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STATE OF WASHINGTON
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No. 99664-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

CHARLES REISERT,
Petitioner.

**BRIEF OF AMICI CURIAE
WASHINGTON DEFENDER ASSOCIATION, AMERICAN CIVIL
LIBERTIES UNION OF WASHINGTON, AND WASHINGTON
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN
SUPPORT OF THE PETITION FOR REVIEW**

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I. INTRODUCTION

In King County Superior Court, those detained after a warrantless arrest are assigned counsel and given an opportunity to argue for pretrial release and against any conditions of release. But defendants arrested under a warrant typically must wait until their arraignment to challenge ex parte determinations regarding bail.

This disparity is not only deeply unfair, it is inconsistent with CrR 3.2.1(d), which requires that “any defendant” detained in jail be provided a preliminary appearance hearing before the end of the next court day. The Court of Appeals’ published opinion holding that this provision relates only to warrantless arrests is at odds with this Court’s precedents regarding statutory construction. By summarily concluding that (unidentified) language in CrR 3.2.1 is ambiguous, the Court of Appeals disregarded this Court’s directive that plain language governs the interpretation of statutes and court rules. The Court of Appeals then compounded its errors by looking to the rule’s title—itsself ambiguous—to resolve the non-existent ambiguity in the rule, declaring the title “substantive” without basis, and finding its meaning clear.

The Court of Appeals failed to recognize that the merger of former CrR 3.2A and 3.2B into CrR 3.2.1 did *not* limit the provision of preliminary appearances only to defendants arrested without a warrant.

The history of this rule adoption shows that the renumbering was intended only to track the numbering of CrRLJ 3.2.1 for ease of reference, while leaving the substance of both former rules intact—including that of former CrR 3.2B, which provided a preliminary appearance to “any defendant.”

If allowed to stand, the Court of Appeals’ decision will promote the state-wide application of King County’s policy denying preliminary appearances to defendants arrested under a warrant. This decision will have an outsized impact on marginalized defendants already facing systemic racism in the criminal legal system. Prolonged pretrial detention causes significant harm, harm this Court sought to avoid by adopting the preliminary appearance requirement of CrR 3.2.1 so “any defendant” could advocate for more favorable pretrial release conditions. Because this presents an issue of substantial public interest, and because the Court of Appeals’ decision runs contrary to established precedent, this Court should grant discretionary review under RAP 13.4(b)(1), (4).

II. IDENTITY AND INTEREST OF AMICI

The identities and interests of Washington Defender Association, American Civil Liberties Union of Washington, and Washington Association of Criminal Defense Lawyers are further stated in their motion for leave to file this amicus brief.

III. ISSUES PRESENTED

This Court's precedents require that where ambiguity exists in a rule of criminal procedure, courts consider context, history, case law, and lenity in resolving any ambiguity. CrR 3.2.1's history and context show that the rule providing a preliminary appearance is not limited only to warrantless arrests. The Court of Appeals failed to consider this relevant history, instead finding an ambiguous rule title to be clear after having found the clear language of the rule to be ambiguous. The issue presented is whether the Court of Appeals' decision conflicts with this Court's precedents and raises issues of substantial public interest impacting detained criminal defendants across the State who are entitled to a preliminary appearance after being arrested pursuant to a warrant.

IV. STATEMENT OF THE CASE

Amici adopts the statement of the case in the petition for review.

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

A. The Opinion Conflicts with Decisions of This Court Regarding How Court Rules Should Be Construed

1. The Court of Appeals disregarded basic rules of statutory construction established by this Court.

Court rules are construed in the same manner as statutes. *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993). Under this Court's clear precedents, only ambiguous language is subject to

construction. *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013) (“Plain language that is not ambiguous does not require construction.”). Only where language is susceptible to two or more *reasonable* interpretations may a court resort to extrinsic aids such as the history of enactment or adoption. *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005). If ambiguity remains after trying to ascertain legislative intent, the rule of lenity demands that construction be resolved in favor of a criminal defendant. *State v. Roberts*, 117 Wn.2d 576, 586, 817 P.2d 855 (1991).

The Court of Appeals ignored these directives, “press[ing] statutory construction to the point of disingenuous evasion[.]” *State v. Abrams*, 163 Wn.2d 277, 282, 178 P.3d 1021 (2008) (internal quotation marks and citation omitted). The plain language of CrR 3.2.1 is clear: “*any* defendant” who is detained is entitled to a preliminary appearance no later than the end of the next court day – and “*any*” defendant means “*every*” defendant. *See* CrR 3.2.1(d)(1). Yet the Court of Appeals untenably concluded that “the language in CrR 3.2.1 is ambiguous,” slip op. at 3, without even attempting to identify how the phrase “any defendant” could be susceptible to two *reasonable* interpretations.

Having incorrectly concluded that clear language was ambiguous, the Court next looked to the rule’s heading, “Procedure Following

Warrantless Arrest – Preliminary Appearance,” and determined that the em-dash was designed to limit the scope of preliminary appearances to warrantless arrests. Slip op. at 4–5. Even accepting the very dubious proposition that a rule title could alter or give context to the rule text’s plain language, here the title *itself* is ambiguous—the em-dash could just as reasonably be read to identify two different topics incorporated into one rule. To resolve *this* ambiguity, resort to the history of rule adoption could be warranted. And this history makes crystal clear that the Court of Appeals’ conclusion is erroneous.

