

SHB 2400 - H AMD
By Representative McMahan

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

3 "NEW SECTION. Sec. 1. A new section is added to chapter 9.94A
4 RCW to read as follows:

5 (1) Unless the context clearly requires otherwise, the
6 definitions in this subsection apply to this section only.

7 (a) "Bodily injury" means physical pain or injury, illness, or
8 an impairment of physical condition.

9 (b) "Family member" means a relative by blood, marriage, or
10 adoption, or a foster parent.

11 (c) "First-time offender" means an offender: (i) With no prior
12 convictions for a sex offense as defined in RCW 9.94A.030 or any
13 other felony sex offenses in this or any other state; and (ii) who
14 has not victimized any person other than the person who was
15 victimized by the current offense, regardless of whether the
16 offender was subject to criminal charges for such victimization.

17 (d) "Sex offender treatment provider" or "treatment provider"
18 means a certified sex offender treatment provider as defined in RCW
19 18.155.020.

20 (e) "Substantial bodily harm" means bodily injury that involves
21 a temporary but substantial disfigurement, or that causes a
22 temporary but substantial loss or impairment of the function of any
23 body part or organ, or that causes a fracture of any body part or
24 organ.

25 (f) "Victim" means any person who has sustained emotional,
26 psychological, physical, or financial injury to person or property
27 as a result of the crime charged. "Victim" also means a parent or
28 guardian of a victim who is a minor child unless the parent or
29 guardian is the perpetrator of the offense.

1 (2) An offender is eligible for the special sex offender
2 sentencing alternative for sex offenses against children if:

3 (a) The offender has been convicted of any of the following
4 offenses:

5 (i) Rape of a child in the third degree (RCW 9A.44.079);

6 (ii) Child molestation in the second degree (RCW 9A.44.086);

7 (iii) Child molestation in the third degree (RCW 9A.44.089); or

8 (iv) Sexual misconduct with a minor in the first degree (RCW
9 9A.44.093);

10 (b) The offender is the immediate victim's family member;

11 (c) The offender is a first-time offender;

12 (d) The testimony of the immediate victim of the crime is
13 material to the case or necessary to the prosecution of the
14 offender;

15 (e) The offender has not committed multiple acts constituting
16 sex offenses against the same victim, regardless of whether the
17 offender was subject to criminal charges for the acts;

18 (f) The offender has no prior convictions for a violent offense
19 that was committed within five years of the current offense;

20 (g) The victim of the offense has not suffered substantial
21 bodily harm; and

22 (h) The offender's standard sentence range for the offense
23 includes the possibility of confinement for less than eleven years.

24 (3) If the court finds the offender is eligible for this
25 alternative, the court, on its own motion or the motion of the
26 state or the offender, may order an examination to determine
27 whether the offender is amenable to treatment.

28 (a) The report of the examination shall include at a minimum
29 the following:

30 (i) The offender's version of the facts and the official
31 version of the facts;

32 (ii) The offender's offense history;

33 (iii) An assessment of problems in addition to alleged deviant
34 behaviors;

35 (iv) The offender's social and employment situation; and

36 (v) Other evaluation measures used.

37 The report shall set forth the sources of the examiner's
38 information.

1 (b) The examiner shall assess and report regarding the
2 offender's amenability to treatment and relative risk to the
3 community. A proposed treatment plan shall be provided and shall
4 include, at a minimum:

5 (i) Frequency and type of contact between offender and
6 therapist;

7 (ii) Specific issues to be addressed in the treatment and
8 description of planned treatment modalities;

9 (iii) Monitoring plans, including any requirements regarding
10 living conditions, lifestyle requirements, and monitoring by family
11 members and others;

12 (iv) Anticipated length of treatment; and

13 (v) Recommended crime-related prohibitions.

14 (c) The court on its own motion may order, or on a motion by
15 the state or a victim shall order, a second examination regarding
16 the offender's amenability to treatment. The examiner shall be
17 selected by the party making the motion. The offender shall pay
18 the cost of any second examination ordered unless the court finds
19 the defendant to be indigent in which case the state shall pay the
20 cost.

