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**SUBSTITUTE HOUSE BILL 2400**

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**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 and 9.92.151; reenacting and amending  
3 RCW 9.94A.515; adding a new section to chapter 9.94A RCW; creating new  
4 sections; prescribing penalties; and providing an effective date.

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

6            **Sec. 1.** RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c  
7 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52  
8 s 4 are each reenacted and amended to read as follows:

9	TABLE 2
10	CRIMES INCLUDED WITHIN
11	EACH SERIOUSNESS LEVEL
12	XVI Aggravated Murder 1 (RCW
13	10.95.020)
14	XV Homicide by abuse (RCW 9A.32.055)
15	Malicious explosion 1 (RCW
16	70.74.280(1))

1 Murder 1 (RCW 9A.32.030)  
2 XIV Murder 2 (RCW 9A.32.050)  
3 Trafficking 1 (RCW 9A.40.100(1))  
4 XIII Malicious explosion 2 (RCW  
5 70.74.280(2))  
6 Malicious placement of an explosive 1  
7 (RCW 70.74.270(1))  
8 Rape of a Child 1 when offender is at  
9 least eighteen years of age when  
10 charged (RCW 9A.44.073)  
11 Rape of a Child 2 when offender is at  
12 least eighteen years of age when  
13 charged (RCW 9A.44.076)  
14 XII Assault 1 (RCW 9A.36.011)  
15 Assault of a Child 1 (RCW 9A.36.120)  
16 Malicious placement of an imitation  
17 device 1 (RCW 70.74.272(1)(a))  
18 Rape 1 (RCW 9A.44.040)  
19 Rape of a Child 1 when offender is  
20 under eighteen years of age when  
21 charged, but subject to adult  
22 felony prosecution because the  
23 juvenile court lacks jurisdiction  
24 under RCW 13.04.030, or has  
25 declined jurisdiction under RCW  
26 13.40.110 (RCW 9A.44.073)  
27 Trafficking 2 (RCW 9A.40.100(2))  
28 XI Manslaughter 1 (RCW 9A.32.060)  
29 Rape 2 (RCW 9A.44.050)  
30 Rape of a Child 2 when offender is  
31 under eighteen years of age when  
32 charged, but subject to adult  
33 felony prosecution because the  
34 juvenile court lacks jurisdiction  
35 under RCW 13.04.030, or has  
36 declined jurisdiction under RCW  
37 13.40.110 (RCW 9A.44.076)

1 X Child Molestation 1 (RCW 9A.44.083)  
2 Indecent Liberties (with forcible  
3 compulsion) (RCW  
4 9A.44.100(1)(a))  
5 Kidnapping 1 (RCW 9A.40.020)  
6 Leading Organized Crime (RCW  
7 9A.82.060(1)(a))  
8 Malicious explosion 3 (RCW  
9 70.74.280(3))  
10 Sexually Violent Predator Escape  
11 (RCW 9A.76.115)  
12 IX Assault of a Child 2 (RCW 9A.36.130)  
13 Explosive devices prohibited (RCW  
14 70.74.180)  
15 Hit and Run--Death (RCW  
16 46.52.020(4)(a))  
17 Homicide by Watercraft, by being  
18 under the influence of intoxicating  
19 liquor or any drug (RCW  
20 79A.60.050)  
21 Inciting Criminal Profiteering (RCW  
22 9A.82.060(1)(b))  
23 Malicious placement of an explosive 2  
24 (RCW 70.74.270(2))  
25 Robbery 1 (RCW 9A.56.200)  
26 Sexual Exploitation (RCW 9.68A.040)  
27 Vehicular Homicide, by being under  
28 the influence of intoxicating  
29 liquor or any drug (RCW  
30 46.61.520)  
31 VIII Arson 1 (RCW 9A.48.020)  
32 Homicide by Watercraft, by the  
33 operation of any vessel in a  
34 reckless manner (RCW  
35 79A.60.050)  
36 Manslaughter 2 (RCW 9A.32.070)

