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**Subject:** FW: Proposed Amendment to CrR 3.4  
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**From:** Petersen, Jennifer [mailto:Jennifer.Petersen@kingcounty.gov]  
**Sent:** Wednesday, September 29, 2021 2:09 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed Amendment to CrR 3.4

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Good afternoon,

I am writing to express my opposition to the proposed amendment to CrR 3.4. The stated purpose of the proposed amendment is to decrease daily court congestion and allow for more expeditious case resolution while improving access to the justice. However, allowing defendants to appear remotely for arraignment, trial, plea and sentencing would have the opposite effect and would invite a host of issues.

Remote appearance by the defendant will actually slow down court proceedings as the court will bear the burden of ensuring the defendant's technology is working properly and he/she can observe and hear everything in the courtroom. Remote participation makes it very difficult to hear and understand the parties, witnesses and the judge. These issues may not be immediately obvious to the parties and it will be difficult if not impossible to determine what was missed. Remote participation means the defendant will not have the same access to trial exhibits, particularly physical exhibits and video. The proceedings will presumably be halted each time the defendant needs to confer with counsel. The proceedings will be halted each time there is a technical failure. As we have all learned throughout this pandemic, these technical failures are inevitable. The result will be a slower court proceeding with no assurances of an adequate record.

Remote appearance by the defendant raises serious questions about the voluntariness of waivers of constitutional rights, voluntariness of pleas, and the identify of the person appearing. The court will have little control over the defendant's environment, possible distractions, and the presence of others who may exert undue influence over the defendant. If the defendant is not present, the parties will not be able to conduct in-court identification. In many criminal trials the State makes pretrial motions that require the presence of the defendant, such as a motion directing the defendant's fingerprints be taken in court for the purpose of proving predicate convictions. The

State will be unable to prove the defendant's identity in these cases. If a defendant is not physically present and fingerprinted at sentencing, any conviction cannot be added to felony criminal history databases. There are other notice requirements at the time of plea and sentencing including no contact orders, sex offender registration, firearm prohibition, rights on appeal, etc. If it is necessary to prove receipt of the notice for purposes of later prosecution, the same identity issues arise.

Finally, contrary to the stated purpose of the rule, it will not improve access to justice. Allowing a defendant to appear remotely will result in inequitable treatment of defendants with limited means who do not have devices and reliable internet access. It will also result in inequitable treatment of defendants who require interpreters. The logistical issues of a defendant requiring an interpreter would mean that only English speakers could in fact appear remotely.

The inevitable problems of this proposed amendment will result in unnecessary reversals, retrials, and withdrawal of pleas. Victims and the community have an interest in finality of convictions that is not well served by this rule. For all of these reasons, I respectfully request the Court reject the proposed amendment.

*Jennifer Petersen*

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