

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, May 1, 2019 8:25 AM  
**To:** Tracy, Mary  
**Subject:** FW: Comments to proposed rules

**From:** Harrison, Susan [mailto:Susan.Harrison@kingcounty.gov]  
**Sent:** Tuesday, April 30, 2019 9:18 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comments to proposed rules

To the Clerk of the Supreme Court:

I am writing to express my opposition to proposed new rules CrR 3.7, CrR 3.8, CrR 3.9, and CrR 4.11, amendments to CrR 4.7, and parallel CrRLJ proposals. I am a senior deputy prosecuting attorney for King County, and my current focus is on prolific offenders who commit burglary and car theft related crimes. Prior to this position, I worked as a trial deputy in our office's Special Assault, Violent/Economic Crimes, and Domestic Violence Units, among others.

Proposed CrR 3.7 and CrR 3.8: Victims and witnesses in cases that run the gamut from car theft to robbery or sexual assault routinely express concern about their personal safety amid the potential for retaliation if a criminal defendant were to find out that they cooperated with law enforcement. I am concerned that these proposed new rules would have a chilling effect on the willingness of those individuals to assist law enforcement by even speaking about crimes that were committed against them or witnessed by them, as well as their willingness to participate in any eyewitness identification procedure. Those recordings would be viewed by the defendant and would also be available to anyone who filed a request under the Public Records Act should the case be filed. Questioning during defense interviews and cross-examination at trial are appropriate, effective, and available tools for defense to challenge any testimony given by victims and witnesses, as well as any eyewitness identification made by a victim or witness.

Proposed CrR 3.9 : the rule is confusing as drafted, it wars with the commonly-made argument by defense that in-court identification should not be allowed if there has been a prior identification procedure, and if adopted it would preclude law enforcement from identifying in court a defendant he or she arrested for crimes such as DUI, vehicular assault, or vehicular homicide, without any basis provided for the assertion that this would further the goal of justice.

Proposed CrR 4.7(h): a review of this proposed amendment to this rule deepens the concern expressed above as to proposed CrR 3.7 and CrR 3.8, as prosecutors in my office regularly receive requests to review redacted discovery and many have found it is often the case that the initial review conducted by defense does not catch all necessary redactions. Allowing discovery to be provided to defendants without prosecutor or court knowledge or approval would eliminate that secondary review process and would in many instances result in criminal defendants receiving sensitive information pertaining to victims and witnesses (and often their friends and families). Once this incompletely redacted discovery is in the hands of a criminal defendant, he or she is free to do what they wish with the information contained within, and there is no effective remedy to address this and any resulting consequences once it has happened.

Proposed CrR 4.11: It has been my experience that the vast majority of victims and witness agree to have their defense interviews recorded, and this proposed rule would penalize a victim or witness who declined to be recorded by way of a negative jury instruction. It is not clear whether or not under the proposed rule a victim/witness would be allowed to tell the jury in detail about their reasons for not agreeing to have their interview recorded (as noted above, many victims and witnesses express a real and valid fear that they are subjecting themselves to potential retaliation by cooperating

with law enforcement—some of those individuals hold these fears because they know the defendant personally, or know details of his or her criminal history).

Thank you for considering my comments as you review and consider all of the proposed rule changes.

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