21 (4) After receipt of the reports, the court shall consider
22 whether the offender and the community will benefit from use of
23 this alternative, consider whether the alternative is too lenient
24 in light of the extent and circumstances of the offense, consider
25 whether the offender is amenable to treatment, consider the risk
26 the offender would present to the community, to the victim, or to
27 persons of similar age and circumstances as the victim, and
28 consider the victim's opinion whether the offender should receive
29 a treatment disposition under this section. When considering the
30 victim's opinion, the court shall provide any victim the
31 opportunity to provide testimony to the court. If the court
32 imposes a sentence that is contrary to any victim's opinion, it
33 shall enter written findings stating its reason for imposing such
34 a sentence. The fact that the offender admits to his or her
35 offense does not, by itself, constitute amenability to treatment.
36 If the court determines that this alternative is appropriate, the
37 court shall then impose a sentence or, pursuant to RCW 9.94A.712,
38 a minimum term of sentence, within the standard sentence range. If
39 the sentence imposed is less than eleven years of confinement, the

1 court may suspend the execution of the sentence and impose the
2 following conditions of suspension:

3 (a) The court shall order the offender to serve a term of total
4 confinement of twelve months and one day in an institution operated
5 by, or utilized under contract with, the department. An offender
6 serving a term of confinement under this subsection is not eligible
7 for earned release credits under RCW 9.94A.728.

8 (b) The court shall place the offender on community custody for
9 the length of the suspended sentence, the length of the maximum
10 term imposed pursuant to RCW 9.94A.712, or three years, whichever
11 is greater, and require the offender to comply with the following
12 conditions:

13 (i) Crime-related prohibitions;

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

17 (iii) Pay all court-ordered legal financial obligations as
18 provided in RCW 9.94A.030;

19 (iv) Reimburse the victim for the cost of any counseling
20 required as a result of the offender's crime;

21 (v) Refrain from possessing or consuming alcohol or controlled
22 substances except pursuant to lawfully issued prescriptions;

23 (vi) Refrain from possessing, viewing, or listening to
24 pornography;

25 (vii) Refrain from having direct or indirect contact with
26 children and refrain from being in a location where groups of
27 children normally congregate; and

28 (viii) Any other conditions imposed by the department under RCW
29 9.94A.720.

30 (c) The court shall order treatment for any period up to seven
31 years in duration. The court, in its discretion, shall order
32 outpatient sex offender treatment or inpatient sex offender
33 treatment, if available. A community mental health center may not
34 be used for such treatment unless it has an appropriate program
35 designed for sex offender treatment. The offender shall not change
36 sex offender treatment providers or treatment conditions without
37 first notifying the prosecutor, the community corrections officer,
38 and the court. If any party or the court objects to a proposed

1 change, the offender shall not change providers or conditions
2 without court approval after a hearing.

3 (5) As conditions of the suspended sentence, the court may
4 impose one or more of the following:

5 (a) Require the offender to devote time to a specific
6 employment or occupation;

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

9 (c) Perform community restitution work.

10 (6) At the time of sentencing, the court shall set a treatment
11 termination hearing for three months prior to the anticipated date
12 for completion of treatment.

13 (7) If the court imposes the sentencing alternative under this
14 section, the prosecutor shall submit a detailed written statement
15 for public release stating whether the prosecutor agreed or
16 disagreed with the imposition of the sentencing alternative and the
17 reasons for his or her agreement or disagreement.

18 (8)(a) The sex offender treatment provider shall submit
19 quarterly reports on the offender's progress in treatment to the
20 court and the parties. The report shall reference the treatment
21 plan and include at a minimum the following: Dates of attendance,
22 offender's compliance with requirements, treatment activities, the
23 offender's relative progress in treatment, and any other material
24 specified by the court at sentencing.

25 (b) The court shall conduct a hearing on the offender's
26 progress in treatment at least once a year. At least fourteen days
27 prior to the hearing, notice of the hearing shall be given to the
28 victim. The victim shall be given the opportunity to make
29 statements to the court regarding the offender's supervision and
30 treatment.

