

## APPENDIX H

### MINORITY COUNTER-PROPOSAL, IN BILL DRAFT FORMAT

#### CrR 4.1 ARRAIGNMENT

**(a) Time.** ~~((Promptly after the indictment or information has been filed, the defendant shall be arraigned thereon in open court.))~~

(1) Defendant Detained in Jail. The defendant shall be arraigned not later than 14 days after the date the information or indictment is filed in the adult division of the superior court, if the defendant is (i) detained in the jail of the county where the charges are pending or (ii) subject to conditions of release imposed in connection with the same charges.

(2) Defendant Not Detained in Jail. The defendant shall be arraigned not later than 14 days after that appearance which next follows the filing of the information or indictment, if the defendant is not detained in jail or subject to conditions of release. For purposes of this section, “appearance” has the meaning defined in CrR 3.3(a)(5)(iii).

#### **(b) Delay in Arraigning Defendant Not Detained in Jail.**

(1) Due Diligence Certification. Any delay in bringing before the court for arraignment a defendant not detained in jail shall not affect the allowable time for arraignment if, by the date of that appearance which next follows the filing of the information or indictment, the State has filed a due-diligence certification.

(i) Such certification must be in the form of an affidavit or declaration under penalty of perjury, signed by a person competent to testify to the matters stated therein.

(ii) It must show that an attempt was made to serve an arrest warrant upon the defendant during the period within 60 days after filing of the information or indictment.

(2) Sufficient Attempt to Serve. For felony charges involving a crime against children or other persons as defined in RCW 43.43.830, an attempt to serve such warrant shall be considered sufficient if personal service was attempted at the defendant’s last known residence in a manner consistent with service of process. For all other charges, an attempt to serve shall be considered sufficient if notice of the warrant was mailed to the defendant’s last known residence.

(3) Determining Location of Residence. The location of the defendant’s residence for purposes of attempting service shall be determined by consulting, at minimum, the investigative report supporting the charge in question and the then current and accessible records of

the information systems of the Washington state courts (SCOMIS, DISCIS, etc.) and departments of licensing, corrections, and state patrol, using the defendant's legal name or known variants thereof and other known identifiers such as date of birth, social security number, and physical description.

(4) *Supporting Records.* Records supporting the due-diligence certification shall be kept and be subject to disclosure.

**(c) Establishment of Arraignment Date.**

(1) *Objections to Arraignment Date.* A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of arraignment.

(2) *Hearings on Objections.* Hearings on such objections shall be held as soon as determined by the court to be practicable. Hearings on delays in arraigning a defendant not detained in jail shall be limited to the issues of competence, form, timeliness, and merits of the due-diligence certification.

(3) *Establishment of Proper Arraignment Date.* If the court rules that an objection to the arraignment date is correct, it shall establish the last day the defendant could properly have been arraigned on the pending charge from the date of the filing of the information or indictment and announce the proper date for arraignment, and the time for trial for purposes of CrR 3.3(b) shall be deemed to have commenced on that date. In all other instances, the date of arraignment shall be the date upon which the defendant was actually arraigned.

(4) *Loss of Right to Object.* A party who fails to object as required shall lose the right to object, and the date of arraignment shall be conclusively established as the date upon which the defendant was actually arraigned.

**((b)) (d) Counsel.** If the defendant appears without counsel, the court shall inform ~~((him of his))~~ the defendant of his or her right to have counsel before being arraigned. The court shall inquire if ~~((he))~~ the defendant has counsel. If ~~((he))~~ the defendant is not represented and is unable to obtain counsel, counsel shall be assigned ~~((to him))~~ by the court, unless otherwise provided.

**((e)) (e) Waiver of Counsel.** If the defendant chooses to proceed without counsel, the court shall ascertain whether this waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered in the minutes. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming ~~((his))~~ the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed. If such claim for counsel is not timely, the court shall appoint counsel but may deny or limit a continuance.

~~((d))~~ **(f) Name.** Defendant shall be asked his or her true name. If ~~((he))~~ the defendant alleges that ~~((his))~~ the true name is one other than that by which he or she is charged, it must be entered in the minutes of the court, and subsequent proceedings ~~((against him))~~ shall be had by that name or other names relevant to the proceedings.

~~((e))~~ **(g) Reading.** The indictment or information shall be read to defendant, unless the reading is waived, and a copy shall be given to defendant.