

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Proposed Amendment to CrR/ CrRLJ 8.3 (b)  
**Date:** Tuesday, April 30, 2024 11:59:17 AM

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**From:** Theodore Cropley <theodore.cropley@piercecountywa.gov>  
**Sent:** Tuesday, April 30, 2024 11:59 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed Amendment to CrR/ CrRLJ 8.3 (b)

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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.

As 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. Accordingly, this amendment would authorize dismissal of any case that a court concludes was affected by that policy.

In addition, 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.

The proposed amendment also 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.

Finally, 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.

Thank you,

Theodore M. Cropley  
Deputy Prosecuting Attorney – Pierce County