



Incarcerated Parents Project
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www.defensenet.org/case-support/incarcerated-parents-project

24 September 2020

Supreme Court Rules Committee
supreme@courts.wa.gov
VIA EMAIL

Re: Support for Proposal to Change CrR 3.4 & CrRLJ 3.4

To Honorable Justices of the Supreme Court of Washington:

I am writing in support of changes for Criminal Rule 3.4 and Criminal Rule for Courts of Limited Jurisdiction 3.4. I am the resource attorney at WDA's Incarcerated Parents Project. In that capacity, I work directly with formerly and currently incarcerated parents of minor children, their loved ones, and their attorneys. The proposed rule changes will increase the ability of people, including parents of minor children, to continue providing care to their child(ren) before their cases are resolved, and the changes will create opportunity for parents to make safer, more appropriate substitute child care-giving arrangements should they face incarceration.

Change is Needed. The current rule means that those accused of crimes commonly face the dilemma of deciding between not earning the family's rent money or getting a warrant for not attending a court hearing, at which they do not participate. Attending multiple court hearings also requires physical and financial access to transportation to get to and from court. Paying for gas and/or transit tickets in order to attend court requires money the accused person must take from other parts of the household budget, for example, money to pay rent, utilities, and necessities for their child(ren) and child care.¹

Poor people charged with crimes do have paid work. Most of the people accused of crimes in Washington State are indigent² and qualify for court-appointed counsel.³ Nearly one in four people receiving the types of major means-tested government assistance⁴ that qualify a person for court appointed counsel do paid-work.⁵ Many others earning low wages but not on public assistance also qualify for court-appointed counsel. Having low wage employment means that someone is far less likely to have paid leave to attend court.⁶ As a result, someone with low wage employment who is missing work loses money to pay for basic human needs,⁷ or they can lose their jobs for missing too many shifts.⁸

Many parents accused of crimes have paid work. About half of all people incarcerated in state prisons, and sixty percent of women incarcerated in state prisons, are parents of minor children.⁹ More than sixty percent (60%) of mothers and forty-two percent (42%) of fathers in

state prisons reported living with their minor children just prior to incarceration.¹⁰ Most incarcerated parents are employed and contributing financial support to their children prior to incarceration.¹¹

Less is more. These rule changes would make it more likely that accused people will be able to attend the court hearings where their presence is important and necessary. The majority of all criminal court hearings in Washington are not arraignments or trial hearings. Requiring people to attend fewer hearings that are more meaningful will result in better attendance at substantive due process hearings. Increasing attendance for accused people should save on the human costs of issuing and serving arrest warrants and the fiscal costs for court and jail administration of those warrants. It should also lead to fewer delays in the proceedings caused by bench warrants. There will also likely be a collateral benefit: an increase in respect for the process.

Children matter. Parents have several additional concerns when they are accused of crimes. Prosecutors have broad discretion on the timing of bringing charges. Once a charge is filed, an accused person must respond, or they risk incarceration even before there is any determination of guilt. Court schedules do not take into account what is actually happening in a person's life. A parent risks losing employment and housing for attending multiple court hearings, which exposes their (child)ren to foster care placement, school disruption, and other emotional harms. Jailing the accused who are parenting minor children also has dire consequences for the child and the whole family. Reducing the number of criminal hearings also provides time and opportunity for parents to make long-term plans about who will care for their children if they are incarcerated by working with the other parent or other relatives.¹²

Submitting to the current criminal court process in and of itself (even if ultimately acquitted) brings unnecessary harms, such as eviction, job loss, and child and family disruption by CPS. At times, those harms to the accused person and their family are irreparable. For all these reasons, WDA's IPP strongly urges the court to adopt changes to these rules.

Sincerely,



Ms. D'Adre Cunningham
Washington Defender Association
Incarcerated Parents Project Resource Attorney

¹ U.S. Department of Health and Human Services Administration for Children and Families, "Child Care and Development Fund (CCDF) Program," Federal Register 81 (190) (2016): 67438–67595, available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22986.pdf>. ("The results of the child care spending

analysis show that among working families with children under age 5 that pay for child care, average child care spending amounts to nearly 10 percent of the average family income, or 40 percent higher than the U.S. Department of Health and Human Services' definition of affordability.”).

²See RCW 10.101.010 (3)(“Indigent means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or (c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.”).

