

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2400

Chapter 176, Laws of 2004

(partial veto)

58th Legislature
2004 Regular Session

SEX CRIMES AGAINST MINORS--SENTENCE ENHANCEMENTS

EFFECTIVE DATE: 6/10/04 - Except sections 2 through 6, which
become effective 7/1/05

Passed by the House March 10, 2004
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 10, 2004
Yeas 40 Nays 7

BRAD OWEN

President of the Senate

Approved March 26, 2004, with the
exception of section 1, which is vetoed.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk
of the House of Representatives of
the State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE HOUSE BILL
2400** as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 26, 2004 - 4:34 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2400

AS AMENDED BY THE SENATE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives McMahan, Carrell, Mielke, Talcott, Crouse, Bush, Ahern, Newhouse, G. Simpson, Woods and Orcutt)

READ FIRST TIME 03/02/04.

1 AN ACT Relating to sentence enhancement for sex crimes against
2 minors; amending RCW 9.94A.670, 9.92.151, and 9.94A.728; reenacting RCW
3 9.94A.515 and 9.94A.712; creating new sections; prescribing penalties;
4 and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 ****NEW SECTION. Sec. 1. (1) The legislature finds that sex offenses***
7 ***against children are among the most heinous of crimes and that the***
8 ***legislature has a paramount duty to protect children from victimization***
9 ***by sex offenders. Sentencing policy in Washington state should ensure***
10 ***that punishment of sex offenders is pursued to the extent that such***
11 ***punishment does not jeopardize the safety of children or hinder the***
12 ***successful prosecution of sex offenses against children.***

13 ***The legislature finds that offenders with the most serious sex***
14 ***offenses against children including, but not limited to, rape in the***
15 ***first and second degree, rape of a child in the first and second***
16 ***degree, child molestation in the first degree, indecent liberties with***
17 ***forcible compulsion, and kidnapping in the first or second degree with***
18 ***a sexual motivation should be subject to life sentences. The***
19 ***legislature finds that since September of 2001, these and other most***

1 serious sex offenses have been subject to life sentences under a
2 determinate-plus sentencing structure. Those offenders who are more
3 likely than not to reoffend are kept in prison and those who present a
4 low risk to reoffend are released under supervision for the remainder
5 of their life and may be reincarcerated for serious violations that do
6 not constitute a new sex offense. The legislature further finds that
7 persons subject to determinate-plus sentencing who receive a special
8 sex offender sentencing alternative sentence that is subsequently
9 revoked are subject to life sentences as if they had not received a
10 sentencing alternative. The legislature also finds that these
11 offenders' failure in treatment is likely to make it harder for them to
12 receive a release from prison to lifetime community custody. The
13 legislature intends to reiterate its commitment to life sentences for
14 these offenders by reenacting the law on seriousness levels of offenses
15 and determinate-plus sentencing that sets the minimum sentence levels
16 for these offenders.

17 (2) The legislature also finds that the special sex offender
18 sentencing alternative was enacted in 1984 to protect victims of sexual
19 assault. A 1991 evaluation of the effectiveness of the sentencing
20 alternative concluded that it accurately selected sex offenders who,
21 with supervision and treatment, reoffend at lower rates and that the
22 use of the sentencing alternative does not increase risk to the
23 community. Today, strong support for the special sex offender
24 sentencing alternative continues among advocates for children who are
25 victims of sexual assault and prosecutors who prosecute sex offenses
26 against children.

27 (3) The legislature further finds that several weaknesses in the
28 structure and administration of the special sex offender sentencing
29 alternative have been identified and should be addressed. In addition,
30 a comprehensive analysis and evaluation of the special sex offender
31 sentencing alternative is needed to ensure that efforts to reform the
32 sentencing alternative do not result in jeopardizing the safety of
33 children or hindering the successful prosecution of sex offenses
34 against children.

35 (4) The legislature intends to protect children from victimization
36 by sex offenders by taking immediate action to make changes in the
37 special sex offender sentencing alternative to address perceived

1 *weaknesses in the program, and thoroughly evaluating its effectiveness*
2 *to determine whether additional changes are needed to further increase*
3 *the protection of children from victimization by sex offenders.*
*Sec. 1 was vetoed. See message at end of chapter.

4 **Sec. 2.** RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c
5 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52
6 s 4 are each reenacted to read as follows:

7 TABLE 2

8 CRIMES INCLUDED WITHIN
9 EACH SERIOUSNESS LEVEL

- 10 XVI Aggravated Murder 1 (RCW
11 10.95.020)
- 12 XV Homicide by abuse (RCW 9A.32.055)
13 Malicious explosion 1 (RCW
14 70.74.280(1))
15 Murder 1 (RCW 9A.32.030)
- 16 XIV Murder 2 (RCW 9A.32.050)
17 Trafficking 1 (RCW 9A.40.100(1))
- 18 XIII Malicious explosion 2 (RCW
19 70.74.280(2))
20 Malicious placement of an explosive 1
21 (RCW 70.74.270(1))
- 22 XII Assault 1 (RCW 9A.36.011)
23 Assault of a Child 1 (RCW 9A.36.120)
24 Malicious placement of an imitation
25 device 1 (RCW 70.74.272(1)(a))
26 Rape 1 (RCW 9A.44.040)
27 Rape of a Child 1 (RCW 9A.44.073)
28 Trafficking 2 (RCW 9A.40.100(2))
- 29 XI Manslaughter 1 (RCW 9A.32.060)
30 Rape 2 (RCW 9A.44.050)
31 Rape of a Child 2 (RCW 9A.44.076)
- 32 X Child Molestation 1 (RCW 9A.44.083)
33 Indecent Liberties (with forcible
34 compulsion) (RCW
35 9A.44.100(1)(a))

