

# **SUPERIOR COURT CRIMINAL RULES (CRR)**

## **1. SCOPE, PURPOSE AND CONSTRUCTION**

### **RULE 1.1 SCOPE**

These rules govern the procedure in the courts of general jurisdiction of the State of Washington in all criminal proceedings and supersede all procedural statutes and rules that may be in conflict and shall be interpreted and supplemented in light of the common law and the decisional law of this state. These rules shall not be construed to affect or derogate from the constitutional rights of any defendant.

### **RULE 1.2 PURPOSE AND CONSTRUCTION**

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay.

### **RULE 1.3 EFFECT**

Except as otherwise provided elsewhere in these rules, on their effective date:

(a) Any acts done before the effective date in any proceedings then pending or any action taken in any proceeding pending under rules of procedure in effect prior to the effective date of these rules and any constitutional right are not impaired by these rules.

(b) These rules also apply to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedures of these rules.

### **RULE 1.4 PROSECUTING ATTORNEY DEFINITION**

Whenever used in these rules, prosecuting attorney shall include deputy prosecuting attorneys, or such other person as may be designated by statute.

### **RULE 1.5 STYLE AND FORM**

[Reserved]

## **2. PROCEDURES PRIOR TO ARREST AND OTHER SPECIAL PROCEEDINGS**

### **RULE 2.1 THE INDICTMENT AND THE INFORMATION**

(a) **Use of Indictment or Information.** The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) *Nature.* The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations

made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) *Contents.* The indictment or the information shall contain or have attached to it the following information when filed with the court:

(i) the name, address, date of birth, and sex of the defendant;

(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

**(b) Surplusage.** The court on motion of the defendant may strike surplusage from the indictment or information.

**(c) Bill of Particulars.** The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit.

**(d) Amendment.** The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

**(e) Defendant's Criminal History.** Upon the filing of an indictment or information charging a felony, the prosecuting attorney shall request a copy of the defendant's criminal history, as defined in RCW 9.94A.030, from the Washington State Patrol Identification and Criminal History Section.

## **RULE 2.2 WARRANT OF ARREST AND SUMMONS**

**(a) Warrant of Arrest.** If an indictment is found or an information is filed, the court may direct the clerk to issue a warrant for the arrest of the defendant. Before ruling on a request for a warrant the court may require the complainant to appear personally and may examine under oath the complainant and any witnesses the complainant may produce. A warrant of arrest may not issue unless the court determines that there is probable cause to believe that the defendant committed the offense charged. The court shall determine probable cause based on an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically or stenographically. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

### **(b) Issuance of Summons in Lieu of Warrant.**

(1) *Generally.* If an indictment is found or an information is filed, the court may direct the clerk to issue a summons commanding the defendant to appear before the court at a specified time and place.

(2) *When Summons Must Issue.* If the indictment or information charges only the commission of a misdemeanor or a gross misdemeanor, the court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent bodily harm to the accused or another, in which case it may issue a warrant.

(3) *Summons.* A summons shall be in writing and in the name of the State of Washington, shall be signed by the clerk with the title of the office, and shall state the date when issued and the county where issued. It shall state the name of the defendant and shall summon the defendant to appear before the court at a stated time and place.

(4) *Failure to Appear on Summons.* If a person fails to appear in response to a summons, or if service is not effected within a reasonable time, a warrant for arrest may issue.

**(c) Requisites of a Warrant.** The warrant shall be in writing and in the name of the State of Washington, shall be signed by the clerk with the title of the office, and shall state the date when issued and the county where issued. It shall specify the name of the defendant, or if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The warrant shall specify the offense charged against the defendant and that the court has found that probable cause exists to believe the defendant has committed the offense charged and shall command that the defendant be arrested and brought forthwith before the court issuing the warrant. If the offense is bailable, the judge shall set forth in the order for the warrant, bail, or other conditions of release.

**(d) Execution; Service.**

(1) *Execution of Warrant.* The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Service of Summons.* The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, postage prepaid, to the defendant at the defendant's address.

**(e) Return.** The officer executing a warrant shall make return to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the issuing court to be canceled. The person to whom a summons has been delivered for service shall, on or before the return date, file a return with the court before which the summons is returnable. For reasonable cause, the court may order that the warrant be returned to it.

**(f) Defective Warrant or Summons.**

(1) *Amendment.* No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

(2) *Issuance of New Warrant or Summons.* If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which the defendant is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that the defendant is guilty of some other offense, the judge shall not discharge or dismiss the defendant but may allow a new indictment or information to be filed and shall thereupon issue a new warrant or summons.

**RULE 2.3 SEARCH AND SEIZURE**

**(a) Authority to Issue Warrant.** A search warrant authorized by this rule may be issued by the court upon request of a peace officer or a prosecuting attorney.

**(b) Property or Persons Which May Be Seized With a Warrant.** A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise

criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

**(c) Issuance and Contents.** A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. There must be an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant. The sworn testimony may be an electronically recorded telephonic statement. The recording or a duplication of the recording shall be a part of the court record and shall be transcribed if requested by a party if there is a challenge to the validity of the warrant or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purpose to affix the court's signature to a warrant identifying the property or person and naming or describing the person, place or thing to be searched. The court shall record a summary of any additional evidence on which it relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property or person specified. It shall designate to whom it shall be returned. The warrant may be served at any time.

**(d) Execution and Return With Inventory.** The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

**(e) Motion for Return of Property.** A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress.

**(f) Searches of Media.**

(1) *Scope.* If an application for a search warrant is governed by RCW 10.79.015(3) or 42 U.S.C. §§ 2000aa et seq., this section controls the procedure for obtaining the evidence.

(2) *Subpoena Duces Tecum.* Except as provided in subsection (3), if the court determines that the application satisfies the requirements for issuance of a warrant, as provided in section (c) of this rule, the court shall issue a subpoena duces tecum in accordance with CR 45(b).

(3) *Warrant.* If the court determines that the application satisfies the requirements for issuance of a warrant and that RCW 10.79.015(3) and 42 U.S.C. §§ 2000aa et seq. permit issuance of a search warrant rather than a subpoena duces tecum, the court may issue a warrant.

### **3. RIGHTS OF DEFENDANTS**

#### **RULE 3.1 RIGHT TO AND ASSIGNMENT OF LAWYER**

**(a) Types of Proceedings.** The right to a lawyer shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

**(b) Stage of Proceedings.**

(1) The right to a lawyer shall accrue as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original lawyer pursuant to section (e) because geographical considerations or other factors make it necessary.

**(c) Explaining the Availability of a Lawyer.**

(1) When a person is taken into custody that person shall immediately be advised of the right to a lawyer. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires a lawyer shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning a lawyer, and any other means necessary to place the person in communication with a lawyer.

**(d) Assignment of Lawyer.**

(1) Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the person's family. A lawyer shall not be denied to any person merely because the person's friends or relatives have resources adequate to retain a lawyer or because the person has posted or is capable of posting bond.

(2) The ability to pay part of the cost of a lawyer shall not preclude assignment. The assignment of a lawyer may be conditioned upon part payment pursuant to an established method of collection.

