

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 2:37 PM
To: Tracy, Mary
Subject: FW: Comments to proposed changes to criminal rules

From: Jacobson, Brynn [mailto:Brynn.Jacobson@kingcounty.gov]
Sent: Tuesday, April 30, 2019 2:36 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments to proposed changes to criminal rules

Hello,

I am a Deputy Prosecuting Attorney for King County, currently working in the special assault unit, though I have also spent time prosecuting domestic violence cases. I have a number of concerns about the proposed changes to the rules, particularly as they impact the people we serve in this community. I will limit my comments to a few sections of the proposed rules I am most concerned about:

- **CrR 3.7** → I do not believe that it is appropriate to completely suppress evidence that is valuable and probative of the truth simply because it was not video recorded. This rule seems to presume that law enforcement officers are not credible. It is also unclear if this rule is limited to law enforcement as the rule seems to potentially include any number of individuals beyond law enforcement. Crime scenes are dynamic situations, often with evolving safety concerns. Such a rule places an unnecessary burden on law enforcement officers as it appears to presume that nearly every interaction with any individual who is a suspect must be recorded, no matter how casual. The "exceptions" to this rule are vague and unclear. While I believe that transparency is incredibly important in criminal investigations, this rule will do the exact opposite. It will lead to the unnecessary suppression of relevant information and impede the truth-finding process that is a trial.
- **CrR 3.8** → My concerns about this proposed rule are similar as with CrR 3.7. I do not believe it is appropriate to suppress evidence that is probative of the truth simply because it was not video recorded. This is contrary to the purpose of the fact finding process. But with this rule, I am particularly concerned about the impact this will have on victims and witnesses who come forward to report a crime. Our witness and victims come from all walks of life. Sometimes they have their own criminal history, are marginalized, have concerns about immigration status or simply fear retaliation from the perpetrator of the crime. It takes time and careful building of relationships to convince people to fully participate in the process. Many of these individuals are reluctant to be recorded for a number of reasons. Shoving a camera in their face is intimidating and unnecessary. It will likely reduce cooperation with law enforcement and foreclose the possibility of that person participating in prosecution. This is even more concerning given the proposed changes to rule CrR 4.7, which allow defense counsel to disseminate evidence to the defendant without regulation.
- **CrR 4.7(h)** → This section covers "regulation of discovery." Historically defense counsel is required to submit proposed redactions to discovery intended for the defendant to the prosecutor's office before giving it to the client. That is an appropriate procedure and ensures that the rights of victims are protected. The defendant is always at liberty to sit down with defense counsel and review discovery in its entirety. We frequently find mistakes in these redactions and things which were not redacted appropriately. This rule seeks to eliminate any input from the prosecutor before such dissemination and requires shockingly few redactions. Currently our redactions include: all contact information for all potential witnesses, including email; schools attended by witnesses; job locations and employers of witnesses; medical records; mental health and counseling records; CPS records; photos or video (including on a digital device, or in an electronic file) with images of any part of any person or animal; and any description or depictions of actual, attempted, or simulated sexual contact. In

addition, no notice is required before “redacted” discovery is turned over to the defendant. Defense counsel has no incentive to ensure redactions are carefully made and there is no penalty for failure to do so. The defendant is not subject to the same obligations as counsel when it comes to sharing discovery. As a prosecutor of sexual assault and domestic violence cases, this is perhaps the most disturbing proposed change. Our files are filled with the private information of victims: medical records, mental health records, child protective services, school records. And to allow for such thoughtless dissemination of these records violates the privacy and dignity of our victims, many of whom feel like they are experiencing their assault all over again simply by participating in the process. Once these records have gone past the defense attorney there is no preventing further dissemination at the expense of our victims.

Thank you for your time and consideration

*Best,
Brynn*

Brynn N.H. Jacobson

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