

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelyn](#)  
**Subject:** FW: comments on proposed changes to CrR 8.3 and CrRLJ 8.3  
**Date:** Tuesday, April 30, 2024 8:11:20 AM  
**Attachments:** [image001.png](#)

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**From:** Richards, Stephanie J. <SRICHARDS@spokanecounty.org>  
**Sent:** Monday, April 29, 2024 4:56 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** comments on proposed changes to CrR 8.3 and CrRLJ 8.3

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As an attorney who practices in Spokane County District Court and Superior Court I object to the proposed amendments to CrR 8.3 and CrRLJ 8.3.

Currently, a trial court judge may dismiss a criminal prosecution in the interests of justice 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. This standard should be maintained. 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 with no adequate remedy for the State.

"In the furtherance of justice," is a laudable goal but a vague judicial standard. Without any limiting principle, a trial court could characterize any decision it disagrees with as arbitrary and dismiss in the furtherance of justice. 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—indeed, this is this result envisioned by the proponents of the rule change—without regard to the particular facts of a specific case. Judges 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.

If a case is dismissed, the State could refile if the dismissal is without prejudice, but this seems to invite allegations of "judge shopping."

Likely, most 8.3 dismissals would be with prejudice—as they should be, *if* the government misconduct materially prejudiced the defendant's right to a fair trial.

If a case is dismissed as envisioned by the proposed changes to 8.3—a dismissal with prejudice but without a showing of governmental misconduct—the State could appeal, but the appeal would be subject to the abuse of discretion standard. Unless the trial court decides to dismiss a case stating a basis so untenable, so manifestly unreasonable in its written order, the appeal carries a high burden unlikely to be overcome based on what would necessarily be a limited the record (because how can the State lay a record opposing the court's own motion if there is no basis on which to defend its

charging decision?) before the court of appeals.

I believe the proposed amendments invite inconsistent action by the courts, providing no reasonable remedy for the State, and request they be rejected.

Thank you,

**Stephanie J. Richards**

Deputy Prosecuting Attorney

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