

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Proposed amendment to CrR 8.3 and CrRLJ 8.3
Date: Thursday, April 25, 2024 8:10:13 AM

From: Wise, Donna <Donna.Wise@kingcounty.gov>
Sent: Wednesday, April 24, 2024 8:22 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed amendment to CrR 8.3 and CrRLJ 8.3

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To: Supreme Court

Re: Proposed amendment to CrR 8.3 and CrRLJ 8.3

I write to oppose the radical expansion of trial courts' authority to dismiss criminal cases that is the object of the proposed amendment to CrR 8.3 and CrRLJ 8.3.

The rule currently provides that a judge may dismiss a criminal prosecution due to arbitrary action or government misconduct only if the court finds that action has materially prejudiced the defendant's right to a fair trial. The amendment would eliminate the requirement of prejudice to the defendant, allowing dismissal based solely on the court's disapproval of a decision of the prosecutor.

Allowing dismissal based on "arbitrary action" confers unlimited discretion. A decision can be characterized as arbitrary if the person reviewing that decision believes that the decision is not well-reasoned. A court hearing a motion to dismiss could find a charging decision in a particular case arbitrary because the court disagrees with the prosecutor's choice of charges. Unless the motion is brought at the close of a trial, the court would be doing so without full knowledge of the facts of the crimes, the investigation, or the victims' need for protection. The only limitation remaining in the rule would be that the court act "in furtherance of justice," a term that is subject to a wide range of interpretations and so provides no effective structure either for decision-making or for review of a dismissal.

Under the proposed rule, a court could dismiss all prosecutions of a particular crime because it concludes that the prosecutor's choice to allocate limited resources to pursue that class of crimes is arbitrary. The proponents of the rule

suggest that courts should be permitted to dismiss charges based on “overrepresentation of black Americans in every stage of our criminal and juvenile justice system” and because of “aggravated sentencing laws.” The proponents thus would interpret the rule to permit dismissal based on a court’s opinions about the system as a whole or the sentencing structure established by the legislature, or perhaps, based on the race of the defendant, regardless of the facts of any particular case. Dismissal for any of these reasons would infringe on the executive authority to charge and prosecute crimes and the legislative authority to set punishments.

I have been a prosecutor for 39 years. I believe the proposed amendments invite arbitrary action by the courts and should be rejected.

Respectfully,

Donna Wise

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