



King County

**Department of
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Clerk of the Supreme Court

P.O. Box 40929

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Dear Justices of the Washington State Supreme Court,

The proposed rule changes to CrR 3.2/CrRLJ 3.2 seek to mitigate one of our criminal legal system's greatest inequities: the criminalization of poverty through unaffordable pretrial conditions. By revising the court rules to replace the broad catchall of whether a person will "interfere with the administration of justice" with more concrete and particularized criteria, the court can clarify what circumstances truly justify the imposition of pretrial conditions, including monetary bail.

Under the current CrR 3.2/CrRLJ 3.2, courts may set unaffordable bail based on the risk that a person will "unlawfully interfere with the administration of justice." This criterion is poorly defined but the little applicable appellate caselaw shows that relatively minor past errors like "failing to attend a hearing" constitutes "an unlawful interference with the administration of justice." *State v. Rose*, 146 Wn. App. 439, 454, 191 P.3d 83 (2008).

As those who work in or adjacent to the criminal legal system know too well, a person's ability to attend court hearings often depends on their access to secure housing, transportation, childcare, job flexibility, and phone service, and missing a hearing does not signify an intent to evade court orders. The courts' mistaken, expansive use of the "interference with the administration of justice" criterion overlaps with other criteria like a court's determination that release conditions are necessary because "recognizance will not reasonably assure the accused's appearance."

Courts have also imposed bail under the "administration of justice" criterion after finding that a person is likely to violate release conditions. The misuse of this provision would be prevented if the rule language instead allowed conditions to be imposed if there is a likely danger that the

person “will seek to intimidate or threaten a witness, victim, or court employee, or tamper with evidence.”

The proposed amendments aim to reduce the incidence of pretrial incarceration effectively based on indigence by clarifying what constitutes “interference with the administration of justice” and properly focusing the inquiry on whether a person will seek to intimidate or threaten witnesses, victims, or court employees or seek to tamper with evidence. By replacing a broad and ill-defined consideration of whether the person will “otherwise unlawfully interfere with the administration of justice,” the Court can ensure greater consistency and clarity in the critical determination about whether to impose conditions of release.

Sincerely,

Matt Sanders, Interim Director
King County Department of Public Defense

OTHER SIGNATORIES