1 Kidnapping 1 (RCW 9A.40.020)
2 Leading Organized Crime (RCW
3 9A.82.060(1)(a))
4 Malicious explosion 3 (RCW
5 70.74.280(3))
6 Sexually Violent Predator Escape
7 (RCW 9A.76.115)
8 IX Assault of a Child 2 (RCW 9A.36.130)
9 Explosive devices prohibited (RCW
10 70.74.180)
11 Hit and Run--Death (RCW
12 46.52.020(4)(a))
13 Homicide by Watercraft, by being
14 under the influence of intoxicating
15 liquor or any drug (RCW
16 79A.60.050)
17 Inciting Criminal Profiteering (RCW
18 9A.82.060(1)(b))
19 Malicious placement of an explosive 2
20 (RCW 70.74.270(2))
21 Robbery 1 (RCW 9A.56.200)
22 Sexual Exploitation (RCW 9.68A.040)
23 Vehicular Homicide, by being under
24 the influence of intoxicating
25 liquor or any drug (RCW
26 46.61.520)
27 VIII Arson 1 (RCW 9A.48.020)
28 Homicide by Watercraft, by the
29 operation of any vessel in a
30 reckless manner (RCW
31 79A.60.050)
32 Manslaughter 2 (RCW 9A.32.070)
33 Promoting Prostitution 1 (RCW
34 9A.88.070)
35 Theft of Ammonia (RCW 69.55.010)

1 Vehicular Homicide, by the operation
2 of any vehicle in a reckless
3 manner (RCW 46.61.520)
4 VII Burglary 1 (RCW 9A.52.020)
5 Child Molestation 2 (RCW 9A.44.086)
6 Civil Disorder Training (RCW
7 9A.48.120)
8 Dealing in depictions of minor
9 engaged in sexually explicit
10 conduct (RCW 9.68A.050)
11 Drive-by Shooting (RCW 9A.36.045)
12 Homicide by Watercraft, by disregard
13 for the safety of others (RCW
14 79A.60.050)
15 Indecent Liberties (without forcible
16 compulsion) (RCW 9A.44.100(1)
17 (b) and (c))
18 Introducing Contraband 1 (RCW
19 9A.76.140)
20 Malicious placement of an explosive 3
21 (RCW 70.74.270(3))
22 Sending, bringing into state depictions
23 of minor engaged in sexually
24 explicit conduct (RCW
25 9.68A.060)
26 Unlawful Possession of a Firearm in
27 the first degree (RCW
28 9.41.040(1))
29 Use of a Machine Gun in Commission
30 of a Felony (RCW 9.41.225)
31 Vehicular Homicide, by disregard for
32 the safety of others (RCW
33 46.61.520)
34 VI Bail Jumping with Murder 1 (RCW
35 9A.76.170(3)(a))
36 Bribery (RCW 9A.68.010)
37 Incest 1 (RCW 9A.64.020(1))

1 Intimidating a Judge (RCW
2 9A.72.160)
3 Intimidating a Juror/Witness (RCW
4 9A.72.110, 9A.72.130)
5 Malicious placement of an imitation
6 device 2 (RCW 70.74.272(1)(b))
7 Rape of a Child 3 (RCW 9A.44.079)
8 Theft of a Firearm (RCW 9A.56.300)
9 Unlawful Storage of Ammonia (RCW
10 69.55.020)
11 V Abandonment of dependent person 1
12 (RCW 9A.42.060)
13 Advancing money or property for
14 extortionate extension of credit
15 (RCW 9A.82.030)
16 Bail Jumping with class A Felony
17 (RCW 9A.76.170(3)(b))
18 Child Molestation 3 (RCW 9A.44.089)
19 Criminal Mistreatment 1 (RCW
20 9A.42.020)
21 Custodial Sexual Misconduct 1 (RCW
22 9A.44.160)
23 Domestic Violence Court Order
24 Violation (RCW 10.99.040,
25 10.99.050, 26.09.300, 26.10.220,
26 26.26.138, 26.50.110, 26.52.070,
27 or 74.34.145)
28 Extortion 1 (RCW 9A.56.120)
29 Extortionate Extension of Credit
30 (RCW 9A.82.020)
31 Extortionate Means to Collect
32 Extensions of Credit (RCW
33 9A.82.040)
34 Incest 2 (RCW 9A.64.020(2))
35 Kidnapping 2 (RCW 9A.40.030)
36 Perjury 1 (RCW 9A.72.020)

1 Persistent prison misbehavior (RCW
2 9.94.070)
3 Possession of a Stolen Firearm (RCW
4 9A.56.310)
5 Rape 3 (RCW 9A.44.060)
6 Rendering Criminal Assistance 1
7 (RCW 9A.76.070)
8 Sexual Misconduct with a Minor 1
9 (RCW 9A.44.093)
10 Sexually Violating Human Remains
11 (RCW 9A.44.105)
12 Stalking (RCW 9A.46.110)
13 Taking Motor Vehicle Without
14 Permission 1 (RCW 9A.56.070)
15 IV Arson 2 (RCW 9A.48.030)
16 Assault 2 (RCW 9A.36.021)
17 Assault by Watercraft (RCW
18 79A.60.060)
19 Bribing a Witness/Bribe Received by
20 Witness (RCW 9A.72.090,
21 9A.72.100)
22 Cheating 1 (RCW 9.46.1961)
23 Commercial Bribery (RCW
24 9A.68.060)
25 Counterfeiting (RCW 9.16.035(4))
26 Endangerment with a Controlled
27 Substance (RCW 9A.42.100)
28 Escape 1 (RCW 9A.76.110)
29 Hit and Run--Injury (RCW
30 46.52.020(4)(b))
31 Hit and Run with Vessel--Injury
32 Accident (RCW 79A.60.200(3))
33 Identity Theft 1 (RCW 9.35.020(2))
34 Indecent Exposure to Person Under
35 Age Fourteen (subsequent sex
36 offense) (RCW 9A.88.010)

