

Superior Court of the State of Washington
for the County of King

Paul L. Sherfey
Chief Administrative Officer

King County Courthouse
Seattle, Washington 98104

March 1, 2011

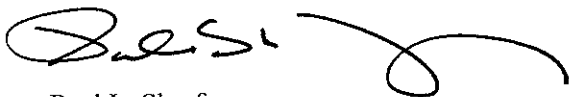
Anne Noris
Clerk of the Council
King County Council
516 Third Avenue, 12th floor
Seattle, WA 98104

Dear Ms. Noris:

As requested, enclosed is an original paper copy of the Superior Court's response to King County Ordinance 16943: "The Superior and District Courts are respectfully requested to consider approval of screening criteria for participation by pre-trial defendants in the alternatives to adult detention programs, specifically for defendants with a prior felony conviction, and are respectfully requested to notify the council of the status of screening criteria by March 1, 2011."

An electronic copy is also being transmitted to you. Please let us know if we can be of any further assistance.

Sincerely,



Paul L. Sherfey
Chief Administrative Officer

PLS:aj
Enclosure

DADJ-CCD maintains several programs for pretrial detention and release which involve different levels of security and freedom. From most secure to less secure, these are secure detention, work/education release, electronically monitored home detention, CCAP-enhanced and CCAP-basic.

Section 1 of K.C.C. 2.16.120A2 and 2.16.122.B.1 request that the court consider approval of screening criteria for a pre-trial defendant's participation in the county's alternatives to secure detention. The court has considered this request in conjunction with the mandates of the court rules and state statute, along with the county's desire to limit the county's liability. The court has considered, for example, whether the court can identify prescriptive exclusions from the jail alternative programs, such as exclusions if the defendant has prior convictions for violent or sex crimes, or current charges for violent or sex crimes, or a certain number of convictions for violent crimes. Prescriptive exclusions run afoul of the court's obligation under CrR 3.2 to honor a presumption of release and to impose the least restrictive alternative that protects community safety and assures the defendant's appearance in court. Even a presumption of exclusion is inconsistent with the court's obligations under CrR 3.2, because every release decision must be based on the individual consideration of the defendant's circumstances, as described below.

While the court generally will impose jail rather than a jail alternative for a defendant with significant violent crime history, there are circumstances that call for a less restrictive placement even for those defendants. For example, the defendant, though charged with a serious violent crime and now before the court on an order for new trial, may have already served the statutory maximum for the crime and cannot be held in custody. A defendant with a history of violent crime may have been convicted long in the past as a juvenile, or while suffering the effects of serious mental illness that has now been treated. Assault in the Second Degree and Robbery in the Second Degree are both denominated violent crimes. Yet each charge describes a broad range of behaviors, some of which, such as the defendant's shove to a store security officer while stealing baby formula, would not be considered violent. In other words, there are many reasons to depart from prescriptive, categorical limitations on which defendants may be ordered to jail alternatives. This broad range of considerations is precisely why CrR 3.2 requires judges to utilize a multi-factor test in making release decisions, rather than rigid prescriptions. The court expects that the felony risk-assessment tool, now being developed, will provide information that will be very helpful in making release decisions.

The Superior Court judge considering conditions of release makes the decision as to which alternative to secure detention, if any, is imposed. In the past, the court recommended to DAJD that a specific defendant enter a specific program; this recommendation was subject to approval by DAJD. This approach was abandoned because of legal opinion that a mere recommendation by the court would not cloak the decision with judicial immunity. Thus, if a court recommended work release and DAJD accepted the recommendation, and the defendant committed a new crime, the county might be liable for damages to the victim of the new crime. When a court orders the county to place a person in a program and the defendant commits a crime, the county is not liable due to the doctrine of judicial immunity.

Court rules are promulgated by the Supreme Court of Washington and are binding upon lower courts. Criminal Rule 3.2, consistent with the Constitution of the United States and the Constitution of the State of Washington's requirement of the presumption of innocence, directs that a court shall presume release on personal recognizance unless recognizance release will not reasonably assure the accused's

appearance in court or there is shown a likely danger that the accused will commit a violent crime or seek to intimidate witnesses. The rule does not provide for an exception to this presumption for certain types of crimes other than capital cases.

In making the decision, the court is to consider relevant facts set forth in CrR 3.3(c) and any other facts the court considers relevant. If the court concludes that recognizance release is insufficient to assure appearance or crime free behavior, the court may impose the least restrictive conditions of release that would reasonably assure appearance and avoid further criminal activity. By rule, these nonexclusive conditions to reasonably assure future appearance include:

- (1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- (2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
- (3) Require the execution of an unsecured bond in a specified amount;
- (4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;
- (5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;
- (6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or
- (7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. of setting a bond that will reasonably assure the accused's appearance.

Items (1), (2) and, (6) relate to King County's Community Corrections Division programs.

Art. I, § 20 of the Constitution of the State of Washington (amendment 104), adopted in November 2010, reads:

All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, subject to such limitations as shall be determined by the legislature.

Following the adoption of the constitutional amendment, the legislature enacted a bill which implements the amendment. With respect to cases punishable by life in prison, the legislature has set forth a specific procedure, RCW 10.21.040- .060, which the court is implementing. The bill also adds to the court rule other possible conditions of release, specifically a court ordered curfew, a condition that the defendant commit no crimes and a condition requiring an interlock device on any automobile operated by the defendant, RCW.10.21.030.

Where the court finds that there exists a “substantial danger that the accused will commit a violent crime” or intimidate witnesses, the court may impose one or more of the following nonexclusive conditions.

- (1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;
- (2) Prohibit the accused from going to certain geographical areas or premises;
- (3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;
- (4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;
- (5) Prohibit the accused from committing any violations of criminal law;
- (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.

Item (4) relates to Community Corrections.

Prior to the court deciding which, if any conditions of release will apply to an individual defendant, the Department prepares a report, usually based in part upon an interview with the accused, but also containing information concerning prior record, employment, housing, and the number of prior warrants issued in King County. The Deputy Prosecuting Attorney provides the court with a copy of the charging document (information), the certification for determination of probable cause which sets forth the facts of the case from the police perspective and “appendix B” which contains defendant’s criminal convictions, adult and juvenile.

When considering conditions of release, the court determines whether or not to release the defendant on personal recognizance or set bail or bond, and what conditions, if any, will assure appearance and protect individuals and the public. In addition to the factors set forth in the court rule, the court will consider the seriousness of the current offense or offenses, criminal history, opinion of the victim if any and if available, community and family support for the defendant, and available community corrections resources; the court will particularly scrutinize the statutory and court rule criteria when a party seeks

alternatives to pretrial detention for persons charged with class A felonies, violent crimes, sex offenses and those with prior felony convictions.

The court assures the council that the application of the court rules and statute, along with the council's legitimate concerns regarding the placement of defendants with prior felony convictions in county-run alternatives to secure detention, will be taken into consideration in ruling on defense motions to release to Community Corrections Division programs.