

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED )  
AMENDMENTS TO CrR 3.2—RELEASE OF )  
ACCUSED AND CrRLJ 3.2—RELEASE OF )  
ACCUSED )  
\_\_\_\_\_ )

**ORDER**

NO. 25700-A-1302

Judge Kessler (ret.), 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 attached hereto 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 2021.

(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, 2021. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov). Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 9th day of July, 2020.

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ORDER

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CrR 3.2—RELEASE OF  
ACCUSED AND CrRLJ 3.2—RELEASE OF ACCUSED

For the Court

  
CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment to  
WASHINGTON STATE COURT RULES:  
CRIMINAL RULES FOR SUPERIOR COURTS  
CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION

Amend TRIAL COURT RULE 3.2  
RELEASE OF ACCUSED

Submitted by Judge Ronald Kessler (Retired)

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- A. **Name of Proponent:** Judge Ronald Kessler (Retired)
- B. **Spokesperson:** Judge Ronald Kessler (Retired)
- C. **Purpose:** CrR 3.2 and CrRLJ 3.2 pertaining to release of the accused directs that accused persons charged with non-violent crimes be released on personal recognizance; as it is currently written the rule is often not honored. The proposed amendments would provide for a specific obligation of the trial courts.

When an accused is charged with a non-violent crime and is either on probation or community custody or has been released on personal recognizance for a previous offense, the court (or DOC in some cases of community custody) has the power to detain on the previous offense pending a decision on whether or not the new charge violates the condition that defendant commit no crimes, CrR 3.2(k)(2), CrRLJ 3.2(k)(2). Thus, regardless of whether or not the defendant is released on the new offense, he or she can be appropriately detained on the older one pending a hearing.

This proposal would require trial courts to release anyone charged with a non-violent crime if he or she has not previously failed to appear on the new offense, is not on probation, and is not on pretrial release for an older crime. This clearly limits the discretion of the trial court which is the intent of the current rule. The proposal mandates release for most people charged with non-violent crimes, but maintains appropriate discretion for others.

Since many people on probation or pretrial release on earlier cases have those matters in other jurisdictions or court levels, it is difficult for those courts to learn that the defendant has been charged with a new offense. The proposal would result in more people being released without condition but also protect public safety for others.

I also propose that CrR/CrRLJ 3.2(b)(4), often called the 10% appearance bond, be repealed. The current rule permits a court to set a bail amount at 10% of the surety amount. The defendant then signs a bond agreeing to pay the court the remaining 90% if the defendant violates a condition of release. This does allow defendants to be released without buying a surety bond and paying a non-refundable premium. The flaw is that courts do not even try to collect the 90%. In King County, the Department of Judicial Administration decided that it is not worth the time and energy to collect this 90% since most defendants are indigent and judgment proof

The proposed alternative will allow the court to set an amount of surety bond as required by the Constitution, CONST., art. 1, § 20, but also set a cash bail amount at less than the surety bond, in the court's discretion. As an example, the court could set a surety bond at \$20,000 or cash of \$1000. If a defendant posts the cash and complies with all conditions, the money would be refunded in full.

The proposal also eliminates references to capital and noncapital cases since we no longer have a death penalty in Washington.

Some jurisdictions in the United States are working towards elimination of money bail. Washington cannot do that via legislation or a court rule absent a constitutional amendment. This is a bail reform proposal that maintains the required surety bond, requires courts to release more defendants, but maintains discretion for those who may have committed a new offense while an older one is still extant.

- D. **Hearing:** A hearing is not recommended.
- E. **Expedited Consideration:** Expedited consideration is requested.

**CrR 3.2**  
**RELEASE OF ACCUSED**

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

**(a) Presumption of Release in ~~Nonecapital~~ Cases.**

The court shall release any person charged with a non-violent crime on the accused's personal recognizance, unless:

- (1) the accused has failed to appear, after notice, on the current charge, or
- (2) the accused is on probation or community custody, or
- (3) the accused has been released on personal recognizance or bail for an offense alleged to pre-date the current charge.

Any person, other than a person charged with a capital offense, charged with a violent crime or charged with a non-violent crime and subject to subsections (a)(1), (a)(2) or (a)(3) above, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

- (1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or
- (2) there is shown a likely danger that the accused:
  - (a) will commit a violent crime, or
  - (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

**(b) Showing of Likely Failure to Appear—Least Restrictive Conditions of Release.** If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

- (1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- (2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
- (3) Require the execution of an unsecured bond in a specified amount;

~~(4) Require the execution of a bond in a specified amount and 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 or forfeited for 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, which need not be the same amount as the bond, in lieu thereof;~~

~~(65) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or~~

~~(76) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If the court determines 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 accused's appearance.~~

~~(c) – (o) [no changes]~~

**CrRLJ 3.2**  
**RELEASE OF ACCUSED**

If the court does not find, or the court has not previously found, probable cause, the accused shall be released without conditions.

**(a) Presumption of Release in ~~Nonecapital~~ Cases.**

The court shall release any person charged with a non-violent crime on the accused's personal recognizance, unless:

- (1) the accused has failed to appear, after notice, on the current charge, or
- (2) the accused is on probation or community custody, or
- (3) the accused has been released on personal recognizance or bail for an offense alleged to pre-date the current charge.

Any person, other than a person charged with a capital offense, charged with a violent crime or charged with a non-violent crime and subject to subsections (a)(1), (a)(2) or (a)(3) above, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

- (1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or
- (2) there is shown a likely danger that the accused:
  - (a) will commit a violent crime, or
  - (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" may include misdemeanors and gross misdemeanors and are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

**(b) Showing of Likely Failure to Appear—Least Restrictive Conditions of Release.**

If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

- (1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- (2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

~~(4) Require the execution of a bond in a specified amount and 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 or forfeited for violation of any condition of release. If this requirement is imposed, the court must also authorize a surety bond under subsection (b)(5);~~

~~(5) Require the execution of a bond with sufficient solvent or the deposit of cash, which need not be the same amount as the bond, in lieu thereof;~~

~~(6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or~~

~~(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required.~~

A court of limited jurisdiction may adopt a bail schedule for persons who have been arrested on probable cause but have not yet made a preliminary appearance before a judicial officer. The adoption of such a schedule or whether to adopt a schedule, is in the discretion of each court of limited jurisdiction, and may be adopted by majority vote. Bail schedules are not subject to GR 7. The supreme court may adopt a uniform bail schedule as an appendix to these rules.

If the court determines 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 accused's appearance.

(c) – (q) [no changes]