

29 April 2022

The Supreme Court of Washington
supreme@courts.wa.gov

Re: Support for Proposal to Change CrRLJ 7.6

To Honorable Justices of the Supreme Court of Washington:

I am writing in support of changes to Criminal Rule for Courts of Limited Jurisdiction (CrRLJ) 7.6. I am the resource attorney at WDA's Incarcerated Parents Project. In that capacity, I work directly with formerly and currently incarcerated parents of minor children, their loved ones, and their attorneys. The proposed changes will increase parents' ability to continue caretaking for their children while waiting for their cases to be resolved and reduce unnecessary harms caused by removing parents from their children, including disruption of parent-child bonds. The changes will also be a step toward alleviating racially disparate impacts on people of color impacted by the criminal legal system.

There is no readily available data regarding parents of minor children who have experienced jail incarceration. The most relevant data concerns parental incarceration in prison.¹ According to the latest data, forty-six (46%) of men and fifty-seven (57%) of women in state prisons are parents of minor children.² More than sixty percent (62%) of Latinx women and half of Black women (50%) in U.S. state prisons are mothers of minor children.³ More than sixty percent of mothers and forty-two percent (42%) of fathers in

¹ There is no way to know for certain whether there is a material difference in number of parents of minor children impacted by jail incarcerations compared to parents impacted by state imprisonment.

² See Maruschak, Laura M., Jennifer Bronson, Ph.D., and Mariel Alper, Ph.D., *Table 1 in Parents in Prison and Their Minor Children, Survey of Prison Inmates, 2016*. Bureau of Justice Statistics: U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics (March 2021), 3 (<https://bjs.ojp.gov/library/publications/parents-prison-and-their-minor-children-survey-prison-inmates-2016>). *But see* Children and Families of Incarcerated Parents Advisory Committee Annual Report, Report to the Legislature and Governor (2010), 5 (2006 survey found that 15,000 of the 18,000 people incarcerated (83%) at WA DOC were parents of minor children) (https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Children%20and%20Families%20of%20Incarcerated%20Parents%202009_499fc72e-e0e8-4021-b6da-a27bb0f5e063.pdf) (viewed 4/29/22).

³ See Maruschak, et al. (2021) at 4.

state prisons reported living with their minor children just prior to incarceration.⁴ Most incarcerated parents were employed and contributed financial support to their children prior to incarceration.⁵

Most of the people accused of crimes in Washington State are indigent⁶ and qualify for court-appointed counsel.⁷ One in five people in the United States would qualify as indigent under Washington's definition simply based on receiving public assistance due to being a child, being elderly, being disabled or earning low wages.⁸ A person with low wage employment is far less likely to have any paid leave that would allow them to miss work for court.⁹ Someone with low wage employment who misses work loses money they need to pay for their or their family's basic human needs.¹⁰ Additionally, people earning low wages can lose their job for missing too many shifts.¹¹

⁴Glaze, Lauren E. and Laura M. Maruschak, *Table 7, Parents in Prison and Their Minor Children*: Bureau of Justice Statistics (revised March 2010), 4. (<https://www.bjs.gov/content/pub/pdf/pptmc.pdf>) (viewed 4/29/22).

⁵ Glaze and Maruschak (rev. 2010) at 5-6. (<https://www.bjs.gov/content/pub/pdf/pptmc.pdf>) (viewed 4/29/22).

⁶See RCW 10.101.010 (3)(definition of "Indigent").

⁷ "It is estimated that in 2018 courts appointed public defense attorneys to represent approximately 95% of felony defendants, 54% of misdemeanor defendants, and almost 100% of juveniles." Washington State Office of Public Defense, *2019 Status Report*, 20 (https://www.opd.wa.gov/documents/00799-2020_StatusReport.pdf).

