

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Comment Proposed Amendment to CrR 3.4 Presence of Defendant
Date: Thursday, April 9, 2020 2:21:02 PM

From: Froh, Amanda [mailto:Amanda.Froh@kingcounty.gov]
Sent: Thursday, April 9, 2020 2:20 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment Proposed Amendment to CrR 3.4 Presence of Defendant

Good afternoon,

I am writing in opposition of the proposed amendment to CrR 3.4 which permits defendants, whether in- or out-of-custody, to sign a waiver after arraignment that in essence would absolve them of any requirement to appear in court in person until trial, unless good cause is found and they are ordered by a court to do so. As a prosecutor who practices in the field of elder abuse, an area in which most of the defendants are out of custody, I have grave concerns about this rule for the following reasons:

- If a defendant who is out of custody does not have to remain engaged in the court proceedings, he or she has an incentive to request repeated continuances of the trial date, resulting in congestion of the court system and prejudice to the State's ability to present its case as memories fade and witnesses become unavailable. I have seen this repeatedly in the cases I have handled where the defendant lives out of state and I have agreed to phone appearances for court hearings for the defendant. In those cases, the cases tend to take longer to resolve than is typical, and the defense attorneys seem to often complain of having great difficulty engaging with the client on a meaningful level, since they are not face to face, aren't looking at discovery or court-related documents together, etc. Given my experience, I would not be surprised if such a rule actually increases the time to trial, not decreases it.
- Requiring in-person hearings builds in a process by which defense attorneys have semi-regular contact with their clients. Often this is the primary contact defense attorneys, especially public defenders, have with their clients. Resolving a case is often a process (especially for out of custody defendants), and often requires repeated interactions between the parties. This rule would likely delay that process more than typical, because the defendant could ignore phone calls and emails from their counsel with no significant repercussions (such as a warrant).
- It's unclear to me what would occur if a defense attorney reported to the court that they were unable to communicate with their client leading up to a scheduled hearing for which there had been a waiver and thus are unable to represent their interests since they had not been able to discuss the pending issues. Would an additional hearing then be set, at which the defendant's presence would be mandated? This, again, would result in inefficiency, not efficiency.
- This rule would put an enormous burden on defense attorneys to ensure that their clients are properly informed of court dates and information relayed in the course of hearings. Knowing

how busy defense attorneys are, especially public defenders with enormous caseloads, I have great concern about this since the only information to the client would be coming from the attorney (not the defendant hearing it with their own ears in court, possibly receiving documentation relating to what happened, and also being able to ask questions of their attorney at the time). This will likely lead to important information not being conveyed (likely by accident), leading to future litigation should the defendant be prejudiced by the failure to communicate critical information.

- The court and parties would likely have great difficulty keeping to whatever subject matter is permitted to be exchanged outside of the defendant's presence by means of a waiver and not discuss matters not within the scope of the waiver. To avoid this issue, likely more hearings would have to be scheduled, leading to additional inefficiencies.
- Eliminating the need for defendants to appear between arraignment and trial will result in the State being unaware if a defendant has fled to avoid prosecution. This would be found out only after a great deal of resources had been expended by the State and its witnesses to prepare for trial.
- How one defines "good cause" to require a defendant's presence will undoubtedly result in litigation.

For all of the reasons stated above (as well as those offered by my colleagues), I urge you to reject this proposed amendment.

Amanda S. Froh

Senior Deputy Prosecuting Attorney | Elder Abuse

Vice Chair | Economic Crimes Unit

King County Prosecuting Attorney's Office

516 3rd Avenue | W554 King County Courthouse | Seattle, WA 98104

TEL: 206.477.1872