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### SUBSTITUTE SENATE BILL 5069

 ${\bf By}$  Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Nelson, McCaslin, Quigley and Erwin)

53rd Legislature

1993 Regular Session

Read first time 02/05/93.

State of Washington

Т	AN ACT Relating to crimes, amending RCW 9A./2.090, 9A./2.100
2	9A.72.110, 9A.72.120, 9A.44.083, 9A.44.086, 9A.44.089, 9A.44.093
3	9A.44.096, 43.43.754, 43.43.680, and 9.94A.140; creating new sections
4	repealing RCW 10.19.130; and prescribing penalties.
5	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
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### PART I - WITNESS INTIMIDATION/TAMPERING

- 3 <u>NEW SECTION.</u> **Sec. 101.** The legislature intends to enhance
- 4 criminal and child dependency proceedings by making criminal that
- 5 behavior which prevents, hinders, or inhibits the reporting of crimes
- 6 or of information relating to child dependencies.
- 7 **Sec. 102.** RCW 9A.72.090 and 1982 1st ex.s. c 47 s 16 are each
- 8 amended to read as follows:
- 9 (1) A person is guilty of bribing a witness if he or she offers,
- 10 confers, or agrees to confer any benefit upon a witness or a person he
- 11 or she has reason to believe is about to be called as a witness in any
- 12 official proceeding or upon a person whom he or she has reason to
- 13 believe may have information relevant to a criminal investigation or
- 14 the abuse or neglect of a minor child, with intent to:
- 15 (a) Influence the testimony of that person; or
- 16 (b) Induce that person to avoid legal process summoning him or her
- 17 to testify; or
- 18 (c) Induce that person to absent himself or herself from an
- 19 official proceeding to which he or she has been legally summoned; or
- 20 (d) Induce that person to refrain from reporting information
- 21 relevant to a criminal investigation or the abuse or neglect of a minor
- 22 child.

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- 23 (2) Bribing a witness is a class B felony.
- 24 Sec. 103. RCW 9A.72.100 and 1982 1st ex.s. c 47 s 17 are each
- 25 amended to read as follows:
- 26 (1) A witness or a person who has reason to believe he or she is
- 27 about to be called as a witness in any official proceeding or that he
- 28 or she may have information relevant to a criminal investigation or the
- 29 abuse or neglect of a minor child is guilty of bribe receiving by a
- 30 witness if he or she requests, accepts, or agrees to accept any benefit
- 31 pursuant to an agreement or understanding that:
- 32 (a) ((His)) The person's testimony will thereby be influenced; or
- 33 (b) ((He)) The person will attempt to avoid legal process summoning
- 34 him or her to testify; or

- 1 (c) ((He)) <u>The person</u> will attempt to absent himself <u>or herself</u> 2 from an official proceeding to which he <u>or she</u> has been legally 3 summoned; or
- 4 (d) The person will not report information he or she has relevant 5 to a criminal investigation or the abuse or neglect of a minor child.
- 6 (2) Bribe receiving by a witness is a class B felony.
- 7 **Sec. 104.** RCW 9A.72.110 and 1985 c 327 s 2 are each amended to 8 read as follows:
- 9 (1) A person is guilty of intimidating a witness if a person directs a threat to a former witness because of the witness' testimony 10 in any official proceeding, or if, by use of a threat directed to a 11 12 current witness or a person he or she has reason to believe is about to be called as a witness in any official proceeding or to a person whom 13 14 he or she has reason to believe may have information relevant to a 15 criminal investigation or the abuse or neglect of a minor child, he or 16 she attempts to:
- 17 (a) Influence the testimony of that person; or
- 18 (b) Induce that person to elude legal process summoning him <u>or her</u> 19 to testify; or
- 20 (c) Induce that person to absent himself <u>or herself</u> from such 21 proceedings; <u>or</u>
- 22 (d) Induce that person not to report the information relevant to a 23 criminal investigation or the abuse or neglect of a minor child, not to 24 prosecute the crime or the abuse or neglect of a minor child, not to 25 have the crime or the abuse or neglect of a minor child prosecuted, or 26 not to give truthful or complete information relevant to a criminal
- 27 <u>investigation or the abuse or neglect of a minor child</u>.
  - (2) "Threat" as used in this section means:

