

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6007

Chapter 271, Laws of 1994

53rd Legislature
1994 Regular Session

CRIMES--CLARIFICATION AND TECHNICAL CORRECTIONS

EFFECTIVE DATE: 6/9/94 - Except Section 1001 which takes effect
7/1/94

Passed by the Senate March 9, 1994
YEAS 45 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 9, 1994
YEAS 96 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6007** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

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**Secretary of State
State of Washington**

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9 **PURPOSE**

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

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

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

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

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

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

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

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

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

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

6 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
7 misdemeanor.

8 PART II - WITNESS INTIMIDATION/TAMPERING

9 NEW SECTION. **Sec. 201.** The legislature finds that witness
10 intimidation and witness tampering serve to thwart both the effective
11 prosecution of criminal conduct in the state of Washington and
12 resolution of child dependencies.

13 Further, the legislature finds that intimidating persons who have
14 information pertaining to a future proceeding serves to prevent both
15 the bringing of a charge and prosecution of such future proceeding.
16 The legislature finds that the period before a crime or child abuse or
17 neglect is reported is when a victim is most vulnerable to influence,
18 both from the defendant or from people acting on behalf of the
19 defendant and a time when the defendant is most able to threaten,
20 bribe, and/or persuade potential witnesses to leave the jurisdiction or
21 withhold information from law enforcement agencies.

22 The legislature moreover finds that a criminal defendant's
23 admonishment or demand to a witness to "drop the charges" is
24 intimidating to witnesses or other persons with information relevant to
25 a criminal proceeding.

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

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

33 (1) A person is guilty of bribing a witness if he or she offers,
34 confers, or agrees to confer any benefit upon a witness or a person he
35 or she has reason to believe is about to be called as a witness in any
36 official proceeding or upon a person whom he or she has reason to

1 believe may have information relevant to a criminal investigation or
2 the abuse or neglect of a minor child, with intent to:

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

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

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

8 (d) Induce that person to refrain from reporting information
9 relevant to a criminal investigation or the abuse or neglect of a minor
10 child.

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

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

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

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

21 (b) ~~((He))~~ The person will attempt to avoid legal process summoning
22 him or her to testify; or

23 (c) ~~((He))~~ The person will attempt to absent himself or herself
24 from an official proceeding to which he or she has been legally
25 summoned; or

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

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

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

31 (1) A person is guilty of intimidating a witness if a person
32 directs a threat to a former witness because of the witness' testimony
33 in any official proceeding, or if, by use of a threat directed to a
34 current witness or a person he or she has reason to believe is about to
35 be called as a witness in any official proceeding or to a person whom
36 he or she has reason to believe may have information relevant to a

1 criminal investigation or the abuse or neglect of a minor child, he or
2 she attempts to:

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

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

6 (c) Induce that person to absent himself or herself from such
7 proceedings; or

8 (d) Induce that person not to report the information relevant to a
9 criminal investigation or the abuse or neglect of a minor child, not to
10 prosecute the crime or the abuse or neglect of a minor child, not to
11 have the crime or the abuse or neglect of a minor child prosecuted, or
12 not to give truthful or complete information relevant to a criminal
13 investigation or the abuse or neglect of a minor child.

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

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

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

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

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

21 (1) A person is guilty of tampering with a witness if he or she
22 attempts to induce a witness or person he or she has reason to believe
23 is about to be called as a witness in any official proceeding or a
24 person whom he or she has reason to believe may have information
25 relevant to a criminal investigation or the abuse or neglect of a minor
26 child to:

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

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

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

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

34 **PART III - CHILD MOLESTATION**

35 NEW SECTION. **Sec. 301.** The legislature hereby reaffirms its
36 desire to protect the children of Washington from sexual abuse and

1 further reaffirms its condemnation of child sexual abuse that takes the
2 form of causing one child to engage in sexual contact with another
3 child for the sexual gratification of the one causing such activities
4 to take place.

