From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comments on Proposed Amendment to CrR 3.2/CrRLJ 3.2
Date: Tuesday, April 29, 2025 4:26:42 PM

From: Dolly Hunt <DHunt@pendoreille.org>
Sent: Tuesday, April 29, 2025 4:21 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Proposed Amendment to CrR 3.2/CrRLJ 3.2

Dear Justices,

I am writing in opposition to the adoption of the proposed changes to CrR 3.2 and CrRLJ 3.2. I am the County Prosecutor for Pend Oreille County and have 22 years of experience working with the criminal rules. The proposed amendment makes a significant change to the bail rules in Washington under the guise of "clarifying" the intentionally broad criterion of interference in the administration of justice. This criterion is clearly intended to give courts the ability to consider a broad range of factors that may be relevant to setting bail in certain circumstances.

Aside from vague and subjective assertions (e.g. "we have seen the state argue…"), the proponents have not provided either concrete examples or a Washington-specific analysis that demonstrate problems with the existing language in the rule. Instead, the proponents cite a single court decision and make references to general problems within the criminal justice system. While this creates the implication that the proposed rule change would somehow resolve those problems by limiting the factors courts can consider in imposing bail, the argument lacks merit and is an oversimplification of numerous multifaceted issues.

The proposed amendment is too narrow and ignores the risk that an accused person can tamper with witnesses in ways other than by threats or intimidation. For example, under the proposed amendment, a court setting bail would not be able to consider a given defendant's attempts to bribe witnesses. In this context, the proposed amendment's over-focus on whether the accused will "threaten or intimidate" a victim or witness ignores the numerous other ways in which an accused can attempt to unlawfully dissuade a witness or victim from appearing and testifying truthfully in response to a subpoena. Courts must have sufficient discretion to address all behavior that interferes with the administration of justice, not just those that involve a threat or attempt to intimidate.

The proposed amendment "clarifies" the meaning of "interfering in the administration of justice" in a way that renders that criterion largely superfluous. Under both the existing rule and the amended version proposed, a court setting bail can consider the likelihood that the

accused will commit a violent offense as a factor in and of itself. As a result, limiting the "interfering in the administration of justice" criterion to "seeking to intimidate or threaten a witness, victim, or court employee, or tampering with evidence" renders that criterion nearly meaningless; intimidating or threatening a witness, victim, or court employee is committing a violent offense. In that context, the practical impact of the proposed amendment is not to *clarify* the meaning of "interfering in the administration of justice," but to effectively delete it and limit the court to only considering the likelihood that the accused will commit a violent offense.

The proposed amendment ignores the fact that the rule applies equally to the initial setting of release conditions as well as to later revisits of those conditions. Courts commonly impose conditions of release that are necessary for the proper administration of justice but are not necessarily tied to an accused's attempts to threaten or intimidate. Examples include prohibiting a defendant from having contact with codefendants, victims (especially in domestic violence and sexual assault cases), minors (especially in sexual assault and CSAM cases), and specific locations. Another example is a condition of release prohibiting new law violations. In this context, it is important to remember that violations of these conditions of release also interfere with the administration of justice even if they do not involve behavior that is threatening or intimidating in intent or effect. The proposed amendment would wholly deprive courts of the ability to enforce such conditions of release.

The proposed amendment precludes courts from considering relevant factors that can negatively impact the court's ability to effectively adjudicate a matter. For example, while an accused's commission of a single new non-violent offense may not be a reason to readdress release or conditions of release, the analysis may be different with an accused who repeatedly commits non-violent offenses in other jurisdictions. The latter circumstance can cause significant issues with a court's ability to adjudicate the case in a timely manner due to repeated instances of the accused being out of contact with their attorney and unavailable to appear in court due to being in custody in another jurisdiction. While it may be rare that an accused's behavior rises to the level that these issues raise, it can happen. In that context, the proposed amendment strips courts of the discretion they need to ensure justice is properly administered, even though there has been no showing of a significant or systematic abuse of that discretion.

Thank you for your time and your consideration.

Sincerely,
Dolly Hunt

Dolly N. Hunt
Prosecuting Attorney
Pend Oreille County
Hall of Justice

PO Box 5070
Newport, WA 99156-5070

Phone (509) 447-4414
Fax (509) 447-0235
Website www.pendoreilleco.org