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**SUBSTITUTE SENATE BILL 6007**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators A. Smith and Nelson)

Read first time 01/26/94.

1 AN ACT Relating to crimes; amending RCW 9A.28.020, 9A.72.090,  
2 9A.72.100, 9A.72.110, 9A.72.120, 9A.44.010, 9A.44.083, 9A.44.086,  
3 9A.44.089, 9A.44.093, 9A.44.096, 43.43.754, 43.43.680, and 9.94A.140;  
4 creating new sections; repealing RCW 10.19.130; and prescribing  
5 penalties.

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

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5 **PURPOSE**

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

10 **PART I - SENTENCING FOR ATTEMPTED MURDER**

11 **Sec. 101.** RCW 9A.28.020 and 1981 c 203 s 3 are each amended to  
12 read as follows:

13 (1) A person is guilty of an attempt to commit crime if, with  
14 intent to commit a specific crime, he does any act which is a  
15 substantial step toward the commission of that crime.

16 (2) If the conduct in which a person engages otherwise constitutes  
17 an attempt to commit a crime, it is no defense to a prosecution of such  
18 attempt that the crime charged to have been attempted was, under the  
19 attendant circumstances, factually or legally impossible of commission.

20 (3) An attempt to commit a crime is a:

21 (a) Class A felony when the crime attempted is murder in the first  
22 degree, murder in the second degree, or arson in the first degree;

23 (b) Class B felony when the crime attempted is a class A felony  
24 other than murder in the first degree, murder in the second degree, or  
25 arson in the first degree;

26 (c) Class C felony when the crime attempted is a class B felony;

27 (d) Gross misdemeanor when the crime attempted is a class C felony;

28 (e) Misdemeanor when the crime attempted is a gross misdemeanor or  
29 misdemeanor.

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

1        NEW SECTION.     **Sec. 201.**     The legislature finds that witness  
2 intimidation and witness tampering serve to thwart both the effective  
3 prosecution of criminal conduct in the state of Washington and  
4 resolution of child dependencies.

5        Further, the legislature finds that intimidating persons who have  
6 information pertaining to a future proceeding serves to prevent both  
7 the bringing of a charge and prosecution of such future proceeding.  
8 The legislature finds that the period before a crime or child abuse or  
9 neglect is reported is when a victim is most vulnerable to influence,  
10 both from the defendant or from people acting on behalf of the  
11 defendant and a time when the defendant is most able to threaten,  
12 bribe, and/or persuade potential witnesses to leave the jurisdiction or  
13 withhold information from law enforcement agencies.

14        The legislature moreover finds that a criminal defendant's  
15 admonishment or demand to a witness to "drop the charges" is  
16 intimidating to witnesses or other persons with information relevant to  
17 a criminal proceeding.

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

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

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

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

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

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

36        (d) Induce that person to refrain from reporting information  
37 relevant to a criminal investigation or the abuse or neglect of a minor  
38 child.

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

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

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

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

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

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

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

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

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

21 (1) A person is guilty of intimidating a witness if a person  
22 directs a threat to a former witness because of the witness' testimony  
23 in any official proceeding, or if, by use of a threat directed to a  
24 current witness or a person he or she has reason to believe is about to  
25 be called as a witness in any official proceeding or to a person whom  
26 he or she has reason to believe may have information relevant to a  
27 criminal investigation or the abuse or neglect of a minor child, he or  
28 she attempts to:

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

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

32 (c) Induce that person to absent himself or herself from such  
33 proceedings; or

34 (d) Induce that person not to report the information relevant to a  
35 criminal investigation or the abuse or neglect of a minor child, not to  
36 prosecute the crime or the abuse or neglect of a minor child, not to  
37 have the crime or the abuse or neglect of a minor child prosecuted, or

1 not to give truthful or complete information relevant to a criminal  
2 investigation or the abuse or neglect of a minor child.

