From:	OFFICE RECEPTIONIST, CLERK
To:	Farino, Amber
Subject:	FW: Objections to Proposed Rule Changes to CrR/CrRLJ 8.3
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From: Osman, Melissa <mosman@kingcounty.gov>
Sent: Wednesday, April 23, 2025 3:19 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Objections to Proposed Rule Changes to CrR/CrRLJ 8.3

Hello,

I am writing in opposition to the proposed changes to rules CrR and CrRLJ 8.3, which are contrary to well-settled precedent, would improperly undermine the necessary separation of power between the judiciary and prosecutors, ignore public interest in the prosecution of crime and protection of the community, and propose language that has been previously rejected in 2024 without sufficient amendment.

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.

Additionally, the proposed rule changes invite arbitrary dismissal of charges based on other impermissible disagreements, like sentencing recommendations or case strategy.

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 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.

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 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 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.

Thank you for your consideration,

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