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4 **PURPOSE**

5 NEW SECTION. **Sec. 1.** The purpose of this act is to make certain  
6 technical corrections and correct oversights discovered only after  
7 unanticipated circumstances have arisen. These changes are necessary  
8 to give full expression to the original intent of the legislature.

9 **PART I - EXCEPTIONAL SENTENCES**

10 NEW SECTION. **Sec. 101.** The legislature finds that a significant  
11 portion of serious criminal offenses are committed by offenders who not  
12 only have a history of similar criminal conduct but also pose a  
13 significant and continuing threat of engaging in similar criminal  
14 activity. The legislature finds that this future threat to the public  
15 safety can only be obviated through incapacitation of the offender.  
16 The legislature finds, therefore, that a determination that a convicted  
17 criminal defendant poses a future danger to society is an appropriate  
18 aggravating factor to consider when sentencing the defendant outside  
19 the standard range for the offense of conviction. The legislature  
20 further finds that a defendant's future dangerousness to society can be  
21 determined based upon his or her history of similar misconduct,  
22 including predatory behavior, as established by prior criminal  
23 convictions or other competent evidence and a finding that the  
24 defendant is not amenable to treatment.

25 **Sec. 102.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to  
26 read as follows:

27 If the sentencing court finds that an exceptional sentence outside  
28 the standard range should be imposed in accordance with RCW  
29 9.94A.120(2), the sentence is subject to review only as provided for in  
30 RCW 9.94A.210(4).

1 The following are illustrative factors which the court may consider  
2 in the exercise of its discretion to impose an exceptional sentence.  
3 The following are illustrative only and are not intended to be  
4 exclusive reasons for exceptional sentences.

5 (1) Mitigating Circumstances

6 (a) To a significant degree, the victim was an initiator, willing  
7 participant, aggressor, or provoker of the incident.

8 (b) Before detection, the defendant compensated, or made a good  
9 faith effort to compensate, the victim of the criminal conduct for any  
10 damage or injury sustained.

11 (c) The defendant committed the crime under duress, coercion,  
12 threat, or compulsion insufficient to constitute a complete defense but  
13 which significantly affected his or her conduct.

14 (d) The defendant, with no apparent predisposition to do so, was  
15 induced by others to participate in the crime.

16 (e) The defendant's capacity to appreciate the wrongfulness of his  
17 or her conduct or to conform his or her conduct to the requirements of  
18 the law, was significantly impaired (voluntary use of drugs or alcohol  
19 is excluded).

20 (f) The offense was principally accomplished by another person and  
21 the defendant manifested extreme caution or sincere concern for the  
22 safety or well-being of the victim.

23 (g) The operation of the multiple offense policy of RCW 9.94A.400  
24 results in a presumptive sentence that is clearly excessive in light of  
25 the purpose of this chapter, as expressed in RCW 9.94A.010.

26 (h) The defendant or the defendant's children suffered a continuing  
27 pattern of physical or sexual abuse by the victim of the offense and  
28 the offense is a response to that abuse.

29 (2) Aggravating Circumstances

30 (a) The defendant's conduct during the commission of the current  
31 offense manifested deliberate cruelty to the victim.

32 (b) The defendant knew or should have known that the victim of the  
33 current offense was particularly vulnerable or incapable of resistance  
34 due to extreme youth, advanced age, disability, or ill health.

35 (c) The current offense was a major economic offense or series of  
36 offenses, so identified by a consideration of any of the following  
37 factors:

38 (i) The current offense involved multiple victims or multiple  
39 incidents per victim;

1 (ii) The current offense involved attempted or actual monetary loss  
2 substantially greater than typical for the offense;

3 (iii) The current offense involved a high degree of sophistication  
4 or planning or occurred over a lengthy period of time;

5 (iv) The defendant used his or her position of trust, confidence,  
6 or fiduciary responsibility to facilitate the commission of the current  
7 offense.

