

2 **SB 5204** - S AMD - 106

3 By Senators Oke, Hargrove, Long and Rinehart

4 ADOPTED 3/10/95

5 On page 2, beginning on line 21, after "confinement." strike all
6 material through "confinement." on line 23, and insert "~~((The court
7 shall also provide that upon completion of the work ethic camp program,
8 the offender shall be released on community custody for any remaining
9 time of total confinement.))~~ In sentencing an offender to the work
10 ethic camp, the court shall specify: (a) That upon completion of the
11 work ethic camp program, the offender shall be released on community
12 custody for any remaining time of total confinement; (b) the applicable
13 conditions of supervision on community custody status as authorized by
14 RCW 9.94A.120(8)(b) and (c); and (c) which conditions, if violated, may
15 result in a return to total confinement for the balance of the
16 offender's remaining time of confinement."

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20 On page 3, after line 9, insert the following:

21 "**Sec. 2.** RCW 9.94A.120 and 1994 c 1 s 2 (Initiative Measure No.
22 593) and 1993 c 31 s 3 are each reenacted and amended to read as
23 follows:

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

26 (1) Except as authorized in subsections (2), (4), (5), and (7) of
27 this section, the court shall impose a sentence within the sentence
28 range for the offense.

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

33 (3) Whenever a sentence outside the standard range is imposed, the
34 court shall set forth the reasons for its decision in written findings

1 of fact and conclusions of law. A sentence outside the standard range
2 shall be a determinate sentence.

3 (4) A persistent offender shall be sentenced to a term of total
4 confinement for life without the possibility of parole or, when
5 authorized by RCW 10.95.030 for the crime of aggravated murder in the
6 first degree, sentenced to death, notwithstanding the maximum sentence
7 under any other law. An offender convicted of the crime of murder in
8 the first degree shall be sentenced to a term of total confinement not
9 less than twenty years. An offender convicted of the crime of assault
10 in the first degree or assault of a child in the first degree where the
11 offender used force or means likely to result in death or intended to
12 kill the victim shall be sentenced to a term of total confinement not
13 less than five years. An offender convicted of the crime of rape in
14 the first degree shall be sentenced to a term of total confinement not
15 less than five years. The foregoing minimum terms of total confinement
16 are mandatory and shall not be varied or modified as provided in
17 subsection (2) of this section. In addition, all offenders subject to
18 the provisions of this subsection shall not be eligible for community
19 custody, earned early release time, furlough, home detention, partial
20 confinement, work crew, work release, or any other form of early
21 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
22 or any other form of authorized leave of absence from the correctional
23 facility while not in the direct custody of a corrections officer or
24 officers during such minimum terms of total confinement except in the
25 case of an offender in need of emergency medical treatment or for the
26 purpose of commitment to an inpatient treatment facility in the case of
27 an offender convicted of the crime of rape in the first degree.

28 (5) In sentencing a first-time offender the court may waive the
29 imposition of a sentence within the sentence range and impose a
30 sentence which may include up to ninety days of confinement in a
31 facility operated or utilized under contract by the county and a
32 requirement that the offender refrain from committing new offenses.
33 The sentence may also include up to two years of community supervision,
34 which, in addition to crime-related prohibitions, may include
35 requirements that the offender perform any one or more of the
36 following:

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

38 (b) Undergo available outpatient treatment for up to two years, or
39 inpatient treatment not to exceed the standard range of confinement for

1 that offense;

2 (c) Pursue a prescribed, secular course of study or vocational
3 training;

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

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

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

11 (6) If a sentence range has not been established for the
12 defendant's crime, the court shall impose a determinate sentence which
13 may include not more than one year of confinement, community service
14 work, a term of community supervision not to exceed one year, and/or
15 other legal financial obligations. The court may impose a sentence
16 which provides more than one year of confinement if the court finds,
17 considering the purpose of this chapter, that there are substantial and
18 compelling reasons justifying an exceptional sentence.

19 (7)(a)(i) When an offender is convicted of a sex offense other than
20 a violation of RCW 9A.44.050 or a sex offense that is also a serious
21 violent offense and has no prior convictions for a sex offense or any
22 other felony sex offenses in this or any other state, the sentencing
23 court, on its own motion or the motion of the state or the defendant,
24 may order an examination to determine whether the defendant is amenable
25 to treatment.

