

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, February 27, 2019 4:42 PM  
**To:** Tracy, Mary  
**Subject:** FW: Comment re: Proposed CrR 3.7 - Update #2

Bold text is an addendum to previously filed comment.

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**From:** Serrano, Barbara (ATG) [mailto:BarbaraS3@ATG.WA.GOV]  
**Sent:** Wednesday, February 27, 2019 4:34 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment re: Proposed CrR 3.7 - Update #2

Dear receptionist,  
My apologies, but this is my last and final addendum (in bold).  
Please forward this to the Rules Committee:

To the Clerk of the Supreme Court:

**The following is my personal opinion and not necessarily the opinion of the State Attorney General's Office.**

A change in the court rules requiring audiovisual recordings of all interrogations would have far-reaching implications for state agencies that investigate white-collar crime. The proposed rule reads:

- a. Custodial and non-custodial interrogations of persons under investigation for any crime are to be audiovisually recorded, by electronic or digital device.

Because the proposed requirement does not refer to "law enforcement" or "law enforcement agencies," it arguably could apply to criminal investigations conducted by state agencies irrespective of whether the "interrogation" is conducted by a commissioned officer.

The Office of the Insurance Commissioner (OIC) and the Department of Revenue (DOR) employ detectives to investigate alleged insurance fraud and tax fraud, i.e. nonpayment of state sales tax.

At the Insurance Commissioner's Office, detectives often conduct recorded interviews with suspects by telephone. Prior to any questioning, a suspect is asked whether they: 1) Are willing to participate in the interview voluntarily, 2) Consent to being recorded, and 3) Understand that they are being questioned as part of a criminal investigation.

Recorded telephone interviews often become part of the evidence I consider for the purposes of making charging decisions, making plea offers, and resolving cases.

If the Supreme Court were to adopt CrR 3.7 as proposed, I anticipate that defense will seek to preclude admission of audio-recorded statements gathered by state agencies in criminal cases simply because they are not conducted with an audiovisual device.

Requiring audiovisual interviews with criminal suspects would result in an unnecessary impediment for state investigations of white-collar crime. OIC and DOR investigators are not equipped with body cameras. Nor should they be expected to wear body cameras, as they are not making traffic stops and frequently in contact with members of the public.

Sincerely,



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