8 (d) The current offense was a major violation of the Uniform  
9 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
10 trafficking in controlled substances, which was more onerous than the  
11 typical offense of its statutory definition: The presence of ANY of  
12 the following may identify a current offense as a major VUCSA:

13 (i) The current offense involved at least three separate  
14 transactions in which controlled substances were sold, transferred, or  
15 possessed with intent to do so; or

16 (ii) The current offense involved an attempted or actual sale or  
17 transfer of controlled substances in quantities substantially larger  
18 than for personal use; or

19 (iii) The current offense involved the manufacture of controlled  
20 substances for use by other parties; or

21 (iv) The circumstances of the current offense reveal the offender  
22 to have occupied a high position in the drug distribution hierarchy; or

23 (v) The current offense involved a high degree of sophistication or  
24 planning or occurred over a lengthy period of time or involved a broad  
25 geographic area of disbursement; or

26 (vi) The offender used his or her position or status to facilitate  
27 the commission of the current offense, including positions of trust,  
28 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
29 other medical professional)(~~(i-iv)~~).

30 (e) The defendant is being sentenced for an offense involving the  
31 use or threatened use of physical violence and poses a future danger  
32 that will not be sufficiently mitigated by a period of incarceration  
33 within the standard range. This finding may be made whether the  
34 current offense is sexually motivated or nonsexually motivated, but it  
35 must be supported by:

36 (i) A history of similar misconduct. This history may be  
37 established by prior criminal convictions or other competent evidence;  
38 and

1 (ii) A finding that the defendant is not amenable to treatment.

2 The presence of any of the following will support such a finding:

3 (A) The opinion of a mental health professional that the defendant  
4 would likely not be amenable to treatment;

5 (B) The defendant is ineligible for treatment at all available  
6 facilities due, for instance, to prior unsuccessful treatment;

7 (C) The defendant refuses to cooperate with necessary evaluations  
8 to determine the usefulness of treatment; or

9 (D) The current offense was committed less than six months after  
10 the defendant was released from incarceration for a similar offense.

11 (f) The current offense included a finding of sexual motivation  
12 pursuant to RCW 9.94A.127((+)).

13 ((+)) (g) The offense was part of an ongoing pattern of sexual  
14 abuse of the same victim under the age of eighteen years manifested by  
15 multiple incidents over a prolonged period of time((+or)).

16 ((+)) (h) The operation of the multiple offense policy of RCW  
17 9.94A.400 results in a presumptive sentence that is clearly too lenient  
18 in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

19 **PART II - WITNESS INTIMIDATION/TAMPERING**

20 NEW SECTION. Sec. 201. The legislature finds that witness  
21 intimidation and witness tampering serve to thwart both the effective  
22 prosecution of criminal conduct in the state of Washington and  
23 resolution of child dependencies.

24 Further, the legislature finds that intimidating persons who have  
25 information pertaining to a future proceeding serves to prevent both  
26 the bringing of a charge and prosecution of such future proceeding.  
27 The legislature finds that the period before a crime or child abuse or  
28 neglect is reported is when a victim is most vulnerable to influence,  
29 both from the defendant or from people acting on behalf of the  
30 defendant and a time when the defendant is most able to threaten,  
31 bribe, and/or persuade potential witnesses to leave the jurisdiction or  
32 withhold information from law enforcement agencies.

33 The legislature moreover finds that a criminal defendant's  
34 admonishment or demand to a witness to "drop the charges" is  
35 intimidating to witnesses or other persons with information relevant to  
36 a criminal proceeding.

1 The legislature finds, therefore, that tampering with and/or  
2 intimidating witnesses or other persons with information relevant to a  
3 present or future criminal or child dependency proceeding are grave  
4 offenses which adversely impact the state's ability to promote public  
5 safety and prosecute criminal behavior.

