

2 SSB 5305 - S AMD - 170

3 By Senators Benton, Hargrove and Fairley

4 SCOPE & OBJECT RULED OUT OF ORDER 3/19/97

5 On page 12, after line 32, insert the following:

6 "Sec. 4. RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c
7 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as
8 follows:

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

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

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

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

22 (4) A persistent offender shall be sentenced to a term of total
23 confinement for life without the possibility of parole or, when
24 authorized by RCW 10.95.030 for the crime of aggravated murder in the
25 first degree, sentenced to death, notwithstanding the maximum sentence
26 under any other law. An offender convicted of the crime of murder in
27 the first degree shall be sentenced to a term of total confinement not
28 less than twenty years. An offender convicted of the crime of assault
29 in the first degree or assault of a child in the first degree where the
30 offender used force or means likely to result in death or intended to
31 kill the victim shall be sentenced to a term of total confinement not
32 less than five years. An offender convicted of the crime of rape in
33 the first degree shall be sentenced to a term of total confinement not
34 less than five years. The foregoing minimum terms of total confinement
35 are mandatory and shall not be varied or modified as provided in
36 subsection (2) of this section. In addition, all offenders subject to

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

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

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

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

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

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

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

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

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

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

1 and the violation does not involve a sentence enhancement under RCW
2 9.94A.310 (3) or (4);

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

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

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

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

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

- 1 (iii) Report as directed to a community corrections officer;
- 2 (iv) Pay all court-ordered legal financial obligations;
- 3 (v) Perform community service work;
- 4 (vi) Stay out of areas designated by the sentencing judge.

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

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

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

33 (8)(a)(i) When an offender is convicted of a sex offense other than
34 a violation of RCW 9A.44.050 or a sex offense that is also a serious
35 violent offense and has no prior convictions for a sex offense or any
36 other felony sex offenses in this or any other state, the sentencing
37 court, on its own motion or the motion of the state or the defendant,
38 may order an examination to determine whether the defendant is amenable
39 to treatment.

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

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

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

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

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

17 (D) Anticipated length of treatment; and

18 (E) Recommended crime-related prohibitions.

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

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

34 (A) The court shall place the defendant on community custody for
35 the length of the suspended sentence or three years, whichever is
36 greater, and require the offender to comply with any conditions imposed
37 by the department of corrections under subsection (14) of this section;
38 and

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

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

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

20 (III) Report as directed to the court and a community corrections
21 officer;

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

25 (V) Make recoupment to the victim for the cost of any counseling
26 required as a result of the offender's crime.

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

34 (iv) At the time of sentencing, the court shall set a treatment
35 termination hearing for three months prior to the anticipated date for
36 completion of treatment. Prior to the treatment termination hearing,
37 the treatment professional and community corrections officer shall
38 submit written reports to the court and parties regarding the
39 defendant's compliance with treatment and monitoring requirements, and

1 recommendations regarding termination from treatment, including
2 proposed community supervision conditions. Either party may request
3 and the court may order another evaluation regarding the advisability
4 of termination from treatment. The defendant shall pay the cost of any
5 additional evaluation ordered unless the court finds the defendant to
6 be indigent in which case the state shall pay the cost. At the
7 treatment termination hearing the court may: (A) Modify conditions of
8 community custody, and either (B) terminate treatment, or (C) extend
9 treatment for up to the remaining period of community custody.

10 (v) If a violation of conditions occurs during community custody,
11 the department shall either impose sanctions as provided for in RCW
12 9.94A.205(2)(a) or refer the violation to the court and recommend
13 revocation of the suspended sentence as provided for in (a)(vi) of this
14 subsection.

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

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

26 (viii) A sex offender therapist who examines or treats a sex
27 offender pursuant to this subsection (8) does not have to be certified
28 by the department of health pursuant to chapter 18.155 RCW if the court
29 finds that: (A) The offender has already moved to another state or
30 plans to move to another state for reasons other than circumventing the
31 certification requirements; (B) no certified providers are available
32 for treatment within a reasonable geographical distance of the
33 offender's home; and (C) the evaluation and treatment plan comply with
34 this subsection (8) and the rules adopted by the department of health.

