

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Cc:** [Tracy, Mary](#)  
**Subject:** FW: Comments re Proposed Changes to CrR 3.4 and CrRLJ 3.4  
**Date:** Wednesday, September 30, 2020 12:01:27 PM

---

**From:** Shawn Arthur [mailto:SArthur@PuyallupWA.gov]  
**Sent:** Wednesday, September 30, 2020 11:56 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comments re Proposed Changes to CrR 3.4 and CrRLJ 3.4

Dear Supreme Court Rules Committee:

The Puyallup City Attorney's Office is writing to oppose the proposed amendments to CrR 3.4 and CrRLJ 3.4. Multiple attorneys within our office have served in both the prosecution and defense capacity, given this background, we understand the difficulties from both sides when it comes to appearing in court. Allowing defendants to only appear at arraignment and trial will only increase the number of times a case is continued, create a surge the backlog of cases, and put the defendant at a disadvantage missing key elements in their prosecution.

The pre-trial process and the defendant's involvement in that process is essential. It provides the defendant with an educational opportunity to observe how the court works and its processes, to learn exactly what sentence they could be facing if convicted and allows them to see the consequences imposed for others convicted of the same offense. Most importantly, their appearance allows them an opportunity to meaningfully interact with their attorney. Defendant's learn about the legal process, defenses, and various legal issues when they attend court. Defendants may also spot factual issues during pre-trial that they can relay to their attorney. All of such would be lost without the defendant's attendance in court.

Speaking from experience, it can be difficult for attorneys to make contact with their client in advance of a hearing. This impacts meaningful communication about their case, assessing potential defenses, and determining if mental health may be a factor. If defendants do not attend pre-trial proceedings the defendant most likely will not be able to assist their counsel in preparation for trial or will not be able to make an informed decision if trial is in fact how they want to proceed. Naturally, when this happens, cases are continued. In smaller jurisdictions that process a large volume of cases with one presiding judge, such as Puyallup, this could mean even longer delays in resolving criminal cases. Delays have a significant impact on the victims of crimes, jurors, and the prosecution's ability to continue to have contact with witnesses. Victims deserve a right to have a speedy disposition and to see consequences imposed for those convicted of harming the victim. Jurors miss work and time from their families to do their civic duty and ensure that a defendant receives a fair trial. Victims and witnesses move and become unavailable prejudicing the government's case. This erodes the confidence in the legal process as victims and witnesses are required to put their lives on hold when matters could have been resolved much sooner if the defendant were required to appear in court. Delay and inefficiencies will be a common occurrence if

these changes take place as the defendant will be working out issues that would have been addressed at pre-trial necessitating a continuance. Additionally, there is a cost on the criminal justice system such as clerks and court staff for the repeated set overs and the cost of juries being called in but not having a trial proceed.

Eliminating defendant appearances at pre-trial hearings also undercuts a Judge's ability to ensure that pre-trial conditions of release are being adhered to and to address any pre-trial motions or lack of compliance with pre-trial conditions of release. For example, defendant's are frequently released on personal recognizance with the condition of an alcohol monitoring bracelet or pre-trial probation. If a defendant is drinking in violation of conditions, the monitoring agency or probation report is sent to the court. The court's opportunity to review the violation and make necessary adjustments to release conditions or remand the defendant into custody typically comes at the next pre-trial hearing. If defendants were not required to appear, the public is placed in increased danger because the court cannot adjust conditions of release without the defendant present. Similar troubling circumstances apply to victims making motions to terminate no-contact orders, issues of proving that defendants had actual notice of motion and trial dates should they fail to appear, and defendants who accrue intervening law violations. How could we expect a defendant to respond to a summons for a pre-trial violation hearing, when he is baldly permitted to ignore summons from the court at all other times?

Eliminating pre-trial appearances is unnecessary and causes more problems than solutions. There is already a mechanism in place to assist defendants who may have trouble appearing in court, a continuance. A continuance can be requested and granted without a defendant ever appearing in court. Typically, when a court date is set the defendant can address future court dates with the judge. In our experience Judges are reasonable and will work with a defendant on scheduling. If a defendant knows at an early hearing that they wish to proceed to trial, then the case can be set at that hearing for a future trial date which negates the need for intervening pre-trial hearings.

The proposed amendment will cause significant problems with the court resolving cases in a speedy, just, and inexpensive manner which is required by the court rules. Adjudication of cases will screech to a halt as defendants will not be ready for trial. One of the repeated complaints heard within the court system is the lack of contact and communication with one's attorney. This amendment would only perpetuate and grow that complaint, which may also result in more appeals being filed due to ineffective assistance of counsel allegations. It makes little sense when reading a book to read the first chapter then jump to the final chapter. The reader is left confused and with a complete misunderstanding of what is happening. This is exactly what will happen if this change were to take effect.

In summation, the Puyallup City Attorneys' Office strongly opposes these amendments as this proposal would harm and delay judicial economy, result in increased costs to the court system, delay justice for victims, could affect the government's ability to prosecute a case, may impact due process rights by precluding opportunities for a defendant to have meaningful contacts with their attorney, and deny the court of it's authority to enforce pre-trial conditions of release.

Respectfully,

Puyallup City Attorney's Office