

2SSB 6497 - S AMD 104

By Senators Johnson, Thibaudeau

WITHDRAWN 02/13/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.510 and 2002 c 290 s 10 are each amended to
4 read as follows:

5 ((TABLE 1
6 Sentencing Grid

LEVEL	SERIOUSNESS									
	0	1	2	3	4	5	6	7	8	9-or more
<hr/>										
XVI Life Sentence without Parole/Death Penalty										
XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
	320-	333-	347-	361-	374-	388-	416-	450-	493-	548-
XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	220	234	244	254	265	275	295	316	357	397
XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136	147	160	171	184	216	236	277	318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
	102-	114	125	136	147	158	194	211	245	280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171

1	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
2		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
3		27	34	41	48	54	61	89	102	116	144
4	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
5		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
6		20	27	34	41	48	54	75	89	102	116
7	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
8		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
9		14-	20	27	34	41	48	61	75	89	102
10	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
11		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
12		12	14	17	20	29	43	54	68	82	96
13	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
14		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
15		9	12	14	17	20	29	43	57	70	84
16	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
17		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
18		3-	8-	12	12	16	22	29	43	57	68
19	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
20		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
21		Days	6-	9-	12	14	18	22	29	43	57
22	I			3m	4m	5m	8m	13m	16m	20m	2y2m
23		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
24		Days	Days	5-	6-	8-	12	14-	18	22	29))

TABLE 1

Sentencing Grid

SERIOUSNESS

LEVEL

OFFENDER SCORE

10 or

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10 or more</u>
<u>XVI</u>	<u>Life Sentence without Parole/Death Penalty</u>										
<u>XV</u>	<u>225-</u>	<u>233-</u>	<u>243-</u>	<u>262-</u>	<u>272-</u>	<u>289-</u>	<u>289-</u>	<u>315-</u>	<u>345-</u>	<u>383-</u>	<u>383-</u>
	<u>335</u>	<u>350</u>	<u>365</u>	<u>370</u>	<u>383</u>	<u>390</u>	<u>439</u>	<u>473</u>	<u>518</u>	<u>576</u>	<u>862</u>
<u>XIV</u>	<u>123-</u>	<u>134-</u>	<u>144-</u>	<u>154-</u>	<u>165-</u>	<u>175-</u>	<u>195-</u>	<u>216-</u>	<u>257-</u>	<u>298-</u>	<u>298-</u>
	<u>220</u>	<u>234</u>	<u>244</u>	<u>254</u>	<u>265</u>	<u>275</u>	<u>295</u>	<u>316</u>	<u>357</u>	<u>397</u>	<u>595</u>
<u>XIII</u>	<u>115-</u>	<u>125-</u>	<u>134-</u>	<u>144-</u>	<u>154-</u>	<u>163-</u>	<u>182-</u>	<u>201-</u>	<u>242-</u>	<u>277-</u>	<u>277-</u>
	<u>172</u>	<u>187</u>	<u>202</u>	<u>215</u>	<u>230</u>	<u>245</u>	<u>273</u>	<u>301</u>	<u>357</u>	<u>418</u>	<u>624</u>
<u>XII</u>	<u>88-</u>	<u>95-</u>	<u>103-</u>	<u>112-</u>	<u>120-</u>	<u>128-</u>	<u>151-</u>	<u>166-</u>	<u>196-</u>	<u>222-</u>	<u>222-</u>
	<u>128</u>	<u>143</u>	<u>155</u>	<u>168</u>	<u>180</u>	<u>194</u>	<u>227</u>	<u>248</u>	<u>290</u>	<u>336</u>	<u>500</u>

