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**Subject:** FW: CrR 3.4 public comment period email (I believe the attachments i previously sent had more concerns, I tried to identify from a finality of conviction perspective)  
**Date:** Thursday, September 16, 2021 3:24:23 PM

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**From:** Russell Brown [mailto:rbrown@waprosecutors.org]  
**Sent:** Thursday, September 16, 2021 3:23 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Larry Haskell <lhaskell@spokanecounty.org>  
**Subject:** FW: CrR 3.4 public comment period email (I believe the attachments i previously sent had more concerns, I tried to identify from a finality of conviction perspective)

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Thank you for the opportunity to share some feedback on proposed CrR 3.4. Elected Prosecutor Larry Haskell from Spokane County is providing the following comment.

Thanks,

Russell Brown  
Executive Director  
Washington Association of Prosecuting Attorneys  
206 10<sup>th</sup> Ave SE, Olympia, WA 98501  
360 753-2175

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Thank you for the chance to comment on the rule change.

In general, I view technological changes as a positive, and I believe courts and the administration of justice could benefit from the smart application of technology, including, in some circumstances, remote appearances. But I believe that the proposed changes to CrR 3.4 go too far in authorizing remote proceedings for, essentially, every possibly hearing in a criminal case, which will affect judicial economy negatively on appeal/collateral review.

My concerns are that authorizing remote appearances for trial, plea hearings, and in particular sentencing hearings will create enormous complications on appeal and for personal restraint petitions. I also question the presumption that defendants will always be able to have on-demand reliable internet access; certainly they should to request a remote hearing, but oftentimes they do not have the resources or means, and it will be unknown until the time of the hearing if they will appear or not based on technology or internet access. Would inability to appear at a trial or sentencing hearing based on faulty internet access result in a continuance? FTA warrant? Trial in absentia? Bail jumping? Are the circumstances uncontrollable where many places have free WiFi connections available, but the place the defendant chose had a temporary connection issue? What happens to the trial court dockets when multiple proceedings are rescheduled last minute due to delay or a failed remote appearance?

It is common for petitioners to allege communication difficulties even when they are in court, when they seek to withdraw a plea months or years after entry, or that they could not privately communicate with counsel, or that counsel did not adequately communicate their concerns. Many defendants are opposed to remote testimony of witnesses on the basis of confrontation/ due process, and courts have been unwilling to authorize remote testimony by witnesses, but these exact same concerns will be raised if it is the defendant who is remote, unable to privately communicate in real time with counsel, rather than witnesses. Victims and the community have an interest in finality of convictions that is not well served by this rule. It would be interesting indeed to see a trial where the jury, State, and court were all excused every single time a defendant and counsel need to have a private communication, which can occur in real time without a recess with an in-person trial. The probable result is significant delay.

I believe the current proposal to change CrR 3.4 would create more potential harm than benefit.

Thank you.