
HOUSE BILL 2427

State of Washington 65th Legislature 2018 Regular Session

By Representatives Klippert, Irwin, Haler, Goodman, and Young

Read first time 01/09/18. Referred to Committee on Public Safety.

1 AN ACT Relating to making residential burglary a crime against
2 persons; amending RCW 43.43.830; reenacting and amending RCW
3 9.94A.411; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.411 and 2017 c 272 s 2 and 2017 c 266 s 5 are
6 each reenacted and amended to read as follows:

7 (1) Decision not to prosecute.

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

13 GUIDELINE/COMMENTARY:

14 Examples

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

17 (a) Contrary to Legislative Intent - It may be proper to decline
18 to charge where the application of criminal sanctions would be
19 clearly contrary to the intent of the legislature in enacting the
20 particular 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
11 cases because the law in question is unpopular or because it is
12 difficult to 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
15 where no public interest or deterrent purpose would be served by
16 prosecution.

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

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

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

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

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

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

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

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

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

36 (f) High Disproportionate Cost of Prosecution - It may be proper
37 to decline to charge where the cost of locating or transporting, or
38 the burden on, prosecution witnesses is highly disproportionate to
39 the importance of prosecuting the offense in question. This reason

1 should be limited to minor cases and should not be relied upon in
2 serious cases.

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

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

14 (i) Victim Request - It may be proper to decline to charge
15 because the victim requests that no criminal charges be filed and the
16 case 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
23 freely made and is not the product of threats or pressure by the
24 accused.

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

27 Notification

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

31 (2) Decision to prosecute.

32 (a) STANDARD:

33 Crimes against persons will be filed if sufficient admissible
34 evidence exists, which, when considered with the most plausible,
35 reasonably foreseeable defense that could be raised under the
36 evidence, would justify conviction by a reasonable and objective fact
37 finder. With regard to offenses prohibited by RCW 9A.44.040,
38 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
39 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling
40 agreements or diversions intended to place the accused in a program

1 of treatment or counseling, so that treatment, if determined to be
2 beneficial, can be provided pursuant to RCW 9.94A.670.

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

8 See table below for the crimes within these categories.

9 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

10 CRIMES AGAINST PERSONS

- 11 Aggravated Murder (RCW 10.95.020)
- 12 1st Degree Murder (RCW 9A.32.030)
- 13 2nd Degree Murder (RCW 9A.32.050)
- 14 1st Degree Manslaughter (RCW 9A.32.060)
- 15 2nd Degree Manslaughter (RCW 9A.32.070)
- 16 1st Degree Kidnapping (RCW 9A.40.020)
- 17 2nd Degree Kidnapping (RCW 9A.40.030)
- 18 1st Degree Assault (RCW 9A.36.011)
- 19 2nd Degree Assault (RCW 9A.36.021)
- 20 3rd Degree Assault (RCW 9A.36.031)
- 21 4th Degree Assault (if a violation of RCW 9A.36.041(3))
- 22 1st Degree Assault of a Child (RCW 9A.36.120)
- 23 2nd Degree Assault of a Child (RCW 9A.36.130)
- 24 3rd Degree Assault of a Child (RCW 9A.36.140)
- 25 1st Degree Rape (RCW 9A.44.040)
- 26 2nd Degree Rape (RCW 9A.44.050)
- 27 3rd Degree Rape (RCW 9A.44.060)
- 28 1st Degree Rape of a Child (RCW 9A.44.073)
- 29 2nd Degree Rape of a Child (RCW 9A.44.076)
- 30 3rd Degree Rape of a Child (RCW 9A.44.079)
- 31 1st Degree Robbery (RCW 9A.56.200)
- 32 2nd Degree Robbery (RCW 9A.56.210)
- 33 1st Degree Arson (RCW 9A.48.020)
- 34 1st Degree Burglary (RCW 9A.52.020)
- 35 Residential Burglary (RCW 9A.52.025)
- 36 1st Degree Identity Theft (RCW 9.35.020(2))
- 37 2nd Degree Identity Theft (RCW 9.35.020(3))
- 38 1st Degree Extortion (RCW 9A.56.120)
- 39 2nd Degree Extortion (RCW 9A.56.130)