1	XI	<u>73-</u>	<u>80-</u>	<u>88-</u>	<u>95-</u>	<u>108-</u>	<u>112-</u>	<u>136-</u>	<u>148-</u>	<u>173-</u>	<u>196-</u>	<u>196-</u>
2		<u>107</u>	<u>120</u>	<u>132</u>	<u>143</u>	<u>150</u>	<u>166</u>	<u>204</u>	<u>222</u>	<u>257</u>	<u>294</u>	<u>442</u>
3	X	<u>48-</u>	<u>53-</u>	<u>58-</u>	<u>63-</u>	<u>68-</u>	<u>72-</u>	<u>96-</u>	<u>102-</u>	<u>120-</u>	<u>127-</u>	<u>127-</u>
4		<u>71</u>	<u>79</u>	<u>86</u>	<u>93</u>	<u>100</u>	<u>107</u>	<u>132</u>	<u>150</u>	<u>180</u>	<u>220</u>	<u>312</u>
5	IX	<u>29-</u>	<u>34-</u>	<u>38-</u>	<u>43-</u>	<u>48-</u>	<u>53-</u>	<u>72-</u>	<u>83-</u>	<u>102-</u>	<u>108-</u>	<u>108-</u>
6		<u>43</u>	<u>50</u>	<u>57</u>	<u>64</u>	<u>71</u>	<u>79</u>	<u>107</u>	<u>120</u>	<u>150</u>	<u>192</u>	<u>270</u>
7	VIII	<u>20-</u>	<u>24-</u>	<u>29-</u>	<u>34-</u>	<u>38-</u>	<u>43-</u>	<u>63-</u>	<u>72-</u>	<u>83-</u>	<u>90-</u>	<u>90-</u>
8		<u>28</u>	<u>36</u>	<u>43</u>	<u>50</u>	<u>57</u>	<u>64</u>	<u>93</u>	<u>107</u>	<u>120</u>	<u>162</u>	<u>225</u>
9	VII	<u>14-</u>	<u>20-</u>	<u>24-</u>	<u>29-</u>	<u>34-</u>	<u>38-</u>	<u>53-</u>	<u>63-</u>	<u>72-</u>	<u>72-</u>	<u>72-</u>
10		<u>21</u>	<u>28</u>	<u>36</u>	<u>43</u>	<u>50</u>	<u>57</u>	<u>79</u>	<u>93</u>	<u>107</u>	<u>131</u>	<u>180</u>
11	VI	<u>10+-</u>	<u>14-</u>	<u>20-</u>	<u>24-</u>	<u>29-</u>	<u>34-</u>	<u>43-</u>	<u>53-</u>	<u>63-</u>	<u>64-</u>	<u>64-</u>
12		<u>16</u>	<u>21</u>	<u>28</u>	<u>36</u>	<u>43</u>	<u>50</u>	<u>64</u>	<u>79</u>	<u>93</u>	<u>115</u>	<u>157</u>
13	V	<u>6-</u>	<u>10+-</u>	<u>12+-</u>	<u>14-</u>	<u>21-</u>	<u>31-</u>	<u>38-</u>	<u>48-</u>	<u>58-</u>	<u>61-</u>	<u>61-</u>
14		<u>12</u>	<u>16</u>	<u>18</u>	<u>21</u>	<u>30</u>	<u>45</u>	<u>57</u>	<u>71</u>	<u>86</u>	<u>107</u>	<u>120</u>
15	IV	<u>3-</u>	<u>6-</u>	<u>10+-</u>	<u>12+-</u>	<u>14-</u>	<u>21-</u>	<u>31-</u>	<u>43-</u>	<u>49-</u>	<u>52-</u>	<u>52-</u>
16		<u>9</u>	<u>12</u>	<u>16</u>	<u>18</u>	<u>21</u>	<u>30</u>	<u>45</u>	<u>57</u>	<u>74</u>	<u>95</u>	<u>120</u>
17	III	<u>1-</u>	<u>3-</u>	<u>4-</u>	<u>9-</u>	<u>11-</u>	<u>16-</u>	<u>21-</u>	<u>31-</u>	<u>40-</u>	<u>43-</u>	<u>43-</u>
18		<u>3</u>	<u>8</u>	<u>12</u>	<u>12</u>	<u>17</u>	<u>23</u>	<u>30</u>	<u>45</u>	<u>60</u>	<u>76</u>	<u>120</u>
19	II	<u>0-90</u>	<u>2-</u>	<u>3-</u>	<u>4-</u>	<u>10+-</u>	<u>13-</u>	<u>16-</u>	<u>21-</u>	<u>31-</u>	<u>36-</u>	<u>36-</u>
20		<u>Days</u>	<u>6</u>	<u>9</u>	<u>12</u>	<u>16</u>	<u>19</u>	<u>23</u>	<u>30</u>	<u>45</u>	<u>64</u>	<u>120</u>
21	I	<u>0-60</u>	<u>0-90</u>	<u>2-</u>	<u>2-</u>	<u>3-</u>	<u>4-</u>	<u>10+-</u>	<u>13-</u>	<u>16-</u>	<u>17-</u>	<u>17-</u>
22		<u>Days</u>	<u>Days</u>	<u>5</u>	<u>6</u>	<u>8</u>	<u>12</u>	<u>16</u>	<u>19</u>	<u>23</u>	<u>34</u>	<u>60</u>

23 Numbers in the first and second horizontal rows of each seriousness
24 category (~~((represent sentencing midpoints in years(y) and months(m).~~
25 ~~Numbers in the second and third rows))~~ represent standard sentence
26 ranges in months, or in days if so designated. 12+ equals one year and
27 one day. 10+ equals ten months and one day.

