

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelyn](#)
Subject: FW: Comments to proposed rule change to CrR 8.3/CrRLJ 8.3, 3.2, 4.7, 3.3, and RAP 18.25
Date: Tuesday, April 30, 2024 8:11:42 AM

From: Harrison, Susan <Susan.Harrison@kingcounty.gov>
Sent: Monday, April 29, 2024 5:54 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments to proposed rule change to CrR 8.3/CrRLJ 8.3, 3.2, 4.7, 3.3, and RAP 18.25

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To: Clerk of the Supreme Court

Re: Proposed Changes to CrR 8.3 and CrRLJ 8.3

Objection to proposed amendment to CrR and CrRLJ 8.3:

I concur with the concerns raised by my colleague Amy Meckling in her letter to the Court sent April 22, 2024, which states in part:

CrR 8.3(b) is designed to protect a defendant's right to a fair trial. Due process is not defined by personal notions of fairness but rather by "fundamental conceptions of justice." Amendment of the rule in the manner proposed would effectively overrule decades of precedent without a showing that any of those cases were incorrectly decided, and is also inconsistent with recent cases from this Court that recognize that a defendant must show prejudice to establish the violation of a constitutional right. If a defendant must show prejudice from a violation of [their] constitutional rights, a court rule authorizing a lesser showing must be justified by something other than an unreviewable reference to arbitrary and variable notions of "justice."

Under the proposed rule change, a defendant could successfully have their 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 [their] 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.

This Court should reject the proposal to amend CrR 8.3(b) to authorize courts to dismiss a case without a showing of material prejudice to the defendant's right to a fair trial. Dismissal without such a showing arbitrarily cuts against society's legitimate interest in the fair prosecution of crimes that are properly alleged and ignores the strong societal interest in

protection of the community. It disregards a victim's right to justice and safety from those who cause harm.

Objection to proposed amendment to CrR and CrRLJ 3.2: the proposed amendment to this rule mandates a reduction of the amount of bond set to 10 percent of the amount necessary; this increases the likelihood of a disconnect between the defendant having an incentive to appear for court and the posting of bond.

Objection to proposed amendment to CrR and CrRLJ 4.7: Under the proposed amendment to this rule, defense counsel may provide a copy of discovery to the defendant before the State has the opportunity to address additional redactions that may be necessary. There is no way to remedy a disclosure of improperly redacted discovery to a defendant. Victims and witnesses are already often incredibly fearful to participate in prosecution of criminal cases, as prosecutors cannot guarantee their safety. We can and do presently assure them that the defendant will not be provided a copy of the discovery without all but their initials redacted (this of course includes their phone number, their home address, and other personal identifying information that can be weaponized in multiple ways). Again, there would be absolutely no way to remedy the release of improperly redacted discovery or the ripple effects that could flow from same.

Opposition to proposed amendment to CrR and CrRLJ 3.3: The time for trial should not be restarted without the defendant appearing in court. An appearance through counsel is effectively no appearance as a defendant can give "3.4 authorization" to their attorney at the commencement of a criminal action and it is only after months of proceedings that a failure to appear is found. The proposed rule requires the prosecution and the court to restart criminal proceedings in anticipation of trial without any assurance that the defendant will actually appear.

Support for proposed amendment to RAP 18.25: A statewide rule prohibiting the identification of minor witnesses and victims by name as well as adult victims of the specified crimes simply makes sense in an era where court documents at every level are readily accessible by members of the public.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Harrison', is written over a horizontal line.

Susan Harrison WSBA #40719
Senior Deputy Prosecuting Attorney
Economic Crimes Unit Chair
King County Prosecuting Attorney's Office