

Yakima courts return to in person hearings for jail inmates

DONALD W. MEYERS *Yakima Herald-Republic*

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*A Yakima County jail inmate leaves the courtroom in the jail basement after his preliminary appearance hearing Wednesday, Sept. 4, 2024. Yakima County Superior Court resumed in-person hearings at the jail after the state Supreme Court and an appellate court both ruled that defendants had a right to attend hearing in person when possible. Yakima County had defendants appearing via Zoom since the start of the COVID-19 pandemic in 2020. DONALD W. MEYERS *Yakima Herald-Republic**

Last week, a defendant dressed in green scrubs walked into a courtroom in the Yakima County jail basement for his first appearance before a judge.

While such proceedings are routine in the court system, this was different. It was the first time in more than four years that a jail inmate was physically present for a preliminary appearance hearing in Yakima County Superior Court.

Starting last week, the court discontinued its virtual hearings for in-custody defendants, who used to attend court proceedings from either a separate room or from their jail cells, their image displayed on a large monitor in the courtroom.

The policy, born out of the COVID-19 pandemic but continued after the other social-distancing and masking restrictions were lifted, was finally changed in the face of state Supreme Court and Court of Appeals rulings that found Zoom hearings violated a defendant's right to consult counsel and the presumption of innocence.

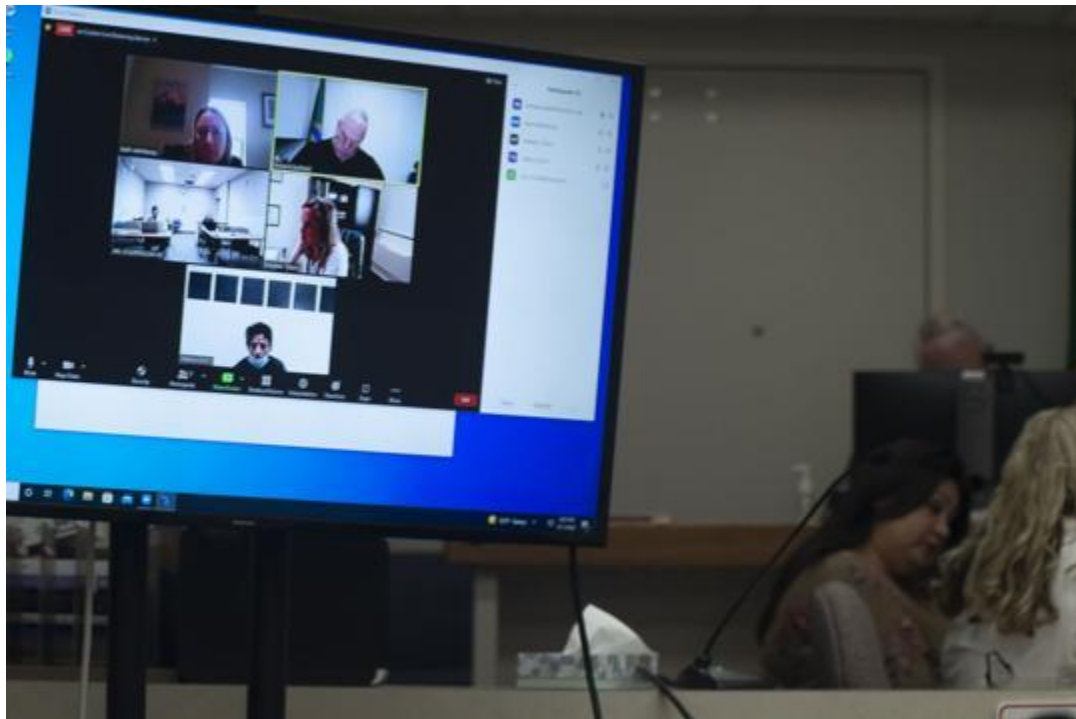
Paul Kelley, director of the county's Department of Assigned Counsel, said it is a welcome, if not overdue, change in procedure.

"I've been sounding that horn for a while, that we need to get back to normal," Kelley said. "It took some court cases to tell local judges all over the state we can't do it this way anymore."

Yakima County Prosecuting Attorney Joe Brusica said his office was in support of the move, even if it means possibly longer court dockets as defendants are brought down and appear in court.

