

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



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PROSECUTING ATTORNEY

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April 29, 2025

Honorable Mary Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court

RE: Comments on Proposed Amendments to CrRLJ 8.3 and CrR 8.3

Dear Honorable Justice Mary Yu and Members of the Rules Committee:

Like last year, I write again in opposition to proposed amendments to CrRLJ 8.3 and CrR 8.3. The addition of four ambiguous factors (and a “catch all” provision that allows for consideration of “any other information the court feels is relevant”) does not cure any of the concerns I had last year with respect to the 2024 proposed amendment. The latest proposed amendment again removes the requirement of prejudice and still provides courts with no meaningful guidance on how to evaluate a particular governmental action. It confers trial courts broad, unchecked discretion to dismiss a case for any reason whatsoever, in violation of separation of powers and contrary to community safety and victims’ rights.

It is well established that CrR 8.3(b) protects a defendant’s right to a fair trial, and that arbitrary action or misconduct by the State may warrant dismissal when it violates a defendant’s due process rights. *State v. Moen*, 150 Wn.2d 221, 226, 76 P.3d 721 (2003). But due process is not defined by personal notions of fairness but rather by “fundamental conceptions of justice.” *State v. Cantrell*, 111 Wn.2d 385, 389, 758 P.2d 1 (1988) (quoting *United States v. Lovasco*, 431 U.S. 783, 790, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)). Due process does not permit a court to dismiss a criminal prosecution simply because it disagrees with a prosecutor’s judgment. *Moen*, 150 Wn.2d at 226 (citations omitted). *But the plain language of the proposed amendment authorizes a court to do just that.*

For decades, this Court’s case law has recognized these principles and steadfastly required a showing of material prejudice to an accused’s fair-trial rights to justify the extraordinary remedy of dismissal. *State v. Baker*, 78 Wn.2d 327, 332-33, 474 P.2d 254

(1970); *State v. Michielli*, 132 Wn.2d 229, 239, 937 P.3d 587 (1997); *State v. Rohrich*, 149 Wn.2d 647, 653, 71 P.3d 638 (2003); *State v. Salgado-Mendoza*, 189 Wn.2d 420, 436, 403 P.3d 45, (2017). Amendment of the rule to obviate the prejudice requirement would effectively overrule this precedent without a showing that any of those cases are harmful and incorrect. To the extent that the proponents seek to overrule constitutional holdings of this Court via an amendment to the criminal rules, it is an improper attempt to avoid *stare decisis* through the rule-making process.

Because the proposed amendment does not require a showing of prejudice to the accused, it untethers the rule from its due process origins. Defendants would benefit—and victims and public safety would suffer—even when the governmental action in no way interfered with a defendant’s right to a fair trial. This is a significant broadening of the rule that would lead to unequitable application of the law. Racial disparity is correlated with unstructured and unreviewed discretion. I am concerned with the significant potential for disparate impact if the proposed amendment were to be adopted, and thus applied statewide.

Importantly, the authority of a trial court to dismiss a prosecution under CrR 8.3(b) is tempered by the separation of powers. *Cantrell*, 111 Wn.2d at 389. But under the proposed rule change, a court could conclude (based on “any other information the court feels is relevant”) that any decision made by a prosecutor was arbitrary—from charging decisions to sentencing recommendations. This suggests that a court could dismiss a case based on its disagreement with the executive’s charging decision (and by extension, the legislature’s setting of punishments for the crimes charged). This illustrates that “arbitrary action,” or “misconduct” is so broad as to allow dismissal for any reason at all. A rule that is not tied to the defendant’s right to a fair trial interferes with the prosecutor’s charging decisions and violates the separation of powers between the judiciary and the executive.

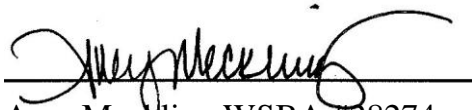
I do not understand the why this change is necessary; the proponents of the amendment do not point to any specific case examples or a multi-jurisdictional analysis suggesting the existence of issues in Washington that would require such a drastic change. General reference to systemic problems within the criminal justice system certainly cannot justify this rule change—courts cannot address those problems by individually dismissing lawfully filed criminal charges. Such a “solution” lacks merit and represents a vast oversimplification of a multifaceted issue.

This Court should reject the proposal to amend CrRLJ 8.3(b) and CrR 8.3(b) to authorize courts to dismiss a case without a showing of material prejudice to the defendant’s right to a fair trial. Dismissal without such a showing arbitrarily cuts against society’s legitimate interest in the fair prosecution of crimes that are properly alleged and ignores the strong societal interest in protection of the community. It disregards a victim’s right to justice and safety from those who cause harm. Although one of the four factors in the proposed amendment is, “the impact of a dismissal on the safety or welfare

of the community,” no guidance is given on how this factor should be weighed—if at all—against the other enumerated factors or against “any other information” a court might deem “relevant to the inquiry.” As I stated last year, I believe that most citizens in this State would strenuously disagree with a rule that causes further harm to crime victims and provides a windfall to those who victimize others.

Thank you for considering my comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy Meckling', is written over a horizontal line.

Amy Meckling WSBA #28274
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Co-Chair, Appellate Unit
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From: Meckling, Amy <Amy.Meckling@kingcounty.gov>
Sent: Tuesday, April 29, 2025 7:26 PM
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Attached, please find my comments to the proposed amendments to CrRLJ 8.3 and CrR 8.3.

Thank you,



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