

April 29, 2025

Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504

**RE: Proposed Amendments to CrR 8.3 and CrRLJ 8.3**



**Washington**

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Seattle, WA 98111  
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aclu-wa.org

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Michele Storms  
*Executive Director*

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Adrien Leavitt  
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David Montes  
Jonathan Nomamiukor  
*Staff Attorneys*

Tracie Hooper Wells  
*Paralegal*

Dear Justices of the Washington State Supreme Court,

We write to urge the Washington Supreme Court to adopt the proposed amendments to Criminal Rule 8.3 and Criminal Rule for Courts of Limited Jurisdiction 8.3 (hereinafter jointly referred to as “CrR 8.3”).

The proposed amendments to CrR 8.3 grant trial courts appropriate discretion when determining whether to dismiss a case due to prosecutorial misconduct or mismanagement. Expanding judicial authority to dismiss cases in extraordinary circumstances is essential to ensure that the criminal legal system is equitable and just. Presently, CrR 8.3 is outdated and narrow by limiting the trial court’s discretion to dismiss a case in furtherance of justice due to the requirement that there must be “prejudice” to an individual’s case.

The proposed amendments seek to update the outdated “prejudice” framework contained in CrR 8.3 and, instead, set out four non-exclusive factors to be considered by a trial court when contemplating dismissal. Importantly, the factors recognize “the impact of a dismissal or lack of dismissal upon the confidence of the public in the criminal justice system.” This factor is critical when considering the history of prosecution based on racial bias, lack of evidence, and government mismanagement. This Court has recognized the long-standing taint of racial bias on the criminal legal system. *See e.g.*, GR 37; *State v. Berhe*, 193 Wn.2d 647, 444 P.3d 1172 (2019). These proposed amendments continue the critical trajectory of remedying outdated rules in order to ensure that the criminal legal system is free from racial bias. Here, the proposed amendments grant trial courts proper discretion to consider dismissal in cases that involve government abuses, including by the police and prosecution, independent of the sole question of prejudice to the accused.

“Courts always have the authority to do justice.” *State v. Starrish*, 86 Wn.2d 200, 214, 544 P.2d 1 (1975) (Utter, J., dissenting). For too long, CrR 8.3(3) has improperly constrained judicial discretion. We urge this Court to appropriate these proposed amendments in order to bring CrR 8.3 in alignment with Washington’s values.

Thank you,

/s Adrien Leavitt

Adrien Leavitt, Staff Attorney

La Rond Baker, Legal Director

American Civil Liberties Union of Washington

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Farino, Amber](#)  
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**Subject:** FW: Comment on Proposed Rule CrR / CrRLJ 8.3 -- ACLU-WA  
**Date:** Tuesday, April 29, 2025 9:28:19 AM  
**Attachments:** [image001.png](#)  
[2025-04-27--WASC Proposed Rule Comment 8-3 - ACLU-WA.pdf](#)

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**From:** Adrien Leavitt <[aleavitt@aclu-wa.org](mailto:aleavitt@aclu-wa.org)>  
**Sent:** Tuesday, April 29, 2025 9:18 AM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Cc:** La Rond Baker <[baker@aclu-wa.org](mailto:baker@aclu-wa.org)>  
**Subject:** Comment on Proposed Rule CrR / CrRLJ 8.3 -- ACLU-WA

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Please find attached a comment to the proposed rule amending CrR / CrRLJ 8.3.

Thank you,  
-Adrien

**Adrien Leavitt**  
Staff Attorney  
Pronouns: he, him

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