35 For purposes of this subsection, "victim" means any person who has
36 sustained emotional, psychological, physical, or financial injury to
37 person or property as a result of the crime charged. "Victim" also
38 means a parent or guardian of a victim who is a minor child unless the
39 parent or guardian is the perpetrator of the offense.

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

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

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

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

19 (iii) Report as directed to the court and a community corrections
20 officer;

21 (iv) Undergo available outpatient treatment.

22 If the offender violates any of the terms of his or her community
23 supervision, the court may order the offender to serve out the balance
24 of his or her community supervision term in confinement in the custody
25 of the department of corrections.

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

30 (c) Offenders convicted and sentenced for a sex offense committed
31 prior to July 1, 1987, may, subject to available funds, request an
32 evaluation by the department of corrections to determine whether they
33 are amenable to treatment. If the offender is determined to be
34 amenable to treatment, the offender may request placement in a
35 treatment program within a correctional facility operated by the
36 department. Placement in such treatment program is subject to
37 available funds.

38 (9)(a) When a court sentences a person to a term of total
39 confinement to the custody of the department of corrections for an

1 offense categorized as a sex offense or a serious violent offense
2 committed after July 1, 1988, but before July 1, 1990, assault in the
3 second degree, assault of a child in the second degree, any crime
4 against a person where it is determined in accordance with RCW
5 9.94A.125 that the defendant or an accomplice was armed with a deadly
6 weapon at the time of commission, or any felony offense under chapter
7 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
8 committed on or after July 1, 1988, the court shall in addition to the
9 other terms of the sentence, sentence the offender to a one-year term
10 of community placement beginning either upon completion of the term of
11 confinement or at such time as the offender is transferred to community
12 custody in lieu of earned early release in accordance with RCW
13 9.94A.150 (1) and (2). When the court sentences an offender under this
14 subsection to the statutory maximum period of confinement then the
15 community placement portion of the sentence shall consist entirely of
16 such community custody to which the offender may become eligible, in
17 accordance with RCW 9.94A.150 (1) and (2). Any period of community
18 custody actually served shall be credited against the community
19 placement portion of the sentence.

20 (b) When a court sentences a person to a term of total confinement
21 to the custody of the department of corrections for an offense
22 categorized as a sex offense committed on or after July 1, 1990, but
23 before June 6, 1996, a serious violent offense, vehicular homicide, or
24 vehicular assault, committed on or after July 1, 1990, the court shall
25 in addition to other terms of the sentence, sentence the offender to
26 community placement for two years or up to the period of earned early
27 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
28 longer. The community placement shall begin either upon completion of
29 the term of confinement or at such time as the offender is transferred
30 to community custody in lieu of earned early release in accordance with
31 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
32 this subsection to the statutory maximum period of confinement then the
33 community placement portion of the sentence shall consist entirely of
34 the community custody to which the offender may become eligible, in
35 accordance with RCW 9.94A.150 (1) and (2). Any period of community
36 custody actually served shall be credited against the community
37 placement portion of the sentence. Unless a condition is waived by the
38 court, the terms of community placement for offenders sentenced
39 pursuant to this section shall include the following conditions:

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

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

5 (iii) The offender shall not consume controlled substances except
6 pursuant to lawfully issued prescriptions;

7 (iv) An offender in community custody shall not unlawfully possess
8 controlled substances;

9 (v) The offender shall pay supervision fees as determined by the
10 department of corrections; and

11 (vi) The residence location and living arrangements are subject to
12 the prior approval of the department of corrections during the period
13 of community placement.

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

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

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

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

23 (iv) The offender shall not consume alcohol;

24 (v) The offender shall comply with any crime-related prohibitions;
25 or

26 (vi) For an offender convicted of a felony sex offense against a
27 minor victim after June 6, 1996, the offender shall comply with any
28 terms and conditions of community placement imposed by the department
29 of corrections relating to contact between the sex offender and a minor
30 victim or a child of similar age or circumstance as a previous victim.