2. The history of the rule shows that a preliminary appearance applies to defendants arrested pursuant to warrants.

The fact that the Court of Appeals’ conclusion is belied by the history of the rule is relevant to this Court’s decision regarding whether to accept review. Here, not only does the Court of Appeals’ analysis conflict with this Court’s precedents, but its errors were prejudicial and impact an area of substantial public interest.

Before CrR 3.2.1 was adopted as a new rule in 2001, the Criminal Rules contained CrR 3.2A, titled “Procedure Following Arrest Without Warrant,” and CrR 3.2B, titled “Preliminary Appearance.” App. A. Former CrR 3.2B made clear that a preliminary appearance was granted to “any defendant whether detained in jail or subjected to court-authorized

condition of release” unless the defendant was subject to a court of limited jurisdiction. CrR 3.2B(a) (2000).

Two decades ago, on January 10, 2000, the Superior Court Judges’ Association (“SCJA”) proposed changes to the criminal rules to “ensure that the superior courts comply with U.S. treaty obligations under the Vienna Convention.” App. B. Then-Chief Justice Charles Johnson responded on November 15, 2000, indicating that the proposal to add language pertaining to the Vienna Convention would not be pursued at that time. *See* App. C. The chair of the SCJA’s Criminal Law & Rules Committee wrote back to Chief Justice Johnson, reflecting acceptance of the Court’s position regarding the Vienna Convention, but further explaining:

[L]est it be overlooked at this time, when SCJA submitted these proposals on January 10, 2000, there was a second set of proposals, i.e., taking what is now referenced as CrR 3.2A and CrR 3.2B (relating to preliminary criminal appearances) and replacing them with a new CrR 3.2.1. . . . The present numbering of these rules is a bit confusing, especially when they are orally referenced, and they deviate from the numbering used in their CrRLJ counterparts in the Limited Jurisdiction Courts. While I am not sure why the different numbering systems and formats came about, they should be eliminated in order to eliminate confusion and in order to assist the members of the bar that practice in both levels of the trial courts.

App. C. The SCJA reflected its hope that it would “not need to re-submit this matter from scratch” and included for the Court’s consideration

simplified submissions eliminating references to the Vienna Convention.

App. C (attachment). The SCJA recommendation explained that CrR

3.2.1 would be:

a new section **designed to combine former CrR 3.2A and CrR 3.2B**. The new rule is patterned after CrRLJ 3.2.1, and will assist attorneys who practice in both the Superior and Limited Jurisdiction courts. The former numbering was somewhat confusing, and helps bring about further uniformity of the criminal rules.

App. C, cmt. on proposed CrR 3.2.1 (emphasis added). This comment establishes the Court's intent that the preliminary appearance provided to "any defendant" in former CrR 3.2B was *incorporated into*, and not *limited by*, new CrR 3.2.1. This Court apparently reviewed the SCJA recommendation, deleted CrR 3.2A and 3.2B, and adopted new CrR 3.2.1 on March 8, 2001. App. D.

Importantly, at the time the Supreme Court approved this proposal to adopt CrR 3.2.1 to conform to the format of CrRLJ 3.2.1, CrRLJ 3.2.1 was titled, "Proceedings before the Judge – Procedure Following Execution of a Warrant, Or Arrest Without a Warrant – Probable Cause for Determination – Bail – Preliminary Hearing." App. E. Thus, CrRLJ 3.2.1 was a collection of distinct topics, clearly encompassing warrantless and warranted arrests. CrR 3.2.1, by adopting the numbering of CrRLJ 3.2.1, also adopted its convention of separating the topics addressed in the

rule by em-dashes. These em-dashes do not indicate an intent to limit the latter topics by the preceding ones in CrRLJ 3.2.1, nor did the em-dash limit the scope of preliminary appearances in CrR 3.2.1, contrary to the Court of Appeals' decision. This Court should grant review to instruct lower courts on how to properly construe court rules consistent with their plain language, considering extrinsic aids only when necessary.

B. The Opinion Threatens to Deprive Defendants of Important Procedural Protections, Disproportionately Impacting Defendants Based on Race and Indigent Status, an Issue of Substantial Public Interest

When defendants are not given preliminary appearance hearings, as contemplated by CrR 3.2.1, they must wait until arraignment to request release or to challenge any imposed conditions. This wait, which may take as long as two weeks, can have devastating collateral consequences. Prolonged detention can lead to job and wage loss, which in turn may threaten housing. Custody over children and family relationships may also be impacted. *See Preliminary Report on Race and Washington's Criminal Justice System*, 35 Seattle U. L. Rev. 623, 650 (2012) (observing that pretrial detention “can have cascading effects on a defendant’s family, ability to maintain a job, and ability to pay for representation”).

Even short-term periods of pretrial incarceration can hurt both accused persons and the communities in which they live, as confirmed by

a study of over 150,000 jail bookings. Christopher Lowenkamp, et al., *The Hidden Costs of Pre-Trial Detention* 3 (Laura and John Arnold Foundation 2013).¹ This study found that individuals held in pretrial detention for more than one day were less likely to appear for court and more likely to commit new criminal offenses in the months following their arrest. *Id.* at 4. Even a detention period of two or three days resulted in defendants being more likely to miss court and more likely to commit a new criminal offense than those given prompt hearings and released within twenty-four hours. *Id.* at 4, 10. This research reinforces the principle that any unnecessary pretrial detention is harmful.

