District and Municipal Court Judges' Association

April 15, 2024

VIA EMAIL

Honorable Mary I. Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Comments on Proposed Amendments to CrRLJ 3.2 – Release of Accused

Dear Justice Yu and Members of the Supreme Court Rules Committee:

The District and Municipal Court Judges' Association respectfully opposes the suggested changes to CrRLJ 3.2 for the reasons discussed below:

Bail Reform Should Come from a Comprehensive Review by Relevant Stakeholders

DMCJA does not oppose review of our bail system. However, that review must come from a considered process involving relevant stakeholders, rather than a binary "yes" or "no" choice based on the proposal of one of many interested groups. Rather than adopt a rule proposed only by public defense interests, the Supreme Court should direct BJA to establish a workgroup of stakeholders to address comprehensive bail reform.

Reasonable Bail is Automatically Reduced to Ten Percent of the Court's Order

CrRLJ 3.2(b) already requires the court to consider the defendant's financial resources and set a bond that will reasonably assure the accused's appearance. After considering the defendant's ability to pay, the judge sets a bail amount which may be satisfied through a secured bond or cash bail. After considering the unique circumstances of the case, the judge may permit the posting of ten percent of that amount in cash or other security.

Discretion over bail resides with the judge because each defendant's circumstances are unique. In an individual case, the judge may determine that the defendant's appearance is adequately secured by posting ten percent of the bail amount in cash.

Under CrRLJ 3.2, the judge must determine whether the amount actually posted is sufficient to secure the defendant's appearance. Under the proposed amendments to CrRLJ 3.2, if a judge determines bail in the amount of $1,000 is required to ensure the defendant's appearance and compliance with release conditions, the defendant may unilaterally post ten percent of the amount the judge determined was appropriate. These proposed changes to the existing rule may result in higher bail being ordered by the judge to account for that possibility.

<u>"Willful Failure to Comply" is Not a Workable Standard</u>

CrRLJ 3.2(j)(2) requires a finding that the defendant willfully violated a release condition in order to revoke release. Requiring a finding that the defendant willfully failed to appear before forfeiting bail or bond is not workable. Under the current version of CrRLJ 3.2(b)(4), forfeiture of bail or bond may result when the defendant fails to appear as required.

Any finding that the defendant willfully failed to appear requires a hearing where the defendant has the right to appear and present evidence. If the defendant has not appeared, no hearing can be conducted, and no findings can result. The forfeiture of bail or bond is the catalyst for the party that posted the bail or the bonding company to secure the defendant's presence before the court. If bail or bond cannot be forfeited, it is unclear whether a bench warrant may issue for failing to appear when required.

In sum, the DMCJA urges you to reject the proposed amendments to CrRLJ 3.2. We thank you for consideration of our comments.

Sincerely,

Judge Jeffrey Smith
DMCJA President

cc: Judge Catherine McDowall, DMCJA Rules Committee Co-Chair
Judge Wade Samuelson, DMCJA Rules Committee Co-Chair
Evan Walker, MPA, MJur, DMCJA Rules Committee Staff