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

7 As used in this chapter:

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

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

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

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

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

25 (4) "Mental incapacity" is that condition existing at the time of
26 the offense which prevents a person from understanding the nature or
27 consequences of the act of sexual intercourse whether that condition is
28 produced by illness, defect, the influence of a substance or from some
29 other cause.

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

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

37 (7) "Consent" means that at the time of the act of sexual
38 intercourse or sexual contact there are actual words or conduct

1 indicating freely given agreement to have sexual intercourse or sexual
2 contact.

3 (8) "Significant relationship" means a situation in which the
4 perpetrator is:

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

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

10 (9) "Abuse of a supervisory position" means a direct or indirect
11 threat or promise to use authority to the detriment or benefit of a
12 minor.

13 (10) "Developmentally disabled," for purposes of RCW
14 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
15 developmental disability as defined in RCW 71A.10.020.

16 (11) "Person with supervisory authority," for purposes of RCW
17 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any
18 proprietor or employee of any public or private care or treatment
19 facility who directly supervises developmentally disabled, mentally
20 disordered, or chemically dependent persons at the facility.

21 (12) "Mentally disordered person" for the purposes of RCW
22 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
23 disorder" as defined in RCW 71.05.020(2).

24 (13) "Chemically dependent person" for purposes of RCW
25 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
26 dependent" as defined in RCW 70.96A.020(4).

27 (14) "Health care provider" for purposes of RCW 9A.44.050 and
28 9A.44.100 means a person who is, holds himself or herself out to be, or
29 provides services as if he or she were: (a) A member of a health care
30 profession under chapter 18.130 RCW; or (b) registered or certified
31 under chapter 18.19 RCW, regardless of whether the health care provider
32 is licensed, certified, or registered by the state.

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

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

1 (1) A person is guilty of child molestation in the first 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 less than
4 twelve years old and not married to the perpetrator and the perpetrator
5 is at least thirty-six months older than the victim.

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

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

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

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

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

18 (1) A person is guilty of child molestation in the third 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 at least
21 fourteen years old but less than sixteen years old and not married to
22 the perpetrator and the perpetrator is at least forty-eight months
23 older than the victim.

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

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

27 (1) A person is guilty of sexual misconduct with a minor in the
28 first degree when the person has, or knowingly causes another person
29 under the age of eighteen to have, sexual intercourse with another
30 person who is at least sixteen years old but less than eighteen years
31 old and not married to the perpetrator, if the perpetrator is at least
32 sixty months older than the victim, is in a significant relationship to
33 the victim, and abuses a supervisory position within that relationship
34 in order to engage in or cause another person under the age of eighteen
35 to engage in sexual intercourse with the victim.

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

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

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

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

16 **PART IV - DNA IDENTIFICATION**

17 NEW SECTION. **Sec. 401.** The legislature finds that DNA
18 identification analysis is an accurate and useful law enforcement tool
19 for identifying and prosecuting sexual and violent offenders. The
20 legislature further finds no compelling reason to exclude juvenile
21 sexual and juvenile violent offenders from DNA identification analysis.

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

24 (~~After July 1, 1990,~~) Every adult or juvenile individual
25 convicted ((in a Washington superior court)) of a felony or adjudicated
26 guilty of an equivalent juvenile offense defined as a sex offense under
27 RCW 9.94A.030(~~((29)(a))~~) (31)(a) or a violent offense as defined in RCW
28 9.94A.030(~~((32))~~) shall have a blood sample drawn for purposes of DNA
29 identification analysis. For persons convicted of such offenses
30 (~~after July 1, 1990,~~) or adjudicated guilty of an equivalent juvenile
31 offense who are serving a term of confinement in a county jail or
32 detention facility, the county shall be responsible for obtaining blood
33 samples prior to release from the county jail or detention facility.
34 For persons convicted of such offenses (~~after July 1, 1990~~) or
35 adjudicated guilty of an equivalent juvenile offense, who are serving

1 a term of confinement in a department of corrections facility or a
2 division of juvenile rehabilitation facility, the ((department))
3 facility holding the person shall be responsible for obtaining blood
4 samples prior to release from such facility. Any blood sample taken
5 pursuant to RCW 43.43.752 through 43.43.758 shall be used solely for
6 the purpose of providing DNA or other blood grouping tests for
7 identification analysis and prosecution of a sex offense or a violent
8 offense.

