Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 1:56 PM
To: Tracy, Mary
Subject: FW: Comment on proposed rule changes

From: Fyall, Chris [mailto:Chris.Fyall@kingcounty.gov]
Sent: Tuesday, April 30, 2019 1:55 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on proposed rule changes

Hello,

I oppose many of the rule changes proposed by the defense bar.

The proposed CrR 3.7 establishes unfunded mandates for many local law enforcement agencies who do not currently have the necessary equipment. I prosecute many cases sent by police agencies that do not have this equipment, and am concerned what the rule would mean for law enforcement in those areas. The legislature and the voters have imposed many unfunded mandates, but the courts should not.

What is more, even where recording equipment exists, the proposed CrR 3.7 is both over-aggressive in its requirements and reckless in its remedy, because it presumes suppression of *all* of a defendant's statements if *any* statement is not recorded. I have prosecuted many cases involving recordings from body-worn videos (BWVs) and in-car videos (ICVs). These devices are often battery operated, and busy officers can forget to charge their batteries. Forgetting can subject an officer to internal discipline, but the proposed rule presumptively insulates the defendant against any statements he might make to that officer, or any other involved in the investigation. The remedy is out of proportion to the error. Also, the rule's "significant exigency" exception is too narrow. It often happens that an officer is racing to a scene and forgets in his/her haste to activate a BWV. Under the proposed rule, even if an officer faced with a non-exigency quickly remembers to turn on his/her BWV, any initial non-recorded interaction with the suspect will presumptively taint all subsequent ones. The rule is even more problematic at complex scenes. What if a single officer with an inactive BWV asks a question of a suspect, even though all other officers complied perfectly with the rule's requirements? As written, it would seem that a single officer's mistake would put presumptive suppression in play. The burden shifting analysis that might permit admission of statements in the face of these errors is small solace. As written, the proposed CrR 3.7 is deeply flawed.

The proposed new rule in CrR 3.8 is loosely written and confusing. In large part, the remedy it creates seems surplus; a trial court already has those authorities. However, in important ways, the rule seems like a backdoor requirement for video recordings of these processes. E.g., calling for "the exact words" a victim uses, the "identity" of any individuals whom the witness spoke "before, during, or immediately after" the proceeding, etc. My concerns regarding court-imposed mandatory recording requirements are discussed above, as are my concerns with establishing suppression as a remedy for technological errors.

The proposed new rule in CrR 3.9 likewise is confusing, because it does not define "unknown to the witness." A witness who has seen a defendant, or an officer who has arrested a defendant, certainly is capable of "knowing" a defendant in broad and relevant respects. If the definition is meant to be narrower—friend,

roommate, co-worker, etc.—then an arresting officer would be unable to given an in-court identification of a defendant. A rule should be specific about its aims, and this rule is not.

Finally, the amendments to CrR 4.7 that permit a defendant almost unfettered access to discovery will obviously chill victims and witnesses. Many witnesses struggle with fears of retribution. This is true even on minor cases that—to prosecutors, defense attorneys, or officers—seem unlikely to engender such concern. To remove prosecutors from the disclosure process will eliminate for victims and witnesses important notice about and clarity regarding disclosures to the defendant.

Thank you,

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