

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Comment Opposing Proposed Rule Changes as to CrR 3.4 and CrRLJ 3.4
Date: Wednesday, April 15, 2020 9:54:00 AM

From: Qerimi, Maggi [mailto:Maggi.Qerimi@kingcounty.gov]
Sent: Wednesday, April 15, 2020 9:46 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment Opposing Proposed Rule Changes as to CrR 3.4 and CrRLJ 3.4

Hello,

I am emailing to express my opposition to all proposed changes to CrR 3.4 and CrRLJ 3.4. My concerns are the following:

As to CrR & CrRLJ 3.4 (a)

- Prosecutors often provide notice of the State's intentions at interim case setting hearings, and omnibus hearings. For example, notice is provided that the State will be amending the charges, or of the State's plea offer. There is no way to ensure that the defendant has received that notice if the defendant is not in court at the time. It is very important that defendants understand the course of the proceedings as they occur. It will be difficult for defendants and the community to have faith in the openness of the process if hearings occur without the defendant present.
- This will 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.
- 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.
- It will be difficult for the State to know if an out-of-custody defendant is actually still around.
- 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.
- For defendants whose competency may be uncertain, it is important for the court and counsel to have ongoing opportunities to view and interact with the defendant to monitor their mental health.

As to CrR & CrRLJ 4.3(b):

- This amendment would preclude appearances by live video feed and there is no justification offered for that change.

As to CrR & CrRLJ 4.3 (d):

- The requirement that a court justify mandating appearance by the defendant by "good cause explained in a written order" is unreasonable and will generate litigation regarding the finding of good cause as a basis to challenge the

- lawfulness of any warrant issued if the defendant fails to appear.
- 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).
 - 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?
 - Eliminating the need for defendants to appear between arraignment at trial will result in the State being unaware if a defendant has fled to avoid prosecution. That will result in a massive waste of resources as the State and defense counsel prepare for a trial that cannot occur (wasting scarce time and money with attorney preparation, witness interviews, issuance of subpoenas, and forensic testing). It also will result in delays (possibly months) in attempting to locate the defendant who has fled.

Thank you,

Maggi Qerimi

Deputy Prosecuting Attorney

King County Prosecuting Attorney’s Office

Special Assault Unit

☎(206) 477-1983 Cell: (425) 677-9380

✉ maggi.qerimi@kingcounty.gov