

# SENATE BILL REPORT

## HB 1182

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As of March 9, 2011

**Title:** An act relating to the unit of prosecution for tampering with or intimidating a witness.

**Brief Description:** Clarifying that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under tampering with or intimidating a witness statutes.

**Sponsors:** Representatives Goodman, Ross, Kirby, Johnson, Hope, Hurst, Kelley, Maxwell, Frockt, Klippert, Liias, Miloscia, Moscoso, Pearson, Billig, Warnick and Ladenburg.

**Brief History:** Passed House: 2/14/11, 93-0.

**Committee Activity:** Judiciary: 3/09/11.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Juliana Roe (786-7438)

**Background:** A person is guilty of Intimidating a Witness if the person uses a threat to attempt to influence a witness's testimony, induce a witness to absent him or herself from proceedings, induce a person not to report information relevant to a criminal investigation or child abuse, or induce a person not to have a crime or abuse prosecuted. Intimidating a Witness is a class B felony with a seriousness level of VI.

A person is guilty of Tampering with a Witness if the person attempts to induce a witness to testify falsely, absent him or herself from proceedings, or withhold information from law enforcement or an agency that is relevant to a criminal investigation or child abuse. Tampering with a Witness is a class C felony with a seriousness level of III.

The Washington Supreme Court (Court) recently determined that where a defendant makes multiple phone calls to induce a single witness not to testify, the prosecutor may charge the defendant with one count of Tampering with a Witness. The Court determined that the unit of prosecution is the ongoing attempt to persuade the witness not to testify.

**Summary of Bill:** For the offenses of Intimidating a Witness and Tampering with a Witness, each instance of an attempt to intimidate or tamper with a witness constitutes a separate offense.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Appropriation:** None.

**Fiscal Note:** Requested on March 1, 2011.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill applies to cases involving, but not limited to, domestic violence and gang cases. Offenders often attempt to intimidate witnesses in order to stop them from testifying. These attempts can be quite serious. The way the law stands now, no matter how many times the offender attempts to tamper with the witness, it is only considered one count of tampering.

This bill will restore the court's ability to punish a person for tampering with a witness. The offenders should have to play fair. If the law remains as it is, the offender has no incentive to stop tampering with witnesses and face no additional penalty for continuing to tamper with witnesses. In one particularly egregious case the prosecution collected twenty hours of recorded telephone calls in which the offender is tampering with the witness. However, the prosecution could only charge the offender with one count.

CON: This bill will allow prosecutors to overcharge. Our state is in an economic crisis. If prosecutors overcharge and those the resulting convictions obtain significant prison terms, the state will be taxed with more prison costs. This is an abuse that contributes to the problems in our justice system. Judges already have tools to deal with this issue. Judges can impose exceptional sentences. This bill takes discretion away from judges.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Adrienne McCoy, King County Prosecutor's Office.

CON: Shankar Narayan, ACLU.