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Subject: FW: Comment of CrR 3.4 proposal
Date: Wednesday, September 29, 2021 4:48:21 PM
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From: Parks, Casey [mailto:Casey.Parks@kingcounty.gov]
Sent: Wednesday, September 29, 2021 4:43 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment of CrR 3.4 proposal

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Hello,

It has come to my attention that there is currently a proposal to amend CrR 3.4 in a way which would allow criminal defendants to appear remotely to any and all hearings. As a prosecutor, this is extremely concerning. I urge the Court to reject this proposal. Below is a list of a few of the many reasons this would be exceptionally detrimental to our system:

- It is not equitable. Defendants with monetary resources will be able to testify and appear in front of a jury comfortably from a position that conveys the message they choose. There is nothing in the amendment as written limiting the types of things potentially visible in the background. Problematic examples include diplomas, family pictures, work/technical equipment, etc. A stable internet connection and high-quality AV equipment can likewise be available for those with the money to afford them.

In stark contrast, those without money to spare may not be able to afford AV equipment at all. Upgrades and high-quality equipment are likely to be simply unrealistic. The location from which they would appear is likely to be wherever they have available. In short, this proposal further exacerbates disproportionate impact on lower-income defendants. That is the exact opposite of the goal we should be pursuing.

- It is not practicable. While the court may admonish defendants to be in an isolated, safe environment, the reality is that many defendants will simply not have such an environment available to them. Even for those with the best of intentions, children, pets, roommates, and poor internet connections will be common factors that will disrupt proceedings and call into question the legitimacy of legal proceedings. There will also be those who do not have the best of intentions. These problems will only be exacerbated in those circumstances.

- It delegitimizes the criminal justice system. There are some undeniable benefits of allowing remote appearances under certain circumstances. But at trial, at testimonial hearings, at plea hearings, and at sentencings, physical appearance is irreplaceably valuable. The problems with allowing remote appearances are too many to list. Evidence will be impacted – identifying someone on a screen will never be as reliable or trustworthy as identifying someone in person. There will always be questions about what is happening off-camera – is there someone coaching the defendant? Applying inappropriate pressure?

Many of our defendants struggle with addiction. Even as things exist now, I have personally unfortunately encountered defendants who were intoxicated in court on multiple occasions. The ability to see, hear, and even smell them in person has been invaluable in not allowing that to impact the proceedings. Away from the courthouse there will be access to substances of abuse while the defendant is in a uniquely stressful situation. Telling if someone is intoxicated over a screen is all but impossible. Claims that pleas, decisions at trial, testimony, and statements at sentencing were made while intoxicated are inevitable.

- It makes sentencing untenable and dangerous. Asking a defendant to turn themselves in knowing they have any amount of incarceration to serve is a heavy ask. More so when the amount of incarceration is substantial. When a defendant is sentenced to more than they were expecting though, a tremendous risk of flight exists. Beyond the obvious impacts of the flight itself, the knowledge that this risk exists may make judge more hesitant to sentence outside of agreed recommendations or to grant unagreed requests for higher sentences. It also creates a tangible risk for victims.

Particularly in a domestic violence context, if a defendant is sentenced to more than they expected, the victim is the most likely target of their anger and frustration. If they are appearing remotely, there is nothing to stop them from immediately acting on that anger. Knowing that, victims may be unwilling to speak at sentencings for fear of retaliation. In the worst circumstances, this proposal creates a potential for an abuser to actually be in the same location as their victim, controlling what is being said through threat of violence.

Books could be written about the damage this proposal would cause. I will not take more of your time though. Please do not make this change that would fundamentally damage our entire system of criminal justice.

Thank you,



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