



Superior Court Judges' Association- Criminal Law and Rules Committee

Hon. Laura M. Riquelme
Chair

Skagit County Superior Court
205 W. Kincaid, Room 202,
Mount Vernon, WA 98273

Hon. Patricia M. Fassett
Cowlitz County Superior Court
312 S.W. First Ave.,
Kelso, WA 98626

Hon. Amber L. Finlay
Mason County Superior Court
419 N. 4th St.,
Shelton, WA 98584

Hon. Evan P. Jones
Whatcom County Superior Court
311 Grand Avenue, Suite 301,
Bellingham, WA 98225

Hon. David S. Keenan
King County Superior Court
516 Third Avenue, Room C-203,
Seattle, WA 98104

Hon. Jennifer R. Langbehn
Snohomish County Superior Court
3000 Rockefeller Ave. M/S 502,
Everett, WA 98201

Hon. Nelson K. H. Lee
King County Superior Court
1211 East Alder Street,
Seattle, WA 98122

Hon. Brian M. McDonald
King County Superior Court
516 3rd Ave., N., Room C-203,
Seattle, WA 98104

Hon. Maryann C. Moreno
Spokane County Superior Court
1116 W Broadway Ave. Fl. 3,
Spokane, WA 99260

Hon. Edmund Murphy
Pierce County Superior Court
930 Tacoma Ave. South, Room
334 County-City Bldg.,
Tacoma, WA 98402

Hon. Andrea K. Robertson
King County Superior Court
401 4th Ave. N., Room 2D,
Kent, WA 98032

Hon. Stan J. Rumbaugh
Pierce County Superior Court
930 Tacoma Ave. South
Room 334 County-City Bldg.
Tacoma, WA 98402

Hon. Michael K. Ryan
King County Superior Court
401 4th Ave. N., Room 2D,
Kent, WA 98032

Hon. Thad E. Scudder
Cowlitz County Superior Court
312 SW 1st Ave., Room 233,
Kelso, WA 98626

Hon. Shane Silverthorn
Yakima County Superior Court
128 N. 2nd St., Rm. 314,
Yakima, WA 98901

Hon. John C. Skinder
Thurston County Superior Court
2000 Lakeridge Dr. S.W.,
Olympia, WA 98502

Hon. Christon C. Skinner
Island County Superior Court
101 N.E. 6th St.,
Coupeville, WA 98239

Date: July 14, 2021

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Washington State Supreme Court Rules Committee
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendment to CrR 3.1 and CrR 7.8

Dear Justices Johnson and Yu,

The Superior Court Judges' Association (SCJA) has learned of a joint request from the criminal defense bar to amend CrR 3.1 and CrR 7.8 in response to the decision in *State v. Blake*. We write in support of the suggested amendment to CrR 7.8 and propose alternative language for amending CrR 3.1.

Early this spring, the SCJA convened multiple meetings with stakeholders to discuss issues related to the impact of the *Blake* decision and how to efficiently and equitably administer justice on such a large scale. One area identified as presenting an unnecessary procedural hurdle was CrR 7.8(c)(2). When a statute is found to be void, invalid, or unconstitutional, an impacted person's path to seek relief directly from the sentencing court should be clear. The amendment to CrR 7.8(c)(2) that OPD, WDA, and WACDL proposed will ensure consistent application by superior courts when faced with requests to review such convictions.

The SCJA agrees that individuals serving sentences for void, invalid, or unconstitutional sentences should have access to counsel once determined eligible for relief under CrR 7.8(c)(2). However, the OPD, WDA, and WACDL proposal's complete elimination of a mechanism for indigency determinations is inconsistent with other court rules and statutes. We suggest creating two subsections to CrR 3.1(b)(2). The new subsection (A) should retain the current language of CrR 3.1(b)(2). The new subsection (B) should include the following alternative language:

A person shall be provided a lawyer where they have demonstrated under CrR 7.8(c)(2)(i) that they are (i) serving a sentence for a conviction based upon a statute determined to be void, invalid, or unconstitutional, or (ii) serving a sentence which was calculated under

RCW 9.94A.525 using a prior conviction based upon a statute determined to be void, invalid, or unconstitutional. Where that person is currently serving the underlying sentence in a correctional institution and was determined to be indigent at the time of sentencing, that person is presumed to remain indigent and has the right to assignment of counsel.

We recognize that the decision in *State v. Blake* affected convictions spanning a period of forty years. Thousands of impacted individuals remain incarcerated and await resentencing. Without a more comprehensive mechanism in place for *Blake*-impacted individuals to be identified and assigned counsel, these court rule amendments will serve to streamline the process for seeking relief so justice may be administered fairly and efficiently.

The SCJA urges the expedited adoption of OPD, WDA, and WACDL's proposed amendment to CrR 7.8(c)(2) and requests expedited consideration of our proposed amendment to CrR 3.1.

If you have any questions please contact me at (360) 416-1200 or at 205 W. Kincaid, Room 202, Mount Vernon, WA 98273.

Thank you for your consideration.

Yours truly,

A handwritten signature in blue ink, appearing to read "Laura M. Riquelme", is written over a horizontal blue line.

Judge Laura M. Riquelme, Chair
SCJA Criminal Law and Rules Committee

cc: J. Benway, AOC Staff, Tom Creekpaum, AOC Staff

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: Comment - Proposed Amendments to CrR 3.1 and CrR 7.8
Date: Wednesday, July 14, 2021 2:18:03 PM
Attachments: [Letter from SCJA Criminal- Comments CrR 3.1 and CrR 7.8.docx](#)

From: Creekpaum, Tom
Sent: Wednesday, July 14, 2021 2:17 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Benway, Jennifer <Jennifer.Benway@courts.wa.gov>; Laura M. Riquelme <lriquelme@co.skagit.wa.us>; Song, Jerome <Jerome.Song@courts.wa.gov>
Subject: Comment - Proposed Amendments to CrR 3.1 and CrR 7.8

Hello,

Please see the attached comment on the proposed amendments to CrR 3.1 and CrR 7.8 from the SCJA Criminal Law and Rules Committee.

Thank you,

Tom Creekpaum | Manager, Office of Legal Services and Appellate Court Support
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Get the most current information on the Courts' response to COVID-19 [here](#).