

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



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April 29, 2024

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

Re: Proposed Amendments to CrRLJ 3.3.

Dear Justices:

Thank you for seeking comments to the proposed amendments to the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) submitted by the proponents. After carefully reviewing them, I strongly urge you to reject the proposed amendment to CrRLJ 3.3 because it is flawed and unwarranted.

A. Proposed Amendment to CrRLJ 3.3

The proponents' stated goal for this proposed amendment is to facilitate remote proceedings and continuances. Of particular concern is the removal of section (a)(3)(iii), defining appearance, and the changes to (c)(2)(ii), regarding speedy trial and resetting of commencement dates.¹ The proposed amendment permits a trial court to reset the commencement date, following a defendant's failure to appear, through remote appearances or appearances through counsel. This proposal will lead an additional and potentially unnecessary burden on courts and attorneys as well as inconsistent practices across the State. It also undermines the seriousness of the cases addressed by courts of limited jurisdiction.

Permitting the resetting of the commencement date based solely on a remote appearance or an appearance through counsel after a failure to appear will lead to additional and potentially unnecessary work for trial courts, attorneys, victims, and witnesses. Numerous changes and allowances have been made in recent years to the requirements for a defendant to be physically present at pretrial proceedings. However, none have gone so far as to say that when a defendant's presence was *required* by the court and they failed to appear, a defendant could simply recontact their attorney and reset the commencement date. The practical impact of this is that once a

¹ The rule amendment coversheet indicates that, "The changes work in conjunction with CrRLJ 3.4, ARLJ 3 and ARLJ 15." Should this Court find my comments relevant to the proposed changes on those rules, I would urge you to reject those proposals as well.

commencement date is reset courts, prosecutors, defense attorneys, witnesses, and victims all must again begin preparing a trial. This can involve interviews, evidence viewings, discovery requests, and numerous other time-consuming tasks, all without any reasonable assurance that the defendant actually will appear for the new trial date. When a defendant fails to appear for trial, the impact on everyone involved is significant. Routinely, witnesses have requested time off work, made arrangements for childcare and transportation, and emotionally prepared to testify in court. Courts and attorneys have also had to prepare and make scheduling decisions based on the belief that a particular trial will be proceeding. When that defendant fails to appear for trial, it can lead to courts being inactive for days and can cause further delays on other cases. Requiring a defendant to be physically present following a failure to appear provides the assurance that the defendant will appear in court when necessary and is not a significant enough burden to warrant the potential consequences.

Additionally, the proposed amendment grants a significant amount of discretion to individual trial judges. Having the potential for such broad variance as to what could be required in a particular case will lead to inconsistent practices across the State, miscommunications between attorneys and clients, and unnecessary delays. For example, one judge in King County District Court could decide that a defendant needed to be physically present for the next hearing following their failure to appear, but another judge in the same courthouse could decide that a defendant need only reestablish contact with their attorney in order to resume criminal proceedings. In fact, a judge could determine that one defendant on their caseload needed to be physically present following a failure to appear, but another did not. This lack of consistency and predictability can lead to disparate impacts on defendants throughout the State. It also presents other concerns regarding important hearings, such as bench warrant quash hearings, where a defendant should logically be required to appear.

Finally, the proposed changes to CrRLJ 3.3 are not coupled with proposed changes to CrR 3.3. The implication here is that the offenses addressed in courts of limited jurisdiction are not important or serious enough to merit a defendant's physical appearance following a failure to appear. When considering the type of work done in these courts (including charges related to Driving while Under the Influence, Assault with Sexual Motivation, and Domestic Violence), this is clearly not the case. Requiring a defendant's physical appearance, following a failure to appear, communicates an important message to the defendant, the victim, and the community that the charges are being taken seriously and that criminal proceedings are not something that can be ignored.

I respectfully urge you to reject the proposed amendment to CrR/CrRLJ 3.3.

Sincerely,



LEESA MANION
King County Prosecuting Attorney