

2 SSB 5305 - S AMD - 615

3 By Senators Benton, Hargrove, Fairley and Deccio

4 ADOPTED 2/11/98

5 On page 12, after line 32, strike all of section 4 and insert the  
6 following:

7 "Sec. 4. RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c  
8 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and  
9 amended to read as follows:

10 When a person is convicted of a felony, the court shall impose  
11 punishment as provided in this section.

12 (1) Except as authorized in subsections (2), (4), (5), (6), and (8)  
13 of this section, the court shall impose a sentence within the sentence  
14 range for the offense.

15 (2) The court may impose a sentence outside the standard sentence  
16 range for that offense if it finds, considering the purpose of this  
17 chapter, that there are substantial and compelling reasons justifying  
18 an exceptional sentence.

19 (3) Whenever a sentence outside the standard range is imposed, the  
20 court shall set forth the reasons for its decision in written findings  
21 of fact and conclusions of law. A sentence outside the standard range  
22 shall be a determinate sentence.

23 (4) A persistent offender shall be sentenced to a term of total  
24 confinement for life without the possibility of parole or, when  
25 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
26 first degree, sentenced to death, notwithstanding the maximum sentence  
27 under any other law. An offender convicted of the crime of murder in  
28 the first degree shall be sentenced to a term of total confinement not  
29 less than twenty years. An offender convicted of the crime of assault  
30 in the first degree or assault of a child in the first degree where the  
31 offender used force or means likely to result in death or intended to  
32 kill the victim shall be sentenced to a term of total confinement not  
33 less than five years. An offender convicted of the crime of rape in  
34 the first degree shall be sentenced to a term of total confinement not  
35 less than five years. The foregoing minimum terms of total confinement  
36 are mandatory and shall not be varied or modified as provided in

1 subsection (2) of this section. In addition, all offenders subject to  
2 the provisions of this subsection shall not be eligible for community  
3 custody, earned early release time, furlough, home detention, partial  
4 confinement, work crew, work release, or any other form of early  
5 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
6 or any other form of authorized leave of absence from the correctional  
7 facility while not in the direct custody of a corrections officer or  
8 officers during such minimum terms of total confinement except in the  
9 case of an offender in need of emergency medical treatment or for the  
10 purpose of commitment to an inpatient treatment facility in the case of  
11 an offender convicted of the crime of rape in the first degree.

12 (5) In sentencing a first-time offender the court may waive the  
13 imposition of a sentence within the sentence range and impose a  
14 sentence which may include up to ninety days of confinement in a  
15 facility operated or utilized under contract by the county and a  
16 requirement that the offender refrain from committing new offenses.  
17 The sentence may also include up to two years of community supervision,  
18 which, in addition to crime-related prohibitions, may include  
19 requirements that the offender perform any one or more of the  
20 following:

21 (a) Devote time to a specific employment or occupation;

22 (b) Undergo available outpatient treatment for up to two years, or  
23 inpatient treatment not to exceed the standard range of confinement for  
24 that offense;

25 (c) Pursue a prescribed, secular course of study or vocational  
26 training;

27 (d) Remain within prescribed geographical boundaries and notify the  
28 court or the community corrections officer prior to any change in the  
29 offender's address or employment;

30 (e) Report as directed to the court and a community corrections  
31 officer; or

32 (f) Pay all court-ordered legal financial obligations as provided  
33 in RCW 9.94A.030 and/or perform community service work.

34 (6)(a) An offender is eligible for the special drug offender  
35 sentencing alternative if:

36 (i) The offender is convicted of the manufacture, delivery, or  
37 possession with intent to manufacture or deliver a controlled substance  
38 classified in Schedule I or II that is a narcotic drug or a felony that  
39 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,

1 criminal solicitation, or criminal conspiracy to commit such crimes,  
2 and the violation does not involve a sentence enhancement under RCW  
3 9.94A.310 (3) or (4);

4 (ii) The offender has no prior convictions for a felony in this  
5 state, another state, or the United States; and

6 (iii) The offense involved only a small quantity of the particular  
7 controlled substance as determined by the judge upon consideration of  
8 such factors as the weight, purity, packaging, sale price, and street  
9 value of the controlled substance.

10 (b) If the midpoint of the standard range is greater than one year  
11 and the sentencing judge determines that the offender is eligible for  
12 this option and that the offender and the community will benefit from  
13 the use of the special drug offender sentencing alternative, the judge  
14 may waive imposition of a sentence within the standard range and impose  
15 a sentence that must include a period of total confinement in a state  
16 facility for one-half of the midpoint of the standard range. During  
17 incarceration in the state facility, offenders sentenced under this  
18 subsection shall undergo a comprehensive substance abuse assessment and  
19 receive, within available resources, treatment services appropriate for  
20 the offender. The treatment services shall be designed by the division  
21 of alcohol and substance abuse of the department of social and health  
22 services, in cooperation with the department of corrections. If the  
23 midpoint of the standard range is twenty-four months or less, no more  
24 than three months of the sentence may be served in a work release  
25 status. The court shall also impose one year of concurrent community  
26 custody and community supervision that must include appropriate  
27 outpatient substance abuse treatment, crime-related prohibitions  
28 including a condition not to use illegal controlled substances, and a  
29 requirement to submit to urinalysis or other testing to monitor that  
30 status. The court may require that the monitoring for controlled  
31 substances be conducted by the department or by a treatment  
32 alternatives to street crime program or a comparable court or agency-  
33 referred program. The offender may be required to pay thirty dollars  
34 per month while on community custody to offset the cost of monitoring.  
35 In addition, the court shall impose three or more of the following  
36 conditions:

37 (i) Devote time to a specific employment or training;

1 (ii) Remain within prescribed geographical boundaries and notify  
2 the court or the community corrections officer before any change in the  
3 offender's address or employment;

4 (iii) Report as directed to a community corrections officer;

5 (iv) Pay all court-ordered legal financial obligations;

6 (v) Perform community service work;

7 (vi) Stay out of areas designated by the sentencing judge.

