

WSR 22-15-066
RULES OF COURT
STATE SUPREME COURT
[July 15, 2022]

IN THE MATTER OF THE PROPOSED) ORDER
AMENDMENTS TO CrRLJ 3.4—) NO. 25700-A-1457
PRESENCE OF THE DEFENDANT)

The District and Municipal Court Judges' Association, having recommended the adoption of the proposed amendments to CrRLJ 3.4—Presence of the Defendant, and the Court having considered the proposed amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed amendments as shown below are adopted.

(b) That the proposed amendments will be published in the Washington Reports and will become effective September 1, 2022.

DATED at Olympia, Washington this 15th day of July, 2022.

Gonzalez, C.J.

Madsen, J.

Yu, J.

Owens, J.

CrRLJ 3.4 PRESENCE APPEARANCE OF THE DEFENDANT

(a) Presence Defined. Unless a court order or this rule specifically requires the physical presence of the defendant, the defendant may appear remotely or through counsel. Appearance through counsel requires that counsel either (i) present a waiver the defendant has signed indicating the defendant wishes to appear through counsel or (ii) affirm, in writing or in open court, that this is the defendant's preference. Appearance Required. The appearance of the defendant is required at all hearings set by the Court.

(b) Definitions. For purposes of this rule, "appear" or "appearance" means the defendant's physical appearance, remote appearance, or appearance through counsel.

(1) "Physical appearance" means the defendant's appearance pursuant to the CrRLJ 3.3(a) definition of appearance.

(2) "Remote appearance" means the defendant appears through a telephonic or videoconference platform approved by the Court.

(3) "Appearance through counsel" means that counsel appears on behalf of the defendant. Appearance through counsel requires that counsel affirm, in writing or in open court, that they have consulted with the defendant since the last appearance and that the defendant waives the right to be present at the instant hearing.

(b)(c) When Physical Appearance Is Required Necessary. The defendant's physical appearance shall be present physically or remotely (in the court's discretion) is required at arraignment (if one is held), at every stage of the trial including the empaneling of the jury, and the returning of the verdict, and at the imposition of imposing the sentence, and at hearings set by the Court upon a finding of

good cause, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

~~(e)(d) Effect of Voluntary Absence.~~ The defendant's voluntary absence after the trial has commenced in their presence shall not prevent continuing with the trial to and including the return of the verdict. A corporation may appear ~~by its lawyer~~ through counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the defendant's written consent ~~of the defendant~~, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

~~(d)(e) Defendant Not Present. Failure To Appear.~~ If in any case the defendant fails to appear is not present when their personal attendance appearance is necessary required, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

~~(e) Videoconference Proceedings.~~

~~(1) Authorization.~~ Preliminary appearances held pursuant to CrRLJ 3.2.1(d), arraignments held pursuant to this rule and CrRLJ 4.1, bail hearings held pursuant to CrRLJ 3.2, and trial settings held pursuant to CrRLJ 3.3(f), may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an in person hearing, which may in the trial court judge's discretion be granted.

~~(2) Agreement.~~ Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrRLJ 4.2 may be conducted by video conference only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.

~~(3) Standards for Videoconference Proceedings.~~ The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. The video and audio should be of sufficient quality to ensure participants are easily seen and understood. Videoconference facilities must provide for confidential communications between attorney and client, including a means during the hearing for the attorney and the client to read and review all documents executed therein, and security sufficient to protect the safety of all participants and observers. For purposes of videoconference proceedings, the electronic or facsimile signatures of the defendant, counsel, interested parties and the court shall be treated as if they were original signatures. This includes all orders on judgment and sentence, no contact orders, statements of defendant on pleas of guilty, and other documents or pleadings as the court shall determine are appropriate or necessary. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.

~~(f) Videoconference Proceedings under Chapter 10.77 RCW.~~

~~(1) Authorization.~~ Proceedings held pursuant to chapter 10.77 RCW, may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other except as otherwise directed by the trial court judge. When these proceedings are conducted via video conference, it is presumed that all participants

~~will be physically present in the courtroom except for the forensic evaluator unless as otherwise provided by these rules, or as excused or excluded by the court for good cause shown. Good cause may include circumstances where at the time of the hearing, the court does not have the technological capability or equipment to conduct the conference by video as provided in this rule. Such video proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule, or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge's discretion be granted.~~

~~(2) Standards for Video Conference Proceedings under Chapter 10.77 RCW. The judge, counsel, all parties, and the public must be able to see and hear each other during the proceedings, and speak as permitted by the judge. Video conference facilities must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.