6 **Sec. 202.** RCW 9A.72.090 and 1982 1st ex.s. c 47 s 16 are each  
7 amended to read as follows:

8 (1) A person is guilty of bribing a witness if he or she offers,  
9 confers, or agrees to confer any benefit upon a witness or a person he  
10 or she has reason to believe is about to be called as a witness in any  
11 official proceeding or upon a person whom he or she has reason to  
12 believe may have information relevant to a criminal investigation or  
13 the abuse or neglect of a minor child, with intent to:

14 (a) Influence the testimony of that person; or

15 (b) Induce that person to avoid legal process summoning him or her  
16 to testify; or

17 (c) Induce that person to absent himself or herself from an  
18 official proceeding to which he or she has been legally summoned; or

19 (d) Induce that person to refrain from reporting information  
20 relevant to a criminal investigation or the abuse or neglect of a minor  
21 child.

22 (2) Bribing a witness is a class B felony.

23 **Sec. 203.** RCW 9A.72.100 and 1982 1st ex.s. c 47 s 17 are each  
24 amended to read as follows:

25 (1) A witness or a person who has reason to believe he or she is  
26 about to be called as a witness in any official proceeding or that he  
27 or she may have information relevant to a criminal investigation or the  
28 abuse or neglect of a minor child is guilty of bribe receiving by a  
29 witness if he or she requests, accepts, or agrees to accept any benefit  
30 pursuant to an agreement or understanding that:

31 (a) ((His)) The person's testimony will thereby be influenced; or

32 (b) ((He)) The person will attempt to avoid legal process summoning  
33 him or her to testify; or

34 (c) ((He)) The person will attempt to absent himself or herself  
35 from an official proceeding to which he or she has been legally  
36 summoned; or

1        (d) The person will not report information he or she has relevant  
2 to a criminal investigation or the abuse or neglect of a minor child.

3        (2) Bribe receiving by a witness is a class B felony.

4        **Sec. 204.** RCW 9A.72.110 and 1985 c 327 s 2 are each amended to  
5 read as follows:

6        (1) A person is guilty of intimidating a witness if a person  
7 directs a threat to a former witness because of the witness' testimony  
8 in any official proceeding, or if, by use of a threat directed to a  
9 current witness or a person he or she has reason to believe is about to  
10 be called as a witness in any official proceeding or to a person whom  
11 he or she has reason to believe may have information relevant to a  
12 criminal investigation or the abuse or neglect of a minor child, he or  
13 she attempts to:

14        (a) Influence the testimony of that person; or

15        (b) Induce that person to elude legal process summoning him or her  
16 to testify; or

17        (c) Induce that person to absent himself or herself from such  
18 proceedings; or

19        (d) Induce that person not to report the information relevant to a  
20 criminal investigation or the abuse or neglect of a minor child, not to  
21 prosecute the crime or the abuse or neglect of a minor child, not to  
22 have the crime or the abuse or neglect of a minor child prosecuted, or  
23 not to give truthful or complete information relevant to a criminal  
24 investigation or the abuse or neglect of a minor child.

25        (2) "Threat" as used in this section means:

26        (a) To communicate, directly or indirectly, the intent immediately  
27 to use force against any person who is present at the time; or

28        (b) Threats as defined in RCW 9A.04.110(25).

29        (3) Intimidating a witness is a class B felony.

30        **Sec. 205.** RCW 9A.72.120 and 1982 1st ex.s. c 47 s 19 are each  
31 amended to read as follows:

32        (1) A person is guilty of tampering with a witness if he or she  
33 attempts to induce a witness or person he or she has reason to believe  
34 is about to be called as a witness in any official proceeding or a  
35 person whom he or she has reason to believe may have information  
36 relevant to a criminal investigation or the abuse or neglect of a minor  
37 child to:

1 (a) Testify falsely or, without right or privilege to do so, to  
2 withhold any testimony; or

3 (b) Absent himself or herself from such proceedings; or

4 (c) Withhold from a law enforcement agency information which he or  
5 she has relevant to a criminal investigation or the abuse or neglect of  
6 a minor child to the agency.