9 This section applies to all adults who are convicted after July 1,
10 1990. This section applies to all juveniles who are adjudicated guilty
11 after July 1, 1994.

12 **PART V - TOXICOLOGIST AS WITNESS**

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

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

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

25 (3) In all prosecutions involving the analysis of a certified
26 simulator solution by the Washington state toxicology laboratory of the
27 University of Washington, a certified copy of the analytical report
28 signed by the state toxicologist or the toxicologist conducting the
29 analysis is prima facie evidence of the results of the analytical
30 findings, and of certification of the simulator solution used in the
31 BAC verifier datamaster or any other alcohol/breath-testing equipment
32 subsequently adopted by rule.

33 (4) The defendant of a prosecution may subpoena the toxicologist
34 who conducted the analysis of the simulator solution to testify at the
35 preliminary hearing and trial of the issue at no cost to the defendant,
36 if thirty days prior to issuing the subpoena the defendant gives the

1 state toxicologist notice of the defendant's intention to require the
2 toxicologist's appearance.

3

PART VI - RESTITUTION

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

6 (1) If restitution is ordered, the court shall determine the amount
7 of restitution due at the sentencing hearing or within sixty days. The
8 court shall then set a minimum monthly payment that the offender is
9 required to make towards the restitution that is ordered. The court
10 should take into consideration the total amount of the restitution
11 owed, the offender's present, past, and future ability to pay, as well
12 as any assets that the offender may have. During the period of
13 supervision, the community corrections officer may examine the offender
14 to determine if there has been a change in circumstances that warrants
15 an amendment of the monthly payment schedule. The community
16 corrections officer may recommend a change to the schedule of payment
17 and shall inform the court of the recommended change and the reasons
18 for the change. The sentencing court may then reset the monthly
19 minimum payments based on the report from the community corrections
20 officer of the change in circumstances. Restitution ordered by a court
21 pursuant to a criminal conviction shall be based on easily
22 ascertainable damages for injury to or loss of property, actual
23 expenses incurred for treatment for injury to persons, and lost wages
24 resulting from injury. Restitution shall not include reimbursement for
25 damages for mental anguish, pain and suffering, or other intangible
26 losses, but may include the costs of counseling reasonably related to
27 the offense. The amount of restitution shall not exceed double the
28 amount of the offender's gain or the victim's loss from the commission
29 of the crime. For the purposes of this section, the offender shall
30 remain under the court's jurisdiction for a maximum term of ten years
31 (~~subsequent to the imposition of sentence~~) following the offender's
32 release from total confinement or ten years subsequent to the entry of
33 the judgment and sentence, whichever period is longer. The portion of
34 the sentence concerning restitution may be modified as to amount, terms
35 and conditions during the ten-year period, regardless of the expiration
36 of the offender's term of community supervision and regardless of the

1 statutory maximum for the crime. The offender's compliance with the
2 restitution shall be supervised by the department.

3 (2) Restitution may be ordered whenever the offender is convicted
4 of an offense which results in injury to any person or damage to or
5 loss of property. In addition, restitution may be ordered to pay for
6 an injury, loss, or damage if the offender pleads guilty to a lesser
7 offense or fewer offenses and agrees with the prosecutor's
8 recommendation that the offender be required to pay restitution to a
9 victim of an offense or offenses which are not prosecuted pursuant to
10 a plea agreement.

11 (3) In addition to any sentence that may be imposed, a defendant
12 who has been found guilty of an offense involving fraud or other
13 deceptive practice or an organization which has been found guilty of
14 any such offense may be ordered by the sentencing court to give notice
15 of the conviction to the class of persons or to the sector of the
16 public affected by the conviction or financially interested in the
17 subject matter of the offense by mail, by advertising in designated
18 areas or through designated media, or by other appropriate means.

