

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1610

Chapter 288, Laws of 1995

54th Legislature
1995 Regular Session

VICTIMS--INVOLVEMENT IN PROSECUTION OF CRIMINAL CASES

EFFECTIVE DATE: 7/23/95

Passed by the House April 19, 1995
Yeas 93 Nays 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate April 11, 1995
Yeas 40 Nays 0

JOEL PRITCHARD

President of the Senate

Approved May 9, 1995

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1610** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

May 9, 1995 - 3:50 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1610

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Delvin, Costa, Ballasiotes, Padden, Tokuda, Kremen, Chappell, Morris, Campbell, Hatfield, Cody, Regala, Romero, Hickel, Sheldon, Robertson and Kessler)

Read first time 03/01/95.

1 AN ACT Relating to increasing the involvement of victims in the
2 prosecution of criminal cases; amending RCW 9.94A.080 and 9.94A.090;
3 and reenacting and amending RCW 9.94A.440.

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

5 **Sec. 1.** RCW 9.94A.080 and 1981 c 137 s 8 are each amended to read
6 as follows:

7 The prosecutor and the attorney for the defendant, or the defendant
8 when acting pro se, may engage in discussions with a view toward
9 reaching an agreement that, upon the entering of a plea to a charged
10 offense or to a lesser or related offense, the prosecutor will do any
11 of the following:

- 12 (1) Move for dismissal of other charges or counts;
- 13 (2) Recommend a particular sentence within the sentence range
14 applicable to the offense or offenses to which the offender pled
15 guilty;
- 16 (3) Recommend a particular sentence outside of the sentence range;
- 17 (4) Agree to file a particular charge or count;
- 18 (5) Agree not to file other charges or counts; or

1 (6) Make any other promise to the defendant, except that in no
2 instance may the prosecutor agree not to allege prior convictions.

3 In a case involving a crime against persons as defined in RCW
4 9.94A.440, the prosecutor shall make reasonable efforts to inform the
5 victim of the violent offense of the nature of and reasons for the plea
6 agreement, including all offenses the prosecutor has agreed not to
7 file, and ascertain any objections or comments the victim has to the
8 plea agreement.

9 The court shall not participate in any discussions under this
10 section.

11 **Sec. 2.** RCW 9.94A.090 and 1984 c 209 s 4 are each amended to read
12 as follows:

13 (1) If a plea agreement has been reached by the prosecutor and the
14 defendant pursuant to RCW 9.94A.080, they shall at the time of the
15 defendant's plea state to the court, on the record, the nature of the
16 agreement and the reasons for the agreement. The prosecutor shall
17 inform the court on the record whether the victim or victims of all
18 crimes against persons, as defined in RCW 9.94A.440, covered by the
19 plea agreement have expressed any objections to or comments on the
20 nature of and reasons for the plea agreement. The court, at the time
21 of the plea, shall determine if the agreement is consistent with the
22 interests of justice and with the prosecuting standards. If the court
23 determines it is not consistent with the interests of justice and with
24 the prosecuting standards, the court shall, on the record, inform the
25 defendant and the prosecutor that they are not bound by the agreement
26 and that the defendant may withdraw the defendant's plea of guilty, if
27 one has been made, and enter a plea of not guilty.

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

31 **Sec. 3.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are
32 each reenacted and amended to read as follows:

33 (1) Decision not to prosecute.

34 STANDARD: A prosecuting attorney may decline to prosecute, even
35 though technically sufficient evidence to prosecute exists, in
36 situations where prosecution would serve no public purpose, would

1 defeat the underlying purpose of the law in question or would result in
2 decreased respect for the law.

3 GUIDELINE/COMMENTARY:

4 Examples

5 The following are examples of reasons not to prosecute which could
6 satisfy the standard.

7 (a) Contrary to Legislative Intent - It may be proper to decline to
8 charge where the application of criminal sanctions would be clearly
9 contrary to the intent of the legislature in enacting the particular
10 statute.

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

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

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

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

18 (iv) The statute has not been recently reconsidered by the
19 legislature.

20 This reason is not to be construed as the basis for declining cases
21 because the law in question is unpopular or because it is difficult to
22 enforce.

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

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

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

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

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

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

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

- 1 (ii) Conviction in the pending prosecution is imminent;
2 (iii) The new offense is either a misdemeanor or a felony which is
3 not particularly aggravated; and
4 (iv) Conviction of the new offense would not serve any significant
5 deterrent purpose.

6 (f) High Disproportionate Cost of Prosecution - It may be proper to
7 decline to charge where the cost of locating or transporting, or the
8 burden on, prosecution witnesses is highly disproportionate to the
9 importance of prosecuting the offense in question. This reason should
10 be limited to minor cases and should not be relied upon in serious
11 cases.

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

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

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

25 (i) Assault cases where the victim has suffered little or no
26 injury;

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

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

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

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

34 Notification

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

37 (2) Decision to prosecute.

