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5 On page 5, beginning on line 24, strike all of sections 4 and 5 and
6 insert the following:

7 "Sec. 4. RCW 71.09.030 and 1990 1st ex.s. c 12 s 3 are each
8 amended to read as follows:

9 When it appears that: (1) The (~~sentence~~) term of total
10 confinement of a person who has been convicted of a sexually violent
11 offense is about to expire, or has expired on, before, or after July 1,
12 1990; (2) the term of total confinement of a person found to have
13 committed a sexually violent offense as a juvenile is about to expire,
14 or has expired on, before, or after July 1, 1990; (3) a person who has
15 been charged with a sexually violent offense and who has been
16 determined to be incompetent to stand trial is about to be released, or
17 has been released on, before, or after July 1, 1990, pursuant to RCW
18 10.77.090(3); or (4) a person who has been found not guilty by reason
19 of insanity of a sexually violent offense is about to be released, or
20 has been released on, before, or after July 1, 1990, pursuant to RCW
21 10.77.020(3); and it appears that the person may be a sexually violent
22 predator, the prosecuting attorney of the county where the person was
23 convicted or charged or the attorney general if requested by the
24 prosecuting attorney may file a petition alleging that the person is a
25 "sexually violent predator" and stating sufficient facts to support
26 such allegation."

1 **"Sec. 5.** RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and
2 1991 c 104 s 3 are each reenacted and amended to read as follows:

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

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

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

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

16 (4) An offender convicted of the crime of murder in the first
17 degree shall be sentenced to a term of total confinement not less than
18 twenty years. An offender convicted of the crime of assault in the
19 first degree where the offender used force or means likely to result in
20 death or intended to kill the victim shall be sentenced to a term of
21 total confinement not less than five years. An offender convicted of
22 the crime of rape in the first degree shall be sentenced to a term of
23 total confinement not less than five years, and shall not be eligible
24 for furlough, work release or other authorized leave of absence from
25 the correctional facility during such minimum five-year term except for
26 the purpose of commitment to an inpatient treatment facility. The
27 foregoing minimum terms of total confinement are mandatory and shall
28 not be varied or modified as provided in subsection (2) of this
29 section.

1 (5) In sentencing a first-time offender the court may waive the
2 imposition of a sentence within the sentence range and impose a
3 sentence which may include up to ninety days of confinement in a
4 facility operated or utilized under contract by the county and a
5 requirement that the offender refrain from committing new offenses.
6 The sentence may also include up to two years of community supervision,
7 which, in addition to crime-related prohibitions, may include
8 requirements that the offender perform any one or more of the
9 following:

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

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

14 (c) Pursue a prescribed, secular course of study or vocational
15 training;

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

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

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

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

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

8 The report of the examination shall include at a minimum the
9 following: The defendant's version of the facts and the official
10 version of the facts, the defendant's offense history, an assessment of
11 problems in addition to alleged deviant behaviors, the offender's
12 social and employment situation, and other evaluation measures used.
13 The report shall set forth the sources of the evaluator's information.

14 The examiner shall assess and report regarding the defendant's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

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

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

21 (C) Monitoring plans, including any requirements regarding living
22 conditions, lifestyle requirements, and monitoring by family members
23 and others;

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

26 The court on its own motion may order, or on a motion by the state
27 shall order, a second examination regarding the offender's amenability
28 to treatment. The evaluator shall be selected by the party making the
29 motion. The defendant shall pay the cost of any second examination

1 ordered unless the court finds the defendant to be indigent in which
2 case the state shall pay the cost.

3 (ii) After receipt of the reports, the court shall consider whether
4 the offender and the community will benefit from use of this special
5 sexual offender sentencing alternative and consider the victim's
6 opinion whether the offender should receive a treatment disposition
7 under this subsection. If the court determines that this special sex
8 offender sentencing alternative is appropriate, the court shall then
9 impose a sentence within the sentence range. If this sentence is less
10 than eight years of confinement, the court may suspend the execution of
11 the sentence and impose the following conditions of suspension:

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

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

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

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

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

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

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

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

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

1 community supervision, and either (B) terminate treatment, or (C)
2 extend treatment for up to the remaining period of community
3 supervision.

