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Subject: FW: Amendment to CrR/CrRLJ 3.2: presence of the defendant
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From: Braden Pence [mailto:Bradenp@mazzonelaw.com]
Sent: Wednesday, December 11, 2019 11:48 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Amendment to CrR/CrRLJ 3.2: presence of the defendant

Greetings,

I am writing in support of the proposed changes to CrR/CrRLJ 3.2. I am a criminal defense and civil rights attorney with about 8 years of experience representing literally thousands of individuals at all stages of criminal litigation. I spent the first 5 years of my career as a public defender and the past three years in private practice representing public defense clients in civil claims against the government; thus I have significant insight into the challenges indigent people have in accessing justice.

CrR/CrRLJ 3.2's obligation that every defendant appear in-person at every hearing is incredibly burdensome to poor and working class people, who already struggle with busy lives and significant burdens in terms of transportation, work, and family needs. Through no fault of their own, their court cases commonly drag out for a year or more, throughout which they must travel to and from court, go through the indignity of courthouse security, wait 1-2 hours in a crowded courtroom for lengthy calendar to be called for before appearing for an extremely brief perfunctory appearance in front of a judge to do nothing more than continue the case (yet again) so that counsel has more time to investigate and negotiate. When, inevitably, many of these poor and working class people miss court, the result is a flurry of bench warrants, which provide grist for the law enforcement mill: justification for speculative searches and identifications of profiled populations. The truth of the matter is that the vast, vast majority of bench warrants are a result of the stressed, overloaded, and perhaps disorganized lives of the same population who faces heightened policing. The truth is that most failures to appear for court are absolutely not a deliberate attempt to flee from justice. The problem is that the record of the warrant, as insignificant or explainable as it may be, becomes part of the individual's permanent record, and appears on a JABS report in black and white, not gray. Over a lifetime, a poor person might building up a number of "failures to appear" because they were missed the bus and were late to court, or had to choose between attending a performative continuance hearing and keeping a job that puts food on the table. There is no way to distinguish between that "failure to appear" history and one resulting from someone who fled to Argentina, giving judges no choice but to impose bail rather than personal recognizance. The arrests that flow from these warrants fill the jails, wasting taxpayer resources and detaining people who simply live on the economic margins of our society. The flood of warrants also feed the predatory money bail industry that profits off this misery. Reducing the number of mandatory appearances will correspondingly reduce failures to appear, bench warrants, and their related negative outcomes.

Another consequence of requiring attendance at non-substantive hearings is that each absence provides the prosecutor with the option to file (or threaten to file) "bail jumping" charges, a crime that is easy to prove and can carry a greater presumptive sentence than the underlying criminal allegation, thereby incentivizing a plea to an underlying offense that the State might not otherwise be able to prove. The opportunity to obtain an otherwise unprovable substantive and life-changing conviction by leveraging the mere absence from a redundant and essentially administrative hearing is a corrupting influence on prosecutors and the court rules should not provide such temptations.

Fundamentally, the overloaded attorney caseloads and court dockets that cause repeated continuance hearings are a result of the underfunding of the criminal legal system, an issue for which there is no easy remedy. However, the greatest consequences of that problem should not be foisted on our most vulnerable population. The criminal legal system suffers from many flaws pertaining to the presumption of innocence and access to justice, but amending rule 3.2 to reduce the number of mandatory appearances, especially for non-substantive hearings, is one of the easiest and best ways to resolve a variety of those flaws. Doing so would ease the burden of the overcrowded system, reduce the number of bench warrants, reduce the jail population, save tax payer dollars, preserve the presumption of innocence, and make the system as a whole far more just and equitable.

Best regards,
Braden Pence

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