From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	FW: CrR 8.3, CrRLJ 8.3, CrR 3.2 (release of accused), CrRLJ 3.2 (release of accused), CrR 4.7, CrRLJ 4.7, RAP 18.25, CrRLJ 3.4
Date:	Friday, April 26, 2024 2:49:45 PM
Attachments:	image001.png

From: Turner, Ryan <rturner@kingcounty.gov>
Sent: Friday, April 26, 2024 2:44 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: CrR 8.3, CrRLJ 8.3, CrR 3.2 (release of accused), CrRLJ 3.2 (release of accused), CrR 4.7, CrRLJ 4.7, RAP 18.25, CrRLJ 3.4

Good afternoon,

I am writing to provide comments on the above listed proposed rule changes:

Oppose proposed changes to CrR and CrRLJ 8.3:

- Courts have consistently held that dismissal of a case under 8.3 is an extreme remedy. See, e.g., State v. Moen, 150 Wn.2d 221, 226, 76 P.3d 721, 723 (2003). The proposed amendment would constitute a radical change, effectively overruling decades of precedent affirming the prejudice requirement under CrR 8.3(b) without a showing that any of those cases are harmful and incorrect. It would also constitute an enormous expansion in the discretion of judges and enable the dismissal of cases without regard to whether it was an appropriate remedy to whatever the alleged misconduct is. The dismissal of cases may no longer be an extreme remedy under this proposed rule change, but instead a more common place one. This change in the rules would deprive justice to a large number of victims in cases where the defendant suffers *no* prejudice.
- Under the proposed rule change, a defendant could successfully have his case dismissed based solely on the individual concept of "justice" held by the judge randomly assigned to the case. Meanwhile, a different defendant, charged with the same crime and based on substantially similar facts, could have his motion denied by a different randomly assigned judge. Racial disparity is correlated with unstructured and unreviewed discretion. The potential amendment may foment more of the injustice it purports to prevent.
- Finally, the proposed amendment might infringe on the separation of powers. Under the proposed rule change, a court could conclude that *any* decision made by a prosecutor was arbitrary —from charging decisions to sentencing recommendations—or that the legislature got it wrong when it came to setting standard ranges for sentences in making the decision to dismiss a case in the furtherance of justice. A court would be empowered to take authority

from the executive and legislative branch to impose what their belief of justice should be.

Oppose proposed changes to CrR and CrRLJ 3.2 with respect to release of the accused:

- The proposed amendment requires a court allow a defendant to satisfy bail by posting 10 percent of the amount set with no security. It effectively reduces any bail amount set by 90 percent. Any forfeiture is limited to the 10 percent posted.
- The proposed amendment does not impose liability for the full amount if the defendant flees or otherwise violates conditions of release.
- As to subsection (d)(6), the court is directed to set a bond amount "that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice." This amendment mandates a reduction of that amount to 10 percent of the amount necessary to assure public safety.

Oppose proposed changes to CrR and CrRLJ 4.7:

- The Washington Constitution acknowledges crime victims at Art. I § 35, the first sentence of which reads: "Effective law enforcement depends on cooperation from victims of crime." Fear of reprisal from defendants and/or their associates is a real concern of members of our communities who report crimes and intend to cooperate with prosecution. I have prosecuted cases involving victims of violent crime where the only reason that they felt safe enough to cooperate with law enforcement and the prosecution is because they were informed that their personal information would remain in the hands of law enforcement, the prosecutor, and the defense attorney but *not* the defendant. The increased possibility of a defendant's access to their private or sensitive information would impact some witnesses' willingness to cooperate. As the rule stands, prosecutors are able to address those concerns to some degree due to the rule requiring their approval of redactions. If the changes as proposed are granted, prosecutors will no longer be able to rely upon such safeguards.
- Under the proposed rule, the defense attorney does not provide a copy of the redacted discovery to the court or the prosecutor. As a result, no errors in the redaction can be identified and no disagreement with how the redaction rules are being applied can be identified. The existence of unique local redaction rules increases the probability that there will be errors in compliance with the local rules.

Oppose proposed changes to CrRLJ 3.4:

- The proposal eliminates the requirement that counsel be in communication with their client if the matter is stayed pursuant to chapter 10.77 RCW. There must be some assurance that defense counsel is communicating with their client or an appearance through counsel is solely an appearance of counsel.

Support proposed changes to RAP 18.25:

- Given the easy internet accessibility of appellate court documents, and because some defense counsel identify minor witnesses and victims by name, there should be a state-wide rule prohibiting that.
- Given the easy internet accessibility of appellate court documents, adult victims of the specified crimes should not be identified by name, in the interest of their privacy.

Ryan D. Turner (he/him/his)
Deputy Prosecuting Attorney
Filing/Early Plea Unit (N-Z)
Violent Crimes Unit | Criminal Division
King County Prosecuting Attorney's Office
516 Third Avenue | Seattle | WA | 98104
Desk: (206) 477-8226
Email: rturner@kingcounty.gov