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**To:** [Martinez, Jacquelyn](#)  
**Subject:** FW: Comments on proposed CrR/CrRLJ 8.3  
**Date:** Monday, April 29, 2024 1:46:43 PM

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**From:** Lundgren, Alexis M. <ALUNDGREN@spokanecounty.org>  
**Sent:** Monday, April 29, 2024 11:33 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comments on proposed CrR/CrRLJ 8.3

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I strongly object to the proposed amendments to CrR 8.3 and CrRLJ 8.3, which would drastically expand trial court authority to dismiss criminal cases without any showing of error or prejudice.

As the rule currently stands, a trial court judge may dismiss a criminal prosecution due to arbitrary action or government misconduct only if the judge finds that action has materially prejudiced the defendant's right to a fair trial. The amendment would eliminate the requirement of prejudice to the defendant and allows for dismissal based solely on the court's disapproval of a decision of the prosecutor.

Allowing dismissal based on "arbitrary action" confers unlimited discretion and undermines the longstanding requirement that defendant's must show material prejudice by prosecutorial misconduct. *See, e.g. State v. Thierry*, 190 Wn. App. 680, 689, 360 P.3d 940 (2015); *State v. Thorgerson*, 172 Wn.2d 438, 442-43, 258 P.3d 43 (2011). The requirement that the dismissal be "in the furtherance of justice" is a vague and essentially limitless standard. Without any limiting principle, a trial court could characterize any decision it disagrees with as arbitrary. Courts could dismiss cases because they dislike the particular charges the prosecutor has filed or would have exercised prosecutorial discretion differently. They could dismiss cases due to opinions about systemic injustice without regard to the particular facts of a specific case. They could dismiss cases due to disagreements with the sentencing structure established by the legislature. Dismissal for any of these reasons would infringe on the legislature's authority to define criminal conduct and the executive's discretion to execute the law as enacted by the legislature.

I believe the proposed amendments invite arbitrary action by the courts and request they be rejected.

Sincerely,

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