From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comments on Proposed Amendment to CrR 8.3/CrRLJ 8.3
Date: Tuesday, April 29, 2025 4:36:20 PM

From: Dolly Hunt <DHunt@pendoreille.org>
Sent: Tuesday, April 29, 2025 4:35 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Proposed Amendment to CrR 8.3/CrRLJ 8.3

Dear Justices,

I am writing to encourage the committee to reject the proposed changes to CrR 8.3/CrRLJ 8.3. 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 doctrine. 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 Sentencing Reform Act (SRA). This illustrates that the intent of the amendment is to create an interpretation of "arbitrary action or governmental misconduct" that is so broad, it allows a judge to dismiss a prosecution based purely on that judicial officer's disagreement with the prosecutor's filing decision or recommended sentence under the SRA. Such broad and unfettered discretion would violate the separation of judicial, executive, and legislative powers.

Because the proposed amendment does not require 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 courts' discretion would lead to unequitable application of the law.

The proposed amendment does not resolve any of the problems identified in numerous comments 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 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 dismiss a case not because the reasons enumerated in the rule apply, but because the case violates the court'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 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 victims 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 public safety or punishment of the guilty. 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.

Thank you for your time and your consideration.

Sincerely,
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