1 Promoting Prostitution 1 (RCW  
2 9A.88.070)  
3 Theft of Ammonia (RCW 69.55.010)  
4 Vehicular Homicide, by the operation  
5 of any vehicle in a reckless  
6 manner (RCW 46.61.520)  
7 VII Burglary 1 (RCW 9A.52.020)  
8 Child Molestation 2 (RCW 9A.44.086)  
9 Civil Disorder Training (RCW  
10 9A.48.120)  
11 Dealing in depictions of minor  
12 engaged in sexually explicit  
13 conduct (RCW 9.68A.050)  
14 Drive-by Shooting (RCW 9A.36.045)  
15 Homicide by Watercraft, by disregard  
16 for the safety of others (RCW  
17 79A.60.050)  
18 Indecent Liberties (without forcible  
19 compulsion) (RCW 9A.44.100(1)  
20 (b) and (c))  
21 Introducing Contraband 1 (RCW  
22 9A.76.140)  
23 Malicious placement of an explosive 3  
24 (RCW 70.74.270(3))  
25 Sending, bringing into state depictions  
26 of minor engaged in sexually  
27 explicit conduct (RCW  
28 9.68A.060)  
29 Unlawful Possession of a Firearm in  
30 the first degree (RCW  
31 9.41.040(1))  
32 Use of a Machine Gun in Commission  
33 of a Felony (RCW 9.41.225)  
34 Vehicular Homicide, by disregard for  
35 the safety of others (RCW  
36 46.61.520)

1 VI Bail Jumping with Murder 1 (RCW  
2 9A.76.170(3)(a))  
3 Bribery (RCW 9A.68.010)  
4 Incest 1 (RCW 9A.64.020(1))  
5 Intimidating a Judge (RCW  
6 9A.72.160)  
7 Intimidating a Juror/Witness (RCW  
8 9A.72.110, 9A.72.130)  
9 Malicious placement of an imitation  
10 device 2 (RCW 70.74.272(1)(b))  
11 Rape of a Child 3 (RCW 9A.44.079)  
12 Theft of a Firearm (RCW 9A.56.300)  
13 Unlawful Storage of Ammonia (RCW  
14 69.55.020)

15 V Abandonment of dependent person 1  
16 (RCW 9A.42.060)  
17 Advancing money or property for  
18 extortionate extension of credit  
19 (RCW 9A.82.030)  
20 Bail Jumping with class A Felony  
21 (RCW 9A.76.170(3)(b))  
22 Child Molestation 3 (RCW 9A.44.089)  
23 Criminal Mistreatment 1 (RCW  
24 9A.42.020)  
25 Custodial Sexual Misconduct 1 (RCW  
26 9A.44.160)  
27 Domestic Violence Court Order  
28 Violation (RCW 10.99.040,  
29 10.99.050, 26.09.300, 26.10.220,  
30 26.26.138, 26.50.110, 26.52.070,  
31 or 74.34.145)  
32 Extortion 1 (RCW 9A.56.120)  
33 Extortionate Extension of Credit  
34 (RCW 9A.82.020)  
35 Extortionate Means to Collect  
36 Extensions of Credit (RCW  
37 9A.82.040)

1 Incest 2 (RCW 9A.64.020(2))  
2 Kidnapping 2 (RCW 9A.40.030)  
3 Perjury 1 (RCW 9A.72.020)  
4 Persistent prison misbehavior (RCW  
5 9.94.070)  
6 Possession of a Stolen Firearm (RCW  
7 9A.56.310)  
8 Rape 3 (RCW 9A.44.060)  
9 Rendering Criminal Assistance 1  
10 (RCW 9A.76.070)  
11 Sexual Misconduct with a Minor 1  
12 (RCW 9A.44.093)  
13 Sexually Violating Human Remains  
14 (RCW 9A.44.105)  
15 Stalking (RCW 9A.46.110)  
16 Taking Motor Vehicle Without  
17 Permission 1 (RCW 9A.56.070)  
18 IV Arson 2 (RCW 9A.48.030)  
19 Assault 2 (RCW 9A.36.021)  
20 Assault by Watercraft (RCW  
21 79A.60.060)  
22 Bribing a Witness/Bribe Received by  
23 Witness (RCW 9A.72.090,  
24 9A.72.100)  
25 Cheating 1 (RCW 9.46.1961)  
26 Commercial Bribery (RCW  
27 9A.68.060)  
28 Counterfeiting (RCW 9.16.035(4))  
29 Endangerment with a Controlled  
30 Substance (RCW 9A.42.100)  
31 Escape 1 (RCW 9A.76.110)  
32 Hit and Run--Injury (RCW  
33 46.52.020(4)(b))  
34 Hit and Run with Vessel--Injury  
35 Accident (RCW 79A.60.200(3))  
36 Identity Theft 1 (RCW 9.35.020(2))