8 (c) If the offender violates any of the sentence conditions in (b)  
9 of this subsection, the department shall impose sanctions  
10 administratively, with notice to the prosecuting attorney and the  
11 sentencing court. Upon motion of the court or the prosecuting  
12 attorney, a violation hearing shall be held by the court. If the court  
13 finds that conditions have been willfully violated, the court may  
14 impose confinement consisting of up to the remaining one-half of the  
15 midpoint of the standard range. All total confinement served during  
16 the period of community custody shall be credited to the offender,  
17 regardless of whether the total confinement is served as a result of  
18 the original sentence, as a result of a sanction imposed by the  
19 department, or as a result of a violation found by the court. The term  
20 of community supervision shall be tolled by any period of time served  
21 in total confinement as a result of a violation found by the court.

22 (d) The department shall determine the rules for calculating the  
23 value of a day fine based on the offender's income and reasonable  
24 obligations which the offender has for the support of the offender and  
25 any dependents. These rules shall be developed in consultation with  
26 the administrator for the courts, the office of financial management,  
27 and the commission.

28 (7) If a sentence range has not been established for the  
29 defendant's crime, the court shall impose a determinate sentence which  
30 may include not more than one year of confinement, community service  
31 work, a term of community supervision not to exceed one year, and/or  
32 other legal financial obligations. The court may impose a sentence  
33 which provides more than one year of confinement if the court finds,  
34 considering the purpose of this chapter, that there are substantial and  
35 compelling reasons justifying an exceptional sentence.

36 (8)(a)(i) When an offender is convicted of a sex offense other than  
37 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
38 violent offense and has no prior convictions for a sex offense or any  
39 other felony sex offenses in this or any other state, the sentencing

1 court, on its own motion or the motion of the state or the defendant,  
2 may order an examination to determine whether the defendant is amenable  
3 to treatment.

4 The report of the examination shall include at a minimum the  
5 following: The defendant's version of the facts and the official  
6 version of the facts, the defendant's offense history, an assessment of  
7 problems in addition to alleged deviant behaviors, the offender's  
8 social and employment situation, and other evaluation measures used.  
9 The report shall set forth the sources of the evaluator's information.

10 The examiner shall assess and report regarding the defendant's  
11 amenability to treatment and relative risk to the community. A  
12 proposed treatment plan shall be provided and shall include, at a  
13 minimum:

14 (A) Frequency and type of contact between offender and therapist;

15 (B) Specific issues to be addressed in the treatment and  
16 description of planned treatment modalities;

17 (C) Monitoring plans, including any requirements regarding living  
18 conditions, lifestyle requirements, and monitoring by family members  
19 and others;

20 (D) Anticipated length of treatment; and

21 (E) Recommended crime-related prohibitions.

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

28 (ii) After receipt of the reports, the court shall consider whether  
29 the offender and the community will benefit from use of this special  
30 sex offender sentencing alternative and consider the victim's opinion  
31 whether the offender should receive a treatment disposition under this  
32 subsection. If the court determines that this special sex offender  
33 sentencing alternative is appropriate, the court shall then impose a  
34 sentence within the sentence range. If this sentence is less than  
35 eleven years of confinement, the court may suspend the execution of the  
36 sentence and impose the following conditions of suspension:

37 (A) The court shall place the defendant on community custody for  
38 the length of the suspended sentence or three years, whichever is

1 greater, and require the offender to comply with any conditions imposed  
2 by the department of corrections under subsection (14) of this section;

3 (B) The court shall order treatment for any period up to three  
4 years in duration. The court in its discretion shall order outpatient  
5 sex offender treatment or inpatient sex offender treatment, if  
6 available. A community mental health center may not be used for such  
7 treatment unless it has an appropriate program designed for sex  
8 offender treatment. The offender shall not change sex offender  
9 treatment providers or treatment conditions without first notifying the  
10 prosecutor, the community corrections officer, and the court, and shall  
11 not change providers without court approval after a hearing if the  
12 prosecutor or community corrections officer object to the change. In  
13 addition, as conditions of the suspended sentence, the court may impose  
14 other sentence conditions including up to six months of confinement,  
15 not to exceed the sentence range of confinement for that offense,  
16 crime-related prohibitions, and requirements that the offender perform  
17 any one or more of the following:

18 (I) Devote time to a specific employment or occupation;

19 (II) Remain within prescribed geographical boundaries and notify  
20 the court or the community corrections officer prior to any change in  
21 the offender's address or employment;

22 (III) Report as directed to the court and a community corrections  
23 officer;

24 (IV) Pay all court-ordered legal financial obligations as provided  
25 in RCW 9.94A.030, perform community service work, or any combination  
26 thereof; or

27 (V) Make recoupment to the victim for the cost of any counseling  
28 required as a result of the offender's crime; and

29 (C) Sex offenders sentenced under this special sex offender  
30 sentencing alternative are not eligible to accrue any earned early  
31 release time while serving a suspended sentence.