(3) Information given by a person to assist in the determination of whether the person is financially able to obtain a lawyer shall be under oath and shall not be available for use by the prosecution in the pending case in chief.

**(e) Withdrawal of Lawyer.** Whenever a criminal cause has been set for trial, no lawyer shall be allowed to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

**(f) Services Other Than a Lawyer.**

(1) A lawyer for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in the case may request them by a motion to the court.

(2) Upon finding the services are necessary and that the defendant is financially unable to obtain them, the court, or a person or agency to whom the administration of the program may have been delegated by local court rule, shall authorize the services. The motion may be made ex parte, and, upon a showing of good cause, the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

(3) Reasonable compensation for the services shall be determined and payment directed to the organization or person who rendered them upon the filing of a claim for compensation supported by affidavit specifying the time expended and the services and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

**RULE 3.2 RELEASE OF ACCUSED**

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

**(a) Presumption of Release in Noncapital Cases.** Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3. 2.1 be ordered released on the accused's personal recognizance pending trial unless:

- (1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or
- (2) there is shown a likely danger that the accused:
  - (a) will commit a violent crime, or
  - (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

**(b) Showing of Likely Failure to Appear--Least Restrictive Conditions of Release.** If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

- (1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- (2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
- (3) Require the execution of an unsecured bond in a specified amount;
- (4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;
- (5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;
- (6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or
- (7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required.

If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

**(c) Relevant Factors--Future Appearance.** In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

- (1) The accused's history of response to legal process, particularly court orders to personally appear;
- (2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;
- (3) The accused's family ties and relationships;
- (4) The accused's reputation, character and mental condition;
- (5) The length of the accused's residence in the community;
- (6) The accused's criminal record;
- (7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;
- (8) The nature of the charge, if relevant to the risk of nonappearance;
- (9) Any other factors indicating the accused's ties to the community.

**(d) Showing of Substantial Danger--Conditions of Release.** Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

- (1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;
- (2) Prohibit the accused from going to certain geographical areas or premises;
- (3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;
- (4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;
- (5) Prohibit the accused from committing any violations of criminal law;
- (6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.
- (7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- (8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
- (9) Require the accused to return to custody during specified hours or to be placed on electronic

monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

**(e) Relevant Factors--Showing of Substantial Danger.** In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

- (1) The accused's criminal record;
- (2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;
- (3) The nature of the charge;
- (4) The accused's reputation, character and mental condition;
- (5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;
- (6) Whether or not there is evidence of present threats or intimidation directed to witnesses;
- (7) The accused's past record of committing offenses while on pretrial release, probation or parole; and
- (8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victim's or witnesses.

**(f) Delay of Release.** The court may delay release of a person in the following circumstances:

- (1) If the person is intoxicated and release will jeopardize the persons safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.
- (2) If the persons mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.
- (3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

**(g) Release in Capital Cases.** Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

**(h) Release After Finding or Plea of Guilty.** After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

**(i) Order for Release.** A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

**(j) Review of Conditions.**

(1) 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. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (i). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

**(k) Amendment or Revocation of Order.**

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (j). Release may be revoked only if the violation is proved by clear and convincing evidence.

**(l) Arrest for Violation of Conditions.**

(1) *Arrest With Warrant.* Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (k).

(2) *Arrest Without Warrant.* A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (k).

**(m) Evidence.** Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

**(n) Forfeiture.** Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

**(o) Accused Released on Recognizance or Bail--Absence--Forfeiture.** If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

**RULE 3.2.1 PROCEDURE FOLLOWING WARRANTLESS ARREST--PRELIMINARY APPEARANCE**

**(a) Probable Cause Determination.** A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.

**(b) How Determined.** The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in rule 2.2(a). The evidence shall be preserved and may consist of an electronically recorded telephonic statement. If the court finds that release without

bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for trial, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations, and may be hearsay in whole or in part.

**(c) Court Days.** For the purpose of section (a) Saturday, Sunday and holidays may be considered judicial days.

**(d) Preliminary Appearance.**

(1) *Adult.* Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court- authorized conditions of release shall be brought before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next court day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.

(2) *Juveniles.* Any person in whose case the juvenile court has entered a written order declining jurisdiction, and who is detained in custody must be taken to appear before the superior court as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day

(3) *Unavailability.* If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.

**(e) Procedure at Preliminary Appearance.**

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, and the court shall orally inform the accused:

- (i) of the nature of the charge against the accused;
- (ii) of the right to be assisted by a lawyer at every stage of the proceedings; and
- (iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charges, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the findings of probable cause may be based on evidence which is hearsay in whole or in part.

**(f) Time Limits.**

(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, an accused, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays or holidays.

(2) If no information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

### **RULE 3.2A PROCEDURE FOLLOWING ARREST WITHOUT WARRANT**

**[REPEALED]**

### **RULE 3.2B PRELIMINARY APPEARANCE**

**[REPEALED]**

### **RULE 3.3 TIME FOR TRIAL**

**(a) Responsibility of Court.** It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with having committed a crime.

**(b) Precedence Over Civil Cases.** Criminal trials shall take precedence over civil trials.

**(c) Time for Arraignment and Trial.**

(1) *Cases Filed Directly in Superior Court.* If the defendant is detained in jail or subject to conditions of release, the defendant shall be arraigned not later than 14 days after the date the information or indictment is filed directly in superior court. If the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after that appearance in superior court which next follows the filing of the information or indictment. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment.

(2) *Cases Filed Initially in District Court.*

(i) If after proceedings have been initiated in district court an information or indictment is filed with the superior court, and if at the time the information or indictment is filed the defendant is detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after the date the information or indictment is filed. If after proceedings have been initiated in district court an information or indictment is filed with the superior court, and if at the time the information or indictment is filed the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after the date of that appearance in superior court which next follows the filing of the information or indictment. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment, less time elapsed in district court. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment, less time elapsed in district court.

(ii) "Time elapsed in district court" means the following: If at the time a complaint is filed with the district court a defendant is detained in jail or subjected to conditions of release, time elapsed in district court commences on the date the complaint is filed. If at the time a complaint is filed with the district court the defendant is not detained in jail or subjected to conditions of release, time elapsed in district court commences on the date of the defendant's appearance in district court which next follows the filing

of the complaint. Time elapsed in district court ends with the earlier of (a) an oral or written order of dismissal entered by the district court, or (b) the filing of an information or indictment in superior court. Time elapsed in district court does not include time which was the subject of a stipulation entered into pursuant to CrRLJ 3.2.1(d)(3).

(3) *Cases Filed Initially in Juvenile Court.* If an information or indictment is filed with the superior court after a juvenile court has declined jurisdiction, and if at the time the information or indictment is filed the defendant is detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after the date the information or indictment is filed. If an information or indictment is filed with the superior court after a juvenile court has declined jurisdiction, and if at the time the information or indictment is filed the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after that appearance in superior court which next follows the filing of the information or indictment. A defendant not released from jail pending trial in superior court shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release pending trial in superior court shall be brought to trial not later than 90 days after the date of arraignment.

