THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CrR/CrRLJ 3.2—RELEASE OF ACCUSED AND CrR/CrRLJ 2.2—WARRANT OF ARREST AND SUMMONS	)	O R D E R
	)	NO. 25700-A-1676

The King County Department of Public Defense, the Washington State Office of Public Defense, the Washington Defender Association, and the Snohomish County Office of Public Defense**,** having recommended the suggested amendments to CrR/CrRLJ 3.2—Release of Accused and CrR/CrRLJ 2.2—Warrant of Arrest and Summons, 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 2026.

(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, 2026. 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 4th day of December, 2025.

For the Court

Stegmann, C. J.
CHIEF JUSTICE

GR9 COVER SHEET

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

B. **Spokesperson:** Matt Sanders, Larry Jefferson, Christie Hedman, and Jason Schwarz

C. **Purpose:** Replace the CrR/CrRLJ 3.2 standard of "likely failure to appear" with "high likelihood of willful flight from prosecution"; require at least one failure to appear before bail can be imposed under the newly amended "willful flight" prong; enact a $200 cap on bond and warrant amounts for most misdemeanor offenses when a finding is made under the newly amended "willful flight" prong; amend CrR/CrRLJ 2.2 regarding the failure to appear and administration of justice prongs; in both CrR/CrRLJ 3.2 and 2.2, enact strong presumption for deposit of a sum not to exceed 10% of the set bail with the clerk of the court.

D. A public hearing is not recommended.

E. Expedited consideration is not requested.

1. Introduction

The King County Department of Public Defense, the Washington State Office of Public Defense, the Washington Defender Association, and the Snohomish County Office of Public Defense propose changes to CrR/CrRLJ 3.2 and CrR/CrRLJ 2.2 to advance the purposes of bail by focusing on a person's risk of flight, by enacting a strong presumption that a person can post 10% of the bail amount with the clerk's office, and by reducing wealth-based pretrial incarceration for misdemeanor offenses.

Frequently, the government requests bail under CrR 3.2(b) or a warrant under CrR 2.2(b) on the sole basis that a person is likely to fail to appear for court hearings. Bail is imposed or a warrant is issued before an accused person has had a single opportunity to voluntarily appear in court for their case and with no evidence that the person intends to "flee from prosecution." In addition, trial courts frequently impose high bail amounts for misdemeanor offenses that result in wealth-based pretrial incarceration.

We propose:

1. Replacing the current standard of "likely risk of nonappearance" with Illinois' standard of "high likelihood of willful flight to avoid prosecution." "Willful flight" will be defined, in part, as "intentional conduct with a purpose to thwart the judicial process to avoid prosecution."
2. Providing an accused person at least one chance to appear out-of-custody on their case before the court can impose bail on the amended "high likelihood of willful flight to avoid prosecution" prong. To be clear, the court would remain able to impose

monetary bail under CrR/CrRLJ 3.2's other prongs regardless of whether the person had the chance to appear out-of-custody for their case.

3. Amending CrR/CrRLJ 2.2(b)'s provisions to allow a warrant, rather than a summons, to be issued if the judge finds that a person presents a high likelihood of willful flight from prosecution, that the person will commit a violent offense, or that the person will seek to intimidate, tamper, or threaten a witness, victim or court employee, or tamper with evidence, or violate a civil or criminal protection order or a condition of release requiring no contact with a person or place.
4. Following Vermont's lead, capping bail at $200 for most misdemeanor offenses (excluding domestic violence and DUI) except, in Washington, limiting the cap to situations where the court makes a finding under the willful flight prong.
5. Enacting a strong presumption that the court will allow the accused to post 10% of the bail or warrant amount with the registry of the court.

2. Courts have long rejected pre-trial, wealth-based detention and extensive research demonstrates the harm.

a. Washington courts allow pre-trial detention in very narrow circumstances.

Washington State courts have repeatedly affirmed the importance of release pre-trial except in very limited circumstances. In *State v. Jakshitz*, the court stated bail is critical so that "the state may be relieved of the burden of keeping an accused person; that the innocent shall not be confined pending a trial and formal acquittal…"[1] The "true purpose [of bail] is to free the defendant from imprisonment and to secure his presence before [the] court at an appointed time." *State ex rel. Wallen v. Judge Noe, Towne, Johnson*.[2] Bail seeks to "prevent excessive pretrial detention."[3]

The Eighth Amendment of the U.S. Constitution and article I, section 14 of the Washington Constitution prohibit excessive bail and are grounded in the principle that bail should allow people to be out of custody pre-trial. However, bail has often been used as a tool of pre-trial incarceration. Judges faced with indigent defendants represented by public defenders, order bail—including on misdemeanor offenses—in the thousands of dollars, knowing that such high amounts will prevent the accused from being released pre-trial.

b. Washington's commitment to narrowing the use of pre-trial detention is supported by evidence.

Despite the clear caselaw emphasizing the importance of pre-trial release, a recent study found that over 81% of the 547,000 people confined to U.S. jails were pretrial detainees.[4] In Washington, the number of people who are incarcerated pretrial has skyrocketed since 1978:

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[1] 76 Wn. 253 (1913)

[2] 78 Wn.2d 484, 487 (1970)

[3] *Id.*

[4] Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022*, Prison Policy Initiative (Mar. 14, 2022), https://perma.cc/6QHQ-L8LB

Washington's jail population by conviction status, 1978-2019

Source: Prison Policy Initiative, Washington's jail population by conviction status, 1978-2019 (April 2024), https://www.prisonpolicy.org/graphs/jails2024/WA_conviction_status_1978-2019.html

The rate of pretrial confinement results from judges imposing bail amounts that indigent individuals cannot afford. This results in people being routinely detained for the entirety of their case—a time period that could last months or even years.[5] Harms of pretrial detention include:

- Loss of housing, employment, and financial stability.[6] A person already experiencing homelessness may lose shelter space, personal belongings stored there, and a place on a waitlist to enter permanent housing.[7] Even short periods of incarceration can jeopardize one's ability to maintain custody of their child and their access to health care,[8] the impact of pretrial detention ancillary to a criminal conviction cannot be overstated.
- Severe consequences for the families of pre-trial incarcerated people in addition to the physical absence of their loved ones. Roughly 65% of families with an incarcerated family member are unable to meet the family's basic needs.[9]

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[5] Marty Berger, *The Constitutional Case for Clear and Convincing Evidence in Bail Hearings*, 75 Stan. L. Rev. 469, 472 (2023)

[6] Samuel R. Wiseman, *Pretrial Detention and the Right to Be Monitored*, 123 Yale L.J. 1344, 1357 (2014)

[7] *Id.*

[8] *See* Lisa Foster, *Judicial Responsibility for Justice in Criminal Courts*, 46 Hofstra L. Rev. 21 (2018)

[9] SanetadeVuono-Powell, et al., Ella Baker Center, *Who Pays? The True Cost of Incarceration in Families* (2014), https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-FINAL.pdf

