
ENGROSSED SUBSTITUTE HOUSE BILL 2400

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives McMahan, Carrell, Mielke, Talcott, Crouse, Bush, Ahern, Newhouse, G. Simpson, Woods and Orcutt)

READ FIRST TIME 03/02/04.

1 AN ACT Relating to sentence enhancement for sex crimes against
2 minors; amending RCW 9.94A.670, 9.92.151, and 9.94A.728; reenacting and
3 amending RCW 9.94A.515; adding a new section to chapter 9.94A RCW;
4 creating new sections; prescribing penalties; making appropriations;
5 and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that sex offenses
8 against children are among the most heinous of crimes and that the
9 legislature has a paramount duty to protect children from victimization
10 by sex offenders. Sentencing policy in Washington state should ensure
11 that punishment of sex offenders is pursued to the extent that such
12 punishment does not jeopardize the safety of children or hinder the
13 successful prosecution of sex offenses against children. The special
14 sex offender sentencing alternative was enacted in 1984 to protect
15 victims of sexual assault. A 1991 evaluation of the effectiveness of
16 the sentencing alternative concluded that it accurately selected sex
17 offenders who, with supervision and treatment, reoffend at lower rates
18 and that the use of the sentencing alternative does not increase risk
19 to the community. Today, strong support for the special sex offender

1 sentencing alternative continues among advocates for children who are
2 victims of sexual assault and prosecutors who prosecute sex offenses
3 against children.

4 (2) The legislature further finds that several weaknesses in the
5 structure and administration of the special sex offender sentencing
6 alternative have been identified and should be addressed. In addition,
7 a comprehensive analysis and evaluation of the special sex offender
8 sentencing alternative is needed to ensure that efforts to reform the
9 sentencing alternative do not result in jeopardizing the safety of
10 children or hindering the successful prosecution of sex offenses
11 against children.

12 (3) The legislature intends to protect children from victimization
13 by sex offenders by taking immediate action to increase punishment for
14 the most serious sex offenses against children, making immediate
15 changes in the special sex offender sentencing alternative to address
16 known weaknesses in the program, and thoroughly evaluating the
17 effectiveness of the special sex offender sentencing alternative to
18 determine whether additional changes are needed to further increase the
19 protection of children from victimization by sex offenders.

20 **Sec. 2.** RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c
21 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52
22 s 4 are each reenacted and amended to read as follows:

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1
2 (RCW 70.74.270(1))
3 Rape of a Child 1 when offender is at
4 least eighteen years of age when
5 charged (RCW 9A.44.073)
6 Rape of a Child 2 when offender is at
7 least eighteen years of age when
8 charged (RCW 9A.44.076)
9 XII Assault 1 (RCW 9A.36.011)
10 Assault of a Child 1 (RCW 9A.36.120)
11 Malicious placement of an imitation
12 device 1 (RCW 70.74.272(1)(a))
13 Rape 1 (RCW 9A.44.040)
14 Rape of a Child 1 when offender is
15 under eighteen years of age when
16 charged, but subject to adult
17 felony prosecution because the
18 juvenile court lacks jurisdiction
19 under RCW 13.04.030, or has
20 declined jurisdiction under RCW
21 13.40.110 (RCW 9A.44.073)
22 Trafficking 2 (RCW 9A.40.100(2))
23 XI Manslaughter 1 (RCW 9A.32.060)
24 Rape 2 (RCW 9A.44.050)
25 Rape of a Child 2 when offender is
26 under eighteen years of age when
27 charged, but subject to adult
28 felony prosecution because the
29 juvenile court lacks jurisdiction
30 under RCW 13.04.030, or has
31 declined jurisdiction under RCW
32 13.40.110 (RCW 9A.44.076)
33 X Child Molestation 1 (RCW 9A.44.083)
34 Indecent Liberties (with forcible
35 compulsion) (RCW
36 9A.44.100(1)(a))
37 Kidnapping 1 (RCW 9A.40.020)

1 Leading Organized Crime (RCW
2 9A.82.060(1)(a))
3 Malicious explosion 3 (RCW
4 70.74.280(3))
5 Sexually Violent Predator Escape
6 (RCW 9A.76.115)
7 IX Assault of a Child 2 (RCW 9A.36.130)
8 Explosive devices prohibited (RCW
9 70.74.180)
10 Hit and Run--Death (RCW
11 46.52.020(4)(a))
12 Homicide by Watercraft, by being
13 under the influence of intoxicating
14 liquor or any drug (RCW
15 79A.60.050)
16 Inciting Criminal Profiteering (RCW
17 9A.82.060(1)(b))
18 Malicious placement of an explosive 2
19 (RCW 70.74.270(2))
20 Robbery 1 (RCW 9A.56.200)
21 Sexual Exploitation (RCW 9.68A.040)
22 Vehicular Homicide, by being under
23 the influence of intoxicating
24 liquor or any drug (RCW
25 46.61.520)
26 VIII Arson 1 (RCW 9A.48.020)
27 Homicide by Watercraft, by the
28 operation of any vessel in a
29 reckless manner (RCW
30 79A.60.050)
31 Manslaughter 2 (RCW 9A.32.070)
32 Promoting Prostitution 1 (RCW
33 9A.88.070)
34 Theft of Ammonia (RCW 69.55.010)
35 Vehicular Homicide, by the operation
36 of any vehicle in a reckless
37 manner (RCW 46.61.520)

