Dear Members of the Washington Supreme Court and Rules Committee,

I write to express serious concerns regarding the proposed amendments to CrR/CrRLJ 3.2, which would narrowly define the circumstances under which courts may impose pretrial conditions or deny release in non-capital cases. Though presented as a clarifying measure, the proposed amendment substantively alters judicial discretion in a manner inconsistent with longstanding legislative policy and unsupported by empirical data on witness interference, victim disengagement, and community risk. It weakens a critical component of pretrial assessment—interference with the administration of justice—at a time when courts are being called upon to enhance equity, integrity, and trauma-informed responses.

Policy Misalignment: Legislative Intent to Uphold Court Orders and Promote Compliance
Washington courts have long recognized the Legislature's commitment to enforcing court orders as foundational to our justice system. The Legislature has consistently treated domestic violence (DV), sexual assault (SA), and stalking as serious threats to public safety. Our legal framework reflects the understanding that disregard for court orders predicts future harm and is a proxy for danger and defiance of lawful authority.

This commitment is embedded throughout the Revised Code of Washington. In 1979, the Legislature declared DV a "serious crime against society" and committed to providing victims "the maximum protection" under the law, affirming that violent behavior would not be excused or tolerated (RCW 10.99.010). More recently, in adopting RCW 7.105, the Legislature reaffirmed that DV, including violations of protective orders, is both a public and private concern:

"*Washington state has been a national leader in adopting legal protections to prevent and respond to abuse… Domestic violence is a problem of immense proportions… women, low-income people, and Black and Indigenous communities experience higher rates of domestic violence… Domestic violence has long been recognized as being at the core of other major social problems. Washington state studies have found that domestic violence is the most predictive of future violent crime by the perpetrator*."

In *Danny v. Laidlaw Transit Services*, 165 Wn.2d 200 (2008), the Washington Supreme Court affirmed the Legislature's longstanding intent to protect DV victims from future harm. See also *State v. Dejarlais*, 136 Wn.2d 939, 944, 969 P.2d 90 (1998); *Rodriguez v. Zavala*, 188 Wn.2d 586 (2017). Washington's commitment to the sanctity of court orders is so clear that consent is not a defense for violating them. In *State v. Dejarlais,* 136 Wash.2d 939, 944, 969 P.2d 90, 92 (1998), the Court emphasized that permitting consensual contact to excuse violations would undermine legislative intent. As noted in that case, the standard protection order form clearly states: "Only the court can change the order upon written application, and any willful disobedience—including consensual contact—is subject to criminal penalties."

Violations of court orders in DV, SA, and stalking cases are serious crimes that go directly to interference with the administration of justice. They reflect knowing and willful defiance of a court's directive. To restrict the court from considering such behavior in bail decisions because there is no threats would contravene both legislative policy and judicial interest in enforcing its

orders. Moreover, the proposed amendment's limitation of "interference" to threats, intimidation, and evidence tampering fails to account for other behaviors that routinely disrupt the legal process, including:

- Violating no-contact orders directly, through third parties, or via indirect communication;
- Influencing victims to recant through emotional manipulation;
- Evading release conditions designed to protect witnesses or bar access to homes, workplaces, or schools.

The proposed amendments are also out of step with national bail reform trends. New York's bail reform framework—though significantly restructured in recent years—explicitly preserves judicial authority to set bail when a defendant violates a protective order even when the underlying conduct is not on its face threatening or violent. This reflects a principled recognition that violations of court orders are an affront to judicial authority and serve as indicators of increased risk of harm and recidivism. In contrast, the proposed Washington amendment would eliminate "interference with the administration of justice" as a general basis for bail unless that interference involves a specific threat, act of intimidation, or tampering with evidence. This creates a policy divergence: while New York reinforces the courts' interest in upholding their own orders, the proposed Washington rule would significantly constrain judicial discretion, shielding conduct that reflects willful defiance of judicial mandates but does not rise to overt threat.

Conflict with Judicial Bench Guidance on Domestic Violence

The proposed amendment also runs counter to the Washington judiciary's own understanding of domestic violence and the role of judicial discretion in responding to it. The *Domestic Violence Bench Guide for Judicial Officers* emphasizes that domestic violence is not simply an isolated event, but a pattern of coercive and controlling behaviors, many of which are non-criminal (threatening or violent) but profoundly disruptive to court processes and victim safety. These include surveillance, manipulation through children, psychological coercion, and violations of court orders designed to isolate or intimidate victims without overt threats. The Bench Guide explicitly cautions judges against focusing solely on individual violent acts, urging instead a broader lens that accounts for cumulative harm and the full spectrum of interference—including procedural abuse and emotional manipulation—as part of a coordinated control strategy (Bench Guide Ch. 2:

"*Focusing only on an isolated incident rather than the pattern or just on assaults that result in physical harm is inadequate for 1) the assessment of lethality, risks, or impacts, and 2) for developing effective interventions. Using both the Washington behavioral and legal definitions of DV is critical for making the complex decisions facing judicial officers hearing these cases in criminal, family law, juvenile, dependency, or protection order courts*." Id. at 2-5.

