From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Subject: FW: Opposition to Proposed Amendment to CrR 8.3(b) – Order No. 25700-A-1621
Date: Thursday, April 24, 2025 3:52:48 PM

From: Erik Nelson <tefling@live.com>
Sent: Thursday, April 24, 2025 3:40 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Opposition to Proposed Amendment to CrR 8.3(b) – Order No. 25700-A-1621

Dear Clerk of the Washington State Supreme Court,

I am writing to express deep concerns about the proposed amendment to Criminal Rule (CrR) 8.3(b), as outlined in Order Number 25700-A-1621. While the intent to enhance judicial flexibility may seek to address systemic inequities, this change risks creating a form of "judge nullification," analogous to jury nullification, which could undermine accountability, consistency, and public safety in Washington's justice system.

The current CrR 8.3(b), shaped by *State v. Starrish*, adopts a narrow interpretation, limiting judges' authority to dismiss charges "in the furtherance of justice." *Starrish* ensures judges act as impartial arbiters, respecting prosecutorial roles and promoting uniform application of the law. This framework supports equitable outcomes by preventing arbitrary dismissals that could vary by judge or region, disproportionately affecting marginalized communities. The proposed amendment, however, grants judges broad discretion to dismiss charges, resembling judge nullification—where judges could override prosecutorial decisions without clear standards, much like juries nullify laws they deem unjust. However, whereas jury nullification reflects widespread citizen sentiment, judge nullification concentrates power in individual members of institutional establishments, risking inconsistent rulings that erode systemic fairness.

This expanded discretion also raises public safety concerns. National trends show that overly lenient policies, even when aimed at reform, have frequently led to harm, with released individuals reoffending in ways that devastate communities. While restorative justice is a critical goal, judge nullification without rigorous guidelines could prioritize individual cases

over collective well-being, undermining trust in the courts, especially in underserved areas where safety is paramount.

Moreover, the amendment invites scrutiny under *Bridges v. California* (1941), where the U.S. Supreme Court defined judicial contempt as a "clear and present danger to the administration of justice," with "substantive evil" that is "extremely serious" and "imminence extremely high." By analogy, enabling judge nullification through CrR 8.3(b) could weaken judicial legitimacy, as arbitrary dismissals may appear to defy precedent and public expectations of fairness. Such actions risk creating a clear and present danger to communities by releasing offenders without consistent justification, contemptuous of the rule of law and contrary to the equitable justice progressives champion.

I urge the Washington State Supreme Court to reconsider this amendment. Preserving the *Starrish* framework ensures judges remain accountable stewards of justice, supporting systemic reform without risking inequitable outcomes or public harm and better aligning with the goal of a fair, transparent system.

Thank you for considering this perspective. I request that my comment be included in the public record for the comment period ending April 30, 2025.

Sincerely,

Erik Nelson
Port Townsend