From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comment on proposed change to CrR/CrRLJ 8.3
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From: Hinds, Patrick <Patrick.Hinds@kingcounty.gov>
Sent: Wednesday, April 30, 2025 1:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on proposed change to CrR/CrRLJ 8.3

Dear Clerk of the Supreme Court,

I am writing to add my voice in opposition to the proposed changes to CrR/CrRLJ 8.3(b). I am a senior deputy prosecutor with the King County Prosecuting Attorney's Office. Over more than 20 years with the KCPAO, I have seen the rules applied to numerous different types of cases in both Superior and District Court. After reviewing the materials submitted in support, I am forced to conclude that these proposed changes should be rejected for a number of reasons.

First, the proposed amendment is contrary to this Court's existing interpretation of constitutional provisions as requiring a showing of prejudice before a case is dismissed even when the text of the court rule does not mention it. As initially enacted in 1973, CrR 8.3 gave courts broad discretion to dismiss and did not require a finding or showing of prejudice. Despite that, this Court held that dismissal under CrR 8.3(b) was only warranted if the defendant showed both arbitrary action or governmental misconduct ***and*** prejudice affecting their 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 existing law. 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.

Second, by allowing dismissal of a prosecution based on policy disagreements with the prosecutor and legislature, the proposed amendment violates the separation of powers doctrine. The separation of power between the various branches of government 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. Similarly, the general authority of the Washington Legislature to criminalize behavior and set punishments via statutory enactments like the Sentencing Reform Act is so well settled as to require no citation to authority. 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.

In this context, it is worth noting that this impact is not just a by-product of the proposed amendment, but appears to be one of the motivations for it. The proponents of the amendment justify it by citing to a dissenting opinion calling for a greater judicial willingness to substitute the court's judgment for that of the prosecutor and the legislature. This illustrates that the intent of the amendment is to create a rule that is so broad as to allow a judge to dismiss a prosecution based purely on a personal disagreement with the decision of the prosecutor as to which charges to file and/or with the legislature's setting of punishments in the Sentencing Reform Act. Such broad and unfettered discretion would violate the separation of judicial, executive, and legislative powers.

Third, the justifications offered for this proposed amendment are nearly identical to those submitted in support of the virtually identical amendment that was proposed and rejected in 2024. However, the proposed amendment itself does not resolve any of the problems identified last year. Both then and now, the materials lack any compelling explanation of why this change is necessary. No specific case examples have been given and no multi-jurisdictional analysis has been done to demonstrate any issues *in Washington* that require this change to the rule. Instead, the proponents simply cite to a dissenting opinion from 1975 and make reference to problems within the general criminal justice system. While this implies that a court could somehow address those problems by individually dismissing lawfully filed criminal charges in this state, this assertion is unsupported by any compelling argument, lacks merit, and oversimplifies numerous multifaceted issues.

Similarly, the inclusion of four vague and ambiguous factors for the court to consider—along with removing the clear standard of requiring 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.

Fourth, the factors enumerated in the proposed amendment are overly vague and do not include other things 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 particularly helpful and will ultimately lead to the same morass of unanswered questions. 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 less serious charge? The third factor requires a court to consider the impact of dismissal upon the confidence of the public in the criminal justice system. But 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 actually provide meaningful guidance as to how a court should make this decision.

Finally, 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 interests 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 is also worded so as to implicitly shifts focus away from the victim and disregards the victim's right to justice and protection from the defendant.

For all of the above reasons, I urge the court to reject the proposed change to CrR/CrRLJ 8.3(b).

Sincerely,

Patrick Hinds

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