
HOUSE BILL 1610

State of Washington

54th Legislature

1995 Regular Session

By Representatives Delvin, Costa, Ballasiotes, Padden, Tokuda, Kremen, Chappell, Morris, Campbell, Hatfield, Cody, Regala, Romero, Hickel, Sheldon, Robertson and Kessler

Read first time 02/01/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to increasing the involvement of victims in the
2 prosecution of criminal cases; amending RCW 9.94A.090; and reenacting
3 and amending RCW 9.94A.440.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.090 and 1984 c 209 s 4 are each amended to read
6 as follows:

7 (1) If a plea agreement has been reached by the prosecutor and the
8 defendant pursuant to RCW 9.94A.080, they shall at the time of the
9 defendant's plea state to the court, on the record, the nature of the
10 agreement and the reasons for the agreement. At the time of the
11 defendant's plea, the court shall inquire of the prosecutor on the
12 record whether the nature of and reasons for the plea agreement have
13 been communicated to the victims in all offenses covered by the plea
14 agreement, including all offenses the prosecutor has agreed not to
15 file. The court, at the time of the plea, shall determine if the
16 agreement is consistent with the interests of justice and with the
17 prosecuting standards. If the court determines it is not consistent
18 with the interests of justice and with the prosecuting standards, the
19 court shall, on the record, inform the defendant and the prosecutor

1 that they are not bound by the agreement and that the defendant may
2 withdraw the defendant's plea of guilty, if one has been made, and
3 enter a plea of not guilty.

4 (2) The sentencing judge is not bound by any recommendations
5 contained in an allowed plea agreement and the defendant shall be so
6 informed at the time of plea.

7 **Sec. 2.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are
8 each reenacted and amended to read as follows:

9 (1) Decision not to prosecute.

10 STANDARD: A prosecuting attorney may decline to prosecute, even
11 though technically sufficient evidence to prosecute exists, in
12 situations where prosecution would serve no public purpose, would
13 defeat the underlying purpose of the law in question or would result in
14 decreased respect for the law.

15 GUIDELINE/COMMENTARY:

16 Examples

17 The following are examples of reasons not to prosecute which could
18 satisfy the standard.

19 (a) Contrary to Legislative Intent - It may be proper to decline to
20 charge where the application of criminal sanctions would be clearly
21 contrary to the intent of the legislature in enacting the particular
22 statute.

23 (b) Antiquated Statute - It may be proper to decline to charge
24 where the statute in question is antiquated in that:

25 (i) It has not been enforced for many years; and

26 (ii) Most members of society act as if it were no longer in
27 existence; and

28 (iii) It serves no deterrent or protective purpose in today's
29 society; and

30 (iv) The statute has not been recently reconsidered by the
31 legislature.

32 This reason is not to be construed as the basis for declining cases
33 because the law in question is unpopular or because it is difficult to
34 enforce.

35 (c) De Minimus Violation - It may be proper to decline to charge
36 where the violation of law is only technical or insubstantial and where
37 no public interest or deterrent purpose would be served by prosecution.

1 (d) Confinement on Other Charges - It may be proper to decline to
2 charge because the accused has been sentenced on another charge to a
3 lengthy period of confinement; and

4 (i) Conviction of the new offense would not merit any additional
5 direct or collateral punishment;

6 (ii) The new offense is either a misdemeanor or a felony which is
7 not particularly aggravated; and

8 (iii) Conviction of the new offense would not serve any significant
9 deterrent purpose.

10 (e) Pending Conviction on Another Charge - It may be proper to
11 decline to charge because the accused is facing a pending prosecution
12 in the same or another county; and

13 (i) Conviction of the new offense would not merit any additional
14 direct or collateral punishment;

15 (ii) Conviction in the pending prosecution is imminent;

16 (iii) The new offense is either a misdemeanor or a felony which is
17 not particularly aggravated; and

18 (iv) Conviction of the new offense would not serve any significant
19 deterrent purpose.

