

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Comment re proposed changes to CrR 8.3 and CrRLJ 8.3
Date: Monday, April 22, 2024 10:32:25 AM

From: Guthrie, Stephanie <Stephanie.Guthrie@kingcounty.gov>
Sent: Monday, April 22, 2024 10:31 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re proposed changes to CrR 8.3 and CrRLJ 8.3

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I am writing to strongly oppose the proposed change to CrR 8.3 and CrRLJ 8.3.

There are many reasons why this proposal should not be adopted. **(1)** The proposed amendment to CrR and CrRLJ 8.3 would allow a trial judge to dismiss any criminal prosecution, no matter how serious, for any reason that a judge felt furthered justice as that judge defines it. A court could conclude that *any* decision made by a prosecutor was arbitrary, from charging decisions to sentencing recommendations. On that basis, the amendment would authorize dismissal of any or all charges or convictions. **(2)** What appears “arbitrary” to the court may not actually be arbitrary. Two cases may appear very similar to the court yet be materially different to the prosecutor based on information the prosecutor possesses about a victim’s willingness or lack of willingness to participate in prosecution. That information often cannot be disclosed to the court without endangering a victim, particularly in domestic violence cases. The proposed rule would allow the court to dismiss cases for action that appears arbitrary to the court but which in fact serves the ends of justice and the needs of victims (e.g. offering a better plea offer in one case where the victim does not want the defendant to know she has fled the state and refuses to return and offering a worse plea offer in another outwardly-similar case where the victim does not want the defendant to know that she is willing to testify against him, because she has told him she will not testify). By allowing dismissal upon any “arbitrary” action by the prosecutor, without requiring any showing of prejudice to the defendant, the proposed rules will undermine the ends of justice. **(3)** 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. **(4)** The proposed amendment is justified by the claim that courts should be able to dismiss cases because of the “overrepresentation of black Americans in every stage of our criminal and juvenile justice systems.” This suggests that courts should dismiss entire categories of cases if a judge concludes that category of cases contributes to that overrepresentation. It is unclear how

a judge could conclude that a particular case is a contributor to overrepresentation of Black persons in the criminal justice system. **(5)** 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. **(6)** The proposed amendment ignores the public interest in the prosecution of crimes and protection of the victim 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 disregards the victim’s right to justice and protection from the defendant. **(7)** By allowing dismissal of a prosecution based on policy disagreements with the prosecutor, the rule violates the separation of powers between the judiciary and the prosecutor.

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