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

1 (iv) At the time of sentencing, the court shall set a treatment  
2 termination hearing for three months prior to the anticipated date for  
3 completion of treatment. Prior to the treatment termination hearing,  
4 the treatment professional and community corrections officer shall  
5 submit written reports to the court and parties regarding the  
6 defendant's compliance with treatment and monitoring requirements, and  
7 recommendations regarding termination from treatment, including  
8 proposed community supervision conditions. Either party may request  
9 and the court may order another evaluation regarding the advisability  
10 of termination from treatment. The defendant shall pay the cost of any  
11 additional evaluation ordered unless the court finds the defendant to  
12 be indigent in which case the state shall pay the cost. At the  
13 treatment termination hearing the court may: (A) Modify conditions of  
14 community custody, and either (B) terminate treatment, or (C) extend  
15 treatment for up to the remaining period of community custody.

16 (v) If a violation of conditions occurs during community custody,  
17 the department shall either impose sanctions as provided for in RCW  
18 9.94A.205(2)(a) or refer the violation to the court and recommend  
19 revocation of the suspended sentence as provided for in (a)(vi) of this  
20 subsection.

21 (vi) The court may revoke the suspended sentence at any time during  
22 the period of community custody and order execution of the sentence if:  
23 (A) The defendant violates the conditions of the suspended sentence, or  
24 (B) the court finds that the defendant is failing to make satisfactory  
25 progress in treatment. All confinement time served during the period  
26 of community custody shall be credited to the offender if the suspended  
27 sentence is revoked.

28 (vii) Except as provided in (a)(viii) of this subsection, after  
29 July 1, 1991, examinations and treatment ordered pursuant to this  
30 subsection shall only be conducted by sex offender treatment providers  
31 certified by the department of health pursuant to chapter 18.155 RCW.

32 (viii) A sex offender therapist who examines or treats a sex  
33 offender pursuant to this subsection (8) does not have to be certified  
34 by the department of health pursuant to chapter 18.155 RCW if the court  
35 finds that: (A) The offender has already moved to another state or  
36 plans to move to another state for reasons other than circumventing the  
37 certification requirements; (B) no certified providers are available  
38 for treatment within a reasonable geographical distance of the

1 offender's home; and (C) the evaluation and treatment plan comply with  
2 this subsection (8) and the rules adopted by the department of health.

3 (ix) For purposes of this subsection (8), "victim" means any person  
4 who has sustained emotional, psychological, physical, or financial  
5 injury to person or property as a result of the crime charged.

6 "Victim" also means a parent or guardian of a victim who is a minor  
7 child unless the parent or guardian is the perpetrator of the offense.

8 (x) If the defendant was less than eighteen years of age when the  
9 charge was filed, the state shall pay for the cost of initial  
10 evaluation and treatment.

11 (b) When an offender commits any felony sex offense on or after  
12 July 1, 1987, and is sentenced to a term of confinement of more than  
13 one year but less than six years, the sentencing court may, on its own  
14 motion or on the motion of the offender or the state, request the  
15 department of corrections to evaluate whether the offender is amenable  
16 to treatment and the department may place the offender in a treatment  
17 program within a correctional facility operated by the department.

18 Except for an offender who has been convicted of a violation of RCW  
19 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
20 before the expiration of his or her term of confinement, the department  
21 of corrections may request the court to convert the balance of  
22 confinement to community supervision and to place conditions on the  
23 offender including crime-related prohibitions and requirements that the  
24 offender perform any one or more of the following:

25 (i) Devote time to a specific employment or occupation;

26 (ii) Remain within prescribed geographical boundaries and notify  
27 the court or the community corrections officer prior to any change in  
28 the offender's address or employment;

29 (iii) Report as directed to the court and a community corrections  
30 officer;

31 (iv) Undergo available outpatient treatment.

32 If the offender violates any of the terms of his or her community  
33 supervision, the court may order the offender to serve out the balance  
34 of his or her community supervision term in confinement in the custody  
35 of the department of corrections.

36 Nothing in this subsection (8)(b) shall confer eligibility for such  
37 programs for offenders convicted and sentenced for a sex offense  
38 committed prior to July 1, 1987. This subsection (8)(b) does not apply  
39 to any crime committed after July 1, 1990.



1 (c) Offenders convicted and sentenced for a sex offense committed  
2 prior to July 1, 1987, may, subject to available funds, request an  
3 evaluation by the department of corrections to determine whether they  
4 are amenable to treatment. If the offender is determined to be  
5 amenable to treatment, the offender may request placement in a  
6 treatment program within a correctional facility operated by the  
7 department. Placement in such treatment program is subject to  
8 available funds.

9 (9)(a) When a court sentences a person to a term of total  
10 confinement to the custody of the department of corrections for an  
11 offense categorized as a sex offense or a serious violent offense  
12 committed after July 1, 1988, but before July 1, 1990, assault in the  
13 second degree, assault of a child in the second degree, any crime  
14 against a person where it is determined in accordance with RCW  
15 9.94A.125 that the defendant or an accomplice was armed with a deadly  
16 weapon at the time of commission, or any felony offense under chapter  
17 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
18 committed on or after July 1, 1988, the court shall in addition to the  
19 other terms of the sentence, sentence the offender to a one-year term  
20 of community placement beginning either upon completion of the term of  
21 confinement or at such time as the offender is transferred to community  
22 custody in lieu of earned early release in accordance with RCW  
23 9.94A.150 (1) and (2). When the court sentences an offender under this  
24 subsection to the statutory maximum period of confinement then the  
25 community placement portion of the sentence shall consist entirely of  
26 such community custody to which the offender may become eligible, in  
27 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
28 custody actually served shall be credited against the community  
29 placement portion of the sentence.

