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**Subject:** FW: Rule comments due TODAY  
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**From:** Hedlund, Sharon <SLHEDLUND@spokanecounty.org>  
**Sent:** Monday, April 29, 2024 12:14 PM  
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**Subject:** FW: Rule comments due TODAY

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### CrR/ CrRLJ 8.3 Dismissal

Dismissal

[Submitted by defense bar]

(a) [Unchanged]

(b) On Motion of Court. The court, in the furtherance of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct ~~when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial~~. The court shall set forth its reasons in a written order.

(c) [Unchanged]

There is already confusion regarding whether a court should dismiss “with” or “without prejudice” under subsections “a” and “b” since neither explicitly identify the method like subsection “c”. A fair reading of subsection “b” supports dismissal with prejudice in cases based upon these findings. Removing the requirement that prejudice be found in subsection “b” suggests that these continuances would be without prejudice. Which makes sense if the court is going to be allowed essentially unfettered ability to dismiss if they perceive arbitrary action or governmental misconduct.

I previously sent this comments but now want to fully “second” Ms. Lundgren’s comment as noted below.

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**From:** Lundgren, Alexis M. <[ALUNDGREN@spokanecounty.org](mailto:ALUNDGREN@spokanecounty.org)>

#### COMMENT:

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.