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

11 (vi) Except as provided in (a)(vii) of this subsection, after July
12 1, 1991, examinations and treatment ordered pursuant to this subsection
13 shall only be conducted by sex offender treatment providers certified
14 by the department of health pursuant to chapter 18.155 RCW.

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

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

29 (b) When an offender is convicted of any felony sex offense
30 committed before July 1, 1987, and is sentenced to a term of

1 confinement of more than one year but less than six years, the
2 sentencing court may, on its own motion or on the motion of the
3 offender or the state, order the offender committed for up to thirty
4 days to the custody of the secretary of social and health services for
5 evaluation and report to the court on the offender's amenability to
6 treatment at these facilities. If the secretary of social and health
7 services cannot begin the evaluation within thirty days of the court's
8 order of commitment, the offender shall be transferred to the state for
9 confinement pending an opportunity to be evaluated at the appropriate
10 facility. The court shall review the reports and may order that the
11 term of confinement imposed be served in the sexual offender treatment
12 program at the location determined by the secretary of social and
13 health services or the secretary's designee, only if the report
14 indicates that the offender is amenable to the treatment program
15 provided at these facilities. The offender shall be transferred to the
16 state pending placement in the treatment program. Any offender who has
17 escaped from the treatment program shall be referred back to the
18 sentencing court.

19 If the offender does not comply with the conditions of the
20 treatment program, the secretary of social and health services may
21 refer the matter to the sentencing court. The sentencing court shall
22 commit the offender to the department of corrections to serve the
23 balance of the term of confinement.

24 If the offender successfully completes the treatment program before
25 the expiration of the term of confinement, the court may convert the
26 balance of confinement to community supervision and may place
27 conditions on the offender including crime-related prohibitions and
28 requirements that the offender perform any one or more of the
29 following:

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

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

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

6 (iv) Undergo available outpatient treatment.

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

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

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

20 Except for an offender who has been convicted of a violation of RCW
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program
22 before the expiration of his term of confinement, the department of
23 corrections may request the court to convert the balance of confinement
24 to community supervision and to place conditions on the offender
25 including crime-related prohibitions and requirements that the offender
26 perform any one or more of the following:

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

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

1 (iii) Report as directed to the court and a community corrections
2 officer;

3 (iv) Undergo available outpatient treatment.

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

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

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

20 (8)(a) When a court sentences a person to a term of total
21 confinement to the custody of the department of corrections for an
22 offense categorized as a sex offense or a serious violent offense
23 committed after July 1, 1988, but before July 1, 1990, assault in the
24 second degree, any crime against a person where it is determined in
25 accordance with RCW 9.94A.125 that the defendant or an accomplice was
26 armed with a deadly weapon at the time of commission, or any felony
27 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
28 1988, the court shall in addition to the other terms of the sentence,
29 sentence the offender to a one-year term of community placement
30 beginning either upon completion of the term of confinement or at such

1 time as the offender is transferred to community custody in lieu of
2 earned early release in accordance with RCW 9.94A.150 (1) and (2).
3 When the court sentences an offender under this subsection to the
4 statutory maximum period of confinement then the community placement
5 portion of the sentence shall consist entirely of such community
6 custody to which the offender may become eligible, in accordance with
7 RCW 9.94A.150 (1) and (2). Any period of community custody actually
8 served shall be credited against the community placement portion of the
9 sentence.