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

21 **Sec. 602.** RCW 9.94A.142 and 1989 c 252 s 6 are each amended to
22 read as follows:

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

1 easily ascertainable damages for injury to or loss of property, actual
2 expenses incurred for treatment for injury to persons, and lost wages
3 resulting from injury. Restitution shall not include reimbursement for
4 damages for mental anguish, pain and suffering, or other intangible
5 losses, but may include the costs of counseling reasonably related to
6 the offense. The amount of restitution shall not exceed double the
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
11 release from total confinement or ten years subsequent to the entry of
12 the judgment and sentence, whichever period is longer. The portion of
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
17 restitution shall be supervised by the department.

18 (2) Restitution shall be ordered whenever the offender is convicted
19 of an offense which results in injury to any person or damage to or
20 loss of property unless extraordinary circumstances exist which make
21 restitution inappropriate in the court's judgment and the court sets
22 forth such circumstances in the record. In addition, restitution shall
23 be ordered to pay for an injury, loss, or damage if the offender pleads
24 guilty to a lesser offense or fewer offenses and agrees with the
25 prosecutor's recommendation that the offender be required to pay
26 restitution to a victim of an offense or offenses which are not
27 prosecuted pursuant to a plea agreement.

28 (3) In addition to any sentence that may be imposed, a defendant
29 who has been found guilty of an offense involving fraud or other
30 deceptive practice or an organization which has been found guilty of
31 any such offense may be ordered by the sentencing court to give notice
32 of the conviction to the class of persons or to the sector of the
33 public affected by the conviction or financially interested in the
34 subject matter of the offense by mail, by advertising in designated
35 areas or through designated media, or by other appropriate means.

36 (4) This section does not limit civil remedies or defenses
37 available to the victim, survivors of the victim, or defendant.

38 (5) This section shall apply to offenses committed after July 1,
39 1985.

1 **PART VII - BAIL JUMPING**

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

4 **PART VIII - STALKING**

5 **Sec. 801.** RCW 9A.46.110 and 1992 c 186 s 1 are each amended to
6 read as follows:

7 (1) A person commits the crime of stalking if, without lawful
8 authority and under circumstances not amounting to a felony attempt of
9 another crime:

10 (a) He or she intentionally and repeatedly harasses or repeatedly
11 follows another person (~~to that person's home, school, place of~~
12 ~~employment, business, or any other location, or follows the person~~
13 ~~while the person is in transit between locations)); and~~

14 (b) The person being harassed or followed is (~~intimidated,~~
15 ~~harassed, or~~) placed in fear that the stalker intends to injure the
16 person, another person, or property of the person (~~being followed~~) or
17 of another person. The feeling of fear(~~, intimidation, or~~
18 ~~harassment~~) must be one that a reasonable person in the same situation
19 would experience under all the circumstances; and

20 (c) The stalker either:

21 (i) Intends to frighten, intimidate, or harass the person (~~being~~
22 ~~followed~~); or

23 (ii) Knows or reasonably should know that the person (~~being~~
24 ~~followed~~) is afraid, intimidated, or harassed even if the stalker did
25 not intend to place the person in fear or intimidate or harass the
26 person.

27 (2)(a) It is not a defense to the crime of stalking under
28 subsection (1)(c)(i) of this section that the stalker was not given
29 actual notice that the person (~~being followed~~) did not want the
30 stalker to contact or follow the person; and

31 (b) It is not a defense to the crime of stalking under subsection
32 (1)(c)(ii) of this section that the stalker did not intend to frighten,
33 intimidate, or harass the person (~~being followed~~).

34 (3) It shall be a defense to the crime of stalking that the
35 defendant is a licensed private detective acting within the capacity of
36 his or her license as provided by chapter 18.165 RCW.

1 (4) Attempts to contact or follow the person after being given
2 actual notice that the person does not want to be contacted or followed
3 constitutes prima facie evidence that the stalker intends to intimidate
4 or harass the person.

