Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, April 15, 2019 11:52 AM
To: Tracy, Mary
Subject: FW: Proposed Criminal Rules

From: Houston, Kyle [mailto:Kyle.Houston@kingcounty.gov]
Sent: Monday, April 15, 2019 11:35 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Criminal Rules

Good morning,

I would like to provide comment on the proposed change to the Criminal Rules.

CrR 3.7 – one of the fundamental tenets of our criminal justice system is that the jury has the burden of determining credibility. The proposed changes completely undermines this by presuming that police officers are not credible or reliable. Not to mention that law enforcement agencies do not always have the funding for the required audio-visual equipment. Not to mention that many people particularly witnesses are reluctant to be recorded, which would decrease cooperation with police. Suppressing all future statements based on a violation at the initial contact is an extremely unreasonable remedy – police often talk with multiple people at a scene before identifying possible suspects. If they happen to not record that first contact with the suspect then all subsequent interrogations are inadmissible.

CrR 3.8 – same issue as with 3.7 above about credibility being the province of the jury. Additionally, many victims are reluctant to be recorded, particularly victims and witnesses of DV, human trafficking, violent, or gang-related offenses. Those recordings will be available to the public which sets up the potential for intimidation/further harm to victims and witnesses.

CrR 3.9 – In-court identification is already covered by case law and defense has the ability to cross-examine and impeach witnesses on the accuracy and reliability of the in-court identification. It also is unclear whether police officers who have done extensive investigation into defendants would have to do an identification procedure out of court before they appear in court to testify.

CrR 4.7 – Brady v. Maryland already adequately addresses exculpatory evidence and the prosecution's obligation for disclosing this evidence. The requirement that evidence be disclosed that is known to anybody acting on the state's behalf is ludicrous. It is impossible for the State to know everything particularly if this is information known only to non-Police witnesses.

The rule about disclosing discovery to defendants without notice or approval by the court or the prosecutor is just simply horrifying. One of the purposes of this requirement for approval is to protect victims including information that needs to be kept away from defendants including the victim's place of employment and home addresses. Many cases also include sexually explicit photographs and videos – a new business in trafficking those images and videos will develop in jails.

CrR 4.11 – It is inappropriate to use a person's right to refuse to be recorded against them, and a jury instruction instructing the jury to examine the statements carefully if the witness refused to be recorded amounts to a judicial

comment on the evidence which is unconstitutional in Washington. Witnesses have many reasons to refuse to be recorded – including concerns about their own safety. If proposed CrR 4.7 goes into effect, then those coerced recordings would also end up in the hands of defendants, further endangering the safety of witnesses and victims.

It is my hope that the Supreme Court refuses to adopt the proposed rule changes.

Kyle

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