

---

HOUSE BILL 1994

---

State of Washington                      54th Legislature                      1995 Regular Session

By Representatives Tokuda, Ballasiotes, Dickerson, Mason and Cooke

Read first time 02/21/95. Referred to Committee on Corrections.

1            AN ACT Relating to adopting recommended prosecuting standards for  
2 juvenile charging and plea dispositions; adding a new section to  
3 chapter 13.40 RCW; 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. (1) Decision not to prosecute.

15            STANDARD: A prosecuting attorney may decline to prosecute, even  
16 though technically sufficient evidence to prosecute exists, in  
17 situations where prosecution would serve no public purpose, would  
18 defeat the underlying purpose of the law in question, or would result

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

4 GUIDELINES/COMMENTARY:

5 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (e) Pending Conviction on Another Charge - It may be proper to  
37 decline to charge because the accused is facing a pending prosecution  
38 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 Selection of Charges/Degree of Charge

22 (1) 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 (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 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 (3) The prosecuting attorney of each county shall develop local  
39 written standards and guidelines that reflect the charging standards

1 proposed by the Washington association of prosecuting attorneys as well  
2 as comprehensive in-house policies and procedures for charging  
3 decisions.

4 The office of financial management shall develop a standardized  
5 form for reporting aggregated prosecuting attorney charging decision  
6 data.

7 The prosecuting attorney of each county, using the office of  
8 financial management-developed standardized form, shall record and  
9 aggregate the reasons for each charging decision by offender  
10 race/ethnicity and other individual differences of interest.

11 The prosecuting attorney of each county shall include aggregated  
12 charging decision data in the prosecutor's annual report to the  
13 governor.

14 The prosecuting attorney of each county shall provide charging  
15 information by race/ethnicity to interested public and to the local  
16 advisory committee on juvenile justice proportionality.

17 The office of the administrator for the courts shall include the  
18 ability to record prosecutor decline recommendations and reasons as  
19 part of the plan for the integration of the juvenile information system  
20 into the judicial information system.

21 (4) To the extent feasible, each prosecutor's office shall  
22 designate one or more individuals to review and file juvenile  
23 misdemeanors and felonies submitted to the office. Individuals  
24 assigned to hold this position should be periodically rotated.

25 The selection of charges and/or the degree of the charge shall not  
26 be influenced by the race, gender, religion, or creed of the  
27 respondent.

28 GUIDELINES/COMMENTARY:

29 Police Investigation

30 A prosecuting attorney is dependent upon law enforcement agencies  
31 to conduct the necessary factual investigation which must precede the  
32 decision to prosecute. The prosecuting attorney shall ensure that a  
33 thorough factual investigation has been conducted before a decision to  
34 prosecute is made. In ordinary circumstances the investigation should  
35 include the following:

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

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

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

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

6 All police shall have a duty to investigate and complete all  
7 initial investigations in a reasonable time or specify reasons why  
8 investigations cannot be completed in a reasonable time; or all initial  
9 investigations by police shall be referred to the prosecutor fourteen  
10 days after the completion.

#### 11 Exceptions

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

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

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

17 (3) The arrest of the suspect is necessary to complete the  
18 investigation of the crime.

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

#### 24 Investigation Techniques

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

27 (1) Polygraph testing;

28 (2) Hypnosis;

29 (3) Electronic surveillance;

30 (4) Use of informants.

#### 31 Prefiling Discussions with Defendant

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

#### 35 PLEA DISPOSITIONS:

##### 36 Standard

37 (1) Except as provided in subsection (2) of this section, a  
38 respondent will normally be expected to plead guilty to the charge or

1 charges which adequately describe the nature of his or her criminal  
2 conduct or go to trial.

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

7 (a) Evidentiary problems which make conviction of the original  
8 charges doubtful;

9 (b) The respondent's willingness to cooperate in the investigation  
10 or prosecution of others whose criminal conduct is more serious or  
11 represents a greater public threat;

12 (c) A request by the victim when it is not the result of pressure  
13 from the respondent;

14 (d) The discovery of facts which mitigate the seriousness of the  
15 respondent's conduct;

16 (e) The correction of errors in the initial charging decision;

17 (f) The respondent's history with respect to criminal activity;

18 (g) The nature and seriousness of the offense or offenses charged;

19 (h) The probable effect of witnesses.

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

25 DISPOSITION RECOMMENDATIONS:

26 Standard

27 The prosecutor may reach an agreement regarding disposition  
28 recommendations.

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

--- END ---