26 The report of the examination shall include at a minimum the
27 following: The defendant's version of the facts and the official
28 version of the facts, the defendant's offense history, an assessment of
29 problems in addition to alleged deviant behaviors, the offender's
30 social and employment situation, and other evaluation measures used.
31 The report shall set forth the sources of the evaluator's information.

32 The examiner shall assess and report regarding the defendant's
33 amenability to treatment and relative risk to the community. A
34 proposed treatment plan shall be provided and shall include, at a
35 minimum:

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

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

39 (C) Monitoring plans, including any requirements regarding living

1 conditions, lifestyle requirements, and monitoring by family members
2 and others;

3 (D) Anticipated length of treatment; and

4 (E) Recommended crime-related prohibitions.

5 The court on its own motion may order, or on a motion by the state
6 shall order, a second examination regarding the offender's amenability
7 to treatment. The evaluator shall be selected by the party making the
8 motion. The defendant shall pay the cost of any second examination
9 ordered unless the court finds the defendant to be indigent in which
10 case the state shall pay the cost.

11 (ii) After receipt of the reports, the court shall consider whether
12 the offender and the community will benefit from use of this special
13 sexual offender sentencing alternative and consider the victim's
14 opinion whether the offender should receive a treatment disposition
15 under this subsection. If the court determines that this special sex
16 offender sentencing alternative is appropriate, the court shall then
17 impose a sentence within the sentence range. If this sentence is less
18 than eight years of confinement, the court may suspend the execution of
19 the sentence and impose the following conditions of suspension:

20 (A) The court shall place the defendant on community supervision
21 for the length of the suspended sentence or three years, whichever is
22 greater; and

23 (B) The court shall order treatment for any period up to three
24 years in duration. The court in its discretion shall order outpatient
25 sex offender treatment or inpatient sex offender treatment, if
26 available. A community mental health center may not be used for such
27 treatment unless it has an appropriate program designed for sex
28 offender treatment. The offender shall not change sex offender
29 treatment providers or treatment conditions without first notifying the
30 prosecutor, the community corrections officer, and the court, and shall
31 not change providers without court approval after a hearing if the
32 prosecutor or community corrections officer object to the change. In
33 addition, as conditions of the suspended sentence, the court may impose
34 other sentence conditions including up to six months of confinement,
35 not to exceed the sentence range of confinement for that offense,
36 crime-related prohibitions, and requirements that the offender perform
37 any one or more of the following:

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

39 (II) Remain within prescribed geographical boundaries and notify

1 the court or the community corrections officer prior to any change in
2 the offender's address or employment;

3 (III) Report as directed to the court and a community corrections
4 officer;

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

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

10 (iii) The sex offender therapist shall submit quarterly reports on
11 the defendant's progress in treatment to the court and the parties.
12 The report shall reference the treatment plan and include at a minimum
13 the following: Dates of attendance, defendant's compliance with
14 requirements, treatment activities, the defendant's relative progress
15 in treatment, and any other material as specified by the court at
16 sentencing.

17 (iv) At the time of sentencing, the court shall set a treatment
18 termination hearing for three months prior to the anticipated date for
19 completion of treatment. Prior to the treatment termination hearing,
20 the treatment professional and community corrections officer shall
21 submit written reports to the court and parties regarding the
22 defendant's compliance with treatment and monitoring requirements, and
23 recommendations regarding termination from treatment, including
24 proposed community supervision conditions. Either party may request
25 and the court may order another evaluation regarding the advisability
26 of termination from treatment. The defendant shall pay the cost of any
27 additional evaluation ordered unless the court finds the defendant to
28 be indigent in which case the state shall pay the cost. At the
29 treatment termination hearing the court may: (A) Modify conditions of
30 community supervision, and either (B) terminate treatment, or (C)
31 extend treatment for up to the remaining period of community
32 supervision.

