

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, May 1, 2019 8:24 AM
To: Tracy, Mary
Subject: FW: Proposed Rule Change Comments

From: Wynne, Brian [mailto:Brian.Wynne@kingcounty.gov]
Sent: Tuesday, April 30, 2019 5:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Rule Change Comments

All,

I am a senior deputy prosecuting attorney for King County, where I presently hold the title of vice chair of the Special Assault Unit in Kent, Washington. I supervise a unit which is tasked with prosecuting child sex offenses, adult sex offenses, and child physical abuse cases. Prior to this position, I worked as a trial attorney in my office's Homicide and Violent Crimes Unit, in addition to other units.

I am particularly concerned about the adverse, and maybe unintended, impact of some of these proposed rule changes will have on individuals from marginalized and underserved communities, which are over-represented as victims of sexual assault and domestic violence.

First, having worked closely with recent immigrant communities and individuals concerned with retaliation for cooperating with law enforcement, I expect proposed CrR 4.11 will have a chilling effect on witness and victim participation in the criminal justice system from marginalized and underserved communities because many individuals will not participate if their participation is recorded. Furthermore, if individuals refuse to be recorded the reasons they may have for not wanting to be recorded will be either discounted, which will again impact participation because individuals will feel disconnected from the criminal justice system, or the reasons for their refusal will be unable to be communicated to a jury for context and background. In my experience in my current role, and in my prior work prosecuting violent crime, witnesses and victims often refuse to be recorded because they know a suspect, or defendant, or suspect/defendant's associates have violent histories and know that giving a recorded interview exposes them to retaliation and retribution. Although a valid concern, it is highly unlikely that a court would admit this evidence under ER 404(b) to provide context for a victim's refusal to be recorded. Furthermore, some victims are willing to discuss their sexual assault, but don't want to do so on a recording because they are concerned about where that recording might end up if not properly protected. I think this is a valid concern.

Second, I am concerned about the effect of the proposed rule change under CrR 4.7 authorizing disclosure of discovery to the defendant without prosecutor or court knowledge or approval. Discovery in modern criminal cases includes detailed information about witnesses and victims that can be used against them not only during the pendency of any particular case, but long after a case resolves. Discovery also includes video recording and audio recordings of victims discussing some of the most personal details of their lives. The current list of redactions is too limited because it allows dissemination of too much information to defendants thereby violating the privacy of victims and witnesses. The current method of discovery regulation allows for defendants to obtain their discovery with some oversight to ensure the victim and witness privacy is not adversely impacted. If the privacy of victims and witnesses from marginalized and underserved communities is not properly taken into account, they will withdraw from the criminal justice system.

I know you will consider these proposed rule changes carefully. Thank you for considering my comments.

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