

ESHB 2400 - S AMD 838

By Senators Stevens, Hargrove

ADOPTED 03/10/2004

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that sex offenses
4 against children are among the most heinous of crimes and that the
5 legislature has a paramount duty to protect children from victimization
6 by sex offenders. Sentencing policy in Washington state should ensure
7 that punishment of sex offenders is pursued to the extent that such
8 punishment does not jeopardize the safety of children or hinder the
9 successful prosecution of sex offenses against children.

10 The legislature finds that offenders with the most serious sex
11 offenses against children including, but not limited to, rape in the
12 first and second degree, rape of a child in the first and second
13 degree, child molestation in the first degree, indecent liberties with
14 forcible compulsion, and kidnapping in the first or second degree with
15 a sexual motivation should be subject to life sentences. The
16 legislature finds that since September of 2001, these and other most
17 serious sex offenses have been subject to life sentences under a
18 determinate-plus sentencing structure. Those offenders who are more
19 likely than not to reoffend are kept in prison and those who present a
20 low risk to reoffend are released under supervision for the remainder
21 of their life and may be reincarcerated for serious violations that do
22 not constitute a new sex offense. The legislature further finds that
23 persons subject to determinate-plus sentencing who receive a special
24 sex offender sentencing alternative sentence that is subsequently
25 revoked are subject to life sentences as if they had not received a
26 sentencing alternative. The legislature also finds that these
27 offenders' failure in treatment is likely to make it harder for them to
28 receive a release from prison to lifetime community custody. The
29 legislature intends to reiterate its commitment to life sentences for
30 these offenders by reenacting the law on seriousness levels of offenses

1 and determinate-plus sentencing that sets the minimum sentence levels
2 for these offenders.

3 (2) The legislature also finds that the special sex offender
4 sentencing alternative was enacted in 1984 to protect victims of sexual
5 assault. A 1991 evaluation of the effectiveness of the sentencing
6 alternative concluded that it accurately selected sex offenders who,
7 with supervision and treatment, reoffend at lower rates and that the
8 use of the sentencing alternative does not increase risk to the
9 community. Today, strong support for the special sex offender
10 sentencing alternative continues among advocates for children who are
11 victims of sexual assault and prosecutors who prosecute sex offenses
12 against children.

13 (3) The legislature further finds that several weaknesses in the
14 structure and administration of the special sex offender sentencing
15 alternative have been identified and should be addressed. In addition,
16 a comprehensive analysis and evaluation of the special sex offender
17 sentencing alternative is needed to ensure that efforts to reform the
18 sentencing alternative do not result in jeopardizing the safety of
19 children or hindering the successful prosecution of sex offenses
20 against children.

21 (4) The legislature intends to protect children from victimization
22 by sex offenders by taking immediate action to make changes in the
23 special sex offender sentencing alternative to address perceived
24 weaknesses in the program, and thoroughly evaluating its effectiveness
25 to determine whether additional changes are needed to further increase
26 the protection of children from victimization by sex offenders.

27 **Sec. 2.** RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c
28 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52
29 s 4 are each reenacted to read as follows:

30

31

32

33

34

35

TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)

1 Malicious explosion 1 (RCW
2 70.74.280(1))
3 Murder 1 (RCW 9A.32.030)
4 XIV Murder 2 (RCW 9A.32.050)
5 Trafficking 1 (RCW 9A.40.100(1))
6 XIII Malicious explosion 2 (RCW
7 70.74.280(2))
8 Malicious placement of an explosive 1
9 (RCW 70.74.270(1))
10 XII Assault 1 (RCW 9A.36.011)
11 Assault of a Child 1 (RCW 9A.36.120)
12 Malicious placement of an imitation
13 device 1 (RCW 70.74.272(1)(a))
14 Rape 1 (RCW 9A.44.040)
15 Rape of a Child 1 (RCW 9A.44.073)
16 Trafficking 2 (RCW 9A.40.100(2))
17 XI Manslaughter 1 (RCW 9A.32.060)
18 Rape 2 (RCW 9A.44.050)
19 Rape of a Child 2 (RCW 9A.44.076)
20 X Child Molestation 1 (RCW 9A.44.083)
21 Indecent Liberties (with forcible
22 compulsion) (RCW
23 9A.44.100(1)(a))
24 Kidnapping 1 (RCW 9A.40.020)
25 Leading Organized Crime (RCW
26 9A.82.060(1)(a))
27 Malicious explosion 3 (RCW
28 70.74.280(3))
29 Sexually Violent Predator Escape
30 (RCW 9A.76.115)
31 IX Assault of a Child 2 (RCW 9A.36.130)
32 Explosive devices prohibited (RCW
33 70.74.180)
34 Hit and Run--Death (RCW
35 46.52.020(4)(a))