(4) *Untimely Arraignment.* If a defendant is not arraigned within the time limits of this rule and an objection to the date of arraignment has been made as required by section (e) of this rule, the time for trial established in this section shall commence on the last day the defendant could properly have been arraigned.

(5) *Rearraignment.* If a defendant is required to be rearraigned on a charge that arises out of the same occurrence and has the same elements of proof as those upon which the defendant was previously arraigned, the time for trial established in this section shall commence on the date of the previous arraignment in superior court.

(6) *Arraignment Defined.* As used in CrR 3.3, "arraignment" means the date on which a plea is entered to the charge.

**(d) Extensions of Time for Trial.** The following extensions of time limits apply notwithstanding the provisions of section (c):

(1) *Revocation of Release.* A defendant who has been released from jail pending trial, pursuant to an order imposing conditions of release, but whose release is then revoked by order of the court, shall be brought to trial within such a time period that the defendant spends no more than a total of 60 days in jail following the date of arraignment, and in any event within such a time period that the defendant is tried not later than a total of 90 days after the date of arraignment unless the time period is otherwise extended by this rule.

(2) *Failure to Appear.* When a defendant who has already been arraigned fails to appear for any trial or pretrial proceeding at which the defendant's presence is required pursuant to rule 3.4, the defendant shall be brought to trial not later than 60 days after the date upon which the defendant is present in the county where the criminal charge is pending and the defendant's presence has been made known to the court on the record, if the defendant is thereafter detained in jail or not later than 90 days after such date if the defendant is not detained in jail whether or not the defendant is thereafter subjected to conditions of release.

(3) *Mistrial and New Trial.* If before verdict the superior court orders a mistrial, the defendant shall be brought to trial not later than 60 days after the oral order of the court if the defendant is thereafter detained in jail or not later than 90 days after the oral order if the defendant is not detained in jail and whether or not the defendant is subjected to conditions of release. If after verdict the superior court orders a new trial, the defendant shall be brought to trial not later than 60 days after entry of the written order of the court if the defendant is thereafter detained in jail, or not later than 90 days after entry of such written order if the defendant is not detained in jail and whether or not the defendant is thereafter subjected to conditions of release.

(4) *Trial After Appeal or Stay.* If a cause is remanded for trial after an appellate court accepts review or

stays proceedings, the defendant shall be brought to trial not later than 60 days after that appearance by or on behalf of the defendant in superior court, with notice to both parties of any such appearance, which next follows receipt by the clerk of the superior court of the mandate or other written order, if after such appearance the defendant is detained in jail, or not later than 90 days after such appearance if the defendant is thereafter released whether or not subject to conditions of release.

(5) *Change of Venue.* If a change of venue has been granted pursuant to rule 5.2, the case shall be transferred to the receiving court as soon as practicable but within 7 days and the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the date upon which the court to which the case is being transferred for trial receives the filing of the case, whichever is later. If, however, after a change of venue is attempted, the criminal calendar of the receiving county will prevent compliance with the time limits within this section, the trial shall commence on the earliest available date permitted by the criminal calendar of the receiving county.

(6) *Disqualification.* If the prosecuting attorney or judge becomes disqualified from participating in the case, the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the disqualification, whichever is later.

(7) *Withdrawal of Guilty Plea.* If a defendant has been permitted to withdraw a plea of guilty, the defendant shall be brought to trial not later than 60 days after the date of the written order allowing withdrawal of the guilty plea if the defendant is thereafter detained in jail or not later than 90 days if the defendant is thereafter released from jail, whether or not subjected to conditions of release.

(8) *Five-Day Extensions.* When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the court or the parties, the court, even if the time for trial has expired, may extend the time within which trial must be held for no more than 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension. If the nature of the unforeseen or unavoidable circumstance continues, the court may extend the time for trial in increments of not to exceed 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension.

**(e) Objection to Arraignment Date--Waiver of Objection.** 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 the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment pursuant to section (c) of this rule, and the time for trial set out in section (c) shall be deemed to have commenced on that date. Failure of a party to object as required shall be a waiver of the objection, and the date of arraignment shall be conclusively established as the date upon which the defendant was actually arraigned.

**(f) Setting of Trial Date-Notice to Parties-Objection to Trial Date-Waiver.**

(1) The court shall, within 15 days of the defendant's actual arraignment in superior court, or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule, and notify counsel for each party of the date set. If a party is not represented by counsel, the notice shall be given to the party, and may be mailed to the party's last known address. The notice shall set forth the proper date of the defendant's arraignment as established at the time of arraignment and the date set for trial. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such date, or on an extension of such date properly granted pursuant to this rule, is not within the time limits prescribed by this rule.

(2) When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a period of extension pursuant to section (d) or a period of exclusion pursuant to section (g), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel

or party of the date set as provided in subsection (f)(1). A party who objects to the date set on the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial date within those time limits. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such a date or on an extension of such date granted pursuant to subsection (d)(8), is not within the time limits prescribed by this rule.

**(g) Excluded Periods.** The following periods shall be excluded in computing the time for arraignment and the time for trial:

- (1) All proceedings relating to the competency of a defendant to stand trial, terminating when the court enters a written order finding the defendant to be competent;
- (2) Preliminary proceedings and trial on another charge except as otherwise provided by CrR 3.3(c)(5);
- (3) Delay granted by the court pursuant to section (h);
- (4) The time between the dismissal of a charge and the defendant's arraignment or rearraignment in superior court following the refiling of the same charge;
- (5) [Reserved.]
- (6) The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington;
- (7) All proceedings in juvenile court.

**(h) Continuances.** Continuances or other delays may be granted as follows:

- (1) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the court on the record or in writing.
- (2) On motion of the State, the court or a party, the court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The court must state on the record or in writing the reasons for the continuance.

**(i) Dismissal With Prejudice.** A criminal charge not brought to trial within the time period provided by this rule shall be dismissed with prejudice.

**(j) Waiver.** A defendant may waive his or her time for trial rights. A waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain beyond the current expiration date as calculated pursuant to this rule or for a period of days beyond the current expiration date.

#### **RULE 3.4 PRESENCE OF THE DEFENDANT**

**(a) When Necessary.** The defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

**(b) Effect of Voluntary Absence.** The defendant's voluntary absence after the trial has commenced in his or her presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by its lawyer for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written

consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

**(c) Defendant Not Present.** If in any case the defendant is not present when his or her personal attendance is necessary, 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.

**(d) Video Conference Proceedings.**

(1) *Authorization.* Preliminary appearances held pursuant to CrR 3.2.1, arraignments held pursuant to this rule and CrR 4.1, bail hearings held pursuant to CrR 3.2, and trial settings held pursuant to CrR 3.3, 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 CrR 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 Video Conference 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. 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.

**RULE 3.5 CONFESSION PROCEDURE**

**(a) Requirement for and Time of Hearing.** When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing.

**(b) Duty of Court to Inform Defendant.** It shall be the duty of the court to inform the defendant that: (1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial.

