

1 **E2SSB 5451** - H AMDS TO H AMD (5451-S2.E AMH H2591.2)

2 By Representative Vance and others

3 On page 11, line 20, after "section" insert "and section 4 of
4 this act"

5 On page 24, after line 18, insert the following section:

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

8 (1) A person convicted of a sexually violent offense shall be
9 sentenced to a term of total confinement of life imprisonment
10 without the possibility of release, community custody, or parole if
11 the court finds beyond a reasonable doubt, at a special sentencing
12 proceeding following conviction, that the person is a sexually
13 violent predator. The court shall not impose a sentence less than
14 life imprisonment without the possibility of release, community
15 custody, or parole unless the court finds that mitigating
16 circumstances exist which warrant a lesser sentence pursuant to RCW
17 9.94A.390, in which case the court shall impose a determinate
18 sentence which in no case shall be less than a determinate term
19 within the standard range for the offense.

20 (2) If a person is charged with a sexually violent offense the
21 prosecutor shall file written notice if the prosecutor intends to
22 ask the court to find that the defendant is a sexually violent
23 predator and to sentence the defendant to life imprisonment without
24 the possibility of release, community custody, or parole. The
25 prosecutor shall serve the defendant and the defendant's attorney
26 with the notice within thirty days after the defendant's
27 arraignment on the charge. Except with the consent of the
28 prosecutor, during the period in which the prosecutor may file the
29 notice of the special sentencing proceeding, the defendant may not
30 tender a plea of guilty to the sexually violent offense nor may the

1 court accept a plea of guilty to the charge. If the notice of the
2 special sentencing proceeding is not filed and served as provided
3 in this subsection, the prosecutor may not seek and the court may
4 not make a finding that the defendant is a sexually violent
5 predator. A defendant who is convicted of a sexually violent
6 offense but is not found to be a sexually violent predator shall be
7 sentenced according to the remaining provisions of this chapter.
8 Nothing in this section shall prohibit the court from sentencing a
9 defendant who is convicted of a sexually violent offense but who is
10 not found to be a sexually violent predator to life imprisonment
11 without the possibility of release, community custody, or parole,
12 under other applicable sentencing provisions in this chapter.

13 (4) The following definitions apply throughout this section:

14 (a) "Sexually violent predator" means any person who has been
15 convicted of a crime of sexual violence and who suffers from a
16 mental abnormality or personality disorder which makes the person
17 likely to engage in predatory acts of sexual violence.

18 (b) "Mental abnormality" means a congenital or acquired
19 condition affecting the emotional or volitional capacity which
20 predisposes the person to the commission of criminal sexual acts in
21 a degree constituting such person a menace to the health and safety
22 of others.

23 (c) "Predatory" means acts directed towards strangers or
24 individuals with whom a relationship has been established or
25 promoted for the primary purpose of victimization.

26 (d) "Sexually violent offense" means an act committed on or
27 after the effective date of this section, that is: (a) An act
28 defined in Title 9A RCW as rape in the first degree, rape in the
29 second degree by forcible compulsion, rape of a child in the first
30 or second degree, statutory rape in the first or second degree,
31 indecent liberties by forcible compulsion, indecent liberties
32 against a child under age fourteen, incest against a child under
33 age fourteen, or child molestation in the first or second degree;

1 or (b) an act of murder in the first or second degree, assault in
2 the first or second degree, assault of a child in the first or
3 second degree, kidnapping in the first or second degree, burglary
4 in the first degree, residential burglary, or unlawful
5 imprisonment, which has been determined beyond a reasonable doubt
6 to have been sexually motivated, as that term is defined in RCW
7 9.94A.030; or (c) an act as described in chapter 9A.28 RCW, that is
8 an attempt, criminal solicitation, or criminal conspiracy to commit
9 one of the felonies designated in (a) or (b) of this subsection."

10 On page 39, after line 12, insert the following section:

11 "Sec. 10. RCW 9A.20.021 and 1982 c 192 s 10 are each amended
12 to read as follows:

13 (1) Felony. No person convicted of a classified felony shall
14 be punished by confinement or fine exceeding the following:

15 (a) For a class A felony, by confinement in a state
16 correctional institution for a term of life imprisonment, or by a
17 fine in an amount fixed by the court of fifty thousand dollars, or
18 by both such confinement and fine;

19 (b) For a class B felony, by confinement in a state
20 correctional institution for a term of ten years, or by a fine in
21 an amount fixed by the court of twenty thousand dollars, or by both
22 such confinement and fine;

23 (c) For a class C felony, by confinement in a state
24 correctional institution for five years, or by a fine in an amount
25 fixed by the court of ten thousand dollars, or by both such
26 confinement and fine.

27 (d) For a class A, B, or C felony that is classified as a
28 sexually violent offense as defined in section 4 of this act, by
29 confinement in a state correctional facility for a term of life
30 imprisonment without release, community custody, or parole, or by
31 a fine in an amount fixed by the court of fifty thousand dollars,

1 or by both. This subsection applies only to those sexually violent
2 offenses committed on or after the effective date of this section.

3 (2) Gross misdemeanor. Every person convicted of a gross
4 misdemeanor defined in Title 9A RCW shall be punished by
5 imprisonment in the county jail for a maximum term fixed by the
6 court of not more than one year, or by a fine in an amount fixed by
7 the court of not more than five thousand dollars, or by both such
8 imprisonment and fine.

9 (3) Misdemeanor. Every person convicted of a misdemeanor
10 defined in Title 9A RCW shall be punished by imprisonment in the
11 county jail for a maximum term fixed by the court of not more than
12 ninety days, or by a fine in an amount fixed by the court of not
13 more than one thousand dollars, or by both such imprisonment and
14 fine.

15 (4) This section applies to only those crimes committed on or
16 after July 1, 1984."

17 On page 59, after line 22, insert the following section:

18 "NEW SECTION. Sec. 34. Sections 4 and 10 of this act shall
19 not take effect unless the Washington State Supreme Court in a
20 final decision holds that civil commitment of sexually violent
21 predators under chapter 71.09 RCW is unconstitutional. If the
22 Washington State Supreme Court holds in a final decision that civil
23 commitment of sexually violent predators under chapter 71.09 RCW is
24 unconstitutional, sections 4 and 10 shall take effect on the date
25 that the Washington Supreme Court issues its final decision.
26 Sections 4 and 10 of this act shall apply to all sexually violent
27 crimes committed on or after the effective date of sections 4 and
28 10."

EFFECT: If the Washington Supreme Court finds that civil
commitment of sexually violent predators is
unconstitutional, then sexually violent predators shall

be sentenced to life imprisonment without the possibility of parole. The court may impose a lesser sentence only upon finding that mitigating circumstances warrant imposition of a lesser sentence but in no case may the court sentence the offender to a sentence below the standard range for the offense. This provision shall not take effect unless the Supreme court finds that the civil commitment procedure is unconstitutional. If so, the new sentencing provisions will apply when that decision is made and will apply to sexually violent offenses committed on or after the effective date of the provision.