

SENATE BILL REPORT

SB 5069

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 4, 1993

Brief Description: Revising provisions relating to crimes.

SPONSORS: Senators A. Smith, Nelson, McCaslin, Quigley and Erwin

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5069 be substituted therefor, and the substitute bill do pass.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, McCaslin, Nelson, Niemi, Roach, and Spanel.

Staff: Susan Carlson (786-7418)

Hearing Dates: January 20, 1993; February 4, 1993

BACKGROUND:

Since the enactment of certain criminal provisions, some issues and factual situations have arisen which were not anticipated. The Washington Association of Prosecuting Attorneys has proposed legislation to address some of these issues.

Exceptional Sentences: In 1991, the Washington Supreme Court held that under the Sentencing Reform Act, future dangerousness cannot be used to justify an exceptional sentence for a defendant convicted of a nonsexual crime. The court stated that this was a policy issue to be addressed by the Legislature.

Child Molestation: Factual situations have arisen in which an adult has ordered a child to molest another child for the adult's gratification. Such activity would not be a violation of the current child molestation statutes.

Witness Intimidation and Tampering: Witness intimidation and tampering is a particular problem in cases of child abuse and neglect because just prior to reporting the victim is often most vulnerable to influence from the defendant or others. It has been suggested that these statutes should be amended to specifically reference reporting of information about a crime or about child abuse and neglect cases.

DNA Identification: In 1989, the Legislature provided that any individual convicted of a felony sex or violent offense must have a blood sample drawn for purposes of DNA identification analysis. It has been proposed that this provision be extended to juveniles convicted of equivalent offenses.

Toxicologist as Witness: Under court rules, the state toxicologist can be required to appear in court to testify about the simulator solution used in the DataMaster breath test instrument if requested to appear at least seven days before trial. This results in numerous requests for the appearance of the toxicologist. Upon appearance, however, the defense often stipulates to admission of a certificate and testimony is not taken from the toxicologist. It has been suggested that the defendant have the obligation of issuing a subpoena for the toxicologist.

Restitution: Statutes in the Sentencing Reform Act conflict on whether an offender remains under the court's jurisdiction for restitution monitoring for 10 years from the imposition of sentence or 10 years from release from total confinement.

Bail Jumping: Separate statutes defining the crime of bail jumping have created confusion. It is proposed that the comprehensive statute found in the criminal code be retained, and the other provision which applies only to failure to appear after release on personal recognizance be repealed.

SUMMARY:

Exceptional Sentences: The court may impose an exceptional sentence if the defendant is convicted of an offense involving the use or threatened use of physical force and the court finds the defendant poses a future danger which is not sufficiently mitigated by incarceration within the standard range. This finding must be supported by a history of similar misconduct, and a finding that the defendant is not amenable to treatment. Lack of amenability to treatment can be based on the opinion of a mental health professional, ineligibility for treatment at all available facilities, the defendant's refusal to cooperate with evaluations, or commission of the current offense less than six months after release from incarceration for a similar offense.

Witness Intimidation/Tampering: The crimes of bribing, intimidating a witness, and tampering with a witness include inducing a person to refrain from reporting information relevant to a criminal investigation or the abuse or neglect of a minor child.

Child Molestation: The crimes of child molestation first, second, and third degree and sexual misconduct with a minor first and second degree include knowingly causing another person to have sexual contact with a minor child.

DNA Identification: Juveniles found guilty of a sex offense or a violent offense are required to have a blood sample drawn for purposes of DNA identification analysis. For juveniles convicted of such offenses since July 1, 1990, who remain incarcerated, the local or state facility is required to obtain the blood sample prior to the juveniles release from the facility.

Toxicologist as Witness: The defendant may subpoena the toxicologist who conducts the analysis of the simulator solution used in the BAC verifier DataMaster breath test if the defendant gives the state toxicologist notice of his intention to do so at least 30 days prior to issuing a subpoena.

Restitution: For purposes of monitoring payment of restitution, felony offenders remain under the court's jurisdiction for a maximum of 10 years from release from total confinement or 10 years subsequent to the entry of the judgment and sentence, whichever period is longer.

Bail Jumping: The statute providing a criminal penalty for failure to appear before the court after release on personal recognizance is repealed.

EFFECT OF PROPOSED SUBSTITUTE:

The exceptional sentences section is stricken. The findings in the witness intimidation and child molestation sections are replaced with a short statement of legislative intent.

The crime of child molestation is committed by causing a person under the age of 18 to have sexual contact with another child. The DNA identification section applies to all persons convicted or in custody as of the effective date of the act.

Appropriation: none

Revenue: none

Fiscal Note: requested January 12, 1993

TESTIMONY FOR:

The bill makes needed clarifying and substantive changes to various sections of the criminal law.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Donald Brockett, Spokane County Prosecuting Attorney; Dr. Barry Logan, State Toxicologist; Jeff Sullivan, Yakima County Prosecuting Attorney