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**Subject:** FW: Proposed amendments to CrR 3.4  
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**From:** Ungerman, Kathy [mailto:Kathy.Ungerman@kingcounty.gov]  
**Sent:** Thursday, September 30, 2021 2:59 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed amendments to CrR 3.4

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Good afternoon,

I've never submitted anything like this before and I'm doing so now because I believe the proposed amendments to CrR 3.4 will have a significant negative impact on our criminal justice system. As a prosecutor, I see the proposed amendment as fraught with constitutional and practical problems to such a degree that it prevents, rather than promotes, fairness and justice. Here are my thoughts on the proposed amendment:

- It is inequitable and fundamentally unfair when a underprivileged person who cannot afford a device or reliable internet service will be required to appear in court but a privileged person with extra money to spend on a device and internet service are not. It would be inappropriate to ask an underprivileged person to conduct personal court business in a public setting where free internet might be available.
- In a remote hearing, there is no way to confirm that the identity of the person appearing is that of the defendant. It is imperative that the court verify that the charged defendant (not someone else) is the person making a knowing, intelligent and voluntary decision to waive the defendant's constitutional rights. A defense attorney should not be required to attest to the identity of the person appearing remotely is the charged defendant because that defense attorney could become a witness against their client. The defense attorney would be in an untenable position if they know that the person appearing remotely is not their client. In addition, the defense attorney may not even be able to attest to whether the person appearing is their client because they may have never met their client in person or on video.
- When a defendant is sentenced, the defendant affixes their fingerprints to the Judgment

and Sentence to confirm their identity. That cannot happen if the defendant is not present at the sentencing hearing. Identity confirmation at the time of sentencing is crucial to ensure that the conviction is not attached to a different person of the same name. In addition, the conviction is not allowed to be added to felony criminal history database without fingerprint verification.

- Without the defendant physically in court, there cannot be any in-court identifications allowed by law. This might be to the defendant's benefit, but it is certainly not in the interest of justice.
- Allowing a defendant to appear remotely, especially for trial, a plea hearing, or sentencing, degrades the importance of the criminal justice system. This is a historical moment of change in our society. The appearance of a flimsy criminal justice system discredits all of the important work that has been done and diminishes the importance of what is happening in the lives of those touched by the criminal justice system.
- Many defense attorneys only meet their clients when they are both physically at the court house. A public defender's large workload would increase exponentially if they have to schedule additional meetings or phone calls with their numerous clients.
- The court cannot properly assess whether a defendant is making knowingly, intelligently, and voluntarily decision to waive their constitutional rights if the defendant is not physically in court. The unfortunate reality is that many defendants have significant alcohol and substance issues. The judge may not realize that a defendant is impaired and accept a waiver of rights or a guilty plea. That is a terrible injustice. I can certainly envision a defendant coming back and saying he was drunk or high and changed his mind about the plea. This will cause more court congestion due to the additional hearings required to litigate the issue.
- The court is poised to lose control of the proceedings. There is no way to verify whether anyone is present off-screen pressuring the defendant or coaching them on what to say or do.
- The effect of this rule will be to slow down the process, not speed it up. Although Zoom and other communication platforms are fantastic in so many ways, they are not always reliable. I've had numerous hearings via zoom, and it is not uncommon for someone on the call to have technical issues. This delays, and sometimes prevents, access to justice for the defendants and the victims.
- I'm concerned that a defendant appearing remotely will not receive the full benefit of counsel if they are not present in the courtroom to consult with their attorney on issues that arise during proceedings. Delays will ensue when the defendant and counsel need to recess for a separate call. This delay not only effects the court and the opposing party, but also the jurors, witnesses and victims.

Thank you for taking the time to read my comments,

Kathy Ungerman

**Kathy Ungerman**

Senior Deputy Prosecuting Attorney  
Sexually Violent Predator Unit  
King County Prosecuting Attorney's Office  
516 3rd Avenue | Seattle, WA 98122  
Desk: 206-477-6213