

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, November 29, 2018 11:53 AM
To: Tracy, Mary
Subject: FW: Comment to Proposed Rule CrR 3.4

From: Boska, Michael [mailto:Michael.Boska@co.snohomish.wa.us]
Sent: Thursday, November 29, 2018 11:46 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Proposed Rule CrR 3.4

To the Clerk of the Supreme Court:

The proposed amendment to CrR 3.4 seeks to prevent incarceration of defendants for the sole issue of non-payment of LFOs absent a finding of willful failure to pay.

To the extent the rule is aimed at preventing courts from issuing warrants for the arrest of defendants for the sole issue of nonpayment, *without* the benefit of a hearing having been scheduled for which the defendant was duly summonsed and given the opportunity to appear, it appears to be appropriate. However, the rule would appear to also have the effect of preventing courts from issuing warrants for a failure to appear at a compliance hearing for which the defendant was summonsed, unless the Court proceeds to make a finding of willfulness. How a court would be able to make such a finding, without the presence of the defendant, does not appear to be contemplated by the rule. This is particularly true given the recent statutory amendments that provide guidance to courts on what nonpayments are to be considered "willful" or not (see, e.g., RCW 9.94A.760(11)).

In other words, the language of the proposed rule seeks to "put the cart before the horse" by encouraging a court to make a finding without complete information. As a practical matter, this can only result in courts either finding willful failures to pay when such findings may later be found to not be merited, or in the court simply not making a finding, which as a practical effect has the impact of the LFO simply being unenforceable. The effect of the rule would therefore be the creation of a perverse incentive for defendants to not appear for court hearings to address violations, knowing that such a failure to appear in all likelihood would not result in any warrant being issued.

My comment is therefore that the amendment to CrR 3.4 should not be adopted in its present form.

Regards,

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