10 (b) When a court sentences a person to a term of total confinement
11 to the custody of the department of corrections for an offense
12 categorized as a sex offense or serious violent offense committed on or
13 after July 1, 1990, the court shall in addition to other terms of the
14 sentence, sentence the offender to community placement for two years or
15 up to the period of earned early release awarded pursuant to RCW
16 9.94A.150 (1) and (2), whichever is longer. The community placement
17 shall begin either upon completion of the term of confinement or at
18 such time as the offender is transferred to community custody in lieu
19 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
20 When the court sentences an offender under this subsection to the
21 statutory maximum period of confinement then the community placement
22 portion of the sentence shall consist entirely of the community custody
23 to which the offender may become eligible, in accordance with RCW
24 9.94A.150 (1) and (2). Any period of community custody actually served
25 shall be credited against the community placement portion of the
26 sentence. Unless a condition is waived by the court, the terms of
27 community placement for offenders sentenced pursuant to this section
28 shall include the following conditions:

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

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

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

5 (iv) An offender in community custody shall not unlawfully possess
6 controlled substances; and

7 (v) The offender shall pay supervision fees as determined by the
8 department of corrections.

9 (c) The court may also order any of the following special
10 conditions:

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

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

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

17 (iv) The offender shall not consume alcohol;

18 (v) The residence location and living arrangements of a sex
19 offender shall be subject to the prior approval of the department of
20 corrections; or

21 (vi) The offender shall comply with any crime-related prohibitions.

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

26 (9) If the court imposes a sentence requiring confinement of thirty
27 days or less, the court may, in its discretion, specify that the
28 sentence be served on consecutive or intermittent days. A sentence
29 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered
2 intermittent sentences as space permits.

3 (10) If a sentence imposed includes payment of a legal financial
4 obligation, the sentence shall specify the total amount of the legal
5 financial obligation owed, and shall require the offender to pay a
6 specified monthly sum toward that legal financial obligation.
7 Restitution to victims shall be paid prior to any other payments of
8 monetary obligations. Any legal financial obligation that is imposed
9 by the court may be collected by the department, which shall deliver
10 the amount paid to the county clerk for credit. The offender's
11 compliance with payment of legal financial obligations shall be
12 supervised by the department. All monetary payments ordered shall be
13 paid no later than ten years after the last date of release from
14 confinement pursuant to a felony conviction or the date the sentence
15 was entered. Independent of the department, the party or entity to
16 whom the legal financial obligation is owed shall have the authority to
17 utilize any other remedies available to the party or entity to collect
18 the legal financial obligation. Nothing in this section makes the
19 department, the state, or any of its employees, agents, or other
20 persons acting on their behalf liable under any circumstances for the
21 payment of these legal financial obligations. If an order includes
22 restitution as one of the monetary assessments, the county clerk shall
23 make disbursements to victims named in the order.

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

28 (12) All offenders sentenced to terms involving community
29 supervision, community service, community placement, or legal financial
30 obligation shall be under the supervision of the secretary of the

1 department of corrections or such person as the secretary may designate
2 and shall follow explicitly the instructions of the secretary including
3 reporting as directed to a community corrections officer, remaining
4 within prescribed geographical boundaries, notifying the community
5 corrections officer of any change in the offender's address or
6 employment, and paying the supervision fee assessment.

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

17 (14) The sentencing court shall give the offender credit for all
18 confinement time served before the sentencing if that confinement was
19 solely in regard to the offense for which the offender is being
20 sentenced.

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

26 (16) The court shall order restitution whenever the offender is
27 convicted of a felony that results in injury to any person or damage to
28 or loss of property, whether the offender is sentenced to confinement
29 or placed under community supervision, unless extraordinary
30 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in
2 the record if it does not order restitution.

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

10 (18) In any sentence of partial confinement, the court may require
11 the defendant to serve the partial confinement in work release, in a
12 program of home detention, on work crew, or in a combined program of
13 work crew and home detention.

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

18 "**Sec. 6.** RCW 13.40.160 and 1990 c 3 s 302 are each amended to read
19 as follows:

20 (1) When the respondent is found to be a serious offender, the
21 court shall commit the offender to the department for the standard
22 range of disposition for the offense, as indicated in option A of
23 schedule D-3, RCW 13.40.0357 except as provided in subsection (5) of
24 this section.

