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April 30, 2019

Clerk of the Supreme Court of the State of Washington
PO Box 40929
Olympia, WA 98504-0929

Re: Proposed CrR 3.7, CrR 3.8, CrR 3.9, and CrR 3.11; proposed amendments to CrR 4.7; and parallel CrRLJ proposals

Dear Clerk of the Supreme Court,

I am writing to add my voice in strong opposition to the adoption of the above referenced proposed changes to the Superior Court Criminal Rules and the Criminal Rules for Courts of Limited Jurisdiction. I am a senior deputy prosecutor with the King County Prosecuting Attorney's Office and am currently assigned to the office's Economic Crimes Unit. However, in more than 15 years with the office, I have seen the court rules applied to many different types of crimes in both Superior and District Court. After reviewing the proposed changes to those rules, there is no question but that—while the stated goals of the proponents of these amendments may be noble—their proposals create dramatically more problems than they solve.

As an initial matter, I want to make clear that my opposition to the proposed rule changes is not a matter of reflexive opposition to any suggestion made by the defense bar. To the contrary, I am fully open to the idea that necessary, thoughtful, and fully vetted changes to the rules can make the criminal justice system more fair and more just to those who find themselves involved in it. We can and should consider seriously claims that the current rules allow or create injustices and then engage in a full and open discussion to determine what changes, if any, should be made to the rules to address such issues. Unfortunately, however, the rule changes proposed by the Washington Association of Criminal Defense Lawyers (WACDL)—and their attempts to have them adopted on an expedited basis—appear designed to avoid precisely such a discussion in the name of advancing an agenda that they cannot otherwise muster the factual and legal support for.

In the statement of purpose for each of the proposed rule changes, WACDL has identified one or more issue that is currently a “hot-button” in the criminal justice system—e.g. false confessions, faulty eye-witness identifications, and police and prosecutor misconduct. These are very real concerns and should be treated as such. What is noticeably absent, however, from WACDL's proposals or the statements in support of them is any real explanation of how the proposed rule changes will actually address any of these issues in any meaningful way. Even more lacking is any analysis of whether the proposed rule changes go so far as to make the cure worse than the diseases they ostensible seek to treat.

In contrast, the submitted comments from numerous prosecutors, law enforcement representatives, and victims' rights advocates point out the numerous and serious problems in, and caused by, the proposed rules.¹ Among other things, the proposed rule changes are badly written; poorly defined; internally inconsistent; contrary to existing case law, statutes, and constitutional provisions; ignore ongoing efforts to study and address problems in the criminal justice system via other methods; and will lead to absurd results. They set unattainable and unworkable standards and requirements for law enforcement and prosecutors that will prevent jurors from hearing and considering credible and reliable evidence. They ignore the experience and expertise of trial judges, whose role it is to hear the facts in specific cases and decide whether evidence was inappropriately obtained and/or unreliable. And they place victims of crime at risk in order to provide unnecessary, undeserved, and unfair benefits to criminal defendants regardless of whether there is any basis for them or not. In sum, these proposed changes will create rules that actually stand in the way of criminal trials serving as a search for the truth by imposing unnecessary barriers to victim and witness participation and artificial limitations on the reliable and trustworthy evidence that may be presented to the jury.

I strongly urge this Court to reject these proposed rule changes. There are clearly issues in the criminal justice system that must be addressed. But before changes of such a sweeping nature as those proposed by WACDL are adopted, there should be a true discussion and debate of whether *these* specific changes are necessary, whether *these* specific changes actually accomplish anything vis-à-vis the issues they are ostensibly aimed at, and whether the resulting costs of *these* changes are too high to bear. The current and cursory solicitation of comments over the internet via email and letter is wholly insufficient.

Sincerely,



Patrick H. Hinds, WSBA # 34049
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office

¹ See, for example, the comments of, *inter alia*, Donald Raz (submitted April 17, 2019), Daniel Satterberg (submitted April 19, 2019), and Donna Wise (submitted April 29, 2019).

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, May 1, 2019 8:25 AM
To: Tracy, Mary
Subject: FW: Letter regarding proposed changes to the Washington state criminal rules
Attachments: Letter to SCt re proposed rule changes (4.30.19).pdf

From: Hinds, Patrick [mailto:Patrick.Hinds@kingcounty.gov]
Sent: Tuesday, April 30, 2019 8:58 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Letter regarding proposed changes to the Washington state criminal rules

Attention: Clerk of the Court

Attached please find my letter regarding the proposed changes to CrR 3.7, 3.8, 3.9, 4.7, and 4.11 and their CrRLJ counterparts.

Thank you.

Patrick Hinds
King County Prosecuting Attorney's Office
Senior Deputy Prosecuting Attorney
Economic Crimes Unit – Chair

(206) 477-1181 (office)