5 (5) A person who stalks another person is guilty of a gross
6 misdemeanor except that the person is guilty of a class C felony if any
7 of the following applies: (a) The stalker has previously been
8 convicted in this state or any other state of any crime of harassment,
9 as defined in RCW 9A.46.060, of the same victim or members of the
10 victim's family or household or any person specifically named in a
11 ~~((no contact order or no harassment))~~ protective order; (b) the
12 ~~((person))~~ stalking violates ((a court)) any protective order ((issued
13 ~~pursuant to RCW 9A.46.040))~~ protecting the person being stalked; ((or))
14 (c) the stalker has previously been convicted of a gross misdemeanor or
15 felony stalking offense under this section for stalking another person;
16 (d) the stalker was armed with a deadly weapon, as defined in RCW
17 9.94A.125, while stalking the person; (e) the stalker's victim is or
18 was a law enforcement officer, judge, juror, attorney, victim advocate,
19 legislator, or community correction's officer, and the stalker stalked
20 the victim to retaliate against the victim for an act the victim
21 performed during the course of official duties or to influence the
22 victim's performance of official duties; or (f) the stalker's victim is
23 a current, former, or prospective witness in an adjudicative
24 proceeding, and the stalker stalked the victim to retaliate against the
25 victim as a result of the victim's testimony or potential testimony.

26 (6) As used in this section:

27 (a) "Follows" means deliberately maintaining visual or physical
28 proximity to a specific person over a period of time. A finding that
29 the alleged stalker repeatedly and deliberately appears at the person's
30 home, school, place of employment, business, or any other location to
31 maintain visual or physical proximity to the person is sufficient to
32 find that the alleged stalker follows the person. It is not necessary
33 to establish that the alleged stalker follows the person while in
34 transit from one location to another.

35 (b) "Harasses" means unlawful harassment as defined in RCW
36 10.14.020.

37 (c) "Protective order" means any temporary or permanent court order
38 prohibiting or limiting violence against, harassment of, contact or
39 communication with, or physical proximity to another person.

1 (d) "Repeatedly" means on two or more separate occasions.

2 **Sec. 802.** RCW 9A.46.060 and 1992 c 186 s 4 and 1992 c 145 s 12 are
3 each reenacted and amended to read as follows:

4 As used in this chapter, "harassment" may include but is not
5 limited to any of the following crimes:

- 6 (1) Harassment (RCW 9A.46.020);
- 7 (2) Malicious harassment (RCW 9A.36.080);
- 8 (3) Telephone harassment (RCW 9.61.230);
- 9 (4) Assault in the first degree (RCW 9A.36.011);
- 10 (5) Assault of a child in the first degree (RCW 9A.36.120);
- 11 (6) Assault in the second degree (RCW 9A.36.021);
- 12 (7) Assault of a child in the second degree (RCW 9A.36.130);
- 13 (8) Assault in the fourth degree (RCW 9A.36.041);
- 14 (9) Reckless endangerment in the second degree (RCW 9A.36.050);
- 15 (10) Extortion in the first degree (RCW 9A.56.120);
- 16 (11) Extortion in the second degree (RCW 9A.56.130);
- 17 (12) Coercion (RCW 9A.36.070);
- 18 (13) Burglary in the first degree (RCW 9A.52.020);
- 19 (14) Burglary in the second degree (RCW 9A.52.030);
- 20 (15) Criminal trespass in the first degree (RCW 9A.52.070);
- 21 (16) Criminal trespass in the second degree (RCW 9A.52.080);
- 22 (17) Malicious mischief in the first degree (RCW 9A.48.070);
- 23 (18) Malicious mischief in the second degree (RCW 9A.48.080);
- 24 (19) Malicious mischief in the third degree (RCW 9A.48.090);
- 25 (20) Kidnapping in the first degree (RCW 9A.40.020);
- 26 (21) Kidnapping in the second degree (RCW 9A.40.030);
- 27 (22) Unlawful imprisonment (RCW 9A.40.040);
- 28 (23) Rape in the first degree (RCW 9A.44.040);
- 29 (24) Rape in the second degree (RCW 9A.44.050);
- 30 (25) Rape in the third degree (RCW 9A.44.060);
- 31 (26) Indecent liberties (RCW 9A.44.100);
- 32 (27) Rape of a child in the first degree (RCW 9A.44.073);
- 33 (28) Rape of a child in the second degree (RCW 9A.44.076);
- 34 (29) Rape of a child in the third degree (RCW 9A.44.079);
- 35 (30) Child molestation in the first degree (RCW 9A.44.083);
- 36 (31) Child molestation in the second degree (RCW 9A.44.086);
- 37 (32) Child molestation in the third degree (RCW 9A.44.089); ((and))
- 38 (33) Stalking (RCW 9A.46.110); and

