



DEPARTMENT OF
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April 30, 2019

Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Attention Clerk of the Courts:

Per the below proposed changes to the existing criminal rules CrR 4.7, 3.7, 3.8, 3.9, and 4.11, we are opposing the rule changes based on the following justifications.

CrR 3.7: I oppose this proposed rule. The rule requires A/V recording of all custodial and non-custodial interrogations. This rule is overbroad. When investigating a criminal matter, law enforcement is doing exactly that...investigating. Law enforcement should not be required to figure out who they will potentially investigate when they are just beginning to gather information. Additionally, the rule would be unduly burdensome on law enforcement as it would require needless additional costs to the State. Furthermore, it would require that every single investigation, be it civil or criminal, be recorded without an inkling as to whether or not that investigation could become a criminal one. Case in point, wildfire investigations. Generally, wildfire suits are civil in nature, but possibly could become criminal after further investigation. This rule essentially would toss all evidence of a crime uncovered during the civil investigation. Lastly, the rule is problematic in that it creates issues with the WA State consent rule. If someone simply states that they do not consent to being recorded during the investigation, that evidence would be excluded.

CrR 3.8: I oppose this proposed rule. This rule requires recording of eyewitness identification. There is absolutely no reason to do this. The witness is not under investigation. A defendant is ID'd at trial. The prosecution has to put forward the case and have a witness ID the defendant. It is then the job of the jury to accept that ID or not.

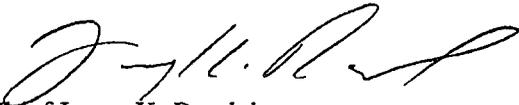
CrR 3.9: I oppose this proposed rule. This is a very vague and confusing rule stating that a witness cannot make an in court ID if the defendant is unknown to the witness or there has been no prior ID. I do not understand what they are trying to do here, but it essentially tries to limit the ability of witness to ID a defendant.

CrR 4.7: I oppose this proposed rule. This rule needlessly enlarges discovery requirements on the part of the prosecutor. Again this is too overbroad and creates an undue burden on the part of the prosecution. It also creates a safety issue for witnesses, as it serves to release additional witness information. Essentially, this may serve to chill the victim's ability to ID a possible defendant, as the ID of the witness would be out in the open and make them subject to reprisals by the defendant or others associated with the defendant.

CrR 4.11: I oppose this proposed rule. The rule states that if a witness declines to be recorded during an interview, the jury is to be instructed to take that into consideration while deliberating the case. Credibility of witnesses is to be assessed by the jury. This could create bias against a given witness prior to their own testimony and is also problematic regarding WA State's consent to record rule.

Please let us know if there is anything further we can do.

Sincerely,



Chief Larry K. Raedel
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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 1:07 PM
To: Tracy, Mary
Subject: FW: DNR Police Opposition to Criminal Rules Changes
Attachments: 2019_04_30 Rule Changes Opposition DNR LE.PDF

From: Asbury, Alex (DNR) [mailto:Alex.Asbury@dnr.wa.gov]
Sent: Tuesday, April 30, 2019 1:06 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: RAEDEL, LARRY (DNR) <larry.raedel@dnr.wa.gov>
Subject: DNR Police Opposition to Criminal Rules Changes

Clerk of the Courts,

Please find attached a letter from Chief Larry Raedel, WA DNR Police outlining his opposition to changes to the existing criminal rules CrR 4.7, 3.7, 3.8, 3.9, and 4.11.

Thank you,

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