33 (v) The court may revoke the suspended sentence at any time during
34 the period of community supervision and order execution of the sentence
35 if: (A) The defendant violates the conditions of the suspended
36 sentence, or (B) the court finds that the defendant is failing to make
37 satisfactory progress in treatment. All confinement time served during
38 the period of community supervision shall be credited to the offender
39 if the suspended sentence is revoked.

1 (vi) Except as provided in (a)(vii) of this subsection, after July
2 1, 1991, examinations and treatment ordered pursuant to this subsection
3 shall only be conducted by sex offender treatment providers certified
4 by the department of health pursuant to chapter 18.155 RCW.

5 (vii) A sex offender therapist who examines or treats a sex
6 offender pursuant to this subsection (7) does not have to be certified
7 by the department of health pursuant to chapter 18.155 RCW if the court
8 finds that: (A) The offender has already moved to another state or
9 plans to move to another state for reasons other than circumventing the
10 certification requirements; (B) no certified providers are available
11 for treatment within a reasonable geographical distance of the
12 offender's home; and (C) the evaluation and treatment plan comply with
13 this subsection (7) and the rules adopted by the department of health.

14 For purposes of this subsection, "victim" means any person who has
15 sustained emotional, psychological, physical, or financial injury to
16 person or property as a result of the crime charged. "Victim" also
17 means a parent or guardian of a victim who is a minor child unless the
18 parent or guardian is the perpetrator of the offense.

19 (b) When an offender is convicted of any felony sex offense
20 committed before July 1, 1987, and is sentenced to a term of
21 confinement of more than one year but less than six years, the
22 sentencing court may, on its own motion or on the motion of the
23 offender or the state, order the offender committed for up to thirty
24 days to the custody of the secretary of social and health services for
25 evaluation and report to the court on the offender's amenability to
26 treatment at these facilities. If the secretary of social and health
27 services cannot begin the evaluation within thirty days of the court's
28 order of commitment, the offender shall be transferred to the state for
29 confinement pending an opportunity to be evaluated at the appropriate
30 facility. The court shall review the reports and may order that the
31 term of confinement imposed be served in the sexual offender treatment
32 program at the location determined by the secretary of social and
33 health services or the secretary's designee, only if the report
34 indicates that the offender is amenable to the treatment program
35 provided at these facilities. The offender shall be transferred to the
36 state pending placement in the treatment program. Any offender who has
37 escaped from the treatment program shall be referred back to the
38 sentencing court.

39 If the offender does not comply with the conditions of the

1 treatment program, the secretary of social and health services may
2 refer the matter to the sentencing court. The sentencing court shall
3 commit the offender to the department of corrections to serve the
4 balance of the term of confinement.

5 If the offender successfully completes the treatment program before
6 the expiration of the term of confinement, the court may convert the
7 balance of confinement to community supervision and may place
8 conditions on the offender including crime-related prohibitions and
9 requirements that the offender perform any one or more of the
10 following:

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

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

15 (iii) Report as directed to the court and a community corrections
16 officer;

17 (iv) Undergo available outpatient treatment.

18 If the offender violates any of the terms of community supervision,
19 the court may order the offender to serve out the balance of the
20 community supervision term in confinement in the custody of the
21 department of corrections.

22 After June 30, 1993, this subsection (b) shall cease to have
23 effect.

24 (c) When an offender commits any felony sex offense on or after
25 July 1, 1987, and is sentenced to a term of confinement of more than
26 one year but less than six years, the sentencing court may, on its own
27 motion or on the motion of the offender or the state, request the
28 department of corrections to evaluate whether the offender is amenable
29 to treatment and the department may place the offender in a treatment
30 program within a correctional facility operated by the department.

31 Except for an offender who has been convicted of a violation of RCW
32 9A.44.040 or 9A.44.050, if the offender completes the treatment program
33 before the expiration of his or her term of confinement, the department
34 of corrections may request the court to convert the balance of
35 confinement to community supervision and to place conditions on the
36 offender including crime-related prohibitions and requirements that the
37 offender perform any one or more of the following:

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

39 (ii) Remain within prescribed geographical boundaries and notify

1 the court or the community corrections officer prior to any change in
2 the offender's address or employment;

3 (iii) Report as directed to the court and a community corrections
4 officer;

5 (iv) Undergo available outpatient treatment.

