

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 10:36 AM
To: Tracy, Mary
Subject: FW: Objections to proposed court rule changes

From: Howe, Dustin [mailto:dhowe@spokanepolice.org]
Sent: Tuesday, April 30, 2019 10:35 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Tracy, Mary <Mary.Tracy@courts.wa.gov>
Subject: Objections to proposed court rule changes

To whom it may concern:

Proposed CrR 3.7 will severely impede effective law enforcement in part many individuals are reluctant to be recorded or the police don't have recording equipment available. Making this a requirement will significantly decrease cooperation with police, who already battle mistrust from many victims/witnesses. It is completely illogical and a violation of the Washington Privacy Act to record the refusal of a person who refuses to be recorded. If a victim or witness, for whatever reason, has a drastic change in their statement, there are already remedies in place to bring those to light.

Proposed CrR 3.8 will grossly impede effective law enforcement, because many individuals are reluctant to be recorded or the police don't have recording equipment available. With respect to DV victims, human trafficking victims, and any victim of a violent crime or gang-related violence, many already have an extreme fear of retaliation. They fear that if they do participate their assailant will have access to the recording and their image may be circulated to associates/family of the defendant for purposes of retaliation. Getting victims and witnesses to participate is already extremely challenging. It has already become apparent that our current DV laws are not congruent with court rules. DV has been identified as a problem/priority in almost every community in the nation. Considering any court rule changes that make it harder to prosecute Domestic Violence perpetrator's should not be considered.

Additionally, many people are uncomfortable and do not want to be recorded or will be less forthright because of being recorded. A refusal to be recorded appears to be an exception only if the person refusing to be recorded is recorded refusing to be recorded which is itself a violation of the Washington Privacy Act. Furthermore, the required preservation of these recordings will be arduous if not impossible for law enforcement agencies to comply with. Additionally, many of the terms being used are not defined and subject to very broad interpretations creating lengthy and repeated litigation because no one knows what the words mean. The remedies for violations of these rules appear extreme and unreasonable. It will not bring about more justice it will only make more victims and create INJUSTICE.

The proposed amendment to CrR 4.7 requires the State to disclose evidence known to "anyone acting on the State's behalf", which apparently would also include any State witness, especially with the concluding clause, "including the police." It could be construed to include witnesses testifying pursuant to a plea agreement. It is unreasonable to require the State to disclose evidence of which it is unaware when that evidence is known only to a witness or another civilian. While the Brady obligation extends to evidence known to law enforcement directly involved in an investigation, it certainly does not extend to civilians who are not State agents. If the proposed amendment is not intended to expand the Brady rule, then it is entirely unnecessary.

Many Law Enforcement agencies, including mine, already use Body Worn Cameras for a vast majority of its contacts with the public. This includes contact with suspects, victims, witnesses, and even talking amongst colleagues. It is very rare

that the body camera footage is allowed into court. It is already the best evidence as it relates to suspect/victim/witness statements however rarely allowed. I strongly urge all the Justices to reject any changes that the Supreme Court is considering imposing. Certainly, a forum of open discussion has not taken place to bring to light why there is a need for such overbearing changes. It also appears that nobody has considered the legality of several of the changes either.

Humbly and respectfully,

Detective Dustin Howe #680 | Major Crimes Domestic Violence Unit |
Spokane Police Department | 509-477-5359 (desk) | 509-385-6827 (cell) |
dhowe@spokanepolice.org |



Spokane Regional Domestic Violence Team

Tracy, Mary

From: Howe, Dustin <dhowe@spokanepolice.org>
Sent: Tuesday, April 30, 2019 10:35 AM
To: OFFICE RECEPTIONIST, CLERK; Tracy, Mary
Subject: Objections to proposed court rule changes

To whom it may concern:

Proposed CrR 3.7 will severely impede effective law enforcement in part many individuals are reluctant to be recorded or the police don't have recording equipment available. Making this a requirement will significantly decrease cooperation with police, who already battle mistrust from many victims/witnesses. It is completely illogical and a violation of the Washington Privacy Act to record the refusal of a person who refuses to be recorded. If a victim or witness, for whatever reason, has a drastic change in their statement, there are already remedies in place to bring those to light.

Proposed CrR 3.8 will grossly impede effective law enforcement, because many individuals are reluctant to be recorded or the police don't have recording equipment available. With respect to DV victims, human trafficking victims, and any victim of a violent crime or gang-related violence, many already have an extreme fear of retaliation. They fear that if they do participate their assailant will have access to the recording and their image may be circulated to associates/family of the defendant for purposes of retaliation. Getting victims and witnesses to participate is already extremely challenging. It has already become apparent that our current DV laws are not congruent with court rules. DV has been identified as a problem/priority in almost every community in the nation. Considering any court rule changes that make it harder to prosecute Domestic Violence perpetrator's should not be considered.

Additionally, many people are uncomfortable and do not want to be recorded or will be less forthright because of being recorded. A refusal to be recorded appears to be an exception only if the person refusing to be recorded is recorded refusing to be recorded which is itself a violation of the Washington Privacy Act. Furthermore, the required preservation of these recordings will be arduous if not impossible for law enforcement agencies to comply with. Additionally, many of the terms being used are not defined and subject to very broad interpretations creating lengthy and repeated litigation because no one knows what the words mean. The remedies for violations of these rules appear extreme and unreasonable. It will not bring about more justice it will only make more victims and create INJUSTICE.

The proposed amendment to CrR 4.7 requires the State to disclose evidence known to "anyone acting on the State's behalf", which apparently would also include any State witness, especially with the concluding clause, "including the police." It could be construed to include witnesses testifying pursuant to a plea agreement. It is unreasonable to require the State to disclose evidence of which it is unaware when that evidence is known only to a witness or another civilian. While the Brady obligation extends to evidence known to law enforcement directly involved in an investigation, it certainly does not extend to civilians who are not State agents. If the proposed amendment is not intended to expand the Brady rule, then it is entirely unnecessary.

Many Law Enforcement agencies, including mine, already use Body Worn Cameras for a vast majority of its contacts with the public. This includes contact with suspects, victims, witnesses, and even talking amongst colleagues. It is very rare that the body camera footage is allowed into court. It is already the best evidence as it relates to suspect/victim/witness statements however rarely allowed. I strongly urge all the Justices to reject any changes that the Supreme Court is considering imposing. Certainly, a forum of open discussion has not taken place to bring to light why there is a need for such overbearing changes. It also appears that nobody has considered the legality of several of the changes either.

Humbly and respectfully,

Detective Dustin Howe #680 | Major Crimes Domestic Violence Unit |
Spokane Police Department | 509-477-5359 (desk) | 509-385-6827 (cell) |
dhowe@spokanepolice.org |



Spokane Regional Domestic Violence Team