**(c) Duty of Court to Make a Record.** After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.

**(d) Rights of Defendant When Statement Is Ruled Admissible.** If the court rules that the statement is admissible, and it is offered in evidence: (1) the defense may offer evidence or cross-examine the witnesses, with respect to the statement without waiving an objection to the admissibility of the statement; (2) unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary hearing on the admissibility of the confession; (3) if the defendant becomes a witness on this issue, he shall be subject to cross examination to the same extent as would any other witness; and, (4) if the defense raises the issue of voluntariness under subsection (1) above, the jury shall be instructed that they may give such weight and credibility to the confession in view of the surrounding circumstances, as they see fit.

**RULE 3.6 SUPPRESSION HEARINGS--DUTY OF COURT**

**(a) Pleadings.** Motions to suppress physical, oral or identification evidence, other than motion pursuant to rule 3.5, shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the motion. Opposing counsel may be ordered to serve and file a memorandum of authorities in opposition to the motion. The court shall determine whether an evidentiary hearing is required based upon the moving papers. If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons.

**(b) Hearing.** If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law.

**4. PROCEDURES PRIOR TO TRIAL**

**RULE 4.1 ARRAIGNMENT**

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

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

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

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

**RULE 4.2 PLEAS**

**(a) Types.** A defendant may plead not guilty, not guilty by reason of insanity or guilty.

**(b) Multiple Offenses.** Where the indictment or information charges two or more offenses in separate counts the defendant shall plead separately to each.

**(c) Pleading Insanity.** Written notice of an intent to rely on the insanity defense, and/or a claim of present incompetency to stand trial, must be filed at the time of arraignment or within 10 days thereafter, or at such later time as the court may for good cause permit. All procedures concerning the defense of insanity or the competence of the defendant to stand trial are governed by RCW 10.77.

**(d) Voluntariness.** The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

**(e) Agreements.** If the defendant intends to plead guilty pursuant to an agreement with the prosecuting attorney, both the defendant and the prosecuting attorney shall, before the plea is entered, file with the court their understanding of the defendant's criminal history, as defined in RCW 9.94A.030. The nature of the agreement and the reasons for the agreement shall be made a part of the record at the time the plea is entered. The validity of the agreement under RCW 9.94A.090 may be determined at the same hearing at which the plea is accepted.

**(f) Withdrawal of Plea.** The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. If the defendant pleads guilty pursuant to a plea agreement and the court determines under RCW 9.94A.090 that the agreement is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.430-.460, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.

**(g) Written Statement.** A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty:

FORM OMITTED

**(h) Verification by Interpreter.** If a defendant is not fluent in the English language, a person the court has determined has fluency in the defendant's language shall certify that the written statement provided for in section (g) has been translated orally or in writing and that the defendant has acknowledged that he or she understands the translation.

#### **RULE 4.3 JOINDER OF OFFENSES AND DEFENDANTS**

**(a) Joinder of Offenses.** Two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:

- (1) Are of the same or similar character, even if not part of a single scheme or plan; or
- (2) Are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

**(b) Joinder of Defendants.** Two or more defendants may be joined in the same charging document:

- (1) When each of the defendants is charged with accountability for each offense included;
- (2) When each of the defendants is charged with conspiracy and one or more of the defendants is also charged with one or more offenses alleged to be in furtherance of the conspiracy; or
- (3) When, even if conspiracy is not charged and all of the defendants are not charged in each count, it is alleged that the several offenses charged:
  - (i) were part of a common scheme or plan; or
  - (ii) were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others.

**(c) [Reserved].**

**(d) [Reserved].**

**(e) Improper Joinder.** Improper joinder of offenses or defendants shall not preclude subsequent prosecution on the same charge for the charge or defendant improperly joined.

#### **RULE 4.3.1 CONSOLIDATION FOR TRIAL**

**(a) Consolidation Generally.** Offenses or defendants properly joined under rule 4.3 shall be consolidated for trial unless the court orders severance pursuant to rule 4.4.

**(b) Failure to Join Related Offenses.**

(1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.

(2) When a defendant has been charged with two or more related offenses, the timely motion to consolidate them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of consolidation as to related offenses with which the defendant knew he or she was charged.

(3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for consolidation of these offenses was previously denied or the right of consolidation was waived as provided in this rule. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(4) Entry of a plea of guilty to one offense does not bar the subsequent prosecution of a related offense unless the plea of guilty was entered on the basis of a plea agreement in which the prosecuting attorney agreed to seek or not to oppose dismissal of other related charges or not to prosecute other potential related charges.

**(c) Authority of Court To Act on Own Motion.** The court may order consolidation for trial of two or more indictments or informations if the offenses or defendants could have been joined in a single charging document under rule 4.3.

#### **RULE 4.3A CONSOLIDATION FOR TRIAL [RENUMBERED]**

#### **RULE 4.4 SEVERANCE OF OFFENSES AND DEFENDANTS**

**(a) Timeliness of Motion--Waiver.**

(1) A defendant's motion for severance of offenses or defendants must be made before trial, except that a motion for severance may be made before or at the close of all the evidence if the interests of justice require. Severance is waived if the motion is not made at the appropriate time.

(2) If a defendant's pretrial motion for severance was overruled he may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

**(b) Severance of Offenses.** The court, on application of the prosecuting attorney, or on application of the defendant other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

**(c) Severance of Defendants.**

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him is inadmissible against him shall be granted unless:

(i) the prosecuting attorney elects not to offer the statement in the case in chief;

(ii) deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

(2) The court, on application of the prosecuting attorney, or on application of the defendant other than under subsection (i), should grant a severance of defendants whenever:

(i) if before trial, it is deemed necessary to protect a defendant's rights to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or

(ii) if during trial upon consent of the severed defendant, it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

(3) When such information would assist the court in ruling on a motion for severance of defendants, the court may order the prosecuting attorney to disclose any statements made by the defendants which he intends to introduce in evidence at the trial.

(4) The assignment of a separate cause number to each defendant of those named on a single charging document is not considered a severance. Should a defendant desire that the case be severed, the defendant must move for severance.

**(d) Failure to Prove Grounds for Joinder of Defendants.** If, pursuant to section (a), a defendant moves to be severed at the conclusion of the prosecution's case or of all the evidence, and there is not sufficient evidence to support the grounds upon which the moving defendant was joined or previously denied severance, the court shall grant a severance if, in view of this lack of evidence, failure to sever prejudices the moving defendant.

**(e) Authority of Court to Act on Own Motion.** The court may order a severance of offenses or defendants before trial if a severance could be obtained on motion of a defendant or the prosecution.

**RULE 4.5 OMNIBUS HEARING**

**(a) When Required.** When a plea of not guilty is entered, the court shall set a time for an omnibus hearing.

**(b) Time.** The time set for the omnibus hearing shall allow sufficient time for counsel to (i) initiate and complete discovery; (ii) conduct further investigation of the case, as needed; and (iii) continue plea discussions.

