

SHB 2400 - H AMD

By Representative McMahan

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

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

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

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

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

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

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

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

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

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

1 (a) The offender has been convicted of any of the following
2 offenses:

- 3 (i) Rape of a child in the third degree (RCW 9A.44.079);
- 4 (ii) Child molestation in the second degree (RCW 9A.44.086);
- 5 (iii) Child molestation in the third degree (RCW 9A.44.089); or
- 6 (iv) Sexual misconduct with a minor in the first degree (RCW
7 9A.44.093);

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

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

10 (e) The offender has no prior convictions for a violent offense
11 that was committed within five years of the current offense;

12 (f) The victim of the offense has not suffered substantial
13 bodily harm; and

14 (g) The offender's standard sentence range for the offense
15 includes the possibility of confinement for less than eleven years.

16 (3) If the court finds the offender is eligible for this
17 alternative, the court, on its own motion or the motion of the
18 state or the offender, may order an examination to determine
19 whether the offender is amenable to treatment.

20 (a) The report of the examination shall include at a minimum
21 the following:

22 (i) The offender's version of the facts and the official
23 version of the facts;

24 (ii) The offender's offense history;

25 (iii) An assessment of problems in addition to alleged deviant
26 behaviors;

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

28 (v) Other evaluation measures used.

29 The report shall set forth the sources of the examiner's
30 information.

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

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

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

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

4 (iv) Anticipated length of treatment; and

5 (v) Recommended crime-related prohibitions.

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

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

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

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

6 (i) Crime-related prohibitions;

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

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

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

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

16 (vi) Refrain from possessing, viewing, or listening to
17 pornography;

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

21 (viii) Any other conditions imposed by the department under RCW
22 9.94A.720.

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

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

36 (a) Require the offender to devote time to a specific
37 employment or occupation;

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

1 (c) Perform community restitution work.

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

5 (7)(a) The sex offender treatment provider shall submit
6 quarterly reports on the offender's progress in treatment to the
7 court and the parties. The report shall reference the treatment
8 plan and include at a minimum the following: Dates of attendance,
9 offender's compliance with requirements, treatment activities, the
10 offender's relative progress in treatment, and any other material
11 specified by the court at sentencing.

12 (b) The court shall conduct a hearing on the offender's
13 progress in treatment at least once a year. At least fourteen days
14 prior to the hearing, notice of the hearing shall be given to the
15 victim. The victim shall be given the opportunity to make
16 statements to the court regarding the offender's supervision and
17 treatment.

18 (8) At least fourteen days prior to the treatment termination
19 hearing, notice of the hearing shall be given to the victim. The
20 victim shall be given the opportunity to make statements to the
21 court regarding the offender's supervision and treatment. Prior to
22 the treatment termination hearing, the treatment provider and
23 community corrections officer shall submit written reports to the
24 court and parties regarding the offender's compliance with
25 treatment and monitoring requirements, and recommendations
26 regarding termination from treatment, including proposed community
27 custody conditions. The court shall order an evaluation regarding
28 the advisability of termination from treatment by a sex offender
29 treatment provider who may not be the same person who treated the
30 offender under subsection (4) of this section or any person who
31 employs, is employed by, or shares profits with the person who
32 treated the offender under subsection (4) of this section. The
33 offender shall pay the cost of the evaluation. At the treatment
34 termination hearing the court may: (a) Modify conditions of
35 community custody, and either (b) terminate treatment, or (c)
36 extend treatment in three-year increments for up to the remaining
37 period of community custody.

38 (9)(a) If a violation of the mandatory conditions imposed under
39 subsection (4)(b) of this section occurs during community custody,

1 the department shall refer the violation to the court and recommend
2 revocation of the suspended sentence as provided in subsections (6)
3 and (8) of this section.

4 (b) If a violation of the conditions imposed under subsection
5 (5) of this section occurs during community custody, the department
6 shall either impose sanctions as provided for in RCW
7 9.94A.737(2)(a) or refer the violation to the court and recommend
8 revocation of the suspended sentence as provided for in subsections
9 (6) and (8) of this section.

10 (10)(a) The court shall revoke the suspended sentence during
11 the period of community custody and order execution of the sentence
12 if: (i) The offender violates any of the mandatory conditions of
13 the suspended sentence imposed under subsection (4)(b)(v) or (vi)
14 of this section; or (ii) the offender violates any of the mandatory
15 conditions imposed under subsection (4)(b)(i) through (iv), (vii),
16 or (viii) of this section, and the offender has a previous
17 violation of any of the mandatory conditions of the suspended
18 sentence imposed under subsection (4)(b)(i) through (iv), (vii), or
19 (viii) of this section.

20 (b) The court may revoke the suspended sentence at any time
21 during the period of community custody and order execution of the
22 sentence if: (i) The offender violates the conditions of the
23 suspended sentence imposed under subsection (5) of this section;
24 (ii) the offender violates the mandatory conditions of the
25 suspended sentence imposed under subsection (4)(b)(i) through (iv),
26 (vii), or (viii) of this section and the offender has no previous
27 violation of any of the mandatory conditions of the suspended
28 sentence imposed under subsection (4)(b)(i) through (iv), (vii), or
29 (viii) of this section; or (iii) the court finds that the offender
30 is failing to make satisfactory progress in treatment.