7 (2) Tampering with a witness is a class C felony.

8 **PART III - CHILD MOLESTATION**

9 NEW SECTION. **Sec. 301.** The legislature hereby reaffirms its  
10 desire to protect the children of Washington from sexual abuse and  
11 further reaffirms its condemnation of child sexual abuse that takes the  
12 form of causing one child to engage in sexual contact with another  
13 child for the sexual gratification of the one causing such activities  
14 to take place.

15 **Sec. 302.** RCW 9A.44.083 and 1990 c 3 s 902 are each amended to  
16 read as follows:

17 (1) A person is guilty of child molestation in the first degree  
18 when the person has, or knowingly causes another person to have, sexual  
19 contact with another who is less than twelve years old and not married  
20 to the perpetrator and the perpetrator is at least thirty-six months  
21 older than the victim.

22 (2) Child molestation in the first degree is a class A felony.

23 **Sec. 303.** RCW 9A.44.086 and 1988 c 145 s 6 are each amended to  
24 read as follows:

25 (1) A person is guilty of child molestation in the second degree  
26 when the person has, or knowingly causes another person to have, sexual  
27 contact with another who is at least twelve years old but less than  
28 fourteen years old and not married to the perpetrator and the  
29 perpetrator is at least thirty-six months older than the victim.

30 (2) Child molestation in the second degree is a class B felony.

31 **Sec. 304.** RCW 9A.44.089 and 1988 c 145 s 7 are each amended to  
32 read as follows:

33 (1) A person is guilty of child molestation in the third degree  
34 when the person has, or knowingly causes another person to have, sexual

1 contact with another who is at least fourteen years old but less than  
2 sixteen years old and not married to the perpetrator and the  
3 perpetrator is at least forty-eight months older than the victim.

4 (2) Child molestation in the third degree is a class C felony.

5 **Sec. 305.** RCW 9A.44.093 and 1988 c 145 s 8 are each amended to  
6 read as follows:

7 (1) A person is guilty of sexual misconduct with a minor in the  
8 first degree when the person has, or knowingly causes another person to  
9 have, sexual intercourse with another person who is at least sixteen  
10 years old but less than eighteen years old and not married to the  
11 perpetrator, if the perpetrator is at least sixty months older than the  
12 victim, is in a significant relationship to the victim, and abuses a  
13 supervisory position within that relationship in order to engage in  
14 sexual intercourse with the victim.

15 (2) Sexual misconduct with a minor in the first degree is a class  
16 C felony.

17 **Sec. 306.** RCW 9A.44.096 and 1988 c 145 s 9 are each amended to  
18 read as follows:

19 (1) A person is guilty of sexual misconduct with a minor in the  
20 second degree when the person has, or knowingly causes another person  
21 to have, sexual contact with another person who is at least sixteen  
22 years old but less than eighteen years old and not married to the  
23 perpetrator, if the perpetrator is at least sixty months older than the  
24 victim, is in a significant relationship to the victim, and abuses a  
25 supervisory position within that relationship in order to engage in  
26 sexual contact with the victim.

27 (2) Sexual misconduct with a minor in the second degree is a gross  
28 misdemeanor.

29 **PART IV - DNA IDENTIFICATION**

30 NEW SECTION. **Sec. 401.** The legislature finds that DNA  
31 identification analysis is an accurate and useful law enforcement tool  
32 for identifying and prosecuting sexual and violent offenders. The  
33 legislature further finds no compelling reason to exclude juvenile  
34 sexual and juvenile violent offenders from DNA identification analysis.



1 signed by the state toxicologist or the toxicologist conducting the  
2 analysis is prima facie evidence of the results of the analytical  
3 findings, and of certification of the simulator solution used in the  
4 BAC verifier datamaster or any other alcohol/breath-testing equipment  
5 subsequently adopted by rule.