1 (34) Violation of a temporary or permanent protective order issued
2 pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW.

3 **Sec. 803.** RCW 13.40.020 and 1993 c 373 s 1 are each amended to
4 read as follows:

5 For the purposes of this chapter:

6 (1) "Serious offender" means a person fifteen years of age or older
7 who has committed an offense which if committed by an adult would be:

8 (a) A class A felony, or an attempt to commit a class A felony;

9 (b) Manslaughter in the first degree; or

10 (c) Assault in the second degree, extortion in the first degree,
11 child molestation in the second degree, kidnapping in the second
12 degree, robbery in the second degree, residential burglary, or burglary
13 in the second degree, where such offenses include the infliction of
14 bodily harm upon another or where during the commission of or immediate
15 withdrawal from such an offense the perpetrator is armed with a deadly
16 weapon or firearm as defined in RCW 9A.04.110;

17 (2) "Community service" means compulsory service, without
18 compensation, performed for the benefit of the community by the
19 offender as punishment for committing an offense. Community service
20 may be performed through public or private organizations or through
21 work crews;

22 (3) "Community supervision" means an order of disposition by the
23 court of an adjudicated youth not committed to the department. A
24 community supervision order for a single offense may be for a period of
25 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
26 one year for other offenses. Community supervision is an
27 individualized program comprised of one or more of the following:

28 (a) Community-based sanctions;

29 (b) Community-based rehabilitation;

30 (c) Monitoring and reporting requirements;

31 (4) Community-based sanctions may include one or more of the
32 following:

33 (a) A fine, not to exceed one hundred dollars;

34 (b) Community service not to exceed one hundred fifty hours of
35 service;

36 (5) "Community-based rehabilitation" means one or more of the
37 following: Attendance of information classes; counseling, outpatient
38 substance abuse treatment programs, outpatient mental health programs,

1 anger management classes, or other services; or attendance at school or
2 other educational programs appropriate for the juvenile as determined
3 by the school district. Placement in community-based rehabilitation
4 programs is subject to available funds;

5 (6) "Monitoring and reporting requirements" means one or more of
6 the following: Curfews; requirements to remain at home, school, work,
7 or court-ordered treatment programs during specified hours;
8 restrictions from leaving or entering specified geographical areas;
9 requirements to report to the probation officer as directed and to
10 remain under the probation officer's supervision; and other conditions
11 or limitations as the court may require which may not include
12 confinement;

13 (7) "Confinement" means physical custody by the department of
14 social and health services in a facility operated by or pursuant to a
15 contract with the state, or physical custody in a detention facility
16 operated by or pursuant to a contract with any county. The county may
17 operate or contract with vendors to operate county detention
18 facilities. The department may operate or contract to operate
19 detention facilities for juveniles committed to the department.
20 Pretrial confinement or confinement of less than thirty-one days
21 imposed as part of a disposition or modification order may be served
22 consecutively or intermittently, in the discretion of the court and may
23 be served in a detention group home, detention foster home, or with
24 electronic monitoring. Detention group homes and detention foster
25 homes used for confinement shall not also be used for the placement of
26 dependent children. Confinement in detention group homes and detention
27 foster homes and electronic monitoring are subject to available funds;

28 (8) "Court", when used without further qualification, means the
29 juvenile court judge(s) or commissioner(s);