1 VII Burglary 1 (RCW 9A.52.020)
2 Child Molestation 2 (RCW 9A.44.086)
3 Civil Disorder Training (RCW
4 9A.48.120)
5 Dealing in depictions of minor
6 engaged in sexually explicit
7 conduct (RCW 9.68A.050)
8 Drive-by Shooting (RCW 9A.36.045)
9 Homicide by Watercraft, by disregard
10 for the safety of others (RCW
11 79A.60.050)
12 Indecent Liberties (without forcible
13 compulsion) (RCW 9A.44.100(1)
14 (b) and (c))
15 Introducing Contraband 1 (RCW
16 9A.76.140)
17 Malicious placement of an explosive 3
18 (RCW 70.74.270(3))
19 Sending, bringing into state depictions
20 of minor engaged in sexually
21 explicit conduct (RCW
22 9.68A.060)
23 Unlawful Possession of a Firearm in
24 the first degree (RCW
25 9.41.040(1))
26 Use of a Machine Gun in Commission
27 of a Felony (RCW 9.41.225)
28 Vehicular Homicide, by disregard for
29 the safety of others (RCW
30 46.61.520)
31 VI Bail Jumping with Murder 1 (RCW
32 9A.76.170(3)(a))
33 Bribery (RCW 9A.68.010)
34 Incest 1 (RCW 9A.64.020(1))
35 Intimidating a Judge (RCW
36 9A.72.160)

1 Intimidating a Juror/Witness (RCW
2 9A.72.110, 9A.72.130)
3 Malicious placement of an imitation
4 device 2 (RCW 70.74.272(1)(b))
5 Rape of a Child 3 (RCW 9A.44.079)
6 Theft of a Firearm (RCW 9A.56.300)
7 Unlawful Storage of Ammonia (RCW
8 69.55.020)
9 V Abandonment of dependent person 1
10 (RCW 9A.42.060)
11 Advancing money or property for
12 extortionate extension of credit
13 (RCW 9A.82.030)
14 Bail Jumping with class A Felony
15 (RCW 9A.76.170(3)(b))
16 Child Molestation 3 (RCW 9A.44.089)
17 Criminal Mistreatment 1 (RCW
18 9A.42.020)
19 Custodial Sexual Misconduct 1 (RCW
20 9A.44.160)
21 Domestic Violence Court Order
22 Violation (RCW 10.99.040,
23 10.99.050, 26.09.300, 26.10.220,
24 26.26.138, 26.50.110, 26.52.070,
25 or 74.34.145)
26 Extortion 1 (RCW 9A.56.120)
27 Extortionate Extension of Credit
28 (RCW 9A.82.020)
29 Extortionate Means to Collect
30 Extensions of Credit (RCW
31 9A.82.040)
32 Incest 2 (RCW 9A.64.020(2))
33 Kidnapping 2 (RCW 9A.40.030)
34 Perjury 1 (RCW 9A.72.020)
35 Persistent prison misbehavior (RCW
36 9.94.070)

1 Possession of a Stolen Firearm (RCW
2 9A.56.310)
3 Rape 3 (RCW 9A.44.060)
4 Rendering Criminal Assistance 1
5 (RCW 9A.76.070)
6 Sexual Misconduct with a Minor 1
7 (RCW 9A.44.093)
8 Sexually Violating Human Remains
9 (RCW 9A.44.105)
10 Stalking (RCW 9A.46.110)
11 Taking Motor Vehicle Without
12 Permission 1 (RCW 9A.56.070)
13 IV Arson 2 (RCW 9A.48.030)
14 Assault 2 (RCW 9A.36.021)
15 Assault by Watercraft (RCW
16 79A.60.060)
17 Bribing a Witness/Bribe Received by
18 Witness (RCW 9A.72.090,
19 9A.72.100)
20 Cheating 1 (RCW 9.46.1961)
21 Commercial Bribery (RCW
22 9A.68.060)
23 Counterfeiting (RCW 9.16.035(4))
24 Endangerment with a Controlled
25 Substance (RCW 9A.42.100)
26 Escape 1 (RCW 9A.76.110)
27 Hit and Run--Injury (RCW
28 46.52.020(4)(b))
29 Hit and Run with Vessel--Injury
30 Accident (RCW 79A.60.200(3))
31 Identity Theft 1 (RCW 9.35.020(2))
32 Indecent Exposure to Person Under
33 Age Fourteen (subsequent sex
34 offense) (RCW 9A.88.010)
35 Influencing Outcome of Sporting
36 Event (RCW 9A.82.070)

