**From:** OFFICE RECEPTIONIST, CLERK
**To:** Farino, Amber
**Cc:** Ward, David
**Subject:** FW: Proposed amendment to CrR 8.3 and CrRLJ 8.3
**Date:** Wednesday, April 30, 2025 4:49:40 PM

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**From:** Harrison, Susan <Susan.Harrison@kingcounty.gov>
**Sent:** Wednesday, April 30, 2025 4:49 PM
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
**Subject:** Proposed amendment to CrR 8.3 and CrRLJ 8.3



I am writing to strongly urge this Court to reject the proposed amendment to CrR 8.3 and CrRLJ 8.3.

The proposed amendment violates the separation of powers doctrine. 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.

The proposed amendment untethers the rule from due process. It does so because it does not require the action or misconduct to prejudice the accused in any manner. 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 defendant's right to a fair trial. This significant broadening of the rule, and trial court's discretion, would lead to unequitable application of the law.

Additionally, the proposed amendment fails to 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 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.

Finally, the justifications for this proposed amendment are nearly identical to the ones submitted in support of the proposed amendment that was rejected in 2024. Both then and now, they 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, thereby implying that a court could somehow address those problems by individually dismissing lawfully filed criminal charges in this state. This argument lacks merit and is an oversimplification of numerous multifaceted issues.

Thank you for considering my comments.

Sincerely,

Susan Harrison
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney’s Office