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April 10, 2019

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Criminal Court Rule Changes

Dear Clerk of the Supreme Court:

I am writing to strongly oppose the proposed changes to the Criminal Court Rules (CrR). I am a senior deputy prosecuting attorney in the Criminal Division of the King County Prosecutor's Office. I have been practicing criminal law as a prosecutor for 21 years. The proposed rule changes are drastic and will severely and negatively impact my practice. In this letter, I will touch on just a few of my concerns.

CrR 3.7: the proposed changes to this rule regarding the recording of interrogations is simply not practical or manageable and will impede many investigations. This proposed change would require video recording of *all* interviews of people under investigation and if it not done, the statement will be presumed inadmissible. First, many law enforcement agencies simply do not have the equipment on the scene with their patrol officers to be able to video-record interviews. Second, the rule is so broad that it is unclear what "persons under investigation" even means. Having responded to many homicide scenes, the initial hours after a crime has occurred is chaotic and police interview many people, any one of whom could later turn out to be a suspect but at that time it may not be clear. This would mean that if police interview someone who later turns out to be the person who committed the crime, but they did not audiovisually record it, that it would not be admissible. Additionally, the unspoken position behind this proposed change is that police should not be believed so anything that is not audiovisually recorded is not reliable. That is an improper belief and also takes away the discretion of trial judges to make credibility calls when it comes to admission of suspect statements.

CrR 4.7: the proposed change to the State's discovery obligations broadens what is required under the Brady v. Maryland body of cases and requires prosecutors to provide any "favorable evidence known to others acting on the State's behalf" and is an "ongoing" requirement even after plea and sentencing. People who are acting on the State's behalf include not only law enforcement but also State's witnesses. This would require the State to be aware of every piece of information any lay witness knows about a defendant. This would be hard enough prior to disposition of a case but after disposition, the State cannot be expected to be aware of every piece of information any witness may know about a defendant. Further, it is not required by the constitution.

CrR 4.11: This proposed rule allows a witness to refuse to be recorded (although it does not require that a witness be told that they *can refuse*) but then instructs the trial court to tell the jury to examine the statement carefully because of the witness's refusal to be recorded. Any instruction by a court like this risks turning into a comment on the credibility of a witness, which is unconstitutional. Furthermore, a person has a right to not be recorded and it should not mean they are automatically considered less credible. In many cases my office prosecutes, we have witnesses reluctant to cooperate with law enforcement and give statements due to fear of retaliation. When law enforcement is successful in getting cooperation, it is not uncommon for a witness to not want to be recorded because that recording could get into the hands of people out to do harm to the witness. This need to protect themselves does not make them less credible and should not be presumed in a court of law. Again, this rule takes away from the court's and the jury's ability to assess the credibility of a witness. The jury is already instructed that they are the "sole judges of credibility" and this rule would not only impede law enforcement investigations but would punish law enforcement that manages to get statements (albeit not recorded) from critical witnesses by then having the jury told that these statements are unreliable.

I strongly urge this Court to reject these proposed rule change or, at the very least, to take into consideration the many practical and unconstitutional issues with the proposed rules.

Sincerely,



Carla B. Carlstrom

Senior Deputy Prosecuting Attorney

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, April 10, 2019 10:39 AM
To: Tracy, Mary
Subject: FW: Opposition to Proposed Criminal Rule Changes
Attachments: Letter to Supreme court re Proposed Criminal Rules.docx

From: Carlstrom, Carla [mailto:Carla.Carlstrom@kingcounty.gov]
Sent: Wednesday, April 10, 2019 10:11 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition to Proposed Criminal Rule Changes

Please see my attached letter opposing the new rule changes.

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