- Negative outcomes for the children of incarcerated parents, including mental health issues, physical health problems, antisocial behavior, and youth incarceration.[10] These outcomes are likely due to increased familial stress levels associated with a loss of income due to incarceration.[11]
- Harm to mental health of incarcerated individuals. The leading cause of in-custody death is suicide.[12] The stress, worry, and isolation brought on even by a relatively short period of pretrial incarceration can cause a person's mental health to deteriorate.[13] Interruption of medication may cause people to harm themselves, refuse to eat, and urinate and defecate on themselves; corrections officers who are not trained to intervene are required to feed and clean people, often leading to physical altercations; and those struggling the most are often placed in solitary confinement, spending 22 to 23 hours alone, which leads to further decompensation that can last for years.[14] In Washington State, the suicide rate for jailed Washingtonians individuals exceeds the nationwide average.[15]
- Negative impacts to the health and welfare of incarcerated persons, who are more likely to be sexually victimized, contract infectious diseases, and be exposed to unsafe and unsanitary living conditions.[16]

Communities pay a significant price for pre-trial detention. Nationwide studies suggest that taxpayers across the country pay approximately $38,000,000 per day, and $14,000,000,000 a year to detain people with pending criminal charges.[17] Locally, King County, Washington's largest county, spends approximately $11,500 every month to detain someone pre-trial.[18]

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[10] *See* Joseph Murray & Lynne Murray, *Parental Incarceration, Attachment, and Child Psychopathology*, Attachment & Human Development, 12, 289-309 (2010); Maxia Dong et al., *Insights Into Causal Pathways for Ischemic Heart Disease: Adverse Childhood Experiences Study,* Circulation, 110, 1761-1766 (2004); Joseph Murray et al., *Children's Antisocial Behavior, Mental Health, Drug Use, and Educational Performance After Parental Incarceration*, Psychological Bulletin, 138, 175-21 (2012); James M. Conway & Edward T. Jones, *Seven Out of Ten? Not Even Close: A review of research on the likelihood of children with incarcerated parents becoming justice-involved* (2015), https://imrp.dpp.uconn.edu/wp-content/uploads/sites/3351/2021/09/March-2015-Seven-out-of-ten.pdf; Beth M. Huebner & Regan Gustafson, *The Effect of Maternal Incarceration on Adult Offspring Involvement in the Criminal Justice System,* Journal of Criminal Justice, 35, 283-296 (2007).

[11] Kristin Turney, *The Consequences of Paternal Incarceration for Maternal Neglect and Harsh Parenting*, Social Forces, 92, 1607-1636 (2014).

[12] Natalie Lima & Susan Nembhard, *Pretrial Deaths in Custody Are Prevalent but Preventable*, Urban Wire (Dec. 14, 2022), https://www.urban.org/urban-wire/pretrial-deaths-custody-are-prevalent-preventable

[13] ACLU, *No Money, No Freedom: The Need for Bail Reform* (2016), http://www.aclu-wa.org/bail

[14] *Trueblood v. Washington State Dep't of Soc. & Health Servs.,* 73 F. Supp. 3d 1311 (W.D. Wash. 2014).

[15] Austin Jenkins, *Jails in Washington and Oregon Have Higher Suicide Rate than National Average*, Northwest News Network (Oct. 7, 2021), https://www.nwnewsnetwork.org/2021-10-07/jails-in-washington-and-oregon-have-higher-suicide-rate-than-national-average

[16] *See* Allen J. Beck et al., Bureau of Justice Statistics, U.S. Dep't of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, at 9 (2013); *see also Moving Beyond Money: A Primer on Bail Reform*, Criminal Justice Policy Program at Harvard Law School, 6 (2016)

[17] Nicole Zayas Manzano, *The High Price of Cash Bail*, The Bail Project, July 17, 2023

[18] *Cashless Bail Has a Place in Our Judicial System*, The Seattle Times, Sept. 9, 2025, https://www.seattletimes.com/opinion/editorials/cashless-bail-has-a-place-in-our-judicial-system/

c. Pretrial detention disproportionately impacts people of color, poor people, and people with disabilities.

The dire circumstances that upend the lives of many pretrial detainees are often disproportionately felt by Black and Brown Washingtonians, given the racial dynamics at play in our criminal legal system. Studies suggest that both the imposition and effect of bail are racially disproportionate.[19] Nationwide, Black people are more likely to be detained and have cash bail imposed than their white counterparts.[20] Disturbingly, the average bail amount given to Black people is about $10,000 higher on average than that given to others.[21] Generally, the likelihood of otherwise "similarly situated" Black and Latinx[22] defendants being incarcerated pretrial because they are unable to pay the ordered bail amount was twice that of white defendants.[23] Implicit racial bias plays a significant role in fostering the racial disproportionality within our nation's criminal legal system—including amongst judges who make bail determinations.[24]

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.[25] 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.[26] In contrast, 2020 census data shows only 7% of King County residents are Black.[27]

Poor people, people of color, and people with disabilities are disproportionately affected by wealth-based pretrial detention because they are more likely to be jailed before trial and less likely to be able to afford bail.[28] We must make changes to the wealth-based pre-trial detention system in Washington State.

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[19] Cynthia E. Jones, *"Give Us Free": Addressing Racial Disparities in Bail Determinations,* 16 N.Y.U.J. Legis. & Pub. Pol'y 919 (2013)

[20] *How Race Impacts Who Is Detained Pretrial*, Prison Policy Initiative (Oct. 9, 2019), https://perma.cc/8MPZ-9CNB

[21] Marty Berger, *The Constitutional Case for Clear and Convincing Evidence in Bail Hearings*, 75 Stan. L. Rev. 469, 492 (2023)

[22] The term "Latinx" is used a gender-neutral alternative to Latino/Latina that, unlike "Hispanic," does not exclusively honor Spanish origin. When "Hispanic" is used referenced materials, it is replaced with the more inclusive "Latinx."

[23] Jones, *supra* note 19; *Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing*, 131 Harv. L. Rev. 1125, 1129 (2018) (citing Stephen Demuth & Darrell Steffensmeier, *The Impact of Gender and Race-Ethnicity in the Pretrial Release Process*, 51 Soc. Probs. 222, 222 (2004))

[24] David Arnold et al., *Measuring Racial Discrimination in Bail Decisions*, 112 Am. Econ. Rev. 2992, 2994 (2022)

[25] *Preliminary Report on Race and Washington's Criminal Justice System*, 47 Gonz. L. Rev. 251 (2011-2012)

[26] 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

[27] King County Demographics, 2020 Census Race and Ethnicity, https://kingcounty.gov/en/dept/executive/governance-leadership/performance-strategy-budget/regional-planning/demographics

[28] Steven Demuth, *Racial and Ethnic Difference in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees*, 41 J. of Crim. 873, 897 (2003)

d. Accused people who are released pre-trial are more likely to have positive outcomes in their criminal cases

The racial disproportionality of the bail system has additional, far-reaching impacts due to the deleterious impact that pre-trial incarceration has on case outcomes.[29] Studies demonstrate a causal link between pre-trial incarceration and adverse case outcomes. Those held in jail during the pre-trial period are 25% more likely to plead guilty, as pleading guilty often allows immediate freedom while maintaining one's innocence could require months, and in some cases years, of continued pre-trial incarceration.[30] Those individuals incarcerated for the entire pre-trial period are "over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than those who were released at some point pending trial."[31] Individuals incarcerated pre-trial are sentenced to prison sentences twice as long as those who were not detained but also sentenced to prison.[32] According to Superior Court Judge Theresa Doyle, "[j]udges have discussed concerns about the unconscious influence that a defendant's custody status has on their sentencing decisions. With an out-of-custody defendant, the judge had 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."[33]

Judge Doyle's observations are borne out in research from Harris County, Texas, and Philadelphia. There, individuals incarcerated pretrial tended to get longer sentences than defendants released pending trial. Specifically, misdemeanor defendants incarcerated pre-trial were 43 percent more likely to receive a jail sentence than similarly situated defendants released before trial, and their sentences were on average nine days longer.[34] According to another study from Philadelphia, defendants incarcerated pending trial were sentenced on average to 124 more days of incarceration than defendants who were released before trial, corresponding to a 42 percent increase in the length of incarceration.[35] Another study analyzing approximately 82,000 felony and misdemeanor cases in New York City from 2009 to 2013 found that the maximum sentence for defendants incarcerated before trial is on average about two-and-a-half years longer than the maximum sentence for those released pending trial.[36] Another nationwide study found that people detained in jail for fewer days had better legal outcomes than those detained for more

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[29] Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization,* 45 J. Legal Stud. 471, 472 (2016) ("We find that the assessment of money bail is a significant, independent cause of convictions and recidivism.")