28 **Sec. 2.** RCW 9.94A.535 and 2005 c 68 s 3 are each amended to read
29 as follows:

30 The court may impose a sentence outside the standard sentence range
31 for an offense if it finds, considering the purpose of this chapter,
32 that there are substantial and compelling reasons justifying an
33 exceptional sentence. Facts supporting aggravated sentences, other
34 than the fact of a prior conviction, shall be determined pursuant to
35 the provisions of RCW 9.94A.537.

1 Whenever a sentence outside the standard sentence range is imposed,
2 the court shall set forth the reasons for its decision in written
3 findings of fact and conclusions of law. A sentence outside the
4 standard sentence range shall be a determinate sentence.

5 If the sentencing court finds that an exceptional sentence outside
6 the standard sentence range should be imposed, the sentence is subject
7 to review only as provided for in RCW 9.94A.585(4).

8 A departure from the standards in RCW 9.94A.589 (1) and (2)
9 governing whether sentences are to be served consecutively or
10 concurrently is an exceptional sentence subject to the limitations in
11 this section, and may be appealed by the offender or the state as set
12 forth in RCW 9.94A.585 (2) through (6).

13 (1) Mitigating Circumstances - Court to Consider

14 The court may impose an exceptional sentence below the standard
15 range if it finds that mitigating circumstances are established by a
16 preponderance of the evidence. The following are illustrative only and
17 are not intended to be exclusive reasons for exceptional sentences.

18 (a) To a significant degree, the victim was an initiator, willing
19 participant, aggressor, or provoker of the incident.

20 (b) Before detection, the defendant compensated, or made a good
21 faith effort to compensate, the victim of the criminal conduct for any
22 damage or injury sustained.

23 (c) The defendant committed the crime under duress, coercion,
24 threat, or compulsion insufficient to constitute a complete defense but
25 which significantly affected his or her conduct.

26 (d) The defendant, with no apparent predisposition to do so, was
27 induced by others to participate in the crime.

28 (e) The defendant's capacity to appreciate the wrongfulness of his
29 or her conduct, or to conform his or her conduct to the requirements of
30 the law, was significantly impaired. Voluntary use of drugs or alcohol
31 is excluded.

32 (f) The offense was principally accomplished by another person and
33 the defendant manifested extreme caution or sincere concern for the
34 safety or well-being of the victim.

35 (g) The operation of the multiple offense policy of RCW 9.94A.589
36 results in a presumptive sentence that is clearly excessive in light of
37 the purpose of this chapter, as expressed in RCW 9.94A.010.

1 (h) The defendant or the defendant's children suffered a continuing
2 pattern of physical or sexual abuse by the victim of the offense and
3 the offense is a response to that abuse.

4 (i) The offender score due to other current offenses, as opposed to
5 prior offenses, results in a presumptive sentence that is clearly
6 excessive.

7 (2) Aggravating Circumstances - Considered and Imposed by the Court
8 The trial court may impose an aggravated exceptional sentence
9 without a finding of fact by a jury under the following circumstances:

10 ((~~a~~)) The defendant and the state both stipulate that justice is
11 best served by the imposition of an exceptional sentence outside the
12 standard range, and the court finds the exceptional sentence to be
13 consistent with and in furtherance of the interests of justice and the
14 purposes of the sentencing reform act.

15 ~~((b) The defendant's prior unscored misdemeanor or prior unscored~~
16 ~~foreign criminal history results in a presumptive sentence that is~~
17 ~~clearly too lenient in light of the purpose of this chapter, as~~
18 ~~expressed in RCW 9.94A.010.~~

19 ~~(c) The defendant has committed multiple current offenses and the~~
20 ~~defendant's high offender score results in some of the current offenses~~
21 ~~going unpunished.~~

22 ~~(d) The failure to consider the defendant's prior criminal history~~
23 ~~which was omitted from the offender score calculation pursuant to RCW~~
24 ~~9.94A.525 results in a presumptive sentence that is clearly too~~
25 ~~lenient.))~~

26 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
27 the Court

28 Except for circumstances listed in subsection (2) of this section,
29 the following circumstances are an exclusive list of factors that can
30 support a sentence above the standard range. Such facts should be
31 determined by procedures specified in RCW 9.94A.537.

32 (a) The defendant's conduct during the commission of the current
33 offense manifested deliberate cruelty to the victim.

34 (b) The defendant knew or should have known that the victim of the
35 current offense was particularly vulnerable or incapable of resistance.

36 (c) The current offense was a violent offense, and the defendant
37 knew that the victim of the current offense was pregnant.

