1 6007-S AMH COR H4450.1

22

| 2 | SSB 6007 - H COMM AMD ADOPTED 3-3-94 By Committee on Corrections |
|----------|---|
| 4 | |
| 5 | Strike everything after the enacting clause and insert the |
| 6 | following: |
| 7 | "TABLE OF CONTENTS |
| | |
| 8 | PURPOSE |
| 9 | PART I - SENTENCING FOR ATTEMPTED MURDER |
| 10 | PART II - WITNESS INTIMIDATION/TAMPERING |
| 11 | PART III - CHILD MOLESTATION |
| 12 | PART IV - DNA IDENTIFICATION |
| 13 | PART V - TOXICOLOGIST AS WITNESS |
| 14 | PART VI - RESTITUTION |
| 15 | PART VII - BAIL JUMPING |
| 16 | PART VIII - MISCELLANEOUS |
| 17 | PURPOSE |
| _ , | |
| 18 | NEW SECTION. Sec. 1. The purpose of this act is to make certain |
| 19 20 | technical corrections and correct oversights discovered only after unanticipated circumstances have arisen. These changes are necessary |
| 21 | to give full expression to the original intent of the legislature. |

PART I - SENTENCING FOR ATTEMPTED MURDER

- 1 **Sec. 101.** RCW 9A.28.020 and 1981 c 203 s 3 are each amended to 2 read as follows:
- 3 (1) A person is guilty of an attempt to commit crime if, with 4 intent to commit a specific crime, he does any act which is a 5 substantial step toward the commission of that crime.
 - (2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.
 - (3) An attempt to commit a crime is a:

6

7

8

9

10

16

- 11 (a) Class A felony when the crime attempted is murder in the first 12 degree, murder in the second degree, or arson in the first degree;
- 13 (b) Class B felony when the crime attempted is a class A felony 14 other than murder in the first degree, murder in the second degree, or 15 arson in the first degree;
 - (c) Class C felony when the crime attempted is a class B felony;
- 17 (d) Gross misdemeanor when the crime attempted is a class C felony;
- 18 (e) Misdemeanor when the crime attempted is a gross misdemeanor or 19 misdemeanor.

20 PART II - WITNESS INTIMIDATION/TAMPERING

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

Further, the legislature finds that intimidating persons who have 25 26 information pertaining to a future proceeding serves to prevent both 27 the bringing of a charge and prosecution of such future proceeding. 28 The legislature finds that the period before a crime or child abuse or 29 neglect is reported is when a victim is most vulnerable to influence, 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 32 bribe, and/or persuade potential witnesses to leave the jurisdiction or withhold information from law enforcement agencies. 33

The legislature moreover finds that a criminal defendant's admonishment or demand to a witness to "drop the charges" is intimidating to witnesses or other persons with information relevant to 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
- (b) Induce that person to avoid legal process summoning him <u>or her</u>
- 16 to testify; or
- 17 (c) Induce that person to absent himself <u>or herself</u> from an
- 18 official proceeding to which he or she has been legally summoned; or
- 19 <u>(d) Induce that person to refrain from reporting information</u>
- 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 <u>abuse or neglect of a minor child</u> 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 <u>or her</u> 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 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 <u>or her</u> 16 to testify; or
- 17 (c) Induce that person to absent himself <u>or herself</u> from such 18 proceedings; <u>or</u>
- (d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to prosecute the crime or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal 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
 - (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 <u>or she</u>
 33 attempts to induce a witness or person he <u>or she</u> has reason to believe
 34 is about to be called as a witness in any official proceeding or a
 35 person whom he <u>or she</u> has reason to believe may have information
 36 relevant to a criminal investigation <u>or the abuse or neglect of a minor</u>
 37 child to:

- 1 (a) Testify falsely or, without right or privilege to do so, to 2 withhold any testimony; or
 - (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 <u>a minor child to the agency</u>.
 - (2) Tampering with a witness is a class C felony.

8 PART III - CHILD MOLESTATION

- 9 <u>NEW SECTION.</u> **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.

