From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Opposition to Proposed Rule Changes CrR/CrRLJ 8.3
Date: Tuesday, April 29, 2025 8:47:44 AM

From: Watson, Sara <SWatson@kentwa.gov>
Sent: Tuesday, April 29, 2025 7:47 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: White, Tammy <TWhite@kentwa.gov>
Subject: Opposition to Proposed Rule Changes CrR/CrRLJ 8.3

The City Attorney's Office for the City of Kent respectfully opposes the proposed amendments to CrR/CrRLJ 8.3.

Permitting dismissal without a requisite showing of prejudice invites arbitrary judicial decisions influenced by individual or subjective perceptions of fairness. Such a shift would likely produce inconsistent outcomes, thereby eroding public confidence in both judicial rulings and the broader criminal justice system. Moreover, the proponents of the amendments have not demonstrated, as required under GR 9(a)(4), that a rule change is necessary statewide. It bears emphasizing that the rationale provided for the current proposal closely mirrors that of a similar amendment rejected by this Court last year.

Controlling precedent from this Court establishes that dismissal under CrR/CrRLJ 8.3 is an extraordinary remedy, available only when a defendant's right to a fair trial has been prejudiced. Eliminating this well-settled requirement would directly contradict binding authority. See *State v. Michielli*, 132 Wn.2d 229, 239–40, 937 P.2d 587 (1997); *State v. Rohrich*, 140 Wn.2d 647, 654–55, 71 P.3d 638 (2003); *State v. Baker*, 78 Wn.2d 327, 332–33, 474 P.2d 254 (1970). The proposed amendments would replace this clear, rights-based standard with one that empowers trial courts to dismiss prosecutions based merely on policy disagreements with prosecutorial decisions—thereby infringing upon the constitutional separation of powers.

The proponents' reference to "aggravated sentencing laws" underscores their position that courts should be permitted to dismiss charges when they disagree with either the prosecutor's charging decision or the sentence mandated by the Sentencing Reform Act (SRA) or other mandatory minimums imposed by statute. This interpretation expands the definition of "arbitrary action or governmental misconduct" to a degree that would allow dismissal based solely on judicial disagreement with a decision made by either of the other branches of government. Such an interpretation would grant the judiciary broad and unchecked authority, in clear violation of the separation of powers among the

branches of government.
The recent failure of HB 1113 in the legislature is notable; that bill sought to grant courts unilateral authority to place defendants on diversion programs without prosecutorial consent. The proposed rule change appears to pursue a similar objective through judicial rulemaking rather than democratic legislation. Additionally, the proponents appear to suggest that this amendment is intended to address racial disparities in the criminal justice system, particularly the overrepresentation of Black Americans. However, implying that judges may—indeed, should—dismiss cases against Black defendants to redress systemic inequities raises serious concerns under the Equal Protection Clause. This approach risks encouraging judicial decisions based on race, which is constitutionally impermissible and deeply troubling.
Currently, CrR 8.3/CrRLJ 8.3 serves an essential function: they safeguard against government misconduct, protect the rights of defendants, and ensure prosecutorial accountability. Expanding these rules as proposed would incentivize frivolous and strategically motivated motions to dismiss, aimed at exploiting perceived judicial leanings rather than advancing justice.
While dismissal in cases of governmental misconduct is sometimes warranted, this Court has consistently held that such relief is extraordinary and must be predicated on a showing of prejudice. Lowering that standard would marginalize the interests of crime victims, diminish public safety, and further erode public trust in the integrity and impartiality of the criminal justice system.

Sara M. Watson (she/her), *Chief Prosecuting Attorney*
Criminal Division | Office of the City Attorney
220 Fourth Avenue South, Kent, WA 98032
Direct Line **253-856-5770** | Fax **253-856-6770**
My Office Hours: Mon-Fri 7:00am to 4:00pm
swatson@KentWA.gov

CITY OF KENT, WASHINGTON
KentWA.gov **Facebook** **Twitter** **YouTube** **Instagram**