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

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

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

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

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

10 (1) A person is guilty of tampering with a witness if he or she  
11 attempts to induce a witness or person he or she has reason to believe  
12 is about to be called as a witness in any official proceeding or a  
13 person whom he or she has reason to believe may have information  
14 relevant to a criminal investigation or the abuse or neglect of a minor  
15 child to:

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

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

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

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

23 **PART III - CHILD MOLESTATION**

24 NEW SECTION. **Sec. 301.** The legislature hereby reaffirms its  
25 desire to protect the children of Washington from sexual abuse and  
26 further reaffirms its condemnation of child sexual abuse that takes the  
27 form of causing one child to engage in sexual contact with another  
28 child for the sexual gratification of the one causing such activities  
29 to take place.

30 **Sec. 302.** RCW 9A.44.010 and 1993 c 477 s 1 are each amended to  
31 read as follows:

32 As used in this chapter:

33 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs  
34 upon any penetration, however slight, and

1 (b) Also means any penetration of the vagina or anus however  
2 slight, by an object, when committed on one person by another, whether  
3 such persons are of the same or opposite sex, except when such  
4 penetration is accomplished for medically recognized treatment or  
5 diagnostic purposes, and

6 (c) Also means any act of sexual contact between persons involving  
7 the sex organs of one person and the mouth or anus of another whether  
8 such persons are of the same or opposite sex.

9 (2) "Sexual contact" means any touching of the sexual or other  
10 intimate parts of a person done for the purpose of gratifying sexual  
11 desire of either party or a third party.

12 (3) "Married" means one who is legally married to another, but does  
13 not include a person who is living separate and apart from his or her  
14 spouse and who has filed in an appropriate court for legal separation  
15 or for dissolution of his or her marriage.

16 (4) "Mental incapacity" is that condition existing at the time of  
17 the offense which prevents a person from understanding the nature or  
18 consequences of the act of sexual intercourse whether that condition is  
19 produced by illness, defect, the influence of a substance or from some  
20 other cause.

21 (5) "Physically helpless" means a person who is unconscious or for  
22 any other reason is physically unable to communicate unwillingness to  
23 an act.

24 (6) "Forcible compulsion" means physical force which overcomes  
25 resistance, or a threat, express or implied, that places a person in  
26 fear of death or physical injury to herself or himself or another  
27 person, or in fear that she or he or another person will be kidnapped.

28 (7) "Consent" means that at the time of the act of sexual  
29 intercourse or sexual contact there are actual words or conduct  
30 indicating freely given agreement to have sexual intercourse or sexual  
31 contact.

32 (8) "Significant relationship" means a situation in which the  
33 perpetrator is:

34 (a) A person who undertakes the responsibility, professionally or  
35 voluntarily, to provide education, health, welfare, or organized  
36 recreational activities principally for minors; or

37 (b) A person who in the course of his or her employment supervises  
38 minors.

1 (9) "Abuse of a supervisory position" means a direct or indirect  
2 threat or promise to use authority to the detriment or benefit of a  
3 minor.

4 (10) "Developmentally disabled," for purposes of RCW  
5 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a  
6 developmental disability as defined in RCW 71A.10.020.

7 (11) "Person with supervisory authority," for purposes of RCW  
8 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any  
9 proprietor or employee of any public or private care or treatment  
10 facility who directly supervises developmentally disabled, mentally  
11 disordered, or chemically dependent persons at the facility.

12 (12) "Mentally disordered person" for the purposes of RCW  
13 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental  
14 disorder" as defined in RCW 71.05.020(2).

15 (13) "Chemically dependent person" for purposes of RCW  
16 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
17 dependent" as defined in RCW 70.96A.020(4).

18 (14) "Health care provider" for purposes of RCW 9A.44.050 and  
19 9A.44.100 means a person who is, holds himself or herself out to be, or  
20 provides services as if he or she were: (a) A member of a health care  
21 profession under chapter 18.130 RCW; or (b) registered or certified  
22 under chapter 18.19 RCW, regardless of whether the health care provider  
23 is licensed, certified, or registered by the state.

24 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means  
25 the active delivery of professional services by a health care provider  
26 which the health care provider holds himself or herself out to be  
27 qualified to provide.

