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Subject: FW: Public comment for proposed amendments to CrR 3.4
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From: Van Olst, Kathy [mailto:Kathy.VanOlst@kingcounty.gov]
Sent: Thursday, September 30, 2021 4:29 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Public comment for proposed amendments to CrR 3.4

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Dear Justices of the Supreme Court,

Thank you for seeking comments regarding the proposed amendments to the Superior Court Criminal Rules (CrR) 3.4 Presence of the Defendant.

I am a Senior Deputy Prosecuting Attorney for King County. I have been with the Office for more than 20 years and I am familiar with CrR 3.4 and regularly appear in court with defendants for pleas, trials and sentencings.

I urge you to reject the proposed changes to the current version of CrR 3.4(e) and (f). First, the rule change for out-of-custody defendants states that each defendant is responsible for their own device and internet access. Unfortunately, it is not the case that all defendants have access to their own devices or internet access; nor do they always have access to available locations for remote participation. When video plea hearings were allowed during COVID-19, some defendants attempting to participate in plea hearings were in public spaces using public Wi-Fi with frequent distractions. Under those circumstances, the court on occasion had to continue the hearing because the defendant was unable to hear and participate in the hearing, and the court was unable to determine that the defendant was understanding the proceeding. Until it is true that all defendants have equal access to video or phone devices, internet access, and appropriate locations in which to attend hearings, this proposal will result in the inequitable treatment of defendants with limited means.

Further, this rule change will seriously impact a defendant's opportunity to observe, understand, and participate in court proceedings. Video or remote appearances often make it

difficult for hearing participants to hear and comprehend both the words spoken and meaning conveyed nonverbally. This may make it difficult for a defendant to understand the judge, witnesses' testimony, and their demeanor while testifying. Courtroom presence, particularly for trials and sentencings, assures that all participants focus on the proceedings. Video and remote proceedings can be interrupted and delayed due to technical problems such as video screens freezing, loss of wi-fi, and in the case of a small screen, the inability of a defendant to see exhibits or a witness's or judge's face.

Finally, under this proposed amendment, the defendant is being given a privilege to appear remotely for all hearings, while no other participants (including witnesses and victims) are given the same opportunity. Others who are seeking justice from the criminal justice system will question why the defendant is given this privilege. Because witnesses and victims are required to attend in person but defendants are not, these participants will perceive that they are being treated with less consideration than the defendant.

Thank you for your consideration.

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