By narrowing the definition of "interference with the administration of justice" to only threats, intimidation, or evidence tampering, the proposed rule would preclude judges from applying the very lens they are trained to use, undermining both the purpose of judicial education and the effectiveness of the courts in protecting vulnerable parties and ensuring fair adjudication. Such a narrowing is inconsistent with modern research and national policy consensus recognizing sustained noncompliance as predictive of obstruction and danger.

Systems Impact: Empirical Evidence on Recantation and Disengagement
A multi-year, National Institute of Justice-funded study conducted in King County by Dr. Mary Kernic and a research team from the University of Washington and the King County Prosecuting Attorney's Office reviewed over 1,000 IPV prosecutions. *Victim Recantation and Disengagement from Prosecution in Intimate Partner Violence Criminally Prosecuted Crimes, Washington, 2014-2016*, Kernic, Mary A., and Martin, David. Inter-university Consortium for Political and Social Research, 2024-02-27. https://doi.org/10.3886/ICPSR38548.v1. It found that victim recantation or disengagement occurred in most cases—yet rarely involved explicit threats. Instead, disengagement was typically a product of:

- Emotional appeals by the defendant;
- Financial dependence;
- Shared parenting obligations;
- Social isolation;
- Fear of harm to children.

This legal interference—though non-violent and often technically lawful—was effective. The proposed rule would prohibit courts from considering such realities when setting bail or conditions of release.

Separate research I co-authored with Dr. Amy Bonomi examined jail calls between felony DV defendants and their victims in King County and developed a now widely cited five-stage model of recantation. See Bonomi et al., "Meet Me at the Hill Where We Used to Park," *Social Science & Medicine*, 2011; *Recantation and Domestic Violence: The Untold Story* Dr. Amy Bonomi and David Martin. Taylor & Francis (taylorfrancis.com) Routledge (2023). We found that the most common form of witness tampering was not threat-based but rooted in sympathy appeals—including suicidal ideation, romantic overtures, and emotional references to shared children. These conversations—made in knowing violation of no-contact orders—led to full or partial recantation. Victim disengagement is rarely passive. It is often the predictable outcome of deliberate, systematic pressure—rooted in willful violations of court orders. The courts must retain the ability to respond to this form of interference.

Court Functionality and Public Confidence
The current standard—"interference with the administration of justice"—is broad, not vague. It serves as a safeguard, enabling courts to respond to real-world patterns of manipulation. The proposed revision would strip that flexibility, rendering courts powerless to act on non-criminal, but equally corrosive, interference, such as:

- Persistent efforts to isolate or shame victims through third parties;
- Coordinated child-centered calls designed to induce guilt and cooperation;
- Ongoing manipulation that appears benign but undermines prosecution.

As our research on triangulation through children shows, defendants often use child-related contact to circumvent no-contact orders and pressure victims into silence. Ignoring this behavior erodes both judicial credibility and public trust. See Bonomi & Martin, "Jail Calls: What Do Kids Have to Do With It?", *Journal of Family Violence* (2017), *Witness Tampering Involving Children and the Use of Civil Legal Aid to Buffer Against it* Bonomi & Martin; Domestic Violence Report, Volume 24, Number 02, December/January 2019.

Recommendation: Retain the Current Rule

The proposed amendment would:

- Weaken judicial discretion without evidence of overreach;
- Undermine the enforceability of conditions vital to victim and community safety;
- Ignore the lived dynamics of abuse and legal manipulation;
- Contradict Washington's well-established DV protection statutes and precedent;
- Reverse momentum built over four decades of legislative and judicial progress on gender violence.

This year marks the 30th anniversary of the Violence Against Women Act (VAWA), the 40th of the Victims of Crime Act (VOCA), and the 45th anniversary of RCW 10.99. These milestones are reminders of the legal and moral commitment to treating DV and SA as serious crimes and ensuring robust court protection for those affected. Accordingly, I urge the Committee to reject the proposed amendment and retain the current language of CrR/CrRLJ 3.2, which appropriately preserves the court's ability to respond to all forms of interference with justice—including those not easily captured by threat-based definitions.

Sincerely,

David D. Martin
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Chair, Domestic Violence Unit and Regional DV Firearms Enforcement Unit
King County Prosecuting Attorney's Office
Co-Author, *Recantation and Domestic Violence: The Untold Story*

From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Subject: FW: Comment on CrR-CrRLJ 3.2
Date: Thursday, April 17, 2025 9:24:49 AM
Attachments: David Martin Letter on CrR-CrRLJ 3.2 4.15.25.pdf
image002.png

From: Martin, David (PAO) <David.Martin@kingcounty.gov>
Sent: Tuesday, April 15, 2025 10:29 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on CrR-CrRLJ 3.2

Good morning,
Please find attached my comment on CrR/CrRLJ 3.2.

Sincerely,

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