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

34 (11) The offender's sex offender treatment provider may not be
35 the same person who examined the offender under subsection (3) of
36 this section or any person who employs, is employed by, or shares
37 profits with the person who examined the offender under subsection
38 (3) of this section. Examinations and treatment ordered pursuant
39 to this subsection shall only be conducted by sex offender

1 treatment providers certified by the department of health pursuant
2 to chapter 18.155 RCW unless the court finds that:

3 (a) The offender has already moved to another state or plans to
4 move to another state for reasons other than circumventing the
5 certification requirements; or

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

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

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

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

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

18 (a) "Sex offender treatment provider" or "treatment provider"
19 means a certified sex offender treatment provider as defined in RCW
20 18.155.020.

21 (b) "Victim" means any person who has sustained emotional,
22 psychological, physical, or financial injury to person or property
23 as a result of the crime charged. "Victim" also means a parent or
24 guardian of a victim who is a minor child unless the parent or
25 guardian is the perpetrator of the offense.

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

28 (a) The offender has been convicted of a sex offense other than
29 a violation of RCW 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079,
30 9A.44.083, 9A.44.086, 9A.44.089, or 9A.44.093 or a sex offense that
31 is also a serious violent offense;

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

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

37 (3) If the court finds the offender is eligible for this
38 alternative, the court, on its own motion or the motion of the

1 state or the offender, may order an examination to determine
2 whether the offender is amenable to treatment.

3 (a) The report of the examination shall include at a minimum
4 the following:

5 (i) The offender's version of the facts and the official
6 version of the facts;

7 (ii) The offender's offense history;

8 (iii) An assessment of problems in addition to alleged deviant
9 behaviors;

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

11 (v) Other evaluation measures used.

12 The report shall set forth the sources of the examiner's
13 information.

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

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

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

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

25 (iv) Anticipated length of treatment; and

26 (v) Recommended crime-related prohibitions.

27 (c) The court on its own motion may order, or on a motion by
28 the state shall order, a second examination regarding the
29 offender's amenability to treatment. The examiner shall be
30 selected by the party making the motion. The offender shall pay
31 the cost of any second examination ordered unless the court finds
32 the defendant to be indigent in which case the state shall pay the
33 cost.

34 (4) After receipt of the reports, the court shall consider
35 whether the offender and the community will benefit from use of
36 this alternative and consider the victim's opinion whether the
37 offender should receive a treatment disposition under this section.
38 If the court determines that this alternative is appropriate, the
39 court shall then impose a sentence or, pursuant to RCW 9.94A.712,

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

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

10 (b) The court shall order treatment for any period up to three
11 years in duration. The court, in its discretion, shall order
12 outpatient sex offender treatment or inpatient sex offender
13 treatment, if available. A community mental health center may not
14 be used for such treatment unless it has an appropriate program
15 designed for sex offender treatment. The offender shall not change
16 sex offender treatment providers or treatment conditions without
17 first notifying the prosecutor, the community corrections officer,
18 and the court. If any party or the court objects to a proposed
19 change, the offender shall not change providers or conditions
20 without court approval after a hearing.

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

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

25 (b) Crime-related prohibitions;

26 (c) Require the offender to devote time to a specific
27 employment or occupation;

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

31 (e) Report as directed to the court and a community corrections
32 officer;

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

35 (g) Perform community restitution work; or

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

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

4 (7) The sex offender treatment provider shall submit quarterly
5 reports on the offender's progress in treatment to the court and
6 the parties. The report shall reference the treatment plan and
7 include at a minimum the following: Dates of attendance,
8 offender's compliance with requirements, treatment activities, the
9 offender's relative progress in treatment, and any other material
10 specified by the court at sentencing.

11 (8) Prior to the treatment termination hearing, the treatment
12 provider and community corrections officer shall submit written
13 reports to the court and parties regarding the offender's
14 compliance with treatment and monitoring requirements, and
15 recommendations regarding termination from treatment, including
16 proposed community custody conditions. Either party may request,
17 and the court may order, another evaluation regarding the
18 advisability of termination from treatment. The offender shall pay
19 the cost of any additional evaluation ordered unless the court
20 finds the offender to be indigent in which case the state shall pay
21 the cost. At the treatment termination hearing the court may: (a)
22 Modify conditions of community custody, and either (b) terminate
23 treatment, or (c) extend treatment for up to the remaining period
24 of community custody.

25 (9) If a violation of conditions occurs during community
26 custody, the department shall either impose sanctions as provided
27 for in RCW 9.94A.737(2)(a) or refer the violation to the court and
28 recommend revocation of the suspended sentence as provided for in
29 subsections (6) and (8) of this section.

30 (10) The court may revoke the suspended sentence at any time
31 during the period of community custody and order execution of the
32 sentence if: (a) The offender violates the conditions of the
33 suspended sentence, or (b) the court finds that the offender is
34 failing to make satisfactory progress in treatment. All
35 confinement time served during the period of community custody
36 shall be credited to the offender if the suspended sentence is
37 revoked.