1 Homicide by Watercraft, by being
2 under the influence of intoxicating
3 liquor or any drug (RCW
4 79A.60.050)
5 Inciting Criminal Profiteering (RCW
6 9A.82.060(1)(b))
7 Malicious placement of an explosive 2
8 (RCW 70.74.270(2))
9 Robbery 1 (RCW 9A.56.200)
10 Sexual Exploitation (RCW 9.68A.040)
11 Vehicular Homicide, by being under
12 the influence of intoxicating
13 liquor or any drug (RCW
14 46.61.520)
15 VIII Arson 1 (RCW 9A.48.020)
16 Homicide by Watercraft, by the
17 operation of any vessel in a
18 reckless manner (RCW
19 79A.60.050)
20 Manslaughter 2 (RCW 9A.32.070)
21 Promoting Prostitution 1 (RCW
22 9A.88.070)
23 Theft of Ammonia (RCW 69.55.010)
24 Vehicular Homicide, by the operation
25 of any vehicle in a reckless
26 manner (RCW 46.61.520)
27 VII Burglary 1 (RCW 9A.52.020)
28 Child Molestation 2 (RCW 9A.44.086)
29 Civil Disorder Training (RCW
30 9A.48.120)
31 Dealing in depictions of minor
32 engaged in sexually explicit
33 conduct (RCW 9.68A.050)
34 Drive-by Shooting (RCW 9A.36.045)
35 Homicide by Watercraft, by disregard
36 for the safety of others (RCW
37 79A.60.050)

1 Indecent Liberties (without forcible
2 compulsion) (RCW 9A.44.100(1)
3 (b) and (c))
4 Introducing Contraband 1 (RCW
5 9A.76.140)
6 Malicious placement of an explosive 3
7 (RCW 70.74.270(3))
8 Sending, bringing into state depictions
9 of minor engaged in sexually
10 explicit conduct (RCW
11 9.68A.060)
12 Unlawful Possession of a Firearm in
13 the first degree (RCW
14 9.41.040(1))
15 Use of a Machine Gun in Commission
16 of a Felony (RCW 9.41.225)
17 Vehicular Homicide, by disregard for
18 the safety of others (RCW
19 46.61.520)
20 VI Bail Jumping with Murder 1 (RCW
21 9A.76.170(3)(a))
22 Bribery (RCW 9A.68.010)
23 Incest 1 (RCW 9A.64.020(1))
24 Intimidating a Judge (RCW
25 9A.72.160)
26 Intimidating a Juror/Witness (RCW
27 9A.72.110, 9A.72.130)
28 Malicious placement of an imitation
29 device 2 (RCW 70.74.272(1)(b))
30 Rape of a Child 3 (RCW 9A.44.079)
31 Theft of a Firearm (RCW 9A.56.300)
32 Unlawful Storage of Ammonia (RCW
33 69.55.020)
34 V Abandonment of dependent person 1
35 (RCW 9A.42.060)

1 Advancing money or property for
2 extortionate extension of credit
3 (RCW 9A.82.030)
4 Bail Jumping with class A Felony
5 (RCW 9A.76.170(3)(b))
6 Child Molestation 3 (RCW 9A.44.089)
7 Criminal Mistreatment 1 (RCW
8 9A.42.020)
9 Custodial Sexual Misconduct 1 (RCW
10 9A.44.160)
11 Domestic Violence Court Order
12 Violation (RCW 10.99.040,
13 10.99.050, 26.09.300, 26.10.220,
14 26.26.138, 26.50.110, 26.52.070,
15 or 74.34.145)
16 Extortion 1 (RCW 9A.56.120)
17 Extortionate Extension of Credit
18 (RCW 9A.82.020)
19 Extortionate Means to Collect
20 Extensions of Credit (RCW
21 9A.82.040)
22 Incest 2 (RCW 9A.64.020(2))
23 Kidnapping 2 (RCW 9A.40.030)
24 Perjury 1 (RCW 9A.72.020)
25 Persistent prison misbehavior (RCW
26 9.94.070)
27 Possession of a Stolen Firearm (RCW
28 9A.56.310)
29 Rape 3 (RCW 9A.44.060)
30 Rendering Criminal Assistance 1
31 (RCW 9A.76.070)
32 Sexual Misconduct with a Minor 1
33 (RCW 9A.44.093)
34 Sexually Violating Human Remains
35 (RCW 9A.44.105)
36 Stalking (RCW 9A.46.110)

1 Taking Motor Vehicle Without
2 Permission 1 (RCW 9A.56.070)
3 IV Arson 2 (RCW 9A.48.030)
4 Assault 2 (RCW 9A.36.021)
5 Assault by Watercraft (RCW
6 79A.60.060)
7 Bribing a Witness/Bribe Received by
8 Witness (RCW 9A.72.090,
9 9A.72.100)
10 Cheating 1 (RCW 9.46.1961)
11 Commercial Bribery (RCW
12 9A.68.060)
13 Counterfeiting (RCW 9.16.035(4))
14 Endangerment with a Controlled
15 Substance (RCW 9A.42.100)
16 Escape 1 (RCW 9A.76.110)
17 Hit and Run--Injury (RCW
18 46.52.020(4)(b))
19 Hit and Run with Vessel--Injury
20 Accident (RCW 79A.60.200(3))
21 Identity Theft 1 (RCW 9.35.020(2))
22 Indecent Exposure to Person Under
23 Age Fourteen (subsequent sex
24 offense) (RCW 9A.88.010)
25 Influencing Outcome of Sporting
26 Event (RCW 9A.82.070)
27 Malicious Harassment (RCW
28 9A.36.080)
29 Residential Burglary (RCW
30 9A.52.025)
31 Robbery 2 (RCW 9A.56.210)
32 Theft of Livestock 1 (RCW 9A.56.080)
33 Threats to Bomb (RCW 9.61.160)
34 Trafficking in Stolen Property 1 (RCW
35 9A.82.050)