25 If the court concludes, and enters reasons for its conclusion, that
26 disposition within the standard range would effectuate a manifest
27 injustice the court shall impose a disposition outside the standard
28 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The

1 court's finding of manifest injustice shall be supported by clear and
2 convincing evidence.

3 A disposition outside the standard range shall be determinate and
4 shall be comprised of confinement or community supervision, or a
5 combination thereof. When a judge finds a manifest injustice and
6 imposes a sentence of confinement exceeding thirty days, the court
7 shall sentence the juvenile to a maximum term, and the provisions of
8 RCW 13.40.030(2), as now or hereafter amended, shall be used to
9 determine the range. A disposition outside the standard range is
10 appealable under RCW 13.40.230, as now or hereafter amended, by the
11 state or the respondent. A disposition within the standard range is
12 not appealable under RCW 13.40.230 as now or hereafter amended.

13 (2) Where the respondent is found to be a minor or first offender,
14 the court shall order that the respondent serve a term of community
15 supervision as indicated in option A or option B of schedule D-1, RCW
16 13.40.0357 except as provided in subsection (5) of this section. If
17 the court determines that a disposition of community supervision would
18 effectuate a manifest injustice the court may impose another
19 disposition under option C of schedule D-1, RCW 13.40.0357. Except as
20 provided in subsection (5) of this section, a disposition other than a
21 community supervision may be imposed only after the court enters
22 reasons upon which it bases its conclusions that imposition of
23 community supervision would effectuate a manifest injustice. When a
24 judge finds a manifest injustice and imposes a sentence of confinement
25 exceeding thirty days, the court shall sentence the juvenile to a
26 maximum term, and the provisions of RCW 13.40.030(2), as now or
27 hereafter amended, shall be used to determine the range. The court's
28 finding of manifest injustice shall be supported by clear and
29 convincing evidence.

1 Except for disposition of community supervision or a disposition
2 imposed pursuant to subsection (5) of this section, a disposition may
3 be appealed as provided in RCW 13.40.230, as now or hereafter amended,
4 by the state or the respondent. A disposition of community supervision
5 or a disposition imposed pursuant to subsection (5) of this section may
6 not be appealed under RCW 13.40.230 as now or hereafter amended.

7 (3) Where a respondent is found to have committed an offense for
8 which the respondent declined to enter into a diversion agreement, the
9 court shall impose a term of community supervision limited to the
10 conditions allowed in a diversion agreement as provided in RCW
11 13.40.080(2) as now or hereafter amended.

12 (4) If a respondent is found to be a middle offender:

13 (a) The court shall impose a determinate disposition within the
14 standard range(s) for such offense, as indicated in option A of
15 schedule D-2, RCW 13.40.0357 except as provided in subsection (5) of
16 this section: PROVIDED, That if the standard range includes a term of
17 confinement exceeding thirty days, commitment shall be to the
18 department for the standard range of confinement; or

19 (b) The court shall impose a determinate disposition of community
20 supervision and/or up to thirty days confinement, as indicated in
21 option B of schedule D-2, RCW 13.40.0357 in which case, if confinement
22 has been imposed, the court shall state either aggravating or
23 mitigating factors as set forth in RCW 13.40.150 as now or hereafter
24 amended.

25 (c) Only if the court concludes, and enters reasons for its
26 conclusions, that disposition as provided in subsection (4) (a) or (b)
27 of this section would effectuate a manifest injustice, the court shall
28 sentence the juvenile to a maximum term, and the provisions of RCW
29 13.40.030(2), as now or hereafter amended, shall be used to determine

1 the range. The court's finding of manifest injustice shall be
2 supported by clear and convincing evidence.

