

HOUSE BILL REPORT

SSB 6007

As Reported By House Committee On:
Corrections

Title: An act relating to crimes.

Brief Description: Revising provisions relating to crimes.

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

Brief History:

Reported by House Committee on:
Corrections, February 24, 1994, DPA.

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass as amended. Signed by 8 members: Representatives Morris, Chair; Mastin, Vice Chair; Long, Ranking Minority Member; G. Cole; L. Johnson; Moak; Ogden and Padden.

Staff: Rick Neidhardt (786-7841).

Background: The Washington Association of Prosecuting Attorneys proposes changes and clarifications to the following areas of criminal law:

Attempted Second Degree Murder. Under current law, attempted second degree murder is a Class B felony. Class B felonies have a maximum punishment of 10 years in prison.

A concern exists that a maximum confinement of 10 years is insufficient for this crime. For some offenders having previous criminal history, the 10-year maximum precludes any sentence within the standard range. Even for offenders with no previous history, the 10-year maximum punishment precludes sentencing at the upper end of the standard range.

By comparison, Class A felonies have a maximum punishment of imprisonment for life. The only attempted offenses that are currently classified as Class A felonies are attempted first degree murder and attempted first degree arson.

Witness Intimidation/Tampering/Bribing. Washington's criminal code has separate crimes that prohibit intimidating a witness, tampering with a witness, bribing a witness, and

accepting a bribe as a witness. These crimes are defined using much the same language. In general, all involve using improper means to influence a witness' testimony or to induce a witness to avoid legal requirements to testify.

The language used in defining these crimes suggests that they are limited to situations where a criminal investigation is already underway or has been completed. A concern exists that witnesses also need protection prior to the reporting of a crime as well as with regard to the reporting of child abuse or neglect.

Child Molestation and Sexual Misconduct. Under current law, the crimes of child molestation (first, second, and third degrees) and sexual misconduct with a minor (first and second degrees) prohibit sexual contact or sexual intercourse with a child under various circumstances.

To commit either crime, the perpetrator must have been directly involved in the sexual contact or sexual intercourse. Neither crime is committed by a person who, for his or her own sexual gratification, causes one child to have sexual intercourse or contact with another child.

DNA Identification. Under a current statute, blood samples are required to be drawn from sex offenders and violent offenders convicted in superior court. The blood is drawn for the purposes of DNA identification analysis or for conducting other blood grouping tests for identification analysis.

The statute does not expressly extend this same requirement to juveniles who have been adjudicated guilty of sex offenses or violent offenses in juvenile court.

Toxicologists as Witnesses in DWI Cases. Under a current court rule, individuals charged with DWI may require toxicologists to testify about the simulator solution used in alcohol breath tests. If the defendant does not give at least seven days notice prior to trial, the toxicologist need not testify and the court can instead rely on the toxicologist's certification of analysis.

It has been suggested that the seven-day notice period be lengthened due to the frequency with which defendants require the toxicologist to appear at trial but then do not call the toxicologist to the stand.

Restitution. Under the Sentencing Reform Act, the sentencing court retains jurisdiction over an offender for a 10-year period for purposes of monitoring restitution. Statutes within the Sentencing Reform Act are inconsistent

as to whether this period of jurisdiction begins to run upon the entry of the judgment and sentence or upon the offender's release from confinement.

Bail Jumping. Confusion has resulted from two statutes that separately address bail jumping.

One statute, RCW 9A.76.170, defines the crime broadly to include failing to appear in court in violation of a court order on release or on bail. The other statute, RCW 10.19.130, more narrowly addresses failing to appear in violation of a court order for release on personal recognizance.

The two statutes have different maximum punishments.

Summary of Amended Bill:

Attempted Second Degree Murder. Attempted murder in the second degree is reclassified as a Class A felony.

Witness Intimidation/Tampering/Bribing. The crimes of intimidating a witness, tampering with a witness, bribing a witness, and a witness accepting a bribe are defined more expansively. Each crime can be committed when a witness is induced to refrain from reporting information relevant to a criminal investigation or the abuse or neglect of a criminal child.

Child Molestation and Sexual Misconduct. The crimes of child molestation (first, second, and third degrees) and sexual misconduct with a minor (first and second degrees) are defined more expansively to include some situations where a person who, for his or her own sexual gratification, knowingly causes one child to engage in sexual activity with another child.

DNA Identification. Juveniles who have been adjudicated guilty of sex offenses or violent offenses in juvenile court shall have their blood drawn for purposes of DNA identification analysis and other analyses based on blood group testing.

Toxicologists as Witnesses. A defendant in a DWI trial must give at least 30 days' notice prior to subpoenaing the toxicologist who analyzed or certified a simulator solution used in the defendant's alcohol/breath test.

Restitution. Jurisdiction over an offender, for purposes of restitution, exists for a period of 10 years after either (1) the imposition of the judgment and sentence or (2) the

offender's release from total confinement, whichever period is longer.

Bail Jumping. RCW 10.19.130 is repealed. Bail jumping will be governed instead by the broader provisions of RCW 9A.76.170.

Amended Bill Compared to Substitute Bill: The amended bill makes two technical changes to the substitute bill. With respect to DNA identification testing, the amended bill deletes language that is inconsistent with the effective date of July 1, 1994, that the bill establishes for juvenile blood testing. With respect to restitution, the amended bill adds a new section that makes the same change to RCW 9.94A.142(1) that the substitute bill already made to RCW 9.94A.140(1).

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The crime of attempted murder in the second degree is not currently being charged because the 10-year maximum penalty sometimes precludes imposing sentences within the standard range. Prosecutors are instead charging first degree assault. Current law regarding witness tampering/intimidating does not protect witnesses prior to their reporting a crime or witnesses reporting child abuse or neglect. There was a case in King County where an adult caused one child to have sexual contact with another child. Juveniles' DNA identification information should be included in law enforcement databanks, because juveniles commit a large percentage of the sexual offenses. The Washington state toxicologist receives 10,000 subpoenas per year. Some defense counsel routinely require the simulator solution toxicologist to appear at trial, for if the toxicologist does not show up for the trial the judge can suppress the breath test results.

Testimony Against: A concern exists regarding elevating attempted second degree murder to a Class A felony because it would then have the same classification as more serious crimes. The bill's expansion of the crime of intimidating a witness, and the other related crimes, results in uncertainty as to the application of certain privileges. The additional 30-day notice period for DWI toxicologists causes an unfair burden on the defendant and impairs the defendant's right to compulsory process. The 30-day notice will also require more continuances. If the toxicologist does not show up at trial, the judge is not required to suppress test results, but can instead order a continuance.

Witnesses: Judy McCauley, Washington Association of Prosecuting Attorneys (pro); Tom McBride, Washington Association of Prosecuting Attorneys (pro); Dr. Barry Logan, Washington State Toxicology Lab (pro); Pat Sainsbury, King County, Washington Association of Prosecuting Attorneys (in favor of amendment authorizing Department of Revenue to disclose tax information to prosecutors); Russ Brubaker, Washington State Department of Revenue (in favor of amendment authorizing Department of Revenue to disclose tax information to prosecutors); and Sherry Appleton, Washington Defense Attorneys and Washington Association of Criminal Defense Lawyers (with concerns as to parts I and II of this bill; opposed to part V).