

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1610**

54th Legislature  
1995 Regular Session

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

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**Speaker of the  
House of Representatives**

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

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**President of the Senate**

Approved

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**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.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1610**

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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.

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