6 If the offender violates any of the terms of his or her community
7 supervision, the court may order the offender to serve out the balance
8 of his or her community supervision term in confinement in the custody
9 of the department of corrections.

10 Nothing in (c) of this subsection shall confer eligibility for such
11 programs for offenders convicted and sentenced for a sex offense
12 committed prior to July 1, 1987. This subsection (c) does not apply to
13 any crime committed after July 1, 1990.

14 (d) Offenders convicted and sentenced for a sex offense committed
15 prior to July 1, 1987, may, subject to available funds, request an
16 evaluation by the department of corrections to determine whether they
17 are amenable to treatment. If the offender is determined to be
18 amenable to treatment, the offender may request placement in a
19 treatment program within a correctional facility operated by the
20 department. Placement in such treatment program is subject to
21 available funds.

22 (8)(a) When a court sentences a person to a term of total
23 confinement to the custody of the department of corrections for an
24 offense categorized as a sex offense or a serious violent offense
25 committed after July 1, 1988, but before July 1, 1990, assault in the
26 second degree, assault of a child in the second degree, any crime
27 against a person where it is determined in accordance with RCW
28 9.94A.125 that the defendant or an accomplice was armed with a deadly
29 weapon at the time of commission, or any felony offense under chapter
30 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
31 in addition to the other terms of the sentence, sentence the offender
32 to a one-year term of community placement beginning either upon
33 completion of the term of confinement or at such time as the offender
34 is transferred to community custody in lieu of earned early release in
35 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
36 offender under this subsection to the statutory maximum period of
37 confinement then the community placement portion of the sentence shall
38 consist entirely of such community custody to which the offender may
39 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any

1 period of community custody actually served shall be credited against
2 the community placement portion of the sentence.

3 (b) When a court sentences a person to a term of total confinement
4 to the custody of the department of corrections for an offense
5 categorized as a sex offense or serious violent offense committed on or
6 after July 1, 1990, the court shall in addition to other terms of the
7 sentence, sentence the offender to community placement for two years or
8 up to the period of earned early release awarded pursuant to RCW
9 9.94A.150 (1) and (2), whichever is longer. The community placement
10 shall begin either upon completion of the term of confinement or at
11 such time as the offender is transferred to community custody in lieu
12 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
13 When the court sentences an offender under this subsection to the
14 statutory maximum period of confinement then the community placement
15 portion of the sentence shall consist entirely of the community custody
16 to which the offender may become eligible, in accordance with RCW
17 9.94A.150 (1) and (2). Any period of community custody actually served
18 shall be credited against the community placement portion of the
19 sentence. Unless a condition is waived by the court, the terms of
20 community placement for offenders sentenced pursuant to this section
21 shall include the following conditions:

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

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

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

28 (iv) An offender in community custody shall not unlawfully possess
29 controlled substances;

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

32 (vi) The residence location and living arrangements are subject to
33 the prior approval of the department of corrections during the period
34 of community placement.

35 (c) The court may also order any of the following special
36 conditions:

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

39 (ii) The offender shall not have direct or indirect contact with

1 the victim of the crime or a specified class of individuals;

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

4 (iv) The offender shall not consume alcohol; or

5 (v) The offender shall comply with any crime-related prohibitions.

6 (d) As a part of any sentence providing for conversion from total
7 confinement to community custody pursuant to RCW 9.94A.137(3) after
8 successful completion of a work ethic camp program, the court shall
9 impose and enforce the conditions enumerated in (b) of this subsection
10 and may order any of the special conditions enumerated in (c) of this
11 subsection, including a prohibition against new felony convictions.
12 The court shall specify which of the conditions, if violated, may
13 result in a return to total confinement for the balance of the
14 offender's remaining term of confinement.

15 (e) Prior to transfer to, or during, community placement, any
16 conditions of community placement may be removed or modified so as not
17 to be more restrictive by the sentencing court, upon recommendation of
18 the department of corrections.

19 (9) If the court imposes a sentence requiring confinement of thirty
20 days or less, the court may, in its discretion, specify that the
21 sentence be served on consecutive or intermittent days. A sentence
22 requiring more than thirty days of confinement shall be served on
23 consecutive days. Local jail administrators may schedule court-ordered
24 intermittent sentences as space permits.