1 Malicious Harassment (RCW
2 9A.36.080)
3 Residential Burglary (RCW
4 9A.52.025)
5 Robbery 2 (RCW 9A.56.210)
6 Theft of Livestock 1 (RCW 9A.56.080)
7 Threats to Bomb (RCW 9.61.160)
8 Trafficking in Stolen Property 1 (RCW
9 9A.82.050)
10 Unlawful factoring of a credit card or
11 payment card transaction (RCW
12 9A.56.290(4)(b))
13 Unlawful transaction of health
14 coverage as a health care service
15 contractor (RCW 48.44.016(3))
16 Unlawful transaction of health
17 coverage as a health maintenance
18 organization (RCW 48.46.033(3))
19 Unlawful transaction of insurance
20 business (RCW 48.15.023(3))
21 Unlicensed practice as an insurance
22 professional (RCW 48.17.063(3))
23 Use of Proceeds of Criminal
24 Profiteering (RCW 9A.82.080 (1)
25 and (2))
26 Vehicular Assault, by being under the
27 influence of intoxicating liquor or
28 any drug, or by the operation or
29 driving of a vehicle in a reckless
30 manner (RCW 46.61.522)
31 Willful Failure to Return from
32 Furlough (RCW 72.66.060)
33 III Abandonment of dependent person 2
34 (RCW 9A.42.070)
35 Assault 3 (RCW 9A.36.031)
36 Assault of a Child 3 (RCW 9A.36.140)

1 Bail Jumping with class B or C Felony
2 (RCW 9A.76.170(3)(c))
3 Burglary 2 (RCW 9A.52.030)
4 Communication with a Minor for
5 Immoral Purposes (RCW
6 9.68A.090)
7 Criminal Gang Intimidation (RCW
8 9A.46.120)
9 Criminal Mistreatment 2 (RCW
10 9A.42.030)
11 Custodial Assault (RCW 9A.36.100)
12 Escape 2 (RCW 9A.76.120)
13 Extortion 2 (RCW 9A.56.130)
14 Harassment (RCW 9A.46.020)
15 Intimidating a Public Servant (RCW
16 9A.76.180)
17 Introducing Contraband 2 (RCW
18 9A.76.150)
19 Malicious Injury to Railroad Property
20 (RCW 81.60.070)
21 Patronizing a Juvenile Prostitute
22 (RCW 9.68A.100)
23 Perjury 2 (RCW 9A.72.030)
24 Possession of Incendiary Device (RCW
25 9.40.120)
26 Possession of Machine Gun or Short-
27 Barreled Shotgun or Rifle (RCW
28 9.41.190)
29 Promoting Prostitution 2 (RCW
30 9A.88.080)
31 Securities Act violation (RCW
32 21.20.400)
33 Tampering with a Witness (RCW
34 9A.72.120)
35 Telephone Harassment (subsequent
36 conviction or threat of death)
37 (RCW 9.61.230(2))

1 Theft of Livestock 2 (RCW 9A.56.083)
2 Trafficking in Stolen Property 2 (RCW
3 9A.82.055)
4 Unlawful Imprisonment (RCW
5 9A.40.040)
6 Unlawful possession of firearm in the
7 second degree (RCW 9.41.040(2))
8 Vehicular Assault, by the operation or
9 driving of a vehicle with disregard
10 for the safety of others (RCW
11 46.61.522)
12 Willful Failure to Return from Work
13 Release (RCW 72.65.070)
14 II Computer Trespass 1 (RCW
15 9A.52.110)
16 Counterfeiting (RCW 9.16.035(3))
17 Escape from Community Custody
18 (RCW 72.09.310)
19 Health Care False Claims (RCW
20 48.80.030)
21 Identity Theft 2 (RCW 9.35.020(3))
22 Improperly Obtaining Financial
23 Information (RCW 9.35.010)
24 Malicious Mischief 1 (RCW
25 9A.48.070)
26 Possession of Stolen Property 1 (RCW
27 9A.56.150)
28 Theft 1 (RCW 9A.56.030)
29 Theft of Rental, Leased, or Lease-
30 purchased Property (valued at one
31 thousand five hundred dollars or
32 more) (RCW 9A.56.096(5)(a))
33 Trafficking in Insurance Claims (RCW
34 48.30A.015)
35 Unlawful factoring of a credit card or
36 payment card transaction (RCW
37 9A.56.290(4)(a))

1 Unlawful Practice of Law (RCW
2 2.48.180)
3 Unlicensed Practice of a Profession or
4 Business (RCW 18.130.190(7))
5 I Attempting to Elude a Pursuing Police
6 Vehicle (RCW 46.61.024)
7 False Verification for Welfare (RCW
8 74.08.055)
9 Forgery (RCW 9A.60.020)
10 Fraudulent Creation or Revocation of a
11 Mental Health Advance Directive
12 (RCW 9A.60.060)
13 Malicious Mischief 2 (RCW
14 9A.48.080)
15 Mineral Trespass (RCW 78.44.330)
16 Possession of Stolen Property 2 (RCW
17 9A.56.160)
18 Reckless Burning 1 (RCW 9A.48.040)
19 Taking Motor Vehicle Without
20 Permission 2 (RCW 9A.56.075)
21 Theft 2 (RCW 9A.56.040)
22 Theft of Rental, Leased, or Lease-
23 purchased Property (valued at two
24 hundred fifty dollars or more but
25 less than one thousand five
26 hundred dollars) (RCW
27 9A.56.096(5)(b))
28 Transaction of insurance business
29 beyond the scope of licensure
30 (RCW 48.17.063(4))
31 Unlawful Issuance of Checks or Drafts
32 (RCW 9A.56.060)
33 Unlawful Possession of Fictitious
34 Identification (RCW 9A.56.320)
35 Unlawful Possession of Instruments of
36 Financial Fraud (RCW
37 9A.56.320)