1 Influencing Outcome of Sporting
2 Event (RCW 9A.82.070)
3 Malicious Harassment (RCW
4 9A.36.080)
5 Residential Burglary (RCW
6 9A.52.025)
7 Robbery 2 (RCW 9A.56.210)
8 Theft of Livestock 1 (RCW 9A.56.080)
9 Threats to Bomb (RCW 9.61.160)
10 Trafficking in Stolen Property 1 (RCW
11 9A.82.050)
12 Unlawful factoring of a credit card or
13 payment card transaction (RCW
14 9A.56.290(4)(b))
15 Unlawful transaction of health
16 coverage as a health care service
17 contractor (RCW 48.44.016(3))
18 Unlawful transaction of health
19 coverage as a health maintenance
20 organization (RCW 48.46.033(3))
21 Unlawful transaction of insurance
22 business (RCW 48.15.023(3))
23 Unlicensed practice as an insurance
24 professional (RCW 48.17.063(3))
25 Use of Proceeds of Criminal
26 Profiteering (RCW 9A.82.080 (1)
27 and (2))
28 Vehicular Assault, by being under the
29 influence of intoxicating liquor or
30 any drug, or by the operation or
31 driving of a vehicle in a reckless
32 manner (RCW 46.61.522)
33 Willful Failure to Return from
34 Furlough (RCW 72.66.060)
35 III Abandonment of dependent person 2
36 (RCW 9A.42.070)
37 Assault 3 (RCW 9A.36.031)

1 Assault of a Child 3 (RCW 9A.36.140)
2 Bail Jumping with class B or C Felony
3 (RCW 9A.76.170(3)(c))
4 Burglary 2 (RCW 9A.52.030)
5 Communication with a Minor for
6 Immoral Purposes (RCW
7 9.68A.090)
8 Criminal Gang Intimidation (RCW
9 9A.46.120)
10 Criminal Mistreatment 2 (RCW
11 9A.42.030)
12 Custodial Assault (RCW 9A.36.100)
13 Escape 2 (RCW 9A.76.120)
14 Extortion 2 (RCW 9A.56.130)
15 Harassment (RCW 9A.46.020)
16 Intimidating a Public Servant (RCW
17 9A.76.180)
18 Introducing Contraband 2 (RCW
19 9A.76.150)
20 Malicious Injury to Railroad Property
21 (RCW 81.60.070)
22 Patronizing a Juvenile Prostitute
23 (RCW 9.68A.100)
24 Perjury 2 (RCW 9A.72.030)
25 Possession of Incendiary Device (RCW
26 9.40.120)
27 Possession of Machine Gun or Short-
28 Barreled Shotgun or Rifle (RCW
29 9.41.190)
30 Promoting Prostitution 2 (RCW
31 9A.88.080)
32 Securities Act violation (RCW
33 21.20.400)
34 Tampering with a Witness (RCW
35 9A.72.120)

1 Telephone Harassment (subsequent
2 conviction or threat of death)
3 (RCW 9.61.230(2))
4 Theft of Livestock 2 (RCW 9A.56.083)
5 Trafficking in Stolen Property 2 (RCW
6 9A.82.055)
7 Unlawful Imprisonment (RCW
8 9A.40.040)
9 Unlawful possession of firearm in the
10 second degree (RCW 9.41.040(2))
11 Vehicular Assault, by the operation or
12 driving of a vehicle with disregard
13 for the safety of others (RCW
14 46.61.522)
15 Willful Failure to Return from Work
16 Release (RCW 72.65.070)
17 II Computer Trespass 1 (RCW
18 9A.52.110)
19 Counterfeiting (RCW 9.16.035(3))
20 Escape from Community Custody
21 (RCW 72.09.310)
22 Health Care False Claims (RCW
23 48.80.030)
24 Identity Theft 2 (RCW 9.35.020(3))
25 Improperly Obtaining Financial
26 Information (RCW 9.35.010)
27 Malicious Mischief 1 (RCW
28 9A.48.070)
29 Possession of Stolen Property 1 (RCW
30 9A.56.150)
31 Theft 1 (RCW 9A.56.030)
32 Theft of Rental, Leased, or Lease-
33 purchased Property (valued at one
34 thousand five hundred dollars or
35 more) (RCW 9A.56.096(5)(a))
36 Trafficking in Insurance Claims (RCW
37 48.30A.015)

1 Unlawful factoring of a credit card or
2 payment card transaction (RCW
3 9A.56.290(4)(a))
4 Unlawful Practice of Law (RCW
5 2.48.180)
6 Unlicensed Practice of a Profession or
7 Business (RCW 18.130.190(7))
8 I Attempting to Elude a Pursuing Police
9 Vehicle (RCW 46.61.024)
10 False Verification for Welfare (RCW
11 74.08.055)
12 Forgery (RCW 9A.60.020)
13 Fraudulent Creation or Revocation of a
14 Mental Health Advance Directive
15 (RCW 9A.60.060)
16 Malicious Mischief 2 (RCW
17 9A.48.080)
18 Mineral Trespass (RCW 78.44.330)
19 Possession of Stolen Property 2 (RCW
20 9A.56.160)
21 Reckless Burning 1 (RCW 9A.48.040)
22 Taking Motor Vehicle Without
23 Permission 2 (RCW 9A.56.075)
24 Theft 2 (RCW 9A.56.040)
25 Theft of Rental, Leased, or Lease-
26 purchased Property (valued at two
27 hundred fifty dollars or more but
28 less than one thousand five
29 hundred dollars) (RCW
30 9A.56.096(5)(b))
31 Transaction of insurance business
32 beyond the scope of licensure
33 (RCW 48.17.063(4))
34 Unlawful Issuance of Checks or Drafts
35 (RCW 9A.56.060)
36 Unlawful Possession of Fictitious
37 Identification (RCW 9A.56.320)

