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From: Pippin, Lucy <lpippin@kingcounty.gov>
Sent: Monday, April 21, 2025 9:29 AM
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The Court should reject this proposed amendment for three reasons:

1. 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.

2. 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.

3. Finally, 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.

Thank you.



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