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Subject: FW: Proposed Amendments to CrR 3.4
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From: Raz, Don [mailto:Don.Raz@kingcounty.gov]
Sent: Wednesday, September 29, 2021 12:39 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Raz, Don <Don.Raz@kingcounty.gov>
Subject: Proposed Amendments to CrR 3.4

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Hello,

I am writing to voice my opposition to the June 2021 proposed amendments to CrR 3.4.

Contrary to the stated purpose of the proposed rule change, having defendants routinely appear remotely for pleas, testimonial hearings, trials and sentencing will increase daily court congestion and undermine the expeditious resolution of cases. Repeated delays or redundant subsequent in-person hearings or trials will be necessary when inevitable technical failures, disconnections and/or failed audio or video undermine the defendant's ability to hear, see, and participate to the proceedings. The defendant's absence from the courtroom for trial, pleas, and sentencing will raise questions in practice and on the record about whether the defendant is able to view or hear the entire proceeding, understand questions and situations presented to him/her/they, or are able to adequately raise requests for explanation from counsel and the court. Remote participation by defendants will limit their ability to comprehend both words spoken and meaning conveyed nonverbally. Courtroom presence assures the defendant's focus will be on the proceeding rather than what is happening at their viewing location. Defendant's remote participation will rob the trial court of its ability to adequately assess the defendant's participation, focus, and understanding of the proceedings. Technical issues or problems might not be obvious immediately when the defendant appears remotely and later it will be impossible to verify the problem or know what the defendant missed. Without the court's ability to assure and gauge the defendant's participation, the court cannot refute factual claims of misunderstanding in subsequent motions to withdraw pleas or for new trials. Defendants unfamiliarity with court proceedings will prevent them from appreciating what they give up by attending remotely.

The proposed rule change will result in in equitable treatment of defendants with limited means.

The rule requires out of custody defendant to be responsible for their own device and internet access. Many socio-economically challenged defendants who do not have reliable virtual devices or internet access will be disadvantaged. In order to assure the necessary focus on the proceedings and understandable audio communication, courts are unlikely to preclude defendants from using Wi-Fi connections in public places. For many defendants, public places are their only access to internet connection.

Remote participation creates problems with sharing documents and exhibits. It will be impossible to assure the defendant has the same access to exhibits pre- and post-admission if they are not in the courtroom. Defendants appearing remotely will not have simultaneous communication with counsel as they would enjoy when present in court. Halting the proceeding for a “break-out” room communication between defendant and counsel may be to the defendant’s or the State’s detriment. Such interruption will definitely delay trial and likely anger jurors against the defendant. The defendant’s physical absence will impede attempts at in-court identification. Remote defendant testimony could allow coaching or reference to notes not apparent to the court. Similarly, the court will not be able during pleas to determine if anyone off screen could be exerting undue influence on the defendant. The court will not be able to assure the defendant’s fingerprints are those affixed to the judgment and sentence. Allowing defendant’s the opportunity to appear remotely for pleas, testimonial hearing, trials, and sentencing greatly diminishes the court’s ability to assure the accuracy and truthfulness of the court process. It diminishes the seriousness, importance, and dignity of these proceedings, which is important to all parties and to the public perception of the fair administration of justice

The proposed amendment raises significant appellate issues as to right of confrontation, the defendant presence at a critical stage, effective assistance of counsel, and the defendant right to participate in his/her/their own defense. The proposed rule unfairly allows a defendant to appear remotely for all hearings while that privilege is not given to other participants such as witnesses, victims, and jurors. Those seeking justice will question why the defendant alone is given this privilege. Victims will believe they are treated with less consideration. Victims will be robbed of the opportunity to speak in the defendant’s presence.

I could go on.

The pandemic has caused court’s and its participants to adjust their normal practices. These necessary pandemic adjustments, some which highlighted beneficial practices to be retained after the pandemic, should not validate bad practices hawked as court efficiencies. There is nothing efficient about have defendant’s appear remotely for pleas, testimonial hearings, trials, and sentencing. Some of the practical inefficiencies the proposed rules changes are noted above. Certainly I have not listed all. More importantly, however, these proposed changes will diminish the importance and seriousness of the criminal justice system and call into question is its fairness and equity. It cheapens a justice system that should be viewed with respect and pride.

For these reasons, I ask this Court to not adopt the proposed changes to CrR 3.4.