Moreover, unnecessary pretrial detention will have a disproportionate impact based on race. In Washington, Black and Latino defendants are detained and held on bail at significantly higher rates than white defendants. *Task Force*, 35 Seattle U. L. Rev. at 650. The harmful effects of such detention—including impacting “the defendant’s ability to prepare for a case or her willingness to go to trial,” which in turn causes “more guilty pleas, higher rates of conviction, and harsher sentences”—will disproportionately impact defendants based on race. Ellen A. Donnelly & John M. MacDonald, *The Downstream Effects of Bail and*

¹ This paper is available at https://www.crj.org/assets/2017/07/12_Exploring_Pretial_Detention.pdf.

Pretrial Detention on Racial Disparities in Incarceration, 108 J. of Crim. Law & Criminology 775, 778–79 (2018); *see also State v. Gregory*, 192 Wn.2d 1, 22, 427 P.3d 621 (2018) (acknowledging that “implicit and overt racial bias” is prevalent in Washington’s criminal legal system). Even relatively short periods of pretrial detention can have significant downstream effects, effects which will more heavily impact defendants based on race and poverty. These impacts raise issues of substantial public importance that this Court should address by granting review.

VI. CONCLUSION

The Court of Appeals’ analysis not only disregarded this Court’s precedents regarding statutory construction, it arrived at an incorrect result that threatens to deprive defendants across the State of important procedural protections this Court intended to provide them.

In *Pimentel*, this Court expressed that it remained “sympathetic” to “the importance of the concerns” regarding King County bail practices, but could not address the concerns through mandamus where the action was moot. *Pimentel v. Judges of King County Superior Court*, 197 Wn.2d 365, 367, 482 P.3d 906 (2021). This case presents an appropriate vehicle to determine similar and substantial issues relating to pretrial detention that are of substantial public importance, and the Court should grant review.

RESPECTFULLY SUBMITTED this 14th day of June, 2021.

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STATE OF WASHINGTON,
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**APPENDIX TO BRIEF OF AMICI CURIAE
WASHINGTON DEFENDER ASSOCIATION, AMERICAN CIVIL
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Appendix B	Letter from Hon. James M. Murphy, President of Superior Court Judges' Association, to Hon. Richard P. Guy, Chief Justice of Washington Supreme Court, dated January 10, 2000
Appendix C	Letter from Hon. Sam F. Cozza, Superior Court Judges' Association Criminal Law & Rules Chair, to Hon. Charles W. Johnson, Chief Justice of Washington Supreme Court, dated November 27, 2000
Appendix D	Order, No. 25700-A-701, <i>In the Matter of the Adoption of the Amendments to CrR 3.2A, CrR 3.2B, CrR 3.2(a), New CrR 3.2.1, CrR 3.4(d)(1) and CrR 4.3A</i> (Wash. March 8, 2001)
Appendix E	Criminal Rules 3.2.1, 3.3 from Washington Court Rules 1996 Including Amendments Received Through September 1, 1995 (West Publishing Co. 1995)

DECLARATION OF SERVICE

On June 14, 2021, I caused to be served a true and correct copy of the foregoing document on counsel of record stated below, via the Washington Courts E-Portal:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of June, 2021, at Seattle, Washington.

By: s/Katie Walker
Katie Walker, *Legal Assistant*

Appendix A

WASHINGTON COURT RULES

STATE

2001

INCLUDING AMENDMENTS RECEIVED
THROUGH SEPTEMBER 1, 2000



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accused for immediate hearing for reconsideration of conditions of release pursuant to section (i).

(2) *Arrest Without Warrant.* A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (i).

(k) *Evidence.* Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(l) *Forfeiture.* Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(m) *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.

[Amended effective July 1, 1976; September 1, 1983; September 1, 1986; September 1, 1991; September 1, 1995.]

Comment

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

RULE 3.2A PROCEDURE FOLLOWING ARREST WITHOUT WARRANT

(a) *Probable Cause Determination.* A person arrested without a warrant shall have a judicial determination of probable cause no later than 48 hours following the person's arrest.

(b) *How Determined.* The court shall determine probable cause on evidence presented by a peace officer or a prosecuting attorney in the same manner as provided for a warrant of arrest in rule 2.2. The evidence shall be preserved.

[Adopted effective July 1, 1992; amended effective September 1, 1995.]

RULE 3.2B PRELIMINARY APPEARANCE

(a) Preliminary Appearance.

(1) Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court-authorized

conditions of release, and any person in whose case the juvenile court has entered a written order declining jurisdiction, must be taken or required to appear before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next judicial day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.

(2) If a defendant is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.

(b) *Procedure at Preliminary Appearance.* At the preliminary appearance the court shall orally inform the defendant:

(1) Of the nature of the charge against the defendant, and;

(2) Of the right to be assisted by a lawyer at every stage of the proceedings.

The court shall provide for counsel pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2.

(c) Time Limits.

(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, a defendant shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72-hour period shall not include any part of Saturdays, Sundays, or holidays.

(2) If no complaint, information or indictment has been filed at the time of the preliminary appearance, and the defendant has not otherwise consented, the court at a time certain which is within the period described in subsection (c)(1), shall either (i) require that the defendant be released from jail or exonerated from the conditions of release, or (ii) set a time at which the defendant shall reappear before the court. The time for reappearance must also be within the period described in subsection (c)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the defendant shall be immediately released from jail or deemed exonerated from all conditions of release.

[Former Rule 3.2A adopted effective August 1, 1980; redesignated as Rule 3.2B effective July 1, 1992.]