1 Indecent Exposure to Person Under  
2 Age Fourteen (subsequent sex  
3 offense) (RCW 9A.88.010)  
4 Influencing Outcome of Sporting  
5 Event (RCW 9A.82.070)  
6 Malicious Harassment (RCW  
7 9A.36.080)  
8 Residential Burglary (RCW  
9 9A.52.025)  
10 Robbery 2 (RCW 9A.56.210)  
11 Theft of Livestock 1 (RCW 9A.56.080)  
12 Threats to Bomb (RCW 9.61.160)  
13 Trafficking in Stolen Property 1 (RCW  
14 9A.82.050)  
15 Unlawful factoring of a credit card or  
16 payment card transaction (RCW  
17 9A.56.290(4)(b))  
18 Unlawful transaction of health  
19 coverage as a health care service  
20 contractor (RCW 48.44.016(3))  
21 Unlawful transaction of health  
22 coverage as a health maintenance  
23 organization (RCW 48.46.033(3))  
24 Unlawful transaction of insurance  
25 business (RCW 48.15.023(3))  
26 Unlicensed practice as an insurance  
27 professional (RCW 48.17.063(3))  
28 Use of Proceeds of Criminal  
29 Profiteering (RCW 9A.82.080 (1)  
30 and (2))  
31 Vehicular Assault, by being under the  
32 influence of intoxicating liquor or  
33 any drug, or by the operation or  
34 driving of a vehicle in a reckless  
35 manner (RCW 46.61.522)  
36 Willful Failure to Return from  
37 Furlough (RCW 72.66.060)

1 III Abandonment of dependent person 2  
2 (RCW 9A.42.070)  
3 Assault 3 (RCW 9A.36.031)  
4 Assault of a Child 3 (RCW 9A.36.140)  
5 Bail Jumping with class B or C Felony  
6 (RCW 9A.76.170(3)(c))  
7 Burglary 2 (RCW 9A.52.030)  
8 Communication with a Minor for  
9 Immoral Purposes (RCW  
10 9.68A.090)  
11 Criminal Gang Intimidation (RCW  
12 9A.46.120)  
13 Criminal Mistreatment 2 (RCW  
14 9A.42.030)  
15 Custodial Assault (RCW 9A.36.100)  
16 Escape 2 (RCW 9A.76.120)  
17 Extortion 2 (RCW 9A.56.130)  
18 Harassment (RCW 9A.46.020)  
19 Intimidating a Public Servant (RCW  
20 9A.76.180)  
21 Introducing Contraband 2 (RCW  
22 9A.76.150)  
23 Malicious Injury to Railroad Property  
24 (RCW 81.60.070)  
25 Patronizing a Juvenile Prostitute  
26 (RCW 9.68A.100)  
27 Perjury 2 (RCW 9A.72.030)  
28 Possession of Incendiary Device (RCW  
29 9.40.120)  
30 Possession of Machine Gun or Short-  
31 Barreled Shotgun or Rifle (RCW  
32 9.41.190)  
33 Promoting Prostitution 2 (RCW  
34 9A.88.080)  
35 Securities Act violation (RCW  
36 21.20.400)