6 (4) The defendant of a prosecution may subpoena the toxicologist  
7 who conducted the analysis of the simulator solution to testify at the  
8 preliminary hearing and trial of the issue at no cost to the defendant,  
9 if thirty days prior to issuing the subpoena the defendant gives the  
10 state toxicologist notice of the defendant's intention to require the  
11 toxicologist's appearance.

12

#### PART VI - RESTITUTION

13 **Sec. 601.** RCW 9.94A.140 and 1989 c 252 s 5 are each amended to  
14 read as follows:

15 (1) If restitution is ordered, the court shall determine the amount  
16 of restitution due at the sentencing hearing or within sixty days. The  
17 court shall then set a minimum monthly payment that the offender is  
18 required to make towards the restitution that is ordered. The court  
19 should take into consideration the total amount of the restitution  
20 owed, the offender's present, past, and future ability to pay, as well  
21 as any assets that the offender may have. During the period of  
22 supervision, the community corrections officer may examine the offender  
23 to determine if there has been a change in circumstances that warrants  
24 an amendment of the monthly payment schedule. The community  
25 corrections officer may recommend a change to the schedule of payment  
26 and shall inform the court of the recommended change and the reasons  
27 for the change. The sentencing court may then reset the monthly  
28 minimum payments based on the report from the community corrections  
29 officer of the change in circumstances. Restitution ordered by a court  
30 pursuant to a criminal conviction shall be based on easily  
31 ascertainable damages for injury to or loss of property, actual  
32 expenses incurred for treatment for injury to persons, and lost wages  
33 resulting from injury. Restitution shall not include reimbursement for  
34 damages for mental anguish, pain and suffering, or other intangible  
35 losses, but may include the costs of counseling reasonably related to  
36 the offense. The amount of restitution shall not exceed double the  
37 amount of the offender's gain or the victim's loss from the commission

1 of the crime. For the purposes of this section, the offender shall  
2 remain under the court's jurisdiction for a maximum term of ten years  
3 (~~subsequent to the imposition of sentence~~) following the offender's  
4 release from total confinement or ten years subsequent to the entry of  
5 the judgment and sentence, whichever period is longer. The portion of  
6 the sentence concerning restitution may be modified as to amount, terms  
7 and conditions during the ten-year period, regardless of the expiration  
8 of the offender's term of community supervision and regardless of the  
9 statutory maximum for the crime. The offender's compliance with the  
10 restitution shall be supervised by the department.

11 (2) Restitution may be ordered whenever the offender is convicted  
12 of an offense which results in injury to any person or damage to or  
13 loss of property. In addition, restitution may be ordered to pay for  
14 an injury, loss, or damage if the offender pleads guilty to a lesser  
15 offense or fewer offenses and agrees with the prosecutor's  
16 recommendation that the offender be required to pay restitution to a  
17 victim of an offense or offenses which are not prosecuted pursuant to  
18 a plea agreement.

19 (3) In addition to any sentence that may be imposed, a defendant  
20 who has been found guilty of an offense involving fraud or other  
21 deceptive practice or an organization which has been found guilty of  
22 any such offense may be ordered by the sentencing court to give notice  
23 of the conviction to the class of persons or to the sector of the  
24 public affected by the conviction or financially interested in the  
25 subject matter of the offense by mail, by advertising in designated  
26 areas or through designated media, or by other appropriate means.

27 (4) This section does not limit civil remedies or defenses  
28 available to the victim or defendant.

29 **PART VII - BAIL JUMPING**

30 NEW SECTION. **Sec. 701.** RCW 10.19.130 and 1975 1st ex.s. c 2 s 1  
31 are each repealed.

32 **PART VIII - MISCELLANEOUS**

1        NEW SECTION.   **Sec. 801.**   Part headings and the table of contents as  
2   used in this act do not constitute any part of the law.

--- END ---