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Subject: FW: Comment on Proposed Amendment to CrR/CrRLJ 8.3
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From: Djamalov, Caroline <cdjamaalov@kingcounty.gov>
Sent: Wednesday, April 30, 2025 2:44 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed Amendment to CrR/CrRLJ 8.3

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Good afternoon,

I am a King County Senior Deputy Prosecuting Attorney, and I lead the Violent Crimes Unit for the downtown Seattle courthouse. My unit handles some of the most serious crimes facing our community, including gun violence and serious assaults, violent burglaries, robberies, arsons, kidnapping, and more.

I have reviewed the proposed amendments to CrR/CrRLJ 8.3, and I urge the Court to reject them.

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, *in direct opposition to the broad support for victims' rights enshrined in RCW 7.69.010 et seq.*

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.

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 defendant’s right to a fair trial. This significant broadening of the rule, and trial court’s discretion, would lead to unequitable application of the law.

I cannot overstate how harmful these amendments would be to public safety and to victims and how unnecessary they are to protect a defendant’s rights. Please reject them.

Thank you,
Caroline Djamalov

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