38 (11) Examinations and treatment ordered pursuant to this
39 subsection shall only be conducted by sex offender treatment

1 providers certified by the department of health pursuant to chapter
2 18.155 RCW unless the court finds that:

3 (a) The offender has already moved to another state or plans to
4 move to another state for reasons other than circumventing the
5 certification requirements; or

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

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

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

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

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

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

22 (a) One superior court judge;

23 (b) (~~Three~~) One sexual offender treatment (~~providers~~)
24 provider;

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

27 (d) One defense attorney with experience in representing
28 persons charged with sexual offenses;

29 (e) One representative from the Washington association of
30 prosecuting attorneys;

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

33 (g) The secretary of the department of corrections or his or
34 her designee;

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

37 The secretary shall develop and implement the certification
38 procedures with the advice of the committee by July 1, 1991.

1 Following implementation of these procedures by the secretary, the
2 committee shall be a permanent body. The members shall serve
3 staggered six-year terms, to be set by the secretary. No person
4 other than the members representing the departments of social and
5 health services and corrections may serve more than two consecutive
6 terms.

7 The secretary may remove any member of the advisory committee
8 for cause as specified by rule. In a case of a vacancy, the
9 secretary shall appoint a person to serve for the remainder of the
10 unexpired term.

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

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

16 (5) Members of the advisory committee shall be residents of
17 this state. The members who are sex offender treatment providers
18 must have a minimum of five years of extensive work experience in
19 treating sex offenders to qualify for appointment to the initial
20 committee, which shall develop and implement the certification
21 program. After July 1, 1991, the sex offender treatment providers
22 on the committee must be certified pursuant to this chapter.

23 (6) The committee shall meet at times as necessary to conduct
24 committee business.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.155
26 RCW to read as follows:

27 (1) The sexual offender treatment providers advisory committee
28 shall conduct a review every six months of the efficacy of the
29 special sex offender sentencing alternative established under RCW
30 9.94A.670.

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

32 (a) Recidivism rates of offenders receiving treatment under the
33 sentencing alternative compared to recidivism rates for sex
34 offenders in general;

35 (b) The amenability to treatment of offenders receiving the
36 sentencing alternative;

37 (c) The number of successful treatment outcomes for offenders
38 receiving treatment under the sentencing alternative compared to

1 the number of successful treatment outcomes for sex offenders in
2 general;

3 (d) The impacts of the sentencing alternative on victims and
4 families; and

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

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

11 NEW SECTION. **Sec. 5.** The sum of one million seven hundred
12 forty-seven thousand dollars, or as much thereof as may be
13 necessary, is appropriated for the fiscal year ending June 30,
14 2005, from the general fund--state to the department of corrections
15 solely for the purposes of:

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

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

21 NEW SECTION. **Sec. 6.** The sum of one hundred fifty thousand
22 dollars, or as much thereof as may be necessary, is appropriated
23 for the fiscal year ending June 30, 2005, from the general fund--
24 state to the department of community, trade, and economic
25 development solely for the purposes of distribution to sexual
26 assault victims programs.

27 NEW SECTION. **Sec. 7.** This act may be known and cited as the
28 child protection act of 2004.

29 NEW SECTION. **Sec. 8.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2004."

EFFECT: Eliminates the increases to the seriousness levels of rape in the first degree and rape in the second degree. Makes changes to SSOSA that apply only to offenders convicted of rape of a child in the third degree, child molestation in the second and third degrees, and sexual misconduct with a minor in the first degree. Adds to the existing SSOSA eligibility requirements. Makes the following types of offenders ineligible for SSOSA: (a) Offenders convicted of rape of a child in the first and second degrees and child molestation in the first degree; (b) persons who have multiple victims; (c) persons who caused substantial bodily harm to the victim; and (d) persons who are not family members of the victim. Requires a second pre-SSOSA evaluation to be ordered upon motion of the victim. Requires the court to consider whether the alternative is too lenient in light of the extent and circumstances of the offense when deciding whether to grant a SSOSA sentence. Requires the court to allow the victim to testify when deciding whether to grant a SSOSA sentence. Increases the mandatory term of incarceration to 12 months and one day, which must be served in total confinement in a state institution. Increases the maximum term of treatment the court may impose to up to seven years. Requires the court to impose mandatory conditions of the suspended sentence, including prohibitions relating to alcohol, drugs, and pornography. Requires that violations of the mandatory conditions be sent directly to court. Requires that the suspended sentence be revoked upon a first violation of a mandatory term relating to drugs, alcohol, or pornography. Requires the suspended sentence to be revoked upon a second violation of any other mandatory term. Requires the Sexual Offender Treatment Providers Advisory Committee to conduct a review of the SSOSA program every six months. Changes the membership of the committee. Makes appropriations to the Department of Corrections for training and reduced caseloads for community corrections officers who supervise sex offenders. Makes appropriations to the Department of Community, Trade, and Economic Development for distribution to sexual assault victims' programs.