28 **Sec. 303.** RCW 9A.44.083 and 1990 c 3 s 902 are each amended to  
29 read as follows:

30 (1) A person is guilty of child molestation in the first degree  
31 when the person has, or knowingly causes another person under the age  
32 of eighteen to have, sexual contact with another who is less than  
33 twelve years old and not married to the perpetrator and the perpetrator  
34 is at least thirty-six months older than the victim.

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

36 **Sec. 304.** RCW 9A.44.086 and 1988 c 145 s 6 are each amended to  
37 read as follows:

1 (1) A person is guilty of child molestation in the second degree  
2 when the person has, or knowingly causes another person under the age  
3 of eighteen to have, sexual contact with another who is at least twelve  
4 years old but less than fourteen years old and not married to the  
5 perpetrator and the perpetrator is at least thirty-six months older  
6 than the victim.

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

8 **Sec. 305.** RCW 9A.44.089 and 1988 c 145 s 7 are each amended to  
9 read as follows:

10 (1) A person is guilty of child molestation in the third degree  
11 when the person has, or knowingly causes another person under the age  
12 of eighteen to have, sexual contact with another who is at least  
13 fourteen years old but less than sixteen years old and not married to  
14 the perpetrator and the perpetrator is at least forty-eight months  
15 older than the victim.

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

17 **Sec. 306.** RCW 9A.44.093 and 1988 c 145 s 8 are each amended to  
18 read as follows:

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

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

30 **Sec. 307.** RCW 9A.44.096 and 1988 c 145 s 9 are each amended to  
31 read as follows:

32 (1) A person is guilty of sexual misconduct with a minor in the  
33 second degree when the person has, or knowingly causes another person  
34 under the age of eighteen to have, sexual contact with another person  
35 who is at least sixteen years old but less than eighteen years old and  
36 not married to the perpetrator, if the perpetrator is at least sixty



1 months older than the victim, is in a significant relationship to the  
2 victim, and abuses a supervisory position within that relationship in  
3 order to engage in or cause another person under the age of eighteen to  
4 engage in sexual contact with the victim.

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

7 **PART IV - DNA IDENTIFICATION**

8 NEW SECTION. **Sec. 401.** The legislature finds that DNA  
9 identification analysis is an accurate and useful law enforcement tool  
10 for identifying and prosecuting sexual and violent offenders. The  
11 legislature further finds no compelling reason to exclude juvenile  
12 sexual and juvenile violent offenders from DNA identification analysis.

13 **Sec. 402.** RCW 43.43.754 and 1990 c 230 s 3 are each amended to  
14 read as follows:

15 (~~After July 1, 1990,~~) Every adult or juvenile individual  
16 convicted ((in a Washington superior court)) of a felony or adjudicated  
17 guilty of an equivalent juvenile offense defined as a sex offense under  
18 RCW 9.94A.030(~~((29)(a))~~) (31)(a) or a violent offense as defined in RCW  
19 9.94A.030(~~((32))~~) shall have a blood sample drawn for purposes of DNA  
20 identification analysis. For persons convicted of such offenses  
21 (~~after July 1, 1990,~~) or adjudicated guilty of an equivalent juvenile  
22 offense who are serving a term of confinement in a county jail or  
23 detention facility, the county shall be responsible for obtaining blood  
24 samples prior to release from the county jail or detention facility.  
25 For persons convicted of such offenses or adjudicated guilty of an  
26 equivalent juvenile offense after July 1, 1990, who are serving a term  
27 of confinement in a department of corrections facility or a division of  
28 juvenile rehabilitation facility, the (~~department~~) facility holding  
29 the person shall be responsible for obtaining blood samples prior to  
30 release from such facility. Any blood sample taken pursuant to RCW  
31 43.43.752 through 43.43.758 shall be used solely for the purpose of  
32 providing DNA or other blood grouping tests for identification analysis  
33 and prosecution of a sex offense or a violent offense.

34 This section applies to all adults who are convicted after July 1,  
35 1990. This section applies to all juveniles who are adjudicated guilty  
36 after July 1, 1994.

