

## Washington Coalition of Crime Victim Advocates

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Clerk of the Supreme Court  
PO Box 40929  
Olympia, Washington 98504-0929

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SUPREME COURT  
STATE OF WASHINGTON  
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BY C. J. HERRITT  
CLERK

To the Clerk of the Supreme Court:

I am writing of behalf of the Board of Directors of the Washington Coalition of Crime Victim Advocates (WCCVA), a nonprofit organization supporting rights and services for victims of crime in Washington State for over 22 years. We wish to express our strong and abiding opposition to the adoption of the proposed amendment to CrR 4.6(a), pertaining to depositions, to the proposed new rule CrR 4.11, pertaining to the recording of witness interviews, and to the corresponding proposed changes to the Criminal Rules for Courts of Limited Jurisdiction.

We are concerned because there has been no public debate about the need for these rule changes, nor any demonstration that solutions to any problems they address are unavailable under existing court rules.

On the other hand, we believe that these proposed rule changes threaten to erode the integrity and credibility of criminal justice in this state. They would, in a significant number of cases, add significantly to the trauma experienced by crime victims and discourage their participation in the criminal justice process.

Though the proposed rule changes do not explicitly require victims and witnesses to submit to recording of interviews, they do communicate a clear expectation that they will do so, and provide attorneys with a tool to pressure reluctant victims and witnesses to consent to recording. There is no provision in the rules requiring that victims or witnesses be informed of their option to refuse to consent to the recording of an interview.

The proposals strongly, and we believe, misleadingly suggest that victims and witnesses of crime are obliged to acquiesce in the recording of their interviews with prosecutors and defense attorneys, regardless of their own preferences.

Should the Supreme Court accept these proposed rule changes, Washington would be the only state in the nation in which the reluctance of a victim or witness to allow their interview with a defense attorney to be recorded by audiotape, or other means of verbatim recording, would be presumptive grounds for ordering a pre-trial deposition.

The members of WCCVA hold that the participation of victims and civilian witnesses in pre-trial interviews is voluntary. As such, they have the ability to negotiate the conditions under which such interviews occur, including the date, time, location, and duration of the interview, the presence of persons to provide support and a sense of security, and whether the interview is electronically or otherwise recorded.

When the witness to be interviewed is the victim of the crime, it is particularly important that he or she retain the power to set the conditions of the interview. Crime is often experienced as the loss or defeat of one's personal power and ability to set and defend boundaries. Criminal justice procedures that provide no choices for victims aggravate this experience of powerlessness and dehumanization, magnify the impact of the crime, and will for many discourage participation in the justice process.

In some cases, victims are particularly reluctant to submit to the electronic recording of an interview because of the emotional content that such recording captures in addition to the factual narrative. Such interviews often require the victim to re-experience the terror, revulsion, or rage triggered by the crime itself. When those powerful feelings surface during the interview and are captured in a medium over which the victim has no control, it increases the victim's sense of exposure and vulnerability. This is especially true if the victim knows the recording will be provided to the defendant, and if submitted as evidence in court, available for public scrutiny.

In cases involving child victims or witnesses, we believe the proposed rules compromise the rights of parents and guardians to look after the interests of their children by suggesting that the option to refuse to allow recording of pre-trial interviews is off the table. They also threaten to undermine investigative practices established over the years to protect both the integrity of the evidence and the health and safety of child witnesses.

Under existing rules, prosecutors and defense attorneys are free to request the permission of victims and witnesses (or their legal guardians, if they are children) to record pre-trial interviews. Some will willingly grant that permission. Others will decide that it is in their best interests to refuse to do so.

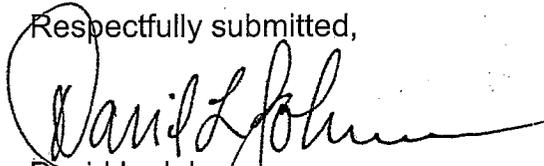
Under existing rules, prosecutors and defense attorneys who feel that victims or witnesses are setting unreasonable conditions on their availability for pre-trial interviews may petition trial courts to order depositions.

Under existing rules, victims and civilian witnesses who choose, as we hope they would, to report crime and participate in the ensuing investigations and judicial proceedings, retain some ability to protect their privacy and their dignity in the process.

Under existing rules, trial courts can and do strike a proper balance between the rights of private individuals who are victims and witnesses of crime and the legitimate requirements of justice in criminal cases.

The members of WCCVA see nothing in the existing rules that justifies the introduction of new provisions that cause further trauma to victims and witnesses, discourage their participation in the justice process, create confusion about their rights and obligations, and devalue their contribution to justice and community safety. We urge you to finally and unequivocally reject these proposed changes to the court rules.

Respectfully submitted,



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