From: OFFICE RECEPTIONIST, CLERK
To: Tracy, Mary
Subject: FW: Comments on proposed changes to CrR 3.4
Date: Friday, April 17, 2020 8:04:43 AM

From: Adams, Danika [mailto:Danika.Adams@kingcounty.gov]
Sent: Thursday, April 16, 2020 7:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on proposed changes to CrR 3.4

I am writing to provide comments to the members of the Supreme Court regarding the proposed amendments to CrR 3.4. I have been a criminal prosecutor for 13 years and been practicing in the Economic Crimes Unit for the past 4 years, where most of the defendants are out-of-custody during the proceedings. If adopted, these changes would lead to confusion, delay, wasted resources, and in all likelihood, violations of defendants' constitutional rights.

In this unprecedented period of social distancing and nearly empty courtrooms, we find ourselves significantly hobbled in our ability to move criminal cases forward. The changes proposed by the Washington Defender Association would make this situation the norm. WDA acknowledges (in its statement of purpose) the connection between missed court dates and delays in cases. However, it ignores the reason missed court dates cause delays – it is the absence of the Defendant. If the Defendant is permitted to be absent from more court dates, that will cause more delays, not fewer.

If the Defendant is not required to be present for hearings, how will the court fulfill its obligations to ensure any waiver of speedy trial rights is valid? How will the court ensure any waiver of appearance at a critical stage of the proceedings is constitutional? How will the court ensure that the Defendant has actual notice of the subsequent court dates they are required to attend?

The rule changes imply that the State will need to set a motion hearing for the court to find good cause to require the Defendant to appear at a subsequent hearing. That "pre-hearing" will obviously require advance notice and the Defendant's presence. How is the court to ensure the Defendant has notice of and attends that pre-hearing? Taking the proposed change to its absurd conclusion, will there also need to be a pre-pre-hearing in advance of the pre-hearing for a determination of whether the Defendant can be required to attend the pre-hearing? Our criminal motions court will quickly become overwhelmed if every motion to amend, to address conditions of release, to compel discovery, to quash a subpoena requires a pre-hearing to find good cause to require the Defendant to attend.

We are currently processing emergency continuance orders to comply with the Supreme Court's essential directives to halt the spread of the novel coronavirus. In this unique situation, the Court has ordered defense counsel to convey notice to the Defendant of the next scheduled court date. In a sense, we are in the midst of a real-life test of what these proposed changes could look like. In all reality, defense counsel, particularly the public defenders that I work with on most of my cases, will do the best that they can to convey that notice, but we will not know until those future hearing dates whether they have been successful in conveying effective notice of future court dates to the Defendant, and whether the Defendant has taken seriously that informal notice. We should anticipate having significant issues in the coming months with out-of-custody Defendants not appearing for their next hearings, and recourse from that will be problematic. What steps will have to be taken before the court can reasonably issue a warrant for the Defendant's arrest? Regardless of the process we put in place, that too will cause further delays of these already delayed cases. This Court should not consider amending CrR 3.4 to put us persistently in this zone of crisis.

If the Defendant is not required to attend hearings, the Defendant will have additional incentive to

continue a criminal case and prolong proceedings. As those proceedings advance nonetheless, the court will have no way to differentiate between a Defendant who is simply not-physically-present, and a Defendant who has absconded. There is nothing in these proposed changes which would prevent the Defendant from signing a blanket waiver of appearance at the time of arraignment. Any communication challenges between defense counsel and the Defendant could easily grind the system to a halt, with the court unable to mandate the Defendant's presence, or be sure the Defendant had notice of any given hearing. While the Defendant's presence would eventually be required at trial, we would not know until the day of trial if the Defendant even knew when the trial date was.

Specifically as to subsection "(b) When Necessary." – The proposed language unreasonably extinguishes any possibility of permitting appearance by live-video feed or video conferencing. Living through these weeks of quarantine has demonstrated starkly that the Court should be supporting systems that enable remote attendance at hearings. This proposed amendment also unjustifiably morphs the Defendant's responsibility to attend into the court's responsibility not to proceed. This shift of responsibility then directly contradicts the subsection that follows regarding voluntary absence of the Defendant during trial.

For all of these reasons, I urge the members of the Supreme Court to reject these proposed amendments.

Regards,

Danika Adams
Senior Deputy Prosecuting Attorney, Economic Crimes Unit
King County Prosecuting Attorney's Office