From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comment to Rule Order 25700-A-1622
Date: Wednesday, April 30, 2025 3:12:18 PM

From: Jason Walker <jeyman@gmail.com>
Sent: Wednesday, April 30, 2025 2:32 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Rule Order 25700-A-1622

As a member of the Washington State Bar Association, I urge this Court to reject the proposed amendments to CrR 4.1/CrRLJ 4.1 and CrRLJ 3.2.1. The proponents fail to establish a statewide problem, their solution does not take smaller jurisdictions into account and is unworkable, and they fail to show that their examples from other jurisdictions lead to better outcomes.

The proponents fail to identify a statewide problem and do not take small and rural counties into consideration.

Rule amendments should be necessary statewide. GR 9(a)(4). Here, the proponents fail to establish that there is a statewide need for this proposed amendment and support their proposal with only anecdotes from only two large counties . Because the proponents fail to establish that their proposed amendment is necessary statewide, their proposal should be rejected.

The proponents also fail to account for how their proposed amendment would affect rural jurisdictions. Requiring arraignment within three days of a first appearance would require arraignment hearings throughout the week. This is no doubt feasible in large, urban counties with numerous public defenders, judges, commissioners. However, non-urban counties rely on defense attorneys who come from a distance, sometimes from a neighboring state. Courts in rural counties arrange their calendars so all arraignments happen on a single "docket day." This allows defense attorneys, and judges, to plan ahead and be available on the assigned day.

Under the proposed amendment, arraignments would happen throughout the week, with only three days' notice. In a county that shares a judge with other counties, and/or relies on defense counsel who come from a distance, the proposed amendment would be burdensome. Imagine a defense attorney who is in a 4-day trial in another county, who receives a notice that she has been assigned a new client and must appear for arraignment in three days. The attorney must either take time away from the trial, or be less prepared for arraignment or find another attorney to cover – none of which helps the defendants.

The current 14-day schedule gives counties flexibility to predictably arrange their calendars so

judges and attorneys can plan ahead and not be presented with a Hobson's choice of rendering ineffective assistance to one client or another. 14 days also allows for circumstances such as when a "docket day" falls on a holiday or vacation. The current rule allows smaller jurisdictions the flexibility they need and should be retained.

The proponents fail to address how the current rules do not address their identified issue.

The proponents want a second hearing soon after a defendant's first appearance so they can make a better argument for bail. However, the rules already provide for such an expedited hearing.

CrR 3.2(j)(1) provides, "At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail." The same rule requires such hearings be held within a reasonable time of such a Motion. CrR 3.2(j)(2).

The proponents do not explain why this mechanism does not address their issue. For that reason alone, the proposed amendment should be rejected.

The proponents' proposed amendment to the felony preliminary hearing rule is unworkable.

The proponents seek to reduce the time allowable for the preliminary hearing in CrRLJ 3.2.1(g) from 30 days to 48 hours. This timeline is too short to be practicable or useful.

Rushing complicated cases can lead to injustice for victims of crime. Recently, in Thurston County, a defendant pled guilty to second-degree manslaughter just as the authorities were discovering that the charge should have been murder. *See* Family of victim 'infuriated' by handling of Lacey manslaughter case. Here's why. The Olympian, March 31, 2025, https://www.theolympian.com/news/local/article303136524.html (accessed April 14, 2025). Such outcomes lead to a perception that the guilty go unpunished and reduce the public's confidence in the courts.

A 30-day period before the ultimate charges are filed is not lengthy compared to other jurisdictions.

Some examples:

- In Connecticut, a defendant may be held for up to forty-five days without a court appearance, unless charged with a capital offense. C.G.S.A. 54-53a.

- In Georgia, a felony defendant has a right to have his case heard before the Grand Jury within 90 days of arrest, unless extended by the court. GA Code 17-7-50.

- In Florida, the State can delay the filing of charges for up to 40 days before the defendant is released. Fla. R. Crim. P. Rule 3.134.

- In West Virginia, a person may be held for two "terms of court" before being indicted, not including the term in which the defendant was arrested. W. Va. Code Ann. § 62-2-12. A "term of court" is four months.

- In Louisiana the State has 120 days to obtain a felony indictment for a crime punishable by life, 60 days for all other felonies. La. C.Cr.P. Art. 701.

- In the federal system, the defendant is entitled to have the grand jury hear the case within 30 days of arrest, unless extended by the court. 18 U.S.C. § 3161.

The proponents' misunderstand other states' procedures.

The proponents claim that other states' arraignment timeline is similar to their proposed amendment. However, 1) they misunderstand the procedures of the other jurisdictions; and 2) they fail to establish that these supposedly faster procedures lead to better outcomes.

The misunderstanding appears to stem from the use of the term "arraignment," which is frequently used to describe a first appearance, not necessarily a hearing where a defendant enters a formal plea to the final charges.

For example, in New York, defendants first appear for "arraignment" in local criminal courts within 24 hours of arrest.[1] The State has up to 144 hours from the first "arraignment" to obtain an indictment, but this time can be extended for good cause. N.Y. Crim. Proc. Law § 180.80. The defendant only enters a plea to an indictment. N.Y. Crim. Proc. Law § 210.50. The purpose of the first "arraignment" is to determine if the defendant should be held. N.Y. Crim. Proc. Law § 180.10 (McKinney).

Note that in New York, discovery need not be provided to the defense until twenty days after arraignment. CPL 245.10(a). By contrast, the proponents' arguments concede that sufficient discovery to successfully argue for bail or release is available within the existing 14-day timeline in CrR 4.1.

In Oregon, a defendant arrested for a felony without a warrant is seen within 36 hours, and this hearing is called an "arraignment." However, this "arraignment" is again akin to a first appearance, because an Oregon criminal defendant can only enter a plea to an indictment. ORS 135.020. Oregon law has no timeline for the prosecutor to obtain an indictment from a grand jury, but because a defendant is entitled to a probable cause hearing within 5 judicial days (or 10 calendar days) the defendant is usually indicted within that time. ORS 135.070(2).

Again, there is no indication that Oregon prosecutors can furnish discovery to defense counsel any faster than Washington prosecutors, or that any additional material is available at the "arraignment" that occurs within 36 hours.

Timelines appear to be similar in New Hampshire. For felony suspects who are in custody, the court holds a probable cause hearing up to 10 days after the defendant's first appearance. New Hampshire Criminal Procedure Rule 6(a)(2).

Because the proponents do not establish any better outcomes in other jurisdictions, or that Washington's procedures are seriously out of step with the rest of the nation, their proposed amendments should be rejected.

Thank you for your time and attention,

Jason Walker, WSBA #44358.

---

[1] This 24-hour requirement is probably only applicable in New York City. *See* Marks, Lawrence, 7 N.Y. Prac., New York Pretrial Criminal Procedure § 3:19 (2d ed.). In New York City, criminal arraignment courts run seven days a week, 16 hours per day. NYCourts.gov, Court Information by County, https://ww2.nycourts.gov/COURTS/nyc/criminal/generalinfo.shtml (visited February 26, 2025). By contrast, the Justice Court in Warwick, a town of 32,000, is only open from 8:30 to 4:00 PM. https://www.townofwarwick.org/justice-court/ (visited April 30, 2025).