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Subject: FW: Comments to proposed amendments to CrR 3.4
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From: Jacobson, Brynn [mailto:Brynn.Jacobson@kingcounty.gov]
Sent: Wednesday, September 29, 2021 2:24 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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Hello – I am a deputy prosecuting attorney in King County and wish to provide some comments to the proposed changes to CrR 3.4.

What is perhaps most concerning is the negative impact of the defendant’s potential remote presence at trial. A defendant should not be a passive observer in a trial which potentially impacts their liberties. They should be an active and present participant. A defendant may be tempted to appear remotely because it seems easier, however they may not understand the ways in which it may diminish their understanding of and participation on their own trial.

Anyone who has listened in to a hearing via phone or zoom can list the ways in which is deficient. Certain voices are often not picked up and the video provides a limited view of the courtroom. It may be difficult for a defendant to understand the judge, witnesses or parties during the proceedings. This will make it challenging to consult with counsel, and likely diminish the right to counsel at trial. If a defendant wishes to consult with trial counsel, they would have to effectively pause the proceedings entirely to allow for them to connect separately and privately outside of court. Not only will this cause additional delay, but it may result in defendant’s simply not consulting with counsel as much as they might want because of the onerousness of the process.

Technology, while amazing in many ways, is not entirely reliable at all times. Wi-fi fails, screens freeze, sound is delayed. Each time this occurs it will not only cause delays but it will also effectively exclude the defendant from the proceedings.

Remote participation in a trial creates significant difficulties in identifying the defendant in court and in allowing the fact finder to assess the defendant’s credibility should they testify. It is unclear how the confrontation clause would be satisfied if the defendant is not present in court and able to observe witnesses testimony in court.

In addition to the technical/practical issues, the defendant's remote appearance for trials, guilty pleas and sentencings has the effect of diminishing the seriousness and dignity of the proceedings, something that is crucial to all involved and to the public perception of the administration of justice.

Thank you for taking the time to review my comments.

Best,

Brynn

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