3

- 15 **Sec. 302.** RCW 9A.44.010 and 1993 c 477 s 1 are each amended to
- 16 read as follows:
- 17 As used in this chapter:
- 18 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
- 19 upon any penetration, however slight, and
- 20 (b) Also means any penetration of the vagina or anus however
- 21 slight, by an object, when committed on one person by another, whether
- 22 such persons are of the same or opposite sex, except when such
- 23 penetration is accomplished for medically recognized treatment or
- 24 diagnostic purposes, and
- 25 (c) Also means any act of sexual contact between persons involving
- 26 the sex organs of one person and the mouth or anus of another whether
- 27 such persons are of the same or opposite sex.
- 28 (2) "Sexual contact" means any touching of the sexual or other
- 29 intimate parts of a person done for the purpose of gratifying sexual
- 30 desire of either party or a third party.
- 31 (3) "Married" means one who is legally married to another, but does
- 32 not include a person who is living separate and apart from his or her
- 33 spouse and who has filed in an appropriate court for legal separation
- 34 or for dissolution of his or her marriage.
- 35 (4) "Mental incapacity" is that condition existing at the time of
- 36 the offense which prevents a person from understanding the nature or

- 1 consequences of the act of sexual intercourse whether that condition is
- 2 produced by illness, defect, the influence of a substance or from some
- 3 other cause.
- 4 (5) "Physically helpless" means a person who is unconscious or for
- 5 any other reason is physically unable to communicate unwillingness to
- 6 an act.
- 7 (6) "Forcible compulsion" means physical force which overcomes
- 8 resistance, or a threat, express or implied, that places a person in
- 9 fear of death or physical injury to herself or himself or another
- 10 person, or in fear that she or he or another person will be kidnapped.
- 11 (7) "Consent" means that at the time of the act of sexual
- 12 intercourse or sexual contact there are actual words or conduct
- 13 indicating freely given agreement to have sexual intercourse or sexual
- 14 contact.
- 15 (8) "Significant relationship" means a situation in which the
- 16 perpetrator is:
- 17 (a) A person who undertakes the responsibility, professionally or
- 18 voluntarily, to provide education, health, welfare, or organized
- 19 recreational activities principally for minors; or
- 20 (b) A person who in the course of his or her employment supervises
- 21 minors.
- 22 (9) "Abuse of a supervisory position" means a direct or indirect
- 23 threat or promise to use authority to the detriment or benefit of a
- 24 minor.
- 25 (10) "Developmentally disabled," for purposes of RCW
- 26 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
- 27 developmental disability as defined in RCW 71A.10.020.
- 28 (11) "Person with supervisory authority," for purposes of RCW
- 29 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any
- 30 proprietor or employee of any public or private care or treatment
- 31 facility who directly supervises developmentally disabled, mentally
- 32 disordered, or chemically dependent persons at the facility.
- 33 (12) "Mentally disordered person" for the purposes of RCW
- 34 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
- 35 disorder" as defined in RCW 71.05.020(2).
- 36 (13) "Chemically dependent person" for purposes of RCW
- 37 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
- 38 dependent as defined in RCW 70.96A.020(4).

- 1 (14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered or certified under chapter 18.19 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.
- 7 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means 8 the active delivery of professional services by a health care provider 9 which the health care provider holds himself or herself out to be 10 qualified to provide.
- 11 **Sec. 303.** RCW 9A.44.083 and 1990 c 3 s 902 are each amended to 12 read as follows:
- (1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.
- 18 (2) Child molestation in the first degree is a class A felony.
- 19 **Sec. 304.** RCW 9A.44.086 and 1988 c 145 s 6 are each amended to 20 read as follows:
- 21 (1) A person is guilty of child molestation in the second degree 22 when the person has, or knowingly causes another person under the age 23 of eighteen to have, sexual contact with another who is at least twelve 24 years old but less than fourteen years old and not married to the 25 perpetrator and the perpetrator is at least thirty-six months older 26 than the victim.
- 27 (2) Child molestation in the second degree is a class B felony.
- 28 **Sec. 305.** RCW 9A.44.089 and 1988 c 145 s 7 are each amended to 29 read as follows:
- 30 (1) A person is guilty of child molestation in the third 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 at least 33 fourteen years old but less than sixteen years old and not married to 34 the perpetrator and the perpetrator is at least forty-eight months 35 older than the victim.
- 36 (2) Child molestation in the third degree is a class C felony.

