

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Subject:** FW: Comment on Proposed amendment to CrR 3.4  
**Date:** Wednesday, August 25, 2021 3:44:55 PM

---

**From:** Teresa Chen [mailto:teresa.chen@piercecountywa.gov]  
**Sent:** Wednesday, August 25, 2021 3:40 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on Proposed amendment to CrR 3.4

**External Email Warning!** This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Regarding the proposed amendment to CrR 3.4 to allow the defendant to appear remotely. This rule would permit the criminal defendant to appear

- remotely, not necessarily by video, for most hearings and
- by video for arraignment, testimonial hearings, trial, and sentencing or when held in custody.

Remote appearances invite a variety of errors that we may have to accommodate during an emergency, but should not grow accustomed to in normal circumstances.

During the COVID pandemic, we are accommodating irregularities out of necessity. The reason for these accommodations is well documented in emergency orders, emergency rules, proclamations, and news stories.

But I question whether it is a good idea to maintain these procedures outside of an emergency and without specific findings re. individual necessity and lack of prejudice. When participants, including criminal defendants, are actually present in a courtroom, conditions are controlled, and there are witnesses to those conditions. In remote appearances, the screen may freeze, the picture may be too small for a participant to read an exhibit or another participant's face, the audio may be spotty, or there may be distractions off-screen. A party may fail to notice or comment on the irregularity at the time of hearing when the problem might be remedied. If the matter is raised after a ruling, the court must determine the veracity of the claim although it will be impossible to verify what a remote participant did or did not observe or hear.

Remote appearances can invite problems with:

- signing, sharing, and disseminating documents/exhibits,
- confidential conversations with counsel,

- interpreting, and
- verifying the defendant's identity, competency, and ability to comprehend or focus.
- 

The party at greatest risk due to a miscommunication is the criminal defendant. However, the state and victim are also invested in a speedy prosecution and the finality of the outcome. The proposed amendment undermines communication, a clean record, and finality without any apparent balancing of necessity or requirement for specific findings.

I agree that courts should have some discretion in allowing participants to appear remotely. And they already do. But the courts should continue to only allow remote appearances outside of an emergency after making specific findings of necessity balanced against prejudice. And the prejudice is greatest when the remote participant is the criminal defendant. I would oppose the amendment.

Teresa Chen  
Deputy Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
(253) 798-6517