[30] *Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing*, 131 Harv. L. Rev. 1125, 1128 (2018); *see also* Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 714 (2017); *see also* John D. Parron*, Pleading for Freedom: The Threat of Guilty Pleas Induced by the Revocation of Bail*, 20 U. Pa. J. Const. L. 139 (2017), https://scholarship.law.upenn.edu/jcl/vol20/iss1/4; *see also* Samuel Wisemen, *Pretrial Detention and the Right to be Monitored*, 123 Yale L. J. 1344 (2014)

[31] Heaton, *supra* note 30 (see Table 4 at 749 for table regarding misdemeanor pretrial detention by subgroups including race, citizenship, offense, and income)

[32] *Id.*

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

[34] Heaton, *supra* note 30 at 747

[35] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* (Working Paper), Nov. 8, 2016, at 3, http://bit.ly/2tLIbaL

[36] Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from NYC Arraignments* (Nov. 9, 2016) at 13, http://www.econweb.umd.edu/~pope/pretrial_paper.pdf

days during pretrial.[37] In fact, among all pre-trial detainees, people held for 24 hours or less had the best legal outcomes in that they were less likely to be arrested for a new crime, more likely to appear before the court for their current criminal case, and less likely to be sentenced on their current charge than people detained for more than one day.[38] These factors suggest that even a short period of pre-trial incarceration "has a criminogenic effect on people – that is, detaining someone pretrial makes that person more likely to commit a crime in the future."[39] Even relatively brief stays in jail can increase a person's likelihood of recidivism.[40] Low-risk individuals who are incarcerated from eight to fourteen days "are 51 percent more likely to commit another crime within two years after completion of their cases than equivalent defendants held no more than 24 hours."[41]

e. *Secured bond burdens incarcerated individuals and their families with years of debt.*

To secure an accused person's release, Washington courts currently accept the deposit of a sum not to exceed 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.

When a court requires that bail be posted, the vast majority of criminal defendants do not have the financial means to post the entire amount. Few incarcerated individuals can even afford 10% of the ordered bond. According to the Federal Reserve, nearly half of Americans would not be able to pay cash for an unexpected expense of $400.[42] Many incarcerated individuals and their families turn to for-profit bail bonds companies: in exchange for certain percentage of the full bail amount—typically 10% and either collateral, a co-signer, and/or a payment plan—a bail bond company will post the full bail amount. "Like payday lenders who profit from families' needs for immediate funds," bail bond companies take advantage of urgent crisis of

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[37] Ian A. Silver, *The Benefits of Early Release from Pretrial Detention* (June 2023), https://www.researchgate.net/profile/Ian-Silver-2/publication/370631008_The_Benefits_of_Early_Release_from_Pretrial_Detention/links/645a8ef3f3512f1cc585bc13/The-Benefits-of-Early-Release-from-Pretrial-Detention.pdf

[38] *Id.*

[39] *Bail Reform and Risk Assessment*, *supra* note 30

[40] *Id.*

[41] *Id.*

[42] Federal Reserve, Board of Governors of the Federal Reserve System, *Report on Economic Well-Being of U.S. Households in 2015* (2016), https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf; Empower, *37% of Americans Can't Afford an Emergency Expense Over $400, According to Empower Research* (July 2, 2024), https://www.empower.com/the-currency/money/over-1-in-5-americans-have-no-emergency-savings-research

incarceration.[43] As a result, incarcerated individuals and their families are often trapped in years of debt due to the urgent need to post bail through for-profit bail bonds companies.[44]

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.[45] Several other states have rejected secured bonds 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.[46]

By enacting a strong presumption for bail and warrant amounts that allows 10% to be deposited with the court, Washington can mitigate the harm that the criminal legal system inflicts on indigent people who are charged with crimes and presumed innocent.

3. Ordering bail and incarcerating individuals pretrial because they cannot post secured bond does not enhance the ability to prosecute individuals accused of crimes and does not further public safety.

Researchers have found that incarcerated individuals released on unsecured bonds were just as likely to appear in court as those released on a secured bond. This finding held for accused persons at all risk levels.[47] That study, hereafter called "the Jones study," analyzed data on successful court appearances made by approximately 2,000 defendants booked into 10 Colorado jails over a 16-month period.[48] The study found that there was no statistically significant difference in the rate of appearance between defendants released on unsecured bonds and those released on secured bonds.[49]

The Jones study's findings indicate that, if anything, individuals released on unsecured bonds are more likely to appear in court than those released on secured bonds. The study showed that 88 percent of defendants released on unsecured bonds appeared as required by the court, while only 81 percent of defendants released on secured bonds made their required

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[43] ACLU, *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System* (2017), https://www.aclu.org/sites/default/files/field_document/059_bail_report_2_1.pdf

[44] Udi Ofer, ACLU, *We Can't End Mass Incarceration Without Ending Money Bail* (2017), https://www.aclu.org/blog/smart-justice/we-cant-end-mass-incarceration-without-ending-money-bail

[45] .*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), https://www.aclu.org/publications/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system

[46] *See* Ky. Rev. Stat. Ann. § 431.510; Wis. Stat. § 969.12(2); *Kahn v. McCormack*, 299 N.W. 2d 279 (Wis. Ct. App. 1980); Mass. Gen. Laws Ann. ch. 276, § 61B; Or. Rev. Stat. Ann. § 135.265; Neb. Rev. Stat. Ann. § 29-901(3)(c)(i)

[47] Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option,* Pretrial Justice Institute, at 3 (Oct. 2013), https://www.azcourts.gov/Portals/0/74/TFFAIR/UnsecuredBondsTheAsEffectiveandMostEfficientPretrialReleaseOption.pdf

[48] *Id.* at 6

[49] *Id.* at 11

appearances.[50] For those defendants rated in the lowest risk category, 97 percent of those released on an unsecured bonds appeared for their court appearances, while only 93 percent of their counterparts released on secured bonds faithfully made their appearances.[51] While the amount of secured bond is associated with increased pretrial jail use, it is not associated with increased court appearances. On the other hand, while unsecured bonds result in higher pretrial release rates, court appearance rates for those released on unsecured bond is the same for those released on secured bond.[52]

In addition, the Jones study did not find any public safety benefit from a secured bond as compared with an unsecured bond.[53] The finding "also holds when only person crimes are analyzed" and also regardless of "[w]hether released defendants are higher or lower risk or in-between."[54] Finally, the Jones study found that unsecured bonds used substantially (and statistically significantly) fewer jail resources.[55] "That is, more unsecured bond defendants are released than are secured bond defendants, and unsecured bond defendants have faster release times than do secured bond defendants."[56]

In light of this research, there is no justification for ordering secured bond—which inevitably leads to the pre-trial incarceration of indigent accused people—when unsecured bond (or posting 10% of the bail amount with the court) is just as likely to accomplish the goals of CrR/CrRLJ 3.2.