1 Unlawful Possession of Payment
2 Instruments (RCW 9A.56.320)
3 Unlawful Possession of a Personal
4 Identification Device (RCW
5 9A.56.320)
6 Unlawful Production of Payment
7 Instruments (RCW 9A.56.320)
8 Unlawful Trafficking in Food Stamps
9 (RCW 9.91.142)
10 Unlawful Use of Food Stamps (RCW
11 9.91.144)
12 Vehicle Prowl 1 (RCW 9A.52.095)

13 **Sec. 3.** RCW 9.94A.670 and 2002 c 175 s 11 are each amended to read
14 as follows:

15 (1) This section applies exclusively to:

16 (a) Offenders who are at least eighteen years old when they are
17 charged with crimes committed prior to the effective date of this act;
18 and

19 (b) Offenders who are less than eighteen years old when they are
20 charged, but are subject to adult felony prosecution because the
21 juvenile court lacks jurisdiction under RCW 13.04.030, or has declined
22 jurisdiction under RCW 13.40.110, prior to, on, or after the effective
23 date of this act.

24 (2) Unless the context clearly requires otherwise, the definitions
25 in this subsection apply to this section only.

26 (a) "Sex offender treatment provider" or "treatment provider" means
27 a certified sex offender treatment provider as defined in RCW
28 18.155.020.

29 (b) "Victim" means any person who has sustained emotional,
30 psychological, physical, or financial injury to person or property as
31 a result of the crime charged. "Victim" also means a parent or
32 guardian of a victim who is a minor child unless the parent or guardian
33 is the perpetrator of the offense.

34 ((+2)) (3) An offender is eligible for the special sex offender
35 sentencing alternative if:

36 (a) The offender has been convicted of a sex offense other than a

1 violation of RCW 9A.44.050 or a sex offense that is also a serious
2 violent offense;

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

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

8 ~~((3))~~ (4) If the court finds the offender is eligible for this
9 alternative, the court, on its own motion or the motion of the state or
10 the offender, may order an examination to determine whether the
11 offender is amenable to treatment.

12 (a) The report of the examination shall include at a minimum the
13 following:

14 (i) The offender's version of the facts and the official version of
15 the facts;

16 (ii) The offender's offense history;

17 (iii) An assessment of problems in addition to alleged deviant
18 behaviors;

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

20 (v) Other evaluation measures used.

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

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

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

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

29 (iii) Monitoring plans, including any requirements regarding living
30 conditions, lifestyle requirements, and monitoring by family members
31 and others;

32 (iv) Anticipated length of treatment; and

33 (v) Recommended crime-related prohibitions.

34 (c) The court on its own motion may order, or on a motion by the
35 state shall order, a second examination regarding the offender's
36 amenability to treatment. The examiner shall be selected by the party
37 making the motion. The offender shall pay the cost of any second

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

3 ~~((4))~~ (5) After receipt of the reports, the court shall consider
4 whether the offender and the community will benefit from use of this
5 alternative and consider the victim's opinion whether the offender
6 should receive a treatment disposition under this section. If the
7 court determines that this alternative is appropriate, the court shall
8 then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of
9 sentence, within the standard sentence range. If the sentence imposed
10 is less than eleven years of confinement, the court may suspend the
11 execution of the sentence and impose the following conditions of
12 suspension:

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

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

28 ~~((5))~~ (6) As conditions of the suspended sentence, the court may
29 impose one or more of the following:

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

32 (b) Crime-related prohibitions;

33 (c) Require the offender to devote time to a specific employment or
34 occupation;

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

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

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

5 (g) Perform community restitution work; or

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

8 ~~((+6))~~ (7) At the time of sentencing, the court shall set a
9 treatment termination hearing for three months prior to the anticipated
10 date for completion of treatment.

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

18 ~~((+8))~~ (9) Prior to the treatment termination hearing, the
19 treatment provider and community corrections officer shall submit
20 written reports to the court and parties regarding the offender's
21 compliance with treatment and monitoring requirements, and
22 recommendations regarding termination from treatment, including
23 proposed community custody conditions. Either party may request, and
24 the court may order, another evaluation regarding the advisability of
25 termination from treatment. The offender shall pay the cost of any
26 additional evaluation ordered unless the court finds the offender to be
27 indigent in which case the state shall pay the cost. At the treatment
28 termination hearing the court may: (a) Modify conditions of community
29 custody, and either (b) terminate treatment, or (c) extend treatment
30 for up to the remaining period of community custody.