RULE 3.3 TIME FOR TRIAL

(a) *Responsibility of Court.* It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with having committed a crime.

Appendix B

Superior Court Judges' Association State of Washington

James M. Murphy, President-Judge
Spokane County Superior Court
1116 W. Broadway Ave.
Spokane, WA 99260-0350

(509) 477-4712
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January 10, 2000

The Honorable Richard P. Guy
Washington State Supreme Court
PO Box 40929
Olympia, Washington 98504-0929

Dear Chief Justice Guy:

RE: PROPOSED AMENDMENTS TO CrR 3.2A, 3.2B, 3.2.1, 4.1, 4.2, 4.3.1

The Superior Court Judges' Association (SCJA) hereby proposes the following court rule changes. The proposals mainly deal with a procedure to ensure that the superior courts comply with U.S. treaty obligations (that also fall within the supremacy clause of the U.S. Constitution) under the Vienna Convention.

Enclosed are the proposed rule changes and the cover sheets required by GR 9. As these rules are of particular importance to ensure that defendant's rights are not violated, the Association requests publication for an abbreviated comment period.

Thank you for your consideration of this matter. If the Supreme Court would like any additional information on this proposal, you may contact our spokesperson Judge Sam Cozza at (509) 477-4795.

Sincerely,



James M. Murphy
SCJA, President

YLP:scja/pres corr/murphy/letter to chief re vienna rules.doc

Enclosures

cc: Judge Sam Cozza
Nancy Sullins

GR 9 COVER SHEET

CrR 3.2A Procedure Following Arrest Without Warrant

- (1) Background: This rule is proposed by the Superior Court Judges' Association.
- (2) Purpose: It is proposed this rule be deleted. The provisions of this rule are contained in the proposed new rule CrR 3.2.1.
- (3) Washington State Bar Association: The rule has not been submitted to the Bar Association.
- (4) Supporting Material: None.
- (5) Spokesperson: Judge Sam Cozza, Chair, Superior Court Judges' Association Criminal Law and Rules Committee.
- (6) Hearing: A hearing is not recommended.

RULE CrR 3.2A

PROCEDURE FOLLOWING ARREST WITHOUT WARRANT

~~(a) Probable Cause Determination. A person arrested without a warrant shall have a judicial determination of probable cause no later than 48 hours following the person's arrest. (b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or a prosecuting attorney in the same manner as provided for a warrant of arrest in rule 2.2. The evidence shall be preserved.~~

GR 9 COVER SHEET

CrR 3.2B Preliminary Appearance

- (1) Background: This rule is proposed by the Superior Court Judges' Association.
- (2) Purpose: It is proposed this rule be deleted. The provisions of this rule are contained in the proposed new rule CrR 3.2.1.
- (3) Washington State Bar Association: The rule has not been submitted to the Bar Association.
- (4) Supporting Material: None.
- (5) Spokesperson: Judge Sam Cozza, Chair, Superior Court Judges' Association Criminal Law and Rules Committee.
- (6) Hearing: A hearing is not recommended.

RULE CrR 3.2B
PRELIMINARY APPEARANCE

~~(a) Preliminary Appearance. (1) Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court authorized conditions of release, and any person in whose case the juvenile court has entered a written order declining jurisdiction, must be taken or required to appear before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next judicial day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date. (2) If a defendant is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance. (b) Procedure at Preliminary Appearance. At the preliminary appearance the court shall orally inform the defendant: (1) Of the nature of the charge against the defendant, and; (2) Of the right to be assisted by a lawyer at every stage of the proceedings. The court shall provide for counsel pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2. (c) Time Limits. (1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, a defendant shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays, or holidays. (2) If no complaint, information or indictment has been filed at the time of the preliminary appearance, and the defendant has not otherwise consented, the court at a time certain which is within the period described in subsection (c)(1), shall either (i) require that the defendant be released from jail or exonerated from the conditions of release, or (ii) set a time at which the defendant shall reappear before the court. The time for reappearance must also be within the period described in subsection (c)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the defendant shall be immediately released from jail or deemed exonerated from all conditions of release.~~

GR 9 COVER SHEET

Proposed New CrR 3.2.1 Procedure Following Warrantless Arrest – Preliminary Appearance

- (1) Background: This rule is proposed by the Superior Court Judges' Association.
- (2) Purpose: The rule establishes the procedure to be followed for preliminary appearance to ensure that superior courts comply with U.S. treaty obligations under the Vienna Convention. This new rule combines former rules CrR 3.2A and CrR 3.2B. The rule contains only one substantive addition in (e)(1)(iv) that refers to rights of foreign nationals who are arrested or detained on any charge, to contact consular representatives of their home country under the 1963 Vienna Convention if they so desire.
- (3) Washington State Bar Association: The rule has not been submitted to the Bar Association.
- (4) Supporting Material: Article 36 of the Vienna Convention Treaty.
- (5) Spokesperson: Judge Sam Cozza, Chair, Superior Court Judges' Association Criminal Law and Rules Committee.
- (6) Hearing: A hearing is not recommended.

PROPOSED NEW RULE CrR 3.2.1
PROCEDURE FOLLOWING WARRANTLESS ARREST -
PRELIMINARY APPEARANCE

(a) Probable Cause Determination. A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in rule 2.2(a). The evidence shall be preserved and may consist of an electronically recorded telephonic statement .

(c) Court Days. For the purpose of section(a), Saturday, Sunday and holidays may be considered judicial days.