- 1 **Sec. 306.** RCW 9A.44.093 and 1988 c 145 s 8 are each amended to 2 read as follows:
- 3 (1) A person is guilty of sexual misconduct with a minor in the 4 first degree when the person has, or knowingly causes another person
- 5 <u>under the age of eighteen to have</u>, sexual intercourse with another
- 6 person who is at least sixteen years old but less than eighteen years
- 7 old and not married to the perpetrator, if the perpetrator is at least
- 8 sixty months older than the victim, is in a significant relationship to
- 9 the victim, and abuses a supervisory position within that relationship
- 10 in order to engage in or cause another person under the age of eighteen
- 11 to engage in sexual intercourse with the victim.
- 12 (2) Sexual misconduct with a minor in the first degree is a class
- 13 C felony.
- 14 Sec. 307. RCW 9A.44.096 and 1988 c 145 s 9 are each amended to
- 15 read as follows:
- 16 (1) A person is guilty of sexual misconduct with a minor in the
- 17 second degree when the person has, or knowingly causes another person
- 18 <u>under the age of eighteen to have</u>, sexual contact with another person
- 19 who is at least sixteen years old but less than eighteen years old and
- 20 not married to the perpetrator, if the perpetrator is at least sixty
- 21 months older than the victim, is in a significant relationship to the
- 22 victim, and abuses a supervisory position within that relationship in
- 23 order to engage in or cause another person under the age of eighteen to
- 24 engage in sexual contact with the victim.
- 25 (2) Sexual misconduct with a minor in the second degree is a gross
- 26 misdemeanor.

27 PART IV - DNA IDENTIFICATION

- 28 <u>NEW SECTION.</u> **Sec. 401.** The legislature finds that DNA
- 29 identification analysis is an accurate and useful law enforcement tool
- 30 for identifying and prosecuting sexual and violent offenders. The
- 31 legislature further finds no compelling reason to exclude juvenile
- 32 sexual and juvenile violent offenders from DNA identification analysis.
- 33 Sec. 402. RCW 43.43.754 and 1990 c 230 s 3 are each amended to
- 34 read as follows:

((After July 1, 1990,)) Every adult or juvenile individual 1 convicted ((in a Washington superior court)) of a felony or adjudicated 2 guilty of an equivalent juvenile offense defined as a sex offense under 3 4 RCW 9.94A.030($(\frac{(29)(a)}{a})$) (31)(a) or a violent offense as defined in RCW $9.94A.030((\frac{32}{32}))$ shall have a blood sample drawn for purposes of DNA 5 identification analysis. For persons convicted of such offenses 6 ((after July 1, 1990,)) or adjudicated quilty of an equivalent juvenile 7 8 offense who are serving a term of confinement in a county jail or 9 detention facility, the county shall be responsible for obtaining blood 10 samples prior to release from the county jail or detention facility. For persons convicted of such offenses ((after July 1, 1990)) or 11 adjudicated guilty of an equivalent juvenile offense, who are serving 12 13 a term of confinement in a department of corrections facility or a division of juvenile rehabilitation facility, the ((department)) 14 15 facility holding the person shall be responsible for obtaining blood 16 samples prior to release from such facility. Any blood sample taken pursuant to RCW 43.43.752 through 43.43.758 shall be used solely for 17 the purpose of providing DNA or other blood grouping tests for 18 19 identification analysis and prosecution of a sex offense or a violent 20 offense.

21 This section applies to all adults who are convicted after July 1, 22 1990. This section applies to all juveniles who are adjudicated guilty 23 after July 1, 1994.

