

LEESA MANION (she/her)
PROSECUTING ATTORNEY



King County

Subject: Comment on proposed amendment to Court Rule CrR and CrRLJ 8.3(b).

Dear Clerk of the Supreme Court,

As the Chair of the Domestic Violence Unit at the King County Prosecuting Attorney's Office, I am writing to formally express concerns regarding the proposed amendment to Court Rule CrR and CrRLJ 8.3(b), which seeks to remove the requirement that dismissals only occur "when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." I oversee the prosecution of over 1000 felony domestic violence (DV) cases annually and believe this change would significantly impact the prosecution of DV cases, the protection and confidence of DV victims, and the broader community's trust in the judicial system. This could potentially lead to fewer protections for victims and a higher likelihood of case dismissals, thereby undermining the justice system's role in addressing and curbing domestic violence effectively.

Under the current rule, the court ensures dismissals are predicated on substantive rights violations, safeguarding against arbitrary decisions. The proposed amendment would lead to broader interpretations, allowing dismissals without substantial justification based on broader, less concrete, and more arbitrary grounds, including gender and racial bias.

DV cases often hinge on the delicate balance of upholding the rights of the accused while ensuring justice for victims, many of whom are in vulnerable positions due to marginalized status. See [Washington State Civil Legal Needs Study Update Washington State Supreme Court](#) and may be subject to intimidation or recantation. Removing the need for demonstrated prejudice could lead to cases being dismissed more easily, thus denying victims their day in court. This is particularly concerning in the context of recantation, a common issue in DV cases due to victim manipulation or coercion by the abuser. Perpetrators of DV often use psychological manipulation and intimidation to control their victims, including influencing them to recant their statements. As recognized by the U.S. Supreme Court, "This particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure she does not testify at trial" (*Davis v. Washington*, 126 S.Ct. 2266, 165 L Ed.2d 224, [2006](#)). See also Bonomi, Amy, and David Martin. *Recantation and Domestic Violence: The Untold Story*. Abingdon, Oxon: Routledge, Taylor & Francis Group, 2024.

In a case where a DV victim initially provides a sworn account of abuse but later recants under pressure from the abuser. The court might consider the coercion behind the recantation when deciding on a dismissal. Without the need to prove prejudice to the accused's fair trial rights, such cases might be dismissed more readily, denying justice and potentially exposing victims to further harm. Easier dismissal of cases without stringent checks could be seen as an incentive for abusers to increase these coercive tactics, knowing that the reduced criteria for dismissal could work in their favor.

Marginalized communities, particularly women of color who disproportionately are victims in felony DV cases (63% of all felony DV in King County involves victims of color), already face significant systemic barriers. This rule change could further exacerbate their vulnerability by allowing easier dismissals of DV cases. Such a shift could undermine their trust in the justice system and lead to decreased reporting of DV incidents, perpetuating cycles of abuse and silence within these communities. Victims might perceive this rule change as weakening the legal protections available, potentially diminishing their confidence in the justice system's ability to protect their interests and enforce restraining orders effectively. This could discourage them from coming forward or cooperating with prosecution efforts.

Public confidence in the judicial system could be undermined if it appears that DV cases are being dismissed without substantial justification. Community members might view the system as less committed to protecting vulnerable individuals or honoring access to justice for marginalized victims, which could erode trust and deter community cooperation in reporting and addressing DV.

I strongly recommend against adopting this amendment, advocating instead for maintaining rigorous standards that ensure dismissals are justified, protecting the rights of both the accused and the victims.

Thank you for considering this critical perspective. I believe it is imperative to approach changes to legal standards with caution, especially when they may significantly impact vulnerable populations and the overall pursuit of justice.

Respectfully,

A handwritten signature in black ink, appearing to read "David Martin", written over a horizontal line.

David Martin
Chair, Domestic Violence Unit
King County Prosecuting Attorney's Office