1 1st Degree Criminal Mistreatment (RCW 9A.42.020)
2 2nd Degree Criminal Mistreatment (RCW 9A.42.030)
3 1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))
4 2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))
5 Indecent Liberties (RCW 9A.44.100)
6 Incest (RCW 9A.64.020)
7 Vehicular Homicide (RCW 46.61.520)
8 Vehicular Assault (RCW 46.61.522)
9 1st Degree Child Molestation (RCW 9A.44.083)
10 2nd Degree Child Molestation (RCW 9A.44.086)
11 3rd Degree Child Molestation (RCW 9A.44.089)
12 1st Degree Promoting Prostitution (RCW 9A.88.070)
13 Intimidating a Juror (RCW 9A.72.130)
14 Communication with a Minor (RCW 9.68A.090)
15 Intimidating a Witness (RCW 9A.72.110)
16 Intimidating a Public Servant (RCW 9A.76.180)
17 Bomb Threat (if against person) (RCW 9.61.160)
18 Unlawful Imprisonment (RCW 9A.40.040)
19 Promoting a Suicide Attempt (RCW 9A.36.060)
20 Criminal Mischief (if against person) (RCW 9A.84.010)
21 Stalking (RCW 9A.46.110)
22 Custodial Assault (RCW 9A.36.100)
23 Domestic Violence Court Order Violation (RCW 10.99.040,
24 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or
25 74.34.145)
26 Counterfeiting (if a violation of RCW 9.16.035(4))
27 Felony Driving a Motor Vehicle While Under the Influence of
28 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
29 Felony Physical Control of a Motor Vehicle While Under the
30 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
31 CRIMES AGAINST PROPERTY/OTHER CRIMES
32 2nd Degree Arson (RCW 9A.48.030)
33 1st Degree Escape (RCW 9A.76.110)
34 2nd Degree Escape (RCW 9A.76.120)
35 2nd Degree Burglary (RCW 9A.52.030)
36 1st Degree Theft (RCW 9A.56.030)
37 2nd Degree Theft (RCW 9A.56.040)
38 1st Degree Perjury (RCW 9A.72.020)
39 2nd Degree Perjury (RCW 9A.72.030)

1 1st Degree Introducing Contraband (RCW 9A.76.140)
2 2nd Degree Introducing Contraband (RCW 9A.76.150)
3 1st Degree Possession of Stolen Property (RCW 9A.56.150)
4 2nd Degree Possession of Stolen Property (RCW 9A.56.160)
5 Bribery (RCW 9A.68.010)
6 Bribing a Witness (RCW 9A.72.090)
7 Bribe received by a Witness (RCW 9A.72.100)
8 Bomb Threat (if against property) (RCW 9.61.160)
9 1st Degree Malicious Mischief (RCW 9A.48.070)
10 2nd Degree Malicious Mischief (RCW 9A.48.080)
11 1st Degree Reckless Burning (RCW 9A.48.040)
12 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and
13 9A.56.075)
14 Forgery (RCW 9A.60.020)
15 2nd Degree Promoting Prostitution (RCW 9A.88.080)
16 Tampering with a Witness (RCW 9A.72.120)
17 Trading in Public Office (RCW 9A.68.040)
18 Trading in Special Influence (RCW 9A.68.050)
19 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)
20 Bigamy (RCW 9A.64.010)
21 Eluding a Pursuing Police Vehicle (RCW 46.61.024)
22 Willful Failure to Return from Furlough
23 Escape from Community Custody
24 Criminal Mischief (if against property) (RCW 9A.84.010)
25 1st Degree Theft of Livestock (RCW 9A.56.080)
26 2nd Degree Theft of Livestock (RCW 9A.56.083)
27 ALL OTHER UNCLASSIFIED FELONIES
28 Selection of Charges/Degree of Charge
29 (i) The prosecutor should file charges which adequately describe
30 the nature of defendant's conduct. Other offenses may be charged only
31 if they are necessary to ensure that the charges:
32 (A) Will significantly enhance the strength of the state's case
33 at trial; or
34 (B) Will result in restitution to all victims.
35 (ii) The prosecutor should not overcharge to obtain a guilty
36 plea. Overcharging includes:
37 (A) Charging a higher degree;
38 (B) Charging additional counts.

