

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, April 29, 2019 1:13 PM
To: Tracy, Mary
Subject: FW: Comments on proposals to amend court rules

From: Burns, Aubony [mailto:aubony.burns@kingcounty.gov]
Sent: Monday, April 29, 2019 1:08 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on proposals to amend court rules

Good morning,

I would like to comment on proposed changes. I am a trial attorney in King County and have been practicing since 2013. I have worked in the criminal justice system since 2003, both in Washington and New Mexico. The proposed rule changes will severely and negatively impact my practice as well as the safety of the people of Washington. I am limited in word space, so my objections and comments are limited as well. I strongly recommend the rejection of the proposals.

CrR 3.7

The rule proposal will impede effective law enforcement. WA law enforcement agencies are more than simply evidence collectors; they serve many functions in their communities. By requiring all statements to be recorded will serve as a chilling effect and could dissuade Good Samaritans from interacting with police. Not all crime scenes are small calm events. Many are chaotic and dynamic situations, where police are trying to render aid, identify public safety threats, and get others to safety, all at the same time. To impose this rule would be a detriment to public safety. Further, the necessity of recording a refusal of a person to comply with the proposed rule is in and of itself a violation. The rule is not clear as to the limitations or applications of the state actors it would apply to. The proposed rule is illogical, subverts public safety goals, puts an unwarranted burden on law enforcement, and forces officers to violate the WA Privacy Act to comply with the rule in some cases. This rule as proposed makes an assumption that police officers are by default unreliable and that the only way to believe what they say is to have a recording. This is absolutely improper and invades the province of the finder of fact to judge credibility of witnesses and the province of the trial judges who make credibility calls related to admissions of suspect statements. The remedy of the proposed rule is disproportionate, is extreme, and is unnecessary. Further, it will result in the suppression of relevant, critical evidence obtained through otherwise constitutionally proper means.

CrR 3.8

This proposed rule will have a negative impact on survivors of crime. Victims of domestic violence and assault in particular will face another form of manipulation and intimidation from their perpetrators from this rule proposal. It will serve to chill cooperation with police, and function as another tool abusers have at their disposal ensure the silence of their victims. It will make the most vulnerable to victimization in our society even more vulnerable. Victims/Witnesses of DV, gang-related, or other types of violence, who are already afraid of their perpetrators, could be less likely to come forward for fear of their abusers getting access to and circulating statements and photos made to police. The existing constitutional standard in place adequately address these issues. Like the proposal in CrR 3.7, this rule will also function as a detriment to public safety in its most general form and is impractical for many police agencies in WA. It imposes unreasonable burdens on police. The rule and its remedy are extreme and unreasonable; it invades the province of the jury. It is the jury who has the responsibility to weigh evidence. The rule also could be viewed as an unconstitutional judicial comment on the evidence of a case.

CrR 3.9

This is a completely unworkable rule as written. The term “unknown to the witness” is impermissibly vague. It contains no exception for law enforcement – it would result in a law enforcement officer who arrested a defendant from making an in-court identification when he has not shown herself a photo montage or lineup. This rule is not at all workable as proposed and would result in suppression of otherwise valid and constitutionally obtained evidence, further invading the province of the jury.

CrR 4.7

The proposed changes to 4.7 fail to include restrictions on discovery provided to a defendant. Further, there is no limit to the defendant’s dissemination. These failures put witnesses and victims at risk of tampering, intimidation, and physical harm. The proposed changes fail to ensure compliance with existing federal and state privacy rights regarding medical and educational records. This puts witnesses at risk for tampering, safety concerns, and could allow the manipulation, intimidation, and re-victimization of those who have already suffered trauma.

CrR 4.11

Similar to 3.7 and 3.8, the proposed rule invades the province of the trial judge and the jury and instructions of the court pursuant to this proposed rule would result in an unconstitutional court comment on the credibility of a witness. The rule violates both Article I, Section 35 of the WA Constitution and RCW 7.69.010 by not requiring victims and witnesses be informed of their right to refuse to be recorded. Further, it is inconsistent with the rules of evidence.

Sincerely,

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