

1 **E2SSB 5451** - H AMDS TO H AMD (5451-S2.E AMH .... H2634.1)

2 By Representative Vance

3 On page 11, line 6, after "section" insert "and section 3 of  
4 this act"

5 On page 23, after line 37, insert the following section:

6 "NEW SECTION. Sec. 3. A new section is added to chapter 9.94A  
7 RCW to read as follows:

8 (1) A person convicted of a sexually violent offense shall be  
9 sentenced to a term of total confinement of life imprisonment  
10 without the possibility of release, community custody, or parole if  
11 the court finds beyond a reasonable doubt, at a special sentencing  
12 proceeding following conviction, that the person is a sexually  
13 violent predator. The court shall not impose a sentence less than  
14 life imprisonment without the possibility of release, community  
15 custody, or parole unless the court finds that mitigating  
16 circumstances exist which warrant a lesser sentence pursuant to RCW  
17 9.94A.390, in which case the court shall impose a determinate  
18 sentence which in no case shall be less than a determinate term  
19 within the standard range for the offense.

20 (2) If a person is charged with a sexually violent offense the  
21 prosecutor shall file written notice if the prosecutor intends to  
22 ask the court to find that the defendant is a sexually violent  
23 predator and to sentence the defendant to life imprisonment without  
24 the possibility of release, community custody, or parole. The  
25 prosecutor shall serve the defendant and the defendant's attorney  
26 with the notice within thirty days after the defendant's  
27 arraignment on the charge. Except with the consent of the  
28 prosecutor, during the period in which the prosecutor may file the  
29 notice of the special sentencing proceeding, the defendant may not  
30 tender a plea of guilty to the sexually violent offense nor may the  
31 court accept a plea of guilty to the charge. If the notice of the

1 special sentencing proceeding is not filed and served as provided  
2 in this subsection, the prosecutor may not seek and the court may  
3 not make a finding that the defendant is a sexually violent  
4 predator. A defendant who is convicted of a sexually violent  
5 offense but is not found to be a sexually violent predator shall be  
6 sentenced according to the remaining provisions of this chapter.  
7 Nothing in this section shall prohibit the court from sentencing a  
8 defendant who is convicted of a sexually violent offense but who is  
9 not found to be a sexually violent predator to life imprisonment  
10 without the possibility of release, community custody, or parole,  
11 under other applicable sentencing provisions in this chapter.

12 (4) The following definitions apply throughout this section:

13 (a) "Sexually violent predator" means any person who has been  
14 convicted of a crime of sexual violence and who suffers from a  
15 mental abnormality or personality disorder which makes the person  
16 likely to engage in predatory acts of sexual violence.

17 (b) "Mental abnormality" means a congenital or acquired  
18 condition affecting the emotional or volitional capacity which  
19 predisposes the person to the commission of criminal sexual acts in  
20 a degree constituting such person a menace to the health and safety  
21 of others.

22 (c) "Predatory" means acts directed towards strangers or  
23 individuals with whom a relationship has been established or  
24 promoted for the primary purpose of victimization.

25 (d) "Sexually violent offense" means an act committed on or  
26 after the effective date of this section, that is: (a) An act  
27 defined in Title 9A RCW as rape in the first degree, rape in the  
28 second degree by forcible compulsion, rape of a child in the first  
29 or second degree, statutory rape in the first or second degree,  
30 indecent liberties by forcible compulsion, indecent liberties  
31 against a child under age fourteen, incest against a child under  
32 age fourteen, or child molestation in the first or second degree;  
33 or (b) an act of murder in the first or second degree, assault in

1 the first or second degree, assault of a child in the first or  
2 second degree, kidnapping in the first or second degree, burglary  
3 in the first degree, residential burglary, or unlawful  
4 imprisonment, which has been determined beyond a reasonable doubt  
5 to have been sexually motivated, as that term is defined in RCW  
6 9.94A.030; or (c) an act as described in chapter 9A.28 RCW, that is  
7 an attempt, criminal solicitation, or criminal conspiracy to commit  
8 one of the felonies designated in (a) or (b) of this subsection."

9 On page 29, after line 2, insert the following section:

10 "Sec. 7. RCW 9A.20.021 and 1982 c 192 s 10 are each amended  
11 to read as follows:

12 (1) Felony. No person convicted of a classified felony shall  
13 be punished by confinement or fine exceeding the following:

14 (a) For a class A felony, by confinement in a state  
15 correctional institution for a term of life imprisonment, or by a  
16 fine in an amount fixed by the court of fifty thousand dollars, or  
17 by both such confinement and fine;

18 (b) For a class B felony, by confinement in a state  
19 correctional institution for a term of ten years, or by a fine in  
20 an amount fixed by the court of twenty thousand dollars, or by both  
21 such confinement and fine;

22 (c) For a class C felony, by confinement in a state  
23 correctional institution for five years, or by a fine in an amount  
24 fixed by the court of ten thousand dollars, or by both such  
25 confinement and fine.

26 (d) For a class A, B, or C felony that is classified as a  
27 sexually violent offense as defined in section 3 of this act, by  
28 confinement in a state correctional facility for a term of life  
29 imprisonment without release, community custody, or parole, or by  
30 a fine in an amount fixed by the court of fifty thousand dollars,  
31 or by both. This subsection applies only to those sexually violent  
32 offenses committed on or after the effective date of this section.

1 (2) Gross misdemeanor. Every person convicted of a gross  
2 misdemeanor defined in Title 9A RCW shall be punished by  
3 imprisonment in the county jail for a maximum term fixed by the  
4 court of not more than one year, or by a fine in an amount fixed by  
5 the court of not more than five thousand dollars, or by both such  
6 imprisonment and fine.

7 (3) Misdemeanor. Every person convicted of a misdemeanor  
8 defined in Title 9A RCW shall be punished by imprisonment in the  
9 county jail for a maximum term fixed by the court of not more than  
10 ninety days, or by a fine in an amount fixed by the court of not  
11 more than one thousand dollars, or by both such imprisonment and  
12 fine.

13 (4) This section applies to only those crimes committed on or  
14 after July 1, 1984."

15 On page 35, after line 20, insert the following section:

16 "NEW SECTION. Sec. 15. Sections 3 and 7 of this act shall not  
17 take effect unless the Washington State Supreme Court in a final  
18 decision holds that civil commitment of sexually violent predators  
19 under chapter 71.09 RCW is unconstitutional. If the Washington  
20 State Supreme Court holds in a final decision that civil commitment  
21 of sexually violent predators under chapter 71.09 RCW is  
22 unconstitutional, sections 3 and 7 shall take effect on the date  
23 that the Washington Supreme Court issues its final decision.  
24 Sections 3 and 7 of this act shall apply to all sexually violent  
25 crimes committed on or after the effective date of sections 3 and  
26 7."

EFFECT: If the Washington Supreme Court finds that civil  
commitment of sexually violent predators is  
unconstitutional, then sexually violent predators shall  
be sentenced to life imprisonment without the possibility  
of parole. The court may impose a lesser sentence only  
upon finding that mitigating circumstances warrant

5451-S2.E AMH VANC SHEL 04

imposition of a lesser sentence but in no case may the court sentence the offender to a sentence below the standard range for the offense. This provision shall not take effect unless the Supreme court finds that the civil commitment procedure is unconstitutional. If so, the new sentencing provisions will apply when that decision is made and will apply to sexually violent offenses committed on or after the effective date of the provision.