I respectfully ask that the Court reject the following proposed rule changes to CrR/CrRLJ 8.3 for the reasons below:

- **The proposed amendment is contrary to this Court's precedent requiring a showing of prejudice to warrant dismissal even when the text of the court rule does not mention it.** As initially enacted in 1973, CrR 8.3 read: "The court on its own motion in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution and shall set forth its reasons in a written order." Despite the seemingly broad discretion allowed under the original rule, this Court held that dismissal under CrR 8.3(b) is only warranted if the defendant shows both arbitrary action or governmental misconduct ***and*** prejudice affecting the defendant's right to a fair trial. *State v. Michielli*, 132 Wn.2d 229, 239-40, 937 P.3d 587 (1997). In 1995, CrR 8.3(b) was amended to explicitly include the prejudice requirement already imposed by case law. As this Court recounted in *State v. Rohrich*, 149 Wn.2d 647, 654-55, 71 P.3d 638 (2003), courts had long recognized that "dismissal of charges is an extraordinary remedy ... available only when there has been *prejudice to the rights of the accused which materially affected the rights of the accused to a fair trial.*" *State v. Baker,* 78 Wash.2d 327, 332–33, 474 P.2d 254 (1970) (emphasis added in *Rohrich*). This conclusion was based on principles of both due process and separation of powers. *State v. Cantrell*, 111 Wn.2d 385, 758 P.2d 1 (1988). In light of both the prior case law and the 1995 amendment codifying that case law, this Court reaffirmed in *Rohrich* that a trial court may not dismiss charges under CrR 8.3(b) unless the defendant shows prejudice affecting their right to a fair trial. 149 Wn.2d at 653-54. Because the prejudice requirement is based on constitutional principles, amending the rule to omit it is contrary to law and will only result in confusion. To the extent that the proponents seek to overrule constitutional holdings of this Court via an amendment to the criminal rules, it is an improper attempt to avoid *stare decisis* through the rule-making process.

- **By allowing dismissal of a prosecution based on policy disagreements with the prosecutor, the proposed amendment violates the separation of powers between the judiciary and the prosecutor.** The separation of powers doctrine is "one of the cardinal and fundamental principles of the American constitutional system" and forms the basis of our state government. *State v. Rice*, 174 Wn.2d 884, 900, 279 P.3d 849, 857 (2012) (quoting *Wash. State Motorcycle Dealers Ass'n v. State*, 111 Wn.2d 667, 674, 763 P.2d 442 (1988). The authority of a trial court to dismiss a prosecution under CrR 8.3(b) must be tempered by this principle. Prosecutors are vested with wide discretion in determining how and when to file criminal charges. *Bordenkircher v. Hayes*, 434 U.S. 357, 365, 98 S.Ct. 663, 669, 54 L.Ed.2d 604 (1978); *State v. Lewis*, 115 Wn.2d 294, 299, 797 P.2d 1141 (1990). A prosecutor's broad charging discretion is part of the inherent authority granted to them as executive officers under the state constitution. *Rice*, 174 Wn.2d at 904. Because the proposed amendment would allow a court to dismiss charges based purely upon the court's subjective determination of "arbitrariness" without any requirement of prejudice to the defendant's constitutional rights, it violates the separation of powers doctrine.

- **The proponents justify the proposed amendment by referring to "aggravated sentencing laws," suggesting that dismissal of a prosecution should be authorized if**

the court disagrees with the charging decision or the sentence provided for under the SRA. This illustrates that the intent of the amendment is to create an interpretation of "arbitrary action or governmental misconduct" that is so broad as to allow a judge to dismiss a prosecution based purely on a disagreement with the decision of the prosecutor as to which charges to file and/or with the legislature's setting of punishments in the Sentencing Reform Act. Such broad and unfettered discretion would violate the separation of judicial, executive, and legislative powers.

- **Because the proposed amendment does not require the action or misconduct to prejudice the accused in any manner, it untethers the rule from due process.** As a result, defendants would benefit—and victims and public safety would suffer—even when the State's action has in no way interfered with a defendants' right to a fair trial. This significant broadening of the rule, and trial court's discretion, would lead to unequitable application of the law

- **The proposed amendment does not resolve any of the problems identified by numerous commenters when a similar amendment was proposed and rejected in 2024.** The inclusion of four vague and ambiguous factors for the court to consider—along with removing the clear standard of requiring a showing that the accused's right to a fair trial was materially affected—provides courts with no meaningful guidance on how to evaluate a particular governmental action. Further, the inclusion of the catchall phrase, "any other information the court believes is relevant to the inquiry," effectively gives courts the same amount of broad, unchecked discretion to dismiss a case for any reason that the amendment proposed in 2024 did. In short, the proposed amendment would allow a court to find that dismissal was not warranted for any of the reasons enumerated in the rule but still dismiss based purely upon a judge's own personal beliefs.

