

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, May 1, 2019 8:25 AM
To: Tracy, Mary
Subject: FW: Proposed CrR/CrRLJ 3.7, 3.8, 4.7, 4.11

From: Riddhi Mukhopadhyay [mailto:riddhim@ywcaworks.org]
Sent: Tuesday, April 30, 2019 11:07 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed CrR/CrRLJ 3.7, 3.8, 4.7, 4.11

To the Clerk of the Supreme Court,

I am the Legal Director at the Sexual Violence Legal Services (SVLS). SVLS opposes the proposed Criminal Rules (CrR) and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). SVLS is the only legal aid program in Washington that provides legal representation and assistance in both criminal and civil proceedings exclusively to victims of sexual violence, which includes victims of rape, assault, commercial sexual exploitation, and stalking.

Though the intention of the proposed rules to prevent possible convictions of innocent individuals is applauded, the many public comments opposing the rule amendments eloquently address many of our concerns about the far-reaching effects on victim rights and privacy rights. These include: victims of sexual and domestic violence being denied by the system, similar to their abuser, the autonomy of having their words and images recorded; the chilling effect on crime victims and witnesses who fear participating in recordings that are accessible to and used by their abuser to further intimidate; and, the overly broad application of *Brady* to extend beyond what is in the State's control, to vast access to agencies, victims, and witnesses in support of the State.

SVLS is also concerned that the current proposed rules ignore Washington's history of protecting rights of crime victims through both statute and constitution. In 1981, Washington enacted a crime victims' rights statute, calling for "vigorous" support of victims' rights as follows:

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are 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.

RCW 7.69.010.

In 1989, the citizens of Washington amended the state constitution to further protect the rights of crime victims. Article I, section 35 begins with an acknowledgement of the important role victims play in the criminal justice system:

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

The Amendment further affords victims of felonies various rights for meaningful input once there is an affirmative notice to the prosecutor from the victim about their intention. Const. Art. I, § 35. Both Constitution and statute clearly identify the importance of meaningful victim participation. The legislative intent and plain language of the Amendment is clear, and echoed in RCW 7.69.010, which is designed “to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity.”

Additionally, SVLS has great hesitation in how these proposed rules endorse tactics that are often used to further intimidate, silence, and humiliate victims of sexual and domestic violence. Having represented countless victims during defense interviews, it is a rare occurrence that a victim does not want to be recorded. Most believe it is better to be recorded for transparency and clarity. However, the few who do not want to be recorded often have a very real fear of further abuse and retaliation by the perpetrator and their community, or the use of specific information to solely shame and humiliate.

In criminal proceedings, we already appear on behalf of minor victims to ensure that all names are properly redacted when defendant’s briefing and responses continue to identify children by their full names. We already appear on behalf of immigrant victims who have heightened fear of public records and face recognition technology being used against them at the federal level. Our program has seen how State’s evidence and information in a criminal case is used against victims of and witnesses to sexual violence in civil proceedings or in the media, once obtained through public records requests. Increasing the scope of information required to be provided to defense only serves to silence victims as it puts victims in the position of having to choose between maintaining their privacy or reporting to law enforcement.

Just as a defendant is innocent until proven guilty, victims and witnesses of crimes should be treated respectfully and as credible until there is reason, not solely based on speculation, to believe otherwise. Therefore, we respectfully ask that the proposed amendments be rejected at this time.

Riddhi Mukhopadhyay
Legal Director
Sexual Violence Legal Services-YWCA
Legal Line: 844.999.SVLS (7857)
[SVLS](#) | [Facebook](#) | [Twitter](#)

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain Protected Health information, privileged or confidential information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender and destroy this message immediately. All incoming e-mails to the domain ywcaworks.org are filtered for SPAM, malicious content, and electronic viruses.