

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 3:59 PM
To: Tracy, Mary
Subject: FW: Proposed Rule Changes

From: Poston, Nathan R. [mailto:NPOSTON@spokanecounty.org]
Sent: Tuesday, April 30, 2019 3:51 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Rule Changes

I'm writing to comment on the proposed criminal rule changes. The entirety of my career has been spent as a public defender working first in Jefferson County and then in Spokane County.

The proposed rule changes address a number of deficiencies that have routinely come up in my 9 years of practice. Further, implementation of the rule changes would provide crucial information for the factfinder in pretrial/trial hearings. Our system can only really work well when the factfinder is presented with most accurate information possible. Below, I've attempted to outline the common issues the proposed changes would address.

First, where a witness interview is not recorded, there are often disagreements about what was asked and what was said in response to questioning. This can be true whether law enforcement is conducting the interview with a suspect or the defense attorney is interviewing a potential witness. A fair amount of defense investigation can be spent trying to determine what exactly was said. Recording that interview eliminates the disagreement and more importantly provides a completely accurate record of what was said. This is especially important when law enforcement is conducting the interview. Law enforcement officers routinely summarize their interviews for police reports. This leads to law enforcement unfairly controlling the narrative of the interaction and, as others have pointed out, the factfinder is left to hear about what the officer chooses to document in their report. Recording the interview lays the entirety of the contact bare for the factfinder. In Spokane, officers of the Spokane Police and Liberty Lake Police Departments wear body cameras. The local WSP officers have dashcam recording devices. These departments stand in contrast to the Spokane County Sheriff's Office whose officers do not employ either of those recording devices. I've seen a wealth of impeachment, as well as the substantiation of search/seizure issues, come from these recording devices. I've also seen officers' accounts corroborated by the body cameras. In my interactions with the general public, most are very surprised that the Sheriff's avoid this simple measure of transparency and do not employ recording devices. Often they want to know why. I'm left at a loss as to how to accurately answer these inquiries and the answer may exceed the scope of the purpose of this comment, but I can hardly agree with the notion that officers' integrity is somehow undermined by the recording of their interactions with suspects, the general public, and counsel. As it pertains to the chilling effect of the recording of statements made an alleged victim, these are statements that have already been provided to and documented by law enforcement and will be subject to questioning by an effective defense attorney. I fail to see how recording the interaction further victimizes the alleged victim because our system already requires that the alleged victim participate in these interviews and the recording would be subject to the same discovery protections in 4.7.

Second, as outlined in other comments, the Innocence Project details the issues with wrongful convictions and the eyewitness identifications. The statistics supporting these issues are well documented. Eyewitness misidentifications generally stem from suggestiveness in the identification process. The rule changes relating to the documenting and/or recording of the identification can only assist in addressing these issues. The rule as it relates to in court identification would properly address the suggestiveness associated with an in court identification. It would also encourage law enforcement to conduct a proper photo lineup prior to trial. The result would ameliorate some of the risk associated

with eyewitness identifications and wrongful convictions, something that should not be debatable. Completely eliminating suggestiveness from eyewitness identifications might be impossible. That potential barrier should not preclude changes that will result in greater accuracy in the identification process. Additionally, recording the out of court identification would provide an accurate basis for determining whether a protocol was properly followed and whether there was any other indicia of suggestiveness.

Please adopt the rule changes as proposed. Any measure that both reduces the risk of wrongful convictions and provides a more accurate record for the factfinder should not be defeated by illusory concerns related to implementation, revictimization of alleged victims, or undermining the integrity of law enforcement.

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