30 (b) When a court sentences a person to a term of total confinement  
31 to the custody of the department of corrections for an offense  
32 categorized as a sex offense committed on or after July 1, 1990, but  
33 before June 6, 1996, a serious violent offense, vehicular homicide, or  
34 vehicular assault, committed on or after July 1, 1990, the court shall  
35 in addition to other terms of the sentence, sentence the offender to  
36 community placement for two years or up to the period of earned early  
37 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is  
38 longer. The community placement shall begin either upon completion of  
39 the term of confinement or at such time as the offender is transferred

1 to community custody in lieu of earned early release in accordance with  
2 RCW 9.94A.150 (1) and (2). When the court sentences an offender under  
3 this subsection to the statutory maximum period of confinement then the  
4 community placement portion of the sentence shall consist entirely of  
5 the community custody to which the offender may become eligible, in  
6 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
7 custody actually served shall be credited against the community  
8 placement portion of the sentence. Unless a condition is waived by the  
9 court, the terms of community placement for offenders sentenced  
10 pursuant to this section shall include the following conditions:

11 (i) The offender shall report to and be available for contact with  
12 the assigned community corrections officer as directed;

13 (ii) The offender shall work at department of corrections-approved  
14 education, employment, and/or community service;

15 (iii) The offender shall not possess or consume controlled  
16 substances except pursuant to lawfully issued prescriptions;

17 (iv) The offender shall pay supervision fees as determined by the  
18 department of corrections;

19 (v) The residence location and living arrangements are subject to  
20 the prior approval of the department of corrections during the period  
21 of community placement; and

22 (vi) The offender shall submit to affirmative acts necessary to  
23 monitor compliance with the orders of the court as required by the  
24 department.

25 (c) As a part of any sentence imposed under (a) or (b) of this  
26 subsection, the court may also order any of the following special  
27 conditions:

28 (i) The offender shall remain within, or outside of, a specified  
29 geographical boundary;

30 (ii) The offender shall not have direct or indirect contact with  
31 the victim of the crime or a specified class of individuals;

32 (iii) The offender shall participate in crime-related treatment or  
33 counseling services;

34 (iv) The offender shall not consume alcohol;

35 (v) The offender shall comply with any crime-related prohibitions;

36 or

37 (vi) For an offender convicted of a felony sex offense against a  
38 minor victim after June 6, 1996, the offender shall comply with any  
39 terms and conditions of community placement imposed by the department

1 of corrections relating to contact between the sex offender and a minor  
2 victim or a child of similar age or circumstance as a previous victim.

3 (d) Prior to transfer to, or during, community placement, any  
4 conditions of community placement may be removed or modified so as not  
5 to be more restrictive by the sentencing court, upon recommendation of  
6 the department of corrections.

7 (10)(a) When a court sentences a person to the custody of the  
8 department of corrections for an offense categorized as a sex offense  
9 committed on or after June 6, 1996, the court shall, in addition to  
10 other terms of the sentence, sentence the offender to community custody  
11 for three years or up to the period of earned early release awarded  
12 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The  
13 community custody shall begin either upon completion of the term of  
14 confinement or at such time as the offender is transferred to community  
15 custody in lieu of earned early release in accordance with RCW  
16 9.94A.150 (1) and (2).

17 (b) Unless a condition is waived by the court, the terms of  
18 community custody shall be the same as those provided for in subsection  
19 (9)(b) of this section and may include those provided for in subsection  
20 (9)(c) of this section. As part of any sentence that includes a term  
21 of community custody imposed under this subsection, the court shall  
22 also require the offender to comply with any conditions imposed by the  
23 department of corrections under subsection (14) of this section.

24 (c) At any time prior to the completion of a sex offender's term of  
25 community custody, if the court finds that public safety would be  
26 enhanced, the court may impose and enforce an order extending any or  
27 all of the conditions imposed pursuant to this section for a period up  
28 to the maximum allowable sentence for the crime as it is classified in  
29 chapter 9A.20 RCW, regardless of the expiration of the offender's term  
30 of community custody. If a violation of a condition extended under  
31 this subsection occurs after the expiration of the offender's term of  
32 community custody, it shall be deemed a violation of the sentence for  
33 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
34 court as provided for in RCW 7.21.040.

35 (11) If the court imposes a sentence requiring confinement of  
36 thirty days or less, the court may, in its discretion, specify that the  
37 sentence be served on consecutive or intermittent days. A sentence  
38 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered  
2 intermittent sentences as space permits.

3 (12) If a sentence imposed includes payment of a legal financial  
4 obligation, the sentence shall specify the total amount of the legal  
5 financial obligation owed, and shall require the offender to pay a  
6 specified monthly sum toward that legal financial obligation.  
7 Restitution to victims shall be paid prior to any other payments of  
8 monetary obligations. Any legal financial obligation that is imposed  
9 by the court may be collected by the department, which shall deliver  
10 the amount paid to the county clerk for credit. The offender's  
11 compliance with payment of legal financial obligations shall be  
12 supervised by the department for ten years following the entry of the  
13 judgment and sentence or ten years following the offender's release  
14 from total confinement. All monetary payments ordered shall be paid no  
15 later than ten years after the last date of release from confinement  
16 pursuant to a felony conviction or the date the sentence was entered  
17 unless the superior court extends the criminal judgment an additional  
18 ten years. If the legal financial obligations including crime victims'  
19 assessments are not paid during the initial ten-year period, the  
20 superior court may extend jurisdiction under the criminal judgment an  
21 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and  
22 9.94A.145. If jurisdiction under the criminal judgment is extended,  
23 the department is not responsible for supervision of the offender  
24 during the subsequent period. Independent of the department, the party  
25 or entity to whom the legal financial obligation is owed shall have the  
26 authority to utilize any other remedies available to the party or  
27 entity to collect the legal financial obligation. Nothing in this  
28 section makes the department, the state, or any of its employees,  
29 agents, or other persons acting on their behalf liable under any  
30 circumstances for the payment of these legal financial obligations. If  
31 an order includes restitution as one of the monetary assessments, the  
32 county clerk shall make disbursements to victims named in the order.

