



columbialegal.org

September 30, 2020

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
SENT VIA EMAIL: supreme@courts.wa.gov

Re: Columbia Legal Services' Comment in support of proposed amendments to CrR 3.4 and CrRLJ 3.4

Dear Rules Committee,

Columbia Legal Services (CLS) strongly supports the Washington Defender Association's (WDA) proposed changes to CrR 3.4 and CrRLJ 3.4. Adoption of the amendments will increase judicial efficiency and reduce burdens on criminal defendants, particularly those who are indigent, by eliminating unnecessary court appearances.

CLS is a non-profit civil legal aid organization that advocates for laws that advance social, economic, and racial equity for people living in poverty. Our advocacy centers, in part, on dismantling the system of mass incarceration in Washington -- one of the key racialized systems that perpetuates poverty, injustice, and dehumanization of people and communities.

Throughout the court process, systemic impediments create hardships for criminal defendants that disproportionately impact low-income communities and communities of color. According to recent data, the vast majority of criminal defendants in Washington State experience some form of substantial financial hardship that prevents them from bearing the costs of their representation.¹ CLS represents persons with similar financial hardships, most of whom have previously or are currently involved with the criminal legal system. For example, all the communities we serve have household incomes either at or below 125% of the federal poverty guidelines. Most of these individuals have employment and family obligations that can be severely disrupted by having to appear before the court. Requiring attendance at court hearings where their presence is not essential puts these individuals in an unenviable catch-22: choosing between compliance with the court process related to their criminal matter or risking job loss and other significant financial consequences.

Often, our clients who work do not have job security, paid vacation time, or otherwise flexible working schedules. Due to the lack of predictability in their work schedule, our client

¹ See Washington State Office of Public Defense, "*Determining and Verifying Indigency for Public Defense*," (Jan. 6, 2014) at 19 (estimated that 80 to 90 percent of all felony defendants are represented by public defense counsel or could have been had they not waived the right to counsel).

Olympia
711 Capitol Way S, Suite 706
Olympia, WA 98501
(800) 260-6260

Tri-Cities
7103 W Clearwater Ave, Suite C
Kennewick, WA 99336
(888) 201-9735

Seattle
101 Yesler Way, Suite 300
Seattle, WA 98104
(800) 542-0794

Wenatchee
300 Okanogan Ave, Suite 2A
Wenatchee, WA 98801
(800) 572-9615

Yakima
600 Larson Building
6 South Second Street
Yakima, WA 98901
(800) 631-1323

communities are forced to make daily sacrifices whenever their work schedule changes, whether it be delaying medical treatment, meeting other personal or family obligations, or forgoing quality time with friends or family. Additionally, our client communities are the most likely to lose any job they have due to economic fluctuations, seasonal changes, or end of contract. These cyclical periods of unemployment leave our client communities in a constant state of insecurity. Thus, any additional change to a work schedule can have dire consequences, including loss of employment.

Moreover, arranging and paying for costs of transportation are yet another hardship for indigent individuals. This can be especially true for defendants who live in rural or more sparsely populated parts of the state, where public transportation is not as readily available. Multiple trips to the courthouse, where access to transportation is a barrier, can be costly and increases the chances that an individual will miss hearings despite their best intentions to attend. These obstacles are magnified for Washington's population of undocumented individuals, where a trip to the courthouse may end up costing them everything. The regularity of the Department of Homeland Security's public and aggressive enforcement activities in and around courthouses has been well documented both in its occurrence and impacts.² As a result, the disruption of an individual's schedule due to court appearances should only be required when necessary. By doing otherwise, the court can potentially create more harm in the lives of people who have been charged with criminal offenses.

The proposed changes to CrR 3.4 and CrRLJ 3.4 will help our client communities by eliminating the default position that they must attend every court hearing, whether their presence is useful or not. Meanwhile, the proposed changes will still require the Defendant to attend all necessary hearings and will allow a judge to demand an accused person appear at other hearings by making a finding of good cause and issuing a written order. These rule changes offer flexibility for people who regularly experience institutional exclusion and will make it easier to prioritize necessary court hearings where the individual's presence is important.

Additionally, fewer required appearances equal fewer missed appearances. This will lead to a decrease in costly bench warrants and reduce delays due to suspensions of proceedings because judges have issued bench warrants, which in turn will result in more efficient adjudication of cases and fewer punitive measures being taken against criminal defendants which are unrelated to the underlying charges.

Finally, CLS would like to highlight the timeliness of this proposed change given the current unprecedented crisis in which we find ourselves. While the COVID-19 pandemic has created significant disruption and harm for all communities, it has been particularly damaging for communities living in poverty, communities of color, and those involved in the criminal legal system. While these disparities have always been in place, the pandemic has amplified the existence of these disparities. Any steps that can be taken to reduce or lessen these disparities is

² *Washington v. U.S. Dep't of Homeland Sec.*, No. C19-2043 TSZ, 2020 WL 1819837, at *2 (W.D. Wash. Apr. 10, 2020) (“The State raises concerns about the risks to bystanders, court personnel, or law enforcement officers who might misinterpret these surreptitious ‘courthouse arrests’ as ‘kidnappings’ or other crimes and it alleges that ‘courthouse arrests’ have had ‘a noticeable chilling effect on courthouse attendance’ in almost 60% of Washington's counties.”).

necessary to ensure a fair and just criminal legal system and to dismantle the system of mass incarceration in Washington.

Thank you in advance for your time and attention to this request.

Sincerely,

Tony Gonzalez

Staff Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
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Subject: FW: Comment in support of proposed amendments to CrR 3.4 and CrRLJ 3.4
Date: Wednesday, September 30, 2020 1:21:50 PM
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From: Tony Gonzalez [mailto:tony.gonzalez@columbialegal.org]
Sent: Wednesday, September 30, 2020 1:15 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment in support of proposed amendments to CrR 3.4 and CrRLJ 3.4

Good afternoon,

I have attached Columbia Legal Services' comment in support of the proposed rule amendments to CrR 3.4 and CrRLJ 3.4.

Thank you!

Tony Gonzalez, Attorney

Phone: (509) 662-9681 EXT: 124

Our vision of justice: A Washington State in which every person enjoys full human rights and economic opportunities.



Help us challenge structural racism and together we can ensure that everyone in our state can realize their dignity and human rights.

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