1 Unlawful Possession of Instruments of
2 Financial Fraud (RCW
3 9A.56.320)
4 Unlawful Possession of Payment
5 Instruments (RCW 9A.56.320)
6 Unlawful Possession of a Personal
7 Identification Device (RCW
8 9A.56.320)
9 Unlawful Production of Payment
10 Instruments (RCW 9A.56.320)
11 Unlawful Trafficking in Food Stamps
12 (RCW 9.91.142)
13 Unlawful Use of Food Stamps (RCW
14 9.91.144)
15 Vehicle Prowl 1 (RCW 9A.52.095)

16 **Sec. 3.** RCW 9.94A.712 and 2001 2nd sp.s. c 12 s 303 are each
17 reenacted to read as follows:

18 (1) An offender who is not a persistent offender shall be sentenced
19 under this section if the offender:

20 (a) Is convicted of:

21 (i) Rape in the first degree, rape in the second degree, rape of a
22 child in the first degree, child molestation in the first degree, rape
23 of a child in the second degree, or indecent liberties by forcible
24 compulsion;

25 (ii) Any of the following offenses with a finding of sexual
26 motivation: Murder in the first degree, murder in the second degree,
27 homicide by abuse, kidnapping in the first degree, kidnapping in the
28 second degree, assault in the first degree, assault in the second
29 degree, assault of a child in the first degree, or burglary in the
30 first degree; or

31 (iii) An attempt to commit any crime listed in this subsection
32 (1)(a);
33 committed on or after September 1, 2001; or

34 (b) Has a prior conviction for an offense listed in RCW
35 9.94A.030(32)(b), and is convicted of any sex offense which was
36 committed after September 1, 2001.

1 For purposes of this subsection (1)(b), failure to register is not
2 a sex offense.

3 (2) An offender convicted of rape of a child in the first or second
4 degree or child molestation in the first degree who was seventeen years
5 of age or younger at the time of the offense shall not be sentenced
6 under this section.

7 (3) Upon a finding that the offender is subject to sentencing under
8 this section, the court shall impose a sentence to a maximum term
9 consisting of the statutory maximum sentence for the offense and a
10 minimum term either within the standard sentence range for the offense,
11 or outside the standard sentence range pursuant to RCW 9.94A.535, if
12 the offender is otherwise eligible for such a sentence.

13 (4) A person sentenced under subsection (3) of this section shall
14 serve the sentence in a facility or institution operated, or utilized
15 under contract, by the state.

16 (5) When a court sentences a person to the custody of the
17 department under this section, the court shall, in addition to the
18 other terms of the sentence, sentence the offender to community custody
19 under the supervision of the department and the authority of the board
20 for any period of time the person is released from total confinement
21 before the expiration of the maximum sentence.

22 (6)(a) Unless a condition is waived by the court, the conditions of
23 community custody shall include those provided for in RCW 9.94A.700(4).
24 The conditions may also include those provided for in RCW 9.94A.700(5).
25 The court may also order the offender to participate in rehabilitative
26 programs or otherwise perform affirmative conduct reasonably related to
27 the circumstances of the offense, the offender's risk of reoffending,
28 or the safety of the community, and the department and the board shall
29 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
30 9.95.430.

31 (b) As part of any sentence under this section, the court shall
32 also require the offender to comply with any conditions imposed by the
33 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

34 **Sec. 4.** RCW 9.94A.670 and 2002 c 175 s 11 are each amended to read
35 as follows:

36 (1) Unless the context clearly requires otherwise, the definitions
37 in this subsection apply to this section only.

1 (a) "Sex offender treatment provider" or "treatment provider" means
2 a certified sex offender treatment provider as defined in RCW
3 18.155.020.

4 (b) "Substantial bodily harm" means bodily injury that involves a
5 temporary but substantial disfigurement, or that causes a temporary but
6 substantial loss or impairment of the function of any body part or
7 organ, or that causes a fracture of any body part or organ.

8 (c) "Victim" means any person who has sustained emotional,
9 psychological, physical, or financial injury to person or property as
10 a result of the crime charged. "Victim" also means a parent or
11 guardian of a victim who is a minor child unless the parent or guardian
12 is the perpetrator of the offense.

13 (2) An offender is eligible for the special sex offender sentencing
14 alternative if:

15 (a) The offender has been convicted of a sex offense other than a
16 violation of RCW 9A.44.050 or a sex offense that is also a serious
17 violent offense;

18 (b) The offender has no prior convictions for a sex offense as
19 defined in RCW 9.94A.030 or any other felony sex offenses in this or
20 any other state; (~~and~~)

21 (c) The offender has no prior adult convictions for a violent
22 offense that was committed within five years of the date the current
23 offense was committed;

24 (d) The offense did not result in substantial bodily harm to the
25 victim;

26 (e) The offender had an established relationship with, or
27 connection to, the victim such that the sole connection with the victim
28 was not the commission of the crime; and

29 (f) The offender's standard sentence range for the offense includes
30 the possibility of confinement for less than eleven years.

31 (3) If the court finds the offender is eligible for this
32 alternative, the court, on its own motion or the motion of the state or
33 the offender, may order an examination to determine whether the
34 offender is amenable to treatment.

35 (a) The report of the examination shall include at a minimum the
36 following:

37 (i) The offender's version of the facts and the official version of
38 the facts;

1 (ii) The offender's offense history;

2 (iii) An assessment of problems in addition to alleged deviant
3 behaviors;

4 (iv) The offender's social and employment situation; and

5 (v) Other evaluation measures used.