**(c) Checklist.** At the omnibus hearing, the trial court on its own initiative, utilizing a checklist substantially in the form of the omnibus application by plaintiff and defendant (see section (h)) shall:

(i) ensure that standards regarding provision of counsel have been complied with;

(ii) ascertain whether the parties have completed discovery and, if not, make orders appropriate to expedite completion;

(iii) make rulings on any motions, other requests then pending, and ascertain whether any additional motions, or requests will be made at the hearing or continued portions thereof;

(iv) ascertain whether there are any procedural or constitutional issues which should be considered;

(v) upon agreement of counsel, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference; and

(vi) permit defendant to change his plea.

**(d) Motions.** All motions and other requests prior to trial should be reserved for and presented at the omnibus hearing unless the court otherwise directs. Failure to raise or give notice at the hearing of any error or issue of which the party concerned has knowledge may constitute waiver of such error or issue. Checklist forms substantially like the memorandum required by section (h) shall be made available by the court and utilized at the hearing to ensure that all requests, errors and issues are then considered.

**(e) Continuance.** Any and all issues should be raised either by counsel or by the court without prior notice, and if appropriate, informally disposed of. If additional discovery, investigation or preparation, or evidentiary hearing, or formal presentation is necessary for a fair and orderly determination of any issue, the omnibus hearing should be continued from time to time until all matters raised are properly disposed of.

**(f) Record.** A verbatim record (electronic, mechanical or otherwise), shall be made of all proceedings at the hearing.

**(g) Stipulations.** Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the court in the interests of justice.

**(h) Memorandum.** At the conclusion of the hearing, a summary memorandum shall be made indicating disclosure made, rulings and orders of the court, stipulations, and any other matters determined or pending. Such summary memorandum shall be in substantially the following form:

FORM OMITTED

#### **RULE 4.6 DEPOSITIONS**

**(a) When Taken.** Upon a showing that a prospective witness may be unable to attend or prevented from attending a trial or hearing or if a witness refuses to discuss the case with either counsel and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a party and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

**(b) Notice of Taking.** The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time and may change the place of taking.

**(c) How Taken.** A deposition shall be taken in the manner provided in civil actions. No deposition shall be used in evidence against any defendant who has not had notice of and an opportunity to participate in or be present at the taking thereof.

**(d) Use.** Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as witness, or as substantive evidence under circumstances permitted by the Rules of Evidence.

**(e) Objections to Admissibility.** Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

#### **RULE 4.7 DISCOVERY**

##### **(a) Prosecutor's Obligations.**

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing:

(i) the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(iii) when authorized by the court, those portions of grand jury minutes containing testimony of the defendant, relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, and any relevant testimony that has not been transcribed;

(iv) any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(v) any books, papers, documents, photographs, or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the defendant; and

(vi) any record or prior criminal convictions known to the prosecuting attorney of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(2) The prosecuting attorney shall disclose to the defendant:

(i) any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;

(ii) any expert witnesses whom the prosecuting attorney will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecuting attorney;

(iii) any information which the prosecuting attorney has indicating entrapment of the defendant.

(3) Except as is otherwise provided as to protective orders, the prosecuting attorney shall disclose to defendant's counsel any material or information within the prosecuting attorney's knowledge which tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting attorney's obligation under this section is limited to material and information within the knowledge, possession or control of members of the prosecuting attorney's staff.

##### **(b) Defendant's Obligations.**

(1) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the defendant shall disclose to the prosecuting attorney the following material and information within the defendant's control no later than the omnibus hearing: the names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witness.

(2) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting attorney or the defendant, may require or allow the defendant to:

- (i) appear in a lineup;
- (ii) speak for identification by a witness to an offense;
- (iii) be fingerprinted;
- (iv) pose for photographs not involving reenactment of the crime charged;
- (v) try on articles of clothing;
- (vi) permit the taking of samples of or from the defendant's blood, hair, and other materials of the defendant's body including materials under the defendant's fingernails which involve no unreasonable intrusion thereof;
- (vii) provide specimens of the defendant's handwriting;
- (viii) submit to a reasonable physical, medical, or psychiatric inspection or examination;
- (ix) state whether there is any claim of incompetency to stand trial;
- (x) allow inspection of physical or documentary evidence in defendant's possession;
- (xi) state whether the defendant's prior convictions will be stipulated or need to be proved;
- (xii) state whether or not the defendant will rely on an alibi and, if so, furnish a list of alibi witnesses and their addresses;
- (xiii) state whether or not the defendant will rely on a defense of insanity at the time of the offense;
- (xiv) state the general nature of the defense.

(3) Provisions may be made for appearance for the foregoing purposes in an order for pretrial release.

**(c) Additional Disclosures Upon Request and Specification.** Except as is otherwise provided as to matters not subject to disclosure the prosecuting attorney shall, upon request of the defendant, disclose any relevant material and information regarding:

- (1) Specified searches and seizures;
- (2) The acquisition of specified statements from the defendant; and
- (3) The relationship, if any, of specified persons to the prosecuting authority.

**(d) Material Held by Others.** Upon defendant's request and designation of material or information in the

knowledge, possession or control of other persons which would be discoverable if in the knowledge, possession or control of the prosecuting attorney, the prosecuting attorney shall attempt to cause such material or information to be made available to the defendant. If the prosecuting attorney's efforts are unsuccessful and if such material or persons are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to the defendant.

**(e) Discretionary Disclosures.**

(1) Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure to the defendant of the relevant material and information not covered by sections (a), (c) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

**(f) Matters Not Subject to Disclosure.**

(1) *Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under subsection (a)(1)(iv).

(2) *Informants.* Disclosure of an informant's identity shall not be required where the informant's identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

**(g) Medical and Scientific Reports.** Subject to constitutional limitations, the court may require the defendant to disclose any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which the defendant intends to use at a hearing or trial.

**(h) Regulation of Discovery.**

(1) *Investigations Not to Be Impeded.* Except as is otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Continuing Duty to Disclose.* If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other party or their counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) *Custody of Materials.* Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney and be used only for the purposes of conducting the party's side of the case, and shall be subject to such other terms and conditions as the court may provide.

(4) *Protective Orders.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) *Excision.* When some parts of certain material are discoverable under this rule, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised

pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(6) *In Camera Proceedings.* Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) *Sanctions.*

(i) if at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

#### **RULE 4.8 SUBPOENAS**

Subpoenas shall be issued in the same manner as in civil actions.

#### **RULE 4.9 PRETRIAL CONFERENCE [RESCINDED]**

#### **RULE 4.10 MATERIAL WITNESS**

(a) **Warrant.** On motion of the prosecuting attorney or the defendant, the court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open court, that the testimony of the witness is material and that

- (1) The witness has refused to submit to a deposition ordered by the court pursuant to rule 4.6; or
- (2) The witness has refused to obey a lawfully issued subpoena; or
- (3) It may become impracticable to secure the presence of the witness by subpoena.

Unless otherwise ordered by the court, the warrant shall be executed and returned as in rule 2.2.

(b) **Hearing.** After the arrest of the witness, the court shall hold a hearing no later than the next judicial day after the witness is present in the county from which the warrant issued. The witness shall be entitled to be represented by a lawyer. The court shall appoint a lawyer for an indigent witness if it is required to protect the rights of the witness.

