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Subject: FW: Proposed Amendment to CrR 8.3
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From: Chris Ashcraft <CAshcraft@co.jefferson.wa.us>
Sent: Friday, February 21, 2025 11:53 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Amendment to CrR 8.3

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The Court should reject the proposed amendment to CrR 8.3.

The State/Federal constitutions and the current criminal rules are designed, as they should be, to protect a defendant's right to a fair trial. In that vein, Washington courts have developed 50 years of case law regarding the appropriate application of this rule. The proposed changes gut that jurisprudence and replace it with a series of subjective terms that every trial judge will interpret differently depending on their personal philosophy and/or the political leanings of their jurisdiction.

8.3 should retain the "when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." This language is the most important clause in the rule because it is the defining limiting principal of the rule. Without this limit, defense can clog the courts with incessant complaints every time there is any mistake made by the government.

The four suggested factors are meaningless and too subjective.

1. "the seriousness of the circumstances of the offense." Does this mean the more serious the offense, the more protection a defendant receives, or does it mean they get less protections? Or does this mean something else entirely? The wording here is unclear, and even if it were clear, every defendant deserves the same protection under the law and so this should not be a factor at all.
2. "the impact of a dismissal on the safety or welfare of the community (the defendant is part of the community)." Why is this a factor? Again it sounds like the amount of due process a defendant receives depends on the crime involved. This seems to violate the basic precepts of due process because there are different standards for each defendant.
3. "the impact of a dismissal or lack of dismissal upon the confidence of the public in the criminal justice system." The public has at best, a rudimentary understanding of the

criminal justice system based on TV which is inaccurate. This sounds like taking a poll among people who are getting inaccurate information from the media, then making a judicial decision based on that. But this is even worse than that, because it is a judge make a decision based on what they judge thinks the community will think. A judge could easily conclude that no case should be dismissed because it would impact public confidence in the criminal justice system. Or the judge could conclude that cases should be dismissed because an immutable trait of the defendant because that would impact the confidence in that particular community.

4. “the degree and impact of the arbitrary action or governmental misconduct.” Impact on who? Impact on what? How much of a degree? This language is too imprecise to be consistently applied across the board. It is too subjective and therefore will lead to inconsistent results which does undermine confidence in the system.

Thank you for your consideration.

Chris R. Ashcraft
Chief Criminal Deputy
cashcraft@co.jefferson.wa.us
Phone: 360.385.9180
Fax: 360.385.9186

