April 16, 2025

Washington Supreme Court
415 12th Ave. SW
Olympia, WA 98504

RE: Proposed Revisions to Criminal Rule 3.2

ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Washington

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Dear Clerk of the Supreme Court,

We write to support the proposed changes to Criminal Rule 3.2. The vague language of Criminal Rule 3.2(a)(2)(b), allowing for bail to be set if there is a substantial danger that a person will "unlawfully interfere with the administration of justice," (administration of justice prong) undermines the presumption of release on personal recognizance[1] because: 1) the language of the rule is so broad that it allows prosecutors to circumvent other provisions of Criminal Rule 3.2; and 2) the language does not give appropriate guidance to courts attempting to apply the rule.

The current wording of the administration of justice prong is so broad that it allows prosecutors to circumvent the otherwise narrowly tailored aspects of Criminal Rule 3.2. For example, to address concerns that a defendant would fail to appear, courts can impose conditions of release, but those conditions must be the least restrictive conditions available.[2] However, courts have "presume[d] that failing to attend a hearing is an unlawful interference with the administration of justice" as well. [3] The administration of justice prong does not contain the same requirement that conditions be the least restrictive available.[4] By using this prong instead of the more specific prong, prosecutors can simply ignore the requirements of the rule, requesting conditions that are not the least restrictive.

Similarly, prosecutors regularly[5] argue that courts should impose conditions because of the propensity of the defendant to commit non-violent offenses, circumventing Criminal Rule 3.2(d). Criminal Rule 3.2(d) allows courts to set conditions if there is a substantial danger that an accused person will commit a *violent* offense. The rule's specific reference to violent offenses implies that the Court meant to exclude all other offenses from the rule.[6]

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[1] CrR 3.2(a).
[2] CrR 3.2(b).
[3] 146 Wn. App. 439, 454, 191 P.3d 83, 91 (2008).
[4] Criminal Rule 3.2(d)(4) requires bail to be the least restrictive alternative but not other conditions, but this requirement does not apply to other conditions.
[5] Undersigned counsel has direct experience with prosecutors making these arguments and has taken a brief survey of other practitioners, who have had similar experiences.
[6] "The court will apply canons of statutory interpretation when construing a court rule." *State v. Robinson*, 153 Wn.2d 689, 692, 107 P.3d 90, 92 (2005). "Under expressio unius est exclusio alterius, a canon of statutory construction, to express one thing in a statute

But because of the vagueness of the administration of justice prong, prosecutors regularly argue that non-violent offenses, like driving with a suspended license, would violate conditions of release and therefore "unlawfully interfere with the administration of justice." But imposing bail because the court thinks a person is going to drive without a license undermines the presumption of release on personal recognizance, and circumvents the implied limitation forbidding courts from imposing conditions of release unless there is a substantial danger that the accused will commit a *violent* offense.[7]

These tensions are obvious but because of the vagueness of this provision, it is not obvious that these arguments can be rejected. A court attempting to apply this rule must abide by the plain language of the provision, which seems to encompass an almost unlimited set of circumstances. As a result, courts may impose conditions or bail where the rule is not meant to allow such conditions. The detrimental effects of a court unnecessarily imposing conditions or bail are well known[8] and have been noted by the Court.[9] The Court should clarify this provision in a way that maintains the presumption of release and narrows the range of release reasons to those contemplated within the careful framework of the rule.

Thank you,

/s/ La Rond Baker
La Rond Baker, Legal Director
David Montes, Staff Attorney
American Civil Liberties Union of Washington

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implies the exclusion of the other. Omissions are deemed to be exclusions. *In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597, 604 (2002).

[7] CrR 3.2(a)(2)(a).

[8] *See* ACLU-WA, *No Money, No Freedom: The Need for Bail* Reform (September, 2016), https://www.aclu-wa.org/file/100870/download?token=chydM11t.

[9] *State v. Heng*, 2 Wn.3d 384, 396, 539 P.3d 13 (2023).

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From: David Montes <dmontes@aclu-wa.org>
Sent: Wednesday, April 16, 2025 2:23 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: La Rond Baker <baker@aclu-wa.org>
Subject: Comment on CrR 3.2

Good afternoon,

Attached is a comment from ACLU-WA on CrR 3.2.

Thank you,

David Ventura Montes
Staff Attorney
Pronouns: he, him

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