

WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS

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Serving the Law Enforcement Community and the Citizens of Washington

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Supreme Court of Washington
Office of the Clerk of the Court
PO Box 40929
Olympia, WA 98504-0920

Washington State
Supreme Court

Dear Clerk of the Court:

This letter is in response to the Order of the Court dated July 11, 2018 seeking comments on certain proposed Court Rules or Amendments to Court rules put forward by the Washington Association of Criminal Defense Lawyers (WACDL). The comments provided herein are intended to apply to each WACDL proposal published for comment on the aforementioned date. The Washington Association of Sheriffs and Police Chiefs (WASPC) opposes these proposals and respectfully requests that the Court not adopt them. Our reasons include, but are not limited to the following:

- **Erosion of Prima Facie Presumption of Statements by Law Enforcement Officers**
The statement of a law enforcement officer carries a presumption of the truth. The underlying presumption behind these proposals erode that long-standing presumption, without good cause, and to the detriment of justice and the history of public service of Washington's law enforcement officers.
- **Financial Impacts**
The financial impacts of these proposals is colossal, and virtually impossible to calculate. These costs include additional staff time to accommodate the provision in these proposed rules, the technology acquisition necessary to abide by these proposed rules, the data storage costs, the public records management and disclosure costs, and liability costs, only to name a few.
- **Unreasonable Expectations**
These proposals create very real and very predictable unreasonable expectations. To require "custodial and non-custodial interrogations of persons under investigation for any crime" is simply unreasonable. To our knowledge, there is no Court adopted definition of the term "interrogation." When a law enforcement officer investigates a crime, all persons are witnesses or suspects until the facts show otherwise. As a result, these proposals would require every law enforcement officer to record every communication while interacting with members of the public, and, thus, require every law enforcement officer to be equipped with a body worn camera. These expectations are unreasonable..
- **Impact on Confidential Informants**
As the Court is well aware, effective law enforcement oftentimes relies on information

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provided by confidential informants. These proposals would effectively eliminate the ability to act on information reported to law enforcement by members of the public who fear retaliation for assisting justice.

- **Unfairly Tilting the Scales of Justice**

These proposed rules, with their presumption that unrecorded statements are inadmissible in Court unless the statement meets a narrow list of exceptions, unfairly tilts the scales of justice, with the result that would have devastating effects on public safety, and the public's confidence in their criminal justice system.

- **Court Overreach**

Our system of government relies on the effective work of all three branches of government – co-equal branches of government. These proposals are more than simple Court Rules – they constitute law enforcement policies and procedures. Court rules are not the proper venue for the consideration or adoption of law enforcement policies and procedures.

- **No Link to Constitutional or Statutory Rights**

The proposals brought by the WACDL have no discernable link to a person's constitutional or statutory right. They are merely a 'wish list' brought forth by an interest group to an inappropriate venue. Rather than be seriously considered by the Court in such a manner as this, the WADCL should have brought these proposals to the Legislature.

- **Unusual Process**

While WASPC does not regularly find itself weighing in with the Court on proposed rules, we note that these proposals appear to have skipped an essential part of the Court's process for considering new or amended Court rules. We understand that the Court utilizes a Rules Committee where proposed rule changes are forwarded for consideration and recommendation *prior* to said proposal being published for comment. We question the unique process for such unique proposals – particularly those with such a disproportionate impact on law enforcement and public safety.

In summary, the Washington Association of Sheriffs and Police Chiefs oppose WACDL's proposals and respectfully requests, in the strongest of terms, that the Court decline to adopt the same.

Sincerely,



Steven D. Strachan
Executive Director

SDS:dg