



Oppose New Changes to When People Charged with Misdemeanors Must Be Present in Court

We need your help to oppose a roll back of recent reforms to when people charged with misdemeanors must be present in court. The District and Municipal Court Judges Association (DMCJA) recently proposed new changes to CrRLJ 3.3 and CrRLJ 3.4 that would walk back the benefits of [current CrRLJ 3.4](#). Current CrRLJ 3.4 went into effect February 1, 2021 and allows people charged with misdemeanors to appear through counsel or via video at many pretrial hearings. Case law interpreting CrRLJ 3.4 limits when judges can issue bench warrants for missed pretrial hearings.

Please submit a comment to the Supreme Court of Washington opposing the proposal to change CrRLJ 3.4 again. Comments on are due by February 28, 2022. Comments can be as short as a few sentences, or they can be longer.

The DMCJA proposal is on the Washington courts website [here](#) (CrRLJ 3.3) and [here](#) (CrRLJ 3.4). If adopted by the Supreme Court of Washington, the proposal would do the following:

- Alter CrRLJ 3.3(f) to make it a defense attorney's responsibility to notify clients of new court dates, eliminating the court's responsibility to summons the client and creating conflicts of interest between defenders and their clients
- Alter CrRLJ 3.4 so that if a client appears through counsel, counsel must affirmatively tell the court that they have consulted with their client since the client's last appearance, forcing the lawyer to violate attorney client privilege
- Alter CrRLJ 3.4 to create a presumption that defendants must be physically present in court for all hearings, eliminating the presumption in the current rule that defendants may appear through counsel or remotely if they wish
- Alter CrRLJ 3.4 to allow judges to issue a bench warrants anytime a defendant misses a hearing that the court has required them to attend, eliminating the rule from *State v. Gelinis*, 15 Wn.App.2d 484 (2020), that a court may issue a warrant only if the defendant's presence is necessary to move their case forward

See the next page for talking points and information on submitting a comment.

Note toward the beginning of your comment that it regards the proposal about CrRLJ 3.3 and 3.4. **Possible talking points for comments opposing changes to CrRLJ 3.3 and 3.4 include the following:**

- A presumption that defendants must be physically present in court will re-introduce problems that existed before February 2021, when the current version of CrRLJ 3.4 went into effect. Those problems include burdening people accused of misdemeanors with many trips to court when they may have difficulty with transportation or may already have multiple demands on their time, such as childcare, care for elderly relatives, work, school, or treatment.
- The change would likely result in more bench warrants because some people will be unable to get to court frequently and because the change would allow judges to issue warrants in more situations than they currently can.
- Requiring defense attorneys to let clients know about new court dates would burden already busy public defenders.
- Requiring defense lawyers to say whether they have consulted with their clients since the last hearing would violate [RPC 1.6](#), which requires lawyers to keep communications with their clients confidential. It could also reduce the trust people charged with crimes have in their lawyers.
- Because defense lawyers would be responsible for giving their clients notice of upcoming hearings, a defense lawyer could become a witness in new cases of bail jump under RCW 9A.76.170 and failure to appear under RCW 9A.76.190. The defense attorney would then have to withdraw from both cases, disrupting representation.
- If current CrRLJ 3.4 is working smoothly where you practice, let the Court know that.

Comments may be sent to the following addresses: P.O. Box 40929, Olympia, WA 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail may not exceed 1500 words. **Comments are due by February 28, 2022.**

Contact Magda Baker with questions or concerns at magda@defensenet.org.