31 ~~((+9))~~ (10) If a violation of conditions occurs during community
32 custody, the department shall either impose sanctions as provided for
33 in RCW 9.94A.737(2)(a) or refer the violation to the court and
34 recommend revocation of the suspended sentence as provided for in
35 subsections ~~((+6))~~ (7) and ~~((+8))~~ (9) of this section.

36 ~~((+10))~~ (11) The court may revoke the suspended sentence at any
37 time during the period of community custody and order execution of the
38 sentence if: (a) The offender violates the conditions of the suspended

1 sentence, or (b) the court finds that the offender is failing to make
2 satisfactory progress in treatment. All confinement time served during
3 the period of community custody shall be credited to the offender if
4 the suspended sentence is revoked.

5 ~~((+11+))~~ (12) The offender's sex offender treatment provider may
6 not be the same person who examined the offender under subsection (4)
7 of this section or any person who employs, is employed by, or shares
8 profits with the person who examined the offender under subsection (4)
9 of this section, unless the court has entered written findings that
10 such treatment is in the best interests of the victim and that
11 successful treatment of the offender would otherwise be impractical.

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

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

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

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

23 ~~((+12+))~~ (13) If the offender is less than eighteen years of age
24 when the charge is filed, the state shall pay for the cost of initial
25 evaluation and treatment.

26 NEW SECTION. Sec. 4. A new section is added to chapter 9.94A RCW
27 to read as follows:

28 (1) This section applies exclusively to offenders who are at least
29 eighteen years old when they are charged with crimes committed on or
30 after the effective date of this act.

31 (2) Unless the context clearly requires otherwise, the definitions
32 in this subsection apply to this section only.

33 (a) "Sex offender treatment provider" or "treatment provider" means
34 a certified sex offender treatment provider as defined in RCW
35 18.155.020.

36 (b) "Substantial bodily harm" means bodily injury that involves a

1 temporary but substantial disfigurement, or that causes a temporary but
2 substantial loss or impairment of the function of any body part or
3 organ, or that causes a fracture of any body part or organ.

4 (c) "Victim" means any person who has sustained emotional,
5 psychological, physical, or financial injury to person or property as
6 a result of the crime charged. "Victim" also means a parent or
7 guardian of a victim who is a minor child unless the parent or guardian
8 is the perpetrator of the offense.

9 (3) An offender is eligible for the special sex offender sentencing
10 alternative if:

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

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

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

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

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

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

27 (4) If the court finds the offender is eligible for this
28 alternative, the court, on its own motion or the motion of the state or
29 the offender, may order an examination to determine whether the
30 offender is amenable to treatment.

31 (a) The report of the examination shall include at a minimum the
32 following:

33 (i) The offender's version of the facts and the official version of
34 the facts;

35 (ii) The offender's offense history;

36 (iii) An assessment of problems in addition to alleged deviant
37 behaviors;

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

1 (v) Other evaluation measures used.

2 The report shall set forth the sources of the examiner's
3 information.

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

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

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

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

14 (iv) Anticipated length of treatment; and

15 (v) Recommended crime-related prohibitions, which must include an
16 identification of specific activities or behaviors that are precursors
17 to the offender's offense cycle, including, but not limited to,
18 activities or behaviors such as viewing or listening to pornography or
19 use of alcohol or controlled substances.

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

26 (5) After receipt of the reports, if the offender's conviction is
27 for a violation of RCW 9A.44.073, 9A.44.076, or 9A.44.083, the
28 prosecutor shall recommend to the court whether the offender should or
29 should not receive a sentencing alternative under this section. When
30 making his or her recommendation, the prosecutor shall consider whether
31 the victim's testimony is essential for successful prosecution, whether
32 the victim is willing to provide credible testimony at trial and
33 sentencing, and whether there are additional chargeable cases against
34 the offender based upon the existence of multiple victims. The court
35 may not impose a sentencing alternative under this section if the
36 prosecutor has recommended that the offender should not receive such a
37 sentencing alternative.

1 (6) After receipt of the reports, unless the imposition of a
2 sentencing alternative under this section is prohibited under
3 subsection (5) of this section, the court shall consider whether the
4 offender and the community will benefit from use of this alternative,
5 consider whether the alternative is too lenient in light of the extent
6 and circumstances of the offense, consider whether the offender has
7 victims in addition to the victim of the offense, consider whether the
8 offender is amenable to treatment, consider the risk the offender would
9 present to the community, to the victim, or to persons of similar age
10 and circumstances as the victim, and consider the victim's opinion
11 whether the offender should receive a treatment disposition under this
12 section. The court shall give great weight to the victim's opinion
13 whether the offender should receive a treatment disposition under this
14 section. If the sentence imposed is contrary to the victim's opinion,
15 the court shall enter written findings stating its reasons for imposing
16 the treatment disposition. The fact that the offender admits to his or
17 her offense does not, by itself, constitute amenability to treatment.
18 If the court determines that this alternative is appropriate, the court
19 shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum
20 term of sentence, within the standard sentence range. If the sentence
21 imposed is less than eleven years of confinement, the court may suspend
22 the execution of the sentence and impose the following conditions of
23 suspension:

24 (a) The court shall order the offender to serve a term of
25 confinement of twelve months or the maximum term within the standard
26 range, whichever is less. The court may order the offender to serve a
27 term of confinement greater than twelve months or the maximum term
28 within the standard range based on the presence of an aggravating
29 circumstance listed in RCW 9.94A.535(2). In no case shall the term of
30 confinement exceed the statutory maximum sentence for the offense. The
31 court may order the offender to serve all or part of his or her term of
32 confinement in partial confinement. An offender sentenced to a term of
33 confinement under this subsection is not eligible for earned release
34 under RCW 9.92.151 or 9.94A.728.

35 (b) The court shall place the offender on community custody for the
36 length of the suspended sentence, the length of the maximum term
37 imposed pursuant to RCW 9.94A.712, or three years, whichever is

1 greater, and require the offender to comply with any conditions imposed
2 by the department under RCW 9.94A.720.

3 (c) The court shall order treatment for any period up to five years
4 in duration. A community mental health center may not be used for such
5 treatment unless it has an appropriate program designed for sex
6 offender treatment. The offender shall not change sex offender
7 treatment providers or treatment conditions without first notifying the
8 prosecutor, the community corrections officer, and the court. If any
9 party or the court objects to a proposed change, the offender shall not
10 change providers or conditions without court approval after a hearing.

11 (d) As conditions of the suspended sentence, the court shall impose
12 specific prohibitions relating to the precursor activities or behaviors
13 identified in the proposed treatment plan under subsection (4)(b)(v) of
14 this section.

15 (7) As conditions of the suspended sentence, the court may impose
16 one or more of the following:

17 (a) Crime-related prohibitions;

18 (b) Require the offender to devote time to a specific employment or
19 occupation;

20 (c) Require the offender to remain within prescribed geographical
21 boundaries and notify the court or the community corrections officer
22 prior to any change in the offender's address or employment;

23 (d) Require the offender to report as directed to the court and a
24 community corrections officer;

25 (e) Require the offender to pay all court-ordered legal financial
26 obligations as provided in RCW 9.94A.030;

27 (f) Require the offender to perform community restitution work; or

28 (g) Require the offender to reimburse the victim for the cost of
29 any counseling required as a result of the offender's crime.

30 (8) At the time of sentencing, the court shall set a treatment
31 termination hearing for three months prior to the anticipated date for
32 completion of treatment.

33 (9)(a) The sex offender treatment provider shall submit quarterly
34 reports on the offender's progress in treatment to the court and the
35 parties. The report shall reference the treatment plan and include at
36 a minimum the following: Dates of attendance, offender's compliance
37 with requirements, treatment activities, the offender's relative

1 progress in treatment, and any other material specified by the court at
2 sentencing.

3 (b) The court shall conduct a hearing on the offender's progress in
4 treatment at least once a year. At least fourteen days prior to the
5 hearing, notice of the hearing shall be given to the victim. The
6 victim shall be given the opportunity to make statements to the court
7 regarding the offender's supervision and treatment. At the hearing,
8 the court may modify conditions of community custody or revoke the
9 suspended sentence.

10 (10) At least fourteen days prior to the treatment termination
11 hearing, notice of the hearing shall be given to the victim. The
12 victim shall be given the opportunity to make statements to the court
13 regarding the offender's supervision and treatment. Prior to the
14 treatment termination hearing, the treatment provider and community
15 corrections officer shall submit written reports to the court and
16 parties regarding the offender's compliance with treatment and
17 monitoring requirements, and recommendations regarding termination from
18 treatment, including proposed community custody conditions. The court
19 shall order an evaluation regarding the advisability of termination
20 from treatment by a sex offender treatment provider who may not be the
21 same person who treated the offender under subsection (6) of this
22 section or any person who employs, is employed by, or shares profits
23 with the person who treated the offender under subsection (6) of this
24 section. The offender shall pay the cost of the evaluation. At the
25 treatment termination hearing the court may: (a) Modify conditions of
26 community custody, and either (b) terminate treatment, or (c) extend
27 treatment in two-year increments for up to the remaining period of
28 community custody.

29 (11)(a) If a violation of conditions other than a second violation
30 of the prohibitions relating to precursor behaviors or activities
31 imposed under subsection (6)(d) of this section occurs during community
32 custody, the department shall either impose sanctions as provided for
33 in RCW 9.94A.737(2)(a) or refer the violation to the court and
34 recommend revocation of the suspended sentence as provided for in
35 subsections (8) and (10) of this section.

36 (b) If a second violation of the prohibitions relating to precursor
37 behaviors or activities imposed under subsection (6)(d) of this section

1 occurs during community custody, the department shall refer the
2 violation to the court and recommend revocation of the suspended
3 sentence as provided in subsection (12) of this section.