31 (9) At least fourteen days prior to the treatment termination
32 hearing, notice of the hearing shall be given to the victim. The
33 victim shall be given the opportunity to make statements to the
34 court regarding the offender's supervision and treatment. Prior to
35 the treatment termination hearing, the treatment provider and
36 community corrections officer shall submit written reports to the
37 court and parties regarding the offender's compliance with
38 treatment and monitoring requirements, and recommendations
39 regarding termination from treatment, including proposed community

1 custody conditions. The court shall order an evaluation regarding
2 the advisability of termination from treatment by a sex offender
3 treatment provider who may not be the same person who treated the
4 offender under subsection (4) of this section or any person who
5 employs, is employed by, or shares profits with the person who
6 treated the offender under subsection (4) of this section. The
7 offender shall pay the cost of the evaluation. At the treatment
8 termination hearing the court may: (a) Modify conditions of
9 community custody, and either (b) terminate treatment, or (c)
10 extend treatment in three-year increments for up to the remaining
11 period of community custody.

12 (10)(a) If a violation of the mandatory conditions imposed
13 under subsection (4)(b) of this section occurs during community
14 custody, the department shall refer the violation to the court and
15 recommend revocation of the suspended sentence as provided in
16 subsections (6) and (9) of this section.

17 (b) If a violation of the conditions imposed under subsection
18 (5) of this section occurs during community custody, the department
19 shall either impose sanctions as provided for in RCW
20 9.94A.737(2)(a) or refer the violation to the court and recommend
21 revocation of the suspended sentence as provided for in subsections
22 (6) and (9) of this section.

23 (11)(a) The court shall revoke the suspended sentence during
24 the period of community custody and order execution of the sentence
25 if: (i) The offender violates any of the mandatory conditions of
26 the suspended sentence imposed under subsection (4)(b)(v) or (vi)
27 of this section; or (ii) the offender violates any of the mandatory
28 conditions imposed under subsection (4)(b)(i) through (iv), (vii),
29 or (viii) of this section, and the offender has a previous
30 violation of any of the mandatory conditions of the suspended
31 sentence imposed under subsection (4)(b)(i) through (iv), (vii), or
32 (viii) of this section.

33 (b) The court may revoke the suspended sentence at any time
34 during the period of community custody and order execution of the
35 sentence if: (i) The offender violates the conditions of the
36 suspended sentence imposed under subsection (5) of this section;
37 (ii) the offender violates the mandatory conditions of the
38 suspended sentence imposed under subsection (4)(b)(i) through (iv),
39 (vii), or (viii) of this section and the offender has no previous

1 violation of any of the mandatory conditions of the suspended
2 sentence imposed under subsection (4)(b)(i) through (iv), (vii), or
3 (viii) of this section; or (iii) the court finds that the offender
4 is failing to make satisfactory progress in treatment.

5 (c) All confinement time served during the period of community
6 custody shall be credited to the offender if the suspended sentence
7 is revoked.

8 (12) The offender's sex offender treatment provider may not be
9 the same person who examined the offender under subsection (3) of
10 this section or any person who employs, is employed by, or shares
11 profits with the person who examined the offender under subsection
12 (3) of this section. Examinations and treatment ordered pursuant
13 to this subsection shall only be conducted by sex offender
14 treatment providers certified by the department of health pursuant
15 to chapter 18.155 RCW unless the court finds that:

16 (a) The offender has already moved to another state or plans to
17 move to another state for reasons other than circumventing the
18 certification requirements; or

19 (b)(i) No certified providers are available for treatment
20 within a reasonable geographical distance of the offender's home;
21 and

22 (ii) The evaluation and treatment plan comply with this section
23 and the rules adopted by the department of health.

24 (13) If the offender is less than eighteen years of age when
25 the charge is filed, the state shall pay for the cost of initial
26 evaluation and treatment.

27 **Sec. 2.** RCW 9.94A.670 and 2002 c 175 s 11 are each amended to
28 read as follows:

29 (1) Unless the context clearly requires otherwise, the
30 definitions in this subsection apply to this section only.