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

35 (10)(a) When a court sentences a person to the custody of the
36 department of corrections for an offense categorized as a sex offense
37 committed on or after June 6, 1996, the court shall, in addition to
38 other terms of the sentence, sentence the offender to community custody
39 for three years or up to the period of earned early release awarded

1 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
2 community custody shall begin either upon completion of the term of
3 confinement or at such time as the offender is transferred to community
4 custody in lieu of earned early release in accordance with RCW
5 9.94A.150 (1) and (2).

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

13 (c) At any time prior to the completion of a sex offender's term of
14 community custody, if the court finds that public safety would be
15 enhanced, the court may impose and enforce an order extending any or
16 all of the conditions imposed pursuant to this section for a period up
17 to the maximum allowable sentence for the crime as it is classified in
18 chapter 9A.20 RCW, regardless of the expiration of the offender's term
19 of community custody. If a violation of a condition extended under
20 this subsection occurs after the expiration of the offender's term of
21 community custody, it shall be deemed a violation of the sentence for
22 the purposes of RCW 9.94A.195 and may be punishable as contempt of
23 court as provided for in RCW 7.21.040.

24 (11) If the court imposes a sentence requiring confinement of
25 thirty days or less, the court may, in its discretion, specify that the
26 sentence be served on consecutive or intermittent days. A sentence
27 requiring more than thirty days of confinement shall be served on
28 consecutive days. Local jail administrators may schedule court-ordered
29 intermittent sentences as space permits.

30 (12) If a sentence imposed includes payment of a legal financial
31 obligation, the sentence shall specify the total amount of the legal
32 financial obligation owed, and shall require the offender to pay a
33 specified monthly sum toward that legal financial obligation.
34 Restitution to victims shall be paid prior to any other payments of
35 monetary obligations. Any legal financial obligation that is imposed
36 by the court may be collected by the department, which shall deliver
37 the amount paid to the county clerk for credit. The offender's
38 compliance with payment of legal financial obligations shall be
39 supervised by the department. All monetary payments ordered shall be

1 paid no later than ten years after the last date of release from
2 confinement pursuant to a felony conviction or the date the sentence
3 was entered. Independent of the department, the party or entity to
4 whom the legal financial obligation is owed shall have the authority to
5 utilize any other remedies available to the party or entity to collect
6 the legal financial obligation. Nothing in this section makes the
7 department, the state, or any of its employees, agents, or other
8 persons acting on their behalf liable under any circumstances for the
9 payment of these legal financial obligations. If an order includes
10 restitution as one of the monetary assessments, the county clerk shall
11 make disbursements to victims named in the order.

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

16 (14) All offenders sentenced to terms involving community
17 supervision, community service, community placement, or legal financial
18 obligation shall be under the supervision of the department of
19 corrections and shall follow explicitly the instructions and conditions
20 of the department of corrections.

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

26 (b) For sex offenders sentenced to terms involving community
27 custody for crimes committed on or after June 6, 1996, the department
28 may include, in addition to the instructions in (a) of this subsection,
29 any appropriate conditions of supervision, including but not limited
30 to, prohibiting the offender from having contact with any other
31 specified individuals or specific class of individuals. The conditions
32 authorized under this subsection (14)(b) may be imposed by the
33 department prior to or during a sex offender's community custody term.
34 If a violation of conditions imposed by the court or the department
35 pursuant to subsection (10) of this section occurs during community
36 custody, it shall be deemed a violation of community placement for the
37 purposes of RCW 9.94A.207 and shall authorize the department to
38 transfer an offender to a more restrictive confinement status as
39 provided in RCW 9.94A.205. At any time prior to the completion of a

1 sex offender's term of community custody, the department may recommend
2 to the court that any or all of the conditions imposed by the court or
3 the department pursuant to subsection (10) of this section be continued
4 beyond the expiration of the offender's term of community custody as
5 authorized in subsection (10)(c) of this section.

6 The department may require offenders to pay for special services
7 rendered on or after July 25, 1993, including electronic monitoring,
8 day reporting, and telephone reporting, dependent upon the offender's
9 ability to pay. The department may pay for these services for
10 offenders who are not able to pay.

