Tracy, Mary

From: Hinchcliffe, Shannon
Sent: Monday, April 29, 2019 12:36 PM
To: Tracy, Mary
Cc: Jennings, Cindy
Subject: FW: Proposed Changes to CrR3.7 et al

Mary,

Can you process this comment that came to the Rules Comments email address? Thanks.

Shannon

From: Duggan, Andrea [ADuggan@spokanecounty.org]
Sent: Monday, April 29, 2019 12:34 PM
To: AOC DL - Rules Comments
Subject: Proposed Changes to CrR3.7 et al

This email is in response the proposed changes to CrR 3.7 et al that the Supreme Court is currently considering imposing. I strongly urge all the Justices to reject the changes. The breadth of the proposed changes should be further analyzed for their potential effectiveness compared to the potential crippling impact on prosecution of victim crimes; the impact on law enforcement agencies who are not financially equipped to conduct investigations in the manner outlines under the proposals; and the chilling impact on victims of knowing his/her medical and other personal information will be in the hands of the persons alleged to have harmed them.

As a prosecutor for over twenty year, these proposed changes appear to be one-sided. They presume unethical law enforcement investigations and require the prosecution to disprove it before evidence is admissible. Furthermore, the ramifications go beyond the Court's power of controlling the rules of court and impose onus and seemingly illegal requirements upon the prosecutor and witnesses. Changes of such drastic measure should be taken only as a last resort after all other avenues have been exhausted. Certainly, a forum of open discussion has not taken place to bring light why there is a need for such overbearing changes but also the legality of several of the changes.

With regard to the proposed changes to CrR 3.7 and CrR3.8 appear to reflect a distrust of law enforcement officers to accurately represent in court under oath statements of defendants and/or IDs. Again, there is no evidence to support such a broad attack on law enforcement. And the breadth of the mandate to audiovisually record presupposes law enforcement know who the person is who under investigation from the moment they arrive on scene or by not knowing, treating everyone as a person under investigation. Additionally, many people are uncomfortable and do not want to be recorded or will be less forthright because of being recorded. A refusal to be recorded appears to be an exception only if the person refusing to be recorded is recorded refusing to be recorded which is itself a violation of the Washington Privacy Act. Furthermore, the required preservation of these recordings will be arduous if not impossible for law enforcement agencies to comply with. Additionally, many of the terms being used are not defined and subject to very broad interpretations creating lengthy and repeated litigation because no one knows what the words mean. The remedies for violations of these rules is extreme and unreasonable and will result in injustice to victims who do not want to be recorded or who are not recorded because a law enforcement agency lacks the appropriate recording tools.

With regard to the proposed changes to CrR 3.9, the admissibility of in-court identifications would turn on a perpetrator being known to the witness OR a prior-of-out-of-court eyewitness identification procedure would need to have occurred. With regard to traffic-related offenses where law enforcement are often the identifying witness, they would be precluded unless they knew the perpetrator because they do not use identification procedures on themselves.

Additionally, there are specific rules and case law that adequately address any concerns for in and/or out of court identifications.

With regard to the proposed changes to CrR 4.7, the language results in an over-statement of Maryland v. Brady and as a result places an undue burden on prosecutors because of the "tends to impeach language." Furthermore, it applies beyond law enforcement and beyond verdict/sentencing. RPC 3.8(g) sufficiently addresses post-conviction evidence that must be disclosed. Additionally, the broad scope of permitting defendants to have discovery of material in the criminal case with no prior knowledge or approval of the prosecutor or court will make victims resistant to cooperating in criminal prosecution. At a minimum, victims deserve to have a court decide if the discovery in the case should be given to defendants who are under no obligation not to disseminate. Furthermore, information obtained from other agencies that have their own privacy/dissemination regulations will be compromised. Redaction is subject to mistakes or carelessness which cannot be undone.

With regard to the proposed changes to CrR 4.11, the ability of one party to force witnesses and victims to be recorded violates RCW 7.69.010. This rule would also appear to violate the Washington Privacy Act as not allowing a witness to be advised that can refuse to be recorded. And then if a witness refuses to be recorded, this fact is used against them in court as if they were doing something wrong. If a recording is made of an interview, it would appear that such recordings would then also be subject to being given to defendants under the proposed CrR4.7 which again will cause a chilling effect on victims and witnesses in cooperating in criminal prosecution. And once dissemination has occurred, there is no way to undo the damage that can be done.

Again, I sincerely hope that all of the Justices will see that these proposed changes cannot be adopted as they are currently written. Even if some or all of the Justices agree that changes are need, it must be done in a more circumspect and thoughtful manner than theses proposed changes.

Sincerely,

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