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**To:** [Linford, Tera](#)  
**Subject:** FW: Opposition to proposed changes to CrR 3.4  
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**From:** Martin, Margo [mailto:Margo.Martin@kingcounty.gov]  
**Sent:** Thursday, September 30, 2021 11:50 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Opposition to proposed changes to CrR 3.4

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Good morning,

I am writing to express concern about the proposed changes to CrR 3.4. As written, these changes would result in a radical change of not requiring the defendant to be physically present during evidentiary hearings including hearings to address conditions of release and trials or at plea hearings, sentencings, and arraignments. This will cause a myriad of issues and will likely slow down proceedings. Below are just a few examples of issues that are likely to result if the proposed changes are adopted:

- 1) Remote appearances during arraignment-  
Currently, remote appearances for arraignment are permitted by agreement of the parties and with court approval. This allows remote appearance in some circumstances, but also allows parties to determine and present to the court any issues that might be affected by remote appearance such as identity of the person being arraigned. Additionally, in many instances, the arraignment is the first time that the defendant meets their counsel. Having the defendant appear remotely diminishes their ability to speak with their counsel before and during the arraignment procedure to address any questions they may have.
- 2) Remote appearances during bond hearings or other times conditions of release are addressed-  
Often the conditions of release will include no contact orders. In domestic violence or sexual assault cases, these order have criminal legal consequences if they are violated. Having the defendant in court to review these orders with their attorney, sign the orders or otherwise acknowledge receipt of them is critical to being able to enforce the orders if they are violated. Additionally, it is not uncommon for a defendant to refuse to sign these orders. If that is the case, the prosecutor or the court will make a record that they were handed a physical copy of the order in open court. This same record cannot be made where the

defendant is appearing remotely because no one will be able to observe that they have a copy in hand.

3) Remote appearances during pleas-

Not being able to determine if the defendant is under pressure from someone else in the room along with them or some other source will make it difficult to determine if pleas are being made voluntarily. Other people being in the room could severely impact the defendant's ability to make a voluntary waiver of their rights. As an example of how others in the room may influence the proceedings, one can refer to the widely publicized instance from a domestic violence proceeding in Michigan. In that Zoom proceeding the defendant was in the same room as the complaining witness while she recanted her original statement to police. He was off screen, and did not appear in her screen. It was only that the sharp eyes of participants noticed the victim repeatedly looking off to the side and the defendant having a similar background in his zoom video that allowed this to be interrupted. A link to an ABA Journal article about this incident is here:

<https://www.abajournal.com/news/article/a-prosecutors-suspicion-during-assault-defendants-zoom-hearing-leads-to-his-arrest>

If the influence on the defendant during the plea is not also on the zoom screen, these same indicators may not be present. Further, there will be no record of any potential influences, making a defendant's later claim that the plea was involuntary nearly impossible to corroborate.

Remote appearances during trials-

- a. The courts and other stake holders in the criminal justice system have been working hard to limit the number of people who are in custody while awaiting adjudication of the case against them. This means that many defendants may be facing sentences of confinement, even lengthy DOC sentences, and be out of custody while the charges against them are pending. By operation of RCW 10.64.025, that defendant is to be taken into custody and held pending sentencing absent a finding that they are not a flight risk or a danger to the community. If such a defendant is found guilty while appearing remotely for the entry of the verdict, the court will be unable to accomplish this statutory requirement. Such a defendant may have a very strong incentive not to appear for sentencing as well.
- b. Requiring that victims and witnesses appear in person but allowing defendants to appear remotely will leave those victims and witnesses with the understanding that they are treated with less consideration by the process than the defendant.
- c. If a defendant opts to testify, they would be the only witness who would be able to testify remotely in the proceeding. This may influence both how the jury perceives testimony from the defendant. It will also create significant issues while trying to reference exhibits with the defendant, as they will not be in the courtroom to observe the exhibits in the same manner and at the same time as the jury.

4) Remote appearances during sentencing hearings-

- a. Sentencing documents for felony convictions require that the defendant place their fingerprints on the form in open court. This will not be possible if the defendant appears remotely.
- b. A defendant's ability to consult with their attorney during the proceedings about the notices regarding rights to appeal, loss of right to vote, and loss of right to possess a firearm will be diminished by remote appearance. These rights are very important,

and the consequences of the defendant not understanding the notices can be significant.

Finally, allowing for remote appearance by defendants will exacerbate any access issues for those with limited internet or technology capabilities, individuals for whom adaptations are necessary, or individuals for whom English is not their primary language.

For all these reasons and more, the court should reject the proposed rule change to CrR 3.4 as it is written.

Thank you,



**Margo Martin** ([She/Her](#))

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