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Subject: FW: Proposed Amendment to CrR/ CrRLJ 8.3 (b)
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From: Terry Bloor <Terry.Bloor@co.benton.wa.us>
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Justices of the Supreme Court

In re: Proposed Amendments to CrR 8.3 (b) and CrRLJ 8.3 (b)

I object to the proposed amendments to CrR 8.3 (b) and CrRLJ 8.3 (b), which delete a requirement that for a court to dismiss a criminal prosecution it must find that the defendant has been materially prejudiced due to any arbitrary action or government misconduct. I have three main objections.

First, the requirement that the defendant must show material prejudice by prosecutorial misconduct has been long established by caselaw. See, e.g. *State v. Thierry*, 190 Wn.App. 680, 689, 360 P.3d 940 (2015), *State v. Thorgerson*, 172 Wn.2d 438, 442-43, 258 P.3d 43 (2011). Likewise, a defendant alleging her attorney was ineffective must show that she was prejudiced. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Deleting the “prejudice” prong would be contrary to decades of established caselaw.

Second, the amendments would provide for vastly different outcomes between counties and between Judges within those counties. Once the “prejudice” prong is deleted, Judges will be free to decide whatever they want to do with a motion to dismiss.

Third, a prosecutor aims to hold a guilty defendant accountable and provide some justice to crime victims. I believe that the most citizens and the legal profession have the same goals. These amendments will be a windfall to a guilty defendant and make it less likely that crime victims will see any justice.

Terry J. Bloor (Mr./He/Him)
Deputy Prosecutor
Benton County Prosecutor’s Office
7122 West Okanogan Pl., Suite A230
Kennewick, WA 99336
terry.bloor@co.benton.wa.us / (509) 735-3591