³ According to the most recently reported data about Washington’s indigent defense services, state courts appoint public defense attorneys to represent approximately 90% of felony defendants, 60% of misdemeanor defendants, and almost 100% of the juveniles. Washington State Office of Public Defense, *2018 Status Report*, at 14 & footnote 7 (“Public defense appointment rates are calculated by comparing the number of annual filings as reported by the Administrative Office of the courts, against the number of public defense case assignments as reported by counties in their applications for Chapter 10.101 RCW funds.”).

⁴ Major means-tested government assistance programs include Medicaid, Supplemental Nutrition Assistance Program (SNAP), Housing Assistance, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and General Assistance (GA).

⁵ Irving, Shelley K. and Tracy A. Loveless. *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?*, United States Census, Household Economic Studies Report Number P70-141 (May 2015), 10-11. (<https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf>) (viewed 4/21/20).

⁶ See also *The Economics of Paid And Unpaid Leave*, The Council of Economic Advisers (June 2014), 1-2; Washington statutorily provides 1 hour of paid sick leave for every forty hours worked, and no holiday, vacation, or bereavement leave. RCW 49.46.210; Washington State Labor & Industries, *Holiday, Vacation & Bereavement Leave* (<https://lni.wa.gov/workers-rights/leave/holiday-vacation-bereavement-leave>) (viewed 4/20/20).

⁷ The average worker without paid leave access, the lost wages associated with staying home for about three days would amount to their household’s entire monthly grocery budget or monthly utilities budget. See Gould, Elise and Jessica Schieder. *Table 1 in Work sick or lose pay? The high cost of being sick when you don’t get paid sick days*. Economic Policy Institute (June 2017) at7, (<https://www.epi.org/files/pdf/130245.pdf>)(viewed 4/22/20).

⁸ Keith-Jennings, Brynne, and Raheem Chaudhry. *Most Working-Age SNAP Participants Work, But Often in Unstable Jobs*, The Center for Budget and Policy Priorities (March 15, 2018), 1. (<https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>)(viewed 4/21/20).

⁹ Glaze, Lauren E. and Laura M. Maruschak, *Table 5 in Parents in Prison and Their Minor Children*. Bureau of Justice Statistics: U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics (revised March 2010), 3. *But see* Children and Families of Incarcerated Parents Advisory Committee Annual Report, Report to the Legislature and Governor (2010), 5 (2006 survey found that 15,000 of the 18,000 people incarcerated (83%) at WA DOC were parents of minor children) (https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Children%20and%20Families%20of%20Incarcerated%20Parents%202009_499fc72e-e0e8-4021-b6da-a27bb0f5e063.pdf) (viewed 4/21/20).

¹⁰Glaze, Lauren E. and Laura M. Maruschak, *Table 7, Parents in Prison and Their Minor Children*: Bureau of Justice Statistics (revised March 2010), 4. (<https://www.bjs.gov/content/pub/pdf/pptmc.pdf>) (viewed 4/21/20).

¹¹ Glaze, Lauren E. and Laura M. Maruschak, *Parents in Prison and Their Minor Children*: Bureau of Justice Statistics (revised March 2010), 5-6. (<https://www.bjs.gov/content/pub/pdf/pptmc.pdf>) (viewed 4/21/20).

¹² Note: A parent may need to transfer decision-making authority to another responsible adult for one’s child(ren), such as social benefits assistance, medical insurance, educational decision-making, and may need to transfer custody of children if the other parent is not available. They may need to add an adult caregiver to a rental lease where the child resides, transfer custody of a child to another parent or other suitable adult, and/or to access low or no cost civil legal assistance.

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: Support for Proposal to Change CrR 3.4 & CrRLJ 3.4
Date: Thursday, September 24, 2020 11:59:58 AM
Attachments: [Final WDAIPP Letter re CrR-CrRLJ 3.4 09242020-Short.docx](#)

From: D'Adre Cunningham [mailto:dadre@defensenet.org]
Sent: Thursday, September 24, 2020 11:40 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Support for Proposal to Change CrR 3.4 & CrRLJ 3.4

Please see the attached comment (1497 words).

Thank you,

D'Adre Cunningham
She, her, hers
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Please note that I respond to technical assistance on Tuesdays and Thursdays. Please note that WDA is working normal business hours but remotely at this time

"Let your dreams be bigger than your fears, your actions louder than your words, and your faith stronger than your feelings."

-Unknown

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