1 Unlawful factoring of a credit card or
2 payment card transaction (RCW
3 9A.56.290(4)(b))
4 Unlawful transaction of health
5 coverage as a health care service
6 contractor (RCW 48.44.016(3))
7 Unlawful transaction of health
8 coverage as a health maintenance
9 organization (RCW 48.46.033(3))
10 Unlawful transaction of insurance
11 business (RCW 48.15.023(3))
12 Unlicensed practice as an insurance
13 professional (RCW 48.17.063(3))
14 Use of Proceeds of Criminal
15 Profiteering (RCW 9A.82.080 (1)
16 and (2))
17 Vehicular Assault, by being under the
18 influence of intoxicating liquor or
19 any drug, or by the operation or
20 driving of a vehicle in a reckless
21 manner (RCW 46.61.522)
22 Willful Failure to Return from
23 Furlough (RCW 72.66.060)
24 III Abandonment of dependent person 2
25 (RCW 9A.42.070)
26 Assault 3 (RCW 9A.36.031)
27 Assault of a Child 3 (RCW 9A.36.140)
28 Bail Jumping with class B or C Felony
29 (RCW 9A.76.170(3)(c))
30 Burglary 2 (RCW 9A.52.030)
31 Communication with a Minor for
32 Immoral Purposes (RCW
33 9.68A.090)
34 Criminal Gang Intimidation (RCW
35 9A.46.120)
36 Criminal Mistreatment 2 (RCW
37 9A.42.030)

1 Custodial Assault (RCW 9A.36.100)
2 Escape 2 (RCW 9A.76.120)
3 Extortion 2 (RCW 9A.56.130)
4 Harassment (RCW 9A.46.020)
5 Intimidating a Public Servant (RCW
6 9A.76.180)
7 Introducing Contraband 2 (RCW
8 9A.76.150)
9 Malicious Injury to Railroad Property
10 (RCW 81.60.070)
11 Patronizing a Juvenile Prostitute
12 (RCW 9.68A.100)
13 Perjury 2 (RCW 9A.72.030)
14 Possession of Incendiary Device (RCW
15 9.40.120)
16 Possession of Machine Gun or Short-
17 Barreled Shotgun or Rifle (RCW
18 9.41.190)
19 Promoting Prostitution 2 (RCW
20 9A.88.080)
21 Securities Act violation (RCW
22 21.20.400)
23 Tampering with a Witness (RCW
24 9A.72.120)
25 Telephone Harassment (subsequent
26 conviction or threat of death)
27 (RCW 9.61.230(2))
28 Theft of Livestock 2 (RCW 9A.56.083)
29 Trafficking in Stolen Property 2 (RCW
30 9A.82.055)
31 Unlawful Imprisonment (RCW
32 9A.40.040)
33 Unlawful possession of firearm in the
34 second degree (RCW 9.41.040(2))

1 Vehicular Assault, by the operation or
2 driving of a vehicle with disregard
3 for the safety of others (RCW
4 46.61.522)
5 Willful Failure to Return from Work
6 Release (RCW 72.65.070)
7 II Computer Trespass 1 (RCW
8 9A.52.110)
9 Counterfeiting (RCW 9.16.035(3))
10 Escape from Community Custody
11 (RCW 72.09.310)
12 Health Care False Claims (RCW
13 48.80.030)
14 Identity Theft 2 (RCW 9.35.020(3))
15 Improperly Obtaining Financial
16 Information (RCW 9.35.010)
17 Malicious Mischief 1 (RCW
18 9A.48.070)
19 Possession of Stolen Property 1 (RCW
20 9A.56.150)
21 Theft 1 (RCW 9A.56.030)
22 Theft of Rental, Leased, or Lease-
23 purchased Property (valued at one
24 thousand five hundred dollars or
25 more) (RCW 9A.56.096(5)(a))
26 Trafficking in Insurance Claims (RCW
27 48.30A.015)
28 Unlawful factoring of a credit card or
29 payment card transaction (RCW
30 9A.56.290(4)(a))
31 Unlawful Practice of Law (RCW
32 2.48.180)
33 Unlicensed Practice of a Profession or
34 Business (RCW 18.130.190(7))
35 I Attempting to Elude a Pursuing Police
36 Vehicle (RCW 46.61.024)

