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Subject: FW: Comment on Proposed Rule CrR, CrRLJ 8.3
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From: Godwin, Hannah <hgodwin@kingcounty.gov>
Sent: Tuesday, April 30, 2024 11:14 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed Rule CrR, CrRLJ 8.3

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I write to strongly oppose the proposed change of CrR and CrRLJ 8.3.

As the rule is currently written, a court may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. What constitutes prejudice to a defendant's right to a fair trial has been developed in Washington criminal caselaw for decades. There are well-established mechanisms in place to handle prejudicial misconduct when it occurs. This proposed amendment strikes out the most important caveat—it eliminates the requirement that any arbitrary action or governmental misconduct materially affect a defendant's right to a fair trial—and hands a court the authority to dismiss charges or convictions if they believe there has been arbitrary action or government misconduct, even if there has been no prejudice to the defendant.

What does arbitrary action or government misconduct that does not affect a defendant's right to a fair trial look like? It is unclear. The term "government misconduct" has been interpreted to include negligence as well as affirmative misconduct. A court could conclude that a prosecutor's charging standards or allocation of office resources was arbitrary or negligent. The amendment would authorize dismissal of any case that it concludes was affected by that policy. The proposed amendment is justified by referring to "aggravated sentencing laws," suggesting that dismissal of a prosecution should be authorized if the court disagrees with the charges or the sentence provided under the SRA. Thus, the justification proposes that courts should be able to dismiss a case if the court disagrees with the charging decision of the prosecutor or the sentence range applicable to the convictions returned. This illustrates that "arbitrary action" or "misconduct" is so broad as to allow dismissal for any reason. It allows the judiciary to dismiss a prosecution based on its disagreement with the legislature's setting of punishments in the Sentencing Reform Act. There are no limits on what this sweeping, unchecked power could look like, but in my experience as a deputy prosecuting attorney, there are a handful of scenarios that come to mind:

- Dismissal of violent cases where defendants are found to be likely to commit a violent

offense, and there are underlying protection orders and orders surrendering weapons within the court record. A dismissal will invalidate these orders and release the defendant into the community without any accountability, and place victims and the community in danger;

- A reduction in plea resolutions;
- An increase in forum shopping among courts based on their interpretation of the proposed rule, which in essence would lead to more inequality in the King County criminal justice system.

The impacts of this proposed rule would be catastrophic. I strongly oppose the implementation of the proposed rule.

Respectfully,

Hannah Godwin

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