Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, January 30, 2019 1:42 PM
To: Tracy, Mary
Subject: FW: objections to proposed court rules

More...

From: Hayes, Colin [mailto:Colin.Hayes@clark.wa.gov]
Sent: Wednesday, January 30, 2019 1:39 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: objections to proposed court rules

Greetings. I am writing to object to each of the following proposals:

Will your gang, sexual assault, and DV witnesses be intimidated if the police video record them making an identification? The remedy for failure to record is suppression. (proposed CrR 3.8 (and LJ))
I believe witnesses will be intimidated my mandated video recording in these situations. Even if video recording was considered a best practice, suppression is an overly harsh remedy. If such evidence is admitted at trial, the defense can simply argue the weight that should be afforded such evidence in their closing argument.

Should all discovery, including medical records, photos, and recordings be handed over to the defendant without your knowledge or input? (proposed amendment to CrR 4.7 (and LJ))
Victims in domestic violence and sexual assault cases will be very intimidated and hesitant to cooperate if they know that a defendant will have access to their own copy of medical and counseling records without redactions or consideration by the prosecution.

Do you think police have the resources to video record anyone they question who is under investigation for any crime, including traffic stops? If they fail to do so, that statement and all subsequent statements are excluded. (proposed CrR 3.7 (and LJ))
This will unfairly hamper police investigations. Also, many police departments won't have the resources to make this a regular occurrence. Many suspects are willing to talk to the police but do not wish to be recorded. Suppression is an overly harsh remedy for failing to video record conversations.

Does it make sense that all witnesses must be shown a montage or be precluded from identifying defendant in court (unless defendant is known to the witness)? (proposed CrR 3.9 (and LJ))
ER 403 already exists to exclude overly prejudicial identifications. This court rule is an overly harsh remedy. It may not always be feasible for law enforcement to get a photo montage together on short notice.

Should defense attorneys be entitled to openly record any witness interview without informing the witness she can refuse? (proposed CrR 4.1 (and LJ))
Why in the world would be want to do this? This would be a setback for the rights of witnesses and victims.

Regards,

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