31 (a) "Sex offender treatment provider" or "treatment provider"
32 means a certified sex offender treatment provider as defined in RCW
33 18.155.020.

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

1 (2) An offender is eligible for the special sex offender
2 sentencing alternative if:

3 (a) The offender has been convicted of a sex offense other than
4 a violation of RCW 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079,
5 9A.44.083, 9A.44.086, 9A.44.089, or 9A.44.093 or a sex offense that
6 is also a serious violent offense;

7 (b) The offender has no prior convictions for a sex offense as
8 defined in RCW 9.94A.030 or any other felony sex offenses in this
9 or any other state; and

10 (c) The offender's standard sentence range for the offense
11 includes the possibility of confinement for less than eleven years.

12 (3) If the court finds the offender is eligible for this
13 alternative, the court, on its own motion or the motion of the
14 state or the offender, may order an examination to determine
15 whether the offender is amenable to treatment.

16 (a) The report of the examination shall include at a minimum
17 the following:

18 (i) The offender's version of the facts and the official
19 version of the facts;

20 (ii) The offender's offense history;

21 (iii) An assessment of problems in addition to alleged deviant
22 behaviors;

23 (iv) The offender's social and employment situation; and

24 (v) Other evaluation measures used.

25 The report shall set forth the sources of the examiner's
26 information.

27 (b) The examiner shall assess and report regarding the
28 offender's amenability to treatment and relative risk to the
29 community. A proposed treatment plan shall be provided and shall
30 include, at a minimum:

31 (i) Frequency and type of contact between offender and
32 therapist;

33 (ii) Specific issues to be addressed in the treatment and
34 description of planned treatment modalities;

35 (iii) Monitoring plans, including any requirements regarding
36 living conditions, lifestyle requirements, and monitoring by family
37 members and others;

38 (iv) Anticipated length of treatment; and

39 (v) Recommended crime-related prohibitions.

1 (c) The court on its own motion may order, or on a motion by
2 the state shall order, a second examination regarding the
3 offender's amenability to treatment. The examiner shall be
4 selected by the party making the motion. The offender shall pay
5 the cost of any second examination ordered unless the court finds
6 the defendant to be indigent in which case the state shall pay the
7 cost.

8 (4) After receipt of the reports, the court shall consider
9 whether the offender and the community will benefit from use of
10 this alternative and consider the victim's opinion whether the
11 offender should receive a treatment disposition under this section.
12 If the court determines that this alternative is appropriate, the
13 court shall then impose a sentence or, pursuant to RCW 9.94A.712,
14 a minimum term of sentence, within the standard sentence range. If
15 the sentence imposed is less than eleven years of confinement, the
16 court may suspend the execution of the sentence and impose the
17 following conditions of suspension:

18 (a) The court shall place the offender on community custody for
19 the length of the suspended sentence, the length of the maximum
20 term imposed pursuant to RCW 9.94A.712, or three years, whichever
21 is greater, and require the offender to comply with any conditions
22 imposed by the department under RCW 9.94A.720.

23 (b) The court shall order treatment for any period up to three
24 years in duration. The court, in its discretion, shall order
25 outpatient sex offender treatment or inpatient sex offender
26 treatment, if available. A community mental health center may not
27 be used for such treatment unless it has an appropriate program
28 designed for sex offender treatment. The offender shall not change
29 sex offender treatment providers or treatment conditions without
30 first notifying the prosecutor, the community corrections officer,
31 and the court. If any party or the court objects to a proposed
32 change, the offender shall not change providers or conditions
33 without court approval after a hearing.

34 (5) As conditions of the suspended sentence, the court may
35 impose one or more of the following:

36 (a) Up to six months of confinement, not to exceed the sentence
37 range of confinement for that offense;

38 (b) Crime-related prohibitions;

1 (c) Require the offender to devote time to a specific
2 employment or occupation;

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

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

8 (f) Pay all court-ordered legal financial obligations as
9 provided in RCW 9.94A.030;

10 (g) Perform community restitution work; or

11 (h) Reimburse the victim for the cost of any counseling
12 required as a result of the offender's crime.