How it worked

Prior to spring 2020, defendants appeared in person for their hearings. While one person was standing before the judge, a corrections officer would have the next inmate stand by a tape mark on the floor several feet back to wait for the next hearing.



A monitor in a Yakima County jail courtroom shows the participants in a preliminary appearance hearing March 11, 2022. The court began using videoconferencing for in-custody jail hearings at the start of the COVID-19 pandemic and recently lifted the practice in the wake of two court rulings that restrict virtual appearances. ([Donald W. Meyers / Yakima Herald-Republic File](#))

But when Gov. Jay Inslee issued his "Stay Home, Stay Healthy" order to curb the spread of COVID in 2020, the courts shifted to virtual hearings, with the defendant either appearing from another room in the jail or, if they couldn't be moved, from their cells via Zoom video conferencing software.

They would appear on a large TV screen in the court, as well as on a monitor at the judge's position. Attorneys would either appear in the courtroom or attend virtually.

If a defendant needed to confer with an attorney, the judge would put them in a virtual breakout room where they could talk privately.

The hearings were livestreamed on either the court's website or a YouTube channel.

In 2022, most of the precautions were lifted, [but in-custody defendants were still appearing by video](#). At the time, Judge Richard Bartheld, the court's presiding judge, said having in-custody inmates appear virtually reduced incidents in the courtroom.

Prior to 2020, there were instances in which an inmate would become violent, either attacking another inmate or others. Kelley was punched in the face once by a man he was representing.

Court rulings

Two higher court rulings this summer brought about change in Yakima County's court.

In June, the state Supreme Court ordered Cowlitz County Superior Court to redo a hearing for a woman who was forced to appear in court inside a cell-like room in the courtroom without providing a legal justification for the restraint, such as would be done if a defendant had to appear at a hearing in shackles.

The woman was at a hearing to revoke her mental-health sentencing alternative after she violated the conditions of the program, but was placed in an in-court holding cell that Justice G. Helen Whitener in a concurring opinion compared to the defendant's dock in British and colonial American courtrooms, where the defendant stood alone in a box in the room.

Writing for the court, Justice Mary Yu said the use of the cell interfered with the woman's ability to communicate with her attorney and was prejudicial. While in the holding cell, which had a mesh window and a slot to pass papers, the woman also had a corrections officer next to her, making it impossible to have a private conversation.

"It cannot be disputed that the presence of a guard in a 5-by-5-foot holding cell would discourage any defendant from discussing confidential matters relevant to their case with counsel," Yu wrote.

Before any restraint can be used on someone appearing in court, Yu said, the trial courts must inquire as to whether the circumstances justify the restraint. The high court also ordered a new hearing for the woman.

In August, the Spokane-based Division III Court of Appeals ordered a new trial for a man after finding that Pacific County Superior Court did not allow the defendant, who was

appearing in court through a video connection during the pandemic, to confer privately with his attorney during pretrial hearings.

The case, which was originally filed in Division II in Tacoma, was transferred to the Spokane court to expedite the appeals process.

“The constitutional right to counsel demands more than just a warm body with a bar (association) card,” Judge George Fearing wrote in the unanimous ruling of the three-judge panel. “The constitutional right to the assistance of counsel conveys with it a reasonable time for consultation and preparation, which includes the opportunity for private and continual discussions between the defendant and his attorney at least during the critical stages of the prosecution.”

Yakima County

Bartheld met with Brusic and Kelley on Aug. 20 to announce the change. Brusic said the Supreme Court ruling appeared to be the ruling that drove the decision. He said Yakima County has always ensured that defendants appearing virtually could have a private discussion with attorneys.

Brusic said having to physically bring in inmates may lengthen how long the hearings go, but he said his office fully supports it.

“We’re getting back to the pre-COVID days of doing things,” Brusic said. “I think it’s time.”

Kelley said it is helpful to have more contact with clients during proceedings, and that it is also helpful to have a defendant in person before a judge who is deciding whether they should remain in jail or be released either on bail or court supervision.

“I think it is going to be good that they can sit with us or stand with us,” Kelley said.

Over at the Yakima County Juvenile Justice Center, defendants can appear virtually for their preliminary appearance, but the majority have been coming into the courtroom as long as there isn’t a medical reason that keeps them out, said Candi Shute, the county’s juvenile court administrator.