

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



LEESA MANION
PROSECUTING ATTORNEY

JUSTICE
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April 29, 2024

Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendments to CrR/CrRLJ 8.3.

Dear Justices:

Thank you for seeking comments to the proposed amendments to the Superior Court Criminal Rules (CrR) and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) submitted by the proponents.¹ After carefully reviewing them, and in consultation with the victim services community, I strongly urge you to reject the amendments because they are deeply flawed and unwarranted.

A. Proposed Amendment to CrR 8.3(b)

The proponents' stated goal for eliminating the prejudice requirement to CrR 8.3(b), is "to ensure that judges throughout Washington are empowered to dismiss cases in the furtherance of justice." Instead, the proposed amendment makes the rule effectively standardless, lacks any meaningful showing that it would further justice, and violates the separation of powers doctrine.

The proposed amendment to CrR 8.3 would allow any trial judge to dismiss any criminal prosecution for virtually any reason. Removing the essential requirement that the "arbitrary action" or "governmental misconduct" *must* have resulted in prejudice that materially affected the defendant's right to a fair trial deprives courts of any guidance on when or how to evaluate such claims. Without a meaningful way to assess the impact of the "action" or "misconduct," a trial court could conclude that anything from the prosecutor's charging decision to the sentencing recommendation, or even the prosecutor's charging standards and allocation of office resources was "arbitrary" or negligent. This would allow for the dismissal of all charges and convictions in a particular case and could even authorize the dismissal of entire swaths of cases if a trial court

¹ Although my comments focus on the proposed changes to the Criminal Rules (CrR), they apply with equal force to the proposed changes to the Criminal Rules of Limited Jurisdiction (CrRLJ), which are identical, and should be considered accordingly.

concluded they were affected by a particular policy. In other words, this amendment encourages unpredictable and likely disparate results across the state.

The proponents also assert that the current rule constrains Washington courts from achieving justice. However, the proponents offer no showing that such an amendment is warranted or necessary. There are no cases cited, no examples given, and no explanation of how the current rule has specifically led to unjust results. Instead, the proponents point to three different states with rules similar to the proposed amendment. Even still, they fail to show why simply following those states would accomplish their stated goal. There is no information as to how those state courts are “furthering justice” more so than Washington courts.

A related justification advanced by the proponent is that the amendment would allow judges to address “overrepresentation of black (sic) Americans” in our criminal justice system. The clear inference here is that simply dismissing lawfully filed cases, based upon the race of the defendant, would somehow accomplish this goal. However, it is entirely unclear how a judge would evaluate whether an individual case contributes to overrepresentation of people of color in the criminal justice system. It is also unclear what should be done in cases where the victim is a person of color. Research shows that more than half of the victims in Washington criminal cases are people of color, but people of color only account for less than 35% of the population. Allowing and encouraging such race-based dismissals would violate both due process and equal protection, erode public trust, and devastate victims.

Finally, the proponents argue the amendment is necessary to combat broad prosecutorial discretion and aggravated sentencing laws. This suggests that dismissal of a criminal case should be authorized if a trial court disagrees with the charging decision of the prosecutor, or the sentences enacted by the legislature. Allowing the dismissal of cases for these types of reasons violates the separation of powers between all three branches of government. The Legislature and prosecutors are constitutionally tasked with making and enforcing the law, respectively. They are accountable to the public and in-touch with community members and victims. The proposed amendment takes away the voters’ ability to elect representatives who will enact laws they support and to respond to the will of the people by making decisions that reflect the values of the communities they serve. The amendment also serves to undermine the prosecutor’s ability to respond to the needs of the community and to consider victim input at every stage of prosecution. The King County Prosecuting Attorney’s Office (KCPAO) reviews thousands of felony cases each year and ultimately files approximately 60% of those into Superior Court. This work grants prosecutors a perspective on the state of the community and its values that individual trial judges are not afforded as part of their day-to-day work because of their position and role within our justice system.

I respectfully urge you to reject the proposed amendment to CrR/CrRLJ 8.3.

Sincerely,



LEESA MANION
King County Prosecuting Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
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Subject: FW: Proposed Amendments to CrR/CrRLJ 8.3
Date: Tuesday, April 30, 2024 9:30:50 AM
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[Letter Opposing Proposed Amendment to 8.3 - Leesa Manion - FINAL.pdf](#)

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Good morning, Justice of the Supreme Court.

Please find the attached letter from King County Prosecutor Leesa Manion. Thank you!

Best,
Mary Colasurdo



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