From: OFFICE RECEPTIONIST, CLERK
To: Tracy, Mary
Subject: FW: Proposed Amendments to CrR 3.4 and CrRLJ 3.4
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From: Erik Sigmar [mailto:ESigmar@co.whatcom.wa.us]
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Subject: Proposed Amendments to CrR 3.4 and CrRLJ 3.4

I am writing to oppose the proposed amendments to CrR 3.4 and CrRLJ 3.4. The defendant's presence at pretrial hearings is necessary to facilitate meaningful participation in the progression of the case and effective communication with the court and counsel.

In the past few years caseloads have ballooned rapidly due primarily to the difficulty of resolving cases short of trial. Cases are continued and the backlog builds, compounding the problem. The proposed rule would exacerbate the quagmire.

Prosecutors are under increased pressure to reduce local jail populations, in particular while cases are pending trial. More defendants are out of custody with pending cases.

The common refrain from the defense bar is that it is very difficult to plea bargain when their clients are out-of-custody, because their clients often do not respond to calls or they do not show up to scheduled meetings (especially transient defendants). Plea bargaining is challenging even under the best of circumstances. Plea bargaining is essential to criminal justice, without it the system would grind to a halt. Courts order defendants to stay in communication with their attorney as a condition of release. However, there is no meaningful mechanism to require communication, and the court is often reticent to remand people into custody for failing to communicate.

Consequently, if the proposed rule is implemented then the most meaningful opportunity to discuss plea negotiations is lost, i.e. between arraignment and plea/sentencing. If the proposed rule is implemented, it is very likely that the court and the State (and victims) will be unaware that the defendant absconded until they fail to appear to the trial date, months later. Without an accurate gauge of whether or not a defendant will actually appear for trial, further delays, loss of witness cooperation, and unnecessary expenditure of resources are likely.

When defendants fail to communicate with their attorney, their attorney is not adequately prepared for trial, and that often leads to perpetual and last-minute continuances. These continuances take a significant toll on victims, the court, and the prosecution. The latter of which wastes time preparing cases for trial and subpoenaing witnesses unnecessarily and at great expense to the community. Nonappearances inhibit the court's ability to keep tabs on the case, and to resolve pretrial issues (e.g. discovery issues, motions to suppress, arguments about conditions of release, no-contact provisions, etc.).

The unintended consequence of the proposed rule change is that it will force more prosecutors to confirm cases for trial, because they are not able to effectively plea bargain. More trials will increase delay and gridlock. The other unintended consequence is that it will inhibit the ability of prosecutors to view criminal defendants holistically and to consider meaningful alternatives to incarceration.

In conclusion, the proposed rule change will strain the overburdened system and cause more delay. Further delay causes backlog, and limits precious court and prosecutorial resources, including the ability to pursue meaningful alternatives to incarceration. Limiting court appearances, will also adversely affect criminal defendants, whom are more likely to blow off their case and suffer greater consequences. Finally, the proposed rule and consequent delay adversely affects victims, and diminishes the public trust in the criminal justice system.

Respectfully submitted, Erik Sigmar, #39236; and Ariane Takano, #53643.

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