From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Subject: FW: Comment on Proposed Rule in CrR/CrRLJ 8.3
Date: Monday, April 21, 2025 11:40:15 AM

From: Godwin, Hannah <hgodwin@kingcounty.gov>
Sent: Sunday, April 20, 2025 7:32 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed Rule in CrR/CrRLJ 8.3

I am writing to provide comment against the proposed change in CrR/CrRLJ 8.3 for three reasons: 1) the proposed amendment violates separation of powers; 2) the proposed amendment would allow criminal cases to be dismissed due to actions that caused the defendant no prejudice; and 3) because this proposed amendment provides no meaningful guidance and gives broad, unchecked discretion for courts to dismiss criminal cases.

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). 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 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. 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.

This 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.

Thank you for your consideration.

Respectfully,

Hannah Godwin
Deputy Prosecuting Attorney | Felony Traffic Unit

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