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- 29 (a) To communicate, directly or indirectly, the intent immediately 30 to use force against any person who is present at the time; or
- 31 (b) <u>Threats</u> as defined in RCW 9A.04.110(25).
- 32 (3) Intimidating a witness is a class B felony.
- 33 **Sec. 105.** RCW 9A.72.120 and 1982 1st ex.s. c 47 s 19 are each 34 amended to read as follows:
- 35 (1) A person is guilty of tampering with a witness if he <u>or she</u> 36 attempts to induce a witness or person he <u>or she</u> has reason to believe 37 is about to be called as a witness in any official proceeding or a

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- l person whom he <u>or she</u> has reason to believe may have information
- 2 relevant to a criminal investigation or the abuse or neglect of a minor
- 3 child to:

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- 4 (a) Testify falsely or, without right or privilege to do so, to
- 5 withhold any testimony; or
  - (b) Absent himself or herself from such proceedings; or
- 7 (c) Withhold from a law enforcement agency information which he or
- 8 she has relevant to a criminal investigation or the abuse or neglect of
- 9 <u>a minor child to the agency</u>.
- 10 (2) Tampering with a witness is a class C felony.

### 11 PART II - CHILD MOLESTATION

- 12 <u>NEW SECTION.</u> **Sec. 201.** The legislature hereby intends to make
- 13 criminal child sexual abuse that takes the form of causing one child to
- 14 engage in sexual contact with another child for the sexual
- 15 gratification of the one causing such activities to take place.
- 16 **Sec. 202.** RCW 9A.44.083 and 1990 c 3 s 902 are each amended to
- 17 read as follows:
- 18 (1) A person is guilty of child molestation in the first degree
- 19 when the person has, or knowingly causes another person under the age
- 20 of eighteen to have, sexual contact with another who is less than
- 21 twelve years old and not married to the perpetrator and the perpetrator
- 22 is at least thirty-six months older than the victim.
- 23 (2) Child molestation in the first degree is a class A felony.
- 24 Sec. 203. RCW 9A.44.086 and 1988 c 145 s 6 are each amended to
- 25 read as follows:
- 26 (1) A person is guilty of child molestation in the second degree
- 27 when the person has, or knowingly causes another person under the age
- 28 of eighteen to have, sexual contact with another who is at least twelve
- 29 years old but less than fourteen years old and not married to the
- 30 perpetrator and the perpetrator is at least thirty-six months older
- 31 than the victim.
- 32 (2) Child molestation in the second degree is a class B felony.
- 33 **Sec. 204.** RCW 9A.44.089 and 1988 c 145 s 7 are each amended to
- 34 read as follows:

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- (1) A person is guilty of child molestation in the third degree 1 when the person has, or knowingly causes another person under the age 2 of eighteen to have, sexual contact with another who is at least 3 4 fourteen years old but less than sixteen years old and not married to 5 the perpetrator and the perpetrator is at least forty-eight months older than the victim. 6
  - (2) Child molestation in the third degree is a class C felony.

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- 8 Sec. 205. RCW 9A.44.093 and 1988 c 145 s 8 are each amended to read as follows: 9
- (1) A person is guilty of sexual misconduct with a minor in the 10 first degree when the person has, or knowingly causes another person 11 12 under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years 13 14 old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to 15 the victim, and abuses a supervisory position within that relationship 16 in order to engage in or cause another person to engage in sexual 17 18 intercourse with the victim.
- 19 (2) Sexual misconduct with a minor in the first degree is a class C felony. 20
- 21 Sec. 206. RCW 9A.44.096 and 1988 c 145 s 9 are each amended to 22 read as follows:
- 23 (1) A person is guilty of sexual misconduct with a minor in the 24 second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty 27 months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in 29 30 order to engage in or cause another person to engage in sexual contact with the victim.
- 32 (2) Sexual misconduct with a minor in the second degree is a gross 33 misdemeanor.

## PART III - DNA IDENTIFICATION

p. 5 SSB 5069 NEW SECTION. Sec. 301. The legislature finds that DNA identification analysis is an accurate and useful law enforcement tool for identifying and prosecuting sexual and violent offenders.