1 This standard is intended to direct prosecutors to charge those
2 crimes which demonstrate the nature and seriousness of a defendant's
3 criminal conduct, but to decline to charge crimes which are not
4 necessary to such an indication. Crimes which do not merge as a
5 matter of law, but which arise from the same course of conduct, do
6 not all have to be charged.

7 (b) GUIDELINES/COMMENTARY:

8 (i) 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
13 to prosecute is made. In ordinary circumstances the investigation
14 should include the following:

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

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

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

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

24 (ii) Exceptions

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

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

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

31 (C) The arrest of the suspect is necessary to complete the
32 investigation of the crime.

33 In the event that the exception to the standard is applied, the
34 prosecuting attorney shall obtain a commitment from the law
35 enforcement agency involved to complete the investigation in a timely
36 manner. If the subsequent investigation does not produce sufficient
37 evidence to meet the normal charging standard, the complaint should
38 be dismissed.

39 (iii) Investigation Techniques

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

- 3 (A) Polygraph testing;
- 4 (B) Hypnosis;
- 5 (C) Electronic surveillance;
- 6 (D) Use of informants.

7 (iv) Prefiling Discussions with Defendant

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

11 (v) Prefiling Discussions with Victim(s)

12 Discussions with the victim(s) or victims' representatives
13 regarding the selection or disposition of charges may occur before
14 the filing of charges. The discussions may be considered by the
15 prosecutor in charging and disposition decisions, and should be
16 considered before reaching any agreement with the defendant regarding
17 these decisions.

18 **Sec. 2.** RCW 43.43.830 and 2017 c 272 s 5 are each amended to
19 read as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout RCW 43.43.830 through 43.43.845.

22 (1) "Agency" means any person, firm, partnership, association,
23 corporation, or facility which receives, provides services to, houses
24 or otherwise cares for vulnerable adults, juveniles, or children, or
25 which provides child day care, early learning, or early childhood
26 education services.

27 (2) "Applicant" means:

28 (a) Any prospective employee who will or may have unsupervised
29 access to children under sixteen years of age or developmentally
30 disabled persons or vulnerable adults during the course of his or her
31 employment or involvement with the business or organization;

32 (b) Any prospective volunteer who will have regularly scheduled
33 unsupervised access to children under sixteen years of age,
34 developmentally disabled persons, or vulnerable adults during the
35 course of his or her employment or involvement with the business or
36 organization under circumstances where such access will or may
37 involve groups of (i) five or fewer children under twelve years of
38 age, (ii) three or fewer children between twelve and sixteen years of

1 age, (iii) developmentally disabled persons, or (iv) vulnerable
2 adults;

3 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
4 or

5 (d) Any prospective custodian in a nonparental custody proceeding
6 under chapter 26.10 RCW.

7 (3) "Business or organization" means a person, business, or
8 organization licensed in this state, any agency of the state, or
9 other governmental entity, that educates, trains, treats, supervises,
10 houses, or provides recreation to developmentally disabled persons,
11 vulnerable adults, or children under sixteen years of age, or that
12 provides child day care, early learning, or early learning childhood
13 education services, including but not limited to public housing
14 authorities, school districts, and educational service districts.

15 (4) "Civil adjudication proceeding" is a judicial or
16 administrative adjudicative proceeding that results in a finding of,
17 or upholds an agency finding of, domestic violence, abuse, sexual
18 abuse, neglect, abandonment, violation of a professional licensing
19 standard regarding a child or vulnerable adult, or exploitation or
20 financial exploitation of a child or vulnerable adult under any
21 provision of law, including but not limited to chapter 13.34, 26.44,
22 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.
23 "Civil adjudication proceeding" also includes judicial or
24 administrative findings that become final due to the failure of the
25 alleged perpetrator to timely exercise a legal right to
26 administratively challenge such findings.