(d) Preliminary Appearance.

(1) Adult. Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court-authorized conditions of release shall be brought before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next court day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.

(2) Juveniles. Any person in whose case the juvenile court has entered a written order declining jurisdiction, and who is detained in custody must be taken to appear before the superior court as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day.

(3) Unavailability. If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.

(e) Procedure at Preliminary Appearance.

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, and the court shall orally inform the accused:

(i) of the nature of the charge against the accused;

(ii) of the right to be assisted by a lawyer at every stage of the proceedings;

(iii) of the right to remain silent, and that anything the accused says may be used against him or her; and

(iv) of the right to contact diplomatic representatives of the foreign country, if he or she is a citizen of a foreign country, as provided in the Vienna Convention on Consular Relations (21 U.S.T. 77 -1963).

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider

affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the findings of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, an accused, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays or holidays.

(2) If no information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

GR 9 COVER SHEET

Amendment to CrR 4.1 Arraignment

- (1) Background: This rule is proposed by the Superior Court Judges' Association.
- (2) Purpose: The rule establishes the procedure to be followed for arraignment to ensure that superior courts comply with U.S. treaty obligations under the Vienna Convention. The substantive addition is in (b)(1) that refers to advise of rights for non-citizens to contact consular representatives of their home country under the 1963 Vienna Convention if they so desire.
- (3) Washington State Bar Association: The rule has not been submitted to the Bar Association.
- (4) Supporting Material:
- (5) Spokesperson: Judge Sam Cozza, Chair, Superior Court Judges' Association Criminal Law and Rules Committee.
- (6) Hearing: A hearing is not recommended.

RULE CrR 4.1
ARRAIGNMENT

(a) **Time (No change)**

(b) **Counsel (No change)**

(1) Non-Citizens. The court shall advise the defendant that he or she has the right to contact diplomatic representatives of the foreign country if he or she is a citizen of a foreign country.

(c- e) **(No change)**

GR 9 COVER SHEET

Amendment to CrR 4.2 Pleas

- (1) Background: This rule is proposed by the Superior Court Judges' Association.
- (2) Purpose: The rule ensures that defendants are advised of their right to contact consular representatives of their home country under the 1963 Vienna Convention, if they so desire.
- (3) Washington State Bar Association: The rule has not been submitted to the Bar Association.
- (4) Supporting Material: None.
- (5) Spokesperson: Judge Sam Cozza, Chair, Superior Court Judges' Association Criminal Law and Rules Committee.
- (6) Hearing: A hearing is not recommended.

RULE CrR 4.2

PLEAS

(a-f) (No Change)

(g) Written Statement

...

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. If I am a citizen of a foreign country, I understand that I have the option to contact diplomatic representatives of my home country for assistance.

(h-z) (No change)

GR 9 COVER SHEET

Proposed New CrR 4.3.1 Consolidation for Trial

- (1) Background: This rule is proposed by the Superior Court Judges' Association.
- (2) Purpose: The rule changes the numbering of CrR 4.3A to 4.3.1. This change will alleviate confusion and make the numbering consistent with CrRLJ 4.3.1 which will assist lawyers who practice in both superior and limited jurisdiction courts.
- (3) Washington State Bar Association: The rule has not been submitted to the Bar Association.
- (4) Supporting Material: None.
- (5) Spokesperson: Judge Sam Cozza, Chair, Superior Court Judges' Association Criminal Law and Rules Committee.
- (6) Hearing: A hearing is not recommended.

RULE CrR-~~4.3A~~ 4.3.1
CONSOLIDATION FOR TRIAL

(a) Consolidation Generally. Offenses or defendants properly joined under rule 4.3 shall be consolidated for trial unless the court orders severance pursuant to rule 4.4. (b) Failure to Join Related Offenses. (1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct. (2) When a defendant has been charged with two or more related offenses, the timely motion to consolidate them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of consolidation as to related offenses with which the defendant knew he or she was charged. (3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for consolidation of these offenses was previously denied or the right of consolidation was waived as provided in this rule. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted. (4) Entry of a plea of guilty to one offense does not bar the subsequent prosecution of a related offense unless the plea of guilty was entered on the basis of a plea agreement in which the prosecuting attorney agreed to seek or not to oppose dismissal of other related charges or not to prosecute other potential related charges. (c) Authority of Court To Act on Own Motion. The court may order consolidation for trial of two or more indictments or informations if the offenses or defendants could have been joined in a single charging document under rule 4.3.

Appendix C

Superior Court Judges' Association State of Washington

Judge Sam F. Cozza, Chair Criminal Law & Rules Committee
Spokane County Superior Court
West 1116 Broadway
Spokane, WA 99260

(509) 477-4795
Fax: (509) 477-5714

scozza@spokanecounty.org

November 27, 2000

Hon. Charles W. Johnson
Rules Committee Chair
The Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed CrR Amendments submitted by SCJA 1/10/00 { CrR 3.2.1 and CrR 4.3.1 }

Dear Justice Johnson:

I have received a copy of your letter of November 15, 2000 to President Judge Jim Murphy indicating that the SCJA proposals to add language to certain CrR pertaining to the Vienna Convention would not be pursued at this time. I understand the Court's position in this matter, and perhaps the matter could be revisited someday in the future.

