



**Department of
PUBLIC DEFENSE**

**Anita Khandelwal
Director**

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April 29, 2022

Honorable Charles W. Johnson
Honorable Mary I. Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
supreme@courts.wa.gov
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Re: Comment Supporting Proposed Changes to CrRLJ 7.6

Dear Justice Johnson, Justice Yu, and Rules Committee Members:

The King County Department of Public Defense submits this comment in strong support of the proposed amendment to CrRLJ 7.6. The existing version of the Rule only notes circularly that a convicted person may be placed on probation as provided by law, and identifies a small number of requirements for probation revocation hearings.

The proposed amendment fills a number of enormous gaps in the misdemeanor post-conviction landscape. The first such gap is that there is currently no established mechanism for a person who is merely accused of a misdemeanor probation violation and detained on that bare allegation to seek their release pending their probation hearing. The proposed rule change offers a simple solution to this problem by incorporating the long relied upon standards of CrRLJ 3.2. There is no principled reason we should not trust our State's judges to make reasoned release decisions in this context just as we trust them to do so in the pretrial context.

Next, the proposal would require probation revocation hearings to take place within two weeks of a person's arrest on an alleged probation violation. While even short periods of incarceration can be enormously disruptive to a person's life and have significant and lasting negative effects, the proposal at least sets some limit on when courts must hear these matters. This is a critical need, especially in light of the range of alleged probation violations and the frequency with which individuals are released on credit for time served immediately upon completion of their hearing.

Research demonstrates that short periods of incarceration frequently upend a person's employment, housing, child custody, and access to health care.¹ While incarcerated, individuals often lose their jobs and their ability to pay rent, which can lead to late fees and eviction.² A person already experiencing homelessness may lose shelter space, personal belongings stored there, and a place on a waitlist to enter permanent housing.³ Even a brief period of incarceration can result in lost wages, jobs, and housing.⁴

These basic due process measures will not only protect defendants though, they will also benefit public safety. We know that even brief stays in jail can increase a person's likelihood of recidivism. For instance, low-risk individuals who are incarcerated from eight to fourteen days "are 51 percent more likely to commit another crime within two years after completion of their cases than equivalent defendants held no more than 24 hours."⁵

In addition to providing a timely hearing and a mechanism to seek pre-hearing release, the amendment would also helpfully denote within the rule those robust and important rights applicable at a probation revocation hearing.

Finally, the amendment would provide important flexibility in a number of ways. It would give judges discretion to permit the defendant's appearance remotely or through counsel where appropriate, such as at a previously agreed upon continuance of a probation hearing. Given the known impacts of repeated, compulsory court attendance over time, this is another important improvement. The amendment would also give judges the authority to relocate a person's supervision to the county where they live, work, or go to school. This flexibility is provided among states, in recognition that it is at times unworkable and even harmful to keep an individual physically tethered to the location where they committed an offense, sometimes years earlier. The same flexibility should be available within our state.

We urge the Court to adopt the proposed changes to CrRLJ 7.6

Sincerely,

/s/ Anita Khandelwal

Director

King County Department of Public Defense

¹ Lisa Foster, *Judicial Responsibility for Justice in Criminal Courts*, 46 HOFSTRA L. REV. 21 (Fall 2017).

² ACLU, *No Money, No Freedom: The Need for Bail Reform* (2016) (available at <http://www.aclu-wa.org/bail>).

³ *Id.*

⁴ Sarah Lustader, *The Right to an Attorney is not enough: Steps to Rid the Criminal Justice System of its Poverty Tax*, 44 FORDHAM URB. L.J. 1407, 1413 (2017).

⁵ Note, *Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing*, 131 HARV. L. REV. 1125, 1129 (2018).

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Good afternoon,

Attached please find King County Department of Public Defense's Comment in support of the pending proposed amendment to CrRLJ 7.6. Thank you very much for the Committee's time and consideration.

Brian Flaherty
Assistant Special Counsel for Criminal Practice and Policy