33 (13) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a  
34 court may not impose a sentence providing for a term of confinement or  
35 community supervision or community placement which exceeds the  
36 statutory maximum for the crime as provided in chapter 9A.20 RCW.

37 (14) All offenders sentenced to terms involving community  
38 supervision, community service, community placement, or legal financial  
39 obligation shall be under the supervision of the department of

1 corrections and shall follow explicitly the instructions and conditions  
2 of the department of corrections. The department may require an  
3 offender to perform affirmative acts it deems appropriate to monitor  
4 compliance with the conditions of the sentence imposed.

5 (a) The instructions shall include, at a minimum, reporting as  
6 directed to a community corrections officer, remaining within  
7 prescribed geographical boundaries, notifying the community corrections  
8 officer of any change in the offender's address or employment, and  
9 paying the supervision fee assessment.

10 (b) For offenders sentenced to terms involving community custody  
11 for crimes committed on or after June 6, 1996, the department may  
12 include, in addition to the instructions in (a) of this subsection, any  
13 appropriate conditions of supervision, including but not limited to,  
14 prohibiting the offender from having contact with any other specified  
15 individuals or specific class of individuals. The conditions  
16 authorized under this subsection (14)(b) may be imposed by the  
17 department prior to or during an offender's community custody term. If  
18 a violation of conditions imposed by the court or the department  
19 pursuant to subsection (10) of this section occurs during community  
20 custody, it shall be deemed a violation of community placement for the  
21 purposes of RCW 9.94A.207 and shall authorize the department to  
22 transfer an offender to a more restrictive confinement status as  
23 provided in RCW 9.94A.205. At any time prior to the completion of a  
24 sex offender's term of community custody, the department may recommend  
25 to the court that any or all of the conditions imposed by the court or  
26 the department pursuant to subsection (10) of this section be continued  
27 beyond the expiration of the offender's term of community custody as  
28 authorized in subsection (10)(c) of this section.

29 The department may require offenders to pay for special services  
30 rendered on or after July 25, 1993, including electronic monitoring,  
31 day reporting, and telephone reporting, dependent upon the offender's  
32 ability to pay. The department may pay for these services for  
33 offenders who are not able to pay.

34 (15) All offenders sentenced to terms involving community  
35 supervision, community service, or community placement under the  
36 supervision of the department of corrections shall not own, use, or  
37 possess firearms or ammunition. Offenders who own, use, or are found  
38 to be in actual or constructive possession of firearms or ammunition  
39 shall be subject to the appropriate violation process and sanctions.

1 "Constructive possession" as used in this subsection means the power  
2 and intent to control the firearm or ammunition. "Firearm" as used in  
3 this subsection means a weapon or device from which a projectile may be  
4 fired by an explosive such as gunpowder.

5 (16) The sentencing court shall give the offender credit for all  
6 confinement time served before the sentencing if that confinement was  
7 solely in regard to the offense for which the offender is being  
8 sentenced.

9 (17) A departure from the standards in RCW 9.94A.400 (1) and (2)  
10 governing whether sentences are to be served consecutively or  
11 concurrently is an exceptional sentence subject to the limitations in  
12 subsections (2) and (3) of this section, and may be appealed by the  
13 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

14 (18) The court shall order restitution whenever the offender is  
15 convicted of a felony that results in injury to any person or damage to  
16 or loss of property, whether the offender is sentenced to confinement  
17 or placed under community supervision, unless extraordinary  
18 circumstances exist that make restitution inappropriate in the court's  
19 judgment. The court shall set forth the extraordinary circumstances in  
20 the record if it does not order restitution.

21 (19) As a part of any sentence, the court may impose and enforce an  
22 order that relates directly to the circumstances of the crime for which  
23 the offender has been convicted, prohibiting the offender from having  
24 any contact with other specified individuals or a specific class of  
25 individuals for a period not to exceed the maximum allowable sentence  
26 for the crime, regardless of the expiration of the offender's term of  
27 community supervision or community placement.

28 (20) In any sentence of partial confinement, the court may require  
29 the defendant to serve the partial confinement in work release, in a  
30 program of home detention, on work crew, or in a combined program of  
31 work crew and home detention.

32 (21) All court-ordered legal financial obligations collected by the  
33 department and remitted to the county clerk shall be credited and paid  
34 where restitution is ordered. Restitution shall be paid prior to any  
35 other payments of monetary obligations.

36 (22)(a) If the offense is not one for which the conviction results  
37 in the offender's being a persistent offender, the court shall, at the  
38 time of sentencing, impose as a condition of release such treatment,  
39 including the use of medroxyprogesterone acetate together with any

1 other mental health or chemical dependency treatment, as the court  
2 finds appropriate to reduce the likelihood of the offender's commission  
3 of a subsequent sex offense upon release, for any of the following  
4 offenses:

5 (i) Rape in the first degree;

6 (ii) Rape in the second degree;

7 (iii) Rape of a child in the first degree; and

8 (iv) Child molestation in the first degree, if it is the person's  
9 second conviction for child molestation in the first degree.

