

To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>

Subject: Public comments on the adoption of proposed CrR/CrRU 3.8, 4.7, and 4.11

To the Washington Supreme Court:

My name is Ciara Murphy and I am the Director of Domestic Violence Programs at the Salvation Army in Seattle. Here we offer a range of supportive social services to adult victims of gender-based violence (GBV) such as domestic violence, sexual assault, and sex trafficking. I object to the following proposed rules as adverse to the interests of both individual victims of GBV crimes, and society in general, in terms of the need for protection from criminal behavior and securing offender accountability.

CrR 3.8 - Recording eyewitness identification procedure: Proposed CrR 3.8 will impede effective law enforcement and result in intimidation of victims/ witnesses of violent crimes as recordings of them making an identification can be shared with and circulated by the defendant. One also assumes that the recordings will be available under the Public Records Act upon the filing of charges and so can eventually be circulated by anyone. With respect to human trafficking crimes, which often involve gang-related violence, eyewitnesses will fear retaliation because their image may be circulated to associates of the defendant for the purposes of retaliation or witness tampering.

CrR/CrRU 4.11 - Recording witness interviews: The vast majority of witnesses already agree to recording. In the rare instances of refusal, it's usually related to the sensitivity of subject matter (e.g. domestic violence or sexual assault) where victim/witnesses are in fear of both the defendant and community shame. Coercing such a witness to be recorded (by a negative jury instruction if they refuse) is unacceptable. I am particularly concerned about how this will affect victims of sexual assault, sex trafficking, or incest. These cases are notoriously hard to prosecute as it is, given the shame and trauma of the victims and their often dependent and complex relationships with the perpetrators. Victims need some control over what information is shared with their abusers – their main fear of reporting the details of their assaults to the criminal justice system is because it increases the likelihood of severe retaliation from the abuser or his/her family or associates and contributes to community shaming as this sensitive information which is digitized, is easily replicated and shared with the click of a computer key. Right now, it is very difficult for law enforcement to secure statements from these victims – and imposing an audio recording requirement will make it doubly so. If victims learn that their statements must be recorded and made available to the abuser (With whom she/he may still have to live, share community, or co-parent), even more refusals to cooperate with prosecution will result. This will lead to less accountability for offenders and continued exposure to harm for victims.

CrR/CrRU 4.11 will also hinder law enforcement's ability to conduct investigations involving victims/witnesses from immigrant communities. These, whether documented or undocumented, often maintain elevated concerns about interacting with governmental entities. In the case of undocumented immigrants, many whom are limited English proficient, it takes repeated conversations on the part of law enforcement (often working through language interpreters) to gain their trust and reassure them that their legal status is not in question (Only the information on the elements of the alleged crime). The prospect of an audio recording taking place

will have chilling effect on our imperative to secure justice for them as victims, and again, will be especially harmful to persons who are both undocumented and victims of GBV crimes.

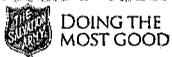
CrR/CrRU 4.7(h)(3) Redacted Discovery: this permits the defense to redact discovery and to provide it to a defendant without approval of the court or of the prosecutor. Prosecutors typically approve redactions on discovery because of their role in protecting victims/society from crime. If this rule is adopted, prosecutors will have to file protective orders pre-emptively as a matter of course in order to protect victims. The defense bar is certainly capable of competent and conscientious redaction - they are officers of the court and do not need prosecutorial oversight, but the fact is that the defense bar, especially public defenders are *completely overloaded* with work, and have neither the time nor resources to do this adequately. Moreover, the list of necessary redactions must be expanded - one expects to see included such basics as the contact details of witnesses as well as their employment or school locations. This rule will inevitably lead to more private victim/witness information being shared and publicized.

In considering these proposed rules, I urge the court to have regard to the Crime Victim Bill of Rights (RCW 7.69.030), which says "***The people of this State intend that victims and witnesses in criminal cases be treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.***" Removing a GBV victim's choice as to how and when information such as their recorded voice, images, and medical records are shared with the defendant will hinder their willingness to participate in the criminal justice process, thus denying them protection and avoiding abuser accountability.

Yours sincerely.

Ciara Murphy

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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, April 29, 2019 1:05 PM
To: Tracy, Mary
Subject: FW: Salvation Army - Public comments on proposed CrR/CrRUI 3.8, 4.7, and 4.11
Attachments: Salv. Army_Public Comments on Proposed CrR_CrRUI 3.8 4.7 4.11.pdf

From: Ciara Murphy [mailto:ciara.murphy@usw.salvationarmy.org]
Sent: Monday, April 29, 2019 1:02 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Salvation Army - Public comments on proposed CrR/CrRUI 3.8, 4.7, and 4.11

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