



**Department of  
PUBLIC DEFENSE**

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April 30, 2026

Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

Dear Justices of the Washington State Supreme Court,

Both the U.S. and state constitutions prohibit excessive bail, as all people charged with crimes are presumed innocent. However, Washington judges regularly impose unaffordable bail on indigent people for nonviolent offenses knowing this will result in pre-trial incarceration. All across the state, indigent people are being kept in jail for low-level offenses typically associated with poverty; here are just a few examples:

- In Clark County, an indigent man with no criminal history was jailed on an allegation of Theft 3 (generally charged when the value is less than \$750) and held on \$2,500 bail. He remained in jail for over a month before the case was finally dismissed, as he was found incompetent to assist in his own defense.
- In Douglas County, an indigent person was jailed for over a week on a Criminal Trespass 2 charge, with bail set at \$5,000.
- In Pasco, an indigent man with one misdemeanor drug possession on his record was charged with misdemeanor theft and jailed for 30 days on \$500 bail for allegedly wheeling off a gardening cart.

The proposed rule changes seek to reduce pre-trial incarceration of poor people who are presumed innocent, yet incarcerated due to unaffordable bail. Informed by practices in other states, this proposal gives people a chance to appear in court before finding they are a flight risk; allows for bail deposit refunds, and caps bail for most misdemeanor offenses where the person does not present a risk of committing a violent offense. Specifically, the proposal would:

1. Replace the current bail standard of “likely risk of nonappearance” with Illinois’ narrower standard of “high likelihood of willful flight to avoid prosecution,” and allow people at least one chance to appear out of custody before imposing bail for this standard.

2. Cap bail at \$200 for most misdemeanor offenses (excluding domestic violence and DUI), following Vermont’s lead, when bail is imposed on the likelihood of willful flight prong.

3. Enact a strong presumption that the court will allow the accused to post 10% of the bail or warrant amount with the court, which will be refunded after they attend their court appearances.

4. Replace the current prongs of the requirements for warrants issued after a person is charged with a crime to ensure consistency with the other reforms that properly center a person’s likelihood of willful flight, intentional interference with the judicial process, and/or violating a court order before allowing pretrial incarceration.

These changes to CrR 3.2/CrRLJ 3.2 and 2.2 are intended to reduce the harm of pre-trial detention experienced by Washingtonians living in poverty. Pre-trial incarceration has devastating effects—not just on the accused, but also their families and communities. Harms of pre-trial incarceration include loss of housing, healthcare, employment, financial stability, and the physical and mental health of the accused and their loved ones. These harms are both significant and enduring, with one study finding that initial pre-trial release increased the probability of employment in the formal labor market three to four years after the bail hearing by 24.9 percent.<sup>1</sup>

Though meted out at the individual level, these harms compound at the family and community level. When family members—most often women of color—have to turn to bail companies to get loved ones released, they typically must pay 10% of the full bond amount in addition to bond fees, none of which is refundable.<sup>2</sup> And many bail companies charge poor people more because they are poor; as an example, in Washington state, Aladdin Bail Bonds charges 10% of the bond if the person is represented by a public defender and only 8% if they can afford a private attorney.<sup>3</sup> This extraction of wealth from the communities least able to afford it has led to growth in the bail industry to an estimated \$3.5 billion nationwide in 2025.<sup>4</sup>

Additionally, those who are incarcerated pre-trial have worse case outcomes than those who are released. People incarcerated pre-trial are more likely to agree to plead guilty to secure their freedom as quickly as possible, regardless of whether they actually committed the crime. One study found that individuals incarcerated pre-trial are also sentenced to prison sentences twice as

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<sup>1</sup> Will Dobbie et al., *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 *American Economic Rev.* 201 (2018), 204, <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20161503>.

<sup>2</sup> Joshua Page et al., *A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation*, 5 *Russell Sage Foundation Journal of the Social Sciences* 150 (February 2019), 153, <https://doi.org/10.7758/RSF.2019.5.1.07>.

<sup>3</sup> Aladdin Bail Bonds, *Industry Standard Rates*, <https://www.aladdinbailbonds.com/industry-standard-rates/> (accessed March 23, 2026) (“In California, Washington, and Idaho, Aladdin Bail Bonds is authorized to offer an 8% rate in addition to the standard 10%. ... We are happy to offer the 8% premium rate to customers who... [have] Retained Private Defense Counsel...”

