

From: [Lundgren, Alexis M.](#)
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Subject: Comment on Proposed Changes to CrR 8.3
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I strongly object to the proposed amendments to CrR 8.3. I have no issue with the factors proposed for consideration by the court, but I do object to the elimination of the prejudice requirement.

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 proposed amendment would eliminate the requirement of prejudice to the defendant and allow the court significantly more discretion to dismiss charges. The purpose of these proposed amendments is to circumvent the constitutional charging prerogative of the executive branch, and allow trial courts to dismiss cases that it deems unimportant, charges which it believes should not have been brought, or to make decisions based on public perception and personally held views of best policy. This is not the constitutional role of the courts, but of the executive and legislative branches of government.

The language of the rule already provides the judiciary with sufficient discretion to dismiss criminal prosecutions where the government engages in arbitrary action or misconduct and that misconduct prejudices the defendant. This is an appropriate standard and does not make the judiciary a rubber stamp. It grants the court authority to dismiss where the government's conduct has harmed the defendant in the presentation of his case, but not where any missteps have little to no impact on the defendant's fair trial right. This properly reserves the extraordinary remedy of dismissal to those cases where the defendant's constitutional right to a fair trial is undermined by the State's actions. To expand that remedy without requiring prejudice risks infringing on the legislature's authority to define criminal conduct and the executive's discretion to execute the law as enacted by the legislature. The judiciary has many other functions aside from total dismissal of a case that render it an essential and meaningful participant in the life of a case, including making myriad evidentiary decisions throughout trial, deciding substantive motions, instructing the jury, and controlling the courtroom. Additional discretion to dismiss cases without prejudice to the defendant is not necessary to ensure defendants are given fair trials.

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

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