(c) **Release/Detention.** Upon a determination that the testimony of the witness is material and that one of the conditions set forth in section (a) exists, the court shall set conditions for release of the witness pursuant to rule 3.2. A material witness shall be released unless the court determines that the testimony of such witness cannot be secured adequately by deposition and that further detention is necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to rule 4.6.

## 5. VENUE

### RULE 5.1 COMMENCEMENT OF ACTIONS

**(a) Where Commenced.** All actions shall be commenced:

- (1) In the county where the offense was committed;
- (2) In any county wherein an element of the offense was committed or occurred.

**(b) Two or More Counties.** When there is reasonable doubt whether an offense has been committed in one of two or more counties, the action may be commenced in any such county.

**(c) Right to Change.** When a case is filed pursuant to section (b) of this rule, the defendant shall have the right to change venue to any other county in which the offense may have been committed. Any objection to venue must be made as soon after the initial pleading is filed as the defendant has knowledge upon which to make it.

### RULE 5.2 CHANGE OF VENUE

**(a) When Ordered--Improper County.** The court shall order a change of venue upon motion and showing that the action has not been prosecuted in the proper county.

**(b) When Ordered--On Motion of Party.** The court may order a change of venue to any county in the state:

- (1) Upon written agreement of the prosecuting attorney and the defendant;
- (2) Upon motion of the defendant, supported by affidavit that he believes he cannot receive a fair trial in the county where the action is pending.

**(c) Discharge of Jury.** When the court orders a change of venue it shall discharge the jury, if any, without prejudice to the prosecution, and direct that all the papers and proceedings be certified to the superior court of the proper county and direct the defendant and the witnesses to appear at such court.

## 6. PROCEDURES AT TRIAL

### RULE 6.1 TRIAL BY JURY OR BY THE COURT

**(a) Trial by Jury.** Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.

**(b) Number of Jurors.** Unless otherwise provided by these rules, the number of persons serving on a jury shall be 12, not including alternates. If prior to trial on a noncapital case all defendants so elect, the case shall be tried by a jury of not less than six, or by the court.

**(c) Juror Unable to Continue.** If a case has not yet been submitted to the jury and a juror is unable to continue and no alternate jurors were selected or none are available, or if a case has been submitted to the jury and a juror is unable to continue, all defendants may elect to continue with the remaining jurors. The court shall declare a mistrial for any defendant who does not elect to continue with the remaining jurors. If some, but not all, defendants elect to continue with the trial, the court shall proceed with the trial for those defendants unless the court determines manifest necessity requires a mistrial.

**(d) Trial Without Jury.** In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

### **RULE 6.2 JURORS' ORIENTATION**

All jurors will be given a general orientation when they report for duty.

**(a) Juror Handbook.** A copy of the Juror's Handbook to Washington Courts prepared by the Superior Court Judges' Association of the State of Washington and the Washington State Magistrates Association shall be provided to all petit jurors by the court in which they are to serve.

**(b) Juror Information Sheet.** Prior to the commencement of a petit juror's term of service, a juror information sheet shall be furnished to the juror by the court in which the person is to serve. The format of the information sheet shall be consistent with recommendations of the Administrator for the Courts.

### **RULE 6.3 SELECTING THE JURY**

When the action is called for trial, the jurors shall be selected at random from the jurors summoned who have appeared and have not been excused.

### **RULE 6.4 CHALLENGES**

**(a) Challenges to the Entire Panel.** Challenges to the entire panel shall only be sustained for a material departure from the procedures prescribed by law for their selection.

**(b) Voir Dire.** A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge and counsel may then ask the prospective jurors questions touching their qualifications to serve as jurors in the case, subject to the supervision of the court as appropriate to the facts of the case.

**(c) Challenges for Cause.**

(1) If the judge after examination of any juror is of the opinion that grounds for challenge are present, he or she shall excuse that juror from the trial of the case. If the judge does not excuse the juror, any party may challenge the juror for cause.

(2) RCW 4.44.150 through 4.44.200 shall govern challenges for cause.

**(d) Exceptions to Challenge.**

(1) *Determination.* The challenge may be excepted to by the adverse party for insufficiency and, if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party and, if so, the court shall try the issue and determine the law and the facts.

(2) *Trial of Challenge.* Upon trial of a challenge, the Rules of Evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or if found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if not so determined or found otherwise, it shall be disallowed.

**(e) Peremptory Challenges.**

(1) *Peremptory Challenges Defined.* A peremptory challenge is an objection to a juror for which there is no reason given, but upon which the court shall exclude the juror. In prosecutions for capital offenses the defense and the state may challenge peremptorily 12 jurors each; in prosecution for offenses punishable by imprisonment in the state Department of Corrections 6 jurors each; in all other prosecutions, 3 jurors each. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the number of challenges provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant.

(2) *Peremptory Challenges--How Taken.* After prospective jurors have been passed for cause, peremptory challenges shall be exercised alternately first by the prosecution then by each defendant until the peremptory challenges are exhausted or the jury accepted. Acceptance of the jury as presently constituted shall not waive any remaining peremptory challenges to jurors subsequently called.

### **RULE 6.5 ALTERNATE JURORS**

When the jury is selected the court may direct the selection of one or more additional jurors, in its discretion, to be known as alternate jurors. Each party shall be entitled to one peremptory challenge for each alternate juror to be selected. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the challenge provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant. If at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged, and the clerk shall draw the name of an alternate who shall take the juror's place on the jury.

Alternate jurors who do not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When jurors are temporarily excused but not discharged, the trial judge shall take appropriate steps to protect alternate jurors from influence, interference or publicity, which might affect that juror's ability to remain impartial and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. Such alternate juror may be recalled at any time that a regular juror is unable to serve, including a second phase of any trial that is bifurcated. If the jury has commenced deliberations prior to replacement of an initial juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and begin deliberations anew.

### **RULE 6.6 JURORS' OATH**

The jury shall be sworn or affirmed well and truly to try the issue between the State and the defendant, according to the evidence and instructions by the court.

### **RULE 6.7 CUSTODY OF JURY**

(a) **Generally.** During trial and deliberations the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury.

(b) **Communication Restricted.** Unless the jury is allowed to separate, the jurors shall be kept together under the charge of one or more officers until they agree upon their verdict or are discharged by the court. The officer shall keep the jurors separate from other persons and shall not allow any communication which may affect the case to be made to the jurors, nor make any himself, unless by order of the court, except to ask the jurors if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of the

jurors' deliberations or their verdict.

**(c) Motions.** Any motions or proceedings concerning the separation or sequestration of the jury shall be made out of the presence of the jury.

#### **RULE 6.8 NOTE TAKING BY JURORS**

In all cases, jurors shall be allowed to take written notes regarding the evidence presented to them and keep these notes with them during their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

#### **RULE 6.9 VIEW OF PREMISES BY JURY**

The court may allow the jury to view the place in which any material fact occurred. In such event it shall order the jury to be conducted in a body, in the custody of a proper officer of the court to the place which shall be shown to them by the judge. The defendant shall be present at the view. During the view, no person other than the judge or person authorized by him shall speak to the jury on any subject relating to the trial.