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

11 (13) The offender's sex offender treatment provider may not be the
12 same person who examined the offender under subsection (4) of this
13 section or any person who employs, is employed by, or shares profits
14 with the person who examined the offender under subsection (4) of this
15 section, unless the court has entered written findings that such
16 treatment is in the best interests of the victim and that successful
17 treatment of the offender would otherwise be impractical. Examinations
18 and treatment ordered pursuant to this subsection shall only be
19 conducted by sex offender treatment providers certified by the
20 department of health pursuant to chapter 18.155 RCW unless the court
21 finds that:

22 (a) The offender has already moved to another state or plans to
23 move to another state for reasons other than circumventing the
24 certification requirements; or

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

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

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

31 (1) Except as provided in subsection (2) of this section, the
32 sentence of a prisoner confined in a county jail facility for a felony,
33 gross misdemeanor, or misdemeanor conviction may be reduced by earned
34 release credits in accordance with procedures that shall be developed
35 and promulgated by the correctional agency having jurisdiction. The
36 earned early release time shall be for good behavior and good
37 performance as determined by the correctional agency having

1 jurisdiction. Any program established pursuant to this section shall
2 allow an offender to earn early release credits for presentence
3 incarceration. The correctional agency shall not credit the offender
4 with earned early release credits in advance of the offender actually
5 earning the credits. In the case of an offender convicted of a serious
6 violent offense or a sex offense that is a class A felony committed on
7 or after July 1, 1990, the aggregate earned early release time may not
8 exceed fifteen percent of the sentence. In no other case may the
9 aggregate earned early release time exceed one-third of the total
10 sentence.

11 (2) An offender serving a term of confinement imposed under section
12 4(6)(a) of this act is not eligible for earned release credits under
13 this section.

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

16 No person serving a sentence imposed pursuant to this chapter and
17 committed to the custody of the department shall leave the confines of
18 the correctional facility or be released prior to the expiration of the
19 sentence except as follows:

20 (1) Except as otherwise provided for in subsection (2) of this
21 section, the term of the sentence of an offender committed to a
22 correctional facility operated by the department may be reduced by
23 earned release time in accordance with procedures that shall be
24 developed and promulgated by the correctional agency having
25 jurisdiction in which the offender is confined. The earned release
26 time shall be for good behavior and good performance, as determined by
27 the correctional agency having jurisdiction. The correctional agency
28 shall not credit the offender with earned release credits in advance of
29 the offender actually earning the credits. Any program established
30 pursuant to this section shall allow an offender to earn early release
31 credits for presentence incarceration. If an offender is transferred
32 from a county jail to the department, the administrator of a county
33 jail facility shall certify to the department the amount of time spent
34 in custody at the facility and the amount of earned release time. An
35 offender who has been convicted of a felony committed after July 23,
36 1995, that involves any applicable deadly weapon enhancements under RCW

1 9.94A.533 (3) or (4), or both, shall not receive any good time credits
2 or earned release time for that portion of his or her sentence that
3 results from any deadly weapon enhancements.

4 (a) In the case of an offender convicted of a serious violent
5 offense, or a sex offense that is a class A felony, committed on or
6 after July 1, 1990, and before July 1, 2003, the aggregate earned
7 release time may not exceed fifteen percent of the sentence. In the
8 case of an offender convicted of a serious violent offense, or a sex
9 offense that is a class A felony, committed on or after July 1, 2003,
10 the aggregate earned release time may not exceed ten percent of the
11 sentence.

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

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

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

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

21 (I) A sex offense;

22 (II) A violent offense;

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

24 (IV) A felony that is domestic violence as defined in RCW
25 10.99.020;

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

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

30 (VII) A violation of, or an attempt, solicitation, or conspiracy to
31 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
32 and

33 (C) Has no prior conviction for:

34 (I) A sex offense;

35 (II) A violent offense;

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

37 (IV) A felony that is domestic violence as defined in RCW
38 10.99.020;

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

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

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

7 (iii) For purposes of determining an offender's eligibility under
8 this subsection (1)(b), the department shall perform a risk assessment
9 of every offender committed to a correctional facility operated by the
10 department who has no current or prior conviction for a sex offense, a
11 violent offense, a crime against persons as defined in RCW 9.94A.411,
12 a felony that is domestic violence as defined in RCW 10.99.020, a
13 violation of RCW 9A.52.025 (residential burglary), a violation of, or
14 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
15 manufacture or delivery or possession with intent to deliver
16 methamphetamine, or a violation of, or an attempt, solicitation, or
17 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
18 substance to a minor). The department must classify each assessed
19 offender in one of four risk categories between highest and lowest
20 risk.

