

WSR 25-02-018
RULES OF COURT
STATE SUPREME COURT
[December 5, 2024]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO CrR ) NO. 25700-A-1622
4.1/CrRLJ 4.1—ARRAIGNMENT AND )
CrRLJ 3.2.1—PROCEDURE )
FOLLOWING WARRANTLESS )
ARREST—PRELIMINARY HEARING )

The King County Department of Public Defense and the Snohomish County Public Defenders Association, having recommended the suggested amendments to CrR 4.1/CrRLJ 4.1—Arraignment and CrRLJ 3.2.1—Procedure Following Warrantless Arrest—Preliminary Hearing, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of December, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

A. Name of Proponent: The King County Department of Defense and the Snohomish County Public Defenders Association.

B. Spokesperson: Matt Sanders and Kathleen Kyle.

C. Purpose: Revise CrR/CrRLJ 4.1 to reduce the timeline for in-custody arraignment hearings from 14 days to 3 days; similarly, revise the timelines in CrRLJ 3.2.1 to ensure timely Arraignment hearings.

D. Public Hearing: A public hearing is not recommended.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material: Suggested rule amendment.

Introduction

The King County Department of Public Defense and the Snohomish County Public Defenders Association propose changes to CrR/CrRLJ 4.1 to reduce the timeline for in-custody Arraignment Hearings from 14 days to 3 days.

In addition, these organizations proposed changes to CrRLJ 3.2.1 to both ensure that a preliminary hearing occurs within 48 hours and

to also ensure that a felony complaint is filed in Superior Court within three days of a felony probable cause finding in District Court.

By changing the timelines, incarcerated individuals will more quickly have an Arraignment hearing where they can both enter a plea and address conditions of release, including bail.

Background and justification for the proposal

In theory, those who are detained pretrial have an opportunity to be released at their preliminary court hearing. However, those hearings happen quickly and without full discovery. In addition, there are times when a person allegedly 'refuses' their preliminary appearance hearing and so do not have a hearing before their Arraignment hearing. As a result, individuals are frequently incarcerated in jail on unaffordable bail until their Arraignment Hearing. For example, King County jail data (as of 9/26/24) shows that of the releases in the last 14 days, 13.7% of people had been incarcerated for 4-10 days and 16.4% for 11-30 days.<sup>1</sup>

Throughout Washington State, counties and cities schedule arraignment hearings for incarcerated people on different timelines. For example, in Pierce County, a person is generally arraigned on felony charges within 24 hours of booking but it can be up to 72 hours of booking.

In Snohomish County, felony complaints are regularly first filed in District Court and then filed into Superior Court two Fridays later; the District Court felony complaint hold (on unaffordable bail) is generally about 14 days, with variation to account for the second Friday filing deadline. After the State files a felony complaint into Superior Court, the accused individual has an Arraignment Hearing within 3 days. Snohomish County engages in this practice routinely- in 2023, Snohomish County filed 2,729 felony complaints into district court in 2023 and statewide, 3,705 were filed total.<sup>2</sup> The practice results in many accused persons sitting in jail due to the District Court hold (on unaffordable bail) and there is no access to discovery, speedy trial, or other rights provided for by Superior Court rules.

State v. Dowdney illustrates the practice well. In that case, Mr. Dowdney was booked into Snohomish County jail on March 11, 2016. On March 13, a district court commissioner ex parte found probable cause and set bail at \$500,000. In addition, the district court further ordered that, 'if a Complaint is filed in District Court-Everett Division by 5:00 p.m. on March 15, 2016, the conditions of release including bail shall remain in effect until the Felony Dismissal Date as listed on the Complaint.'

On March 14, Dowdney appeared before the district court, where the judge maintained the bail amount and conditions of release ...

The next day, March 15, the State filed a felony criminal complaint in district court, with a felony dismissal date of April 1. Dowdney was not arraigned at this or any point before a district court judge, nor did he have any type of preliminary hearing pursuant to CrRLJ 3.2.1 (g)(1). **It is undisputed that this practice regularly occurs in Snohomish County.**

On April 1, the State filed a new felony information in superior court, in which Dowdney was charged only with First Degree Robbery, and the district court charges were dismissed.

On April 4, Dowdney appeared before a Snohomish County Superior Court judge for arraignment ... 26 Wash. App. 2d 1002, review denied, 537 P.3d 1026 (Wash. 2023) (emphasis added).

The Court of Appeals, in an unpublished decision, analyzed the above practice and related objections and found that "without any comment as to the wisdom of this practice as a matter of policy, we conclude that the county's charging practice does not violate the equal protection clause as presented and argued in this particular case." Id.