13 (6) At the time of sentencing, the court shall set a treatment
14 termination hearing for three months prior to the anticipated date
15 for completion of treatment.

16 (7) The sex offender treatment provider shall submit quarterly
17 reports on the offender's progress in treatment to the court and
18 the parties. The report shall reference the treatment plan and
19 include at a minimum the following: Dates of attendance,
20 offender's compliance with requirements, treatment activities, the
21 offender's relative progress in treatment, and any other material
22 specified by the court at sentencing.

23 (8) Prior to the treatment termination hearing, the treatment
24 provider and community corrections officer shall submit written
25 reports to the court and parties regarding the offender's
26 compliance with treatment and monitoring requirements, and
27 recommendations regarding termination from treatment, including
28 proposed community custody conditions. Either party may request,
29 and the court may order, another evaluation regarding the
30 advisability of termination from treatment. The offender shall pay
31 the cost of any additional evaluation ordered unless the court
32 finds the offender to be indigent in which case the state shall pay
33 the cost. At the treatment termination hearing the court may: (a)
34 Modify conditions of community custody, and either (b) terminate
35 treatment, or (c) extend treatment for up to the remaining period
36 of community custody.

37 (9) If a violation of conditions occurs during community
38 custody, the department shall either impose sanctions as provided
39 for in RCW 9.94A.737(2)(a) or refer the violation to the court and

1 recommend revocation of the suspended sentence as provided for in
2 subsections (6) and (8) of this section.

3 (10) The court may revoke the suspended sentence at any time
4 during the period of community custody and order execution of the
5 sentence if: (a) The offender violates the conditions of the
6 suspended sentence, or (b) the court finds that the offender is
7 failing to make satisfactory progress in treatment. All
8 confinement time served during the period of community custody
9 shall be credited to the offender if the suspended sentence is
10 revoked.

11 (11) Examinations and treatment ordered pursuant to this
12 subsection shall only be conducted by sex offender treatment
13 providers certified by the department of health pursuant to chapter
14 18.155 RCW unless the court finds that:

15 (a) The offender has already moved to another state or plans to
16 move to another state for reasons other than circumventing the
17 certification requirements; or

18 (b)(i) No certified providers are available for treatment
19 within a reasonable geographical distance of the offender's home;
20 and

21 (ii) The evaluation and treatment plan comply with this section
22 and the rules adopted by the department of health.

23 (12) If the offender is less than eighteen years of age when
24 the charge is filed, the state shall pay for the cost of initial
25 evaluation and treatment.

26 **Sec. 3.** RCW 18.155.050 and 1990 c 3 s 805 are each amended to
27 read as follows:

28 (1) The sexual offender treatment providers advisory committee
29 is established to advise the secretary concerning the
30 administration of this chapter and conduct reviews of the special
31 sex offender sentencing alternative under section 6 of this act.

32 (2) The secretary shall appoint the members of the advisory
33 committee who shall consist of the following persons:

34 (a) One superior court judge;

35 (b) (~~Three~~) One sexual offender treatment (~~providers~~)
36 provider;

37 (c) One mental health practitioner who specializes in treating
38 victims of sexual assault;

1 (d) One defense attorney with experience in representing
2 persons charged with sexual offenses;

3 (e) One representative from the Washington association of
4 prosecuting attorneys;

5 (f) The secretary of the department of social and health
6 services or his or her designee;

7 (g) The secretary of the department of corrections or his or
8 her designee;

9 (h) One person representing a statewide organization that
10 advocates on behalf of victims of sexual assault.

11 The secretary shall develop and implement the certification
12 procedures with the advice of the committee by July 1, 1991.
13 Following implementation of these procedures by the secretary, the
14 committee shall be a permanent body. The members shall serve
15 staggered six-year terms, to be set by the secretary. No person
16 other than the members representing the departments of social and
17 health services and corrections may serve more than two consecutive
18 terms.

19 The secretary may remove any member of the advisory committee
20 for cause as specified by rule. In a case of a vacancy, the
21 secretary shall appoint a person to serve for the remainder of the
22 unexpired term.

