
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-1666.1/91

ATTY/TYPIST: BR: jlk

BRIEF TITLE:

1 1234-S AMH PADD H1666.1

2 SHB 1234 - H Amd
3 By Representative Padden

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 9.94A.440 and 1989 c 332 s 2 are each amended to read
8 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

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

3 (iv) The statute has not been recently reconsidered by the
4 legislature.

5 This reason is not to be construed as the basis for declining cases
6 because the law in question is unpopular or because it is difficult to
7 enforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (i) Assault cases where the victim has suffered little or no
21 injury;

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

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

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

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

29 Notification

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

3 (2) Decision to prosecute.

4 STANDARD:

5 Crimes against persons will be filed if sufficient admissible
6 evidence exists, which, when considered with the most plausible,
7 reasonably foreseeable defense that could be raised under the evidence,
8 would justify conviction by a reasonable and objective fact-finder.
9 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
10 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
11 9A.64.020 the prosecutor should avoid prefiling agreements or
12 diversions intended to place the accused in a program of treatment or
13 counseling, so that treatment, if determined to be beneficial, can be
14 provided pursuant to RCW 9.94A.120(7).

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

20 See table below for the crimes within these categories.

21 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

22 CRIMES AGAINST PERSONS

23 Aggravated Murder

24 1st Degree Murder

25 2nd Degree Murder

26 1st Degree Kidnaping

27 1st Degree Assault

- 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 Rape
- 8 2nd Degree Robbery
- 9 1st Degree Burglary
- 10 1st Degree Manslaughter
- 11 2nd Degree Manslaughter
- 12 1st Degree Extortion
- 13 Indecent Liberties
- 14 Incest
- 15 2nd Degree Rape of a Child
- 16 Vehicular Homicide
- 17 Vehicular Assault
- 18 3rd Degree Rape
- 19 3rd Degree Rape of a Child
- 20 1st Degree Child Molestation
- 21 2nd Degree Child Molestation
- 22 3rd Degree Child Molestation
- 23 2nd Degree Extortion
- 24 1st Degree Promoting Prostitution
- 25 Intimidating a Juror
- 26 Communication with a Minor
- 27 Intimidating a Witness
- 28 Intimidating a Public Servant
- 29 Bomb Threat (if against person)
- 30 3rd Degree Assault

1 Unlawful Imprisonment
2 Promoting a Suicide Attempt
3 Riot (if against person)

4 CRIMES AGAINST PROPERTY/OTHER CRIMES

5 2nd Degree Arson
6 1st Degree Escape
7 2nd Degree Burglary
8 1st Degree Theft
9 1st Degree Perjury
10 1st Degree Introducing Contraband
11 1st Degree Possession of Stolen Property
12 Bribery
13 Bribing a Witness
14 Bribe received by a Witness
15 Bomb Threat (if against property)
16 1st Degree Malicious Mischief
17 2nd Degree Theft
18 2nd Degree Escape
19 2nd Degree Introducing Contraband
20 2nd Degree Possession of Stolen Property
21 2nd Degree Malicious Mischief
22 1st Degree Reckless Burning
23 Taking a Motor Vehicle without Authorization
24 Forgery
25 2nd Degree Perjury
26 2nd Degree Promoting Prostitution
27 Tampering with a Witness
28 Trading in Public Office

- 1 Trading in Special Influence
- 2 Receiving/Granting Unlawful Compensation
- 3 Bigamy
- 4 Eluding a Pursuing Police Vehicle
- 5 Willful Failure to Return from Furlough
- 6 Riot (if against property)
- 7 Thefts of Livestock

8 ALL OTHER UNCLASSIFIED FELONIES

9 Selection of Charges/Degree of Charge

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

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

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

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

17 Overcharging includes:

18 (a) Charging a higher degree;

19 (b) Charging additional counts.

20 This standard is intended to direct prosecutors to charge those
21 crimes which demonstrate the nature and seriousness of a defendant's
22 criminal conduct, but to decline to charge crimes which are not
23 necessary to such an indication. Crimes which do not merge as a matter
24 of law, but which arise from the same course of conduct, do not all
25 have to be charged.

26 Decision Whether to Seek the Death Penalty for Aggravated Murder in
27 the First Degree

1 When considering whether to file a notice of special sentencing
2 proceeding to determine whether or not the death penalty should be
3 imposed under RCW 10.95.040, the prosecuting attorney shall consider
4 whether the person is mentally retarded, and, if so, whether the mental
5 retardation constitutes a sufficient mitigating circumstance to merit
6 leniency.

7 GUIDELINES/COMMENTARY:

8 Police Investigation

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

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

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

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

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

23 Exceptions

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

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

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

29 (3) The arrest of the suspect is necessary to complete the
30 investigation of the crime.

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

6 Investigation Techniques

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

9 (1) Polygraph testing;

10 (2) Hypnosis;

11 (3) Electronic surveillance;

12 (4) Use of informants.

13 Pre-Filing Discussions with Defendant

14 Discussions with the defendant or his/her representative regarding
15 the selection or disposition of charges may occur prior to the filing
16 of charges, and potential agreements can be reached."

17 **SHB 1234** - H Amd
18 By Representative Padden

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20 On page 1, line 2 of the title, after "retarded;" strike the
21 remainder of the title and insert "and amending RCW 9.94A.440."