#### **RULE 6.10 DISCHARGE OF JURY**

The jury may be discharged by the court on consent of both parties or when it appears that there is no reasonable probability of their reaching agreement.

#### **RULE 6.11 JUDGE--DISABILITY**

**(a) Disability of Judge During Jury Trial.** If, before the judge submits the case to the jury, he or she is unable to continue with the trial, any other judge assigned to or regularly sitting in the court, upon becoming familiar with the record of the trial, may proceed with the trial. Upon defendant's objection to the replacement, a mistrial shall be granted. If, after the judge submits the case to the jury, he or she is unable to continue, the case shall proceed before another judge.

**(b) Disability of Judge During Nonjury Trial.** If a judge before whom trial without jury has commenced is unable to proceed with the trial, a mistrial shall be granted.

#### **RULE 6.12 WITNESSES**

**(a) Who May Testify.** Any person may be a witness in any action or proceeding under these rules except as hereinafter provided or as provided in the Rules of Evidence.

**(b) When Excused.** A witness subpoenaed to attend in a criminal case is dismissed and excused from further attendance as soon as he or she has given his or her testimony-in-chief and has been cross-examined thereon, unless either party makes requests in open court that the witness remain in attendance; and witness fees will not be allowed any witness after the day on which his or her testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact in his or her journal.

**(c) Persons Incompetent to Testify.** The following persons are incompetent to testify: (1) Those who are of unsound mind, or intoxicated at the time of their production for examination; and (2) children who do not have the capacity of receiving just impressions of the facts about which they are examined or who do not have the capacity of relating them truly. This shall not affect any recognized privileges.

**(d) Not Excluded on Grounds of Interest.** No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the result of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility.

#### **RULE 6.13 TESTIMONY IN LIEU OF WITNESSES**

**(a) Deposition.** Upon a determination that the testimony of a witness is material, and that it appears probable that the witness will not voluntarily appear at the trial, the court may order the taking of his or her deposition. Pending the taking of the deposition the provisions of CrR 3.2 shall apply.

**(b) Test Report by Expert.**

(1) *Certification Required.* Subject to subsection (b)(3) of this rule, the official written report of an expert witness which contains the results of any test of a substance or object which are relevant to an issue in a trial shall be admitted in evidence without further proof or foundation as prima facie evidence of the facts stated in the report if the report bears or has attached a certification stating that the certifier has performed a test on the substance or object in question, the name of the person from whom the substance or object was received, the certificate is attached to a true and complete copy of the certifier's official report, the report was made by the certifier, and the qualifications of the certifier to make such tests. The certificate shall be signed by the certifier with the title of his office and his business address and telephone number.

(2) *Form.* The certificate shall be in substantially the following form:

The undersigned certifies under penalty of perjury that:

1. He performed a test on the (substance) (object) in question;
2. The person from whom he received the (substance) (object) in question is \_\_\_;
3. The document on which this certificate appears or to which it is attached is a true and complete copy of my official report; and
4. Such document is a report of the results of a test which report and test were made by the undersigned who has the following qualifications and experience:

FORM OMITTED

(3) *Notice Requirements.* The court shall exclude such report if:

(i) a copy of the report and certificate has not been served on the defendant or the defendant's attorney at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper; or

(ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the report and certificate has not been served on the defendant at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper; or

(iii) at least 7 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, the defendant has served a written demand upon the prosecutor to produce the expert witness at the trial.

#### **RULE 6.14 IMMUNITY**

In any case the court on motion of the prosecuting attorney may order that a witness shall not be excused from giving testimony or producing any papers, documents or things, on the ground that such testimony may tend to incriminate or subject the witness to a penalty or forfeiture; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which the witness has been ordered to testify pursuant to this rule. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or the giving of false evidence.

#### **RULE 6.15 INSTRUCTIONS AND ARGUMENT**

**(a) Proposed Instructions.** Proposed jury instructions shall be served and filed when a case is called for trial by serving one copy upon counsel for each party, by filing one copy with the clerk, and by delivering the original and one additional copy for each party to the trial judge. Additional instructions, which could not be reasonably anticipated, shall be served and filed at any time before the court has instructed the jury.

Not less than 10 days before the date of trial, the court may order counsel to serve and file proposed instructions not less than 3 days before the trial date.

Each proposed instruction shall be on a separate sheet of paper. The original shall not be numbered nor include citations of authority.

Any superior court may adopt special rules permitting certain instructions to be requested by number from any published book of instructions.

**(b) [Reserved.]**

**(c) Objection to Instructions.** Before instructing the jury, the court shall supply counsel with copies of the proposed numbered instructions, verdict and special finding forms. The court shall afford to counsel an opportunity in the absence of the jury to object to the giving of any instructions and the refusal to give a requested instruction or submission of a verdict or special finding form. The party objecting shall state the reasons for the objection, specifying the number, paragraph, and particular part of the instruction to be given or refused. The court shall provide counsel for each party with a copy of the instructions in their final form.

**(d) Instructing the Jury and Argument of Counsel.** The court shall read the instructions to the jury. The prosecution may then address the jury after which the defense may address the jury followed by the prosecution's rebuttal.

**(e) Deliberation.** After argument, the jury shall retire to consider the verdict. The jury shall take with it the instructions given, all exhibits received in evidence and a verdict form or forms.

**(f) Questions from Jury During Deliberations.**

(1) The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(2) After jury deliberations have begun, the court shall not instruct the jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required to deliberate.

**(g) Several Offenses.** The verdict forms for an offense charged or necessarily included in the offense charged or an attempt to commit either the offense charged or any offense necessarily included therein may be submitted to the jury.

**RULE 6.16 VERDICTS AND FINDINGS**

**(a) Verdicts.**

(1) *Several Defendants.* If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if a jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(2) *Return of Verdict.* When all members of the jury agree upon a verdict, the presiding juror shall complete and sign the verdict form and return it to the judge in open court.

(3) *Poll of Jurors.* When a verdict or special finding is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If at the conclusion of the poll, all of the jurors do not concur, the jury may be directed to retire for further deliberations or may be discharged by the court.

**(b) Special Findings.** The court may submit to the jury forms for such special findings which may be required or authorized by law. The court shall give such instruction as may be necessary to enable the jury both to make these special findings or verdicts and to render a general verdict. When a special finding is inconsistent with another special finding or with the general verdict, the court may order the jury to retire for further consideration.

**(c) Forms.**

(1) *Verdict.* The verdict of the jury may be in substantially the following form:

We, the jury, find the defendant guilty [or not guilty] of the crime of \_\_\_\_\_ as charged in count number \_\_\_\_\_.

