

D. Text of Proposed Amendment for CrRLJ 3.3 (in legislative bill format).

**CrRLJ RULE 3.3
TIME FOR TRIAL**

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with (~~(having committed)~~) a crime.

~~((b))~~ (2) Precedence Over Civil Cases. Criminal trials shall take precedence over civil trials.

(3) Definitions. For purposes of this rule:

(i) “Pending charge” means the charge for which the allowable time for trial is being computed.

(ii) “Related charge” means a charge based on the same conduct as the pending charge that is ultimately filed in the trial court.

(iii) “Appearance” means the defendant’s physical presence in the trial court. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously placed on the record under the cause number of the pending charge.

(iv) “Arrest” means the date determined under CrRLJ 4.1(b).

(v) “Detained in jail” means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(vi) “Trial court” means the court where the pending charge was filed.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under this language of this rule but was delayed by circumstances not addressed in this rule or CrRLJ 4.1, the pending charge shall not be dismissed unless the defendant’s constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time allowed by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time after Excluded Period. If any period of time is excluded pursuant to section (f), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

((c) Time for Arraignment and Trial.

~~(1) Cases Filed in Court. If the defendant is detained in jail, or subject to conditions of release, the defendant shall be arraigned not later than 15 days after the date the complaint is filed in court. If the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 15 days after that appearance in court which next follows the filing of the complaint or citation and notice. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment.~~

(2) [Reserved.]

~~(3) *Cases Filed Initially in Juvenile Court.* If a complaint or citation and notice is filed with the court after a juvenile court has declined jurisdiction, and if at the time the complaint or citation and notice is filed the defendant is detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 15 days after the date the complaint or citation and notice is filed. If a complaint or citation and notice is filed with the court after a juvenile court has declined jurisdiction, and if at the time the complaint or citation and notice is filed the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 15 days after the appearance in court which next follows the filing of the complaint or citation and notice. A defendant not released from jail pending trial in court shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release shall be brought to trial not later than 90 days after the date of arraignment.~~

~~(4) *Untimely Arraignment.* If a defendant is not arraigned within the time limits of this rule and an objection to the date of arraignment has been made as required by section (e) of this rule, the time for trial established in this section shall commence on the last day the defendant could properly have been arraigned.~~

~~(5) *Rearraignment.* If a defendant is required to be rearraigned on a charge that arises out of the same occurrence and has the same elements of proof as those upon which the defendant was previously arraigned, the time for trial established in this section shall commence on the date of the previous arraignment.~~

~~(6) *Arraignment Defined.* As used in this rule, "arraignment" shall be defined as in rule 4.1.~~

(d) Extensions of Time for Trial. The following extensions of time limits apply notwithstanding the provisions of section (c):

~~(1) *Revocation of Release.* A defendant who has been released from jail pending trial, pursuant to an order imposing conditions of release, but whose release is then revoked by order of the court, shall be brought to trial within such a time period that the defendant spends no more than a total of 60 days in jail following the date of arraignment, and in any event within such a time period that the defendant is tried not later than a total of 90 days after the date of arraignment unless the time period is otherwise extended by this rule.~~

~~(2) *Failure To Appear.* When a defendant who has already been arraigned fails to appear for any trial or pretrial proceeding at which the defendant's presence is required, the defendant shall be brought to trial not later than 60 days after the date upon which the defendant is present in the county where the criminal charge is pending and the defendant's presence has been made known to the court on the record, if the defendant is thereafter detained in jail or not later than 90 days after such date if the defendant is not detained in jail whether or not the defendant is thereafter subjected to conditions of release.~~

~~(3) *Mistrial and New Trial.* If before verdict the court orders a mistrial, the defendant shall be brought to trial not later than 60 days after the oral or written order of the court, whichever first occurs, if the defendant is thereafter detained in jail or not later than 90 days after the order if the defendant is not detained in jail and whether or not the defendant is subjected to conditions of release. If after verdict the court orders a new trial, the defendant shall be brought to trial not later than 60 days after entry of the oral or written order of the court if the defendant is thereafter detained in jail, or not later than 90 days after entry of such order if the defendant is not detained in jail whether or not the defendant is thereafter subjected to conditions of release.~~

~~(4) *Trial After Appellate Review or Stay.* If a cause is remanded for trial after an appellate court accepts review or stays proceedings, the defendant shall be brought to trial not later than 60 days after that appearance by or on behalf of the defendant in court, with notice to both parties of any such appearance, which next follows receipt by the clerk of the court of the mandate or other written order, if after such appearance the defendant is detained in jail, or not later than 90 days after such appearance if the defendant is thereafter released whether or not subject to conditions of release.~~

~~(5) *Change of Venue.* If a change of venue has been granted, the case shall be transferred to the receiving court as soon as practicable but within 7 days and the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the date upon which the court to which the case is being transferred for trial receives the filing of the case, whichever is later. If, however, after a change of venue is attempted, the criminal calendar of the receiving county will prevent compliance with the time limits within this section, the trial shall commence on the earliest available date permitted.~~