30 (9) "Criminal history" includes all criminal complaints against the
31 respondent for which, prior to the commission of a current offense:

32 (a) The allegations were found correct by a court. If a respondent
33 is convicted of two or more charges arising out of the same course of
34 conduct, only the highest charge from among these shall count as an
35 offense for the purposes of this chapter; or

36 (b) The criminal complaint was diverted by a prosecutor pursuant to
37 the provisions of this chapter on agreement of the respondent and after
38 an advisement to the respondent that the criminal complaint would be
39 considered as part of the respondent's criminal history;

1 (10) "Department" means the department of social and health
2 services;

3 (11) "Detention facility" means a county facility for the physical
4 confinement of a juvenile alleged to have committed an offense or an
5 adjudicated offender subject to a disposition or modification order;

6 (12) "Diversion unit" means any probation counselor who enters into
7 a diversion agreement with an alleged youthful offender, or any other
8 person or entity except a law enforcement official or entity, with whom
9 the juvenile court administrator has contracted to arrange and
10 supervise such agreements pursuant to RCW 13.40.080, or any person or
11 entity specially funded by the legislature to arrange and supervise
12 diversion agreements in accordance with the requirements of this
13 chapter;

14 (13) "Institution" means a juvenile facility established pursuant
15 to chapters 72.05 and 72.16 through 72.20 RCW;

16 (14) "Juvenile," "youth," and "child" mean any individual who is
17 under the chronological age of eighteen years and who has not been
18 previously transferred to adult court;

19 (15) "Juvenile offender" means any juvenile who has been found by
20 the juvenile court to have committed an offense, including a person
21 eighteen years of age or older over whom jurisdiction has been extended
22 under RCW 13.40.300;

23 (16) "Manifest injustice" means a disposition that would either
24 impose an excessive penalty on the juvenile or would impose a serious,
25 and clear danger to society in light of the purposes of this chapter;

26 (17) "Middle offender" means a person who has committed an offense
27 and who is neither a minor or first offender nor a serious offender;

28 (18) "Minor or first offender" means a person sixteen years of age
29 or younger whose current offense(s) and criminal history fall entirely
30 within one of the following categories:

31 (a) Four misdemeanors;

32 (b) Two misdemeanors and one gross misdemeanor;

33 (c) One misdemeanor and two gross misdemeanors;

34 (d) Three gross misdemeanors;

35 (e) One class C felony except: (i)(A) Manslaughter in the second
36 degree; or (B) felony stalking; and (ii) one misdemeanor or gross
37 misdemeanor;

38 (f) One class B felony except: Any felony which constitutes an
39 attempt to commit a class A felony; manslaughter in the first degree;

1 assault in the second degree; extortion in the first degree; indecent
2 liberties; kidnapping in the second degree; robbery in the second
3 degree; burglary in the second degree; residential burglary; vehicular
4 homicide; or arson in the second degree.

5 For purposes of this definition, current violations shall be
6 counted as misdemeanors;

7 (19) "Offense" means an act designated a violation or a crime if
8 committed by an adult under the law of this state, under any ordinance
9 of any city or county of this state, under any federal law, or under
10 the law of another state if the act occurred in that state;

11 (20) "Respondent" means a juvenile who is alleged or proven to have
12 committed an offense;

13 (21) "Restitution" means financial reimbursement by the offender to
14 the victim, and shall be limited to easily ascertainable damages for
15 injury to or loss of property, actual expenses incurred for medical
16 treatment for physical injury to persons, lost wages resulting from
17 physical injury, and costs of the victim's counseling reasonably
18 related to the offense if the offense is a sex offense. Restitution
19 shall not include reimbursement for damages for mental anguish, pain
20 and suffering, or other intangible losses. Nothing in this chapter
21 shall limit or replace civil remedies or defenses available to the
22 victim or offender;

23 (22) "Secretary" means the secretary of the department of social
24 and health services;

25 (23) "Services" mean services which provide alternatives to
26 incarceration for those juveniles who have pleaded or been adjudicated
27 guilty of an offense or have signed a diversion agreement pursuant to
28 this chapter;