1 False Verification for Welfare (RCW
2 74.08.055)
3 Forgery (RCW 9A.60.020)
4 Fraudulent Creation or Revocation of a
5 Mental Health Advance Directive
6 (RCW 9A.60.060)
7 Malicious Mischief 2 (RCW
8 9A.48.080)
9 Mineral Trespass (RCW 78.44.330)
10 Possession of Stolen Property 2 (RCW
11 9A.56.160)
12 Reckless Burning 1 (RCW 9A.48.040)
13 Taking Motor Vehicle Without
14 Permission 2 (RCW 9A.56.075)
15 Theft 2 (RCW 9A.56.040)
16 Theft of Rental, Leased, or Lease-
17 purchased Property (valued at two
18 hundred fifty dollars or more but
19 less than one thousand five
20 hundred dollars) (RCW
21 9A.56.096(5)(b))
22 Transaction of insurance business
23 beyond the scope of licensure
24 (RCW 48.17.063(4))
25 Unlawful Issuance of Checks or Drafts
26 (RCW 9A.56.060)
27 Unlawful Possession of Fictitious
28 Identification (RCW 9A.56.320)
29 Unlawful Possession of Instruments of
30 Financial Fraud (RCW
31 9A.56.320)
32 Unlawful Possession of Payment
33 Instruments (RCW 9A.56.320)
34 Unlawful Possession of a Personal
35 Identification Device (RCW
36 9A.56.320)

1 Unlawful Production of Payment
2 Instruments (RCW 9A.56.320)
3 Unlawful Trafficking in Food Stamps
4 (RCW 9.91.142)
5 Unlawful Use of Food Stamps (RCW
6 9.91.144)
7 Vehicle Prowl 1 (RCW 9A.52.095)

8 **Sec. 3.** RCW 9.94A.712 and 2001 2nd sp.s. c 12 s 303 are each
9 reenacted to read as follows:

10 (1) An offender who is not a persistent offender shall be sentenced
11 under this section if the offender:

12 (a) Is convicted of:

13 (i) Rape in the first degree, rape in the second degree, rape of a
14 child in the first degree, child molestation in the first degree, rape
15 of a child in the second degree, or indecent liberties by forcible
16 compulsion;

17 (ii) Any of the following offenses with a finding of sexual
18 motivation: Murder in the first degree, murder in the second degree,
19 homicide by abuse, kidnapping in the first degree, kidnapping in the
20 second degree, assault in the first degree, assault in the second
21 degree, assault of a child in the first degree, or burglary in the
22 first degree; or

23 (iii) An attempt to commit any crime listed in this subsection
24 (1)(a);
25 committed on or after September 1, 2001; or

26 (b) Has a prior conviction for an offense listed in RCW
27 9.94A.030(32)(b), and is convicted of any sex offense which was
28 committed after September 1, 2001.

29 For purposes of this subsection (1)(b), failure to register is not
30 a sex offense.

31 (2) An offender convicted of rape of a child in the first or second
32 degree or child molestation in the first degree who was seventeen years
33 of age or younger at the time of the offense shall not be sentenced
34 under this section.

35 (3) Upon a finding that the offender is subject to sentencing under
36 this section, the court shall impose a sentence to a maximum term
37 consisting of the statutory maximum sentence for the offense and a

1 minimum term either within the standard sentence range for the offense,
2 or outside the standard sentence range pursuant to RCW 9.94A.535, if
3 the offender is otherwise eligible for such a sentence.

4 (4) A person sentenced under subsection (3) of this section shall
5 serve the sentence in a facility or institution operated, or utilized
6 under contract, by the state.

7 (5) When a court sentences a person to the custody of the
8 department under this section, the court shall, in addition to the
9 other terms of the sentence, sentence the offender to community custody
10 under the supervision of the department and the authority of the board
11 for any period of time the person is released from total confinement
12 before the expiration of the maximum sentence.

13 (6)(a) Unless a condition is waived by the court, the conditions of
14 community custody shall include those provided for in RCW 9.94A.700(4).
15 The conditions may also include those provided for in RCW 9.94A.700(5).
16 The court may also order the offender to participate in rehabilitative
17 programs or otherwise perform affirmative conduct reasonably related to
18 the circumstances of the offense, the offender's risk of reoffending,
19 or the safety of the community, and the department and the board shall
20 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
21 9.95.430.

22 (b) As part of any sentence under this section, the court shall
23 also require the offender to comply with any conditions imposed by the
24 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

25 **Sec. 4.** RCW 9.94A.670 and 2002 c 175 s 11 are each amended to read
26 as follows:

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

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

32 (b) "Substantial bodily harm" means bodily injury that involves a
33 temporary but substantial disfigurement, or that causes a temporary but
34 substantial loss or impairment of the function of any body part or
35 organ, or that causes a fracture of any body part or organ.

36 (c) "Victim" means any person who has sustained emotional,
37 psychological, physical, or financial injury to person or property as

1 a result of the crime charged. "Victim" also means a parent or
2 guardian of a victim who is a minor child unless the parent or guardian
3 is the perpetrator of the offense.