20 (f) High Disproportionate Cost of Prosecution - It may be proper to
21 decline to charge where the cost of locating or transporting, or the
22 burden on, prosecution witnesses is highly disproportionate to the
23 importance of prosecuting the offense in question. This reason should
24 be limited to minor cases and should not be relied upon in serious
25 cases.

26 (g) Improper Motives of Complainant - It may be proper to decline
27 charges because the motives of the complainant are improper and
28 prosecution would serve no public purpose, would defeat the underlying
29 purpose of the law in question or would result in decreased respect for
30 the law.

31 (h) Immunity - It may be proper to decline to charge where immunity
32 is to be given to an accused in order to prosecute another where the
33 accused's information or testimony will reasonably lead to the
34 conviction of others who are responsible for more serious criminal
35 conduct or who represent a greater danger to the public interest.

36 (i) Victim Request - It may be proper to decline to charge because
37 the victim requests that no criminal charges be filed and the case
38 involves the following crimes or situations:

1 (i) Assault cases where the victim has suffered little or no
2 injury;

3 (ii) Crimes against property, not involving violence, where no
4 major loss was suffered;

5 (iii) Where doing so would not jeopardize the safety of society.

6 Care should be taken to insure that the victim's request is freely
7 made and is not the product of threats or pressure by the accused.

8 The presence of these factors may also justify the decision to
9 dismiss a prosecution which has been commenced.

10 Notification

11 The prosecutor is encouraged to notify the victim, when practical,
12 and the law enforcement personnel, of the decision not to prosecute.

13 (2) Decision to prosecute.

14 STANDARD:

15 Crimes against persons will be filed if sufficient admissible
16 evidence exists, which, when considered with the most plausible,
17 reasonably foreseeable defense that could be raised under the evidence,
18 would justify conviction by a reasonable and objective fact-finder.
19 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
20 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
21 9A.64.020 the prosecutor should avoid pre-filing agreements or
22 diversions intended to place the accused in a program of treatment or
23 counseling, so that treatment, if determined to be beneficial, can be
24 provided pursuant to RCW 9.94A.120(7).

25 Crimes against property/other crimes will be filed if the
26 admissible evidence is of such convincing force as to make it probable
27 that a reasonable and objective fact-finder would convict after hearing
28 all the admissible evidence and the most plausible defense that could
29 be raised.

30 See table below for the crimes within these categories.

31 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

32 CRIMES AGAINST PERSONS

33 Aggravated Murder

34 1st Degree Murder

35 2nd Degree Murder

36 1st Degree Kidnaping

37 1st Degree Assault

38 1st Degree Assault of a Child

1 1st Degree Rape
2 1st Degree Robbery
3 1st Degree Rape of a Child
4 1st Degree Arson
5 2nd Degree Kidnaping
6 2nd Degree Assault
7 2nd Degree Assault of a Child
8 2nd Degree Rape
9 2nd Degree Robbery
10 1st Degree Burglary
11 1st Degree Manslaughter
12 2nd Degree Manslaughter
13 1st Degree Extortion
14 Indecent Liberties
15 Incest
16 2nd Degree Rape of a Child
17 Vehicular Homicide
18 Vehicular Assault
19 3rd Degree Rape
20 3rd Degree Rape of a Child
21 1st Degree Child Molestation
22 2nd Degree Child Molestation
23 3rd Degree Child Molestation
24 2nd Degree Extortion
25 1st Degree Promoting Prostitution
26 Intimidating a Juror
27 Communication with a Minor
28 Intimidating a Witness
29 Intimidating a Public Servant
30 Bomb Threat (if against person)
31 3rd Degree Assault
32 3rd Degree Assault of a Child
33 Unlawful Imprisonment
34 Promoting a Suicide Attempt
35 Riot (if against person)