1 (d) The current offense was a major economic offense or series of
2 offenses, so identified by a consideration of any of the following
3 factors:

4 (i) The current offense involved multiple victims or multiple
5 incidents per victim;

6 (ii) The current offense involved attempted or actual monetary loss
7 substantially greater than typical for the offense;

8 (iii) The current offense involved a high degree of sophistication
9 or planning or occurred over a lengthy period of time; or

10 (iv) The defendant used his or her position of trust, confidence,
11 or fiduciary responsibility to facilitate the commission of the current
12 offense.

13 (e) The current offense was a major violation of the Uniform
14 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
15 trafficking in controlled substances, which was more onerous than the
16 typical offense of its statutory definition: The presence of ANY of
17 the following may identify a current offense as a major VUCSA:

18 (i) The current offense involved at least three separate
19 transactions in which controlled substances were sold, transferred, or
20 possessed with intent to do so;

21 (ii) The current offense involved an attempted or actual sale or
22 transfer of controlled substances in quantities substantially larger
23 than for personal use;

24 (iii) The current offense involved the manufacture of controlled
25 substances for use by other parties;

26 (iv) The circumstances of the current offense reveal the offender
27 to have occupied a high position in the drug distribution hierarchy;

28 (v) The current offense involved a high degree of sophistication or
29 planning, occurred over a lengthy period of time, or involved a broad
30 geographic area of disbursement; or

31 (vi) The offender used his or her position or status to facilitate
32 the commission of the current offense, including positions of trust,
33 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
34 other medical professional).

35 (f) The current offense included a finding of sexual motivation
36 pursuant to RCW 9.94A.835.

37 (g) The offense was part of an ongoing pattern of sexual abuse of

1 the same victim under the age of eighteen years manifested by multiple
2 incidents over a prolonged period of time.

3 (h) The current offense involved domestic violence, as defined in
4 RCW 10.99.020, and one or more of the following was present:

5 (i) The offense was part of an ongoing pattern of psychological,
6 physical, or sexual abuse of the victim manifested by multiple
7 incidents over a prolonged period of time;

8 (ii) The offense occurred within sight or sound of the victim's or
9 the offender's minor children under the age of eighteen years; or

10 (iii) The offender's conduct during the commission of the current
11 offense manifested deliberate cruelty or intimidation of the victim.

12 (i) The offense resulted in the pregnancy of a child victim of
13 rape.

14 (j) The defendant knew that the victim of the current offense was
15 a youth who was not residing with a legal custodian and the defendant
16 established or promoted the relationship for the primary purpose of
17 victimization.

18 (k) The offense was committed with the intent to obstruct or impair
19 human or animal health care or agricultural or forestry research or
20 commercial production.

21 (l) The current offense is trafficking in the first degree or
22 trafficking in the second degree and any victim was a minor at the time
23 of the offense.

24 (m) The offense involved a high degree of sophistication or
25 planning.

26 (n) The defendant used his or her position of trust, confidence, or
27 fiduciary responsibility to facilitate the commission of the current
28 offense.

29 (o) The defendant committed a current sex offense, has a history of
30 sex offenses, and is not amenable to treatment.

31 (p) The offense involved an invasion of the victim's privacy.

32 (q) The defendant demonstrated or displayed an egregious lack of
33 remorse.

34 (r) The offense involved a destructive and foreseeable impact on
35 persons other than the victim.

36 (s) The defendant committed the offense to obtain or maintain his
37 or her membership or to advance his or her position in the hierarchy of
38 an organization, association, or identifiable group.

1 (t) The defendant committed the current offense shortly after being
2 released from incarceration.

3 (u) The current offense is a burglary and the victim of the
4 burglary was present in the building or residence when the crime was
5 committed.

6 (v) The offense was committed against a law enforcement officer who
7 was performing his or her official duties at the time of the offense,
8 the offender knew that the victim was a law enforcement officer, and
9 the victim's status as a law enforcement officer is not an element of
10 the offense.

11 (w) The defendant committed the offense against a victim who was
12 acting as a good samaritan.

13 (x) The defendant committed the offense against a public official
14 or officer of the court in retaliation of the public official's
15 performance of his or her duty to the criminal justice system.

16 (y) The victim's injuries substantially exceed the level of bodily
17 harm necessary to satisfy the elements of the offense. This aggravator
18 is not an exception to RCW 9.94A.530(2).

19 (z) The defendant's prior unscored misdemeanor or prior unscored
20 foreign criminal history results in a presumptive sentence that is
21 clearly too lenient in light of the purpose of this chapter, as
22 expressed in RCW 9.94A.010.

23 (aa) The defendant has committed multiple current offenses and the
24 defendant's high offender score results in some of the current offenses
25 going unpunished.

26 (bb) The failure to consider the defendant's prior criminal history
27 which was omitted from the offender score calculation pursuant to RCW
28 9.94A.525 results in a presumptive sentence that is clearly too
29 lenient.