4. Other jurisdictions' bail reforms have prevented or limited bail for certain offenses and focused on the risk of flight from prosecution rather than the risk of nonappearance.

Federal and state bail reform has sought to address the inequity of secured bond and detaining people pre-trial by requiring evidence the person is a flight risk, or by imposing monetary limits for low-level offenses.

There is a growing awareness of the difference between "flight" and other forms of nonappearance.[57] Most defendants who miss court have not fled the jurisdiction, and they are not willfully and persistently trying to avoid their obligations. Instead, the vast majority of people fail to appear in court "due to personal, organizational, or transportation problems."[58]

Prof. Gouldin notes that "[t]ypically, in order to flee, defendants need resources. This category of true flight, then, will likely encompass wealthier defendants than other non-appearing defendants (who remain in the jurisdiction)."[59] Unfortunately, although courts and

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[50] *Id.*
[51] *Id.*
[52] *Id.* at 13
[53] *Id.* at 10, the study found "[t]he lack of benefit from using one financial bond type versus another is not surprising given that both bond types carry the potential for the defendant to lose money for failing to appear."
[54] *Id.*
[55] *Id.*at 20
[56] *Id.* at 19
[57] Lauryn P. Gouldin, *Keeping Up Appearances,* 58 U.C. Davis L. Rev. 1019, 1037 (2024)
[58] *Id.* at 1034.
[59] Lauryn P. Gouldin, *Defining Flight Risk,* 85 U. Chi. L. Rev. 677 (2018)

commentators frequently describe nonappearance risk in terms of "flight," the data rarely segregate flight from other failures to appear (FTAs)."[60]

The Federal Bail Reform Act distinguishes between a risk of "flight" and nonappearance. Under federal law, a person must be released absent a circumstance that would trigger a detention hearing, including being charged with one of five categories of serious crimes, or if there is "a serious risk" the person "will flee" or there is a "serious risk" they will violate the integrity of the judicial process through obstructing justice or witness intimidation.[61]

Federal district courts treat a defendant's risk of "flight" as different than their risk of "nonappearance."[62] As one district court found:

> [I]t is clear that flight and nonappearance are not simply interchangeable names for the same concept, nor are they merely different degrees of the same type of risk. In the context of measuring and managing risks, many defendants who merely fail to appear differ in important ways from their fugitive cousins. Precision about these distinctions is constitutionally mandated and statutorily required.[63]

Based on this critical distinction, courts have stringently interpreted "serious risk of flight"' under 18 U.S.C. § 3142(f)(2)(A) to mean there "is a great risk—beyond average—that the defendant will intentionally and actively move within or outside the jurisdiction to avoid court proceedings or supervision."[64]

The Washington State Supreme Court similarly recognized "[t]here are many innocent reasons people fail to appear for court."[65] In ruling that a failure to appear (FTA) alone is not sufficient evidence of flight for the charge of bail jumping, the court underscored that many of the reasons people do not attend court are related to poverty, and "may include lack of reliable transportation: competing responsibilities, such as child care or work; disorganization; and forgetting court dates."[66] The court was specifically concerned about the "disproportionate effect that criminalizing FTAs has on persons of lower socioeconomic classes."[67]

Indeed, research shows that poverty—experienced disproportionately by women and people of color—is the greatest predictor of nonappearance in court.[68] *S*ince failure to appear in court correlates with race and poverty, imposing bail based on a person's FTA history serves no purpose and perpetuates racial and economic inequality. It guarantees a person will be jailed pre-trial because they are too poor to post bail, or if the person can post bail, it exacerbates the

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[60] *Id.*

[61] 18 U.S.C. § 3142(f).

[62] *United States v. Molina-Orantes,* 3:25-CR-00079-AN, 2025 WL 1177654, at *4 (D. Or. Apr. 23, 2025).

[63] *United States v. White,* 2021 WL 2155441 (M.D. Tenn. May 27, 2021).

[64] *United States v. Figueroa-Alvarez,* 681 F. Supp. 3d 1131, 1138 (D. Idaho 2023).

[65] *State v. Slater,* 197 Wn.2d 660, 674, 486 P.3d 873 (2021).

[66] *Id.* at 674

[67] *Id.*

[68] Aleksandrea E. Johnson, *Decriminalizing Non-Appearance in Washington State: The Problem and Solutions for Washington's Bail Jumping Statute and Court Nonappearance,* 18 Seattle J. for Soc. Just. 433, 442 (2020)

stresses of poverty that make people miss court in the first place. Throughout the country, states have undertaken different types of bail reform that require evidence the person presents a risk of flight—not just nonappearance—and prohibit or cap bail for misdemeanor offenses.

In recent years several studies have investigated the reasons why people do not appear for court, and the results are all similar: most people intend to go to court but find the barriers too difficult to overcome. In one study of court participants in Lake County, Illinois, researchers found that 60% of interviewees described life responsibilities and challenges such as caregiving, working, and managing mental health issues as the primary barrier, and 28% reporting that attending court would put basic needs like food or shelter at risk.[69] A study in Harris County, Texas, examined the role of poverty in missing court dates, and found that over half (51%) of interviewees cited scarcity-related issues, such as a lack of stable housing, reliable vehicle, consistent childcare, etc.[70] Another study, of court participants in Kentucky and Utah, found that 79% had multiple reasons for missing court dates; the most common reasons were forgetting the court date, unawareness of the appearance, and lack of transportation.[71]

New York State has largely eliminated bail for most misdemeanor offenses and nonviolent felonies.[72] New York requires judges to focus solely on the conditions that will ensure that the person returns to court and to impose conditions only if a person "poses a risk of flight to avoid prosecution."[73]

In 2018, Vermont amended its bail statutes to differentiate between the risk of nonappearance and flight. Specifically, the law was changed to only allow bail and other conditions to be imposed in order "reasonably mitigate the risk of flight from prosecution." Prior to that change, bail and other conditions could be imposed to ensure the appearance of the defendant at future hearings.[74] Flight from prosecution" is defined as "any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings."[75] In assessing whether there are conditions of pretrial release that would reasonably mitigate the risk that a defendant would attempt to evade court proceedings—or whether something more restrictive such as bail is appropriate to mitigate that risk—courts must consider "the seriousness of the offense charged and the number of offenses with which the [defendant] is charged."[76] Vermont also imposed a cap of $200 for most misdemeanor offenses and exceptions are made

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[69] Shannon Magnuson et al., Justice System Partners, *Understanding Court Absence and Reframing "Failure to Appear"* (2023), https://justicesystempartners.org/wp-content/uploads/2023/05/SJC-Lake-County-Getting-to-Court-as-Scheduled-Reframing-Failure-to-Appear.pdf