23 (3) Committee members shall be reimbursed for travel expenses
24 in accordance with RCW 43.03.050 and 43.03.060.

25 (4) The committee shall elect officers as deemed necessary to
26 administer its duties. A simple majority of the committee members
27 currently serving shall constitute a quorum of the committee.

28 (5) Members of the advisory committee shall be residents of
29 this state. The members who are sex offender treatment providers
30 must have a minimum of five years of extensive work experience in
31 treating sex offenders to qualify for appointment to the initial
32 committee, which shall develop and implement the certification
33 program. After July 1, 1991, the sex offender treatment providers
34 on the committee must be certified pursuant to this chapter.

35 (6) The committee shall meet at times as necessary to conduct
36 committee business.

37 NEW SECTION. Sec. 4. A new section is added to chapter 18.155
38 RCW to read as follows:

1 (1) The sexual offender treatment providers advisory committee
2 shall conduct a review every six months of the efficacy of the
3 special sex offender sentencing alternative established under RCW
4 9.94A.670.

5 (2) When conducting its review, the committee shall consider:

6 (a) Recidivism rates of offenders receiving treatment under the
7 sentencing alternative compared to recidivism rates for sex
8 offenders in general;

9 (b) The amenability to treatment of offenders receiving the
10 sentencing alternative;

11 (c) The number of successful treatment outcomes for offenders
12 receiving treatment under the sentencing alternative compared to
13 the number of successful treatment outcomes for sex offenders in
14 general;

15 (d) The impacts of the sentencing alternative on victims and
16 families; and

17 (e) The outcomes and usage of the sentencing alternative in
18 light of the original purposes of the alternative.

19 (3) The committee shall make recommendations on its findings
20 and ways to improve the special sex offender sentencing alternative
21 to the appropriate standing committees of the legislature at least
22 twice a year.

23 **Sec. 5.** RCW 9A.44.150 and 1990 c 150 s 2 are each amended to
24 read as follows:

25 (1) On motion of the prosecuting attorney in a criminal
26 proceeding, the court may order that a child under the age of ten
27 may testify in a room outside the presence of the defendant and the
28 jury while one-way closed-circuit television equipment
29 simultaneously projects the child's testimony into another room so
30 the defendant and the jury can watch and hear the child testify if:

31 (a) The testimony will:

32 (i) Describe an act or attempted act of sexual contact
33 performed with or on the child witness by another ((or)) person or
34 with or on a child other than the child witness by another person;

35 (ii) Describe an act or attempted act of physical abuse against
36 the child witness by another person or against a child other than
37 the child witness by another person; or

1 (iii) Describe a violent offense as defined by RCW 9.94A.030
2 committed against a person known by or familiar to the child
3 witness or by a person known by or familiar to the child witness;

4 (b) The testimony is taken during the criminal proceeding;

5 (c) The court finds by substantial evidence, in a hearing
6 conducted outside the presence of the jury, that requiring the
7 child witness to testify in the presence of the defendant will
8 cause the child to suffer serious emotional or mental distress that
9 will prevent the child from reasonably communicating at the trial.
10 If the defendant is excluded from the presence of the child, the
11 jury must also be excluded;

12 (d) As provided in subsection (1)(a) and (b) of this section,
13 the court may allow a child witness to testify in the presence of
14 the defendant but outside the presence of the jury, via closed-
15 circuit television, if the court finds, upon motion and hearing
16 outside the presence of the jury, that the child will suffer
17 serious emotional distress that will prevent the child from
18 reasonably communicating at the trial in front of the jury, or,
19 that although the child may be able to reasonably communicate at
20 trial in front of the jury, the child will suffer serious emotional
21 or mental distress from testifying in front of the jury. If the
22 child is able to communicate in front of the defendant but not the
23 jury the defendant will remain in the room with the child while the
24 jury is excluded from the room;

25 (e) The court finds that the prosecutor has made all reasonable
26 efforts to prepare the child witness for testifying, including
27 informing the child or the child's parent or guardian about
28 community counseling services, giving court tours, and explaining
29 the trial process. If the prosecutor fails to demonstrate that
30 preparations were implemented or the prosecutor in good faith
31 attempted to implement them, the court shall deny the motion;