29 (24) "Sex offense" means an offense defined as a sex offense in RCW
30 9.94A.030;

31 (25) "Sexual motivation" means that one of the purposes for which
32 the respondent committed the offense was for the purpose of his or her
33 sexual gratification;

34 (26) "Foster care" means temporary physical care in a foster family
35 home or group care facility as defined in RCW 74.15.020 and licensed by
36 the department, or other legally authorized care;

37 (27) "Violation" means an act or omission, which if committed by an
38 adult, must be proven beyond a reasonable doubt, and is punishable by
39 sanctions which do not include incarceration.

1 **PART IX - DISCHARGE OF OFFENDERS**

2 **Sec. 901.** RCW 9.94A.220 and 1984 c 209 s 14 are each amended to
3 read as follows:

4 (1) When an offender has completed the requirements of the
5 sentence, the secretary of the department or ((his)) the secretary's
6 designee shall notify the sentencing court, which shall discharge the
7 offender and provide the offender with a certificate of discharge.

8 (2) An offender who is not convicted of a violent offense or a sex
9 offense and is sentenced to a term involving community supervision may
10 be considered for a discharge of sentence by the sentencing court prior
11 to the completion of community supervision, provided that the offender
12 has completed at least one-half of the term of community supervision
13 and has met all other sentence requirements.

14 (3) The discharge shall have the effect of restoring all civil
15 rights lost by operation of law upon conviction, and the certificate of
16 discharge shall so state. Nothing in this section prohibits the use of
17 an offender's prior record for purposes of determining sentences for
18 later offenses as provided in this chapter. Nothing in this section
19 affects or prevents use of the offender's prior conviction in a later
20 criminal prosecution either as an element of an offense or for
21 impeachment purposes. A certificate of discharge is not based on a
22 finding of rehabilitation.

23 (4) Upon release from custody, the offender may apply to the
24 department for counseling and help in adjusting to the community. This
25 voluntary help may be provided for up to one year following the release
26 from custody.

27 **PART X - SITING OF CORRECTIONAL FACILITIES**

28 **NEW SECTION. Sec. 1001.** A new section is added to chapter 72.65
29 RCW to read as follows:

30 (1) The department and other state agencies that have
31 responsibility for siting the department's facilities shall establish
32 a process for early and continuous public participation in establishing
33 or relocating work release or other community-based facilities. This
34 process shall include public meetings in the local communities
35 affected, opportunities for written and oral comments, and wide
36 dissemination of proposals and alternatives.

1 (2) The department may establish or relocate a work release or
2 other community-based facility only after holding local public meetings
3 and providing public notification to local communities consistent with
4 this chapter.

5 (3) When the department has selected three or fewer sites for final
6 consideration for site selection of a work release or other community-
7 based facility, notification shall be given and public hearings shall
8 be held in the final three or fewer local communities where the siting
9 is proposed. Additional notification and a public hearing shall also
10 be conducted in the local community selected as the final proposed
11 site, prior to completion of the siting process. All hearings and
12 notifications shall be consistent with this chapter.

13 (4) Throughout this process the department shall provide
14 notification to all newspapers of general circulation in the local area
15 and all local radio stations, television stations, and cable networks.

16 (5) Notice shall also be provided to appropriate school districts,
17 private schools, kindergartens, city and county libraries, and all
18 other local government offices within a one-half mile radius of the
19 proposed facility.

20 (6) In addition, the department shall also provide notice to the
21 local chamber of commerce, local economic development agencies, and any
22 other local organizations that request such notification from the
23 department.

24 (7) Notification in writing shall be provided to all residents
25 and/or property owners within a one-half mile radius of the proposed
26 site.

27 **PART XI - MISCELLANEOUS**

28 NEW SECTION. **Sec. 1101.** Section 1001 of this act shall take
29 effect July 1, 1994.

30 NEW SECTION. **Sec. 1102.** Part headings and the table of contents
31 as used in this act do not constitute any part of the law.

32 NEW SECTION. **Sec. 1103.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

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