36 CRIMES AGAINST PROPERTY/OTHER CRIMES
37 2nd Degree Arson
38 1st Degree Escape
39 2nd Degree Burglary

1 1st Degree Theft
2 1st Degree Perjury
3 1st Degree Introducing Contraband
4 1st Degree Possession of Stolen Property
5 Bribery
6 Bribing a Witness
7 Bribe received by a Witness
8 Bomb Threat (if against property)
9 1st Degree Malicious Mischief
10 2nd Degree Theft
11 2nd Degree Escape
12 2nd Degree Introducing Contraband
13 2nd Degree Possession of Stolen Property
14 2nd Degree Malicious Mischief
15 1st Degree Reckless Burning
16 Taking a Motor Vehicle without Authorization
17 Forgery
18 2nd Degree Perjury
19 2nd Degree Promoting Prostitution
20 Tampering with a Witness
21 Trading in Public Office
22 Trading in Special Influence
23 Receiving/Granting Unlawful Compensation
24 Bigamy
25 Eluding a Pursuing Police Vehicle
26 Willful Failure to Return from Furlough
27 Escape from Community Custody
28 Riot (if against property)
29 Thefts of Livestock

30 ALL OTHER UNCLASSIFIED FELONIES

31 Selection of Charges/Degree of Charge

32 (1) The prosecutor should file charges which adequately describe
33 the nature of defendant's conduct. Other offenses may be charged only
34 if they are necessary to ensure that the charges:

35 (a) Will significantly enhance the strength of the state's case at
36 trial; or

37 (b) Will result in restitution to all victims.

1 (2) The prosecutor should not overcharge to obtain a guilty plea.

2 Overcharging includes:

3 (a) Charging a higher degree;

4 (b) Charging additional counts.

5 This standard is intended to direct prosecutors to charge those
6 crimes which demonstrate the nature and seriousness of a defendant's
7 criminal conduct, but to decline to charge crimes which are not
8 necessary to such an indication. Crimes which do not merge as a matter
9 of law, but which arise from the same course of conduct, do not all
10 have to be charged.

11 GUIDELINES/COMMENTARY:

12 Police Investigation

13 A prosecuting attorney is dependent upon law enforcement agencies
14 to conduct the necessary factual investigation which must precede the
15 decision to prosecute. The prosecuting attorney shall ensure that a
16 thorough factual investigation has been conducted before a decision to
17 prosecute is made. In ordinary circumstances the investigation should
18 include the following:

19 (1) The interviewing of all material witnesses, together with the
20 obtaining of written statements whenever possible;

21 (2) The completion of necessary laboratory tests; and

22 (3) The obtaining, in accordance with constitutional requirements,
23 of the suspect's version of the events.

24 If the initial investigation is incomplete, a prosecuting attorney
25 should insist upon further investigation before a decision to prosecute
26 is made, and specify what the investigation needs to include.

27 Exceptions

28 In certain situations, a prosecuting attorney may authorize filing
29 of a criminal complaint before the investigation is complete if:

30 (1) Probable cause exists to believe the suspect is guilty; and

31 (2) The suspect presents a danger to the community or is likely to
32 flee if not apprehended; or

33 (3) The arrest of the suspect is necessary to complete the
34 investigation of the crime.

35 In the event that the exception to the standard is applied, the
36 prosecuting attorney shall obtain a commitment from the law enforcement
37 agency involved to complete the investigation in a timely manner. If
38 the subsequent investigation does not produce sufficient evidence to
39 meet the normal charging standard, the complaint should be dismissed.

1 Investigation Techniques

2 The prosecutor should be fully advised of the investigatory
3 techniques that were used in the case investigation including:

- 4 (1) Polygraph testing;
- 5 (2) Hypnosis;
- 6 (3) Electronic surveillance;
- 7 (4) Use of informants.

8 Pre-Filing Discussions with Defendant

9 Discussions with the defendant or his/her representative regarding
10 the selection or disposition of charges may occur prior to the filing
11 of charges, and potential agreements can be reached.

12 Pre-Filing Discussions with Victim(s)

13 Discussions with the victim(s) or victims' representatives
14 regarding the selection or disposition of charges may occur before the
15 filing of charges. The discussions may be considered by the prosecutor
16 in charging and disposition decisions, and should be considered before
17 reaching any agreement with the defendant regarding these decisions.

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