

WSR 24-01-050
RULES OF COURT
STATE SUPREME COURT
[December 7, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO CrR) NO. 25700-A-1557
3.2—RELEASE OF ACCUSED AND)
CrRLJ 3.2—RELEASE OF ACCUSED)

The King County Department of Defense, the Washington State Office of Public Defense, and the Snohomish County Office of Public Defense, having recommended the suggested amendments to CrR 3.2—Release of Accused and CrRLJ 3.2—Release of Accused, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2024.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of December, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR9 COVER SHEET

A. Name of Proponent: The King County Department of Defense, the Washington State Office of Public Defense and the Snohomish County Office of Public Defense

B. Spokesperson: Anita Khandelwal, Larry Jefferson, and Jason Schwarz

C. Purpose: Ensure that when the court imposes bail that an accused person can deposit 10% of an ordered bond amount with the court and that such deposit is returned at the conclusion of the case if the conditions are followed (consistent with current CrR/CrRLJ 3.2 (b) (4)).

D. Public Hearing: A public hearing is not recommended.

E. Expedited Consideration: Expedited Consideration is not requested.

Introduction

The proposed amendments seek to remedy one of the inequities the bail surety system imposes on indigent persons accused of crimes. The current surety bail system unjustly deprives indigent litigants of their bail deposit. The proposed amendment to CrR 3.2/CrRLJ 3.2, Re-

lease of Accused, will ensure that courts will accept multiple bail payment options, including a 10% cash deposit of the bail amount to be returned to the accused at the conclusion of their case. This proposed amendment will enable indigent people to obtain their release from jail without losing their cash deposit.

Background

To secure an accused person's release, Washington courts currently accept the deposit of 10% of an ordered bond, the posting of the full bail amount, or a surety bond. Courts overwhelmingly order the posting of the total bail or a surety bond in lieu of full bail rather than allowing the option of depositing 10% with the court. As a result, an indigent accused person unable to post the entire full bail amount is required to use a private bail bonds company to post a surety bond on their behalf. These low-income people must generally pay 10% of the bail amount to the bail bonds company for the surety bond. Unlike 10% deposited with the court, which can be returned to the accused upon conclusion of the case, the money used to purchase a surety bond from a private bail bond company is never returned, regardless of whether they return to court for the remainder of their case or even have the charges against them dismissed.

The wealth extracted from low-income communities across the country due to this practice is significant: the ACLU and Color of Change estimate that the private bail bonds industry generates as much as \$2.4 billion nationwide every year. See Color of Change and American Civil Liberties Union's Campaign for Smart Justice, "Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System" (Oakland, CA: 2017), available at <https://www.aclu.org/report/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system>.

Several other states have adopted procedures similar to this proposal, including Kentucky, Wisconsin, Massachusetts, Oregon, and Nebraska. These jurisdictions vary in the amounts they charge an accused person for posting 10% of bail set in order to secure their release pretrial, ranging from a specified fee to a percentage of the deposit. See KRS 431.510; Wis. Stat. § 969.12(2); *Kahn v. McCormack*, 299 N.W. 2d 279 (Ct. App. 1980); M.G.L. ch.276 §61B; ORS 135.265; NRS 29-901 (3) (c) (1).

By amending CrR and CrRLJ 3.2, Washington can mitigate the harm the criminal legal system inflicts on people with low incomes who are charged with crimes and presumed innocent.

Proposed Amendment to CrR/CrRLJ 3.2

(a) [Unchanged]

(b)

(1)-(3) [Unchanged]

(4) Impose bail require the execution of a bond in a specified amount and allow the accused to elect to satisfy the bail amount through any one of the following: the execution of a bond with sufficient sureties, a deposit of cash in lieu thereof, or by the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release, less court costs not to exceed fifty dollars, or forfeited for willful violation of any condition of release. If this requirement is imposed, the court must also authorize a surety bond under section (b) (5);

~~(5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;~~

(6)-(7) [Unchanged]

(c) [Unchanged]

(d)

(1)-(5) [Unchanged]

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice; if the court imposes bail, the court shall permit the accused to satisfy the bail amount in accordance with

(b) (4).

(7)-(10) [Unchanged]

(e)-(o) [Unchanged]

Conclusion

In sum, the proposed rule change would create a fairer criminal legal system where people of low incomes don't end up paying more for their freedom than the wealthy. Allowing people to pay the 10% deposit with the Court will assure more equal access to justice without imposing any significant administrative burden on Washington's courts. For these reasons, we urge the Court to adopt this proposed rule change.

Proposed Amendment to CrR/CrRLJ 3.2

(a) [Unchanged]

(b)

(1)-(3) [Unchanged]

(4) Impose bail require the execution of a bond in a specified amount and allow the accused to elect to satisfy the bail amount through any one of the following: the execution of a bond with sufficient sureties, a deposit of cash in lieu thereof, or by the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release, less court costs not to exceed fifty dollars, or forfeited for willful violation of any condition of release. If this requirement is imposed, the court must also authorize a surety bond under section (b) (5);

~~(5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;~~

(6)-(7) [Unchanged]

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(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice; if the court imposes bail, the court shall

permit the accused to satisfy the bail amount in accordance with
(b) (4).

(7) - (10) [Unchanged]

(e) - (o) [Unchanged]

Reviser's note: The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.