From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comment on proposed change to CrR/CrRLJ 3.2
Date: Wednesday, April 30, 2025 11:59:36 AM

From: Hinds, Patrick <Patrick.Hinds@kingcounty.gov>
Sent: Wednesday, April 30, 2025 11:57 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on proposed change to CrR/CrRLJ 3.2

Dear Clerk of the Supreme Court,

I am writing to add my voice in opposition to the proposed changes to CrR/CrRLJ 3.2. I am a senior deputy prosecutor with the King County Prosecuting Attorney's Office. Over more than 20 years with the KCPAO, I have seen the rules applied to numerous different types of cases in both Superior and District Court. After reviewing the materials submitted in support, I am forced to conclude that these proposed changes should be rejected for a number of reasons.

First, the proposed amendment makes a significant change to the bail rules in Washington under the guise of "clarifying" an intentionally broad criterion. The criterion of "interfere in the administration of justice" is clearly intended to give courts the ability to consider a broad range of facts 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 of the change 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 to 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 that courts can consider in imposing bail, the argument lacks merit and is an oversimplification of numerous multifaceted issues.

Second, the proposed amendment is too narrow and ignores the risk that an accused 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 the current case or their history of attempting to bribe witnesses in the past. This obvious example exemplifies the extent to which 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 behavior that involve a threat or attempt to intimidate.

Third, the proposed amendment "clarifies" the meaning of the "interfering in the administration of justice" factor in a way that renders it mostly 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" factor to meaning only "seeking to intimidate or threaten a witness, victim, or court employee, or tampering with evidence" renders it mostly superfluous because an accused who intimidates or threatens a witness, victim, or court employee is already necessarily 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.

Fourth, the proposed amendment ignores the fact that the rule applies equally to circumstances in which the court is readdressing release based on the accused having already violated conditions of release previously imposed by the court. Courts commonly impose conditions of release that are necessary for the due administration of justice, but are not necessarily tied to the accused attempting to threaten or intimidate anyone. 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.

Finally, 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 new 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 raises these issues, it can happen. In that context, the proposed amendment strips courts of the discretion that they need to ensure that justice is properly administered even though there has been no showing of a significant or systematic abuse of that discretion.

For all of the above reasons, I urge the court to reject the proposed change to CrR/CrRLJ 3.2.

Sincerely,

Patrick Hinds

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