[70] Shannon McAuliffe et al., Ideas 42, *Navigating the Real-Life Challenges of Appearing in Court: Recommendations for Addressing Wealth-Based Barriers to Court Appearance in Harris County* (July 2022), https://www.ideas42.org/wp-content/uploads/2023/02/Harris-County-Nonappearance-Study-and-Recommendations.pdf

[71] Crime and Justice Institute, *What Really Prevents Court Appearance? Survey Findings from People Who Failed to Appear in Two Counties* (February 2025), https://www.cjinstitute.org/assets/sites/2/2025/02/What-Really-Prevents-Court-Appearance.pdf

[72] N.Y. Crim. Proc. Law 510.10(3)-(4)

[73] N.Y. Crim. Proc. Law 510.10(1)

[74] Vt. Stat. Ann. tit. 13, § 7554(a)(1)

[75] Vt. Stat. Ann. tit. 13, § 7576(9)

[76] Vt. Stat. Ann. tit. 13, § 7554(a)(1)

for offenses like DUI and domestic violence offenses and we propose the same in Washington State.[77]

Illinois eliminated cash bail in 2023. A person can now only be detained pre-trial for certain enumerated felonies and a limited number of misdemeanors if the State can establish the person's pretrial release "poses a real and present threat to the safety of any person or persons or the community" or they have a "high likelihood of willful flight to avoid prosecution."[78] Illinois' definition of "willful flight" emphasizes that a person's history of nonappearance alone is insufficient to establish a future intent to evade prosecution. Instead, there must be evidence of "intentional conduct with a purpose to thwart the judicial process to avoid prosecution."[79] In Illinois, while a prior failure to appear alone does not establish a high likelihood of willful flight, "recurring, uncured failures to appear" may. *People v. Slaten*, 239 N.E.3d 1220, 1226 (Ill. App. Ct. 2024).

Our proposal to impose $200 bond cap on most misdemeanor offenses (where the court finds that the person is a high likelihood of willful flight), replacing "failure to appear" with "high likelihood of willful flight to avoid prosecution," and requiring that a person have the chance to appear on their case before bail is imposed on the willful flight prong, will allow Washington to reduce the disproportionate, harmful, and unjust pre-trial incarceration of poor people, people of color and people with disabilities. For example, a $200 bond cap on these recent cases would have produced more just outcomes:

- In Clark County, an indigent man with no criminal history was jailed in December 2024 on a Theft 3 charge 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 man with two past convictions, for a DUI and an ignition interlock offense, was jailed for over a week in September 2025 on a Criminal Trespass 2 charge, with bail set at $5,000.
- In Bellevue, an indigent man with no criminal history was jailed in September 2025 on a Theft 3 charge and held for 15 days on $5,000 bail.
- 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 in September 2025.
- In Redmond, a man with no criminal history or any past failures to appear was charged with driving without a license and obstructing and failing to stop for a police officer in September 2025. He has been held in SCORE jail for 19 days on $10,200 bail.
- In Spokane, a homeless man was charged with obstructing a police officer in October 2025 and was jailed on $1,000 bail.
- In Yakima, a 21-year-old woman struggling with substance use issues was jailed and held on $2,500 bail for a single Theft in the Third Degree charge in

[77] In 2024, Vermont's $200 cap on most misdemeanor bail amounts was amended in way that undermined the purpose of the cap and provided that cap does not apply to "an offense allegedly committed by a defendant who has been released on personal recognizance or conditions of release pending trial for another offense."

[78] 725 Ill. Comp. Stat. Ann. 5/110-6.1

[79] 725 Ill. Comp. Stat. Ann. 5/110-1

September 2025. Despite being in custody, she missed three court appearances, as the jail reported she was "dope sick" and on drug watch.

- In Port Angeles, an indigent woman was jailed for Criminal Trespass in the Second Degree in September 2025 and has been held on $1,500 bail for the last 12 days.
- In Bellevue, after one failure to appear, an indigent woman with just one prior conviction, for Assault in the Third Degree, was jailed on $3,000 bail on a warrant for Criminal Trespass in the First Degree in October 2025. She will have been in custody for 20 days when her scheduled competency hearing occurs.
- In Renton, an indigent woman with substance use issues and only misdemeanor prior convictions was jailed in September 2025 for Theft in the Third Degree and Obstruction on $5,200 bail. She has been in jail for weeks.

5. Washington should amend CrR/CrRLJ 2.2 to also focus on flight risk, to enact a strong presumption that any warrant amount can be satisfied by posting a sum not to exceed 10% with the clerk's office, and to reflect the proposed language regarding the "administration of justice" prong of CrR/CrRLJ 3.2.

In Washington State, the trial court can issue a warrant, rather than a summons, upon a finding that there is "reasonable cause to believe that the defendant (i) will not appear in response to a summons, (ii) will commit a violent offense, (iii) will interfere with witnesses or the administration of justice, or (iv) is in custody."

Trial courts routinely issue a warrant after a case is filed on the sole basis that the accused is likely to fail to appear. The warrant is often quashed, despite the court having found that accused was unlikely to appear, when the person appears for their Arraignment hearing. This adds unnecessary procedures for our overburdened court system and difficulty for people accused of crimes who risk incarceration while the warrant is outstanding. A more equitable route can be found by replacing "failure to appear" with consideration of their "risk of flight." That way, accused persons do not needlessly risk pre-trial detention—and all of the deleterious impacts that comes with incarceration—prior to Arraignment without a prior finding that they are either a risk of flight or under the other prongs. Of course, if the person fails to appear at their Arraignment hearing, a warrant may be issued.

Other states have adopted a more equitable approach for issuing warrants after a case is filed. For example, Colorado requires that a summons be issued under most circumstances "unless a law enforcement officer presents in writing a basis to believe there is a significant risk of flight or that the victim's or public's safety may be compromised" for most criminal allegations.[80] And in Delaware, a warrant may be issued upon the attorney general certifying the existence of "a risk of flight or of danger to the public, or that there is other good reason that a warrant should issue in lieu of a summons."[81]

Here are two examples from King County where bench warrants were issued after charges were filed but the person appeared in court, proving that a prior failure to appear does

[80] Colo. Rev. Stat. Ann. § 16-5-206

[81] Del. Super. Ct. Crim. R. Rule 9

not mean a person will not appear at a future appearance if given the opportunity—

- Example 1: Arraignment was scheduled in May 2025, nearly one year after the alleged incident. The court granted the State's request for a $15,000 warrant on the basis that the accused had pending warrants from nearby jurisdictions from 2021 and 2024, and 10 prior misdemeanor convictions, and 63 FTA bench warrants from 2015-2025. The prosecutor claimed, "Given his active bench warrants and extensive history of failing to appear, the defendant is unlikely to appear at a summons." The prosecutor's assumption was wrong. The accused came to court, and the warrant was quashed.
- Example 2: A person with no prior convictions was charged with organized retail theft almost three years after the alleged offense. She faced "a standard sentencing range of 0-90 days." The State requested a $25,000 warrant, claiming that the underlying allegation, lack of ties to the community and warrant history, including an active warrant in another state, demonstrated her non-compliance with court orders and that bail was necessary to ensure her appearance in court. The accused lived in California and was a "single mother to a daughter with special needs." She appeared, quashed the warrant, and the case ultimately resolved as a misdemeanor offense and no jail time. Thankfully, the accused was never arrested on the $25,000 warrant.

