From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Opposition to Proposed Rule Change to CrR 3.2 and CrRLJ 3.2
Date: Monday, April 29, 2024 11:01:31 AM

From: Benjamin Pratt <BPratt@co.whatcom.wa.us>
Sent: Monday, April 29, 2024 9:15 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition to Proposed Rule Change to CrR 3.2 and CrRLJ 3.2

The Washington State Defense Bar has proposed that the Court adopt revisions to CrR 3.2 regarding the setting of bail. These proposed revisions remove judicial discretion, eviscerate any meaningful ability to secure future appearances by Defendants, and will ultimately make our communities substantially less safe to live in.

In Washington State, unless you are charged with a Class A Felony, you have a constitutional right to bondable bail. You do not, however, have any right to cash alternative bail. Currently, Criminal Court Rule 3.2 allows the Court to set a bondable amount for release of a Defendant that the Court deems appropriate, and then authorizes the Court to choose to set alternative means for the Defendant to secure that bond at the Court's discretion, up to 10 percent of the bond. That can be in the form of cash or other security as approved by the Court, and any bond posted must have sufficiently solvent sureties.

What the Defense Bar is proposing is that the Defendant, not the Court, should be the one to decide what is the appropriate condition to secure their future appearance and compliance with release conditions. They also propose that the Defendant should, in all cases, be entitled to cash alternative bail at 10 percent of the bond amount. Furthermore, it removes the requirement that bonds, posted on behalf of the Defendant, be solvent.

The practical effect of this rule is that it will allow a Defendant, no matter their criminal history, no matter how many times they have failed to appear for their cases, no matter how violent their past and current criminal activity, and no matter how much they interfere with the administration of justice, to be released by posting 10 percent of the amount that the Court determined was the least restrictive means of ensuring their compliance with release conditions.

Adoption of such a rule will have a substantial impact on the safety of all communities in Washington State. In my experience, the Court will use its discretion to deny a cash alternative to those

Defendants who have substantial criminal history and are true dangers to the community; for example, Defendants accused of dealing lethal drugs such as fentanyl. Such Defendants often claim indigency because they do not have legal income to report, yet also often have access to large quantities of cash due to their past and current criminal activity. Often such Defendants also have substantial recurrent criminal activity, so the risk of recidivism should the Defendant be released becomes too great for the bonding agency to justify posting a bond on their behalf. Were these changes to the rule to be adopted, the Court would be required to allow the fentanyl dealer to be released back into the community at 10 percent of the bond setting.

Removing a judge's discretion to impose necessary bail will lead to absurd results. Now, in accordance with their responsibility to ensure community safety, the Court can deny cash alternative bail when they believe a posting of a full bond amount is appropriate. To achieve a similar result under the proposed rule changes, the Court would need to set bail 10 times higher than it would have otherwise set. And, even in those situations, no bonding agency or Defendant would ever actually be required to submit the full bond amount. In essence, adoption of the rule changes would create a categorical decrease of all bail settings made by the court by 90 percent.

For all these reasons I ask the Court to decline the proposed rule amendment.

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