Sec. 302. RCW 43.43.754 and 1990 c 230 s 3 are each amended to read as follows:

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((After July 1, 1990,)) Every adult or juvenile individual 6 7 convicted ((in a Washington superior court)) of a felony or adjudicated guilty of an equivalent juvenile offense defined as a sex offense under 8 RCW 9.94A.030(29)(a) or a violent offense as defined in RCW 9  $9.94A.030((\frac{32}{32}))$  shall have a blood sample drawn for purposes of DNA 10 identification analysis. For persons convicted of such offenses 11 ((after July 1, 1990,)) or adjudicated quilty of an equivalent juvenile 12 offense who are serving a term of confinement in a county jail or 13 14 detention facility, the county shall be responsible for obtaining blood 15 samples prior to release from the county jail or detention facility. For persons convicted of such offenses ((after July 1, 1990,)) or 16 adjudicated guilty of an equivalent juvenile offense who are serving a 17 18 term of confinement in a department of corrections facility or a division of juvenile rehabilitation facility, the department shall be 19 responsible for obtaining blood samples prior to release from such 20 21 facility. Any blood sample taken pursuant to RCW 43.43.752 through 22 43.43.758 shall be used solely for the purpose of providing DNA or 23 other blood grouping tests for identification analysis and prosecution 24 of a sex offense or a violent offense.

25 <u>This section applies to all persons in custody or who are convicted</u> 26 <u>or adjudicated guilty on or after the effective date of this act.</u>

#### PART IV - TOXICOLOGIST AS WITNESS

28 **Sec. 401.** RCW 43.43.680 and 1992 c 129 s 1 are each amended to 29 read as follows:

(1) In all prosecutions involving the analysis of a controlled substance or a sample of a controlled substance by the crime laboratory system of the state patrol, a certified copy of the analytical report signed by the supervisor of the state patrol's crime laboratory or the forensic scientist conducting the analysis is prima facie evidence of the results of the analytical findings.

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- (2) The defendant or a prosecutor may subpoen the forensic scientist who conducted the analysis of the substance to testify at the preliminary hearing and trial of the issue at no cost to the defendant, if the subpoena is issued at least ten days prior to the trial date.
- (3) In all prosecutions involving the analysis of a certified simulator solution by the Washington state toxicology laboratory of the University of Washington, a certified copy of the analytical report signed by the state toxicologist or the toxicologist conducting the analysis is prima facie evidence of the results of the analytical findings, and of certification of the simulator solution used in the BAC verifier datamaster or any other alcohol/breath-testing equipment subsequently adopted by rule.
- 13 (4) The defendant of a prosecution may subpoen the toxicologist
  14 who conducted the analysis of the simulator solution to testify at the
  15 preliminary hearing and trial of the issue at no cost to the defendant,
  16 if thirty days prior to issuing the subpoena the defendant gives the
  17 state toxicologist notice of the defendant's intention to require the
  18 toxicologist's appearance.

#### 19 PART V - RESTITUTION

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20 **Sec. 501.** RCW 9.94A.140 and 1989 c 252 s 5 are each amended to 21 read as follows:

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily

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ascertainable damages for injury to or loss of property, actual 1 expenses incurred for treatment for injury to persons, and lost wages 2 resulting from injury. Restitution shall not include reimbursement for 3 4 damages for mental anguish, pain and suffering, or other intangible 5 losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the 6 7 amount of the offender's gain or the victim's loss from the commission 8 of the crime. For the purposes of this section, the offender shall 9 remain under the court's jurisdiction for a maximum term of ten years 10 ((subsequent to the imposition of sentence)) following the offender's release from total confinement or ten years subsequent to the entry of 11 the judgment and sentence, whichever period is longer. The portion of 12 13 the sentence concerning restitution may be modified as to amount, terms 14 and conditions during the ten-year period, regardless of the expiration 15 of the offender's term of community supervision and regardless of the 16 statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department. 17

- (2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.
- (3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.
- 34 (4) This section does not limit civil remedies or defenses 35 available to the victim or defendant.

### PART VI - BAIL JUMPING

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- 1 <u>NEW SECTION.</u> **Sec. 601.** RCW 10.19.130 and 1975 1st ex.s. c 2 s 1
- 2 are each repealed.

# 3 PART VII - MISCELLANEOUS

NEW SECTION. Sec. 701. Part headings and the table of contents as used in this act do not constitute any part of the law.

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