
SUBSTITUTE HOUSE BILL 1610

State of Washington

54th Legislature

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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. The court
23 shall consider the objections and comments of the victim of a crime
24 against persons covered in the plea agreement in determining whether
25 the plea agreement is consistent with the interests of justice and the
26 prosecuting standards. If the court determines it is not consistent
27 with the interests of justice and with the prosecuting standards, the
28 court shall, on the record, inform the defendant and the prosecutor
29 that they are not bound by the agreement and that the defendant may
30 withdraw the defendant's plea of guilty, if one has been made, and
31 enter a plea of not guilty.

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

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

37 (1) Decision not to prosecute.

1 STANDARD: A prosecuting attorney may decline to prosecute, even
2 though technically sufficient evidence to prosecute exists, in
3 situations where prosecution would serve no public purpose, would
4 defeat the underlying purpose of the law in question or would result in
5 decreased respect for the law.

6 GUIDELINE/COMMENTARY:

7 Examples

8 The following are examples of reasons not to prosecute which could
9 satisfy the standard.

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

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

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

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

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

21 (iv) The statute has not been recently reconsidered by the
22 legislature.

23 This reason is not to be construed as the basis for declining cases
24 because the law in question is unpopular or because it is difficult to
25 enforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (i) Assault cases where the victim has suffered little or no
31 injury;

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

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

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

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

39 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

28 1st Degree Assault of a Child

29 1st Degree Rape

30 1st Degree Robbery

31 1st Degree Rape of a Child

32 1st Degree Arson

33 2nd Degree Kidnaping

34 2nd Degree Assault

35 2nd Degree Assault of a Child

36 2nd Degree Rape

37 2nd Degree Robbery

38 1st Degree Burglary

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

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

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

20 ALL OTHER UNCLASSIFIED FELONIES

21 Selection of Charges/Degree of Charge

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

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

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

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

30 (a) Charging a higher degree;

31 (b) Charging additional counts.

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

1 GUIDELINES/COMMENTARY:

2 Police Investigation

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

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

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

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

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

17 Exceptions

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

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

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

23 (3) The arrest of the suspect is necessary to complete the
24 investigation of the crime.

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

30 Investigation Techniques

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

33 (1) Polygraph testing;

34 (2) Hypnosis;

35 (3) Electronic surveillance;

36 (4) Use of informants.

37 Pre-Filing Discussions with Defendant

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

4 Pre-Filing Discussions with Victim(s)

5 Discussions with the victim(s) or victims' representatives
6 regarding the selection or disposition of charges may occur before the
7 filing of charges. The discussions may be considered by the prosecutor
8 in charging and disposition decisions, and should be considered before
9 reaching any agreement with the defendant regarding these decisions.

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