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**Subject:** FW: Proposed CrR 3.4 comment  
**Date:** Friday, September 10, 2021 11:30:22 AM

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**From:** Houston, Kyle [mailto:Kyle.Houston@kingcounty.gov]  
**Sent:** Friday, September 10, 2021 11:30 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed CrR 3.4 comment

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Good morning,

I am writing to express my opposition to the proposed amendments to CrR 3.4.

The increased use of remote appearances due to the pandemic and allowing defendants to appear through counsel has helped make some pretrial hearings more effective. However, expanding this rule to include arraignment, trials, and pleas would bring in a host of other issues. One of the main issues would be the ability to confirm that the person appearing remotely is in fact, the person being charged with the crime. This is particularly problematic during arraignment, where notice of the charges and of any subsequent hearings are of utmost importance. This issue also extends to pleas, where fingerprinting is used to confirm identity and the defendant is given multiple notices as a consequence of their conviction including the right to appeal, the loss of the right to possess firearms, and so on.

The Court and both the State and Defense have invested interests in ensuring that trials are in a tightly controlled environment where outside influences are not allowed to prejudice the State's case or the defendant. Allowing a defendant to appear remotely would open the door for introduction of irrelevant or prejudicial information through video to the jury that could sway them one way or the other. The Court's options for addressing this would be to stop the proceedings and instruct the jury to disregard this information, or declare a mistrial. The delays caused by this would be to the detriment of both the State and Defense and frustrate the jury. Not to mention that a jury instruction to disregard information is not always effective. As noted in *Dunn v. United States*, 307 F.2d 883 (5<sup>th</sup> Cir. 1962), "if you throw a skunk into the jury box, you can't instruct the jury not to smell it."

Additionally, allowing remote appearances during trials would cause difficulty for the record. The

current practice is to either record the entire trial via audio or have a court reporter transcribe the proceedings. The parties can recite any visual information onto the record while the trial is ongoing to preserve any potential issues for appeal, and having a trial in a controlled environment makes this possible. The addition of appearances through video introduces a host of new visual information that will not be as easily captured in the record, particularly if the Court and attorneys are not focused on the person appearing via video at the moment and may miss something that needs to be preserved on the record. One remedy to this would be to record the entire video feed of the trial and preserve it as part of the record, however, the amount of data storage required for video recordings could easily exceed the resources available to the various Courts.

For the foregoing reasons, I respectfully request that the Court reject the proposed amendments to CrR 3.4.

**Kyle D. Houston** | Deputy Prosecuting Attorney  
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