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

6 (a) The offender has been convicted of a sex offense other than a
7 violation of RCW 9A.44.050 or a sex offense that is also a serious
8 violent offense;

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

12 (c) The offender has no prior adult convictions for a violent
13 offense that was committed within five years of the date the current
14 offense was committed;

15 (d) The offense did not result in substantial bodily harm to the
16 victim;

17 (e) The offender had an established relationship with, or
18 connection to, the victim such that the sole connection with the victim
19 was not the commission of the crime; and

20 (f) The offender's standard sentence range for the offense includes
21 the possibility of confinement for less than eleven years.

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

26 (a) The report of the examination shall include at a minimum the
27 following:

28 (i) The offender's version of the facts and the official version of
29 the facts;

30 (ii) The offender's offense history;

31 (iii) An assessment of problems in addition to alleged deviant
32 behaviors;

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

34 (v) Other evaluation measures used.

35 The report shall set forth the sources of the examiner's
36 information.

37 (b) The examiner shall assess and report regarding the offender's
38 amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a
2 minimum:

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

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

6 (iii) Monitoring plans, including any requirements regarding living
7 conditions, lifestyle requirements, and monitoring by family members
8 and others;

9 (iv) Anticipated length of treatment; and

10 (v) Recommended crime-related prohibitions and affirmative
11 conditions, which must include, to the extent known, an identification
12 of specific activities or behaviors that are precursors to the
13 offender's offense cycle, including, but not limited to, activities or
14 behaviors such as viewing or listening to pornography or use of alcohol
15 or controlled substances.

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

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

1 standard sentence range. If the sentence imposed is less than eleven
2 years of confinement, the court may suspend the execution of the
3 sentence and impose the following conditions of suspension:

4 (a) The court shall order the offender to serve a term of
5 confinement of up to twelve months or the maximum term within the
6 standard range, whichever is less. The court may order the offender to
7 serve a term of confinement greater than twelve months or the maximum
8 term within the standard range based on the presence of an aggravating
9 circumstance listed in RCW 9.94A.535(2). In no case shall the term of
10 confinement exceed the statutory maximum sentence for the offense. The
11 court may order the offender to serve all or part of his or her term of
12 confinement in partial confinement. An offender sentenced to a term of
13 confinement under this subsection is not eligible for earned release
14 under RCW 9.92.151 or 9.94A.728.

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

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

30 (d) As conditions of the suspended sentence, the court shall impose
31 specific prohibitions and affirmative conditions relating to the known
32 precursor activities or behaviors identified in the proposed treatment
33 plan under subsection (3)(b)(v) of this section or identified in an
34 annual review under subsection (7)(b) of this section.

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

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

39 ~~(b))~~ Crime-related prohibitions;

1 ~~((+e))~~ (b) Require the offender to devote time to a specific
2 employment or occupation;

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

7 ~~((+e))~~ (d) Require the offender to report as directed to the court
8 and a community corrections officer;

9 ~~((+f))~~ (e) Require the offender to pay all court-ordered legal
10 financial obligations as provided in RCW 9.94A.030;

11 ~~((+g))~~ (f) Require the offender to perform community restitution
12 work; or

13 ~~((+h))~~ (g) Require the offender to reimburse the victim for the
14 cost of any counseling required as a result of the offender's crime.

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

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

25 (b) The court shall conduct a hearing on the offender's progress in
26 treatment at least once a year. At least fourteen days prior to the
27 hearing, notice of the hearing shall be given to the victim. The
28 victim shall be given the opportunity to make statements to the court
29 regarding the offender's supervision and treatment. At the hearing,
30 the court may modify conditions of community custody including, but not
31 limited to, crime-related prohibitions and affirmative conditions
32 relating to activities and behaviors identified as part of, or relating
33 to precursor activities and behaviors in, the offender's offense cycle
34 or revoke the suspended sentence.

35 (8) At least fourteen days prior to the treatment termination
36 hearing, notice of the hearing shall be given to the victim. The
37 victim shall be given the opportunity to make statements to the court
38 regarding the offender's supervision and treatment. Prior to the
39 treatment termination hearing, the treatment provider and community

1 corrections officer shall submit written reports to the court and
2 parties regarding the offender's compliance with treatment and
3 monitoring requirements, and recommendations regarding termination from
4 treatment, including proposed community custody conditions. (~~Either~~
5 ~~party may request, and the court may order, another evaluation~~
6 ~~regarding the advisability of termination from treatment. The offender~~
7 ~~shall pay the cost of any additional evaluation ordered unless the~~
8 ~~court finds the offender to be indigent in which case the state shall~~
9 ~~pay the cost.)) The court may order an evaluation regarding the
10 advisability of termination from treatment by a sex offender treatment
11 provider who may not be the same person who treated the offender under
12 subsection (4) of this section or any person who employs, is employed
13 by, or shares profits with the person who treated the offender under
14 subsection (4) of this section unless the court has entered written
15 findings that such evaluation is in the best interest of the victim and
16 that a successful evaluation of the offender would otherwise be
17 impractical. The offender shall pay the cost of the evaluation. At
18 the treatment termination hearing the court may: (a) Modify conditions
19 of community custody, and either (b) terminate treatment, or (c) extend
20 treatment in two-year increments for up to the remaining period of
21 community custody.~~

22 (9)(a) If a violation of conditions other than a second violation
23 of the prohibitions or affirmative conditions relating to precursor
24 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
25 this section occurs during community custody, the department shall
26 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
27 the violation to the court and recommend revocation of the suspended
28 sentence as provided for in subsections (6) and (8) of this section.

