

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, April 29, 2019 3:22 PM
To: Tracy, Mary
Subject: FW: July 2018 - Proposed Rules Comments

From: Jones, Sandy P. [mailto:SJONES@SpokaneCounty.org]
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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: July 2018 - Proposed Rules Comments

I am concerned about the following rule amendments:

CrR & CrRLJ 4.7(a)(4) of Prosecutor's Obligations:

I find this rule objectionable because it purports to make the rules comport with Brady. Because Brady is heavily determined by caselaw. Instead of developing tailored language in a Court rule, it should state that the prosecution should comply with Brady, or the rules should remain silent as there is already robust law on prosecutors' obligations involving Brady. I believe this rule oversimplifies the prosecutions discovery obligations under Brady. This section could be deleted in its entirety.

CrRLJ 4.7(g)(3) & CrR 4.7(h)(3) of Custody of Materials: If this rule is adopted, the defense is likely not going to receive discovery timely and there are going to be more required court hearings. There are a great number of documents that should not fall directly into a defendants hands for dissemination as they see fit. This includes: juvenile records, medical records, and sensitive images. I foresee filing many motions for protective orders and motions for in camera proceedings to protect victims and witnesses, which will be very burdensome on our court system and will slow down a defendant's case.

CrRLJ 3.7 & CrR 3.7 Recording Interrogations:

The criminal justice system is already under great resource pressure. To require every scenario where subjects are being questioned be recorded will greatly inhibit the prosecution of crimes. Defendants already have the right to hearings on statements made in their cases where the credibility of law enforcement may be assessed under CrR 3.5. While it is ideal for every interrogation to be recorded, this is not possible in every scenario. This rule will serve to increase court hearings and will harm victims of crime where a subjects statements are not allowed because they were not recorded. Many times people do not become "under investigation" until after they have made statements to law enforcement.

CrRLj 3.8 & CrR 3.8 Recording Eyewitness ID Procedure: Again it is ideal for everything to be recorded, however there are going to be situations where it is not possible. Further subsection (b)(1) applies the rule to all statements instead of just identification procedures. I see the requirement that every victim interview must be recorded as chilling reports of crime. In domestic violence cases a victim may not wish to be recorded. Domestic violence victims, often times while defendant's are still on scene, want to look cooperative with the defendant to save face with the defendant later. They do this as a survival mechanism. If they are asked to do a recorded interview at that time, it may have a chilling effect on reporting the crime. This may also be the case in any situation where a victim fears retaliation.

CrRLJ 3.9 & CrR 3.9 In-Court Identifications: This rule should not be adopted because there are scenarios where law enforcement may not have felt the need to do an out of court lineup procedure due to other means of identifying a

subject. The defense counsel would be readily able to impeach the witness on their in-court identification regarding their recollection, but the witness should be allowed to testify regarding their memory.

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