As the above fact pattern demonstrates, Snohomish County's regular practice results in presumptively innocent people being booked into jail and then not coming to court for an Arraignment hearing for up to 24 days (in the above example, the arrest occurred on 3/11/16 and the Arraignment Hearing occurred on 4/4/24).

Similarly, in King County Superior Court, due to the timelines in CrR 4.1, incarcerated individuals generally languish in jail for 14 days after charges are filed before their Arraignment Hearing. That is even true for individuals who are arrested pursuant to a warrant and who do not have a preliminary appearance following their booking into jail.

Here are some examples of how presumptively innocent people languished in jail for weeks in King County before their arraignment hearings in September 2024:

■ 24-1-06228-5 -- a person was booked for possession with intent to manufacture on 9/4/24 and he did not have a preliminary appearance due to an alleged refusal. Charges were filed on 9/9/24 with a warrant issued on 9/9/24 for \$25,000. The arraignment hearing was set for 9/23/24, and the accused was released on personal recognizance with a less restrictive alternative 19 days after arrest.

■ 24-1-02843-5 -- a person was booked for residential burglary and criminal impersonation in the first degree on 9/3/24 with a warrant issued on 9/6/24 for \$10,000 (the amount ordered at the preliminary appearance) after the case was filed. The arraignment hearing was set for 9/19/24, where enhanced alternative CCAP programming was ordered, and the person was released 16 days after arrest.

■ 24-1-06419-9 -- a person was booked for motor vehicle theft on 9/1/24 and a warrant was issued on 9/5/22 for \$5,000 (the amount ordered at the preliminary appearance) after the case was filed. The arraignment hearing was set for 9/19/24, where the person was released on personal recognizance with basic alternative CCAP programming ordered, and the person was released 18 days after arrest.

■ 24-1-04295-1 -- a person was suspected of forgery on June 1, 2023, and was stopped and released by police. Over a year later, on 5/21/24 a single forgery charge was filed, and a notice of arraignment was sent to the person's old address, and the notice was returned as 'unclaimed mail'. On 6/3/24, a bench warrant was issued, and bail was set at \$5,050. The person was booked on 9/16/24. The arraignment hearing was set for 9/30/24, where the person was released on personal recognizance 14 days after being jailed.

States with shorter timelines between a person's booking into jail and their Arraignment hearing include Oregon, where an incarcerated person's arraignment is held within the first 36 hours of custody (excluding weekends and holidays). Or. Rev. Stat. Ann. § 135.010. In New Hampshire, incarcerated people's arraignments are held within 24-36 hours of arrest (excluding weekends and holidays). In New York State, a "delay of arraignment of more than 24 hours is presumptively unnecessary and, unless explained, constitutes a violation of CPL 140.20(1)," entitling the incarcerated person to immediate release. If the person is held on a felony complaint and cannot pay the bail set

at arraignment, the State has six days to indict them or else they get released. N.Y. Crim. Proc. Law § 180.80.

The proposed changes to CrR/CrRLJ 4.1 will ensure that an incarcerated person timely appears before the Court for their Arraignment Hearing so they may properly address release conditions, including bail, and so that the time for trial commences. Defense counsel cannot effectively address release conditions at a preliminary hearing because it is only after charges are filed that they can review the initial discovery in the case.

Similarly, the proposed changes to CrRLJ 3.2.1, will ensure that when a felony complaint is filed in District Court, that the preliminary hearing to determine probable cause will be held within 48 hours. In addition, the changes will ensure that if the court finds probable cause and binds the defendant over to the superior court, an information must be filed within 3 days to ensure that the defendant is not languishing in jail while waiting for charges to be filed.

Timely Arraignment hearings for incarcerated individuals help ensure that the accused is informed of the specific charges, can respond with a plea, and can address conditions of release. In addition, a timely Arraignment Hearing helps protect the right to speedy trial and prevents excessive delays since the timeline for a speedy trial starts at Arraignment.

The harms of pretrial incarceration are well known, with research demonstrating that that short periods of incarceration frequently up-end a person's employment, housing, child custody, and access to health care. See Lisa Foster, *Judicial Responsibility for Justice in Criminal Courts*, 46 Hofstra L. RevV. 21 (2018).

