

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, January 30, 2019 2:31 PM  
**To:** Tracy, Mary  
**Subject:** FW: Comments on Suggested Criminal Rules 3.7, 3.8, 3.9

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**From:** Manca, Jessica [mailto:Jessica.Manca@kingcounty.gov]  
**Sent:** Wednesday, January 30, 2019 2:28 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comments on Suggested Criminal Rules 3.7, 3.8, 3.9

Good afternoon,

I am submitting the following comments on proposed CrR 3.7, 3.8, and 3.9, published for comment in July 2018.

**Proposed CrR 3.7:** Investigations in the field are inherently unpredictable and constantly evolving. Officers often engage with suspects in unexpected locations and situations. They often contact individuals for the purpose of determining whether a crime has been committed. Are the individuals contacted in this investigatory capacity considered a "person[ ] under investigation for any crime," as defined by proposed Criminal Rule 3.7? Additionally, when police arrive at a scene, it is rare that the "suspect" of an investigation is immediately apparent. Therefore, to comply with these rules and avoid the harsh remedy of suppression, all police officers would have to record everyone they contact at all times. This would impose an unreasonable and ultimately unsustainable burden on law enforcement agencies. Furthermore, the exceptions to the rule are vaguely defined and would require extensive litigation in virtually all cases.

**Proposed CrR 3.8:** Witnesses and victims are often reluctant to provide information about criminal activity for fear of retaliation. Those concerns would be magnified if a court rule requires them to be recorded. The requirement that victims and witnesses be recorded is a violation of their privacy and would have a chilling effect on victim and witness participation.

**Proposed CrR 3.9:** Every trial requires an in-court identification, but not every case presents an identification issue. It is an unreasonable and unnecessary burden to require witnesses, including law enforcement officers, to conduct an out-of-court identification when identity is not at issue. In the cases where identity is at issue, case law already provides a framework for analyzing whether an in-court identification should be excluded.

At their core, the proposed rules preempt the court's role as gatekeeper of inherently unreliable evidence and the fact-finder's role as the sole judge of the credibility and weight of evidence. The proposal arbitrarily imposes a presumption of inadmissibility and a higher burden of proof than is required by the Washington or United States Constitutions. The proposal attempts to codify traditional challenges to the credibility of evidence that are commonly and properly presented to the finder of fact through cross-examination.

The criminal trial process is fundamentally a search for the truth. That process is hindered, not helped, by rules that impose unnecessary barriers to victim and witness participation and artificial limitations on the evidence that may be presented to the finder of fact.

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