However, lest it be overlooked at this time, when SCJA submitted these proposals on January 10, 2000, there was a second set of proposals, i.e. taking what is now referenced as CrR 3.2A and CrR 3.2B (relating to preliminary criminal appearances) and replacing them with a new CrR 3.2.1. Additionally, CrR 4.3A (Consolidation for Trial) would be re-numbered as CrR 4.3.1. The present numbering of these rules is a bit confusing, especially when they are orally referenced, and they deviate from the numbering used in their CrRLJ counterparts in the Limited Jurisdiction Courts. While I am not sure why the different numbering systems and formats came about, they should be eliminated in order to eliminate confusion and in order to assist the members of the bar that practice in both levels of the trial courts.

It is my hope that SCJA does not need to re-submit this matter from scratch. I have attached the simplified submission, minus any references to the Vienna Convention. I note that WAPA did not object to these format changes, and WSBA was silent about them. I would appreciate your response to either Judge Murphy or myself.

Thank you for your consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "S. F. Cozza". The signature is written in a cursive, flowing style.

Judge Sam F. Cozza
SCJA Criminal Law & Rules Chair

cc: Judge Jim Murphy
Nan Sullins, OAC

RULE CrR 3.2A

PROCEDURE FOLLOWING ARREST WITHOUT WARRANT

{delete} *There is a reference in CrR 3.2(a) referring to "CrR 3.2A" that needs to be changed to "CrR 3.2.1."

RULE CrR 3.2B

PRELIMINARY APPEARANCE

{delete}

{NEW} RULE CrR 3.2.1

**PROCEDURE FOLLOWING WARRANTLESS ARREST -
PRELIMINARY APPEARANCE**

- (a) **Probable Cause Determination.** A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.
- (b) **How Determined.** The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner a provided for a warrant of arrest in rule 2.2(a). The evidence shall be preserved and may consist of an electronically recorded telephonic statement.
- (c) **Court Days.** For the purpose of section(a), Saturday, Sunday and holidays may be considered judicial days.
- (d) **Preliminary Appearance.**
- (1) *Adult.* Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court –authorized conditions of release shall be brought before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next court day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.
 - (2) *Juveniles.* Any person in whose case the juvenile court has entered a written order declining jurisdiction, and who is detained in custody must be taken to appear before the superior court as soon as practicable after the juvenile court order is entered , but in any event before the close of business on the next court day.
 - (3) *Unavailability.* If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.
- (e) **Procedure at Preliminary Appearance.**
- (1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, . and the court shall orally inform the accused:

- (i) of the nature of the charge against the accused;
- (ii) of the right to be assisted by a lawyer at every stage of the proceedings; and
- (iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the findings of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, an accused, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays or holidays.

(1) If no information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

- (i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or
- (ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

Comment: This is a new section designed to combine former CrR 3.2A and CrR3.2B. The new rule is patterned after CrRLJ 3.2.1, and will assist attorneys who practice in both the Superior and Limited Jurisdiction courts. The former numbering was somewhat confusing, and helps bring about further uniformity of the criminal rules.

RULE CrR-4.3A 4.3.1
CONSOLIDATION FOR TRIAL

(No change in text of rule)

Comment: To alleviate confusion and to make the numbering consistent with CrRLJ 4.3.1, which will assist lawyers who practice in both Superior and Limited Jurisdiction Courts.

Appendix D

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF THE)
AMENDMENTS TO CrR 3.2A, CrR 3.2B, CrR)
3.2(a), NEW CrR 3.2.1, CrR 3.4(d)(1) AND CrR 4.3A)
_____)

ORDER
NO. 25700-A- 701

The Superior Court Judges' Association having recommended the adoption of the proposed amendments to CrR 3.2A, CrR 3.2B, CrR 3.2(a), New CrR 3.2.1, CrR 3.4(d)(1) and CrR 4.3A, and the Court having determined that the proposed amendments and new rule will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

- (a) That the amendments and new rule as attached hereto are adopted.
- (b) That pursuant to the emergency provisions of GR 9(i), the amendments and new

rule will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 8th day of March 2001.

FILED
 SUPERIOR COURT
 STATE OF WASHINGTON
 2001 MAR 8 P 3:07
 BY _____
 CLERK

Alexander, C. J.

395/99

Superior Court Criminal Rules (CrR)

~~RULE 3.2A~~

~~PROCEDURE FOLLOWING ARREST WITHOUT WARRANT~~

~~(a) Probable Cause Determination. A person arrested without a warrant shall have a judicial determination of probable cause no later than 48 hours following the person's arrest.~~

~~(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or a prosecuting attorney in the same manner as provided for a warrant of arrest in rule 2.2. The evidence shall be preserved.~~

Superior Court Criminal Rules (CrR)

~~RULE 3.2B~~ ~~PRELIMINARY APPEARANCE~~

~~_____ (a) Preliminary Appearance.~~

~~_____ (1) Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court authorized conditions of release, and any person in whose case the juvenile court has entered a written order declining jurisdiction, must be taken or required to appear before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next judicial day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.~~

~~_____ (2) If a defendant is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.~~

~~_____ (b) Procedure at Preliminary Appearance. At the preliminary appearance the court shall orally inform the defendant:~~

~~_____ (1) Of the nature of the charge against the defendant, and;~~

~~_____ (2) Of the right to be assisted by a lawyer at every stage of the proceedings. The court shall provide for counsel pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2.~~

~~_____ (c) Time Limits.~~

~~_____ (1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, a defendant shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72-hour period shall not include any part of Saturdays, Sundays, or holidays.~~