32 (f) The court balances the strength of the state's case without
33 the testimony of the child witness against the defendant's
34 constitutional rights and the degree of infringement of the closed-
35 circuit television procedure on those rights;

36 (g) The court finds that no less restrictive method of
37 obtaining the testimony exists that can adequately protect the
38 child witness from the serious emotional or mental distress;

1 (h) When the court allows the child witness to testify outside
2 the presence of the defendant, the defendant can communicate
3 constantly with the defense attorney by electronic transmission and
4 be granted reasonable court recesses during the child's testimony
5 for person-to-person consultation with the defense attorney;

6 (i) The court can communicate with the attorneys by an audio
7 system so that the court can rule on objections and otherwise
8 control the proceedings;

9 (j) All parties in the room with the child witness are on
10 camera and can be viewed by all other parties. If viewing all
11 participants is not possible, the court shall describe for the
12 viewers the location of the prosecutor, defense attorney, and other
13 participants in relation to the child;

14 (k) The court finds that the television equipment is capable of
15 making an accurate reproduction and the operator of the equipment
16 is competent to operate the equipment; and

17 (l) The court imposes reasonable guidelines upon the parties
18 for conducting the filming to avoid trauma to the child witness or
19 abuse of the procedure for tactical advantage.

20 The prosecutor, defense attorney, and a neutral and trained
21 victim's advocate, if any, shall always be in the room where the
22 child witness is testifying. The court in the court's discretion
23 depending on the circumstances and whether the jury or defendant or
24 both are excluded from the room where the child is testifying, may
25 remain or may not remain in the room with the child.

26 (2) During the hearing conducted under subsection (1) of this
27 section to determine whether the child witness may testify outside
28 the presence of the defendant and/or the jury, the court may
29 conduct the observation and examination of the child outside the
30 presence of the defendant if:

31 (a) The prosecutor alleges and the court concurs that the child
32 witness will be unable to testify in front of the defendant or will
33 suffer severe emotional or mental distress if forced to testify in
34 front of the defendant;

35 (b) The defendant can observe and hear the child witness by
36 closed-circuit television;

37 (c) The defendant can communicate constantly with the defense
38 attorney during the examination of the child witness by electronic
39 transmission and be granted reasonable court recesses during the

1 child's examination for person-to-person consultation with the
2 defense attorney; and

3 (d) The court finds the closed-circuit television is capable of
4 making an accurate reproduction and the operator of the equipment
5 is competent to operate the equipment. Whenever possible, all the
6 parties in the room with the child witness shall be on camera so
7 that the viewers can see all the parties. If viewing all
8 participants is not possible, then the court shall describe for the
9 viewers the location of the prosecutor, defense attorney, and other
10 participants in relation to the child.

11 (3) The court shall make particularized findings on the record
12 articulating the factors upon which the court based its decision to
13 allow the child witness to testify via closed-circuit television
14 pursuant to this section. The factors the court may consider
15 include, but are not limited to, a consideration of the child's
16 age, physical health, emotional stability, expressions by the child
17 of fear of testifying in open court or in front of the defendant,
18 the relationship of the defendant to the child, and the court's
19 observations of the child's inability to reasonably communicate in
20 front of the defendant or in open court. The court's findings
21 shall identify the impact the factors have upon the child's ability
22 to testify in front of the jury or the defendant or both and the
23 specific nature of the emotional or mental trauma the child would
24 suffer. The court shall determine whether the source of the trauma
25 is the presence of the defendant, the jury, or both, and shall
26 limit the use of the closed-circuit television accordingly.

27 (4) This section does not apply if the defendant is an attorney
28 pro se unless the defendant has a court-appointed attorney
29 assisting the defendant in the defense.

30 (5) This section may not preclude the presence of both the
31 ((victim)) child witness and the defendant in the courtroom
32 together for purposes of establishing or challenging the
33 identification of the defendant when identification is a legitimate
34 issue in the proceeding.

35 (6) The Washington supreme court may adopt rules of procedure
36 regarding closed-circuit television procedures.

