From:	OFFICE RECEPTIONIST, CLERK
To:	Tracy, Mary
Subject:	FW: Support for changes to CrR 3.4 & CrRLJ 3.4
Date:	Friday, April 10, 2020 4:51:30 PM

From: Marek Falk [mailto:marek@washapp.org]
Sent: Friday, April 10, 2020 4:51 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Support for changes to CrR 3.4 & CrRLJ 3.4

To the Supreme Court Rules Committee:

I am strongly in support of nearly all the changes to CrR 3.4 & CrRLJ 3.4 proposed by the Washington Defender Association.

The current court system is an inefficient use of all participants' time. It requires many defendants (and attorneys and judges) to wait hours for continuances and other short hearings where the defendant's presence is of little substantive importance, presuming a person has been in good contact with their attorney to communicate goals about dates and waivers of speedy trial. It also requires others with substantive hearings to wait during numerous hearings for minor issues such as continuances. When I practiced in Skagit County Superior Court, the weekly out of custody felony omnibus calendar was always crowded, with standing room only, with many people hoping to get a continuance order entered quickly so they could get to work or get on with their lives, and some waiting several hours for their continuance or time in front of the judge.

The proposed rules new language requiring a signed waiver of appearance should satisfy concerns about defendants signing for each date personally, particularly as cases in many courts stretch out with multiple continuances, often for many months or a year or more.

Further, the system is inefficient in how many warrants it generates for people who miss hearings of little substantive importance. It costs time for judges, court staff, law enforcement, and jail staff, as well as harming defendants and their families through incarceration.

The current system has a disproportionately harmful effect on indigent and lower-income people, who may lose their job or miss out on hourly wages to appear in court; may lack transportation; and may not have child care. More affluent people face much less hardship to appear physically in court. People who get warrants may have to resolve their cases from the jail; the warrant system, along with an unfair bail system, encourage guilty pleas even where people are innocent or have winning legal arguments, because people are often desperate to get out of jail.

The bail jump system, even with the recent changes to the law, will continue to be unduly harsh, given it is a stand-alone charge that persists even when the underlying charge, which should be the thing that truly matters, is dismissed or the defendant is acquitted. Reducing the number of required appearances would reduce the number of bail jump charges, which do not relate to the guilt or

innocence of a person on the underlying charge and are used as a prosecutorial tool to induce guilty pleas.

One commenter (Judge James Roberts, dated Feb. 7, 2020) expressed concerns that this change will increase defendants' mistrust and affect a defendant's constitutional right to appear. These concerns will not materialize. From my perspective of over seven years in public defense, clients are mistrustful of attorneys who do not communicate well to them, listen well to them, and fight hard for them. The proposed rule change in the rule would not change these practices among individual attorneys or an individual client's tendency to mis/trust. Any attorney under this proposed rule would need to communicate with their client at the outset about the client's goals and act in their client's stated interest; those who would not are likely already mistrusted by many of their clients. Further, any person would be free to appear at all hearings; this rule does not limit a person's constitutional rights.

As one commenter noted (Judge Tracy Staab, dated Jan. 29, 2020), arraignment on some misdemeanor charges may be waived by a notice of appearance. To me, it seems that if arraignment were waived under that rule, then the language in the proposed sections (b) and (d) would not apply, as arraignment would not happen. However, proposed section (d) could be read to conflict with the rule or statute that permits waiver of arraignment, and perhaps should be modified to avoid confusion.

I would propose one modification to the proposed rules due to an apparent inconsistency. Proposed section (b) states the court shall not proceed when the defendant is not present at trial, but proposed section (c) says the trial may continue without a defendant who was present at the start and who is voluntarily absent; these are in conflict. Perhaps (b) could indicate the court shall not proceed when the defendant is not present at the start of trial.

Thank you for considering the proposed changes to CrR 3.4 & CrRLJ 3.4. They are in line with the legislature's efforts in the last several years (through legal financial obligation reductions and bail jump reform) to reduce the hardships the system puts on indigent people.

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