27 (5) "Client" or "resident" means a child, person with
28 developmental disabilities, or vulnerable adult applying for housing
29 assistance from a business or organization.

30 (6) "Conviction record" means "conviction record" information as
31 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed
32 by either an adult or a juvenile. It does not include a conviction
33 for an offense that has been the subject of an expungement, pardon,
34 annulment, certificate of rehabilitation, or other equivalent
35 procedure based on a finding of the rehabilitation of the person
36 convicted, or a conviction that has been the subject of a pardon,
37 annulment, or other equivalent procedure based on a finding of
38 innocence. It does include convictions for offenses for which the
39 defendant received a deferred or suspended sentence, unless the
40 record has been expunged according to law.

1 (7) "Crime against children or other persons" means a conviction
2 of any of the following offenses: Aggravated murder; first or second
3 degree murder; first or second degree kidnapping; first, second, or
4 third degree assault; fourth degree assault (if a violation of RCW
5 9A.36.041(3)); first, second, or third degree assault of a child;
6 first, second, or third degree rape; first, second, or third degree
7 rape of a child; first or second degree robbery; first degree arson;
8 first degree burglary; residential burglary; first or second degree
9 manslaughter; first or second degree extortion; indecent liberties;
10 incest; vehicular homicide; first degree promoting prostitution;
11 communication with a minor; unlawful imprisonment; simple assault;
12 sexual exploitation of minors; first or second degree criminal
13 mistreatment; endangerment with a controlled substance; child abuse
14 or neglect as defined in RCW 26.44.020; first or second degree
15 custodial interference; first or second degree custodial sexual
16 misconduct; malicious harassment; first, second, or third degree
17 child molestation; first or second degree sexual misconduct with a
18 minor; commercial sexual abuse of a minor; child abandonment;
19 promoting pornography; selling or distributing erotic material to a
20 minor; custodial assault; violation of child abuse restraining order;
21 child buying or selling; prostitution; felony indecent exposure;
22 criminal abandonment; or any of these crimes as they may be renamed
23 in the future.

24 (8) "Crimes relating to drugs" means a conviction of a crime to
25 manufacture, delivery, or possession with intent to manufacture or
26 deliver a controlled substance.

27 (9) "Crimes relating to financial exploitation" means a
28 conviction for first, second, or third degree extortion; first,
29 second, or third degree theft; first or second degree robbery;
30 forgery; or any of these crimes as they may be renamed in the future.

31 (10) "Financial exploitation" means "financial exploitation" as
32 defined in RCW 74.34.020.

33 (11) "Health care facility" means a nursing home licensed under
34 chapter 18.51 RCW, (~~(a-[an])~~) an assisted living facility licensed
35 under chapter 18.20 RCW, or an adult family home licensed under
36 chapter 70.128 RCW.

37 (12) "Peer counselor" means a nonprofessional person who has
38 equal standing with another person, providing advice on a topic about
39 which the nonprofessional person is more experienced or
40 knowledgeable, and who is a counselor for a peer counseling program

1 that contracts with or is otherwise approved by the department,
2 another state or local agency, or the court.

3 (13) "Unsupervised" means not in the presence of:

4 (a) Another employee or volunteer from the same business or
5 organization as the applicant; or

6 (b) Any relative or guardian of any of the children or
7 developmentally disabled persons or vulnerable adults to which the
8 applicant has access during the course of his or her employment or
9 involvement with the business or organization.

10 With regard to peer counselors, "unsupervised" does not include
11 incidental contact with children under age sixteen at the location at
12 which the peer counseling is taking place. "Incidental contact" means
13 minor or casual contact with a child in an area accessible to and
14 within visual or auditory range of others. It could include passing a
15 child while walking down a hallway but would not include being alone
16 with a child for any period of time in a closed room or office.

17 (14) "Vulnerable adult" means "vulnerable adult" as defined in
18 chapter 74.34 RCW, except that for the purposes of requesting and
19 receiving background checks pursuant to RCW 43.43.832, it shall also
20 include adults of any age who lack the functional, mental, or
21 physical ability to care for themselves.

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