3 (d) A disposition pursuant to subsection (4)(c) of this section is
4 appealable under RCW 13.40.230, as now or hereafter amended, by the
5 state or the respondent. A disposition pursuant to subsection (4) (a)
6 or (b) of this section is not appealable under RCW 13.40.230 as now or
7 hereafter amended.

8 (5) When a serious, middle, or minor first offender is found to
9 have committed a sex offense, other than a sex offense that is also a
10 serious violent offense as defined by RCW 9.94A.030, and has no history
11 of a prior sex offense, the court, on its own motion or the motion of
12 the state or the respondent, may order an examination to determine
13 whether the respondent is amenable to treatment.

14 The report of the examination shall include at a minimum the
15 following: The respondent's version of the facts and the official
16 version of the facts, the respondent's offense history, an assessment
17 of problems in addition to alleged deviant behaviors, the respondent's
18 social, educational, and employment situation, and other evaluation
19 measures used. The report shall set forth the sources of the
20 evaluator's information.

21 The examiner shall assess and report regarding the respondent's
22 amenability to treatment and relative risk to the community. A
23 proposed treatment plan shall be provided and shall include, at a
24 minimum:

25 (a)(i) Frequency and type of contact between the offender and
26 therapist;

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

1 (iii) Monitoring plans, including any requirements regarding living
2 conditions, lifestyle requirements, and monitoring by family members,
3 legal guardians, or others;

4 (iv) Anticipated length of treatment; and

5 (v) Recommended crime-related prohibitions.

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

12 After receipt of reports of the examination, the court shall then
13 consider whether the offender and the community will benefit from use
14 of this special sex offender disposition alternative and consider the
15 victim's opinion whether the offender should receive a treatment
16 disposition under this section. If the court determines that this
17 special sex offender disposition alternative is appropriate, then the
18 court shall impose a determinate disposition within the standard range
19 for the offense, and the court may suspend the execution of the
20 disposition and place the offender on community supervision for up to
21 two years. As a condition of the suspended disposition, the court may
22 impose the conditions of community supervision and other conditions,
23 including up to thirty days of confinement and requirements that the
24 offender do any one or more of the following:

25 (b)(i) Devote time to a specific education, employment, or
26 occupation;

27 (ii) Undergo available outpatient sex offender treatment for up to
28 two years, or inpatient sex offender treatment not to exceed the
29 standard range of confinement for that offense. A community mental
30 health center may not be used for such treatment unless it has an

1 appropriate program designed for sex offender treatment. The
2 respondent shall not change sex offender treatment providers or
3 treatment conditions without first notifying the prosecutor, the
4 probation counselor, and the court, and shall not change providers
5 without court approval after a hearing if the prosecutor or probation
6 counselor object to the change;

7 (iii) Remain within prescribed geographical boundaries and notify
8 the court or the probation counselor prior to any change in the
9 offender's address, educational program, or employment;

10 (iv) Report to the prosecutor and the probation counselor prior to
11 any change in a sex offender treatment provider. This change shall
12 have prior approval by the court;

13 (v) Report as directed to the court and a probation counselor;

14 (vi) Pay all court-ordered legal financial obligations, perform
15 community service, or any combination thereof; or

16 (vii) Make restitution to the victim for the cost of any counseling
17 reasonably related to the offense.

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

25 At the time of the disposition, the court may set treatment review
26 hearings as the court considers appropriate.

27 Except as provided in this subsection (5), after July 1, 1991,
28 examinations and treatment ordered pursuant to this subsection shall
29 only be conducted by sex offender treatment providers certified by the
30 department of health pursuant to chapter 18.155 RCW. A sex offender

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

10 If the offender violates any condition of the disposition or the
11 court finds that the respondent is failing to make satisfactory
12 progress in treatment, the court may revoke the suspension and order
13 execution of the sentence. The court shall give credit for any
14 confinement time previously served if that confinement was for the
15 offense for which the suspension is being revoked.