~~_____ (2) If no complaint, information or indictment has been filed at the time of the preliminary appearance, and the defendant has not otherwise consented, the court at a time certain which is within the period described in subsection (c)(1), shall either (i) require that the defendant be released from jail or exonerated from the conditions of release, or (ii) set a time at which the defendant shall reappear before the court. The time for reappearance must also be within the period described in subsection (c)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the defendant shall be immediately released from jail or deemed exonerated from all conditions of release.~~

Superior Court Criminal Rules (CrR)

RULE 3.2 RELEASE OF ACCUSED

(a) 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 3.2A.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or if there is shown a likely 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. For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030. If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for trial, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations, and may be hearsay in whole or in part. The court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, will not significantly interfere with the administration of justice and not pose a substantial danger to others or the community or, if no single condition gives that assurance, any combination of the following conditions:

- (1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- (2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
- (3) Require the execution of an unsecured bond in a specified amount;
- (4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;
- (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
- (7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required, assure noninterference with the trial and reduce danger to others or the community.

(b) Relevant Factors. In determining which conditions of release will reasonably assure the accused's appearance and noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available

information, consider the relevant facts including but not limited to: the length and character of the accused's residence in the community; the accused's employment status and history and financial condition; the accused's family ties and relationships; the accused's reputation, character and mental condition; the accused's history of response to legal process; the accused's criminal record; the willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release; the nature of the charge; any other factors indicating the accused's ties to the community; the accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice; whether or not there is evidence of present threats or intimidation directed to witnesses; the accused's past record of committing offenses while on pretrial release, probation or parole; and the accused's past record of use of or threatened use of deadly weapons or firearms, especially to victims or witnesses.

(c) 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 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, 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 or the appearance of the defendant.

(d) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the persons safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the persons mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(e) 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.

(f) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(g) 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.

(h) Review of Conditions.

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (g). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

(i) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (h). Release may be revoked only if the violation is proved by clear and convincing evidence.

(j) Arrest for Violation of Conditions.

(1) Arrest With Warrant. Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (i).

(2) Arrest Without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (i).

(k) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(l) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(m) 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.

Comment

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080;
RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

Superior Court Criminal Rules (CrR)

{NEW} RULE CrR 3.2.1

PROCEDURE FOLLOWING WARRANTLESS ARREST - PRELIMINARY APPEARANCE

- (a) Probable Cause Determination.** A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.
- (b) How Determined.** The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner a provided for a warrant of arrest in rule 2.2(a). The evidence shall be preserved and may consist of an electronically recorded telephonic statement
- (c) Court Days.** For the purpose of section(a), Saturday, Sunday and holidays may be considered judicial days.
- (d) Preliminary Appearance.**
- (1) Adult.* Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court –authorized conditions of release shall be brought before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next court day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.
- (2) Juveniles.* Any person in whose case the juvenile court has entered a written order declining jurisdiction, and who is detained in custody must be taken to appear before the superior court as soon as practicable after the juvenile court order is entered , but in any event before the close of business on the next court day.
- (3) Unavailability.* If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.
- (e) Procedure at Preliminary Appearance.**
- (1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, , and the court shall orally inform the accused:
- (i) of the nature of the charge against the accused;
- (ii) of the right to be assisted by a lawyer at every stage of the proceedings;
- and

(iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the findings of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, an accused, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays or holidays.

(1) If no information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

- (i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or
- (ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

Superior Court Criminal Rules (CrR)

RULE 3.4 PRESENCE OF THE DEFENDANT

(a) **When Necessary.** The defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

(b) **Effect of Voluntary Absence.** The defendant's voluntary absence after the trial has commenced in his or her presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by its lawyer for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(c) **Defendant Not Present.** If in any case the defendant is not present when his or her personal attendance is necessary, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

(d) **Video Conference Proceedings.**

(1) **Authorization.** Preliminary appearances held pursuant to CrR 3.2B.1, arraignments held pursuant to this rule and CrR 4.1, bail hearings held pursuant to CrR 3.2, and trial settings held pursuant to CrR 3.3, may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an inperson hearing, which may in the trial court judge's discretion be granted.

(2) **Agreement.** Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrR 4.2 may be conducted by video conference only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.

(3) **Standards for Video Conference Proceedings.** The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. Video conference facilities must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.

Superior Court Criminal Rules (CrR)

RULE 4.3A1 CONSOLIDATION FOR TRIAL

(a) Consolidation Generally. Offenses or defendants properly joined under rule 4.3 shall be consolidated for trial unless the court orders severance pursuant to rule 4.4.

(b) Failure to Join Related Offenses.

(1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.

(2) When a defendant has been charged with two or more related offenses, the timely motion to consolidate them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of consolidation as to related offenses with which the defendant knew he or she was charged.

(3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for consolidation of these offenses was previously denied or the right of consolidation was waived as provided in this rule. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(4) Entry of a plea of guilty to one offense does not bar the subsequent prosecution of a related offense unless the plea of guilty was entered on the basis of a plea agreement in which the prosecuting attorney agreed to seek or not to oppose dismissal of other related charges or not to prosecute other potential related charges.

(c) Authority of Court To Act on Own Motion. The court may order consolidation for trial of two or more indictments or informations if the offenses or defendants could have been joined in a single charging document under rule 4.3.

