From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Comment on Proposed Amendment to CrR 8.3 and CrRLJ 8.3
Date: Wednesday, May 1, 2024 8:30:31 AM

From: Hinds, Patrick <Patrick.Hinds@kingcounty.gov>
Sent: Tuesday, April 30, 2024 7:54 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed Amendment to CrR 8.3 and CrRLJ 8.3

Attention: Clerk of the Washington State Supreme Court

I am writing to urge the Court to reject the proposed amendments to CrR 8.3 and CrRLJ 8.3. The many problems with these proposed amendments have been described at length in the comments submitted by prosecutors and judges from around the state and I share in their concerns. In particular, I would note and highlight two.

First, the proposed amendment flies in the face of long established law and violates principles of separation of powers. This Court has long held that prosecutors are properly vested with wide discretion in deciding such things as what defendants to charge, what charges to file, when and how to bring charges, how to negotiate and try cases, and what sentences to seek following conviction. This Court reaffirmed the point as recently as a few weeks ago in State v. Stearns, 545 P.3d 320 (2024). While this discretion is not unlimited, a court cannot and should not simply substitute its judgment on such matters. However, because the term "governmental misconduct" has been interpreted to include negligence as well as affirmative misconduct, the amendments would have the impact of authorizing a court to do just that. Under the amended version of CrR/CrRLJ 8.3, a court could dismiss any or all charges or convictions simply because the judge disagreed with a prosecutor's charging standards, allocations of office resources, or virtually any other decision, and believed it was arbitrary or negligent, regardless of whether the decision had ***any*** impact on the case in question.

Similarly, this Court has long noted that the Legislature is the body constitutionally empowered to define crimes and to set punishments for them. However, the justification for the proposed amendments is based in part on an attempt to empower courts to push back against "aggravated sentencing laws," which suggests that dismissal of a prosecution should be authorized if the court disagrees with the Legislature's definition of a crime or the sentence provided for it under the SRA. This illustrates that "arbitrary action" or "misconduct" is so broad as to essentially allow dismissal for

any reason and would allow courts to dismiss a prosecution based purely on a disagreement with the Legislature.

In this context, the current requirement that a dismissal under CrR/CrRLJ 8.3 is only allowable "when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial" strikes the appropriate balance between the authority of the Legislature, the discretion of the prosecutor, the due process rights of the defendant, and the role of the judge. The proposed amendment undoes this balance and not only allows, but encourages, a court to dismiss charges based purely on the judge's personal philosophical disagreement with decisions made by the prosecutor or Legislature.

Second, the proposed amendment ignores the public interest in the prosecution of crimes and the protection of victims and the community. Because it does not require a connection between any misconduct of the State and the defendant's ability to have a fair trial, it does not serve the public interest in punishment of the guilty and public safety. It also disregards the victim's right to justice and protection from the defendant.

For all of the above reasons – as well as those stated in other comments to the Court on this proposed rule change – I respectfully request that the proposed amendment to CrR 8.3 and CrRLJ 8.3 be rejected.

Sincerely,
Patrick Hinds

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