10 (b)(i) At least thirty days before the department sets a release  
11 date for an offender who has had a treatment regimen imposed as a  
12 condition of release under (a) of this subsection, the offender must be  
13 brought back before the court for a hearing, including an examination  
14 by medical experts, for the purpose of determining whether to impose  
15 the regimen. At the hearing, the offender has the right to all due  
16 process rights including counsel, cross-examination, testimony,  
17 experts, and the provision of counsel if the offender is indigent, but  
18 not the presence of a jury.

19 (ii) At the hearing under (b)(i) of this subsection, the court  
20 shall determine, by a preponderance of the evidence, whether a proposed  
21 treatment regimen, including treatment with medroxyprogesterone  
22 acetate, makes it likely that the regimen will reduce the chance that  
23 the offender will commit a sex offense upon release. In making its  
24 determination, the court shall consider:

25 (A) Whether the offender has a mental abnormality as defined in RCW  
26 71.09.020;

27 (B) Whether the offender is likely to engage in predatory acts, as  
28 defined in RCW 71.09.020, if the regimen is not required; and

29 (C) Whether the regimen is likely to decrease the offender's  
30 likelihood to engage in predatory acts, as defined in RCW 71.09.020.

31 (c) If the court decides that the offender and the treatment  
32 regimen meet the criteria in (b) of this subsection, the court shall  
33 impose the requirement of the treatment regimen as a condition of  
34 release and the treatment must begin before the release of the  
35 offender. The court may set the treatment regimen period for as long  
36 as the court finds it necessary. If the court decides that the  
37 criteria are not met, then the court shall suspend the imposition of  
38 the treatment regimen, but may reimpose it if, following a hearing, the  
39 court finds the offender meets the criteria in (b)(ii) of this

1 subsection. The offender, to the extent private resources are  
2 available, shall bear the cost of the treatment regimen.

3 (d) Imposition and successful use of the treatment regimen shall in  
4 no way otherwise reduce the time in confinement an offender would  
5 otherwise serve.

6 (e) The court may require the offender to return at any time in  
7 order for the court to monitor the progress and effect of the treatment  
8 regimen.

9 (f) An offender may appeal any determination made under this  
10 subsection, but a determination under this subsection is of record and  
11 the offender shall continue any treatment regimen imposed under this  
12 subsection pending a decision on the appeal.

13 (g) An offender may at any time seek early termination of a  
14 treatment regimen imposed under this subsection, but an early  
15 termination may not be granted unless, by clear and convincing  
16 evidence, the offender proves that the offender no longer has a mental  
17 abnormality, as defined in RCW 71.09.020, and that a continued  
18 treatment regimen is not necessary to prevent the offender's commission  
19 of a predatory act, as defined in RCW 71.09.020.

20 (h) The offender may at any time agree to surgical alternatives to  
21 medroxyprogesterone acetate treatment if the offender voluntarily,  
22 knowingly, and intelligently petitions the court in writing.

23 (i) An offender who unlawfully stops treatment imposed under this  
24 subsection is guilty of a class B felony.

25 **Sec. 5.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c  
26 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each  
27 reenacted and amended to read as follows:

28 TABLE 2

29 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

30 XV	Aggravated Murder 1 (RCW 10.95.020)
31 XIV	Murder 1 (RCW 9A.32.030)
32	Homicide by abuse (RCW 9A.32.055)
33	Malicious explosion 1 (RCW 70.74.280(1))
34 XIII	Murder 2 (RCW 9A.32.050)
35	Malicious explosion 2 (RCW 70.74.280(2))



1 Malicious placement of an explosive 1 (RCW  
2 70.74.270(1))

3 XII Assault 1 (RCW 9A.36.011)  
4 Assault of a Child 1 (RCW 9A.36.120)  
5 Rape 1 (RCW 9A.44.040)  
6 Rape of a Child 1 (RCW 9A.44.073)  
7 Malicious placement of an imitation device  
8 1 (RCW 70.74.272(1)(a))

9 XI Rape 2 (RCW 9A.44.050)  
10 Rape of a Child 2 (RCW 9A.44.076)  
11 Manslaughter 1 (RCW 9A.32.060)

12 X Kidnapping 1 (RCW 9A.40.020)  
13 Child Molestation 1 (RCW 9A.44.083)  
14 Malicious explosion 3 (RCW 70.74.280(3))  
15 Over 18 and deliver heroin (~~(or)~~), a  
16 narcotic from Schedule I or II, or  
17 flunitrazepam from Schedule IV to  
18 someone under 18 (RCW 69.50.406)  
19 Leading Organized Crime (RCW  
20 9A.82.060(1)(a))  
21 Indecent Liberties (with forcible  
22 compulsion) (RCW 9A.44.100(1)(a))

23 IX Assault of a Child 2 (RCW 9A.36.130)  
24 Robbery 1 (RCW 9A.56.200)  
25 Explosive devices prohibited (RCW  
26 70.74.180)  
27 Malicious placement of an explosive 2 (RCW  
28 70.74.270(2))  
29 Over 18 and deliver narcotic from Schedule  
30 III, IV, or V or a nonnarcotic except  
31 for flunitrazepam from Schedule I-V to  
32 someone under 18 and 3 years junior  
33 (RCW 69.50.406)  
34 Controlled Substance Homicide (RCW  
35 69.50.415)

