

**WCSAP**  
Washington Coalition of  
Sexual Assault Programs

April 28, 2011

Supreme Court Rules Committee  
Washington Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: *Proposed Rules of the Court, CrR 4.11, regarding recording of witness interviews in criminal cases.*

Dear Supreme Court Rules Committee:

We oppose the proposed new rule and amendments to the above referenced Rule of the Court. We respectfully request the court to *reject* the proposal for the following reasons:

- **The proposed rule diminishes the role of complaining witnesses and/or alleged crime victims in the Criminal Justice System, and potentially could have a damaging effect on victim cooperation.**

The rule does not allow victims/witnesses to object to recordings. This is of great concern for a multitude of privacy, safety, and victim participatory reasons.

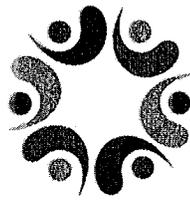
The proposed rule fails to provide crime victims with a meaningful role in the criminal justice system because it fails to respect their right to privacy. Our State Constitution Article 1, Section 35, requires that crime victims be treated with dignity and respect. This rule affords them neither.

Without an option to decline a pre-trial recording, victim's willingness to participate in the criminal justice system will be impacted. Sexual assault victims will be less likely to come forward knowing that they will be forced to be recorded and that the accused or others could have access to the recording of this most personal violation. Additionally, there is dialog captured in these interviews outside of details of the assault that the perpetrator may gain access to and leverage in order to obtain power over and/or to intimidate the victim.

Victims must be afforded the right to decline the recordings. Recording interviews is not essential for quality witness interviews and there are more common and practical practices such as note-taking to achieve accurate records.

The current rule which would limit dissemination of the recording to only those involved in the criminal case is completely insufficient. Beyond the access to the recording by the accused, who may share it, there are challenges to counties. It is not likely, that given public information requests, that the materials will be protected. In fact, a subcommittee inquiry found that 50% would release the data. In the digital age in which we live, this is far too dangerous for victims.

Victims won't come forward and this fear should not be dismissed. We encourage the court to take a moment to consider that the participation of complaining witnesses and/or alleged crime victims is integral to the criminal justice system. And yet, as we provide protections to criminal defendants and seek to make our legal system more



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efficient, we create barriers to the participation of victims and witnesses by ignoring the impact these rules have upon them.

We strongly advocate that the proposed rule be voted against. It is not victim centered or evidence based. The current system values victim participation and allows for recording should the victim agree. This must remain a victim's choice. There is no substantive supporting evidence that a victim who agrees to be interviewed, but declines recording hinders justice. However, mandatory recording will do just that by disregarding victim considerations and rights. It has been argued by some that the proposed rule is pro-victim because it allows their story to be recorded thus minimizing need for additional follow-up or retelling of their story. This is not fully factual and under the current system a victim can elect to a recording should they desire to.

- **The absence of basic standards to ensure the accuracy and fairness of recordings further marginalizes complaining witnesses and/or alleged crime victims.**

The proposed rule reflects an absence of awareness of and/or regard for the extensive protocols and procedures that have been implemented by counties throughout the State of Washington to ensure that any electronic and near verbatim recordings are accurate and complete. The Child Sexual Abuse Investigation Protocols are the direct result of policy makers emphasizing the importance of documenting child statements in an accurate manner. If the State is going to require that complaining witness and/or alleged crime victims submit to a recording, it should at least provide them the courtesy of having standards and guidelines that ensure the accuracy of their statements.

For the above stated reasons, we respectfully request the court reject this proposed rule in its entirety. For many years the coalition has consistently raised these concerns, and on behalf of rape crisis centers throughout the State of Washington and victims of sexual assault, we appreciate your ongoing consideration of our comments.

Sincerely,  
Andrea Piper-Wentland  
Executive Director