From: Mohandeson, Mike
To: OFFICE RECEPTIONIST, CLERK
Subject: Proposed changes to CrR 8.3(b)/CrRLJ 8.3(b)
Date: Thursday, April 17, 2025 9:43:59 AM

Greetings,

I am a Senior Deputy Prosecuting Attorney at the King County Prosecutor's Office, where I have served for almost 25 years. I am currently the vice chair of the Sexually Violent Predator Unit in my office.

The amendments to CrR 8.3(b)/CrRLJ 8.3(b) as currently proposed raise significant concerns from both a public safety and equal application standpoint, in addition to upending decades of Washington Supreme Court precedent. Even prior to inclusion of the language added to the rule in 1995 that explicitly required a showing of prejudice, the Washington Supreme Court held that prejudice affecting the defendant's right to a fair trial needed to be shown. State v. Michielli, 132 Wn.2d 229, 239-40, 937 P.3d 587 (1997). This longstanding requirement makes sense, as our courts in Washington have repeatedly held that dismissal of charges is an extraordinary remedy. See State v. Rohrich, 149 Wn.2d 647, 653 & 658, 71 P.3d 638 (2003). There is no reasonable basis to change course from how CrR 8.3(b)/CrRLJ 8.3(b) requests are considered by the court. Indeed, a prior effort in 2024 to amend these same court rule provisions was not adopted. The renewed effort is not grounded on additional reasons that would warrant the changes again being sought, and the newly proposed additional language does not remedy the concerns that existed during the 2024 rule change effort.

Additionally, by not including a uniform requirement that the requisite prejudice be established there is a notable risk that defendants across the state could be treated differently depending on which judge they appear in front of, resulting in significantly disparate outcomes. Some judges may choose to require a defendant to demonstrate prejudice as part of the "any other information the court believes is relevant" or "the degree and impact of the arbitrary action or governmental misconduct" while other judges may not

because the requirement will be removed from the rule. In fact, some judges may choose to even disregard the lack of prejudice to a defendant's right to a fair trial specifically because it will have been removed from the rule if adopted.

Inclusion of the language that says "any other information the court believes is relevant," without also maintaining a requirement that a defendant demonstrate prejudice that materially affects their right to a fair trial, would allow a judge to dismiss a case based only on that judge's subjective determination of what is arbitrary action. That determination of arbitrariness could be grounded on a judge's belief about the charging decision or sentencing recommendation. Any given judge could reach a conclusion about arbitrariness or purported governmental mismanagement based on a prosecutor's charging standards or allocation of office resources and therefore dismiss the case if they believed the defendant was negatively impacted by those policies, even if no prejudice to the defendant's right to a fair trial exists. This reality creates a serious risk of violating the separation of powers between the judiciary and the prosecution.

Finally, adverse public safety consequences and victims' rights are implicated by the proposed amendment, despite a defendant's right to a fair trial not necessarily being violated. While the language of the amendment does include "the impact of a dismissal on the safety or welfare of the community," there is no guidance on how this factor should be weighed against others and it does not explicitly require the court to consider victim input in any event. The right to a fair trial is undeniably a bedrock principle of our justice system. However, fairness to victims and to the community should not be subject to sacrifice when the defendant has not suffered material prejudice to their ability to have a fair trial.

I would respectfully request that this proposed rule amendment again be denied, as it was in 2024. Thank you for your consideration of my input.

Best Regards,

Michael Mohandeson