

WASHINGTON STATE BAR ASSOCIATION

To: Stakeholders and Interested Parties
From: Court Rules and Procedures Committee
Re: Draft proposal to amend Criminal Rules (CrR) 8.2 and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 8.2

Please find enclosed for your review and comment draft proposals to amend CrR 8.2 and CrRLJ 8.2. We would like your input. You are receiving this notice because you are a member of an identified stakeholder group, an individual who has expressed interest in proposed rule changes in the past, or you have been identified as someone with an interest in this area.

There is currently a conflict in the case law as to whether the criminal rules allow a motion for reconsideration. *State v. Batsell*, 198 Wn.App. 1066, unpublished (issued May 2, 2017), illustrates that there is some confusion as to whether a motion for reconsideration is allowed under the criminal rules. The Batsell court noted that *State v. Gonzalez*, 110 Wn.2d 738, 744, 757 P.2d 925 (1988), noted that civil rules are instructive as to matters of procedure on which the criminal rules are silent. However, *State v. Keller*, 32 Wn.App. 135, 647 P.2d 35 (1982), held that CR 59 did not apply in criminal cases. In contrast, as the Batsell court noted, “at least two reported decisions in criminal appeals have involved motions for reconsideration without questioning CR 59’s application in criminal cases.” (citing *State v. Englund*, 186 Wn.App. 444, 459, 345 P.3d 859, review denied, 183 Wn.2d 1011, 352 P.3d 188 (2015); *State v. Chaussee*, 77 Wn.App. 803, 806-07, 895 P.2d 414 (1995)).

This confusion results in inconsistency across courts. It also presents a problem when a party in a criminal case wishes to move for discretionary review, as the time for filing a notice of discretionary review runs from the entry of an order deciding a timely motion for reconsideration pursuant to RAP 5.2(b).

The district court criminal rules do not have an express provision for motions for reconsideration. To be consistent with the superior court rule it is also recommended that District Court Criminal Rule 8.2 also be amended.

As part of the review process, Subcommittee X seeks feedback about these draft proposals. Stakeholder input is crucially important in the rulemaking process and assists the subcommittee in making an informed decision.

Please feel free to distribute these materials within your organization or firm, or to other people or groups who may have an interest in weighing in.

Please provide any comments to Tony DiTommaso at WSBACourtRules@wsba.org by **May 1, 2019**.

For more information about the Court Rules and Procedures Committee, please visit: <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/court-rules-and-procedures-committee>

SUGGESTED AMENDMENT
SUPERIOR COURT CRIMINAL RULES (CrR)
RULE 8.2 MOTIONS

1 Rules 3.5 and 3.6 and CR 7(b) shall govern motions in criminal cases. A motion for
2 reconsideration shall be governed by CR 59(b), (e) and (j).

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SUGGESTED AMENDMENT
CRIMINAL RULES FOR COURTS OF LIMITED
JURISDICTION (CrRLJ)
RULE 8.2 MOTIONS

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