1 **PART V - TOXICOLOGIST AS WITNESS**

2 **Sec. 501.** RCW 43.43.680 and 1992 c 129 s 1 are each amended to  
3 read as follows:

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

10 (2) The defendant or a prosecutor may subpoena the forensic  
11 scientist who conducted the analysis of the substance to testify at the  
12 preliminary hearing and trial of the issue at no cost to the defendant,  
13 if the subpoena is issued at least ten days prior to the trial date.

14 (3) In all prosecutions involving the analysis of a certified  
15 simulator solution by the Washington state toxicology laboratory of the  
16 University of Washington, a certified copy of the analytical report  
17 signed by the state toxicologist or the toxicologist conducting the  
18 analysis is prima facie evidence of the results of the analytical  
19 findings, and of certification of the simulator solution used in the  
20 BAC verifier datamaster or any other alcohol/breath-testing equipment  
21 subsequently adopted by rule.

22 (4) The defendant of a prosecution may subpoena the toxicologist  
23 who conducted the analysis of the simulator solution to testify at the  
24 preliminary hearing and trial of the issue at no cost to the defendant,  
25 if thirty days prior to issuing the subpoena the defendant gives the  
26 state toxicologist notice of the defendant's intention to require the  
27 toxicologist's appearance.

28 **PART VI - RESTITUTION**

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

31 (1) If restitution is ordered, the court shall determine the amount  
32 of restitution due at the sentencing hearing or within sixty days. The  
33 court shall then set a minimum monthly payment that the offender is  
34 required to make towards the restitution that is ordered. The court  
35 should take into consideration the total amount of the restitution  
36 owed, the offender's present, past, and future ability to pay, as well

1 as any assets that the offender may have. During the period of  
2 supervision, the community corrections officer may examine the offender  
3 to determine if there has been a change in circumstances that warrants  
4 an amendment of the monthly payment schedule. The community  
5 corrections officer may recommend a change to the schedule of payment  
6 and shall inform the court of the recommended change and the reasons  
7 for the change. The sentencing court may then reset the monthly  
8 minimum payments based on the report from the community corrections  
9 officer of the change in circumstances. Restitution ordered by a court  
10 pursuant to a criminal conviction shall be based on easily  
11 ascertainable damages for injury to or loss of property, actual  
12 expenses incurred for treatment for injury to persons, and lost wages  
13 resulting from injury. Restitution shall not include reimbursement for  
14 damages for mental anguish, pain and suffering, or other intangible  
15 losses, but may include the costs of counseling reasonably related to  
16 the offense. The amount of restitution shall not exceed double the  
17 amount of the offender's gain or the victim's loss from the commission  
18 of the crime. For the purposes of this section, the offender shall  
19 remain under the court's jurisdiction for a maximum term of ten years  
20 (~~subsequent to the imposition of sentence~~) following the offender's  
21 release from total confinement or ten years subsequent to the entry of  
22 the judgment and sentence, whichever period is longer. The portion of  
23 the sentence concerning restitution may be modified as to amount, terms  
24 and conditions during the ten-year period, regardless of the expiration  
25 of the offender's term of community supervision and regardless of the  
26 statutory maximum for the crime. The offender's compliance with the  
27 restitution shall be supervised by the department.

28 (2) Restitution may be ordered whenever the offender is convicted  
29 of an offense which results in injury to any person or damage to or  
30 loss of property. In addition, restitution may be ordered to pay for  
31 an injury, loss, or damage if the offender pleads guilty to a lesser  
32 offense or fewer offenses and agrees with the prosecutor's  
33 recommendation that the offender be required to pay restitution to a  
34 victim of an offense or offenses which are not prosecuted pursuant to  
35 a plea agreement.

36 (3) In addition to any sentence that may be imposed, a defendant  
37 who has been found guilty of an offense involving fraud or other  
38 deceptive practice or an organization which has been found guilty of  
39 any such offense may be ordered by the sentencing court to give notice

1 of the conviction to the class of persons or to the sector of the  
2 public affected by the conviction or financially interested in the  
3 subject matter of the offense by mail, by advertising in designated  
4 areas or through designated media, or by other appropriate means.

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

7 **PART VII - BAIL JUMPING**

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

10 **PART VIII - MISCELLANEOUS**

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

--- END ---