A warrant may issue if a person fails to appear at their Arraignment hearing but, absent exceptional circumstances, people should be given the chance to appear in person.

In addition, we propose that the rule's current language allowing a warrant to issue on a finding a defendant a "will interfere with witnesses or the administration of justice" be replaced with, "will seek to intimidate, tamper, or threaten a witness, victim or court employee, or tamper with evidence, or violate a civil or criminal protection order or a condition of release requiring no contact with a person or place," consistent with our proposal related to CrR/CrRLJ 3.2.[82]

6. Proposed Amendments to CrR/CrRLJ 3.2

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 Noncapital Cases~~.**

Any person~~, other than a person charged with a capital offense,~~ 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 there is a showing of high likelihood of willful flight to avoid prosecution ~~such recognizance will not reasonably assure the accused's appearance, when~~

[82] *See* GR9 Cover Sheet, Proposed Amendments to CrR/CrRLJ 3.2, submitted by the King County Department of Public Defense, the Washington State Office of Public Defense, the Washington Defender Association, and the Snohomish County Office of Public Defense, https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=6240

~~required~~, or

(2) [unchanged]

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 High Likelihood of Willful Flight to Avoid Prosecution ~~Likely Failure to Appear~~ —Least Restrictive Conditions of Release. If the court determines that the accused presents a high likelihood of willful flight to avoid prosecution ~~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~~ not willfully flee to avoid prosecution, or, if no single condition gives that assurance, any combination of the following conditions. "Willful flight" means intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution.

(1)-(2) [unchanged]

(3) If there has been a previous finding of willful flight to avoid prosecution on the current charge, ~~R~~require the execution of an unsecured bond in a specified amount;

(4) If there has been a previous finding of willful flight on the current charge, ~~R~~require ~~the execution of a bond~~ bail in a specified amount ~~and~~ with the strong presumption that the court shall allow 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 bail ~~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) If there has been a previous finding of willful flight on the current charge, ~~R~~require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof~~;~~. There shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release;

(6) [unchanged]

(7) Impose any condition other than detention deemed reasonably necessary to prevent willful flight from prosecution ~~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~~ will not willfully flee from prosecution.

(8) The court may impose monetary conditions when requested by the accused (even if there has not been a previous finding of willful flight from prosecution).

(c) Relevant Factors—Showing of High Likelihood of Willful Flight from Prosecution ~~Future Appearance~~. In determining which conditions of release will reasonably assure the accused~~'s appearance~~ will not willfully flee from prosecution ~~appearance~~, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of willful evasion of the ~~response to~~ legal process, particularly court orders to personally appear;

(2)–(7) [unchanged]

(8) The nature of the charge, if relevant to the risk of willful flight from prosecution ~~nonappearance~~.

(9) [unchanged]

(d) Showing of Substantial Danger—Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(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, there shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release.

(7)-(10) [unchanged]

(e)-(f) [unchanged]

~~**(g) Release in Capital Cases.** Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.~~

(h) [unchanged]

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(j-n) [unchanged]

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(p) Enacting a $200 Cap on Bail for Certain Gross Misdemeanor and Misdemeanor Offenses Where the Court Finds a High Likelihood of Willful Flight to Avoid Prosecution.

(1) If the court finds that a person charged with a misdemeanor or gross misdemeanor offense presents a high likelihood of willful flight to avoid prosecution, the court may impose bail in a maximum amount of $200.00. The cap does not apply if the court finds that a showing of substantial danger has been made under CrR 3.2(d). There shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release.

(2) This subsection does not apply to the following offenses: any offense that would constitute a prior offense as defined in RCW 46.61.5055 upon conviction; a domestic violence offense involving an intimate partner as defined in RCW 7.105.010; stalking under RCW 9A.46.110(5)(a); violation of a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order; violation of an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW; violation of a valid foreign protection order as described in RCW 26.52.020; or violation of a Canadian domestic violence protection order as defined in RCW 26.55.010; aiming or discharging firearms under RCW 9.41.230; any offense with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; communication with a minor or someone believed to be a minor for immoral purposes under RCW 9.68A.090(1); unlawful carrying or handling of a firearm under RCW 9.41.270; indecent exposure under RCW 9A.88.010(2) (a) or (b); disclosing intimate images under RCW 9A.86.010(7)(a); interfering with the reporting of domestic violence under RCW 9A.36.150; reckless endangerment under RCW 9A.36.050; or a violation of the

provisions of an order to surrender and prohibit weapons, an extreme risk protection order, or any other protection order or no-contact order restraining the person or excluding the person.

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 Noncapital Cases.~~ Any person ~~other than a person charged with a capital offense~~ 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~~ the accused presents a high likelihood of willful flight to avoid prosecution. "Willful flight" means intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution; or

(2) [unchanged]

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 High Likelihood of Willful Flight to Avoid Prosecution~~Likely Failure to Appear~~ —Least Restrictive Conditions of Release. If the court determines that the accused is ~~not likely to appear~~ presents a high likelihood of willful flight to avoid prosecution if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will not willfully flee to avoid prosecution ~~be present for later hearings~~, or, if no single condition gives that assurance, any combination of the following conditions.

(1)-(2) [unchanged]

(3) If there has been a previous finding of willful flight to avoid prosecution on the current charge, ~~R~~require the execution of an unsecured bond in a specified amount;

(4) If there has been a previous finding of willful flight on the current charge, Rrequire the execution of a bond bail in a specified amount and with the strong presumption that the court shall allow 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 bail 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) If there has been a previous finding of willful flight to avoid prosecution on the current charge, ~~R~~require the execution of a bond with sufficient solvent sureties or the deposit of cash in lieu thereof; if the court imposes bail, there shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release.

(6) [unchanged]

(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 but are subject to CrRLJ 3.2(p). 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~~ will not willfully flee from prosecution.

(8) The court may impose monetary conditions when requested by a defendant (even if there has not been a previous finding of willful flight to avoid prosecution).

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused will not willfully flee from prosecution~~'s appearance,~~ the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of willful evasion of the ~~response to~~ legal process, particularly court orders to personally appear;

(2)-(7) [unchanged]

(8) The nature of the charge, if relevant to the risk of willful flight from prosecution ~~nonappearance~~;

(9) [unchanged]

(d)-(f) [unchanged]

~~**(g) Release in Capital Cases**. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.~~

(h) [unchanged]

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(j)-(m) [unchanged]

(n) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's appearance is required or violates conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant shall be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(o) Bail in Criminal Offense Cases--Mandatory Appearance.

(1) Except as provided in subsection (2) or (3) below, when required to reasonably assure ~~appearance in court~~ that the person will not willfully flee from prosecution, bail for a person arrested for a misdemeanor or gross misdemeanor shall be no more than ~~be~~ $~~5~~200. ~~and for a gross misdemeanor shall be $1,000. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.~~

(2)-(3) [unchanged]

(p) Enacting a $200 Cap on Bail for Certain Gross Misdemeanor and Misdemeanor Offenses Where the Court Finds a High Likelihood of Willful Flight to Avoid Prosecution.

(1) If the court finds that a person charged with a misdemeanor or gross misdemeanor offense presents a high likelihood of willful flight to avoid prosecution, the court may impose bail in a maximum amount of $200.00. The cap does not apply if the court finds that a showing of substantial danger has been made under CrRLJ 3.2(d). There shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release.

