

SENATE BILL REPORT

SB 6007

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 8, 1994

Brief Description: Revising provisions relating to crimes.

SPONSORS: Senators A. Smith and Nelson

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6007 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Quigley, Roach, Schow and Spanel.

Staff: Susan Carlson (786-7418)

Hearing Dates: January 12, 1994; January 25, 1994

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6007 as recommended by Committee on Law & Justice be substituted therefor, and the substitute bill do pass.

Signed by Senators Rinehart, Chairman; Quigley, Vice Chairman; Bauer, Bluechel, Cantu, Gaspard, Hargrove, Hochstatter, Ludwig, McDonald, Moyer, Niemi, Roach, L. Smith, Snyder, Spanel, Sutherland, Talmadge, West, Williams and Wojahn.

Staff: Linda Brownell (786-7913)

Hearing Dates: February 7, 1994; February 8, 1994

BACKGROUND:

Since the enactment of certain criminal provisions, some issues and factual situations have arisen which were not anticipated. The Washington Association of Prosecuting Attorneys has proposed legislation to address some of these issues.

Attempted Murder: Attempted murder in the second degree is a class B felony with a maximum sentence of ten years in prison. The standard range under the Sentencing Reform Act is 75 percent of the range for murder in the second degree. If an offender has prior convictions, the standard range may exceed ten years. It is suggested that attempted murder in the second degree should be a class A felony with a maximum sentence of 20 years to allow imposition of the full standard range.

Witness Intimidation and Tampering: This is a particular problem in cases of child abuse and neglect because the victim is often most vulnerable to influence from the defendant or others just prior to reporting the crime. It has been suggested that these statutes be amended to specifically reference intimidation occurring prior to reporting a crime.

Child Molestation: There have been some cases involving adults ordering a child to molest another child for the adult's gratification. Current child molestation statutes do not prohibit this activity.

DNA Identification: In 1989, the Legislature provided that any individual convicted of a felony sex or violent offense must have a blood sample drawn for purposes of DNA identification analysis. It has been suggested that this provision be extended to juveniles adjudicated guilty of equivalent offenses.

Toxicologist as Witness: Under court rules, the state toxicologist can be required to appear to testify about the simulator solution used in the breath test instrument if requested to appear at least seven days before the trial. This results in numerous requests for the appearance of the toxicologist. Upon appearance, however, the defense attorney often will stipulate to admission of a certificate and the toxicologist is not required to testify. It has been suggested that the defendant should be required to give earlier notice of intent to require the toxicologist's appearance.

Restitution: Statutes in the Sentencing Reform Act conflict on whether an offender remains under the court's jurisdiction for restitution monitoring for ten years from the imposition of the sentence or ten years from release from total confinement.

Bail Jumping: Separate statutes defining the crime of bail jumping have created confusion. It is proposed that the comprehensive statute found in the criminal code be retained, and the other provision which applies only to failure to appear after release on personal recognizance be repealed.

SUMMARY:

Attempted Murder: The crime of attempted murder in the second degree is a class A felony.

Witness Intimidation and Tampering: The crimes of bribing, intimidating a witness, and tampering with a witness include inducing a person to refrain from reporting information relevant to a criminal investigation or the abuse or neglect of a minor child.

Child Molestation: The crimes of child molestation first, second, and third degree and sexual misconduct with a minor first and second degree include knowingly causing another person to have sexual contact with a minor child.

DNA Identification: Juveniles adjudicated guilty of a sex offense or a violent offense are required to have a blood sample drawn for purposes of DNA identification analysis.

Toxicologist as Witness: The defendant may subpoena the toxicologist who conducts the analysis of the simulator solution used in the alcohol/breath testing equipment if the defendant gives the state toxicologist notice of his intention to do so at least 30 days prior to issuing a subpoena.

Restitution: For purposes of monitoring payment of restitution, felony offenders remain under the court's jurisdiction for a maximum of ten years from release from total confinement or ten years from entry of the judgment and sentence, whichever period is longer.

Bail Jumping: The statute providing a criminal penalty for failure to appear before the court after release on personal recognizance is repealed.

EFFECT OF PROPOSED SUBSTITUTE:

The amendments to the child molestation and sexual misconduct statutes apply to a person directing a child to have sexual contact with another child.

An effective date of July 1, 1994, is provided for the requirement that certain convicted juveniles provide blood samples for DNA analysis. The facility holding the offender is responsible for obtaining the blood sample.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR (Law & Justice):

The bill makes a number of needed clarifying and substantive changes to the criminal laws.

TESTIMONY AGAINST (Law & Justice):

Ten days should be sufficient advance notice to the toxicologist. The subpoena for the toxicologist would have to be approved by the court in many cases.

TESTIFIED (Law & Justice): PRO: Tom McBride, John Ladenburg, Gerald Matosich, Washington Association of Prosecuting Attorneys; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Barry Logan, State Toxicologist; CON: David Chapman, Washington Association of Criminal Defense Lawyers

TESTIMONY FOR (Ways & Means):

In regard to DNA testing for juveniles, many offenders will reoffend into their thirties and reoffend many times. It's very important to keep track of these offenders, and build the DNA data bank. Use of inhouse medical personnel could reduce the costs presented in the fiscal note from DJR. The State Patrol would require two additional forensic scientists. There is currently a backlog of 5,000 cases and this bill would increase the backlog in DNA testing if no additional scientists are provided. Juveniles need to be added to the data base, even if no further funding is provided.

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): John Ladenburg, WAPA (pro); Bruce Bjork, Washington State Patrol (pro)