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

21 (6) Whenever a juvenile offender is entitled to credit for time
22 spent in detention prior to a dispositional order, the dispositional
23 order shall specifically state the number of days of credit for time
24 served.

25 (7) Except as provided for in subsection (5) of this section, the
26 court shall not suspend or defer the imposition or the execution of the
27 disposition.

28 (8) In no case shall the term of confinement imposed by the court
29 at disposition exceed that to which an adult could be subjected for the
30 same offense."

1 **"Sec. 7.** RCW 71.09.090 and 1990 c 3 s 1009 are each amended to
2 read as follows:

3 (1) If the secretary of the department of social and health
4 services determines that the person's mental abnormality or personality
5 disorder has so changed that the person is not likely to ((~~commit~~))
6 engage in predatory acts of sexual violence if released, the secretary
7 shall authorize the person to petition the court for release. The
8 petition shall be served upon the court and the prosecuting attorney.
9 The court, upon receipt of the petition for release, shall within
10 forty-five days order a hearing. The prosecuting attorney or the
11 attorney general, if requested by the county, shall represent the
12 state, and shall have the right to have the petitioner examined by an
13 expert or professional person of his or her choice. The hearing shall
14 be before a jury if demanded by either the petitioner or the
15 prosecuting attorney or attorney general. The burden of proof shall be
16 upon the prosecuting attorney or attorney general to show beyond a
17 reasonable doubt that the petitioner's mental abnormality or
18 personality disorder remains such that the petitioner is not safe to be
19 at large and that if discharged is likely to ((~~commit~~)) engage in
20 predatory acts of sexual violence.

21 (2) Nothing contained in this chapter shall prohibit the person
22 from otherwise petitioning the court for discharge without the
23 secretary's approval. The secretary shall provide the committed person
24 with an annual written notice of the person's right to petition the
25 court for release over the secretary's objection. The notice shall
26 contain a waiver of rights. The secretary shall forward the notice and
27 waiver form to the court with the annual report. If the person does
28 not affirmatively waive the right to petition, the court shall set a
29 show cause hearing to determine whether facts exist that warrant a
30 hearing on whether the person's condition has so changed that he or she

1 is safe to be at large. The committed person shall have a right to
2 have an attorney represent him or her at the show cause hearing but the
3 person is not entitled to be present at the show cause hearing. If the
4 court at the show cause hearing determines that probable cause exists
5 to believe that the person's mental abnormality or personality disorder
6 has so changed that the person is safe to be at large and (~~will~~) is
7 not likely to engage in predatory acts of sexual violence if
8 discharged, then the court shall set a hearing on the issue. At the
9 hearing, the committed person shall be entitled to be present and to
10 the benefit of all constitutional protections that were afforded to the
11 person at the initial commitment proceeding. The prosecuting attorney
12 or the attorney general if requested by the county shall represent the
13 state and shall have a right to a jury trial and to have the committed
14 person evaluated by experts chosen by the state. The committed person
15 shall also have the right to have experts evaluate him or her on his or
16 her behalf and the court shall appoint an expert if the person is
17 indigent and requests an appointment. The burden of proof at the
18 hearing shall be upon the state to prove beyond a reasonable doubt that
19 the committed person's mental abnormality or personality disorder
20 remains such that the person is not safe to be at large and if released
21 (~~will~~) is likely to engage in predatory acts of sexual violence."

22 "NEW SECTION. Sec. 8. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected."

26 "NEW SECTION. Sec. 9. This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take
2 effect immediately."

3 "NEW SECTION. **Sec. 10.** This act applies to sex offenses
4 committed on, before, or after the effective date of this act."

5 **SHB 2262** - H AMD
6 By Representative Appelwick

7
8 On page 1, line 2 of the title, after "9.94A.155," strike the
9 remainder of the title and insert "71.09.030, 13.40.160, and 71.09.090;
10 reenacting and amending RCW 9.94A.120; adding a new section to chapter
11 71.09 RCW; creating a new section; and declaring an emergency."