From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comments on proposed court rules/rule changes - 2025
Date: Wednesday, April 30, 2025 11:01:49 AM
Attachments: image002.png

From: Ernsdorff, Gary <Gary.Ernsdorff@kingcounty.gov>
Sent: Wednesday, April 30, 2025 10:25 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on proposed court rules/rule changes - 2025

Thank you for the opportunity to comment on proposed rule changes. My comments are included below.
Sincerely

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CrR 8.3 and CrRLJ 8.3: The proposal would allow a trial judge to **dismiss any criminal case if the judge finds that there has been "arbitrary" conduct** by the state, or misconduct (including negligence), **even if did not prejudice the defendant**.

OPPOSED

- The proposed amendment ignores the public interest in the prosecution of crimes and protection of the victim and the community. Because the proposed amendment would do away with the need for 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. While one of the four factors is, "the impact of a dismissal on the safety or welfare of the community (the defendant is part of the community)," no guidance is given on how this factor ought to be weighed, if at all, against the other enumerated factors or any other information a court might deem

"relevant to the inquiry." This factor also implicitly shifts focus away from the victim and disregards the victim's right to justice and protection from the defendant.

- The proponents justify the proposed amendment by making the assertion 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 implies that courts can and should dismiss entire categories of cases if a judge concludes that the category contributes to that overrepresentation. Absent prejudice to a specific defendant, the rule suggests that a judge could elect to dismiss all such cases against Black Americans but not other racial groups.
- The proposed amendment would allow a trial judge to dismiss any criminal prosecution. 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. For example, the term "government misconduct" has been interpreted to include negligence as well as affirmative misconduct. As a result, 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 a court concludes was affected by that policy.
- The proponents justify the proposed amendment by referring to "aggravated sentencing laws," suggesting that dismissal of a prosecution should be authorized if the court disagrees with the charging decision or the sentence provided for under the SRA. This illustrates that the intent of the amendment is to create an interpretation of "arbitrary action or governmental misconduct" that is so broad as to allow a judge to dismiss a prosecution based purely on a disagreement with the decision of the prosecutor as to which charges to file and/or with the legislature's setting of punishments in the Sentencing Reform Act. Such broad and unfettered discretion would violate the separation of judicial, executive, and legislative powers.
- Because the proposed amendment does not require the action or misconduct to prejudice the accused in any manner, it untethers the rule from due process. As a result, defendants would benefit—and victims and public safety would suffer—even when the State's action has in no way interfered with a defendants' right to a fair trial. This significant broadening of the rule, and trial court's discretion, would lead to unequitable application of the law

CrR 3.2.1, CrR 4.1, and CrRLJ 4.1: When charges are filed against a defendant who is in-custody or is subject to conditions of release imposed at filing, this proposal would—among other things —**require that the defendant be arraigned within three days of filing** (down from the current 14 days)**.**

OPPOSED

- The proposed amendment does not provide sufficient time for victim notification. In many cases, prosecutors must still rely on the postal system to provide victims with notice that a case has been filed and scheduled for arraignment. The proposed three-day window between filing and arraignment is insufficient to generate notice, submit it to the postal service, and have it delivered and received prior to the arraignment date. At best, the notice will arrive the day before arraignment, providing victims of crime with insufficient time to make work, childcare, or transportation arrangements to attend the arraignment and potential bond motion or provide input to an advocate or prosecutor to relay to the court. As a result, the proposed three-day timeline is not trauma-informed for victims on serious cases. Even eight days of notice would allow victims the opportunity to prepare for the stress of attending and participating in an arraignment hearing.

- The proposed amendment does not allow courts to effectively manage their schedule. The courts and State require flexibility to manage the volume of cases set for arraignment on given days. Otherwise, circumstances like heavy arrest days, court holidays, and unexpected closures due to weather will result in unmanageable arraignment calendars.
- The proposed amendment does not provide sufficient time to mail notice to defendants subject to conditions of release. As drafted, the rule applies to people who are out-of-custody (either because no bail was imposed or because they posted bail), but subject to conditions. In many cases, the courts or prosecutors must still rely on the postal system to provide such defendants with notice that they have been charged with a crime and are scheduled for arraignment. The proposed three-day window between filing and arraignment is insufficient to generate notice, submit it to the postal service, and have it delivered and received prior to the arraignment date. At best, the notice will arrive the day before arraignment, providing defendants with insufficient time to make work, childcare, or transportation arrangements to attend their arraignment.

CrR 3.2 and CrRLJ 3.2: In all portions of the rule where the court currently considers the risk that the defendant will "interfere with the administration of justice," the proposal would limit that and only allow the court to consider the specific risks that the defendant will "intimidate or threaten a witness, victim, or court employee, or tamper with evidence."

OPPOSED

- The proposed amendment is too narrow and ignores the risk that an accused can tamper with witnesses in ways other than by threats or intimidation. For example, under the proposed amendment, a court setting bail would not be able to consider a given defendant's attempts to bribe witnesses. In this context, the proposed amendment's over-focus on whether the accused will "threaten or intimidate" a victim or witness ignores the numerous other ways in which an accused can attempt to unlawfully dissuade a witness or victim from appearing and testifying truthfully in response to a subpoena. Courts must have sufficient discretion to address all behavior that interferes with the administration of justice, not just those that involve a threat or attempt to intimidate.
- The proposed amendment "clarifies" the meaning of the "interfering in the administration of justice" factor in a way that renders it mostly superfluous. Under both the existing rule and the amended version proposed, a court setting bail can consider the likelihood that the accused will commit a violent offense as a factor in and of itself. As a result, limiting the "interfering in the administration of justice" factor to meaning "seeking to intimidate or threaten a witness, victim, or court employee, or tampering with evidence" renders it mostly superfluous; intimidating or threatening a witness, victim, or court employee is committing a violent offense. In that context, the practical impact of the proposed amendment is not to clarify the meaning of "interfering in the administration of justice," but to effectively delete it and limit the court to only considering the likelihood that the accused will commit a violent offense.
- The proposed amendment precludes courts from considering relevant factors that can negatively impact the court's ability to effectively adjudicate a matter. For example, while an accused's commission of a single new non-violent offense may not be a reason to readdress release or conditions of release, the analysis may be different with an accused who repeatedly commits non-violent offenses in other jurisdictions. The latter circumstance can cause significant issues with a court's ability to adjudicate the case in a timely manner due to repeated instances of the accused

being out of contact with their attorney and unavailable to appear in court due to being in-custody in another jurisdiction. While it may be rare that an accused's behavior rises to the level that raises these issues, it can happen. In that context, the proposed amendment strips courts of the discretion that they need to ensure that justice is properly administered even though there has been no showing of a significant or systematic abuse of that discretion.