⁸ Nearly one in four people receiving these types of major means-tested government assistance do work. See Irving, Shelley K. and Tracy A. Loveless. *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?*, United States Census, Household Economic Studies Report Number P70-141 (May 2015), 10-11 (major means-tested government assistance programs include Medicaid, Supplemental Nutrition Assistance Program (SNAP), Housing Assistance, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and General Assistance (GA)) (<https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf>) (viewed 4/29/22). When looking at those who have children and who receive Supplemental Nutrition Assistance Program (SNAP) participation, the rate of employment is greater than fifty percent. See Keith-Jennings, Brynne, and Raheem Chaudhry. *Most Working-Age SNAP Participants Work, But Often in Unstable Jobs*, The Center for Budget and Policy Priorities (March 15, 2018), 2. (<https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>) (viewed 4/29/22).

⁹ See also *The Economics of Paid And Unpaid Leave*, The Council of Economic Advisers (June 2014), 1-2; Washington statutorily provides 1 hour of paid sick leave for every forty hours worked, and no holiday, vacation, or bereavement leave. RCW 49.46.210; Washington State Labor & Industries, *Holiday, Vacation & Bereavement Leave* (<https://lni.wa.gov/workers-rights/leave/holiday-vacation-bereavement-leave>) (viewed 4/20/20).

¹⁰ The average worker without paid leave access, the lost wages associated with staying home for about three days would amount to their household's entire monthly grocery budget or monthly utilities budget. See Gould, Elise and Jessica Schieder. *Table 1 in Work sick or lose pay? The high cost of being sick when you don't get paid sick days*. Economic Policy Institute (June 2017) at 7, (<https://www.epi.org/files/pdf/130245.pdf>) (viewed 4/22/20).

¹¹ Keith-Jennings, Brynne, and Raheem Chaudhry. *Most Working-Age SNAP Participants Work, But Often in Unstable Jobs*, The Center for Budget and Policy Priorities (March 15, 2018), 1. (<https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>) (viewed 4/21/20).

Current practices, including the lack of procedural protection for people jailed while awaiting hearings for alleged probation violations, often cause people accused of violating probation conditions to wait several weeks for a substantive hearing at which a court may not even find a violation. Once released after prolonged and unnecessary incarceration, they may have lost their employment, housing, vehicle (means of transportation),¹² and in some cases, their children. Sadly, courts often review compliance with probation and issue warrants based on alleged violations without the person on probation knowing about it. Their criminal attorney has usually withdrawn from the legal representation before these reviews occur. These reviews also often occur several months after they were sentenced, and their addresses may have changed. When later arrested on the warrants, people are often ill-prepared to make caregiving arrangements for their child(ren), obtain coverage for work, or make plans to maintain their housing. Given the current practice of arresting people first and evaluating the need for incarceration after the fact, this Court should implement rules and standards allowing people to be released after an arrest in order to reduce the harms caused by immediate and unexpected incarceration.¹³

I strongly urge the court to adopt the proposed rule changes requiring courts to treat people who live on lower incomes and are awaiting probation violation hearings in courts of limited jurisdiction more equitably. The criminal court process, even for people ultimately deemed not to have violated probation, brings unnecessary and sometimes irreparable harm to people on probation and their families. People confined pending court hearings may experience prolonged separation from their child(ren), eviction, job loss, and termination from medical treatment.

Please adopt these proposed changes to help reduce the harms to people accused of probation violations.

Sincerely,



Ms. D'Adre Cunningham
Washington Defender Association
Incarcerated Parents Project Resource Attorney

¹² See, e.g., Wilson Criscione, “Where you live in WA may determine whether you get stuck in jail before trial?,” The Seattle Times, April 23, 2022 (<https://www.seattletimes.com/seattle-news/law-justice/getting-stuck-in-jail-before-trial-may-depend-on-where-in-washington-you-live/>).

¹³ See, e.g., Mark Bolton and Julie Wertheimer, “How unnecessary time in jail costs public health and local budgets: Opinion,” Courier Journal, *online*, April 11, 2022 (<https://www.courier-journal.com/story/opinion/2022/04/11/how-unnecessary-jail-time-costs-public-health-local-budgets-opinion/9485572002/>) (viewed 4/29/22).

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My comment is attached.

Thank you,

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-- Maya Angelou

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