<sup>4</sup> Dimitry Diment, *Bail Bond Services in the U.S.* (2025), IBISWorld, <https://www.ibisworld.com/united-states/industry/bail-bond-services/5002/>.

long as those who were not detained.<sup>5</sup> One King County Superior Court judge has explained that custody status may have an “unconscious influence” on sentencing decisions: “With an out-of-custody defendant, the judge has to make an affirmative decision to send the person to prison or jail rather than imposing an alternative. An in-custody defendant is already there.”<sup>6</sup>

Unsurprisingly, people of color are disproportionately jailed pre-trial. Studies have found that both the imposition and effect of bail are racially disproportionate.<sup>7</sup> Research in Washington State, including data from King County, demonstrates that Black and Latinx individuals are incarcerated pre-trial at higher rates than white defendants.<sup>8</sup> Data published by the King County Department of Adult and Juvenile Detention (DAJD) shows that, in September 2025, over 38.7% of the average daily population of adults incarcerated in King County Correctional Facilities were Black.<sup>9</sup> In contrast, 2020 census data shows only 7% of King County residents are Black.<sup>10</sup>

While this proposal will not fix the two-tiered system of justice that unaffordable bail perpetuates, it will mitigate some of the legal system’s disproportionate harm on poor people in our community. By changing the bail standard from “likely risk of nonappearance” to “high likelihood of willful flight to avoid prosecution,” indigent people who do not intend to flee prosecution, but who may miss a court appearance for lack of transportation, stable housing, and solid support systems will not be harmed by pre-trial incarceration. By capping some misdemeanor bail amounts at \$200, those who have committed low-level offenses associated with poverty, such as trespassing or shoplifting, will be less likely to needlessly suffer the harm of pre-trial incarceration. And by enacting a presumption that a jailed person can post 10% of bail with the court, families of poor people will be able to help gain release of their loved ones, knowing they can get their deposit back when the person successfully appears in court instead of losing the 10% forever as a nonrefundable fee to a commercial bail business.

“Providing equal justice for poor and rich, weak and powerful alike is an age-old problem,” but we have “never ceased to hope and strive to move closer to that goal.”<sup>11</sup> Pre-trial detention of people who are presumed innocent but too poor to post bail deprives our community members of their liberty, well-being, and equal justice. These common-sense bail reforms are an important step towards reducing the disproportionate harms of pre-trial detention and should be adopted by this Court.

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<sup>5</sup> Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 714 (2017), <https://www.law.upenn.edu/live/files/6467-harriscountybailstanford>.

<sup>6</sup> Theresa Doyle, King County Bar Bulletin, *Fixing the Money Bail System*, 1 (April 2016), <https://www.courts.wa.gov/subsite/mjc/docs/FixingtheMoneyBailSystem.pdf>.

<sup>7</sup> Cynthia E. Jones, “Give Us Free”: *Addressing Racial Disparities in Bail Determinations*, 16 N.Y.U.J. Legis. & Pub. Pol’y 919 (2013), <https://www.nyuilpp.org/wp-content/uploads/2014/01/Jones-Give-Us-Free-16nyuilpp919.pdf>

<sup>8</sup> *Preliminary Report on Race and Washington’s Criminal Justice System*, 47 Gonz. L. Rev. 251 (2011-2012), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1021&context=faculty>.

<sup>9</sup> Population Information - Adult and Juvenile Detention, Population Dashboard, King County Department of Adult and Juvenile Detention, <https://www.kingcounty.gov/depts/jails/about/dajd-stats.aspx>.

<sup>10</sup> King County Demographics, 2020 Census Race and Ethnicity, <https://kingcounty.gov/en/dept/executive/governance-leadership/performance-strategy-budget/regional-planning/demographics>.

<sup>11</sup> *Griffin v. Illinois*, 351 U.S. 12, 16, 76 S. Ct. 585, 589, 100 L. Ed. 891 (1956).

Almost 40 years ago, the U.S. Supreme Court held that “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>12</sup> We must work together to uphold this principle, and make these important, common-sense changes.

Sincerely,

Matt Sanders, Director  
King County Department of Public Defense

OTHER SIGNATORIES

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<sup>12</sup> *United States v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 2105, 95 L. Ed. 2d 697 (1987).