

# KING COUNTY PROSECUTING ATTORNEY'S OFFICE



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JUSTICE  
COMPASSION  
PROFESSIONALISM  
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LEADERSHIP

September 29, 2021

Clerk of the Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

*Re: Proposed Amendments to CrR 3.4*

Dear Justices of the Supreme Court,

Thank you for seeking comments to the Superior Court Judges' Association's (SCJA) proposed amendments to the Superior Court Criminal Rule (CrR) 3.4.

I echo the comment prepared by the King County Prosecuting Attorney, and I respectfully urge the court to carefully examine the data sources supplied with that comment. I comment separately with a few additional points drawn from personal experience after more than 30 years of practice in the criminal justice system in King County.

It has been my experience that it is often difficult for defense counsel to track and meaningfully engage with clients between hearings. Plea agreements – absolutely essential to the efficient functioning of the system – are often finalized immediately before or after hearings where the defendant has been required to attend court in person, see the judge in person, and meet face-to-face with counsel. Encouraging less direct contact with courts and counsel will undoubtedly slow the negotiating process, as seems to be our experience during the pandemic. Although the superior courts have made impressive strides in handling technological challenges caused by the pandemic, technological barriers persist. Snafus and glitches will likely increase if even greater numbers of defendants attempt to appear remotely. Many defendants may abandon appearances when faced with technological costs and difficulties.

Moreover, fewer contacts with the court are likely to increase the number of times when a defendant fails to appear for trial, often late in the process when both parties have expended time and resources on a case set on an already grossly bloated trial calendar. These late delays will extend and prolong the crippling backlog that faces our superior courts.

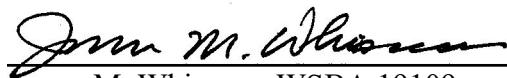
If we are correct in our predictions, and the proposed rule worsens the backlog, the consequences for our courts will be dire. The courts, defense counsel, and prosecutors have all received emergency funding to clear the pandemic-caused backlog of cases. But this money is

finite. If that additional money is spent on preparing cases that never go to trial because the defendant failed to appear late in the process, the resources required to eliminate the backlog will be gone before the backlog has disappeared. It may never go away.

Given the grave importance of this decision, a rule change that discourages defendants from attending court should not be made without data showing it will alleviate rather than exacerbate the backlog.

For these reasons, I respectfully suggest that the proposed changes be rejected unless or until the data-driven concerns outlined in the King County Prosecutor's comment, and the more anecdotal evidence outlined in this comment, can be properly assessed.

Sincerely,



James M. Whisman, WSBA 19109  
Senior Deputy Prosecuting Attorney  
Appellate Unit Chair  
Office of the King County Prosecuting Attorney

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Subject:** FW: Comment re CrR 3.4  
**Date:** Wednesday, September 29, 2021 9:27:58 AM  
**Attachments:** [Comment to CrR 3.4.pdf](#)

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**From:** Whisman, Jim [mailto:Jim.Whisman@kingcounty.gov]  
**Sent:** Wednesday, September 29, 2021 9:27 AM  
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Dear Supreme Court Clerk,

Please find attached my comment to the proposed amendments to CrR 3.4.

Thank you,

Jim Whisman