30 **Sec. 3.** RCW 9.94A.537 and 2005 c 68 s 4 are each amended to read
31 as follows:

32 (1) At any time prior to trial or entry of the guilty plea if
33 substantial rights of the defendant are not prejudiced, the state may
34 give notice that it is seeking a sentence above the standard sentencing
35 range. The notice shall state aggravating circumstances upon which the
36 requested sentence will be based.

1 (2) The facts supporting aggravating circumstances shall be proved
2 to a jury beyond a reasonable doubt. The jury's verdict on the
3 aggravating factor must be unanimous, and by special interrogatory. If
4 a jury is waived, proof shall be to the court beyond a reasonable
5 doubt, unless the defendant stipulates to the aggravating facts. A
6 jury may be empaneled to find aggravating facts if the defendant pleads
7 guilty to the underlying crime but not to the aggravating factor.

8 (3) Evidence regarding any facts supporting aggravating
9 circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented
10 to the jury during the trial of the alleged crime, unless the state
11 alleges the aggravating circumstances listed in RCW 9.94A.535(3)
12 (e)(iv), (h)(i), (o), or (t). If one of these aggravating
13 circumstances is alleged, the trial court may conduct a separate
14 proceeding if the evidence supporting the aggravating fact is not part
15 of the res geste of the charged crime, if the evidence is not otherwise
16 admissible in trial of the charged crime, and if the court finds that
17 the probative value of the evidence to the aggravated fact is
18 substantially outweighed by its prejudicial effect on the jury's
19 ability to determine guilt or innocence for the underlying crime.

20 (4) If the court conducts a separate proceeding to determine the
21 existence of aggravating circumstances, the proceeding shall
22 immediately follow the trial on the underlying conviction, if possible.
23 If any person who served on the jury is unable to continue, the court
24 shall substitute an alternate juror.

25 (5) If the jury finds, unanimously and beyond a reasonable doubt,
26 one or more of the facts alleged by the state in support of an
27 aggravated sentence, the court may sentence the offender pursuant to
28 RCW 9.94A.535 to a term of confinement up to the maximum allowed under
29 RCW 9A.20.021 for the underlying conviction if it finds, considering
30 the purposes of this chapter, that the facts found are substantial and
31 compelling reasons justifying an exceptional sentence.

32 (6) If the defendant enters a guilty plea to the charged crime or
33 the case is remanded for a new sentencing hearing, the court may
34 empanel a jury for the purpose of considering any aggravating
35 circumstances alleged by the state. The trial on the aggravating
36 circumstances should occur within ninety days of the entry of the
37 guilty plea, or the filing of an appellate court mandate. Upon a
38 showing of good cause, the court may extend the time for the trial on

1 aggravating circumstances. The time limit for holding a sentencing
2 hearing, set forth in RCW 9.94A.500, shall not begin to run until the
3 jury renders a verdict on the aggravating circumstances.

4 **Sec. 4.** RCW 9.94A.190 and 2001 2nd sp.s. c 12 s 313 are each
5 amended to read as follows:

6 (1) A sentence that includes a term or terms of confinement
7 totaling more than one year, or a sentence set under RCW 9.94A.510
8 based on a sentence range with a minimum sentence of more than ten
9 months, shall be served in a facility or institution operated, or
10 utilized under contract, by the state. Except as provided in this
11 subsection or subsection (3) or (5) of this section, a sentence of not
12 more than one year of confinement shall be served in a facility
13 operated, licensed, or utilized under contract, by the county, or if
14 home detention or work crew has been ordered by the court, in the
15 residence of either the offender or a member of the offender's
16 immediate family.

17 (2) If a county uses a state partial confinement facility for the
18 partial confinement of a person sentenced to confinement for not more
19 than one year, the county shall reimburse the state for the use of the
20 facility as provided in this subsection. The office of financial
21 management shall set the rate of reimbursement based upon the average
22 per diem cost per offender in the facility. The office of financial
23 management shall determine to what extent, if any, reimbursement shall
24 be reduced or eliminated because of funds provided by the legislature
25 to the department for the purpose of covering the cost of county use of
26 state partial confinement facilities. The office of financial
27 management shall reestablish reimbursement rates each even-numbered
28 year.

29 (3) A person who is sentenced for a felony to a term of not more
30 than one year, and who is committed or returned to incarceration in a
31 state facility on another felony conviction, either under the
32 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
33 shall serve all terms of confinement, including a sentence of not more
34 than one year, in a facility or institution operated, or utilized under
35 contract, by the state, consistent with the provisions of RCW
36 9.94A.589.

1 (4) Notwithstanding any other provision of this section, a sentence
2 imposed pursuant to RCW 9.94A.660 which has a standard sentence range
3 of over one year, regardless of length, shall be served in a facility
4 or institution operated, or utilized under contract, by the state.

