

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2392

54th Legislature
1996 Regular Session

Passed by the House February 5, 1996
Yeas 96 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate February 27, 1996
Yeas 48 Nays 0

President of the Senate

Approved

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 **HOUSE BILL 2392** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2392

Passed Legislature - 1996 Regular Session

State of Washington 54th Legislature 1996 Regular Session

By Representatives Tokuda, Ballasiotes, Chopp, Mason, Wolfe, Radcliff,
Poulsen, Schoesler, Veloria, Cooke, Murray, Blanton and Costa

Read first time 01/10/96. Referred to Committee on Corrections.

1 AN ACT Relating to recommended prosecuting standards for juvenile
2 charging and plea dispositions; adding a new section to chapter 13.40
3 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.40 RCW
6 to read as follows:

7 RECOMMENDED PROSECUTING STANDARDS
8 FOR CHARGING AND PLEA DISPOSITIONS

9 INTRODUCTION: These standards are intended solely for the guidance
10 of prosecutors in the state of Washington. They are not intended to,
11 do not, and may not be relied upon to create a right or benefit,
12 substantive or procedural, enforceable at law by a party in litigation
13 with the state.

14 Evidentiary sufficiency.

15 (1) Decision not to prosecute.

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

1 defeat the underlying purpose of the law in question, or would result
2 in decreased respect for the law. The decision not to prosecute or
3 divert shall not be influenced by the race, gender, religion, or creed
4 of the suspect.

5 GUIDELINES/COMMENTARY:

6 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) Assault cases where the victim has suffered little or no
28 injury;

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

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

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

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

36 Notification

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

39 (2) Decision to prosecute.

1 STANDARD:

2 Crimes against persons will be filed if sufficient admissible
3 evidence exists, which, when considered with the most plausible,
4 reasonably foreseeable defense that could be raised under the evidence,
5 would justify conviction by a reasonable and objective fact-finder.
6 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
7 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
8 9A.64.020 the prosecutor should avoid prefiling agreements or
9 diversions intended to place the accused in a program of treatment or
10 counseling, so that treatment, if determined to be beneficial, can be
11 proved under RCW 13.40.160(5).

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

17 The categorization of crimes for these charging standards shall be
18 the same as found in RCW 9.94A.440(2).

19 The decision to prosecute or use diversion shall not be influenced
20 by the race, gender, religion, or creed of the respondent.

21 (3) Selection of Charges/Degree of Charge

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

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

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

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

30 (i) Charging a higher degree;

31 (ii) Charging additional counts.

32 This standard is intended to direct prosecutors to charge those
33 crimes which demonstrate the nature and seriousness of a respondent'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.

38 (4) 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 (5) 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 that 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 (6) 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 (7) Prefiling Discussions with Defendant

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

39 (8) Plea dispositions:

1 STANDARD

2 (a) Except as provided in subsection (2) of this section, a
3 respondent will normally be expected to plead guilty to the charge or
4 charges which adequately describe the nature of his or her criminal
5 conduct or go to trial.

6 (b) In certain circumstances, a plea agreement with a respondent in
7 exchange for a plea of guilty to a charge or charges that may not fully
8 describe the nature of his or her criminal conduct may be necessary and
9 in the public interest. Such situations may include the following:

10 (i) Evidentiary problems which make conviction of the original
11 charges doubtful;

12 (ii) The respondent's willingness to cooperate in the investigation
13 or prosecution of others whose criminal conduct is more serious or
14 represents a greater public threat;

15 (iii) A request by the victim when it is not the result of pressure
16 from the respondent;

17 (iv) The discovery of facts which mitigate the seriousness of the
18 respondent's conduct;

19 (v) The correction of errors in the initial charging decision;

20 (vi) The respondent's history with respect to criminal activity;

21 (vii) The nature and seriousness of the offense or offenses
22 charged;

23 (viii) The probable effect of witnesses.

24 (c) No plea agreement shall be influenced by the race, gender,
25 religion, or creed of the respondent. This includes but is not limited
26 to the prosecutor's decision to utilize such disposition alternatives
27 as "Option B," the Special Sex Offender Disposition Alternative, and
28 manifest injustice.

29 (9) Disposition recommendations:

30 STANDARD

31 The prosecutor may reach an agreement regarding disposition
32 recommendations.

33 The prosecutor shall not agree to withhold relevant information
34 from the court concerning the plea agreement.

35 NEW SECTION. **Sec. 2.** A juvenile prosecutorial standards pilot
36 project shall be established in two counties. The purpose of the
37 juvenile prosecutorial standards pilot project is to demonstrate how
38 juvenile prosecutorial standards when formally implemented facilitate

1 uniformity of compliance in the filing of charges and plea
2 negotiations. The counties selected as pilot projects shall collect
3 data on juvenile criminal prosecutions for their respective counties.
4 The data shall include aggregated charging decisions, the reasons for
5 the charging decisions cross tabulated by the demographic
6 characteristics of the offenders including, but not limited to, race,
7 age, and the type of crime, and other data as defined by the Washington
8 association of prosecuting attorneys in coordination with the
9 commission on African-American affairs, commission on Hispanic affairs,
10 Washington state commission on Asian Pacific American affairs, and the
11 governor's office of Indian affairs. The two counties selected as
12 juvenile prosecutorial pilot projects shall be selected by the
13 Washington association of prosecuting attorneys and shall consist of
14 one county in eastern Washington and one in western Washington. The
15 counties selected to participate in the pilot project shall agree to
16 participate voluntarily.

17 The prosecuting attorney of each of the pilot project sites shall
18 report his or her findings to the appropriate committees of the
19 legislature by December 12, 1996.

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