29 (b) If a second violation of the prohibitions or affirmative
30 conditions relating to precursor behaviors or activities imposed under
31 subsection (4)(d) or (7)(b) of this section occurs during community
32 custody, the department shall refer the violation to the court and
33 recommend revocation of the suspended sentence as provided in
34 subsection (10) of this section.

35 (10) The court may revoke the suspended sentence at any time during
36 the period of community custody and order execution of the sentence if:
37 (a) The offender violates the conditions of the suspended sentence, or
38 (b) the court finds that the offender is failing to make satisfactory

1 progress in treatment. All confinement time served during the period
2 of community custody shall be credited to the offender if the suspended
3 sentence is revoked.

4 (11) The offender's sex offender treatment provider may not be the
5 same person who examined the offender under subsection (3) of this
6 section or any person who employs, is employed by, or shares profits
7 with the person who examined the offender under subsection (3) of this
8 section, unless the court has entered written findings that such
9 treatment is in the best interests of the victim and that successful
10 treatment of the offender would otherwise be impractical. Examinations
11 and treatment ordered pursuant to this subsection shall only be
12 conducted by sex offender treatment providers certified by the
13 department of health pursuant to chapter 18.155 RCW unless the court
14 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 within a
19 reasonable geographical distance of the offender's home; and

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

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

25 **Sec. 5.** RCW 9.92.151 and 1990 c 3 s 201 are each amended to read
26 as follows:

27 (1) Except as provided in subsection (2) of this section, the
28 sentence of a prisoner confined in a county jail facility for a felony,
29 gross misdemeanor, or misdemeanor conviction may be reduced by earned
30 release credits in accordance with procedures that shall be developed
31 and promulgated by the correctional agency having jurisdiction. The
32 earned early release time shall be for good behavior and good
33 performance as determined by the correctional agency having
34 jurisdiction. Any program established pursuant to this section shall
35 allow an offender to earn early release credits for presentence
36 incarceration. The correctional agency shall not credit the offender
37 with earned early release credits in advance of the offender actually
38 earning the credits. In the case of an offender convicted of a serious

1 violent offense or a sex offense that is a class A felony committed on
2 or after July 1, 1990, the aggregate earned early release time may not
3 exceed fifteen percent of the sentence. In no other case may the
4 aggregate earned early release time exceed one-third of the total
5 sentence.

6 (2) An offender serving a term of confinement imposed under RCW
7 9.94A.670(4)(a) is not eligible for earned release credits under this
8 section.

9 **Sec. 6.** RCW 9.94A.728 and 2003 c 379 s 1 are each amended to read
10 as follows:

11 No person serving a sentence imposed pursuant to this chapter and
12 committed to the custody of the department shall leave the confines of
13 the correctional facility or be released prior to the expiration of the
14 sentence except as follows:

15 (1) Except as otherwise provided for in subsection (2) of this
16 section, the term of the sentence of an offender committed to a
17 correctional facility operated by the department may be reduced by
18 earned release time in accordance with procedures that shall be
19 developed and promulgated by the correctional agency having
20 jurisdiction in which the offender is confined. The earned release
21 time shall be for good behavior and good performance, as determined by
22 the correctional agency having jurisdiction. The correctional agency
23 shall not credit the offender with earned release credits in advance of
24 the offender actually earning the credits. Any program established
25 pursuant to this section shall allow an offender to earn early release
26 credits for presentence incarceration. If an offender is transferred
27 from a county jail to the department, the administrator of a county
28 jail facility shall certify to the department the amount of time spent
29 in custody at the facility and the amount of earned release time. An
30 offender who has been convicted of a felony committed after July 23,
31 1995, that involves any applicable deadly weapon enhancements under RCW
32 9.94A.533 (3) or (4), or both, shall not receive any good time credits
33 or earned release time for that portion of his or her sentence that
34 results from any deadly weapon enhancements.

35 (a) In the case of an offender convicted of a serious violent
36 offense, or a sex offense that is a class A felony, committed on or
37 after July 1, 1990, and before July 1, 2003, the aggregate earned
38 release time may not exceed fifteen percent of the sentence. In the

1 case of an offender convicted of a serious violent offense, or a sex
2 offense that is a class A felony, committed on or after July 1, 2003,
3 the aggregate earned release time may not exceed ten percent of the
4 sentence.

5 (b)(i) In the case of an offender who qualifies under (b)(ii) of
6 this subsection, the aggregate earned release time may not exceed fifty
7 percent of the sentence.