11 (15) All offenders sentenced to terms involving community
12 supervision, community service, or community placement under the
13 supervision of the department of corrections shall not own, use, or
14 possess firearms or ammunition. Offenders who own, use, or are found
15 to be in actual or constructive possession of firearms or ammunition
16 shall be subject to the appropriate violation process and sanctions.
17 "Constructive possession" as used in this subsection means the power
18 and intent to control the firearm or ammunition. "Firearm" as used in
19 this subsection means a weapon or device from which a projectile may be
20 fired by an explosive such as gunpowder.

21 (16) The sentencing court shall give the offender credit for all
22 confinement time served before the sentencing if that confinement was
23 solely in regard to the offense for which the offender is being
24 sentenced.

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

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

37 (19) As a part of any sentence, the court may impose and enforce an
38 order that relates directly to the circumstances of the crime for which
39 the offender has been convicted, prohibiting the offender from having

1 any contact with other specified individuals or a specific class of
2 individuals for a period not to exceed the maximum allowable sentence
3 for the crime, regardless of the expiration of the offender's term of
4 community supervision or community placement.

5 (20) In any sentence of partial confinement, the court may require
6 the defendant to serve the partial confinement in work release, in a
7 program of home detention, on work crew, or in a combined program of
8 work crew and home detention.

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

13 (22)(a) If the offense is not one for which the conviction results
14 in the offender's being a persistent offender, the court shall, at the
15 time of sentencing, impose as a condition of release such treatment,
16 including the use of medroxyprogesterone acetate together with any
17 other mental health or chemical dependency treatment, as the court
18 finds appropriate to reduce the likelihood of the offender's commission
19 of a subsequent sex offense upon release, for any of the following
20 offenses:

21 (i) Rape in the first degree;

22 (ii) Rape in the second degree;

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

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

26 (b)(i) At least thirty days before the department sets a release
27 date for an offender who has had a treatment regimen imposed as a
28 condition of release under (a) of this subsection, the offender must be
29 brought back before the court for a hearing, including an examination
30 by medical experts, for the purpose of determining whether to impose
31 the regimen. At the hearing, the offender has the right to all due
32 process rights including counsel, cross-examination, testimony,
33 experts, and the provision of counsel if the offender is indigent, but
34 not the presence of a jury.

35 (ii) At the hearing under (b)(i) of this subsection, the court
36 shall determine, by a preponderance of the evidence, whether a proposed
37 treatment regimen, including treatment with medroxyprogesterone
38 acetate, makes it likely that the regimen will reduce the chance that

1 the offender will commit a sex offense upon release. In making its
2 determination, the court shall consider:

3 (A) Whether the offender has a mental abnormality as defined in RCW
4 71.09.020;

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

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

9 (c) If the court decides that the offender and the treatment
10 regimen meet the criteria in (b) of this subsection, the court shall
11 impose the requirement of the treatment regimen as a condition of
12 release and the treatment must begin before the release of the
13 offender. The court may set the treatment regimen period for as long
14 as the court finds it necessary. If the court decides that the
15 criteria are not met, then the court shall suspend the imposition of
16 the treatment regimen, but may reimpose it if, following a hearing, the
17 court finds the offender meets the criteria in (b)(ii) of this
18 subsection. The offender, to the extent private resources are
19 available, shall bear the cost of the treatment regimen.

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

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

26 (f) An offender may appeal any determination made under this
27 subsection, but a determination under this subsection is of record and
28 the offender shall continue any treatment regimen imposed under this
29 subsection pending a decision on the appeal.

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

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

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

3 Renumber the remaining sections and correct any internal references
4 accordingly.

5 **SSB 5305** - S AMD - 170
6 By Senators Benton, Hargrove and Fairley

7

8 On page 16, after line 31, insert the following:

9 "Unlawful termination of sex offender reoffense reduction treatment
10 (RCW 9.94A.120(22))"

11 **SSB 5305** - S AMD - 170
12 By Senators Benton, Hargrove and Fairley

13

14 On page 1, on line 3 of the title, after "9.94A.030" insert ",
15 9.94A.120,"

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