

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Comments RE: Proposed Amendments to CrR8.3
Date: Tuesday, January 2, 2024 1:41:35 PM
Attachments: [Letter RE CrR 8.3 changes.pdf](#)

From: Chad M. Enright <CEnright@kitsap.gov>
Sent: Tuesday, January 2, 2024 1:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments RE: Proposed Amendments to CrR8.3

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Clerk of the Supreme Court:

Attached are comments for consideration on the proposed amendments to CrR 8.3/CrRLJ 8.3

Thank you,

Chad Enright
Kitsap County Prosecutor



Kitsap County Prosecuting Attorney

Chad M. Enright



CRIMINAL DIVISION

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Chief of Staff

Cami Lewis
Felony & Juvenile
Division Chief

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District & Municipal
Division Chief

Rebecca Graunke
Criminal Program
Manager

January 2, 2024

Please reply to: Adult Criminal & Administrative Divisions

Re: IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CrR 8.3--DISMISSAL AND CrRLJ 8.3--DISMISSAL

Washington State Supreme Court
P.O. Box 40929,
Olympia, Washington 98504-0929,

Copy Emailed to: supreme@courts.wa.gov.

Greetings--

**JUDGES MAKE "ERRORS."
DEFENSE ATTORNEYS ARE "INEFFECTIVE."
BUT PROSECUTORS COMMIT "MISCONDUCT."**

I am writing in opposition to the proposed amendment to CrR 8.3 and CrRLJ 8.3 that would expand the court's authority to dismiss criminal cases. Rather, I would urge the court to consider rules changes that might help prosecutors avoid errors, before seeking to increase penalties for those errors that ultimately may result in punishment for crime victims who could see cases dismissed through no fault of their own.

Prosecutors in Washington are increasingly overworked and fleeing from the profession. In recent years, this Court and the Washington State Legislature have taken important steps to improve the quality of public defense. I began my career in public defense and I believe these have been valuable steps. However, similar steps to regulate the workloads for prosecutors have not been taken. While the workload burden on defense counsel has decreased, recent rule changes by this court have had a significant impact on prosecutor's workloads. As this court knows from its work on defense caseload standards, increased workloads lead to an increase in "errors" or "misconduct."

Recently, CrR 3.4/CrRLJ 3.4 was amended under the theory that it would lead to increased efficiency by not requiring the personal presence of criminal defendants for some hearings. This rule change was proposed by many of the same organizations who have proposed the current amendment to CrR 8.3/CrRLJ 8.3. Instead, the amendments to CrR 3.4/CrRLJ 3.4 have decreased efficiency and led to cases lingering much longer in the criminal justice system. We see an increasing number of hearings being continued because defense counsel has not been able to communicate with their client. In the past, this communication often happened at court ordered hearings. However, this has become much less common as personal appearance isn't required.

This has led to increased caseloads for prosecutors, but very little impact on public defenders who have had their caseloads capped. These problems have been exacerbated by recent legislative changes that have significantly

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reduced penalties for missing court dates. Ultimately, cases are taking much longer to resolve and the number of hearings that prosecutors appear for has increased.

The end result is that prosecutors are drowning. Fewer law school graduates, low pay, and lack of telecommuting options have all had an impact on prosecutors. Many of our offices have had multiple vacant positions for the last year. A recent article by William and Mary Law School explains the increased burden being placed on prosecutors and how it has resulted in a prosecutor shortage across Washington State.¹ While defense attorneys are regulated by case load limits, those who remain in prosecution are being asked to take on more and more cases as others flee the profession.

Errors and mistakes should be avoided. The protection of a defendant's rights is an unquestionable duty of all who are involved in the criminal justice system. But, prosecutors are as human as a judge or a defense attorney who make "errors" or who are "ineffective." But, when we make "errors," the court unfortunately defines it as "misconduct." Obviously, the public perception of "misconduct" is very different from the perception of "errors."

Victims of crime are human too. Prosecutors are being asked to speak for more and more victims as our caseloads increase. Not surprisingly, legislative funding for victim services has significantly decreased while our caseloads have increased.

There should be a remedy for "prosecutorial misconduct." But, before increasing the penalty for instances where a prosecutor commits "error" or is "ineffective" **I would urge this court to follow the lead you took with public defense and consider whether there are steps you can take to avoid these "errors" in the first place.** At best, expanding the rule may have a deterrent effect for already overworked prosecutors. However, in my experience, most CrR 8.3 violations are not intentional. They are the result of careless work by overworked attorneys. So, using this rule as a deterrent is likely to be ineffective.

While this court does not have the ability to impose workload limits for prosecutors, there are steps this court could take to increase case resolution efficiency that would indirectly impact prosecutor workloads. This court has taken important steps to help reduce instances of "ineffective" defense counsel. Please consider similar steps towards prosecutors before creating another instance where victims are punished because over worked prosecutors are "ineffective" or make "errors."

Sincerely yours,

A handwritten signature in black ink that reads "Chad Enright". The signature is fluid and cursive, with the first name "Chad" and last name "Enright" clearly distinguishable.

CHAD M. ENRIGHT
Prosecuting Attorney

¹ The Prosecutor Vacancy Crisis, *William & Mary Law School Research Paper No. 09-480*; Adam M. Gershowitz
William & Mary Law School - Date Written: December 15, 2023