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

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

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

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

31 (2)(a) A person convicted of a sex offense or an offense
32 categorized as a serious violent offense, assault in the second degree,
33 vehicular homicide, vehicular assault, assault of a child in the second
34 degree, any crime against persons where it is determined in accordance
35 with RCW 9.94A.602 that the offender or an accomplice was armed with a
36 deadly weapon at the time of commission, or any felony offense under
37 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become

1 eligible, in accordance with a program developed by the department, for
2 transfer to community custody status in lieu of earned release time
3 pursuant to subsection (1) of this section;

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

10 (c) The department shall, as a part of its program for release to
11 the community in lieu of earned release, require the offender to
12 propose a release plan that includes an approved residence and living
13 arrangement. All offenders with community placement or community
14 custody terms eligible for release to community custody status in lieu
15 of earned release shall provide an approved residence and living
16 arrangement prior to release to the community;

17 (d) The department may deny transfer to community custody status in
18 lieu of earned release time pursuant to subsection (1) of this section
19 if the department determines an offender's release plan, including
20 proposed residence location and living arrangements, may violate the
21 conditions of the sentence or conditions of supervision, place the
22 offender at risk to violate the conditions of the sentence, place the
23 offender at risk to reoffend, or present a risk to victim safety or
24 community safety. The department's authority under this section is
25 independent of any court-ordered condition of sentence or statutory
26 provision regarding conditions for community custody or community
27 placement;

28 (e) An offender serving a term of confinement imposed under section
29 4(6)(a) of this act is not eligible for earned release credits under
30 this section;

31 (3) An offender may leave a correctional facility pursuant to an
32 authorized furlough or leave of absence. In addition, offenders may
33 leave a correctional facility when in the custody of a corrections
34 officer or officers;

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

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

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

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

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

9 (c) The secretary shall require electronic monitoring for all
10 offenders in extraordinary medical placement unless the electronic
11 monitoring equipment interferes with the function of the offender's
12 medical equipment or results in the loss of funding for the offender's
13 medical care. The secretary shall specify who shall provide the
14 monitoring services and the terms under which the monitoring shall be
15 performed.

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

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

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

25 (7) The governor may pardon any offender;

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

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

32 Notwithstanding any other provisions of this section, an offender
33 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
34 mandatory minimum sentence of total confinement shall not be released
35 from total confinement before the completion of the listed mandatory
36 minimum sentence for that felony crime of conviction unless allowed
37 under RCW 9.94A.540, however persistent offenders are not eligible for
38 extraordinary medical placement.

1 NEW SECTION. **Sec. 7.** (1) The Washington state institute for
2 public policy shall conduct a comprehensive analysis and evaluation of
3 the impact and effectiveness of current sex offender sentencing
4 policies. The institute shall analyze and evaluate the effectiveness
5 of sex offender policies and programs, including the special sex
6 offender sentencing alternative, the department of corrections'
7 treatment program for offenders in prison, and the validity of the risk
8 assessment conducted by the end of sentence review committee prior to
9 release from prison. Using detailed information from offender files
10 and court records, and research conducted in Washington state and other
11 states and nations, the analysis shall examine whether changes to
12 sentencing policies and sex offender programming can increase public
13 safety.

14 (2) The analysis of the special sex offender sentencing alternative
15 shall specifically evaluate the impact of the sentencing alternative on
16 protection of children from sexual victimization, reporting of sex
17 offenses against children, prosecution of sex offenses against
18 children, appropriate punishment of perpetrators of sex offenses
19 against children, and child sex offense recidivism rates. At a
20 minimum, the institute shall review the following issues to determine
21 whether modifications in the sentencing alternative will increase its
22 effectiveness with respect to protecting children from sexual
23 victimization, successfully prosecuting sex offenses against children,
24 and appropriately punishing perpetrators of sex offenses against
25 children:

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

32 (b) Minimum terms of incarceration, including imprisonment at a
33 state facility;

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

36 (d) Standards for revocation of a sentencing alternative suspended
37 sentence.

1 (3) The institute shall report its results and recommendations to
2 the appropriate standing committees of the legislature no later than
3 December 31, 2004.

4 NEW SECTION. **Sec. 8.** The sum of one million two hundred forty
5 thousand dollars, or as much thereof as may be necessary, is
6 appropriated for the fiscal year ending June 30, 2005, from the general
7 fund--state to the department of corrections solely for the purposes
8 of:

9 (1) Providing specialized training to community corrections
10 officers regarding the supervision of sex offenders in the community;
11 and

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

14 NEW SECTION. **Sec. 9.** The sum of three hundred fifty thousand
15 dollars, or as much thereof as may be necessary, is appropriated for
16 the fiscal year ending June 30, 2005, from the general fund--state to
17 the department of community, trade, and economic development solely for
18 the purposes of distribution to sexual assault victims programs.

19 NEW SECTION. **Sec. 10.** The sum of two hundred sixty thousand
20 dollars, or as much thereof as may be necessary, is appropriated for
21 the fiscal year ending June 30, 2005, from the general fund--state to
22 the department of community, trade, and economic development solely to
23 reimburse counties for costs associated with the implementation of this
24 act and shall be distributed in accordance with RCW 82.14.310.

25 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
26 this act, referencing this act by bill or chapter number, is not
27 provided by June 30, 2004, in the omnibus appropriations act, this act
28 is null and void.

29 NEW SECTION. **Sec. 12.** 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

1 persons or circumstances is not affected.

2 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2004.

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