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Subject: FW: Comments concerning proposed changes to CrR 3.4
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From: Lam, Tuyen [mailto:Tuyen.Lam@kingcounty.gov]
Sent: Thursday, September 30, 2021 10:56 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments concerning proposed changes to CrR 3.4

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Dear Counsels and Honorable Judges: I am writing to voice serious concerns over the proposed changes in CrR 3.4. In allowing defendants to appear remotely for essentially every part of the judicial process has grave ramifications for not only the criminal justice process but will also have severe impacts on judicial economy. Here are my concerns:

- 1.) The rule applies equally to a defendant who has been charged with traffic crimes to murderers.
- 2.) The rules have no regard to the impact of victims in the judicial process. 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.
 - a. Because victims are required to attend in person but defendants are not, victims will understand that they are being treated with less consideration than the defendant.
 - b. If defendants appear remotely for sentencing, victims will not be able to speak in the defendant's presence.
- 3.) I have had many court proceedings where a defendant cannot appear due to technical failures.
- 4.) Allow a defendant to appear remotely will degrade a defendant's opportunity to observe, understand, and participate in court proceedings:
 - a. Remote participation often makes it difficult to comprehend both the words spoken and meaning conveyed nonverbally. This may make it difficult to

understand the judge and the full meaning of witnesses' testimony.

- b. Courtroom presence assures that defendants focus on proceedings.
 - c. There are always technical problems: screen freeze, loss of wi-fi, with a small screen the defendant will not be able to see exhibits or a witness's or judge's face. Unexpected off-screen distractions are common.
- 5.) Defendants may be tempted to appear remotely because it seems easy but will not understand how much of the proceedings they will not fully experience and may not understand. They cannot anticipate technical challenges or distractions that will arise.
 - 6.) Any technical issues or problems with comprehension might not be obvious immediately, and later it may be impossible to verify the problem or know what was missed.
 - 7.) At any testimonial hearing, remote participation will create problems with sharing documents and exhibits. It will be virtually impossible to assure that the defendant has the same access to exhibits, pre- and post-admission, as if present in court.
 - 8.) The amendments diminish the right to counsel – the defendant will not have the opportunity to simultaneously consult with counsel during the proceedings. If the court has to halt proceedings for a private conversation, it may be to the defendant's or the State's detriment. Interruptions to consult with counsel also will irritate the jury and delay the proceedings. As a result, remote defendants will be reluctant to (or unable to) consult with counsel to the extent physical presence allows.
 - 9.) As to testimony, the defendant's remote presence would not satisfy the confrontation clause. It will be difficult to assure that courts obtain sufficient waivers before allowing remote presence.
 - 10.) The amendments invite problems verifying the defendant's identity at critical stages of the proceedings.
 - a. If the defendant isn't physically present and printed, any conviction cannot be added to felony criminal history databases.
 - b. If the defendant is not present, the parties will be unable to conduct in-court identification – positive or negative.
 - 11.) The amendments authorize a defendant to testify remotely, which would deprive the fact-finder of the chance to observe the defendant's demeanor. It also would allow coaching to occur off-screen without detection by the fact-finder or the court. The defendant could refer to notes that are not apparent remotely.
 - 12.) It will be impossible to assure the voluntariness of a guilty plea or waiver of other constitutional rights, especially via phone, where there is no ability to determine who else is present (off screen) when the plea is taken, who may be exerting undue influence.
 - 13.) The defendant appearing remotely for trials, guilty pleas, and sentencing diminishes the seriousness, importance, and dignity of these proceedings – that is

important to all parties and to the public perception of fair administration of justice.

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