6 The report shall set forth the sources of the examiner's
7 information.

8 (b) The examiner shall assess and report regarding the offender's
9 amenability to treatment and relative risk to the community. A
10 proposed treatment plan shall be provided and shall include, at a
11 minimum:

12 (i) Frequency and type of contact between offender and therapist;

13 (ii) Specific issues to be addressed in the treatment and
14 description of planned treatment modalities;

15 (iii) Monitoring plans, including any requirements regarding living
16 conditions, lifestyle requirements, and monitoring by family members
17 and others;

18 (iv) Anticipated length of treatment; and

19 (v) Recommended crime-related prohibitions and affirmative
20 conditions, which must include, to the extent known, an identification
21 of specific activities or behaviors that are precursors to the
22 offender's offense cycle, including, but not limited to, activities or
23 behaviors such as viewing or listening to pornography or use of alcohol
24 or controlled substances.

25 (c) The court on its own motion may order, or on a motion by the
26 state shall order, a second examination regarding the offender's
27 amenability to treatment. The examiner shall be selected by the party
28 making the motion. The offender shall pay the cost of any second
29 examination ordered unless the court finds the defendant to be indigent
30 in which case the state shall pay the cost.

31 (4) After receipt of the reports, the court shall consider whether
32 the offender and the community will benefit from use of this
33 alternative, consider whether the alternative is too lenient in light
34 of the extent and circumstances of the offense, consider whether the
35 offender has victims in addition to the victim of the offense, consider
36 whether the offender is amenable to treatment, consider the risk the
37 offender would present to the community, to the victim, or to persons
38 of similar age and circumstances as the victim, and consider the

1 victim's opinion whether the offender should receive a treatment
2 disposition under this section. The court shall give great weight to
3 the victim's opinion whether the offender should receive a treatment
4 disposition under this section. If the sentence imposed is contrary to
5 the victim's opinion, the court shall enter written findings stating
6 its reasons for imposing the treatment disposition. The fact that the
7 offender admits to his or her offense does not, by itself, constitute
8 amenability to treatment. If the court determines that this
9 alternative is appropriate, the court shall then impose a sentence or,
10 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
11 standard sentence range. If the sentence imposed is less than eleven
12 years of confinement, the court may suspend the execution of the
13 sentence and impose the following conditions of suspension:

14 (a) The court shall order the offender to serve a term of
15 confinement of up to twelve months or the maximum term within the
16 standard range, whichever is less. The court may order the offender to
17 serve a term of confinement greater than twelve months or the maximum
18 term within the standard range based on the presence of an aggravating
19 circumstance listed in RCW 9.94A.535(2). In no case shall the term of
20 confinement exceed the statutory maximum sentence for the offense. The
21 court may order the offender to serve all or part of his or her term of
22 confinement in partial confinement. An offender sentenced to a term of
23 confinement under this subsection is not eligible for earned release
24 under RCW 9.92.151 or 9.94A.728.

25 (b) The court shall place the offender on community custody for the
26 length of the suspended sentence, the length of the maximum term
27 imposed pursuant to RCW 9.94A.712, or three years, whichever is
28 greater, and require the offender to comply with any conditions imposed
29 by the department under RCW 9.94A.720.

30 (~~((b))~~) (c) The court shall order treatment for any period up to
31 (~~(three)~~) five years in duration. The court, in its discretion, shall
32 order outpatient sex offender treatment or inpatient sex offender
33 treatment, if available. A community mental health center may not be
34 used for such treatment unless it has an appropriate program designed
35 for sex offender treatment. The offender shall not change sex offender
36 treatment providers or treatment conditions without first notifying the
37 prosecutor, the community corrections officer, and the court. If any

1 party or the court objects to a proposed change, the offender shall not
2 change providers or conditions without court approval after a hearing.

3 (d) As conditions of the suspended sentence, the court shall impose
4 specific prohibitions and affirmative conditions relating to the known
5 precursor activities or behaviors identified in the proposed treatment
6 plan under subsection (3)(b)(v) of this section or identified in an
7 annual review under subsection (7)(b) of this section.

8 (5) As conditions of the suspended sentence, the court may impose
9 one or more of the following:

10 ~~((Up to six months of confinement, not to exceed the sentence~~
11 ~~range of confinement for that offense;~~

12 ~~(b))~~ Crime-related prohibitions;

13 ~~((c))~~ (b) Require the offender to devote time to a specific
14 employment or occupation;

15 ~~((d))~~ (c) Require the offender to remain within prescribed
16 geographical boundaries and notify the court or the community
17 corrections officer prior to any change in the offender's address or
18 employment;

19 ~~((e))~~ (d) Require the offender to report as directed to the court
20 and a community corrections officer;

21 ~~((f))~~ (e) Require the offender to pay all court-ordered legal
22 financial obligations as provided in RCW 9.94A.030;

23 ~~((g))~~ (f) Require the offender to perform community restitution
24 work; or

25 ~~((h))~~ (g) Require the offender to reimburse the victim for the
26 cost of any counseling required as a result of the offender's crime.

27 (6) At the time of sentencing, the court shall set a treatment
28 termination hearing for three months prior to the anticipated date for
29 completion of treatment.

30 (7)(a) The sex offender treatment provider shall submit quarterly
31 reports on the offender's progress in treatment to the court and the
32 parties. The report shall reference the treatment plan and include at
33 a minimum the following: Dates of attendance, offender's compliance
34 with requirements, treatment activities, the offender's relative
35 progress in treatment, and any other material specified by the court at
36 sentencing.