25 (10) If a sentence imposed includes payment of a legal financial
26 obligation, the sentence shall specify the total amount of the legal
27 financial obligation owed, and shall require the offender to pay a
28 specified monthly sum toward that legal financial obligation.
29 Restitution to victims shall be paid prior to any other payments of
30 monetary obligations. Any legal financial obligation that is imposed
31 by the court may be collected by the department, which shall deliver
32 the amount paid to the county clerk for credit. The offender's
33 compliance with payment of legal financial obligations shall be
34 supervised by the department. All monetary payments ordered shall be
35 paid no later than ten years after the last date of release from
36 confinement pursuant to a felony conviction or the date the sentence
37 was entered. Independent of the department, the party or entity to
38 whom the legal financial obligation is owed shall have the authority to
39 utilize any other remedies available to the party or entity to collect

1 the legal financial obligation. Nothing in this section makes the
2 department, the state, or any of its employees, agents, or other
3 persons acting on their behalf liable under any circumstances for the
4 payment of these legal financial obligations. If an order includes
5 restitution as one of the monetary assessments, the county clerk shall
6 make disbursements to victims named in the order.

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

11 (12) All offenders sentenced to terms involving community
12 supervision, community service, community placement, or legal financial
13 obligation shall be under the supervision of the secretary of the
14 department of corrections or such person as the secretary may designate
15 and shall follow explicitly the instructions of the secretary including
16 reporting as directed to a community corrections officer, remaining
17 within prescribed geographical boundaries, notifying the community
18 corrections officer of any change in the offender's address or
19 employment, and paying the supervision fee assessment. The department
20 may require offenders to pay for special services rendered on or after
21 July 25, 1993, including electronic monitoring, day reporting, and
22 telephone reporting, dependent upon the offender's ability to pay. The
23 department may pay for these services for offenders who are not able to
24 pay.

25 (13) All offenders sentenced to terms involving community
26 supervision, community service, or community placement under the
27 supervision of the department of corrections shall not own, use, or
28 possess firearms or ammunition. Offenders who own, use, or are found
29 to be in actual or constructive possession of firearms or ammunition
30 shall be subject to the appropriate violation process and sanctions.
31 "Constructive possession" as used in this subsection means the power
32 and intent to control the firearm or ammunition. "Firearm" as used in
33 this subsection means a weapon or device from which a projectile may be
34 fired by an explosive such as gunpowder.

35 (14) The sentencing court shall give the offender credit for all
36 confinement time served before the sentencing if that confinement was
37 solely in regard to the offense for which the offender is being
38 sentenced.

39 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)

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

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

12 (17) As a part of any sentence, the court may impose and enforce an
13 order that relates directly to the circumstances of the crime for which
14 the offender has been convicted, prohibiting the offender from having
15 any contact with other specified individuals or a specific class of
16 individuals for a period not to exceed the maximum allowable sentence
17 for the crime, regardless of the expiration of the offender's term of
18 community supervision or community placement.

19 (18) In any sentence of partial confinement, the court may require
20 the defendant to serve the partial confinement in work release, in a
21 program of home detention, on work crew, or in a combined program of
22 work crew and home detention.

23 (19) All court-ordered legal financial obligations collected by the
24 department and remitted to the county clerk shall be credited and paid
25 where restitution is ordered. Restitution shall be paid prior to any
26 other payments of monetary obligations."

27 **SB 5204** - S AMD - 106

28 By Senators Oke, Hargrove, Long and Rinehart

29 ADOPTED 3/10/95

30 On page 1, line 1 of the title, after "9.94A.137;" insert
31 "reenacting and amending RCW 9.94A.120;"

32 EFFECT: Allows the sentencing judge to specify under what
33 circumstances an offender may be returned to total confinement for
34 violating the conditions of his or her community custody sentence after
35 receiving credit for the work ethic camp program.

1 EFFECT: Requires the sentencing court to specify which of the
2 sentencing conditions may cause a work ethic camp graduate to be
3 returned to prison if he or she violates the condition while on
4 community custody.

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