

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 3:37 PM
To: Tracy, Mary
Subject: FW: Comments on the adoption of proposed CrR 3.7 & 3.8

From: Dernbach, Jeff [mailto:Jeffrey.Dernbach@kingcounty.gov]
Sent: Tuesday, April 30, 2019 3:36 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on the adoption of proposed CrR 3.7 & 3.8

Dear Justice Johnson and the Supreme Court Rules Committee,

I have been reviewing the proposed rules changes and I have a lot of concerns about the ways they would undermine a fair determination of justice and undermine the public's confidence in the judicial system. The implications of all of these changes are too numerous to detail here. One could spend considerable time on the vast implications of any one of these rule changes would have.

Many of these proposed changes would greatly discourage people from participating in police investigations or the court process. The rule under CrR 3.7 the requirement that a refusal to be recorded must be recorded will obstruct the police's ability to investigate. A witness that does not wish to be recorded will likely not want the recording turned on to capture their refusal either. Suppose a witness tells police they saw what happened, but does not want to be recorded. The officer then says they have to turn on the recording for the refusal. That may end the witness's cooperation and obstruct the investigation. You could have a witness that says they saw a crime happened but they are afraid of retaliation so do not want to be recorded and do not want their refusal to be recorded either. That witness may simply refuse to say anything to police. The goal of the police investigation is to gather as much accurate information as possible and this rule would make the process harder. That could be to the detriment of the accused. If the witnesses in the above example saw something that would support the conclusion there was another suspect, or the acts in were in self-defense we want police to know that, and pass that information on to the prosecutor making a filing decision.

That is also problematic for the requirement that identification procedures be recorded under CrR 3.8. The rule does not allow for a witness to refuse. That means the witness' choice is to be recorded or refuse to participate in the identification procedure. If the witnesses is reluctant to be recorded they may simply refuse to participate. We should not discourage people from participating on the identification procedure because if law enforcement has detained the wrong person we really want to know that as much as if they have the correct suspect.

The remedies for violation of these proposed rules is exclusion of the evidence, even statements obtained subsequently in compliance with the rules. If a suspect confesses to a crime after properly being advised of their constitutional rights that statement could be excluded under CrR 3.7. Imagine having to tell a victim, or a murder victim's family, that a confession to a crime where police properly informed a suspect of their

constitutional rights is not admissible because an officer inadvertently neglected to record their refusal to be recorded. These comments address only a few of the glaring problems from the proposed rule changes.

The confidence the public would have in the judicial system will be undermined when an investigation is hampered by the proposed rules that discourage people from participating in the process and prevents a jury from considering reliable information.

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