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**Sent:** Wednesday, April 30, 2025 10:33 AM  
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**Subject:** Comments on Proposed Changes

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Thank you for providing the opportunity to comment to the proposed changes in 2025.

### **CrR 8.3/CrRLJ 8.3**

The current rules under CrR 8.3 and CrRLJ 8.3 strike a fair balance between allowing judges the discretion to dismiss cases in furtherance of justice while also requiring a showing that a defendant has been prejudiced in such a way as to materially affect the right to a fair trial. The new proposal removes the required showing of prejudice to the defendant and also eliminates the required finding that there was arbitrary action or governmental misconduct that materially affected the accused's right to a fair trial. Without the requirement that the accused demonstrate actual prejudice, cases could be dismissed based upon the individualized beliefs of judges of how a prosecutor should have handled a case. Preserving the balance between judicial discretion and prosecutor discretion is vital in ensuring a fair application of the laws.

An example of this can be found in the admissibility of DUI prosecution evidence. The legislature and state toxicologist have set clear guidelines for the requirements of the admissibility of blood evidence in DUI prosecution. It has been repeatedly held that a court shall not substitute its judgment for the state toxicologist. However, under the new proposed rules, a judge would have the authority to dismiss DUI prosecutions if it disagreed with how blood evidence was handled (regardless if the evidence complied with the RCW or WAC requirements). Such a situation would result in inconsistent application of DUI prosecutions in different courtrooms throughout the state.

### **CrR 3.2/CrRLJ 3.2 Release of Accused**

The proposed change to CrR 3.2/CrRLJ 3.2 seeks to modify the administration of justice prong to include only whether a person will seek to intimidate or threaten witnesses, victims or court employees, or tamper with evidence. As *State v. Rose* indicated "we presume that failing to attend a hearing is an unlawful interference with the administration of justice." 146 Wn. App. 439, 454, 191 P.3d 83, 91 (2008). If the court were barred from considering likelihood to appear at future hearings when determining whether to set bail, individuals who have a history of not showing up to court

would be released. Non-appearance interferes with the administration of justice and with the ability to prosecute a case – if a person does not show up for court, the case stalls. If an extended period occurs where they are not availing themselves to the court evidence can be lost, memories dimmed, witnesses may change contact information or addresses and not be located when the defendant reappears in court.

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