5 (5) Sentences imposed pursuant to RCW 9.94A.712 shall be served in
6 a facility or institution operated, or utilized under contract, by the
7 state.

8 **Sec. 5.** RCW 9.94A.850 and 2005 c 282 s 19 are each amended to read
9 as follows:

10 (1) A sentencing guidelines commission is established as an agency
11 of state government.

12 (2) The legislature finds that the commission, having accomplished
13 its original statutory directive to implement this chapter, and having
14 expertise in sentencing practice and policies, shall:

15 (a) Evaluate state sentencing policy, to include whether the
16 sentencing ranges and standards are consistent with and further:

17 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

18 (ii) The intent of the legislature to emphasize confinement for the
19 violent offender and alternatives to confinement for the nonviolent
20 offender.

21 The commission shall provide the governor and the legislature with
22 its evaluation and recommendations under this subsection not later than
23 December 1, 1996, and every two years thereafter;

24 (b) Recommend to the legislature revisions or modifications to the
25 standard sentence ranges, state sentencing policy, prosecuting
26 standards, and other standards. If implementation of the revisions or
27 modifications would result in exceeding the capacity of correctional
28 facilities, then the commission shall accompany its recommendation with
29 an additional list of standard sentence ranges which are consistent
30 with correction capacity;

31 (c) Study the existing criminal code and from time to time make
32 recommendations to the legislature for modification;

33 (d)(i) Serve as a clearinghouse and information center for the
34 collection, preparation, analysis, and dissemination of information on
35 state and local adult and juvenile sentencing practices; (ii) develop
36 and maintain a computerized adult and juvenile sentencing information
37 system by individual superior court judge consisting of offender,

1 offense, history, and sentence information entered from judgment and
2 sentence forms for all adult felons; and (iii) conduct ongoing research
3 regarding adult and juvenile sentencing guidelines, use of total
4 confinement and alternatives to total confinement, plea bargaining, and
5 other matters relating to the improvement of the adult criminal justice
6 system and the juvenile justice system;

7 (e) Assume the powers and duties of the juvenile disposition
8 standards commission after June 30, 1996;

9 (f) Evaluate the effectiveness of existing disposition standards
10 and related statutes in implementing policies set forth in RCW
11 13.40.010 generally, specifically review the guidelines relating to the
12 confinement of minor and first-time offenders as well as the use of
13 diversion, and review the application of current and proposed juvenile
14 sentencing standards and guidelines for potential adverse impacts on
15 the sentencing outcomes of racial and ethnic minority youth;

16 (g) Solicit the comments and suggestions of the juvenile justice
17 community concerning disposition standards, and make recommendations to
18 the legislature regarding revisions or modifications of the standards.
19 The evaluations shall be submitted to the legislature on December 1 of
20 each odd-numbered year. The department of social and health services
21 shall provide the commission with available data concerning the
22 implementation of the disposition standards and related statutes and
23 their effect on the performance of the department's responsibilities
24 relating to juvenile offenders, and with recommendations for
25 modification of the disposition standards. The administrative office
26 of the courts shall provide the commission with available data on
27 diversion, including the use of youth court programs, and dispositions
28 of juvenile offenders under chapter 13.40 RCW; and

29 (h) Not later than December 1, 1997, and at least every two years
30 thereafter, based on available information, report to the governor and
31 the legislature on:

32 (i) Racial disproportionality in juvenile and adult sentencing,
33 and, if available, the impact that diversions, such as youth courts,
34 have on racial disproportionality in juvenile prosecution,
35 adjudication, and sentencing;

36 (ii) The capacity of state and local juvenile and adult facilities
37 and resources; and

38 (iii) Recidivism information on adult and juvenile offenders.

1 (3) Each of the commission's recommended standard sentence ranges
2 shall include one or more of the following: Total confinement, partial
3 confinement, community supervision, community restitution, and a fine.

4 (4) The standard sentence ranges of total and partial confinement
5 under this chapter, except as provided in RCW 9.94A.517, are subject to
6 the following limitations:

7 (a) If the maximum term in the range is one year or less, the
8 minimum term in the range shall be no less than one-third of the
9 maximum term in the range, except that if the maximum term in the range
10 is ninety days or less, the minimum term may be less than one-third of
11 the maximum;

12 (b) If the maximum term in the range is greater than one year, the
13 minimum term in the range shall be no less than ((~~seventy-five~~)) sixty
14 percent of the maximum term in the range, except that for murder in the
15 second degree in seriousness level XIV under RCW 9.94A.510, the minimum
16 term in the range shall be no less than fifty percent of the maximum
17 term in the range and except that for any offense with an offender
18 score of ten or more, the minimum term in the range shall be no less
19 than twenty-five percent of the maximum term in the range; and

20 (c) The maximum term of confinement in a range may not exceed the
21 statutory maximum for the crime as provided in RCW 9A.20.021.