37 (b) The court shall conduct a hearing on the offender's progress in
38 treatment at least once a year. At least fourteen days prior to the

1 hearing, notice of the hearing shall be given to the victim. The
2 victim shall be given the opportunity to make statements to the court
3 regarding the offender's supervision and treatment. At the hearing,
4 the court may modify conditions of community custody including, but not
5 limited to, crime-related prohibitions and affirmative conditions
6 relating to activities and behaviors identified as part of, or relating
7 to precursor activities and behaviors in, the offender's offense cycle
8 or revoke the suspended sentence.

9 (8) At least fourteen days prior to the treatment termination
10 hearing, notice of the hearing shall be given to the victim. The
11 victim shall be given the opportunity to make statements to the court
12 regarding the offender's supervision and treatment. Prior to the
13 treatment termination hearing, the treatment provider and community
14 corrections officer shall submit written reports to the court and
15 parties regarding the offender's compliance with treatment and
16 monitoring requirements, and recommendations regarding termination from
17 treatment, including proposed community custody conditions. (~~Either~~
18 party may request, and the court may order, another evaluation
19 regarding the advisability of termination from treatment. The offender
20 shall pay the cost of any additional evaluation ordered unless the
21 court finds the offender to be indigent in which case the state shall
22 pay the cost.)) The court may order an evaluation regarding the
23 advisability of termination from treatment by a sex offender treatment
24 provider who may not be the same person who treated the offender under
25 subsection (4) of this section or any person who employs, is employed
26 by, or shares profits with the person who treated the offender under
27 subsection (4) of this section unless the court has entered written
28 findings that such evaluation is in the best interest of the victim and
29 that a successful evaluation of the offender would otherwise be
30 impractical. The offender shall pay the cost of the evaluation. At
31 the treatment termination hearing the court may: (a) Modify conditions
32 of community custody, and either (b) terminate treatment, or (c) extend
33 treatment in two-year increments for up to the remaining period of
34 community custody.

35 (9)(a) If a violation of conditions other than a second violation
36 of the prohibitions or affirmative conditions relating to precursor
37 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
38 this section occurs during community custody, the department shall

1 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
2 the violation to the court and recommend revocation of the suspended
3 sentence as provided for in subsections (6) and (8) of this section.

4 (b) If a second violation of the prohibitions or affirmative
5 conditions relating to precursor behaviors or activities imposed under
6 subsection (4)(d) or (7)(b) of this section occurs during community
7 custody, the department shall refer the violation to the court and
8 recommend revocation of the suspended sentence as provided in
9 subsection (10) of this section.

10 (10) The court may revoke the suspended sentence at any time during
11 the period of community custody and order execution of the sentence if:
12 (a) The offender violates the conditions of the suspended sentence, or
13 (b) the court finds that the offender is failing to make satisfactory
14 progress in treatment. All confinement time served during the period
15 of community custody shall be credited to the offender if the suspended
16 sentence is revoked.

17 (11) The offender's sex offender treatment provider may not be the
18 same person who examined the offender under subsection (3) of this
19 section or any person who employs, is employed by, or shares profits
20 with the person who examined the offender under subsection (3) of this
21 section, unless the court has entered written findings that such
22 treatment is in the best interests of the victim and that successful
23 treatment of the offender would otherwise be impractical. Examinations
24 and treatment ordered pursuant to this subsection shall only be
25 conducted by sex offender treatment providers certified by the
26 department of health pursuant to chapter 18.155 RCW unless the court
27 finds that:

28 (a) The offender has already moved to another state or plans to
29 move to another state for reasons other than circumventing the
30 certification requirements; or

31 (b)(i) No certified providers are available for treatment within a
32 reasonable geographical distance of the offender's home; and

33 (ii) The evaluation and treatment plan comply with this section and
34 the rules adopted by the department of health.

35 (12) If the offender is less than eighteen years of age when the
36 charge is filed, the state shall pay for the cost of initial evaluation
37 and treatment.

1 **Sec. 5.** RCW 9.92.151 and 1990 c 3 s 201 are each amended to read
2 as follows:

3 (1) Except as provided in subsection (2) of this section, the
4 sentence of a prisoner confined in a county jail facility for a felony,
5 gross misdemeanor, or misdemeanor conviction may be reduced by earned
6 release credits in accordance with procedures that shall be developed
7 and promulgated by the correctional agency having jurisdiction. The
8 earned early release time shall be for good behavior and good
9 performance as determined by the correctional agency having
10 jurisdiction. Any program established pursuant to this section shall
11 allow an offender to earn early release credits for presentence
12 incarceration. The correctional agency shall not credit the offender
13 with earned early release credits in advance of the offender actually
14 earning the credits. In the case of an offender convicted of a serious
15 violent offense or a sex offense that is a class A felony committed on
16 or after July 1, 1990, the aggregate earned early release time may not
17 exceed fifteen percent of the sentence. In no other case may the
18 aggregate earned early release time exceed one-third of the total
19 sentence.

20 (2) An offender serving a term of confinement imposed under RCW
21 9.94A.670(4)(a) is not eligible for earned release credits under this
22 section.

23 **Sec. 6.** RCW 9.94A.728 and 2003 c 379 s 1 are each amended to read
24 as follows:

25 No person serving a sentence imposed pursuant to this chapter and
26 committed to the custody of the department shall leave the confines of
27 the correctional facility or be released prior to the expiration of the
28 sentence except as follows:

29 (1) Except as otherwise provided for in subsection (2) of this
30 section, the term of the sentence of an offender committed to a
31 correctional facility operated by the department may be reduced by
32 earned release time in accordance with procedures that shall be
33 developed and promulgated by the correctional agency having
34 jurisdiction in which the offender is confined. The earned release
35 time shall be for good behavior and good performance, as determined by
36 the correctional agency having jurisdiction. The correctional agency
37 shall not credit the offender with earned release credits in advance of

1 the offender actually earning the credits. Any program established
2 pursuant to this section shall allow an offender to earn early release
3 credits for presentence incarceration. If an offender is transferred
4 from a county jail to the department, the administrator of a county
5 jail facility shall certify to the department the amount of time spent
6 in custody at the facility and the amount of earned release time. An
7 offender who has been convicted of a felony committed after July 23,
8 1995, that involves any applicable deadly weapon enhancements under RCW
9 9.94A.533 (3) or (4), or both, shall not receive any good time credits
10 or earned release time for that portion of his or her sentence that
11 results from any deadly weapon enhancements.