38 STANDARD:

1 Crimes against persons will be filed if sufficient admissible
2 evidence exists, which, when considered with the most plausible,
3 reasonably foreseeable defense that could be raised under the evidence,
4 would justify conviction by a reasonable and objective fact-finder.
5 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
6 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
7 9A.64.020 the prosecutor should avoid prefiling agreements or
8 diversions intended to place the accused in a program of treatment or
9 counseling, so that treatment, if determined to be beneficial, can be
10 provided pursuant to RCW 9.94A.120(7).

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

16 See table below for the crimes within these categories.

17 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

18 CRIMES AGAINST PERSONS

- 19 Aggravated Murder
- 20 1st Degree Murder
- 21 2nd Degree Murder
- 22 1st Degree Kidnaping
- 23 1st Degree Assault
- 24 1st Degree Assault of a Child
- 25 1st Degree Rape
- 26 1st Degree Robbery
- 27 1st Degree Rape of a Child
- 28 1st Degree Arson
- 29 2nd Degree Kidnaping
- 30 2nd Degree Assault
- 31 2nd Degree Assault of a Child
- 32 2nd Degree Rape
- 33 2nd Degree Robbery
- 34 1st Degree Burglary
- 35 1st Degree Manslaughter
- 36 2nd Degree Manslaughter
- 37 1st Degree Extortion
- 38 Indecent Liberties

1 Incest
2 2nd Degree Rape of a Child
3 Vehicular Homicide
4 Vehicular Assault
5 3rd Degree Rape
6 3rd Degree Rape of a Child
7 1st Degree Child Molestation
8 2nd Degree Child Molestation
9 3rd Degree Child Molestation
10 2nd Degree Extortion
11 1st Degree Promoting Prostitution
12 Intimidating a Juror
13 Communication with a Minor
14 Intimidating a Witness
15 Intimidating a Public Servant
16 Bomb Threat (if against person)
17 3rd Degree Assault
18 3rd Degree Assault of a Child
19 Unlawful Imprisonment
20 Promoting a Suicide Attempt
21 Riot (if against person)

22 CRIMES AGAINST PROPERTY/OTHER CRIMES
23 2nd Degree Arson
24 1st Degree Escape
25 2nd Degree Burglary
26 1st Degree Theft
27 1st Degree Perjury
28 1st Degree Introducing Contraband
29 1st Degree Possession of Stolen Property
30 Bribery
31 Bribing a Witness
32 Bribe received by a Witness
33 Bomb Threat (if against property)
34 1st Degree Malicious Mischief
35 2nd Degree Theft
36 2nd Degree Escape
37 2nd Degree Introducing Contraband
38 2nd Degree Possession of Stolen Property
39 2nd Degree Malicious Mischief

1 1st Degree Reckless Burning
2 Taking a Motor Vehicle without Authorization
3 Forgery
4 2nd Degree Perjury
5 2nd Degree Promoting Prostitution
6 Tampering with a Witness
7 Trading in Public Office
8 Trading in Special Influence
9 Receiving/Granting Unlawful Compensation
10 Bigamy
11 Eluding a Pursuing Police Vehicle
12 Willful Failure to Return from Furlough
13 Escape from Community Custody
14 Riot (if against property)
15 Thefts of Livestock

16 ALL OTHER UNCLASSIFIED FELONIES

17 Selection of Charges/Degree of Charge

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

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

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

24 (2) The prosecutor should not overcharge to obtain a guilty plea.
25 Overcharging includes:

26 (a) Charging a higher degree;

27 (b) Charging additional counts.

28 This standard is intended to direct prosecutors to charge those
29 crimes which demonstrate the nature and seriousness of a defendant's
30 criminal conduct, but to decline to charge crimes which are not
31 necessary to such an indication. Crimes which do not merge as a matter
32 of law, but which arise from the same course of conduct, do not all
33 have to be charged.

34 GUIDELINES/COMMENTARY:

35 Police Investigation

36 A prosecuting attorney is dependent upon law enforcement agencies
37 to conduct the necessary factual investigation which must precede the
38 decision to prosecute. The prosecuting attorney shall ensure that a

1 thorough factual investigation has been conducted before a decision to
2 prosecute is made. In ordinary circumstances the investigation should
3 include the following:

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

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

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

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

12 Exceptions

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

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

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

18 (3) The arrest of the suspect is necessary to complete the
19 investigation of the crime.

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

25 Investigation Techniques

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

28 (1) Polygraph testing;

29 (2) Hypnosis;

30 (3) Electronic surveillance;

31 (4) Use of informants.

32 Pre-Filing Discussions with Defendant

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

36 Pre-Filing Discussions with Victim(s)

37 Discussions with the victim(s) or victims' representatives
38 regarding the selection or disposition of charges may occur before the
39 filing of charges. The discussions may be considered by the prosecutor

- 1 in charging and disposition decisions, and should be considered before
- 2 reaching any agreement with the defendant regarding these decisions.

Passed the House April 19, 1995.

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Approved by the Governor May 9, 1995.

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