1 Sexual Exploitation (RCW 9.68A.040)  
2 Inciting Criminal Profiteering (RCW  
3 9A.82.060(1)(b))  
4 Vehicular Homicide, by being under the  
5 influence of intoxicating liquor or  
6 any drug (RCW 46.61.520)

7 VIII Arson 1 (RCW 9A.48.020)  
8 Promoting Prostitution 1 (RCW 9A.88.070)  
9 Selling for profit (controlled or  
10 counterfeit) any controlled substance  
11 (RCW 69.50.410)  
12 Manufacture, deliver, or possess with  
13 intent to deliver heroin or cocaine  
14 (RCW 69.50.401(a)(1)(i))  
15 Manufacture, deliver, or possess with  
16 intent to deliver methamphetamine (RCW  
17 69.50.401(a)(1)(ii))  
18 Possession of ephedrine or pseudoephedrine  
19 with intent to manufacture  
20 methamphetamine (RCW 69.50.440)  
21 Vehicular Homicide, by the operation of any  
22 vehicle in a reckless manner (RCW  
23 46.61.520)  
24 Manslaughter 2 (RCW 9A.32.070)

25 VII Burglary 1 (RCW 9A.52.020)  
26 Vehicular Homicide, by disregard for the  
27 safety of others (RCW 46.61.520)  
28 Introducing Contraband 1 (RCW 9A.76.140)  
29 Indecent Liberties (without forcible  
30 compulsion) (RCW 9A.44.100(1) (b) and  
31 (c))  
32 Child Molestation 2 (RCW 9A.44.086)  
33 Dealing in depictions of minor engaged in  
34 sexually explicit conduct (RCW  
35 9.68A.050)

1           Sending, bringing into state depictions of  
2           minor engaged in sexually explicit  
3           conduct (RCW 9.68A.060)  
4           Involving a minor in drug dealing (RCW  
5           69.50.401(f))  
6           Drive-by Shooting (RCW 9A.36.045)  
7           Unlawful Possession of a Firearm in the  
8           first degree (RCW 9.41.040(1)(a))  
9           Malicious placement of an explosive 3 (RCW  
10           70.74.270(3))  
  
11       VI       Bribery (RCW 9A.68.010)  
12           Rape of a Child 3 (RCW 9A.44.079)  
13           Intimidating a Juror/Witness (RCW  
14           9A.72.110, 9A.72.130)  
15           Malicious placement of an imitation device  
16           2 (RCW 70.74.272(1)(b))  
17           Incest 1 (RCW 9A.64.020(1))  
18           Manufacture, deliver, or possess with  
19           intent to deliver narcotics from  
20           Schedule I or II (except heroin or  
21           cocaine) or flunitrazepam from  
22           Schedule IV (RCW 69.50.401(a)(1)(i))  
23           Intimidating a Judge (RCW 9A.72.160)  
24           Bail Jumping with Murder 1 (RCW  
25           9A.76.170(2)(a))  
26           Theft of a Firearm (RCW 9A.56.300)  
  
27       V       Persistent prison misbehavior (RCW  
28           9.94.070)  
29           Criminal Mistreatment 1 (RCW 9A.42.020)  
30           Abandonment of dependent person 1 (RCW  
31           9A.42.060)  
32           Rape 3 (RCW 9A.44.060)  
33           Sexual Misconduct with a Minor 1 (RCW  
34           9A.44.093)  
35           Child Molestation 3 (RCW 9A.44.089)  
36           Kidnapping 2 (RCW 9A.40.030)  
37           Extortion 1 (RCW 9A.56.120)  
38           Incest 2 (RCW 9A.64.020(2))

1 Perjury 1 (RCW 9A.72.020)  
2 Extortionate Extension of Credit (RCW  
3 9A.82.020)  
4 Advancing money or property for  
5 extortionate extension of credit (RCW  
6 9A.82.030)  
7 Extortionate Means to Collect Extensions of  
8 Credit (RCW 9A.82.040)  
9 Rendering Criminal Assistance 1 (RCW  
10 9A.76.070)  
11 Bail Jumping with class A Felony (RCW  
12 9A.76.170(2)(b))  
13 Sexually Violating Human Remains (RCW  
14 9A.44.105)  
15 Delivery of imitation controlled substance  
16 by person eighteen or over to person  
17 under eighteen (RCW 69.52.030(2))  
18 Possession of a Stolen Firearm (RCW  
19 9A.56.310)  
20 Unlawful termination of sex offender  
21 reoffense reduction treatment (RCW  
22 9.94A.120(22))

23 IV Residential Burglary (RCW 9A.52.025)  
24 Theft of Livestock 1 (RCW 9A.56.080)  
25 Robbery 2 (RCW 9A.56.210)  
26 Assault 2 (RCW 9A.36.021)  
27 Escape 1 (RCW 9A.76.110)  
28 Arson 2 (RCW 9A.48.030)  
29 Commercial Bribery (RCW 9A.68.060)  
30 Bribing a Witness/Bribe Received by Witness  
31 (RCW 9A.72.090, 9A.72.100)  
32 Malicious Harassment (RCW 9A.36.080)  
33 Threats to Bomb (RCW 9.61.160)  
34 Willful Failure to Return from Furlough  
35 (RCW 72.66.060)  
36 Hit and Run--Injury Accident (RCW  
37 46.52.020(4))  
38 Hit and Run with Vessel--Injury Accident  
39 (RCW 88.12.155(3))