12 (a) In the case of an offender convicted of a serious violent
13 offense, or a sex offense that is a class A felony, committed on or
14 after July 1, 1990, and before July 1, 2003, the aggregate earned
15 release time may not exceed fifteen percent of the sentence. In the
16 case of an offender convicted of a serious violent offense, or a sex
17 offense that is a class A felony, committed on or after July 1, 2003,
18 the aggregate earned release time may not exceed ten percent of the
19 sentence.

20 (b)(i) In the case of an offender who qualifies under (b)(ii) of
21 this subsection, the aggregate earned release time may not exceed fifty
22 percent of the sentence.

23 (ii) An offender is qualified to earn up to fifty percent of
24 aggregate earned release time under this subsection (1)(b) if he or
25 she:

26 (A) Is classified in one of the two lowest risk categories under
27 (b)(iii) of this subsection;

28 (B) Is not confined pursuant to a sentence for:

29 (I) A sex offense;

30 (II) A violent offense;

31 (III) A crime against persons as defined in RCW 9.94A.411;

32 (IV) A felony that is domestic violence as defined in RCW
33 10.99.020;

34 (V) A violation of RCW 9A.52.025 (residential burglary);

35 (VI) A violation of, or an attempt, solicitation, or conspiracy to
36 violate, RCW 69.50.401 by manufacture or delivery or possession with
37 intent to deliver methamphetamine; or

1 (VII) A violation of, or an attempt, solicitation, or conspiracy to
2 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
3 and

4 (C) Has no prior conviction for:

5 (I) A sex offense;

6 (II) A violent offense;

7 (III) A crime against persons as defined in RCW 9.94A.411;

8 (IV) A felony that is domestic violence as defined in RCW
9 10.99.020;

10 (V) A violation of RCW 9A.52.025 (residential burglary);

11 (VI) A violation of, or an attempt, solicitation, or conspiracy to
12 violate, RCW 69.50.401 by manufacture or delivery or possession with
13 intent to deliver methamphetamine; or

14 (VII) A violation of, or an attempt, solicitation, or conspiracy to
15 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

16 (iii) For purposes of determining an offender's eligibility under
17 this subsection (1)(b), the department shall perform a risk assessment
18 of every offender committed to a correctional facility operated by the
19 department who has no current or prior conviction for a sex offense, a
20 violent offense, a crime against persons as defined in RCW 9.94A.411,
21 a felony that is domestic violence as defined in RCW 10.99.020, a
22 violation of RCW 9A.52.025 (residential burglary), a violation of, or
23 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
24 manufacture or delivery or possession with intent to deliver
25 methamphetamine, or a violation of, or an attempt, solicitation, or
26 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
27 substance to a minor). The department must classify each assessed
28 offender in one of four risk categories between highest and lowest
29 risk.

30 (iv) The department shall recalculate the earned release time and
31 reschedule the expected release dates for each qualified offender under
32 this subsection (1)(b).

33 (v) This subsection (1)(b) applies retroactively to eligible
34 offenders serving terms of total confinement in a state correctional
35 facility as of July 1, 2003.

36 (vi) This subsection (1)(b) does not apply to offenders convicted
37 after July 1, 2010.

1 (c) In no other case shall the aggregate earned release time exceed
2 one-third of the total sentence;

3 (2)(a) A person convicted of a sex offense or an offense
4 categorized as a serious violent offense, assault in the second degree,
5 vehicular homicide, vehicular assault, assault of a child in the second
6 degree, any crime against persons where it is determined in accordance
7 with RCW 9.94A.602 that the offender or an accomplice was armed with a
8 deadly weapon at the time of commission, or any felony offense under
9 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
10 eligible, in accordance with a program developed by the department, for
11 transfer to community custody status in lieu of earned release time
12 pursuant to subsection (1) of this section;

13 (b) A person convicted of a sex offense, a violent offense, any
14 crime against persons under RCW 9.94A.411(2), or a felony offense under
15 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
16 become eligible, in accordance with a program developed by the
17 department, for transfer to community custody status in lieu of earned
18 release time pursuant to subsection (1) of this section;

19 (c) The department shall, as a part of its program for release to
20 the community in lieu of earned release, require the offender to
21 propose a release plan that includes an approved residence and living
22 arrangement. All offenders with community placement or community
23 custody terms eligible for release to community custody status in lieu
24 of earned release shall provide an approved residence and living
25 arrangement prior to release to the community;

26 (d) The department may deny transfer to community custody status in
27 lieu of earned release time pursuant to subsection (1) of this section
28 if the department determines an offender's release plan, including
29 proposed residence location and living arrangements, may violate the
30 conditions of the sentence or conditions of supervision, place the
31 offender at risk to violate the conditions of the sentence, place the
32 offender at risk to reoffend, or present a risk to victim safety or
33 community safety. The department's authority under this section is
34 independent of any court-ordered condition of sentence or statutory
35 provision regarding conditions for community custody or community
36 placement;

37 (e) An offender serving a term of confinement imposed under RCW

1 9.94A.670(4)(a) is not eligible for earned release credits under this
2 section;

3 (3) An offender may leave a correctional facility pursuant to an
4 authorized furlough or leave of absence. In addition, offenders may
5 leave a correctional facility when in the custody of a corrections
6 officer or officers;

7 (4)(a) The secretary may authorize an extraordinary medical
8 placement for an offender when all of the following conditions exist:

9 (i) The offender has a medical condition that is serious enough to
10 require costly care or treatment;

11 (ii) The offender poses a low risk to the community because he or
12 she is physically incapacitated due to age or the medical condition;
13 and

14 (iii) Granting the extraordinary medical placement will result in
15 a cost savings to the state.

