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To: [Martinez, Jacquelyn](#)
Subject: FW: proposed amendments to CrR 8.3 and CrRLJ 8.3
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From: Maryman, Bridgette <Bridgette.Maryman@kingcounty.gov>
Sent: Tuesday, April 30, 2024 9:54 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: proposed amendments to CrR 8.3 and CrRLJ 8.3

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I write in opposition to the proposed amendments to CrR 8.3 and CrRLJ 8.3

The proposed amendments would allow trial courts broad discretion to dismiss criminal prosecution without consideration of whether alleged error impacts a defendant's right to a fair trial. Because "government misconduct" has been interpreted to include negligence, the amendments would allow courts to dismiss for a wide array of reasons, including charging decisions, resource allocation, or negligence by parties outside the prosecutor's office. By removing any requirement that a defendant show prejudice, the amendment would unfairly impact crime victims and the broader community, and likely violates the separation of powers.

Proponents of the amendment reference "aggravated sentencing laws" in support of the changes. A trial court could use those comments to justify dismissal if the court disagreed with the charges or sentence provided under the SRA. Disagreement with the legislature's setting of punishment should not be a basis to dismiss criminal charges.

Finally, proponents of the rule cite to overrepresentation of Black Americans in the criminal justice system. The inference is that trial courts could address this overrepresentation by dismissing individual cases or classes of cases. It is unclear how a trial court could link those systemic issues to individual cases. Moreover, this justification ignores the fact that the majority of victims of crime in Washington—whose cases could be dismissed under the amendments—are people of color.

Finally, as Andrea Vitalich commented in her letter to the Court, the proposed rule amendments conflict with this Court's analysis under *Bertrand*. Just as analysis of ineffective assistance should be "anchored" by a requirement that a defendant show prejudice, so should analysis under CrR 8.3 and CrRLJ 8.3.

Trial courts have significant discretion to dismiss under current CrR 8.3 and CrRLJ 8.3 when arbitrary action or government misconduct affects a defendant's right to a fair trial. I urge this Court to reject the proposed amendments.

Respectfully,
Bridgette Maryman



Bridgette Maryman (she/her)

Chief Deputy, Gender-Based Violence and Prevention Division
King County Prosecuting Attorney's Office

516 3rd Avenue, Seattle, WA, 98104

(206) 477-1193

bridgette.maryman@kingcounty.gov