- **The proposed amendment would allow a trial judge to dismiss any criminal prosecution.** A court could conclude that any decision made by a prosecutor was arbitrary, from charging decisions to sentencing recommendations. On that basis, the amendment would authorize dismissal of any or all charges or convictions. For example, the term "government misconduct" has been interpreted to include negligence as well as affirmative misconduct. As a result, a court could conclude that a prosecutor's charging standards or allocation of office resources was arbitrary or negligent. The amendment would authorize dismissal of any case that a court concludes was affected by that policy.

- **The justifications for this proposed amendment are nearly identical to the ones submitted in support of the proposed amendment that was rejected in 2024.** Both then and now, the materials lack any compelling explanation of why this change is necessary. No specific case examples have been given and no multi-jurisdictional analysis has been done to demonstrate any issues in Washington that require this change to the rule. Instead, the proponents simply cite to a dissenting opinion from 1975 and make reference to problems within the general criminal justice system; thereby implying that a court could somehow address those problems by individually dismissing lawfully filed criminal charges in this state. This argument lacks merit and is an oversimplification of numerous multifaceted issues.

- **The proposed amendment is justified by citing to a cherry-picked selection of court rules from other states without analysis, context, or meaningful application.** As with many components of law, the bare text of a court rule rarely exists in a vacuum. The proponents have provided insufficient analysis as to how these rules actually function within the jurisdictions from which they have been plucked, how certain terms have been defined in those other jurisdictions, or how incorporating certain language into a Washington rule would impact or clash with existing Washington caselaw.

- **The proposed amendment is justified by referencing a "New York State Criminal Procedure Law," but fails to include more than half of the factors listed in the rule that New York courts must evaluate when considering dismissal.** Some of the removed factors include the extent of the harm caused by the offense, the evidence of guilt, the history and character of the defendant, the seriousness of the misconduct on the part of the State, and the victim's position regarding dismissal. While the proponents are quick to point out that the New York law deals with the "interests of justice" and not "arbitrary action or governmental misconduct," that distinction actually weighs in favor of Washington's existing approach of requiring that any arbitrary action or misconduct must have materially affected the defendant's right to a fair trial before a dismissal is warranted.

- **The proponents justify the proposed amendment by making the assertion that courts should be able to dismiss cases because of the "overrepresentation of black Americans in every stage of our criminal and juvenile justice systems."** This implies that courts can and should dismiss entire categories of cases if a judge concludes that the category contributes to that overrepresentation. However, it is unclear how a judge could conclude that a particular case is a contributor to overrepresentation of Black persons in the criminal justice system. Absent prejudice to a specific defendant, the rule suggests that a judge could elect to dismiss all such cases against Black Americans but not other racial groups.

- **The four factors enumerated in the proposed amendment are overly vague and underinclusive of the factors that ought to be considered before a court dismisses criminal charges.** While the inclusion of some factors a court must consider is different from the amendment proposed in 2024, the factors themselves are not helpful and ultimately yield the same result. For example, the first factor requires a court to consider the seriousness and circumstances of the offense. Does that mean that less arbitrary action would be required to dismiss a misdemeanor as opposed a felony? The third factor requires a court to consider the impact of dismissal upon the confidence of the public in the criminal justice system. How could an individual trial judge possibly evaluate this in an unbiased manner? The fourth factor requires a court to consider the degree and impact of the arbitrary action. Again, how could this possibly be measured or evaluated? In short, without a clear standard by which to evaluate an arbitrary action or misconduct (i.e. whether it has materially affected the defendant's right to a fair trial), these factors do not provide meaningful guidance as to how a court should make this decision.

- **The proposed amendment ignores the public interest in the prosecution of crimes and protection of the victim and the community.** Because the proposed amendment would do away with the need for connection between any misconduct of the State and the

defendant's ability to have a fair trial, it does not serve the public interest in punishment of the guilty and public safety. While one of the four factors is, "the impact of a dismissal on the safety or welfare of the community (the defendant is part of the community)," no guidance is given on how this factor ought to be weighed, if at all, against the other enumerated factors or any other information a court might deem "relevant to the inquiry." This factor also implicitly shifts focus away from the victim and disregards the victim's right to justice and protection from the defendant.

From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Subject: FW: Objection to Proposed Rule Changes CrR/CrRLJ 8.3
Date: Monday, April 21, 2025 10:19:26 AM
Attachments: image001.png
Objection to Proposed Rule Changes to CrR CrRLJ 8.3 .docx

From: Sepulveda, Arthur <asepulveda@kingcounty.gov>
Sent: Monday, April 21, 2025 10:08 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Objection to Proposed Rule Changes CrR/CrRLJ 8.3

Hello,

I have attached my comments in a word document as it exceeds 1500 words.

Best,

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