16 (b) An offender sentenced to death or to life imprisonment without
17 the possibility of release or parole is not eligible for an
18 extraordinary medical placement.

19 (c) The secretary shall require electronic monitoring for all
20 offenders in extraordinary medical placement unless the electronic
21 monitoring equipment interferes with the function of the offender's
22 medical equipment or results in the loss of funding for the offender's
23 medical care. The secretary shall specify who shall provide the
24 monitoring services and the terms under which the monitoring shall be
25 performed.

26 (d) The secretary may revoke an extraordinary medical placement
27 under this subsection at any time;

28 (5) The governor, upon recommendation from the clemency and pardons
29 board, may grant an extraordinary release for reasons of serious health
30 problems, senility, advanced age, extraordinary meritorious acts, or
31 other extraordinary circumstances;

32 (6) No more than the final six months of the sentence may be served
33 in partial confinement designed to aid the offender in finding work and
34 reestablishing himself or herself in the community;

35 (7) The governor may pardon any offender;

36 (8) The department may release an offender from confinement any
37 time within ten days before a release date calculated under this
38 section; and

1 (9) An offender may leave a correctional facility prior to
2 completion of his or her sentence if the sentence has been reduced as
3 provided in RCW 9.94A.870.

4 Notwithstanding any other provisions of this section, an offender
5 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
6 mandatory minimum sentence of total confinement shall not be released
7 from total confinement before the completion of the listed mandatory
8 minimum sentence for that felony crime of conviction unless allowed
9 under RCW 9.94A.540, however persistent offenders are not eligible for
10 extraordinary medical placement.

11 NEW SECTION. **Sec. 7.** (1) The Washington state institute for
12 public policy shall conduct a comprehensive analysis and evaluation of
13 the impact and effectiveness of current sex offender sentencing
14 policies. The institute shall analyze and evaluate the effectiveness
15 of sex offender policies and programs, including the special sex
16 offender sentencing alternative, the department of corrections'
17 treatment program for offenders in prison, and the validity of the risk
18 assessment conducted by the end of sentence review committee prior to
19 release from prison. Using detailed information from offender files
20 and court records, and research conducted in Washington state and other
21 states and nations, the analysis shall examine whether changes to
22 sentencing policies and sex offender programming can increase public
23 safety.

24 (2) Using the research results and other available data, the
25 analysis of the special sex offender sentencing alternative shall
26 specifically evaluate the impact of the sentencing alternative on
27 protection of children from sexual victimization, reporting of sex
28 offenses against children, prosecution of sex offenses against
29 children, and child sex offense recidivism rates.

30 (3) As part of its study, the institute shall also investigate the
31 views of victims whose cases resulted in a special sex offender
32 sentencing alternative sentence. This study shall include victims
33 whose cases have been prosecuted recently, as well as those whose cases
34 were prosecuted in the past. The victims shall be asked whether they
35 considered the special sex offender sentencing alternative sentence to
36 be a just and appropriate sanction, whether it influenced their healing
37 process, and, if so, whether the influence was negative or positive.

1 (4) The sentencing guidelines commission shall review the following
2 issues to determine whether modifications in the special sex offender
3 sentencing alternative will increase its effectiveness with respect to
4 protecting children from sexual victimization, successfully prosecuting
5 sex offenses against children, and appropriately punishing perpetrators
6 of sex offenses against children:

7 (a) Eligibility for the sentencing alternative, including whether
8 the commission of certain types of offenses should render an offender
9 ineligible, whether the disclosure of multiple victims in the course of
10 evaluating an offender should render an offender ineligible, and
11 whether the sentencing alternative should be limited to offenses within
12 families;

13 (b) Minimum terms of incarceration, including imprisonment at a
14 state facility;

15 (c) Appropriate conditions or restrictions that should be placed on
16 offenders who receive a sentence alternative; and

17 (d) Standards for revocation of a sentencing alternative suspended
18 sentence.

19 (5) The institute and the sentencing guidelines commission shall
20 report their results and recommendations to the appropriate standing
21 committees of the legislature no later than December 31, 2004.

22 NEW SECTION. **Sec. 8.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 9.** Sections 2 through 6 of this act take effect
27 July 1, 2005.

Passed by the House March 10, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 26, 2004, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1,
Engrossed Substitute House Bill No. 2400 entitled:

"AN ACT Relating to sentence enhancement for sex crimes against
minors;"

This bill makes improvements in the Special Sex Offender Sentencing
Alternative, which is often needed to get convictions, hold sex
offenders accountable, and protect child victims.

I have vetoed section 1, the intent section, because it includes rhetorical language that could inadvertently be misused to increase taxpayers' liability for harm that should be the responsibility of sex offenders themselves. Section 1 discusses a paramount duty of the Legislature to protect children from victimization by sex offenders. Although I agree that the state has the responsibility to take action within its powers and authority, this language could be misunderstood to create a new duty, which would be a higher duty than many equally important government actions and protections. In addition, the section discusses structure and administrative weaknesses in the Special Sex Offender Sentencing Alternative. Taken out of context, this language could be misunderstood and used to indicate an admission of liability when none exists.

For these reasons, I have vetoed section 1 of Engrossed Substitute House Bill No. 2400.

With the exception of section 1, Engrossed Substitute House Bill No. 2400 is approved."