



King County
Police Chief's Association

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Washington State
Supreme Court

March 7, 2019

Supreme Court of Washington
Office of the Clerk of the Court
PO Box 40929
Olympia, WA 98504-0920

Dear Clerk of the Court:

This letter is in response to the Order of the Court dated July 11, 2018 seeking feedback on a host of proposed Court Rules or Amendments to Court rules by the Washington Association of Criminal Defense Lawyers (WACDL). The comments contained within this letter are given to address each WACDL proposal that were published asking for comment (as previously described).

The King County Police Chief's Association (KCPCA) opposes these proposals and in coordination and agreement (and with permission to use same) with the Washington State Police Chief's and Sheriff's recommendation, respectfully requests that the Court not adopt these proposed changes. Our reasons include, but are not limited to the following:

- **Erosion of Prima Facie Presumption of Statements by Law Enforcement Officers**
The spoken or written statements of a law enforcement officer carries a presumption of truth. The underlying presumption behind these proposals erode that long-standing presumption, without good cause, and to the detriment of justice and the history of public service of Washington's law enforcement officers.
- **Financial Impacts**
The financial impacts of these proposals is massive, and virtually impossible to calculate. These costs include additional staff time to accommodate the provision in these proposed rules, the technology acquisition necessary to abide by these proposed rules, the data storage costs, the public records management and disclosure costs, and liability costs, only to name a few.

Chief Mike Sanford: Algona
Chief William Pierson: Auburn
Chief Steve Mylett: Bellevue
Chief Jamey Kiblinger: Black Diamond
Chief Carol Cummings: Bothell
Chief Theodore Boe: Burien
Chief Kyle Kolling: Clyde Hill
Chief Andrew McCurdy: Covington
Chief Ken Thomas: Des Moines
Chief Carey Hert: Duvall

Chief Bob Huebler: Enumclaw
Chief Andy Hwang: Federal Way
Chief Scott Behrbaum: Issaquah
Chief Peter Horvath: Kenmore
Chief Rafael Padilla: Kent
Sheriff Mitzi Johanknecht: KCSO
Chief Greg Thomas: KCSO Airport
Chief Cherie Harris: Kirkland
Chief Steve Sutton: Lake Forest Park
Chief DJ Nesel: Maple Valley

Chief Steve Burns: Medina
Chief Ed Holmes: Mercer Island
Chief Dave Jutilla: KCSO Metro
Chief Steve Keeney: Muckleshoot
Chief Jason Houck: Newcastle
Chief Daniel Yourkoski: Normandy Park
Chief Rod Covey: Port of Seattle
Chief Kristi Wilson: Redmond
Chief Ed VanValey: Renton
Chief Michelle Bennett: Sammamish

Chief Carmen Best: Seattle
Chief Shawn Ledford: Shoreline
Chief Perry Phipps: Snoqualmie
Chief Rob Mendel: Sound Transit
Chief Bruce Linton: Tukwila
Chief John Vinson: UW Police
Chief Katie Larson: Woodinville

- **Unreasonable Expectations**

These proposals create very real and very predictable unreasonable expectations. To require “custodial and non-custodial interrogations of persons under investigation for any crime” is unreasonable, both in time, technology, and storage. To our knowledge, there is no Court adopted definition of the term “interrogation.” When a law enforcement officer investigates a crime, all persons are witnesses or suspects until the facts show otherwise. As a result, these proposals would require every law enforcement officer to record every communication while interacting with members of the public, and, thus, require every law enforcement officer to be equipped with a body worn camera. These expectations are unreasonable. Many agencies do not yet have funding to purchase body cameras and there are financial, technological, and potential legal issues with body cameras that must still be addressed (the ACLU may have further comments on this issue).

- **Impact on Confidential Informants**

As the Court is well aware, effective law enforcement oftentimes relies on information provided by confidential informants. These proposals would effectively eliminate the ability to act on information reported to law enforcement by members of the public who fear retaliation for assisting justice.

- **Unfairly Tilting the Scales of Justice**

These proposed rules, with their presumption that unrecorded statements are inadmissible in Court unless the statement meets a narrow list of exceptions, unfairly tilts the scales of justice, with the result that would have devastating effects on public safety, and the public’s confidence in their criminal justice system.

- **Court Overreach**

Our system of government relies on the effective work of all three branches of government – co-equal branches of government. These proposals are more than simple Court Rules – they constitute law enforcement policies and procedures. Court rules are not the proper venue for the consideration or adoption of law enforcement policies and procedures.

- **No Link to Constitutional or Statutory Rights**

The proposals brought by the WACDL have no discernable link to a person’s constitutional or statutory right. They are simply desires that have been brought forth by an interest group to an inappropriate venue. I am sure members of law enforcement would enjoy a similar opportunity, but we are aware that such actions would be inappropriate. Rather than be seriously considered by the Court in such a manner as this, the WADCL should have brought these proposals to the Legislature.

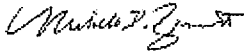
- **Unusual Process**

While KCPCA does not regularly find itself weighing in with the Court on proposed rules, we note that these proposals appear to have skipped an essential part of the Court’s process for considering new or amended Court rules. We understand that the Court utilizes a Rules Committee where proposed rule changes are forwarded for consideration and recommendation *prior* to said proposal being published for comment. We question

the unique process for such unique proposals – particularly those with such a disproportionate impact on law enforcement, law enforcement budgets and public safety.

In summary, the King County Police Chief's Association opposes WACDL's proposals and respectfully requests, in the strongest of terms, that the Court decline to adopt the same.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michelle D. Bennett".

Michelle D. Bennett
President
