WACDL Washington Association of Criminal Defense Lawyers

Cooper Offenbecher
President

Lauren Bramwell
Executive Director

April 30, 2025

Sent via email to supreme@courts.wa.gov

Washington State Supreme Court
Court Rules Committee
supreme@courts.wa.gov

Re: Proposed changes to CrR 3.2, CrRLJ 3.2 (Release of Accused)

Honorable Justices of the Supreme Court:

These proposed rule changes clarify one of the factors a trial court must consider in deciding whether to impose conditions of release on an individual accused of a crime, and what those conditions should be. More particularly, it replaces the phrase "seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice" with more concrete language, to wit: "intimidat[ing] or threaten[ing] a witness, victim, or court employees, or tamper[ing] with evidence." The Washington Association of Criminal Defense Lawyers (WACDL) supports these changes.

Currently, the rules use the vague and broad phrase "interfere with the administration of justice," with only one example of what that phrase means and how it is meant to be interpreted: "intimidate witnesses." Many judicial officers under the current rules apply the canon of statutory interpretation *ejusdem generis* and find that acts like threatening a witness, intimidating a court employee, or tampering with evidence to be sufficiently similar to warrant imposition of prophylactic conditions of release. However some judicial officers may narrowly construe the rules as currently written, and find a substantial danger of evidence tampering to be an improper basis upon which to impose conditions of release. Additionally, some judicial officers may adopt a broader interpretation of "interference with the administration of justice" and determine that the accused poses a substantial risk of committing future acts—regardless of their connection to the underlying purposes of the rules—in order to justify imposing conditions of release. Clarifying the types of conduct that justify imposing conditions of release would promote greater consistency in judicial decisions across jurisdictions.

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Additionally, the current rules' use of the phrase "interfere with the administration of justice" is inherently vague and risks being interpreted too broadly—creating the potential for implicit bias to influence judicial decisions. The persistent correlation between irrelevant and impermissible factors—such as race, ethnicity, disability, and indigency—and the imposition of more stringent conditions of release, including higher bail, travel restrictions, and pretrial supervision, is well-documented and widely recognized. The current rules often provide a facially neutral justification for imposing such conditions, thereby reinforcing this troubling pattern. This concern is particularly acute when the stated rationale bears little or no relationship to the actual goals of the rules.

For example, when a judicial officer cites a person's failure to meet unrelated societal expectations—such as lacking a current driver's license, falling behind on child support, failing to pay legal financial obligations from a prior case, or not being enrolled in a mental health treatment program—as grounds for setting bail based on a perceived risk of interfering with the administration of justice, the underlying purposes of CrR 3.2 and CrRLJ 3.2 are not served. Instead, individuals—often from historically marginalized communities—suffer unnecessary deprivations of liberty without any corresponding benefit to public safety or court integrity.

To ensure that conditions of release are imposed fairly, consistently, and in alignment with the rules' intended goals, the standards must be both clear and narrowly tailored. Without these safeguards, the risk remains high that implicit bias and irrelevant considerations will continue to shape outcomes—undermining public trust in the legal system and inflicting lasting harm on individuals who have not been convicted of any crime.

Thank you for your consideration,

Cooper Offenbecher
WACDL President

Emily Gause
WACDL Court Rules Committee Co-Chair

Christopher Taylor
WACDL Court Rules Committee Co-Chair

From:	OFFICE RECEPTIONIST, CLERK
To:	Farino, Amber
Cc:	Ward, David
Subject:	FW: WACDL Court Rule Public Comments
Date:	Wednesday, April 30, 2025 3:46:30 PM
Attachments:	WACDL_3.1.pdf WACDL_3.2.pdf WACDL_4.1.pdf WACDL_8.3.pdf WACDL_RAP 10.2.pdf WACDL_CR 12.pdf WACDL_17.7.pdf WACDL_18.17.pdf

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From: Lauren Bramwell <Lauren@wacdl.org>
Sent: Wednesday, April 30, 2025 3:34 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Cooper Offenbecher <cooper@ahmlawyers.com>; Emily Gause <emily@emilygauselaw.com>; Christopher Taylor <taylor@crtaylorlaw.com>
Subject: WACDL Court Rule Public Comments

Good Afternoon,

Please see the attached comments submitted on behalf of the Washington Association of Criminal Defense Lawyers (WACDL) regarding the following proposed rules:

- CrR/CrRLJ 3.1 (Appellate Caseloads)
- CrR/CrRLJ 3.2
- CrR/CrRLJ 4.1
- CrR/CrRLJ 8.3
- CR 12
- RAP 10.2
- RAP 17.7
- RAP 18.17

Thank you,

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