Timely arraignments (following timely filing of felony charges in Superior Court), where defense counsel can effectively address bail, are also important because studies demonstrate that both the imposition and effect of bail are racially disproportionate.<sup>3</sup> Black defendants face higher bail amounts than white defendants charged with the same crimes.<sup>4</sup> The racial disproportionality of the bail system has additional, far-reaching impacts due to the deleterious impact that pretrial incarceration has on case outcomes.<sup>5</sup>

1 (Data taken on 9/26/24 from King County Adult and Juvenile Detention's dynamic Resident Population Dashboard, available at <https://app.powerbi.com/view?r=eyJrjoiYWRRkYTkzMTYtMjNhZi00YWZiLTgwYzU0OWVlMTRkM3MTc3NGU4IiwidCI6ImVhNjA5N2ExLTUwZGItdmMi05ZGZkLTVhYjMwNzY3NDE1ZiJ9.>)

2 See Caseloads of the Courts of Washington, Courts of Limited Jurisdiction, Felony Complaints- 2023 Annual Report, available at <https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=d&freq=a&tab=&fileID=rpt13>

3 See Cynthia E. Jones, "Give Us Free": Addressing Racial Disparities in Bail Determinations, 16 N.Y.U.J. Legis. & Pub. Pol'y 919 (2013).

4 See Shawn Bushway & Jonah Gelbach, National Science Foundation, *Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model* (2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1990324](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990324).

5 See Arpit Gupta, Christopher Hansman, Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 J. Legal Stud. 471, 472 (2016) ("We find that the assessment of money bail is a significant, independent cause of convictions and recidivism.").

Conclusion

Under these proposed amendments incarcerated individuals would have an Arraignment Hearing within three days of charges being filed and, moreover, felony charges would need to be filed in Superior Court within five days of a person's arrest.

Presumptively innocent people should not be forced to languish in jail for up to 14 days (if not longer, in Snohomish County) before defense counsel can address their release conditions from a discovery-informed perspective. Pretrial detention has a disproportionate racial impact and has life-changing effects on one's employment, housing, child custody, and access to health care. Ensuring timely arraignments

will help safeguard the accused's fundamental rights and reduce the excessive and harmful detention of individuals on unaffordable bail.

Proposed Amendments to CrR 4.1 and CrRLJ 4.1 and CrR 3.2.1

**CrR 4.1  
ARRAIGNMENT**

**(a) Time.**

(1) *Defendant Detained in Jail.* The defendant shall be arraigned not later than ~~14~~ 3 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. At the time of the arraignment, the defendant shall have an opportunity to argue bail and other conditions of release pursuant to CrR 3.2.

(2) [unchanged]

**(b) - (f)** [unchanged]

**CrRLJ 4.1  
ARRAIGNMENT**

**(a) Time.**

(1) Defendant Detained in Jail. The defendant shall be arraigned not later than ~~14~~ 3 days after the date the complaint or citation and notice is filed in court, if the defendant is (i) detained in a county or city jail in the county where the charges are pending, or (ii) subject to conditions of release imposed in connection with the same charges. At the time of the arraignment, the defendant shall have an opportunity to argue bail and other conditions of release pursuant to CrRLJ 3.2.

(2) [unchanged]

**(b) - (g)** [unchanged]

**CrRLJ 3.2.1**

**PROCEDURE FOLLOWING WARRANTLESS ARREST—PRELIMINARY HEARING**

**(a) - (f)** unchanged

**(g) Preliminary Hearing on Felony Complaint.**

(1) When a felony complaint is filed, the court ~~may~~ must conduct a preliminary hearing within 48 hours to determine whether there is probable cause to believe that the accused has committed a felony unless an information or indictment is filed in superior court prior to the time set for the preliminary hearing. If the court finds probable cause, the court shall bind the defendant over to the superior court. If the court binds the accused over, or if the parties waive the preliminary hearing, an information shall be filed within 3 days ~~without unnecessary delay~~. Jurisdiction vests in the superior court at the time the information is filed.

(2) If at the time a felony complaint is filed with the district court the accused is detained in jail or subjected to conditions of release, the time from the filing of the complaint in district court to the filing of an information in superior court shall not exceed ~~30~~ 5 days plus any time which is the subject of a stipulation under subsection (g) (3). If at the time the complaint is filed with the district court the accused is not detained in jail or subjected to conditions of release, the time from the accused's first appearance in district court which next follows the filing of the complaint to the time

of the filing of an information in superior court shall not exceed 30 days, excluding any time which is the subject of a stipulation under subsection (g)(3). If the applicable time period specified above elapses and no information has been filed in superior court, the case shall be dismissed without prejudice.

(3) Before or after the preliminary hearing or a waiver thereof, the court may delay a preliminary hearing or defer a bind-over date if the parties stipulate in writing that the case shall remain in the court of limited jurisdiction for a specified time, which may be in addition to the 5 ~~30~~-day time limit established in subsection (g)(2).

(4)-(6) unchanged.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.