Appendix E

WASHINGTON COURT RULES

STATE

1996

INCLUDING AMENDMENTS RECEIVED
THROUGH SEPTEMBER 1, 1995

WEST PUBLISHING COMPANY
SAINT PAUL, MINNESOTA

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WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	60% PSEA	30% PSEA	TOTAL
480-12-180(1)	Explosive Laden Vehicle Off Route				
480-14-370(1)	(Mandatory Appearance)				500
480-12-180(6)	Medical Certificate Violation	50	30	15	95
480-14-370(7)					
480-12-190	Hours of Service Violation				
480-14-380	Driver in Service	50	30	15	95
480-12-190(1)	Driver Out of Service	80	48	24	152
480-14-380	Hazardous Material Transporta- tion				
480-14-390	(Mandatory Appearance)				500
480-12-210	Failure To Display Commission Approved Lease	50	30	15	95
81.90.030	Certificate Required (Mandatory Appearance)				500
81.90.140	Failure To Register Interstate Authority	80	48	24	152
480-35-110					
480-35-120	Failure To Display Valid Identifi- cation Decal	50	30	15	95
81.80.301	Failure To Display Single State Registration (SSR) Receipt	50	30	15	95
480-14-300					
480-14-400	Radioactive Material Transp. (Mandatory Appearance)				500

[Amended effective November 17, 1989; September 1, 1991; September 1, 1992; June 25, 1993; May 1, 1994; September 1, 1994; August 15, 1995; September 1, 1995.]

RULE 3.2.1 PROCEEDINGS BEFORE THE JUDGE—PROCEDURE FOLLOWING EXECUTION OF A WARRANT, OR ARREST WITHOUT A WARRANT—PROBABLE CAUSE FOR DETERMINATION—BAIL—PRELIMINARY HEARING

(a) **Probable Cause Determination.** A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.

(b) **How Determined.** The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in rule 2.2(a). The evidence shall be preserved and may consist of an electronically recorded telephonic statement.

(c) **Court Days.** For the purpose of section (a), Saturday, Sunday and holidays may be considered judicial days.

(d) Preliminary Appearance.

(1) *Adult.* Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused detained in jail must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day.

(2) *Juveniles.* Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused in whose case the juvenile court has entered a written order declining jurisdiction and who is detained in custody, must be brought before a court of limited jurisdiction as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day.

(3) *Unavailability.* If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recorded by the court, enlarge the time prior to preliminary appearance.

(e) Procedure at Preliminary Appearance.

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, and the court shall orally inform the accused:

- (i) of the nature of the charge against the accused;
- (ii) of the right to be assisted by a lawyer at every stage of the proceedings; and
- (iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear in court at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, un-

less this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the finding of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless a written complaint is filed or the accused consents in writing or on the record in open court, an accused, following a preliminary appearance, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the accused's detention in jail or release on conditions, whichever occurs first. Computation of the 72-hour period shall not include any part of Saturdays, Sundays, or holidays.

(2) If no complaint, information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

(g) Preliminary Hearing on Felony Complaint.

(1) When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether there is probable cause to believe that the accused has committed a felony unless an information or indictment is filed in superior court prior to the time set for the preliminary hearing. If the court finds probable cause, the court shall bind the defendant over to the superior court. If the court binds the accused over, or if the parties waive the preliminary hearing, an information shall be filed without unnecessary delay. Jurisdiction vests in the superior court at the time the information is filed.

(2) If at the time a felony complaint is filed with the district court the accused is detained in jail or subjected to conditions of release, the time from the filing of the complaint in district court to the filing of an information in superior court shall not exceed 30 days plus any time which is the subject of a stipulation under subsection (g)(3). If at the time the complaint is filed with the district court the accused is not detained in jail or subjected to conditions of release, the time from the accused's first appearance in district court which next follows the filing of the complaint to

the time of the filing of an information in superior court shall not exceed 30 days, excluding any time which is the subject of a stipulation under subsection (g)(3). If the applicable time period specified above elapses and no information has been filed in superior court, the case shall be dismissed without prejudice.

(3) Before or after the preliminary hearing or a waiver thereof, the court may delay a preliminary hearing or defer a bind-over date if the parties stipulate in writing that the case shall remain in the court of limited jurisdiction for a specified time, which may be in addition to the 30-day time limit established in subsection (g)(2).

(4) A preliminary hearing shall be conducted as follows:

(i) the defendant may as a matter of right be present at such hearing;

(ii) the court shall inform the defendant of the charge unless the defendant waives such reading;

(iii) witnesses shall be examined under oath and may be cross-examined;

(iv) the defendant may testify and call witnesses in the defendant's behalf.

(5) If a preliminary hearing on the felony complaint is held and the court finds that probable cause does not exist, the charge shall be dismissed, and may be refiled only if a motion to set aside the finding is granted by the superior court. The superior court shall determine whether, at the time of the hearing on such motion, there is probable cause to believe that the defendant has committed a felony.

(6) If a preliminary hearing is held, the court shall file the record in superior court promptly after notice that the information has been filed. The record shall include, but not be limited to, all written pleadings, docket entries, the bond, and any exhibits filed in the court of limited jurisdiction. Upon written request of any party, the court shall file the recording of any testimony.

[Amended effective July 1, 1992; September 1, 1995.]

RULE 3.3 TIME FOR TRIAL

(a) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with having committed a crime.

(b) Precedence Over Civil Cases. Criminal trials shall take precedence over civil trials.

(c) Time for Arraignment and Trial.

(1) *Cases Filed in Court.* If the defendant is detained in jail, or subject to conditions of release, the defendant shall be arraigned not later than 15 days after the date the complaint is filed in court. If the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not

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