



February 27, 2022

Clerk, Washington Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Re: Proposed Amendment to CrRLJ 3.4  
Comment Deadline 2/28/22

Dear Justices of the Supreme Court:

The American Civil Liberties Union of Washington respectfully submits this comment to oppose the proposed changes to CrRLJ 3.4 that would undo the improvements to the rule that went into effect last year. We support the comments and concerns submitted by the Washington Defender Association.

Under current CrRLJ 3.4, the presumption is that people accused of misdemeanors can appear for some hearings in-person, remotely or through counsel. Current CrRLJ 3.4(a) provides that the accused may appear through counsel unless otherwise required by the rule or a court order, meaning that in the absence of a finding of good cause, the accused can choose how to appear. The DMCJA proposal would flip the presumption to one that the accused must physically appear. Proposed CrRLJ 3.4 removes language stating that a defendant may appear remotely or through counsel unless a court order or the rule specifically require their presence, and instead says that “physical appearance is required at. . . hearings set by the Court upon a finding of good cause.” In other words, under the proposal, the accused must physically be in court at any hearing, no matter how ministerial, unless the judge finds good cause that the accused need not physically appear.

The proposed changes would also render irrelevant the Court of Appeals decision in *State v. Gelinas*, 15 Wn.App.2d 484, 478 P.3d 638 (2020). *Gelinas* limits when judges may issue bench warrants for missed hearings. The *Gelinas* court interpreted what is now the second sentence of CrRLJ 3.4(d), which reads “[i]f in any case the defendant is not present when his or her personal attendance is necessary, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.” The *Gelinas* court discussed caselaw about the meaning of the word “necessary” and held that “a hearing is not ‘necessary’ unless the defendant's absence prevents the case from proceeding.” *Gelinas*, 15 Wn.App.2d at 493. The DMCJA proposal would replace the word “necessary” in CrRLJ 3.4 with “required,” eliminating the holding in *Gelinas* that a court may issue a warrant for an accused who misses a hearing only if the accused’s presence would have helped move the case forward.

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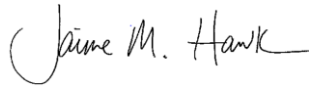
The current version of CrRLJ 3.4 promotes fairness and a more efficient administration of justice, especially for the increasing number of indigent defendants who continue to face economic hardship and struggle due to the pandemic.

As we know, the criminal legal system disproportionately and unfairly impacts those who are living in poverty, communities of color, and people with certain disabilities. Research shows that many people who miss court are experiencing difficulties with transportation, childcare, job disruption, homelessness, health problems, mental illness and other challenges often related to poverty. Many had difficult life circumstances that made it hard or impossible to attend a court hearing on a particular day. Reducing the number of required court appearances for defendants significantly reduces the number of missed court hearings, unnecessary bench warrants, and the harmful and consequential impacts of pretrial detention that often result from the bench warrant.

For the above reasons, we urge you to reject the proposed language that has been submitted to amend CrRLJ 3.4.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Jaime M. Hawk". The signature is written in a cursive style with a large, looping initial "J".

JAIME M. HAWK

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Subject:** FW: Comment on the proposed amendments to CrRLJ 3.4  
**Date:** Tuesday, March 1, 2022 8:13:30 AM  
**Attachments:** [image001.png](#)  
[ACLU-WA comment on Proposed Amendments to CrRLJ 3.4.pdf](#)

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**From:** Jaime Hawk [mailto:jhawk@aclu-wa.org]  
**Sent:** Monday, February 28, 2022 9:17 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on the proposed amendments to CrRLJ 3.4

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Dear Supreme Court Rules Committee,

Thank you for the opportunity to comment on the proposed amendments to CrRLJ 3.4. The ACLU of Washington's comment is attached.

Warm regards,

Jaime

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