

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, March 11, 2019 11:33 AM
To: Tracy, Mary
Subject: FW: feedback on proposed Court Rule Changes 3.7-4.11

From: Phelps, James [mailto:James.Phelps@clark.wa.gov]
Sent: Monday, March 11, 2019 11:32 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: feedback on proposed Court Rule Changes 3.7-4.11

Clerk of the Supreme Court:

As a Detective investigating abuse crimes against children, I was upset and shocked at the implied distrust of myself and my fellow officers in Law Enforcement as represented in the proposed court rule changes. Recent (and historical) portrayals of Law Enforcement in the media have clearly cast police in a bad light, and unfairly so. The vast majority of law enforcement officers are honest, hard-working men and women who believe in what they do and do it well. I have faith that your experience and insight will prevail and the suggested rule changes will not come to pass, but I still feel compelled to comment. As a comment on every aspect of the rule changes is beyond the allowed size of this email, I will comment on the most pertinent issues to my work.

The majority of my cases involve sexual crimes against children. In the vast majority of my cases, there is no physical evidence of any kind since these incidents occurred months or even years before they were disclosed. It is my practice to record all of my interviews when possible, whether with witnesses or suspects (victim interviews are audio and video recorded at our Child Advocacy Center). Per the law, I do this with the consent of the other party. A question that often comes up is "who will be able to hear this?" as my cases tend to involve family members who may or may not support the victim's allegations or the suspect's denials. It is not uncommon for people to refuse to be recorded, and to cast that refusal as somehow indicative of their being untrustworthy is unfair to all parties. These are sensitive issues that greatly impact families, and those involved are rightly concerned about the situation and how it will affect them long after the case is adjudicated.

The proposed rule changes would basically render any unrecorded comments untrustworthy, as there will always be a dispute to the witness statements by the defense if they tend to support the victim's accusations. If unrecorded witness statements are questioned more closely based on this, and unrecorded suspect statements are presumed untrustworthy because police statements are inferred to be inherently unreliable, we would be left with the victim's uncorroborated (and unable to be corroborated) word against the suspect's denial. In my experience, juries already have a hard time convicting people of these crimes as no one wants to believe they happen. The new rules would make things that much more difficult, and allow many more pedophiles to walk free and continue to victimize children.

As stated, it is my practice to record suspect interviews when permitted. However, because of the sensitive nature of these cases and their fear of consequences (both legal and familial) suspects sometimes refuse this. If I cannot obtain permission to record a statement but a suspect confesses to

sexually abusing a child, should the legal system assume my testimony about this is untrustworthy, possibly letting them go free? This not only assumes I am inherently dishonest, but that I would rather send an innocent person to jail or prison and allow the guilty party to remain free to further harm children. This is abhorrent to me, as my daily goal on each and every case is to "get it right." Victims, families, and society deserve no less.

Clearly, I am an advocate of recording statements when feasible and permitted. However, to require this or to allow victims and witnesses to be coerced into making recorded statements with the implication they are required is unfair and unconstitutional. People may fear being recorded for many reasons, including fears of the defendant being provided the recording and the resulting potential consequences to their safety. This is already a valid concern, made all the more relevant by the suggested rule changes allowing unrestricted disclosure of a recording to a defendant. In effect, the rule changes would implicitly force witnesses to make recorded statements that defense could then provide directly to the defendant, leading to possible intimidation directly or through third parties. As this type of situation already occurs regularly, the proposed changes only throw gasoline on the fire and make the situation worse.

In the end, I am an advocate for the truth, and my investigations hold the rights of victims and suspects equally. I cannot think of a more damaging accusation in society today than to be called a child molester, and would no more want to wrongfully prosecute someone accused of these types of crimes than I would want a guilty person to be exonerated. With regard to sexual abuse cases, the legal system is already skewed toward allowing the guilty to go free before incarcerating an innocent. Adopting the proposed rule changes only makes this even more likely and puts the most vulnerable among us, children, in even more danger. For their sake, I ask you to carefully consider the consequences of these changes and ultimately to discard them as unnecessary and unwarranted.

Humbly Submitted,

JP

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