PART V - TOXICOLOGIST AS WITNESS

24

27

28

29

30 31

32

25 **Sec. 501.** RCW 43.43.680 and 1992 c 129 s 1 are each amended to 26 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.
- 33 (2) The defendant or a prosecutor may subpoen the forensic 34 scientist who conducted the analysis of the substance to testify at the 35 preliminary hearing and trial of the issue at no cost to the defendant, 36 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.

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

PART VI - RESTITUTION

1

2

3 4

5

6 7

8

9

10

11

12

13 14

15

18

19 20

2122

2324

2526

27

28

29

30

3132

33

3435

3637

16 **Sec. 601.** RCW 9.94A.140 and 1989 c 252 s 5 are each amended to 17 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 an 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 The sentencing court may then reset the monthly for the change. 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 ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible

- losses, but may include the costs of counseling reasonably related to 1 the offense. The amount of restitution shall not exceed double the 2 amount of the offender's gain or the victim's loss from the commission 3 4 of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years 5 ((subsequent to the imposition of sentence)) following the offender's 6 7 release from total confinement or ten years subsequent to the entry of 8 the judgment and sentence, whichever period is longer. The portion of 9 the sentence concerning restitution may be modified as to amount, terms 10 and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the 11 statutory maximum for the crime. The offender's compliance with the 12 13 restitution shall be supervised by the department.
- (2) Restitution may be ordered whenever the offender is convicted 14 15 of an offense which results in injury to any person or damage to or 16 loss of property. In addition, restitution may be ordered to pay for 17 an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees 18 with the prosecutor's 19 recommendation that the offender be required to pay restitution to a 20 victim of an offense or offenses which are not prosecuted pursuant to a plea agreement. 21
 - (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.

22

2324

25

26

27

28

- 30 (4) This section does not limit civil remedies or defenses 31 available to the victim or defendant.
- 32 **Sec. 602.** RCW 9.94A.142 and 1989 c 252 s 6 are each amended to 33 read as follows:
- 34 (1) When restitution is ordered, the court shall determine the 35 amount of restitution due at the sentencing hearing or within sixty 36 days. The court shall then set a minimum monthly payment that the 37 offender is required to make towards the restitution that is ordered. 38 The court should take into consideration the total amount of the

restitution owed, the offender's present, past, and future ability to 1 2 pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine 3 4 the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. 5 community corrections officer may recommend a change to the schedule of 6 7 payment and shall inform the court of the recommended change and the 8 reasons for the change. The sentencing court may then reset the 9 monthly minimum payments based on the report from the community corrections officer of the change in circumstances. 10 ordered by a court pursuant to a criminal conviction shall be based on 11 easily ascertainable damages for injury to or loss of property, actual 12 13 expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for 14 15 damages for mental anguish, pain and suffering, or other intangible 16 losses, but may include the costs of counseling reasonably related to 17 the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission 18 19 of the crime. For the purposes of this section, the offender shall 20 remain under the court's jurisdiction for a maximum term of ten years ((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. 23 The portion of 24 the sentence concerning restitution may be modified as to amount, terms 25 and conditions during the ten-year period, regardless of the expiration 26 of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the 27 restitution shall be supervised by the department. 28

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall 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.

29

30

31

32

33

3435

3637

- 1 (3) In addition to any sentence that may be imposed, a defendant 2 who has been found guilty of an offense involving fraud or other 3 deceptive practice or an organization which has been found guilty of 4 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 6 public affected by the conviction or financially interested in the 7 subject matter of the offense by mail, by advertising in designated 8 areas or through designated media, or by other appropriate means.
- 9 (4) This section does not limit civil remedies or defenses 10 available to the victim, survivors of the victim, or defendant.
- 11 (5) This section shall apply to offenses committed after July 1, 12 1985.

13 PART VII - BAIL JUMPING

- 14 <u>NEW SECTION.</u> **Sec. 701.** RCW 10.19.130 and 1975 1st ex.s. c 2 s 1 15 are each repealed.
- 16 PART VIII MISCELLANEOUS
- NEW SECTION. **Sec. 801.** Part headings and the table of contents as used in this act do not constitute any part of the law."

--- END ---