

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



LEESA MANION
PROSECUTING ATTORNEY

JUSTICE
COMPASSION
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April 29, 2024

Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendments to CrR/CrRLJ 4.7.

Dear Justices:

Thank you for seeking comments to the proposed amendments to the Superior Court Criminal Rules (CrR) and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) submitted by the proponents.¹ After carefully reviewing them, and in consultation with the victim services community, I strongly urge you to reject the amendments because they are flawed and unwarranted.

A. Proposed Amendment to CrR 4.7

Proposed CrR 4.7(h) suffers from the same three deficits as the version rejected by the court back in 2019. First, it allows defense counsel to provide redacted discovery to defendants without a court or prosecutor's knowledge or prior approval – potentially exposing sensitive material without oversight, only to be discovered and remedied after dissemination. Second, it fails to establish articulated, standardized guidelines, and provides no meaningful incentive for compliance with such guidelines. Finally, it would not accomplish the goal of expediting a defendant's access to discovery since prosecutors would be forced to file prophylactic motions prior to dissemination to address the likelihood of inadequately redacted information.

Removing the requirement that redactions be approved by the prosecutor or by court order prior to disseminating discovery to defendants means that there will be no way for a prosecutor to identify redaction errors and no opportunity to address disagreements on compliance. Ensuring proper redactions is imperative given the reality that discovery in criminal cases often includes victims' and witnesses' entire contact information, their school, employment, and email information, as well as their medical and mental health/counseling records. Discovery can also

¹ Although my comments focus on the proposed changes to the Criminal Rules (CrR), they apply with equal force to the proposed changes to the Criminal Rules of Limited Jurisdiction (CrRLJ), which are identical, and should be considered accordingly.

include autopsy photos, sexually explicit images, as well as descriptions and depictions of actual, attempted, or simulated sexual conduct. The need to adequately protect the privacy and safety of victims and witnesses is exacerbated by the fact that information is shared on social media and the internet with alarming speed, ease, and frequency.

Further, keeping a copy of the redacted discovery in the defense file is inadequate as any errors in redaction that reveal private information of victims or witnesses would only be discovered after the information had been disseminated or the victims or witnesses had been contacted by the defendant or an associate. Moreover, removing the court and prosecutors from regulating redacted discovery runs counter to victims' and witnesses' statutory right to "receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts," and the Legislature's intent that their rights be "honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants." RCW 7.69.010, .030(4).

Additionally, requiring each local court to develop its own redaction guidelines greatly increases the probability of inconsistency across jurisdictions and compliance errors. Setting aside the proposed rule's failure to address how discovery should be provided before courts adopt redaction guidelines, the proposed rule's greater defect is its failure to establish minimum standards for what should be redacted. Despite the proponents' inference, there is no reason to believe that the redaction guidelines disseminated the King County Prosecuting Attorney's Office (KCPAO) would be adopted by every local court. What's more, the current phrasing of the rule actually makes a defense attorney's compliance with local redaction guidelines *optional* ("Defense counsel **may** redact discovery consistent with these guidelines and provide a copy of the discovery to the accused"), meaning that there is no guarantee that even the most robust guidelines will be followed.

If adopted, proposed CrR 4.7(h) will also lead to delays and increased litigation and workload for counsel and the court, as prosecutors will be forced to file motions for protective orders *before* providing discovery to defense counsel to prevent the release of sensitive information. This is because there is nothing in the proposed amendment stopping defense counsel from providing discovery to the defendant in advance of a hearing addressing redactions. Relatedly, there is also no incentive for defense counsel to carefully redact discovery because there is no penalty or remedy for failing to do so; nor is there a penalty or remedy for the defendant's misuse of discovery.

I respectfully urge you to reject the proposed amendment to CrR/CrRLJ 4.7.

Sincerely,



LEESA MANION
King County Prosecuting Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
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Good morning, Justice of the Supreme Court.

Please find the attached letter from King County Prosecutor Leesa Manion. Thank you!

Best,
Mary Colasurdo



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