1 Vehicular Assault (RCW 46.61.522)  
2 Manufacture, deliver, or possess with  
3 intent to deliver narcotics from  
4 Schedule III, IV, or V or nonnarcotics  
5 from Schedule I-V (except marijuana  
6 ((or)), methamphetamines, or  
7 flunitrazepam) (RCW 69.50.401 (a)(1)  
8 (iii) through (v))  
9 Influencing Outcome of Sporting Event (RCW  
10 9A.82.070)  
11 Use of Proceeds of Criminal Profiteering  
12 (RCW 9A.82.080 (1) and (2))  
13 Knowingly Trafficking in Stolen Property  
14 (RCW 9A.82.050(2))  
15 III Criminal Gang Intimidation (RCW 9A.46.120)  
16 Criminal Mistreatment 2 (RCW 9A.42.030)  
17 Abandonment of dependent person 2 (RCW  
18 9A.42.070)  
19 Extortion 2 (RCW 9A.56.130)  
20 Unlawful Imprisonment (RCW 9A.40.040)  
21 Assault 3 (RCW 9A.36.031)  
22 Assault of a Child 3 (RCW 9A.36.140)  
23 Custodial Assault (RCW 9A.36.100)  
24 Unlawful possession of firearm in the  
25 second degree (RCW 9.41.040(1)(b))  
26 Harassment (RCW 9A.46.020)  
27 Promoting Prostitution 2 (RCW 9A.88.080)  
28 Willful Failure to Return from Work Release  
29 (RCW 72.65.070)  
30 Burglary 2 (RCW 9A.52.030)  
31 Introducing Contraband 2 (RCW 9A.76.150)  
32 Communication with a Minor for Immoral  
33 Purposes (RCW 9.68A.090)  
34 Patronizing a Juvenile Prostitute (RCW  
35 9.68A.100)  
36 Escape 2 (RCW 9A.76.120)  
37 Perjury 2 (RCW 9A.72.030)  
38 Bail Jumping with class B or C Felony (RCW  
39 9A.76.170(2)(c))

1 Intimidating a Public Servant (RCW  
2 9A.76.180)  
3 Tampering with a Witness (RCW 9A.72.120)  
4 Manufacture, deliver, or possess with  
5 intent to deliver marijuana (RCW  
6 69.50.401(a)(1)(iii))  
7 Delivery of a material in lieu of a  
8 controlled substance (RCW  
9 69.50.401(c))  
10 Manufacture, distribute, or possess with  
11 intent to distribute an imitation  
12 controlled substance (RCW  
13 69.52.030(1))  
14 Recklessly Trafficking in Stolen Property  
15 (RCW 9A.82.050(1))  
16 Theft of livestock 2 (RCW 9A.56.080)  
17 Securities Act violation (RCW 21.20.400)  
18 II Unlawful Practice of Law (RCW 2.48.180)  
19 Malicious Mischief 1 (RCW 9A.48.070)  
20 Possession of Stolen Property 1 (RCW  
21 9A.56.150)  
22 Theft 1 (RCW 9A.56.030)  
23 Class B Felony Theft of Rental, Leased, or  
24 Lease-purchased Property (RCW  
25 9A.56.096(4))  
26 Trafficking in Insurance Claims (RCW  
27 48.30A.015)  
28 Unlicensed Practice of a Profession or  
29 Business (RCW 18.130.190(7))  
30 Health Care False Claims (RCW 48.80.030)  
31 Possession of controlled substance that is  
32 either heroin or narcotics from  
33 Schedule I or II or flunitrazepam from  
34 Schedule IV (RCW 69.50.401(d))  
35 Possession of phencyclidine (PCP) (RCW  
36 69.50.401(d))  
37 Create, deliver, or possess a counterfeit  
38 controlled substance (RCW  
39 69.50.401(b))

1 Computer Trespass 1 (RCW 9A.52.110)  
2 Escape from Community Custody (RCW  
3 72.09.310)  
4 I Theft 2 (RCW 9A.56.040)  
5 Class C Felony Theft of Rental, Leased, or  
6 Lease-purchased Property (RCW  
7 9A.56.096(4))  
8 Possession of Stolen Property 2 (RCW  
9 9A.56.160)  
10 Forgery (RCW 9A.60.020)  
11 Taking Motor Vehicle Without Permission  
12 (RCW 9A.56.070)  
13 Vehicle Prowl 1 (RCW 9A.52.095)  
14 Attempting to Elude a Pursuing Police  
15 Vehicle (RCW 46.61.024)  
16 Malicious Mischief 2 (RCW 9A.48.080)  
17 Reckless Burning 1 (RCW 9A.48.040)  
18 Unlawful Issuance of Checks or Drafts (RCW  
19 9A.56.060)  
20 Unlawful Use of Food Stamps (RCW 9.91.140  
21 (2) and (3))  
22 False Verification for Welfare (RCW  
23 74.08.055)  
24 Forged Prescription (RCW 69.41.020)  
25 Forged Prescription for a Controlled  
26 Substance (RCW 69.50.403)  
27 Possess Controlled Substance that is a  
28 Narcotic from Schedule III, IV, or V  
29 or Non-narcotic from Schedule I-V  
30 (except phencyclidine or  
31 flunitrazepam) (RCW 69.50.401(d))"

32 Renumber the remaining sections consecutively and correct any  
33 internal references accordingly.

1 **SSB 5305** - S AMD - 615  
2 By Senators Benton, Hargrove, Fairley and Deccio  
3

4 ADOPTED 2/11/98  
5 On page 29, line 22 of the title amendment, after "9.94A.030,"  
6 insert "9.94A.120,"

--- END ---