8 (ii) An offender is qualified to earn up to fifty percent of
9 aggregate earned release time under this subsection (1)(b) if he or
10 she:

11 (A) Is classified in one of the two lowest risk categories under
12 (b)(iii) of this subsection;

13 (B) Is not confined pursuant to a sentence for:

14 (I) A sex offense;

15 (II) A violent offense;

16 (III) A crime against persons as defined in RCW 9.94A.411;

17 (IV) A felony that is domestic violence as defined in RCW
18 10.99.020;

19 (V) A violation of RCW 9A.52.025 (residential burglary);

20 (VI) A violation of, or an attempt, solicitation, or conspiracy to
21 violate, RCW 69.50.401 by manufacture or delivery or possession with
22 intent to deliver methamphetamine; or

23 (VII) A violation of, or an attempt, solicitation, or conspiracy to
24 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
25 and

26 (C) Has no prior conviction for:

27 (I) A sex offense;

28 (II) A violent offense;

29 (III) A crime against persons as defined in RCW 9.94A.411;

30 (IV) A felony that is domestic violence as defined in RCW
31 10.99.020;

32 (V) A violation of RCW 9A.52.025 (residential burglary);

33 (VI) A violation of, or an attempt, solicitation, or conspiracy to
34 violate, RCW 69.50.401 by manufacture or delivery or possession with
35 intent to deliver methamphetamine; or

36 (VII) A violation of, or an attempt, solicitation, or conspiracy to
37 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

38 (iii) For purposes of determining an offender's eligibility under
39 this subsection (1)(b), the department shall perform a risk assessment

1 of every offender committed to a correctional facility operated by the
2 department who has no current or prior conviction for a sex offense, a
3 violent offense, a crime against persons as defined in RCW 9.94A.411,
4 a felony that is domestic violence as defined in RCW 10.99.020, a
5 violation of RCW 9A.52.025 (residential burglary), a violation of, or
6 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
7 manufacture or delivery or possession with intent to deliver
8 methamphetamine, or a violation of, or an attempt, solicitation, or
9 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
10 substance to a minor). The department must classify each assessed
11 offender in one of four risk categories between highest and lowest
12 risk.

13 (iv) The department shall recalculate the earned release time and
14 reschedule the expected release dates for each qualified offender under
15 this subsection (1)(b).

16 (v) This subsection (1)(b) applies retroactively to eligible
17 offenders serving terms of total confinement in a state correctional
18 facility as of July 1, 2003.

19 (vi) This subsection (1)(b) does not apply to offenders convicted
20 after July 1, 2010.

21 (c) In no other case shall the aggregate earned release time exceed
22 one-third of the total sentence;

23 (2)(a) A person convicted of a sex offense or an offense
24 categorized as a serious violent offense, assault in the second degree,
25 vehicular homicide, vehicular assault, assault of a child in the second
26 degree, any crime against persons where it is determined in accordance
27 with RCW 9.94A.602 that the offender or an accomplice was armed with a
28 deadly weapon at the time of commission, or any felony offense under
29 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
30 eligible, in accordance with a program developed by the department, for
31 transfer to community custody status in lieu of earned release time
32 pursuant to subsection (1) of this section;

33 (b) A person convicted of a sex offense, a violent offense, any
34 crime against persons under RCW 9.94A.411(2), or a felony offense under
35 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
36 become eligible, in accordance with a program developed by the
37 department, for transfer to community custody status in lieu of earned
38 release time pursuant to subsection (1) of this section;

1 (c) The department shall, as a part of its program for release to
2 the community in lieu of earned release, require the offender to
3 propose a release plan that includes an approved residence and living
4 arrangement. All offenders with community placement or community
5 custody terms eligible for release to community custody status in lieu
6 of earned release shall provide an approved residence and living
7 arrangement prior to release to the community;

8 (d) The department may deny transfer to community custody status in
9 lieu of earned release time pursuant to subsection (1) of this section
10 if the department determines an offender's release plan, including
11 proposed residence location and living arrangements, may violate the
12 conditions of the sentence or conditions of supervision, place the
13 offender at risk to violate the conditions of the sentence, place the
14 offender at risk to reoffend, or present a risk to victim safety or
15 community safety. The department's authority under this section is
16 independent of any court-ordered condition of sentence or statutory
17 provision regarding conditions for community custody or community
18 placement;

19 (e) An offender serving a term of confinement imposed under RCW
20 9.94A.670(4)(a) is not eligible for earned release credits under this
21 section;

22 (3) An offender may leave a correctional facility pursuant to an
23 authorized furlough or leave of absence. In addition, offenders may
24 leave a correctional facility when in the custody of a corrections
25 officer or officers;

26 (4)(a) The secretary may authorize an extraordinary medical
27 placement for an offender when all of the following conditions exist:

28 (i) The offender has a medical condition that is serious enough to
29 require costly care or treatment;

30 (ii) The offender poses a low risk to the community because he or
31 she is physically incapacitated due to age or the medical condition;
32 and

33 (iii) Granting the extraordinary medical placement will result in
34 a cost savings to the state.

35 (b) An offender sentenced to death or to life imprisonment without
36 the possibility of release or parole is not eligible for an
37 extraordinary medical placement.