37 (7) All recorded tapes of testimony produced by closed-circuit
38 television equipment shall be subject to any protective order of

1 the court for the purpose of protecting the privacy of the child
2 witness.

3 (8) Nothing in this section creates a right of the child
4 witness to a closed-circuit television procedure in lieu of
5 testifying in open court.

6 (9) The state shall bear the costs of the closed-circuit
7 television procedure.

8 (10) A child witness may or may not be a victim in the
9 proceeding."

10 NEW SECTION. Sec. 6. The sum of one million seven hundred
11 forty-seven thousand dollars, or as much thereof as may be
12 necessary, is appropriated for the fiscal year ending June 30,
13 2005, from the general fund--state to the department of corrections
14 solely for the purposes of:

15 (1) Providing specialized training to community corrections
16 officers regarding the supervision of sex offenders in the
17 community; and

18 (2) Reducing the caseloads of community corrections officers
19 who supervise sex offenders in the community.

20 NEW SECTION. Sec. 7. The sum of one hundred fifty thousand
21 dollars, or as much thereof as may be necessary, is appropriated
22 for the fiscal year ending June 30, 2005, from the general fund--
23 state to the department of community, trade, and economic
24 development solely for the purposes of distribution to sexual
25 assault victims programs.

26 NEW SECTION. Sec. 8. This act may be known and cited as the
27 child protection act of 2004.

28 NEW SECTION. Sec. 9. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. Sec. 10. This act takes effect July 1, 2004."

33 Correct the title.

EFFECT: Eliminates the increases to the seriousness levels of rape in the first degree and rape in the second degree. Makes changes to SSOSA that apply only to offenders convicted of rape of a child in the third degree, child molestation in the second and third degrees, and sexual misconduct with a minor in the first degree. Adds to the SSOSA eligibility requirements. Makes the following types of offenders ineligible for SSOSA: (a) Offenders convicted of rape of a child in the first and second degrees and child molestation in the first degree; (b) persons who have multiple victims; (c) persons who caused substantial bodily harm to the victim; (d) persons who are not family members of the victim; (e) persons who commit multiple acts against the same victim; and (f) persons who commit crimes where the testimony of the immediate victim of the crime is immaterial to the case or not necessary to the prosecution of the offender. Requires a second pre-SSOSA evaluation to be ordered upon motion of the victim. Requires the court to consider whether the alternative is too lenient in light of the extent and circumstances of the offense when deciding whether to grant a SSOSA sentence. Requires the court to allow the victim to testify when deciding whether to grant a SSOSA sentence. Requires, when a SSOSA is granted, the prosecutor to submit a detailed written statement for public release stating whether he or she agreed or disagreed with the imposition of the SSOSA sentence and the reasons for his or her agreement or disagreement. Increases the mandatory term of incarceration to 12 months and one day, which must be served in total confinement in a state institution. Increases the maximum term of initial treatment the court may impose to up to seven years. Requires the court to impose mandatory conditions of the suspended sentence, including prohibitions relating to alcohol, drugs, and pornography. Requires that violations of the mandatory conditions be sent directly to court. Requires that the suspended sentence be revoked upon a first violation of a mandatory term relating to drugs, alcohol, or pornography. Requires the suspended sentence to be revoked upon a second violation of any other mandatory term. Allows, after the treatment termination hearing, treatment to be extended in three year increments, instead of two year increments. Requires the Sexual Offender Treatment Providers Advisory Committee to conduct a review of the SSOSA program every six months. Changes the membership of the committee. Expands the allowed use of one-way, closed-circuit television for taking the testimony of a child witness under the age of 10 outside the presence of the defendant in criminal prosecutions. Allows such testimony of a child witness to be so taken with respect to sexual contact or physical abuse against a child other than the witness. Allows such testimony of a child witness to be so taken with respect to a violent offense committed against a person known by or familiar to the child witness. Makes appropriations to the Department of Corrections for training and reduced caseloads for community corrections officers who

supervise sex offenders. Makes appropriations to the Department of Community, Trade, and Economic Development for distribution to sexual assault victims' programs.