

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Comments on Proposed Changes to CrR 3.4 and CrRLJ 3.4
Date: Tuesday, April 7, 2020 3:46:53 PM

From: Evans, Alexandra [mailto:aevens@kingcounty.gov]
Sent: Tuesday, April 7, 2020 3:26 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Proposed Changes to CrR 3.4 and CrRLJ 3.4

Good afternoon,

I am writing to object to the proposed amendments to CrR 3.4 and CrRLJ 3.4. While I appreciate that many defendants have financial and health limitations making it difficult for them to appear for court, pretrial court proceedings are critical stages in criminal proceedings. A waiver “indicating the defendant wishes to appear through counsel” will not establish a knowing, intelligent, and voluntary waiver of the defendant’s constitutional right to appear at critical stages of criminal proceedings. There are hearings that are critical stages beyond those specified in proposed CrR 3.4(b), e.g. most motions.

I am concerned that if defense attorneys have their clients sign waivers so the attorneys can appear on their behalf, defendants will not understand the court proceedings and will not have proper notice of potential amendments to the charges, changes to trial dates, etc. The defendant will not be present to note their own objections, if they have objections, to important rights they have that counsel may want to agree to waive, such as the right to speedy trial if counsel is requesting a continuance.

While defense attorneys represent their defendants, defendants ultimately have the say in how cases proceed. If they are not present they do not have all the information to decide how to proceed. This change will also require a separate hearing to obtain a court order to require the defendant’s presence for any motion outside of trial. E.g. motion to compel production of DNA sample from defendant, motion to join cases for trial, motion to revoke bail. This pre-hearing hearing will be an additional burden on the attorneys and the court system and cause unnecessary delays.

Regarding proposed section (d), the proposal opens too many doors for excuses for defendants not to be present for trial or sentencings. The requirement of “good cause” suggests that defense counsel will be arguing against a requirement that the defendant be present, and to do so will minimize the significance of the hearing, which may mislead the defendant as to significance of the proceedings and affect the defendant’s ability to knowingly and voluntarily execute the waiver provided in proposed CrR 3.4(a). Also, The relationship between sections (a) and (d) is unclear. If the court has not made a finding that the defendant’s presence is necessary, is a waiver under (a) nevertheless necessary? If there is no need for a defendant to be present, why is a waiver necessary?

I agree that criminal court proceedings need to be more efficient, but I do not believe that waiving a defendant's presence is the best way to do so in that it is not in the defendants' best interests.

Thank you for your consideration,



Alexandra Evans | Deputy Prosecuting Attorney

Felony Trial Unit | King County Prosecuting Attorney's Office

✉ aevans@kingcounty.gov

☎ 206-263-0385