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Subject: FW: Proposed Amendments to CrR 3.4
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From: Carlstrom, Terry [mailto:Terry.Carlstrom@kingcounty.gov]
Sent: Tuesday, September 28, 2021 6:12 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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To Whom it Concerns:

I write in opposition to the proposal to amend CrR 3.4(e) and (f) to permit remote appearances by defendants at *all* court hearings, including arraignment, trial, and sentencing. The pitfalls of the proposal are too numerous to permit an exhaustive list, but here are several of the most significant:

- 1) Remote appearances at arraignment, trial, and sentencing severely limit or even eliminate entirely the ability of the court, witnesses, victims, the State, etc. to verify the identity of the defendant. How is a defendant appearing remotely for sentencing to affix his or her fingerprints to a J&S? Or provide a buccal swab for DNA identification and/or HIV testing when required pursuant to a felony (and some misdemeanor) conviction? How is a witness or victim to identify a defendant at trial from a video screen, particularly where the defendant's physical characteristics play a role in the identification? How is a DV No Contact Order or Sexual Assault Protection Order issued at arraignment or sentencing to be enforced where there will be no documentary proof that the defendant actually received a copy of the order?
- 2) The proposal to permit remote attendance at trial is fundamentally unfair to jurors, witnesses, and victims, all of whom will still be required to travel to the courthouse and attend or testify in person. If witnesses and victims are not allowed to testify remotely except in highly particularized instances because of the defendant's confrontation clause rights, how are those same confrontation rights to be protected when the defendant him/herself is not present? The inconvenience imposed upon and required of jurors, victims, and witnesses will not promote respect for the criminal justice system and the courts in any way; indeed, it will have precisely the opposite effect.
- 3) I have conducted hundreds of guilty plea hearings over the course of the 19+ years I have been a prosecutor, and in virtually every one there comes a time where the defendant needs

at least a brief word with his/her attorney to ensure a full understanding of the significant rights being explained and given up as part of the plea. When a defendant is present in person, those interruptions will often be quite short. If the defendant is not present, however, there is no way for defense attorneys and defendants to communicate privately without shutting down the video feed, having the defense attorney step out of the courtroom, and placing a call to the defendant to answer his/her questions. That will not make the guilty plea process more efficient; rather, it will make it far less efficient.

- 4) Technical difficulties experienced during Zoom jury selection are bad enough when the wifi connections of prospective jurors freeze or go out. What happens when the defendant's connection is not good enough? The hearing cannot go forward without him/her, and if it's an arraignment, guilty plea hearing, trial, or sentencing, there is no increase in the efficiency of the process when the hearing has to be rescheduled to another date with no guarantee the problem will be resolved.
- 5) There is no way for a defendant appearing remotely for trial to be able to view all of the exhibits being presented, consult with his/her attorney in real time, etc. Nor is there any way to verify that the defendant is not being coached during testimony by someone in the room but offscreen.
- 6) Guilty pleas conducted with defendants appearing remotely will be inherently more subject to later challenges and motions to withdraw, and much harder to defend. Finality of convictions is not served by making it easier to challenge or withdraw pleas.
- 7) Even during the height of the current pandemic, defendants are not being allowed to appear remotely for arraignments, plea hearings, trials, and sentencings. The proposed changes are not simply a codification of pandemic practices, they are a massive (and unwarranted) expansion of them.

I join in the objections filed by others to the proposed amendments, and urge the Supreme Court to reject them.

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