22 (5)(a) Not later than December 31, 1999, the commission shall
23 propose to the legislature the initial community custody ranges to be
24 included in sentences under RCW 9.94A.715 for crimes committed on or
25 after July 1, 2000. Not later than December 31 of each year, the
26 commission may propose modifications to the ranges. The ranges shall
27 be based on the principles in RCW 9.94A.010, and shall take into
28 account the funds available to the department for community custody.
29 The minimum term in each range shall not be less than one-half of the
30 maximum term.

31 (b) The legislature may, by enactment of a legislative bill, adopt
32 or modify the community custody ranges proposed by the commission. If
33 the legislature fails to adopt or modify the initial ranges in its next
34 regular session after they are proposed, the proposed ranges shall take
35 effect without legislative approval for crimes committed on or after
36 July 1, 2000.

37 (c) When the commission proposes modifications to ranges pursuant
38 to this subsection, the legislature may, by enactment of a bill, adopt

1 or modify the ranges proposed by the commission for crimes committed on
2 or after July 1 of the year after they were proposed. Unless the
3 legislature adopts or modifies the commission's proposal in its next
4 regular session, the proposed ranges shall not take effect.

5 (6) The commission shall exercise its duties under this section in
6 conformity with chapter 34.05 RCW.

7 NEW SECTION. **Sec. 6.** (1) Savings to the state general fund
8 resulting from reductions in sentencing as a result of sections 1 and
9 5 of this act, shall be deposited in the criminal justice treatment
10 account. All moneys deposited pursuant to this act shall be
11 appropriated to the division of alcohol and substance abuse for
12 distribution pursuant to RCW 70.96A.350(5).

13 (2) Moneys allocated under this section shall be used to
14 supplement, not supplant, other federal, state, and local funds used
15 for substance abuse treatment.

16 NEW SECTION. **Sec. 7.** It is the intent of the legislature to
17 restore the ability to impose an aggravated sentence lost by the
18 superior court as a result of the decision of the United States supreme
19 court in *Blakely v. State of Washington*, 542 U.S. 296 (2004). The
20 legislature finds that as the seriousness level of the crime and the
21 criminal history of the offender increase, the need for an
22 individualized and informed assessment of the circumstances of the
23 crime, the offender, and the victim, by the judiciary, is necessary for
24 justice to be obtained. The legislature further finds that the
25 exercise of the judiciary's sentencing discretion over a broader range
26 based upon the assessment of these circumstances is consistent with the
27 policies supporting Washington's sentencing reform act.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 9.94A RCW
29 to read as follows:

30 (1) For offenders convicted of a violent offense, the upper limit
31 of the standard sentencing range shall be advisory only. However,
32 without limiting the sentencing discretion of the judge, in cases in
33 which the prosecutor seeks a sentence above the standard range, the
34 prosecutor must assert a statutory aggravating factor. Notwithstanding
35 any other law, the maximum sentence that a court may impose for a

1 violent offense where the lower limit of the standard sentencing range
2 is more than twelve months is the maximum sentence for the current
3 offense under chapter 9A.20 RCW, or twice the upper limit of the
4 standard sentencing range, whichever is less; the maximum sentence that
5 a court may impose for all other violent offenses is twice the upper
6 limit of the standard range or twelve months, whichever is less. This
7 provision shall not apply to any offender sentenced under RCW
8 9.94A.712.

9 (2) In making its determination of the sentence length to be
10 imposed, the court shall consider the risk assessment prepared by the
11 department of corrections, if any, the presentence report, if any, and
12 other materials provided by the offender, and any information provided
13 by the victim or victims of the crime. Nothing in this section
14 requires the department of corrections to prepare a risk assessment or
15 presentence report prior to sentencing.

16 (3) A sentence imposed under this section shall be a determinate
17 sentence unless it is imposed on an offender sentenced under RCW
18 9.94A.712. The sentence may be appealed by the offender or the state
19 as set forth in RCW 9.94A.585 (2) through (6).

20 (4) Nothing in this section prohibits an aggravated exceptional
21 sentence from being imposed on an offender under RCW 9.94A.535 or
22 9.94A.537 up to the statutory maximum sentence as defined in RCW
23 9.94A.030.

