Snohomish County
Prosecuting Attorney

Jason J. Cummings
Prosecuting Attorney

Robert J. Drewel Bldg., 7th Floor
3000 Rockefeller Ave., M/S 504 | Everett,WA
98201-4046
(425) 388-3742 | Fax (425) 388-6333
www.snoco.org

April 30, 2025

Supreme Court Rules Committee
c/o Clerk of the Supreme Court Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929
[sent via email at supreme@courts.wa.gov]

RE: Proposed Rule Change to CrR 3.2 and CrCRLJ 3.2.1

To the members of the Rules Committee,

I am writing oppose the proposed changes to CrR 3.2 and CrRLJ 3.2.1. The rule changes proposed by the King County Department of Public Defense and the Snohomish County Public Defender Association are detrimental to a well-functioning criminal justice system. While the goal seems to be to get more individuals out of jail more quickly, a rule change reducing the time for the prosecutor to file a charge into Superior Court is not likely to further that goal, which is already addressed in CrR 3.2 & CrRLJ 3.2. Instead, the proposed rule requires prosecutors to make less informed decisions about charging a person with a felony in Superior Court.

CrRLJ 3.2.1 applies after a judicial officer has already determined probable cause exists to believe the individual held in jail committed the crime. In addition, the judicial officer will have already determined that the arrested individual meets the strict criteria for the setting of bail under CrR 3.2 or CrRLJ 3.2. I object to the proposed rule change because the current rule strikes a reasonable balance between the competing interests at stake. The proposed rule reduces the time available for police investigation before charges must be filed in Superior Court and will unnecessarily rush investigations of the most serious crimes. Reducing from 30 days to 5 days the time available before charges must be filed in Superior Court will result in hurried, rather than careful and thoughtful, charging decisions in criminal cases. Attorneys for the proponent agencies already frequently accuse law enforcement of rushing to judgement, arguing hasty investigations lead to people who did not commit the crime getting charged. Shortening the timeframe for filing charges exacerbates rather than diminishes this problem. Getting the decision right should be the primary consideration.

The justifications set forth by Proponents do not support the rule change. Proponents use as an example the recent Court of Appeals decision in State v. Dowdney. The Court in Dowdney rejected the defendant's claim that the current rule violates Equal Protection. Proponents now seek to amend the current rule despite there being no legal impediment to its continued validity. The Proponents provide some procedural background about the Dowdney case. However, what they neglect to point out is that

when the defendant did come before the Superior Court for timely arraignment the Superior Court judge set the very same bail and conditions of release as was set in District Court. Mr. Dowdney's case is an example of why no rule change is necessary.

Most arrested individuals are released without conditions. For those held in custody, Proponents recognize that under the current rule arrested individuals have an opportunity to be released at their preliminary appearance. The proposed rule change will not address Proponent's concern about arrested individuals refusing to attend their preliminary hearings nor the concern with hearings happening without full discovery. Those concerns are not altered by this proposed rule change.

Discovery in criminal cases takes time to put together. Police must have time to write reports, download body camera footage from multiple officers, witnesses must be identified and statements obtained, video from a variety of sources must be collected and reviewed, search warrants for information from phones or computers must be obtained and the results analyzed, crime lab analysis for DNA, or firearm and toolmark, or other comparative analysis on items of evidence must be completed, certified copies of documents must be obtained, criminal history determined, and a wide variety of other tasks must be completed. All of the discovery materials have to be provided to the Prosecutors office and input into the Prosecutor's computer system by staff. A deputy prosecutor must then have time to review those materials and determine whether sufficient evidence exists to charge a crime. There may be requests for police to obtain additional materials which takes additional time. Legal research is often necessary in order to make quality charging decisions. Then the DPA must decide what crime or crimes should be charged.

Our office places a high priority on making significant efforts to meet with and speak to the victims of certain crimes before making a charging decision. We try to explain the process of what is going to happen, seek victim input on their preferred outcome, and otherwise comply with RCW 7.69.030. Drastically shortening the timeframes available to allow this to occur will be detrimental to victim participation in these important decisions and will make it that much harder for them to exercise their constitutionally and legally guaranteed rights in these kinds of cases.

Additionally, once charges are filed it is exceptionally rare for a case to go to trial on the first setting and defense continuances are routinely sought and granted. The proposed reduction in the prosecutor's time available to charge the case does not mean charges will get to trial or reach resolution any faster.

The proposed rule also introduces inconsistency and uncertainty. Section (g)(1) would require a preliminary *hearing* within 48 hours of filing a complaint for the purpose of determining probable cause, even when probable cause has already been previously determined. That is a waste of valuable court time. Courts already determine probable cause within 48 hours of arrest, under section (a). Proposed section (g)(1) also conflicts with proposed section (g)(2) since a charge must be filed in Superior Court within 3 days of a probable cause finding under proposed (g)(1), but 5 days of filing of the complaint under proposed (g)(2). The Proposed rule change should be rejected for introducing inconsistency and uncertainty that will require litigation to figure out what it even means.

Weighty decisions about whether to charge someone with a felony in Superior Court take time. The citizens of our state expect prosecutors to make careful and thoughtful decisions. The proposed rule undermines careful consideration before filing felony charges in Superior Court and should be rejected.

Respectfully,

Jason Cummings
Snohomish County Prosecuting Attorney

Criminal Division
Elise Deschenes, Chief Deputy
Mission Building, 1st Floor
(425) 388-3333
Fax (425) 388-3572

Civil Division
Bridget E. Casey, Chief Deputy
Robert J. Drewel Bldg., 8th Floor
(425) 388-6330
Fax (425) 388-6333

Family Support Division
Julie Mohr, Chief Deputy
Robert J. Drewel Bldg., 6th Floor
(425) 388-7280
Fax (425) 388-7295

From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Rulemaking Comments on CrR 3.2/CrRLJ 3.2.1
Date: Wednesday, April 30, 2025 3:21:18 PM
Attachments: 0765_001.pdf

From: Cummings, Jason <Jason.Cummings@co.snohomish.wa.us>
Sent: Wednesday, April 30, 2025 3:20 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Cummings, Jason <Jason.Cummings@co.snohomish.wa.us>
Subject: Rulemaking Comments on CrR 3.2/CrRLJ 3.2.1

Attached please find my comment on the above referenced proposed rules.

Thank you,

Jason J. Cummings
Prosecuting Attorney
Snohomish County Prosecuting Attorney's Office
3000 Rockefeller Avenue, M/S 504
Everett,WA 98201-4046
phone: (425) 388-6332
fax: (425) 388-6333
email: jcummings@co.snohomish.wa.us