

WCSAP
Washington Coalition of
Sexual Assault Programs

March 2, 2019

Re: *CcR 4.11 RECORDING WITNESS INTERVIEWS*

To whom it may concern,

This letter is written on behalf of the victim services community to express concern with proposed changes to CcR 4.11 pertaining to recording witness interviews.

The change listed under (d) witness consent, states that a witness may refuse to be recorded. In the event that a witness refuses to be recorded, and there is a dispute regarding any statement made by the witness, the jury should be instructed to examine the statement carefully in the light of any reasons for the refusal and other circumstances relevant to that witness's testimony, including, but not limited to, bias and motive.

This proposed rule change, specific to the jury instructions, is extremely problematic for sexual assault survivor witnesses. Survivors must have the option to opt out of recordings. To instruct juries to be suspicious of a survivor's declination of audio recording discounts survivor autonomy and does not take into account neurobiological responses to trauma.

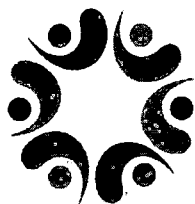
Our laws and court processes reflect values, this proposal sends a chilling message to sexual assault victims and the community at large. It discounts scientific research on how the brain and body are impacted by trauma (neurobiology of trauma).

Declining to be recorded is not reflective of credibility or truthfulness. Witness statements can be conducted at different stages of a survivor's crisis and trauma, and, whether recorded or not, the memory and narrative can be disjointed.

In addition, we know that a long-term consequence of trauma can be "a decreased ability to access our hippocampus for maps of safety or danger." (1) This means that when victims are testifying or giving a statement, and they are triggered by describing the assault, they might not be able to realize that they are actually physically safe. A victim's altered sense of safety might be a reason for declining to be recorded. Trauma is a subjective event; what is traumatic to one person may not be for another. The distinction lies both in the "hard wiring" or conditioning of our brains, as well as the cumulative impact of learning and life experiences. (1)

Audio recording should be a tool for legal professionals to use and an option for survivors, but it must be a true choice.

We appreciate the opportunity to share our concerns. On behalf sexual assault programs and survivors statewide we urge you to reject this proposal.



WCSAP

Washington Coalition of
Sexual Assault Programs

Sincerely,

Andrea Piper-Wentland

Andrea Piper-Wentland, Policy Director
Washington Coalition of Sexual Assault Programs

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, March 4, 2019 8:07 AM
To: Tracy, Mary
Subject: FW: Proposed Rule
Attachments: Court Rule.pdf

From: Andrea Piper-Wentland [mailto:andrea@wcsap.org]
Sent: Saturday, March 2, 2019 7:29 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Rule

Please find attached comments from WCSAP regarding proposed CcR 4.1 recording of witness interviews.
Thank you for the opportunity to provide feedback.

Sincerely,
Andrea Piper-Wentland

Andrea Piper-Wentland (she/her/hers)
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