~~(6) *Disqualification.* If the prosecuting authority or judge becomes disqualified from participating in the case, the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the disqualification, whichever is later.~~

~~(7) *Withdrawal of Guilty Plea.* If a defendant has been permitted to withdraw a plea of guilty, the defendant shall be brought to trial not later than 60 days after the date of the written order allowing withdrawal of the guilty plea if the defendant is thereafter detained in jail or not later than 90 days if the defendant is thereafter released from jail, whether or not subjected to conditions of release.~~

~~(8) *Five Day Extensions.* When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the court or the parties, the court, even if the time for trial has expired, may extend the time within which trial must be held for no more than 5 days unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension. If the nature of the unforeseen or unavoidable circumstance continues, the court may extend the time for trial in increments of not to exceed 5 days unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension.))~~

(c) Commencement date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under CrRLJ 4.1.

(2) Resetting of commencement date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) New Trial. The entry of an order granting a mistrial or a new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court, or the issuance of a writ of certiorari, mandamus, or prohibition. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the trial court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new trial pursuant to a personal restraint proceeding, a habeas corpus proceedings, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the trial court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification. The disqualification of the judge, defense attorney, or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(viii) Deferred Prosecution. The filing of a motion for deferred prosecution. The new commencement date shall be the date that an order is entered denying the motion or revoking deferred prosecution.

~~((e) Objection to Arraignment Date—Waiver of Objection))~~

~~((A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment pursuant to section (c) of this rule, and the time for trial set out in section (c) shall be deemed to have commenced on that date. Failure of a party to object as required shall be a waiver of the objection, and the date of arraignment shall be conclusively established as the date upon which the defendant was actually arraigned.))~~

~~((f))~~ **Setting of Trial Date—Notice to Parties—Objection to Trial Date—Waiver of Objection**) **(d) Trial Settings and Notice—Objections—Loss of Right to Object.**

(1) *Initial Setting of Trial Date.* The court shall, within 15 days of the defendant's actual arraignment ~~in the trial court~~(;) or at the ~~(pretrial))~~ omnibus hearing, set a date for trial which is within the time limits prescribed by this rule(;) and notify ~~(the lawyer))~~ counsel for each party of the date set. If a ~~(party))~~ defendant is not represented by ~~(a lawyer))~~ counsel, the notice ~~((of the trial date))~~ shall be given to the ~~((party))~~ defendant(;) and may be mailed to the ~~((party's))~~ defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment ~~((as established at the time of arraignment,))~~ and the date set for trial. ~~((A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such a date, or on an extension of such date properly granted pursuant to this rule, is not within the time limits prescribed by this rule.))~~

(2) *Resetting of Trial Date.* When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a ~~((period of extension))~~ new commencement date pursuant to ~~((section (d)))~~ subsection (c)(2) or a period of exclusion pursuant to section ~~((g))~~ (e), the court shall set a new date for trial which is within the time limits prescribed and notify each ~~((lawyer or))~~ party of the date set ~~((in subsection (f)(1)))~~.

(3) *Objection to Trial Setting.* A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. ~~((Failure of a party, for any reason, to make such a motion shall be a waiver of the objection))~~ A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date~~((, or on any extension of such date granted pursuant to subsection (d)(8,))~~ is not within the time limits prescribed by this rule.

(4) *Loss of Right to Object.* If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial. A later trial date shall be timely only if the

commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

~~((g))~~ **(e) Excluded Periods.** The following periods shall be excluded in computing ~~((the time for arraignment and))~~ the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters ~~((an))~~ a written order finding the defendant to be competent~~((;)).~~

(2) Proceedings on Unrelated Charges. Arraignment, ~~((Preliminary))~~ pre-trial proceedings, ~~((and))~~ trial, and sentencing on ~~((another))~~ an unrelated charge ~~((except as otherwise provided by subsection (e)(5);)).~~

(3) Continuances. Delay granted by the court pursuant to section ~~((h;))~~ (f).

(4) Period between Dismissal and Filing. The time between the dismissal of a charge and the ~~((defendant's arraignment or rearraignment in court following the))~~ refiling of the same or related charge~~((;)).~~

(5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in the trial court on a related charge.

~~((5))~~ (6) Defendant Subject to Foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington~~((;)).~~

~~((6))~~ (7) Juvenile Proceedings. All proceedings in juvenile court.

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

~~((h))~~ **(f) Continuances.** Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial to a specified date. ~~((The agreement shall be effective when approved by the court on the record or in writing.))~~

(2) Motion by the Court or a Party. On motion of the ~~((State, the))~~ court or a party, the court may continue the ~~((case when))~~ trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be ~~((substantially))~~ prejudiced in the presentation of his or her defense. The motion must be filed ~~((on or))~~ before the ~~((date set~~

for trial or the last day of any continuance or extension granted pursuant to this rule)) time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

((†)) (h) Dismissal With Prejudice. A ((criminal)) charge not brought to trial within the time ((period provided by)) limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

((j) Waiver. A defendant may waive his or her time for trial rights. A waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain beyond the current expiration date as calculated pursuant to this rule or for a period of days beyond the current expiration date.))