(2) This subsection does not apply to the following offenses: any offense that would constitute a prior offense as defined in RCW 46.61.5055 upon conviction, a domestic violence offense involving an intimate partner as defined in RCW 7.105.010; stalking under RCW 9A.46.110(5)(a); violation of a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order; violation of an order issued

under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW; violation of a valid foreign protection order as described in RCW 26.52.020; or violation of a Canadian domestic violence protection order as defined in RCW 26.55.010; aiming or discharging firearms under RCW 9.41.230; any offense with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; communication with a minor or someone believed to be a minor for immoral purposes under RCW 9.68A.090(1); unlawful carrying or handling of a firearm under RCW 9.41.270; indecent exposure under RCW 9A.88.010(2) (a) or (b); disclosing intimate images under RCW 9A.86.010(7)(a); interfering with the reporting of domestic violence under RCW 9A.36.150; reckless endangerment under RCW 9A.36.050; or a violation of the provisions of an order to surrender and prohibit weapons, an extreme risk protection order, or any other protection order or no-contact order restraining the person or excluding the person.

7. Proposed Amendments to CrR/CrRLJ 2.2

CrR 2.2

WARRANT OF ARREST AND SUMMONS

(a) [unchanged]

(b) Issuance of Summons in Lieu of Warrant.

(1) [unchanged]

(2) *When Summons Must Issue.* The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) ~~will not appear in response to a summons~~ presents a high likelihood of willful flight from prosecution (ii) will commit a violent offense or (iii) will seek to intimidate, tamper or threaten a witness, victim, or court employee, or tamper with evidence, or violate a civil or criminal protection order, or violate a condition of release requiring no contact with a person or place ~~will interfere with witnesses or the administration of justice~~, or (iv) is in custody. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court, of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(3)-(4) [unchanged

(c)–(g) [unchanged]

CrRLJ 2.2

(a) [unchanged]

(b) Issuance of Summons in Lieu of Warrant.

(1) [unchanged]

(2) *When Summons Must Issue.* The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) ~~will not appear in response to a summons~~ presents a high likelihood of willful flight from prosecution

(ii) will commit a violent offense or (iii) will seek to intimidate, tamper, or threaten a witness, victim or court employee, or tamper with evidence, or violate a civil or criminal protection order, or violate a condition of release requiring no contact with a person or place, ~~will interfere with witnesses or the administration of justice~~, or (iv) is in custody. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(3) *Summons for Felony Complaint*. If the complaint charges the commission of a felony, the court may direct the clerk to issue a summons instead of a warrant unless it finds ~~r~~easonable cause to believe that the defendant (i) ~~will not appear in response to a summons~~ presents a high likelihood of willful flight from prosecution (ii) will commit a violent offense or (iii) will seek to intimidate, tamper, or threaten a witness, victim or court employee, or tamper with evidence, or violate a civil or criminal protection order, or violate a condition of release requiring no contact with a person or place, ~~will interfere with witnesses or the administration of justice~~, or (iv) is in custody.. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(4)-(5) [unchanged]

(c)–(g) [unchanged]

8. Conclusion

We must work together to change our system of justice which, as *Just Mercy* author and Equal Justice Initiative founder Bryan Stevenson put it, "treats you much better if you're rich and guilty than if you're poor and innocent."[83]. These proposed changes will advance justice and recognize that our wealth-based system of cash bail has a deleterious effect on those experiencing poverty and on our community. Too often, cash bail functions as de facto pre-trial incarceration, which disproportionately harms poor people, people of color, and people with disabilities. As the Seattle Times editorial board recently opined:

> America's judicial bail system has been criticized as being racist and exploitative of those with little financial means, and there are studies and research to support both claims. ... For a person experiencing homelessness accused of a low-level offense, a bond of $250 would mean they would have to come up with $25. For many unsheltered people, that is unattainable. But for those with greater financial means facing a more serious charge, and potentially more of a threat to the public, a $5,000 bond, or $500, may easily be paid. [84]

With these changes, we propose that Washington follow the lead of jurisdictions that focus on a person's "high likelihood of flight from prosecution" in setting bail and when deciding whether to issue a warrant rather than summons. In addition, these proposed

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[83] Bryan Stevenson, *We Need to Talk About an Injustice* (March 2012), TED, https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice

[84] *Cashless Bail Has a Place in Our Judicial System*, *supra* note 18

amendments seek to ensure that fewer individuals accused of misdemeanors are subject to high bail amounts that result in wealth-based pretrial incarceration.

While these proposed changes will not eliminate a bail system that is “racist and exploitative of those with little financial means,” it seeks to move incrementally forward in our collective pursuit to bend the arc of history towards justice.

Proposed Amendments to CrR/CrRLJ 3.2

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 Noncapital Cases~~.**

Any person~~, other than a person charged with a capital offense,~~ 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 there is a showing of high likelihood of willful flight to avoid prosecution ~~such recognizance will not reasonably assure the accused's appearance, when required~~, or

(2) [unchanged]

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 High Likelihood of Willful Flight to Avoid Prosecution ~~Likely Failure to Appear~~ —Least Restrictive Conditions of Release. If the court determines that the accused presents a high likelihood of willful flight to avoid prosecution ~~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~~ not willfully flee to avoid prosecution, or, if no single condition gives that assurance, any combination of the following conditions. "Willful flight" means intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution.

(1)-(2) [unchanged]

(3) If there has been a previous finding of willful flight to avoid prosecution on the current charge, ~~R~~require the execution of an unsecured bond in a specified amount;

(4) If there has been a previous finding of willful flight on the current charge, ~~R~~require ~~the execution of a bond~~ bail in a specified amount ~~and~~ with the strong presumption that the court shall allow 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 bail ~~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) If there has been a previous finding of willful flight on the current charge, ~~R~~require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof~~;~~.

There shall be a strong presumption that the court shall allow the deposit a sum not to exceed 10 percent of the bail amount ln the registry of the court; such deposit shall be returned upon the performance of the conditions of release;

(6) [unchanged]

(7) Impose any condition other than detention deemed reasonably necessary to prevent willful flight from prosecution ~~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~~ will not willfully flee from prosecution.

(8) The court may impose monetary conditions when requested by the accused (even if there has not been a previous finding of willful flight from prosecution).

(c) Relevant Factors— Showing of High Likelihood of Willful Flight from Prosecution ~~Future Appearance~~. In determining which conditions of release will reasonably assure the accused~~'s appearance~~ will not willfully flee from prosecution ~~appearance~~, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of willful evasion of the ~~response to~~ legal process, particularly court orders to personally appear;

(2)–(7) [unchanged]

(8) The nature of the charge, if relevant to the risk of willful flight from prosecution ~~nonappearance~~.

(9) [unchanged]

(d) Showing of Substantial Danger—Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(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, there shall be a strong presumption that the court shall allow the deposit a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of

the conditions of release.

(7)-(10) [unchanged]

(e)-(f) [unchanged]

~~**(g) Release in Capital Cases.** Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.~~

(h) [unchanged]

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(j-n) [unchanged]

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(p) Enacting a $200 Cap on Bail for Certain Gross Misdemeanor and Misdemeanor Offenses Where the Court Finds a High Likelihood of Willful Flight to Avoid Prosecution.

