**CrR 3.4**

**PRESENCE OF THE DEFENDANT**

**(a) – (d)** [Unchanged.]

**(e) ~~Videoconference Proceedings~~ Remote Appearances.**

(1) *In General.* A defendant may appear remotely through video or telephonic conferencing as available in each court and indicated in this rule. A defendant who is out of custody and wishes to appear remotely is responsible for his or her own device and internet access to connect to court.

(2) *Authorization*. Remote appearances are authorized for all criminal proceedings except for arraignment, all phases of a trial, entry of a guilty plea, and sentencing for which the defendant must have prior court approval permitting a remote appearance. ~~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 videoconference 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 remote ~~videoconference~~ 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 inperson hearing, which may in the trial court judge's discretion be granted.

(3) *Remote Appearances Required by Video.* Remote appearances at arraignments, testimonial hearings, trials, sentencing, and whenever the defendant is in-custody shall include video. Local court rules may require all remote appearances take place over video.

~~(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 videoconference 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)~~ (4) *Standards for Remote Appearances ~~Videoconference Proceedings~~*.

(a) *Video Appearances.* The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. The video and audio should be of sufficient quality to ensure that the video and audio connections are clear and intelligible ~~participants are easily seen and understood~~. ~~Videoconference facilities~~ Platforms, court procedures, or in-custody facilities must ~~provide for~~ allow confidential communications between attorney and client, including a means during the hearing for the attorney and the client to read and review all documents executed therein, and security sufficient to protect the safety of all participants and observers when conducted in a custodial environment. ~~For purposes of videoconference proceedings, t~~ The electronic, scanned, or facsimile signatures of the defendant, counsel, interested parties, and the court shall be treated as if they were original signatures. This includes all orders on judgment and sentence, no contact orders, statements of defendant on pleas of guilty, and other documents or pleadings as the court shall determine are appropriate or necessary. Defense counsel or the court may affix a “/s/” on any documents except a judgment and sentence to indicate the defendant’s signature when the defendant indicates their approval during the hearing. In interpreted proceedings, the interpreter must be in a location or over a platform where the defendant and defense attorney can have confidential conversations through the interpreter. ~~the interpreter must be located next to the defendant and t~~ The proceeding must be conducted to assure that the interpreter can hear all participants. When the public appears remotely, members of the public need not enable their video to be visible to other participants absent a finding of good cause and order of the court.

(B) *Telephonic Appearances*. If parties appear remotely with only an audio connection, the connection should be of sufficient quality to ensure participants are clearly audible. Telephonic appearances shall otherwise have the same requirements as indicated for video appearances.

**(f) Remote ~~Videoconference~~ Proceedings under RCW 10.77.**

(1) *Authorization*. Proceedings held pursuant to chapter 10.77 RCW may be conducted by video ~~conference~~ using the same safeguards in CrR 3.4(e)(4)(a). ~~in which all participants can simultaneously see, hear, and speak with each other except as otherwise directed by the trial court judge.~~ When these proceedings are conducted ~~via~~ by video ~~conference~~, it is presumed that all participants will be physically present in the courtroom except for the forensic evaluator unless as otherwise provided by these rules, or as excused or excluded by the court for good cause shown. Good cause may include circumstances where at the time of the hearing, the court does not have the technological capability or equipment to conduct the conference by video as provided in this rule. Such video proceedings shall be deemed held in open court and in the defendant’s presence for the purposes of any statute, court rule, or policy. All videoconference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge’s discretion be granted.

(2) *Standards for ~~Videoconference~~ Remote Proceedings under Chapter 10.77 RCW*. These proceedings shall use the same standards enumerated in CrR 3.4(e)(4)(a). ~~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. Videoconference 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.~~