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Good afternoon,

I would like to submit my comment as to the defense bar's proposed rule change for CrRLJ 8.3.

Allowing such broad discretion to the court regarding the dismissal of a criminal charge would be a significant impediment on the separation of powers that allows the justice system to flourish. Such boundaries are set in a way that fosters the ultimate goal that our constitution and country thrives upon: *justice for all*. If adopted, the rule change would give the court absolute discretion over a charge and would ultimately strip the State of its ability to hold individuals accountable of crimes. Additionally, and most compelling, it would strip the State of its ability to offer a just resolution for the community and related victims. The State owns the charges, and the court does not. Only when there is substantial prejudice to a defendant that cannot be corrected should the court intervene. In other words, if the defendant's rights are so violated to a point that they are unrecoverable, the court may use its authority to intervene. This follows our current case law, which is well-established on this topic.

If the proposed rule change to CrRLJ 8.3 is adopted, it would undermine the judicial authority in *State v. Michielli*, *State v. Rohrich*, *State v. Baker*, *State v. Rice*, *Bordenkircher v. Hayes*, and *State v. Lewis*. See *State v. Michielli*, 132 Wn.2d 229, 239-40, 937 P.3d 587 (1997)(holding that dismissal is warrant under circumstances where the defendant shows government misconduct and prejudice); *State v. Rohrich*, 149 Wn.2d 647, 654-55, 71 P.3d 638 (2003)(finding that dismissal of charges is an extraordinary remedy), *State v. Baker*, 78 Wn.2d 327, 332-33, 474 P.2d 254 (1970)(finding dismissal is 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. Rice*, 174 Wn.2d 884, 900, 279 P.3d 849, 857 (2012)(noting the importance of the separation of powers doctrine); *Bordenkircher v. Hayes*, 434 U.S. 357, 365, 98 S.Ct. 663, 669, 54 L.Ed. 2d 604 (1978)(noting prosecutors are given wide discretion in filing criminal charges); *State v. Lewis*, 115 Wn. 2d 294, 299, 797 P.2d 1141 (1990)(again highlighting the wide discretion prosecutors are given in filing decisions).

However, it is worth noting that denial of the defense bar's proposed rule should not be misconstrued to allow the State to proceed on frivolous charges or to violate the defendant's rights. Prosecutors must continue to meet high ethical standards in making charging decisions. There are, however, already safeguards in place for this including probable cause hearings, discovery obligations, meeting a high burden of proof at trial, etc.

In conclusion, allowing such wide discretion to the court to the point that they may dismiss a criminal charge brought by the State would both undermine and violate the separation of powers. These powers must be kept at a delicate balance in order to maintain *liberty*, and *justice*, for all.

Thank you for hearing my comment,



**JULIA F. ZIMNY**

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