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HOUSE BILL 1966

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Ericks, O'Brien, Lovick, Strow, Haler, Takko, Morrell, Nixon, Campbell, McIntire, Conway, Santos, Chase and Moeller

Read first time 02/11/2005.      Referred to Committee on Criminal Justice & Corrections.

1            AN ACT Relating to classifying identity theft as a crime against  
2 persons; and reenacting and amending RCW 9.94A.411.

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

4            **Sec. 1.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are  
5 each reenacted and amended to read as follows:

6            (1) Decision not to prosecute.

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

12            GUIDELINE/COMMENTARY:

13            Examples

14            The following are examples of reasons not to prosecute which could  
15 satisfy the standard.

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

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

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

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

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

8 (iv) The statute has not been recently reconsidered by the  
9 legislature.

10 This reason is not to be construed as the basis for declining cases  
11 because the law in question is unpopular or because it is difficult to  
12 enforce.

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

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

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

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

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

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

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

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

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

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

35 (f) High Disproportionate Cost of Prosecution - It may be proper to  
36 decline to charge where the cost of locating or transporting, or the  
37 burden on, prosecution witnesses is highly disproportionate to the

1 importance of prosecuting the offense in question. This reason should  
2 be limited to minor cases and should not be relied upon in serious  
3 cases.

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

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

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

17 (i) Assault cases where the victim has suffered little or no  
18 injury;

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

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

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

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

26 Notification

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

29 (2) Decision to prosecute.

30 (a) STANDARD:

31 Crimes against persons will be filed if sufficient admissible  
32 evidence exists, which, when considered with the most plausible,  
33 reasonably foreseeable defense that could be raised under the evidence,  
34 would justify conviction by a reasonable and objective fact-finder.  
35 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
36 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
37 9A.64.020 the prosecutor should avoid prefiling agreements or

1 diversions intended to place the accused in a program of treatment or  
2 counseling, so that treatment, if determined to be beneficial, can be  
3 provided pursuant to RCW 9.94A.670.

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

9 See table below for the crimes within these categories.

10 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

11 CRIMES AGAINST PERSONS

- 12 Aggravated Murder
- 13 1st Degree Murder
- 14 2nd Degree Murder
- 15 1st Degree Manslaughter
- 16 2nd Degree Manslaughter
- 17 1st Degree Kidnapping
- 18 2nd Degree Kidnapping
- 19 1st Degree Assault
- 20 2nd Degree Assault
- 21 3rd Degree Assault
- 22 1st Degree Assault of a Child
- 23 2nd Degree Assault of a Child
- 24 3rd Degree Assault of a Child
- 25 1st Degree Rape
- 26 2nd Degree Rape
- 27 3rd Degree Rape
- 28 1st Degree Rape of a Child
- 29 2nd Degree Rape of a Child
- 30 3rd Degree Rape of a Child
- 31 1st Degree Robbery
- 32 2nd Degree Robbery
- 33 1st Degree Arson
- 34 1st Degree Burglary
- 35 1st Degree Identity Theft
- 36 2nd Degree Identity Theft
- 37 1st Degree Extortion
- 38 2nd Degree Extortion

1 Indecent Liberties  
2 Incest  
3 Vehicular Homicide  
4 Vehicular Assault  
5 1st Degree Child Molestation  
6 2nd Degree Child Molestation  
7 3rd Degree Child Molestation  
8 1st Degree Promoting Prostitution  
9 Intimidating a Juror  
10 Communication with a Minor  
11 Intimidating a Witness  
12 Intimidating a Public Servant  
13 Bomb Threat (if against person)  
14 Unlawful Imprisonment  
15 Promoting a Suicide Attempt  
16 Riot (if against person)  
17 Stalking  
18 Custodial Assault  
19 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,  
20 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)  
21 Counterfeiting (if a violation of RCW 9.16.035(4))  
22 CRIMES AGAINST PROPERTY/OTHER CRIMES  
23 2nd Degree Arson  
24 1st Degree Escape  
25 2nd Degree Escape  
26 2nd Degree Burglary  
27 1st Degree Theft  
28 2nd Degree Theft  
29 1st Degree Perjury  
30 2nd Degree Perjury  
31 1st Degree Introducing Contraband  
32 2nd Degree Introducing Contraband  
33 1st Degree Possession of Stolen Property  
34 2nd Degree Possession of Stolen Property  
35 Bribery  
36 Bribing a Witness  
37 Bribe received by a Witness  
38 Bomb Threat (if against property)

1 1st Degree Malicious Mischief  
2 2nd Degree Malicious Mischief  
3 1st Degree Reckless Burning  
4 Taking a Motor Vehicle without Authorization  
5 Forgery  
6 2nd Degree Promoting Prostitution  
7 Tampering with a Witness  
8 Trading in Public Office  
9 Trading in Special Influence  
10 Receiving/Granting Unlawful Compensation  
11 Bigamy  
12 Eluding a Pursuing Police Vehicle  
13 Willful Failure to Return from Furlough  
14 Escape from Community Custody  
15 Riot (if against property)  
16 1st Degree Theft of Livestock  
17 2nd Degree Theft of Livestock

18 ALL OTHER UNCLASSIFIED FELONIES

19 Selection of Charges/Degree of Charge

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

23 (A) Will significantly enhance the strength of the state's case at  
24 trial; or

25 (B) Will result in restitution to all victims.

26 (ii) The prosecutor should not overcharge to obtain a guilty plea.

27 Overcharging includes:

28 (A) Charging a higher degree;

29 (B) Charging additional counts.

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

36 (b) GUIDELINES/COMMENTARY:

37 (i) Police Investigation

1 A prosecuting attorney is dependent upon law enforcement agencies  
2 to conduct the necessary factual investigation which must precede the  
3 decision to prosecute. The prosecuting attorney shall ensure that a  
4 thorough factual investigation has been conducted before a decision to  
5 prosecute is made. In ordinary circumstances the investigation should  
6 include the following:

7 (A) The interviewing of all material witnesses, together with the  
8 obtaining of written statements whenever possible;

9 (B) The completion of necessary laboratory tests; and

10 (C) The obtaining, in accordance with constitutional requirements,  
11 of the suspect's version of the events.

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

15 (ii) Exceptions

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

18 (A) Probable cause exists to believe the suspect is guilty; and

19 (B) The suspect presents a danger to the community or is likely to  
20 flee if not apprehended; or

21 (C) The arrest of the suspect is necessary to complete the  
22 investigation of the crime.

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

28 (iii) Investigation Techniques

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

31 (A) Polygraph testing;

32 (B) Hypnosis;

33 (C) Electronic surveillance;

34 (D) Use of informants.

35 (iv) Pre-Filing Discussions with Defendant

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

1 (v) Pre-Filing Discussions with Victim(s)  
2 Discussions with the victim(s) or victims' representatives  
3 regarding the selection or disposition of charges may occur before the  
4 filing of charges. The discussions may be considered by the prosecutor  
5 in charging and disposition decisions, and should be considered before  
6 reaching any agreement with the defendant regarding these decisions.

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