From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: CrR 3.2 — proposed changes
Date: Tuesday, April 30, 2024 8:12:24 AM

From: O'Donnell, Sean <Sean.ODonnell@kingcounty.gov>
Sent: Monday, April 29, 2024 10:17 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Donohue, Karen <Karen.Donohue@kingcounty.gov>; Oishi, Patrick <Patrick.Oishi@kingcounty.gov>; Rogers, Jim <Jim.Rogers@kingcounty.gov>; Shah, Ketu <Ketu.Shah@kingcounty.gov>; Young, Melinda <Melinda.Young@kingcounty.gov>
Subject: CrR 3.2 — proposed changes

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Members of the Washington State Supreme Court:

RE: Proposed changes to CrR 3.2 and CLJCrR 3.2

Dear Justices:

We write to you in our individual capacities but also as former, and the current, Chief Criminal judge for King County. Collectively, we have handled thousands of bail hearings for every type of criminal case chargeable under Washington law.

Judges' release decisions can be tremendously important in a case – to the defendant, to victims, and to the community.

As currently drafted, the proposed change to CrR 3.2 and CLJCrR 3.2 removes judicial discretion, may lead to higher bail (an unintended possible consequence) and may lead to the public being confused or misled by judges' release decisions.

Under the current rule, judges can exercise their discretion and apply the rule in multiple ways. For example, a judge is already permitted to release an individual on an appearance bond, which is what the proposed rule contemplates. It also allows a judge to set a surety bond when circumstances warrant.

The distinction is that the proposed rule eliminates the surety option for the judge and removes tools to address the multitude of unique cases judges hear. There are particular circumstances which may necessitate one option or the other. By providing judges options, it allows judges to determine what is appropriate in individual circumstances. It also puts the ultimate decision regarding the balance of presumption of innocence and community safety in the judge's handsrather than the accused's.

We urge you not to change Washington's current bail practices without first having a robust public discussion among justice

system participants. If the Supreme Court sees merit in changes to CrR 3.2, it should convene a Task Force or advisory group to discuss it.

Public distrust in judges' release decisions is already high. Confusion over how and why people are released impacts the public's perception of the judicial branch.

We know that posting bail or securing a bond can be expensive and often out of reach (depending on the bail amount imposed and the type of bond the judge requires). We know that affordability of bail depends entirely on economic status and we know the underlying premise behind bail (that cash can guarantee good behavior and court attendance) is a rigorously debated topic.

It may be important to make sure that judges know that appearance bonds are currently authorized. That is an educational need, not a need to change the rule and eliminate other options.

We do not believe these proposed changes to CrR 3.2 are ready for adoption, for the reasons briefly outlined above and more.

The public and justice system participants should be afforded a public setting or work group to weigh the merits of this proposal against the many questions its implementation would bring.

All of us are willing to participate in such a discussion.

Thank you for your willingness to hear our concerns.

Sincerely,

Judge Karen Donohue

Judge Ketu Shah

Judge Jim Rogers

Judge Melinda Young

Judge Patrick Oishi

Judge Sean P. O'Donnell