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**Subject:** FW: Comment opposing proposed amendment - CrR 3.4  
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**From:** Adams, Danika [mailto:Danika.Adams@kingcounty.gov]  
**Sent:** Thursday, September 30, 2021 1:20 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment opposing proposed amendment - CrR 3.4

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I am writing to provide comments to the members of the Supreme Court regarding the proposed amendment to CrR 3.4. There are many issues with the proposal, but I will focus my comments to highlight just a few.

The current rule already allows a defendant to appear by videoconference for any proceeding—if the parties and the Judge agree. The current rule allows that flexibility to be applied to any case where it is necessary, and ensures that this will only be undertaken in circumstances where all of the resulting practical and constitutional issues can be considered and addressed. There is no need to expand the rule further to (1) allow audio-only appearance by a defendant in many circumstances, and (2) remove the State's option to reject a defendant appearing remotely.

An audio-only appearance by a defendant at a hearing that is as essential as entry of a guilty plea would make it impossible to establish the identity of the person pleading guilty, and impossible to ensure that a plea is being entered knowingly, intelligently, and voluntarily. Any plea entered in that manner would be forever vulnerable to a motion to withdraw, a direct appeal, and a PRP. The rule renders the State powerless to intervene to ensure that pleas are entered validly and that the record of the plea is protected.

With respect to trials, this proposal would allow a defendant to never physically come to the trial courtroom, raising a host of concerns. A defendant could be located anywhere during the trial, even a place not subject to the court's jurisdiction. The court would be powerless to enforce standards of behavior on an unruly defendant, and powerless to enforce a mandatory remand following a jury verdict. It is unclear why this privilege of remote appearance at trial is being granted to defendants, while crime victims and witnesses will still be forced to attend trial proceedings in person. It is also unclear whether a video appearance by a defendant satisfies the right to confront witnesses, especially when the rule allows a court to mandate remote appearance even over a defendant's objection (e.g., for an in-custody defendant).

Additionally, because the proposed amendment only makes changes in subsection (e), these changes create conflict with other parts of CrR 3.4. If the Supreme Court is considering adopting some form of these proposed changes, they must be harmonized with subsections (a) and (b), which also address remote appearance by a defendant, and for which no changes have been proposed.

For these reasons, and the sensible reasons offered by many others, I urge the members of the Supreme Court to reject this proposed amendment.

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