24 **Sec. 9.** RCW 9.94A.480 and 2002 c 290 s 16 are each amended to read
25 as follows:

26 (1) A current, newly created or reworked judgment and sentence
27 document for each felony sentencing shall record any and all
28 recommended sentencing agreements or plea agreements and the sentences
29 for any and all felony crimes kept as public records under RCW
30 9.94A.475 shall contain the clearly printed name and legal signature of
31 the sentencing judge. The judgment and sentence document as defined in
32 this section shall also provide additional space for the sentencing
33 judge's reasons, if any, for going either above or below the
34 presumptive or advisory sentence range for any and all felony crimes
35 covered as public records under RCW 9.94A.475. Both the sentencing
36 judge and the prosecuting attorney's office shall each retain or

1 receive a completed copy of each sentencing document as defined in this
2 section for their own records.

3 (2) The sentencing guidelines commission shall be sent a completed
4 copy of the judgment and sentence document upon conviction for each
5 felony sentencing under subsection (1) of this section and shall
6 compile a yearly and cumulative judicial record of each sentencing
7 judge in regards to his or her sentencing practices for any and all
8 felony crimes involving:

9 (a) Any violent offense as defined in this chapter;

10 (b) Any most serious offense as defined in this chapter;

11 (c) Any felony with any deadly weapon special verdict under RCW
12 9.94A.602;

13 (d) Any felony with any deadly weapon enhancements under RCW
14 9.94A.533 (3) or (4), or both; and/or

15 (e) The felony crimes of possession of a machine gun, possessing a
16 stolen firearm, drive-by shooting, theft of a firearm, unlawful
17 possession of a firearm in the first or second degree, and/or use of a
18 machine gun in a felony.

19 (3) The sentencing guidelines commission shall compare each
20 individual judge's sentencing practices to the standard ~~((σ))~~
21 presumptive, or advisory sentence range for any and all felony crimes
22 listed in subsection (2) of this section for the appropriate offense
23 level as defined in RCW 9.94A.515 or 9.94A.518, offender score as
24 defined in RCW 9.94A.525, and any applicable deadly weapon enhancements
25 as defined in RCW 9.94A.533 (3) or (4), or both. These comparative
26 records shall be retained and made available to the public for review
27 in a current, newly created or reworked official published document by
28 the sentencing guidelines commission.

29 (4) Any and all felony sentences which are either above or below
30 the standard ~~((σ))~~
31 presumptive, or advisory sentence range in
32 subsection (3) of this section shall also mark whether the prosecuting
33 attorney in the case also recommended a similar sentence, if any, which
34 was either above or below the standard, presumptive, or advisory
35 sentence range and shall also indicate if the sentence was in
36 conjunction with an approved alternative sentencing option including a
37 first-time offender waiver, sex offender sentencing alternative, or
other prescribed sentencing option.

1 (5) If any completed judgment and sentence document as defined in
2 subsection (1) of this section is not sent to the sentencing guidelines
3 commission as required in subsection (2) of this section, the
4 sentencing guidelines commission shall have the authority and shall
5 undertake reasonable and necessary steps to assure that all past,
6 current, and future sentencing documents as defined in subsection (1)
7 of this section are received by the sentencing guidelines commission.

8 NEW SECTION. **Sec. 10.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected."

2SSB 6497 - S AMD

By Senators Johnson, Thibaudeau

WITHDRAWN 02/13/2006

12 On page 1, line 1 of the title, after "sentences;" strike the
13 remainder of the title and insert "amending RCW 9.94A.510, 9.94A.535,
14 9.94A.537, 9.94A.190, 9.94A.850, and 9.94A.480; adding a new section to
15 chapter 9.94A RCW; creating new sections; and prescribing penalties."

EFFECT: The sentencing ranges under columns zero through nine of the sentencing guidelines grid are modified so that the expansion of the sentencing ranges are symmetrical throughout the grid. The sentencing ranges are expanded up and down in equal proportion. No changes are made to the sentencing ranges under column ten. An intent section is added to provide that the purpose of the bill is to restore the ability to impose an aggravated sentence lost by the superior court as a result of the decision of the United States Supreme Court in *Blakely v. State of Washington*. For offenders convicted of a violent offense, the upper limit of the standard sentencing range is advisory only. In cases in which the prosecutor seeks a sentence above the standard range, the prosecutor must assert a statutory aggravating factor. The maximum sentence that a court may impose for a violent offense where the lower limit of the standard sentencing range is more

than twelve months is the maximum sentence for the current offense, or twice the upper limit of the standard sentencing range, whichever is less. The maximum sentence that a court may impose for all other violent offenses is twice the upper limit of the standard range or twelve months, whichever is less. In making its determination of the sentence length to be imposed, the court is to consider the risk assessment prepared by the Department of Corrections, if any, the presentence report, if any, materials provided by the offender, and any materials provided by the victim. Nothing in the bill prevents an offender from receiving an aggravated exceptional sentence.

--- END ---