Signature of Presiding Juror

(2) *Special Findings.* Special findings may be substantially in the following form:

Was the defendant (name) armed with a deadly weapon at the time of the commission of the crime charged in count number \_\_\_\_\_? Yes ( ) No ( )

## 7. PROCEDURES FOLLOWING CONVICTION

### **RULE 7.1 PROCEDURES BEFORE SENTENCING**

(a) **Generally.** At the time of, or within 3 days after, a plea, finding, or verdict of guilt of a felony, the court may order that a presentence investigation and report be prepared by the Department of Corrections. The court shall also then:

- (1) Set a date, time, and place for sentencing in compliance with the time requirements of RCW 9.94A.110;
- (2) Order the defendant to return at the designated date, time, and place; and
- (3) Set a date at least 10 days before sentencing for delivery of the presentence report, if any, to the court, to the prosecuting attorney, and to the defendant or defense counsel.

(b) **Report.** The report of the presentence investigation shall contain the defendant's criminal history, as defined by RCW 9.94A.030, such information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior as may be relevant in imposing sentence or in the correctional treatment of the defendant, information about the victim, and such other information as may be required by the court.

(c) **Notice of New Evidence.** At least 3 days before the sentencing hearing, defense counsel and the prosecuting attorney shall notify opposing counsel and the court of any part of the presentence report that will be controverted by the production of evidence.

(d) **Other Reports.** Any interested person, as designated in RCW 9.94A.110, may submit a report separate from that furnished by the Department of Corrections.

### **RULE 7.2 SENTENCING**

(a) **Generally.** The court shall state the precise terms of the sentence and shall assure that the record accurately reflects all time spent in custody in connection with the offense or behavioral incident for which sentence is imposed. Pending such action the court may release or commit the defendant, pursuant to rule 3.2.

(b) **Procedure at Time of Sentencing.** The court shall, immediately after sentencing, advise the defendant: (1) of the right to appeal the conviction; (2) of the right to appeal a sentence outside the standard sentence range; (3) that unless a notice of appeal is filed within 30 days after the entry of the judgment or order appealed from, the right to appeal is irrevocably waived; (4) that the superior court clerk will, if requested by the defendant appearing without counsel, supply a notice of appeal form and file it upon completion by the defendant; (5) of the right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal; and (6) of the time limits on the right to collateral attack imposed by RCW 10.73.090 and .100. These proceedings shall be made a part of the record.

(c) **Record.** A verbatim record of the sentencing proceedings shall be made.

**(d) Judgment and Sentence.** For every felony sentencing, the clerk of the court shall forward a copy of the uniform judgment and sentence to the Sentencing Guidelines Commission. The uniform judgment and sentence shall be a form prescribed by the Administrator for the Courts in conjunction with the Supreme Court Pattern Forms Committee. If the sentence imposed departs from the applicable standard sentence range, the court's written findings of fact and conclusions of law shall also be supplied to the Commission.

### **RULE 7.3 JUDGMENT**

A judgment of conviction shall set forth whether defendant was represented by counsel or made a valid waiver of counsel, the plea, the verdict or findings, and the adjudication and sentence. The court may order that its sentence include special conditions or requirements, including a specified schedule for the payment of a fine, restitution, or other costs, or the performance of community service. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

### **RULE 7.4 ARREST OF JUDGMENT**

**(a) Arrest of Judgments.** Judgment may be arrested on the motion of the defendant for the following causes: (1) Lack of jurisdiction of the person or offense; (2) the indictment or information does not charge a crime; or (3) insufficiency of the proof of a material element of the crime.

**(b) Time for Motion; Contents of Motion.** A motion for arrest of judgment must be served and filed within 10 days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time until such time as judgment is entered.

The motion for arrest of judgment shall identify the specific reasons in fact and law as to each ground on which the motion is based.

**(c) New Charges After Arrest of Judgments.** When judgment is arrested and there is reasonable ground to believe that the defendant can be convicted of an offense properly charged, the court may order the defendant to be recommitted or released to answer a new indictment or information. If judgment was arrested because there was no proof of a material element of the crime the defendant shall be dismissed.

**(d) Rulings on Alternative Motions in Arrest of Judgment or for a New Trial.** Whenever a motion in arrest of a judgment and, in the alternative, for a new trial is filed and submitted in any superior court in any criminal cause tried before a jury, and the superior court enters an order granting the motion in arrest of judgment, the court shall, at the same time, in the alternative, pass upon and decide in the same order the motion for a new trial. The ruling upon the motion for a new trial shall not become effective unless and until the order granting the motion in arrest of judgment is reversed, vacated, or set aside in the manner provided by law.

### **RULE 7.6 PROBATION**

**(a) Probation.** After conviction of an offense the defendant may be placed on probation as provided by law.

**(b) Revocation of Probation.** The court shall not revoke probation except after a hearing in which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant is entitled to be represented by counsel and may be released pursuant to CrR 3.2 pending such hearing. Counsel shall be appointed for a defendant financially unable to obtain counsel.

**RULE 7.7 POST-CONVICTION RELIEF [RESCINDED]**

**RULE 7.8 RELIEF FROM JUDGMENT OR ORDER**

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

- (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.6;
- (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) The judgment is void; or
- (5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) **Procedure on Vacation of Judgment.**

(1) *Motion.* Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) *Initial Consideration.* The court may deny the motion without a hearing if the facts alleged in the affidavits do not establish grounds for relief. The court may transfer a motion to the Court of Appeals for consideration as a personal restraint petition if such transfer would serve the ends of justice. Otherwise, the court shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

## **8. MISCELLANEOUS**

**RULE 8.1 TIME**

Time shall be computed and enlarged in accordance with CR 6.

**RULE 8.2 MOTIONS**

Rules 3.5 and 3.6 and CR 7(b) shall govern motions in criminal cases.

**RULE 8.3 DISMISSAL**

(a) **On Motion of Prosecution.** The court may, in its discretion, upon written motion of the prosecuting attorney setting forth the reasons therefor, dismiss an indictment, information or complaint.

(b) **On Motion of Court.** The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

**RULE 8.4 SERVICE, FILING, AND SIGNING OF PAPERS**

CR 5 shall govern service and filing of written motions (except those heard ex parte) in criminal causes. All pleadings, motions, and legal memoranda signed by an attorney shall include the attorney's Washington State Bar Association membership number in the signature block.

**RULE 8.5 CALENDARS**

In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and criminal cases where the defendant or a witness is in confinement shall have preference over other criminal cases.

**RULE 8.6 EXCEPTIONS UNNECESSARY**

CR 46 shall govern exceptions to rulings and orders in criminal cases.

**RULE 8.7 OBJECTIONS**

Objections in criminal causes shall be taken as in civil causes.

**RULE 8.8 DISCHARGE**

Upon acquittal, or whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall be released from custody or conditions of release on such charge and any bail shall be exonerated.

**RULE 8.9. CHANGE OF JUDGE**

Any right under RCW 4.12.050 to seek disqualification of a judge will be deemed waived unless, in addition to the limitations in the statute, the motion and affidavit is filed with the court no later than thirty days prior to trial before a pre-assigned judge. If a case is re-assigned to a different judge less than forty days prior to trial, a party may then move for a change of judge within ten days of such reassignment, unless the moving party has previously made such a motion.