38 (c) The secretary shall require electronic monitoring for all
39 offenders in extraordinary medical placement unless the electronic

1 monitoring equipment interferes with the function of the offender's
2 medical equipment or results in the loss of funding for the offender's
3 medical care. The secretary shall specify who shall provide the
4 monitoring services and the terms under which the monitoring shall be
5 performed.

6 (d) The secretary may revoke an extraordinary medical placement
7 under this subsection at any time;

8 (5) The governor, upon recommendation from the clemency and pardons
9 board, may grant an extraordinary release for reasons of serious health
10 problems, senility, advanced age, extraordinary meritorious acts, or
11 other extraordinary circumstances;

12 (6) No more than the final six months of the sentence may be served
13 in partial confinement designed to aid the offender in finding work and
14 reestablishing himself or herself in the community;

15 (7) The governor may pardon any offender;

16 (8) The department may release an offender from confinement any
17 time within ten days before a release date calculated under this
18 section; and

19 (9) An offender may leave a correctional facility prior to
20 completion of his or her sentence if the sentence has been reduced as
21 provided in RCW 9.94A.870.

22 Notwithstanding any other provisions of this section, an offender
23 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
24 mandatory minimum sentence of total confinement shall not be released
25 from total confinement before the completion of the listed mandatory
26 minimum sentence for that felony crime of conviction unless allowed
27 under RCW 9.94A.540, however persistent offenders are not eligible for
28 extraordinary medical placement.

29 NEW SECTION. **Sec. 7.** (1) The Washington state institute for
30 public policy shall conduct a comprehensive analysis and evaluation of
31 the impact and effectiveness of current sex offender sentencing
32 policies. The institute shall analyze and evaluate the effectiveness
33 of sex offender policies and programs, including the special sex
34 offender sentencing alternative, the department of corrections'
35 treatment program for offenders in prison, and the validity of the risk
36 assessment conducted by the end of sentence review committee prior to
37 release from prison. Using detailed information from offender files
38 and court records, and research conducted in Washington state and other

1 states and nations, the analysis shall examine whether changes to
2 sentencing policies and sex offender programming can increase public
3 safety.

4 (2) Using the research results and other available data, the
5 analysis of the special sex offender sentencing alternative shall
6 specifically evaluate the impact of the sentencing alternative on
7 protection of children from sexual victimization, reporting of sex
8 offenses against children, prosecution of sex offenses against
9 children, and child sex offense recidivism rates.

10 (3) As part of its study, the institute shall also investigate the
11 views of victims whose cases resulted in a special sex offender
12 sentencing alternative sentence. This study shall include victims
13 whose cases have been prosecuted recently, as well as those whose cases
14 were prosecuted in the past. The victims shall be asked whether they
15 considered the special sex offender sentencing alternative sentence to
16 be a just and appropriate sanction, whether it influenced their healing
17 process, and, if so, whether the influence was negative or positive.

18 (4) The sentencing guidelines commission shall review the following
19 issues to determine whether modifications in the special sex offender
20 sentencing alternative will increase its effectiveness with respect to
21 protecting children from sexual victimization, successfully prosecuting
22 sex offenses against children, and appropriately punishing perpetrators
23 of sex offenses against children:

24 (a) Eligibility for the sentencing alternative, including whether
25 the commission of certain types of offenses should render an offender
26 ineligible, whether the disclosure of multiple victims in the course of
27 evaluating an offender should render an offender ineligible, and
28 whether the sentencing alternative should be limited to offenses within
29 families;

30 (b) Minimum terms of incarceration, including imprisonment at a
31 state facility;

32 (c) Appropriate conditions or restrictions that should be placed on
33 offenders who receive a sentence alternative; and

34 (d) Standards for revocation of a sentencing alternative suspended
35 sentence.

36 (5) The institute and the sentencing guidelines commission shall
37 report their results and recommendations to the appropriate standing
38 committees of the legislature no later than December 31, 2004.

1 NEW SECTION. **Sec. 8.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 9.** Sections 2 through 6 of this act take effect
6 July 1, 2005."

ESHB 2400 - S AMD 838
By Senators Stevens, Hargrove

ADOPTED 03/10/2004

7 On page 1, line 2 of the title, after "minors;" strike the
8 remainder of the title and insert "amending RCW 9.94A.670, 9.92.151,
9 and 9.94A.728; reenacting RCW 9.94A.515 and 9.94A.712; creating new
10 sections; prescribing penalties; and providing an effective date."

EFFECT: Strengthens intent language, reenacts without amending both the seriousness levels and the determinate-plus sentencing provisions, adds affirmative conditions to the crime-related provisions related to precursor activities and behaviors and clarifies that they are to be imposed, to the extent known, at the time of sentencing, and may be modified at annual reviews. Does not include separate provisions for juveniles convicted as adults, the provision prohibiting courts from imposing a SSOSA sentence over the prosecutor's objections, or the provision requiring a mandatory annual evaluation at offender's expense. Separates policy questions from research questions in the study and assigns the policy questions to the sentencing guidelines commission. Adds a victim results component to the study. Makes technical and clarifying corrections. Sections 2 through 6 of the act take effect July 1, 2005.

--- END ---