(1) If the court finds that a person charged with a misdemeanor or gross misdemeanor offense presents a high likelihood of willful flight to avoid prosecution, the court may impose bail in a maximum amount of $200.00. The cap does not apply if the court finds that a showing of substantial danger has been made under CrR 3.2(d). There shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release.

(2) This subsection does not apply to the following offenses: any offense that would constitute a prior offense as defined in RCW 46.61.5055 upon conviction; a domestic violence

offense involving an intimate partner as defined in RCW 7.105.010; stalking under RCW 9A.46.110(5)(a); violation of a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order; violation of an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW; violation of a valid foreign protection order as described in RCW 26.52.020; or violation of a Canadian domestic violence protection order as defined in RCW 26.55.010; aiming or discharging firearms under RCW 9.41.230; any offense with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; communication with a minor or someone believed to be a minor for immoral purposes under RCW 9.68A.090(1); unlawful carrying or handling of a firearm under RCW 9.41.270; indecent exposure under RCW 9A.88.010(2) (a) or (b); disclosing intimate images under RCW 9A.86.010(7)(a); interfering with the reporting of domestic violence under RCW 9A.36.150; reckless endangerment under RCW 9A.36.050; or a violation of the provisions of an order to surrender and prohibit weapons, an extreme risk protection order, or any other protection order or no-contact order restraining the person or excluding the person.

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 Noncapital Cases.~~ Any person ~~other than a person charged with a capital offense~~ 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~~ the accused presents a high likelihood of willful flight to avoid prosecution. "Willful flight" means intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution; or

(2) [unchanged]

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 High Likelihood of Willful Flight to Avoid Prosecution ~~Likely Failure to Appear~~ —Least Restrictive Conditions of Release. If the court determines that the accused is ~~not likely to appear~~ presents a high likelihood of willful flight to avoid prosecution if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will not willfully flee to avoid prosecution ~~be~~

~~present for later hearings~~, or, if no single condition gives that assurance, any combination of the following conditions.

(1)-(2) [unchanged]

(3) If there has been a previous finding of willful flight to avoid prosecution on the current charge, ~~R~~require the execution of an unsecured bond in a specified amount;

(4) If there has been a previous finding of willful flight on the current charge, ~~R~~require ~~the execution of a bond~~ bail in a specified amount ~~and~~ with the strong presumption that the court shall allow 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 bail ~~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) If there has been a previous finding of willful flight to avoid prosecution on the current charge, ~~R~~require the execution of a bond with sufficient solvent sureties or the deposit of cash in lieu thereof; if the court imposes bail, there shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release.

(6) [unchanged]

(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 but are subject to CrRLJ 3.2(p). 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~~ will not willfully flee from prosecution.

(8) The court may impose monetary conditions when requested by a defendant (even if there has not been a previous finding of willful flight to avoid prosecution).

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused will not willfully flee from prosecution~~s appearance,~~ the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of willful evasion of the ~~response to~~ legal process, particularly court orders to personally appear;

(2)-(7) [unchanged]

(8) The nature of the charge, if relevant to the risk of willful flight from prosecution ~~nonappearance~~;

(9) [unchanged]

(d)-(f) [unchanged]

~~**(g) Release in Capital Cases**. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.~~

(h) [unchanged]

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(j)-(m) [unchanged]

(n) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's appearance is required or violates conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant shall be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(o) Bail in Criminal Offense Cases--Mandatory Appearance.

(1) Except as provided in subsection (2) or (3) below, when required to reasonably assure ~~appearance in court~~ that the person will not willfully flee from prosecution, bail for a person arrested for a misdemeanor or gross misdemeanor shall be no more than ~~be~~ $~~5~~200. ~~and for a gross misdemeanor shall be $1,000. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.~~

(2)-(3) [unchanged]

(p) Enacting a $200 Cap on Bail for Certain Gross Misdemeanor and Misdemeanor Offenses Where the Court Finds a High Likelihood of Willful Flight to Avoid Prosecution.

(1) If the court finds that a person charged with a misdemeanor or gross misdemeanor offense presents a high likelihood of willful flight to avoid prosecution, the court may impose bail in a maximum amount of $200.00. The cap does not apply if the court finds that a showing of substantial danger has been made under CrRLJ 3.2(d). There shall be a strong presumption that the court shall allow the deposit of a sum not to exceed 10 percent of the bail amount in the registry of the court; such deposit shall be returned upon the performance of the conditions of release.

(2) This subsection does not apply to the following offenses: any offense that would constitute a prior offense as defined in RCW 46.61.5055 upon conviction, a domestic violence offense involving an intimate partner as defined in RCW 7.105.010; stalking under RCW 9A.46.110(5)(a); violation of a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order; violation of an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW; violation of a valid foreign protection order as described in RCW 26.52.020; or violation of a Canadian domestic violence protection order as defined in RCW 26.55.010; aiming or discharging firearms under RCW 9.41.230; any offense with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; communication with a minor or someone believed to be a minor for immoral purposes under RCW 9.68A.090(1); unlawful carrying or handling of a firearm under RCW 9.41.270; indecent exposure under RCW 9A.88.010(2) (a) or (b); disclosing intimate images under RCW 9A.86.010(7)(a); interfering with the reporting of domestic violence under RCW 9A.36.150; reckless endangerment under RCW 9A.36.050; or a violation of the provisions of an order to surrender and prohibit weapons, an extreme risk protection order, or any other protection order or no-contact order restraining the person or excluding the person.

Proposed Amendments to CrR/CrRLJ 2.2

CrR 2.2: WARRANT OF ARREST AND SUMMONS

(a) [unchanged]

(b) Issuance of Summons in Lieu of Warrant.

(1) [unchanged]

(2) *When Summons Must Issue.* The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) ~~will not appear in response to a summons~~ presents a high likelihood of willful flight from prosecution (ii) will commit a violent offense or (iii) will seek to intimidate, tamper or threaten a witness, victim, or court employee, or tamper with evidence, or violate a civil or criminal protection order, or violate a condition of release requiring no contact with a person or place ~~will interfere with witnesses or the administration of justice~~, (iv) is in custody. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court, of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(3)-(4) [unchanged

(c)–(g) [unchanged]

CrRLJ 2.2: WARRANT OF ARREST OR SUMMONS UPON COMPLAINT

(a) [unchanged]

(b) Issuance of Summons in Lieu of Warrant.

(1) [unchanged]

(2) *When Summons Must Issue.* The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) ~~will not appear in response to a summons~~ presents a high likelihood of willful flight from prosecution (ii) will commit a violent offense or (iii) will seek to intimidate, tamper, or threaten a witness, victim or court employee, or tamper with evidence, or violate a civil or criminal protection order, or violate a condition of release requiring no contact with a person or place, ~~will interfere with witnesses or the administration of justice~~, (iv) is in custody. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

3) *Summons for Felony Complaint*. If the complaint charges the commission of a felony, the court may direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) will not appear in response to a summons presents a high likelihood of willful flight from prosecution (ii) will commit a violent offense or (iii) will seek to intimidate, tamper, or threaten a witness, victim or court employee, or tamper with evidence, or violate a civil or criminal protection order, or violate a condition of release requiring no

contact with a person or place, will interfere with witnesses or the administration of justice, (iv) is in custody.. If a warrant is issued, there shall be a strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court of a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release.

(4)-(5) [unchanged]

(c)–(g) [unchanged]