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**Subject:** FW: proposed amended CrR 3.4  
**Date:** Friday, September 24, 2021 2:01:38 PM  
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**From:** Gauen, Benjamin [mailto:Benjamin.Gauen@kingcounty.gov]  
**Sent:** Friday, September 24, 2021 1:58 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** proposed amended CrR 3.4

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Good afternoon:

I write with concerns about the proposed amended CrR 3.4. If adopted, the defendant is being given a privilege to appear remotely for all hearings, while no other participants (including witnesses and victims) are given the same opportunity. I'm not sure how to explain to victims and witnesses that they will be required to come to court and a defendant does not. Others who are seeking justice from the criminal justice system will question why the defendant is given this privilege. Because victims are required to attend in person but defendants are not, victims will undoubtedly believe that they are being treated with less consideration than the defendant. As a prosecutor who works exclusively with sex trafficking and sexual victims, this type of rule change will have a chilling impact on victims' willingness to participate in the criminal justice process.

I also have legal and equity concerns regarding the defendant's due process rights to ensure, for example, that they completely understand what rights they are giving up and the consequences of taking a plea deal. I have conducted hundreds of plea colloquies with defendants. The ability for a defendant to have private conversations with their attorney (and a court interpreter if necessary) is critical during a plea. I always tell a defendant to please stop me during the colloquy if they want to talk to their attorney or the court because something doesn't make sense, a new question arises, etc.. I would say, anecdotally, that this happens in roughly 1/3 of the pleas that I take. Although the court and the State do not know the substance of those private conversations when they occur, they can still make observations about the defendant's demeanor; the defense attorney can physically show the defendant the plea form and read it; there is non-verbal communication that takes place; and other means manifest themselves to indicate that the court should proceed forward with the plea hearing. Trying to do plea hearings and other critical hearings over Zoom is NOT practical. Simply put, there is no substitute for being in the same physical space to ensure a defendant is voluntarily, intelligently, and knowingly making a critically important decision.

Thank you for considering these comments.

Sincerely,

**Benjamin Gauen** (he/him)  
Senior Deputy Prosecuting Attorney  
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