

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



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PROSECUTING ATTORNEY

JUSTICE
COMPASSION
PROFESSIONALISM
INTEGRITY
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September 30, 2020

Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendments to CrR/CrRLJ 3.4

Dear Justices of the Supreme Court,

Thank you for seeking comments to the Washington Defender Association's proposed amendments to the Superior Court Criminal Rules (CrR) and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ).¹ After carefully reviewing the proposed changes and many of the comments filed in support and opposition to them, I urge you to reject the changes as currently written and initiate a Court-appointed work group comprised of interested and essential stakeholders to conduct a thorough review of the changes and their impact. Although motivated by laudable goals shared by many of us across the judicial system, the proposed changes suffer from several critical flaws and must be carefully redrafted to ensure that they protect a defendant's right to be present at all critical stages of a proceeding, safeguard scarce resources, and ensure public trust.

I strongly support many of the stated intentions behind the proposals, particularly preventing defendants' job loss, school disruptions, compromised child or other family member care, and reducing bench warrants. The onset of COVID-19 has further inspired our efforts to meet people where they are and challenged us to conduct hearings telephonically and through video conferencing technology. We should continue to explore these and other remote options even after the pandemic recedes.

As currently drafted, however, the proposed amendments will create significantly more harm than good. For example, the amendments presume the defendant's absence at all but arraignment, trial, and sentencing, contingent on the defendant's signed waiver indicating only that "the defendant wishes to appear through counsel." This paltry waiver falls far short of establishing the knowing, intelligent, and voluntary waiver of the defendant's constitutional right to appear at critical stages of a criminal proceeding. At minimum, an effective waiver must specify the date and subject matter of the hearing to ensure that the waiver is made with knowledge of the proceeding at issue. Nonetheless, if an unexpected subject is raised and the waiver does not contemplate that subject, then an additional hearing will have to be set, or a reviewing court will conclude that the defendant was deprived of his/her constitutional right to be present. Further, the proposed changes appear to allow defense counsel to request a trial continuance

¹ Although my comments focus on the proposed changes to the Criminal Rules (CrR), they apply with equal force to the proposed changes to the Criminal Rules of Limited Jurisdiction (CrRLJ), which are identical, and should be considered accordingly.

without providing the defendant with an opportunity to object or make a record that he or she is validly waiving the right to a timely trial date.

Moreover, it is inevitable that some defendants will later challenge the validity of the waivers authorized by this rule based on alleged inaccurate advice about the nature of the proceedings at issue, or insufficient notice of the State's plea offer and potential amendments for trial. Establishing the specific advice given years earlier by a defense attorney who represents many defendants is very difficult. Establishing that the defendant understood that advice and made a voluntary and intelligent waiver will be extremely difficult, lead to additional litigation, and potentially result in reversal of the conviction.

Requiring a separate hearing to determine if good cause exists to require the defendant's physical presence at any motion outside of trial, such as a motion to compel production of a defendant's fingerprints or DNA sample, a motion to join cases for trial, or a motion to increase or revoke bail, creates additional burdens on the attorneys and court, spurs litigation about the meaning of "good cause," and leads to unnecessary delays.

Eliminating defendants' obligation to appear between arraignment and trial will also deprive the court and counsel of opportunities to assess the defendant's competency and be assured that the defendant has not absconded. Waiting until the day of trial to learn that the defendant has fled prosecution is an enormous waste of precious resources as both parties and the court will have prepared for a trial that cannot occur, squandering attorneys' scant time and money, witness interviews, issuance of subpoenas, and forensic testing. It will also lead to potentially months-long delays attempting to locate defendants who have fled.

Lastly, the defendant's presumptive absence at nearly all hearings breeds distrust in the criminal justice system, the validity of which is already being widely challenged throughout our state and country. Members of the public will legitimately question whether absent defendants have been properly informed about their cases, understand what is at stake, and able to effectively participate.

I respectfully urge you to reject the proposed amendments and establish a work group of committed stakeholders to determine how best to achieve the amendments' worthwhile goals.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. Satterberg". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

DAN SATTERBERG
King County Prosecuting Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: Proposed Amendments to CrR/CrRLJ3.4
Date: Wednesday, September 30, 2020 9:26:08 AM
Attachments: [DTS Letter re CrR 3.4.docx](#)

From: Colasurdo, Mary [mailto:Mary.Colasurdo@kingcounty.gov] **On Behalf Of** Satterberg, Dan
Sent: Wednesday, September 30, 2020 9:23 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Amendments to CrR/CrRLJ3.4

Please find the attached letter from King County Prosecutor Dan Satterberg. Thank you.

Best,
Mary Colasurdo
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King County Prosecutor
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