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Subject: FW: Opposition to changes in CrR 3.4
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From: Garcia, Éven [mailto:evgarcia@kingcounty.gov]
Sent: Thursday, September 30, 2021 5:41 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition to changes in CrR 3.4

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Good afternoon,

I am writing to express my concern and opposition to the proposed CrR 3.4 changes that would permit defendants to appear remotely for all Superior Court hearings and stages in a criminal case. Doing so would create problems both for the defendant, and for the community at large. This would also undermine the integrity of the cornerstone of the criminal justice system: the right to trial.

First and foremost, how will a defendant appearing remotely communicate quickly with their attorney during trial? Remote appearance at trial will hinder the defendant's ability to have access to their attorney during the most critical part of their case. Remote appearances make those in-the-moment communications impossible. Defendants will not be able to consult with their attorneys by way of body language or sharing notes – things that take place regularly throughout trial. The amount of time it will take to pause proceedings, place the defendant in a break-out room, and ensure privacy to communicate with their attorney will only delay proceedings. How will the Court be able to ensure the defendant has proper access to exhibits offered during trial? What sort of delays will take place when a defendant does not have the proper internet connection to avoid lagging and freezing?

A defendant who is electing to appear remotely may not be able to understand the proceedings as well as one who is physically present. The defendant's ability to perceive what is happening in a courtroom is diminished when trial is translated to a screen – the defendant's opportunity to observe juror's reactions to testimony becomes non-existent. Trial is not the same as appearing for an hour-long hearing. Trials take days and weeks. The Court has no way of ensuring a defendant is paying attention and not distracted for the entire length of a trial. The Court also has no way of enforcing certain *motions in limine* -- (e.g. witnesses who have been excluded from the courtroom during other witnesses testimony) how will the Court know if excluded witnesses are not listening in the room/off camera. Remote appearance of defendants for all proceedings takes away the Court's ability to maintain proper decorum and control in the courtroom. How will the Court proceed if a defendant repeatedly "unmutes" themselves during testimony? How does the court plan to ensure safety of it's jurors? What is there to prevent a defendant from taking screen shots of jurors, witnesses, etc.

Allowing defendant's the opportunity to appear remotely trial deprives the jury of the opportunity to observe the defendant's demeanor during remote testimony by the defendant. It deprives the jury the opportunity to observe the defendant's demeanor during in-court testimony by witnesses and victims. The defendant's physical absence from the courtroom will impede attempts at in-court identification causing undue prejudice for the State. For sentencing hearings, remote appearance by a defendant limits the Court's authority. Should a judge choose to depart from the recommendation of the parties and a defendant were to be immediately remanded into custody, the Court would not be able to do so. The court has no way to assure the defendant's fingerprints are those affixed to the judgment and sentence.

Most importantly, allowing defendants to appear remotely presents an access issue to certain populations. Marginalized populations have less access to resources. Being present remotely requires specific resources that a significant portion of our communities do not have. The rule is, on its face, simply inequitable by permitting those with access to high-speed internet, electronic devices, and privacy to appear remotely and those who do not have those items or access to that to appear in person. Remote participation during trial would only exacerbate language barriers for any defendant whose first language is not English and requires an interpreter. Already vulnerable populations will be the ones most negatively affected by the proposal: those with lower socioeconomic status and those who don't speak English.

The proposed amendment raises significant appellate issues as to right of confrontation, the defendant's presence at a critical stage, effective assistance of counsel, and the defendant right to participate in their own defense. The proposed rule undermines the Court's authority and 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. It will have a disparate affect on communities of color. For these reasons, I ask that the Court not adopt the proposed changes to CrR 3.4.

Thank you for your consideration.

Ms. Éven Garcia

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