1 Tampering with a Witness (RCW  
2 9A.72.120)  
3 Telephone Harassment (subsequent  
4 conviction or threat of death)  
5 (RCW 9.61.230(2))  
6 Theft of Livestock 2 (RCW 9A.56.083)  
7 Trafficking in Stolen Property 2 (RCW  
8 9A.82.055)  
9 Unlawful Imprisonment (RCW  
10 9A.40.040)  
11 Unlawful possession of firearm in the  
12 second degree (RCW 9.41.040(2))  
13 Vehicular Assault, by the operation or  
14 driving of a vehicle with disregard  
15 for the safety of others (RCW  
16 46.61.522)  
17 Willful Failure to Return from Work  
18 Release (RCW 72.65.070)  
19 II Computer Trespass 1 (RCW  
20 9A.52.110)  
21 Counterfeiting (RCW 9.16.035(3))  
22 Escape from Community Custody  
23 (RCW 72.09.310)  
24 Health Care False Claims (RCW  
25 48.80.030)  
26 Identity Theft 2 (RCW 9.35.020(3))  
27 Improperly Obtaining Financial  
28 Information (RCW 9.35.010)  
29 Malicious Mischief 1 (RCW  
30 9A.48.070)  
31 Possession of Stolen Property 1 (RCW  
32 9A.56.150)  
33 Theft 1 (RCW 9A.56.030)  
34 Theft of Rental, Leased, or Lease-  
35 purchased Property (valued at one  
36 thousand five hundred dollars or  
37 more) (RCW 9A.56.096(5)(a))

1 Trafficking in Insurance Claims (RCW  
2 48.30A.015)  
3 Unlawful factoring of a credit card or  
4 payment card transaction (RCW  
5 9A.56.290(4)(a))  
6 Unlawful Practice of Law (RCW  
7 2.48.180)  
8 Unlicensed Practice of a Profession or  
9 Business (RCW 18.130.190(7))  
10 I Attempting to Elude a Pursuing Police  
11 Vehicle (RCW 46.61.024)  
12 False Verification for Welfare (RCW  
13 74.08.055)  
14 Forgery (RCW 9A.60.020)  
15 Fraudulent Creation or Revocation of a  
16 Mental Health Advance Directive  
17 (RCW 9A.60.060)  
18 Malicious Mischief 2 (RCW  
19 9A.48.080)  
20 Mineral Trespass (RCW 78.44.330)  
21 Possession of Stolen Property 2 (RCW  
22 9A.56.160)  
23 Reckless Burning 1 (RCW 9A.48.040)  
24 Taking Motor Vehicle Without  
25 Permission 2 (RCW 9A.56.075)  
26 Theft 2 (RCW 9A.56.040)  
27 Theft of Rental, Leased, or Lease-  
28 purchased Property (valued at two  
29 hundred fifty dollars or more but  
30 less than one thousand five  
31 hundred dollars) (RCW  
32 9A.56.096(5)(b))  
33 Transaction of insurance business  
34 beyond the scope of licensure  
35 (RCW 48.17.063(4))  
36 Unlawful Issuance of Checks or Drafts  
37 (RCW 9A.56.060)

1 Unlawful Possession of Fictitious  
2 Identification (RCW 9A.56.320)  
3 Unlawful Possession of Instruments of  
4 Financial Fraud (RCW  
5 9A.56.320)  
6 Unlawful Possession of Payment  
7 Instruments (RCW 9A.56.320)  
8 Unlawful Possession of a Personal  
9 Identification Device (RCW  
10 9A.56.320)  
11 Unlawful Production of Payment  
12 Instruments (RCW 9A.56.320)  
13 Unlawful Trafficking in Food Stamps  
14 (RCW 9.91.142)  
15 Unlawful Use of Food Stamps (RCW  
16 9.91.144)  
17 Vehicle Prowl 1 (RCW 9A.52.095)

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

20 (1) This section applies exclusively to:

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

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

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

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

34 (b) "Victim" means any person who has sustained emotional,  
35 psychological, physical, or financial injury to person or property as  
36 a result of the crime charged. "Victim" also means a parent or

1 guardian of a victim who is a minor child unless the parent or guardian  
2 is the perpetrator of the offense.

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

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

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

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

13 ~~((+3))~~ (4) If the court finds the offender is eligible for this  
14 alternative, the court, on its own motion or the motion of the state or  
15 the offender, may order an examination to determine whether the  
16 offender is amenable to treatment.

17 (a) The report of the examination shall include at a minimum the  
18 following:

19 (i) The offender's version of the facts and the official version of  
20 the facts;

21 (ii) The offender's offense history;

22 (iii) An assessment of problems in addition to alleged deviant  
23 behaviors;

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

25 (v) Other evaluation measures used.

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

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

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

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

34 (iii) Monitoring plans, including any requirements regarding living  
35 conditions, lifestyle requirements, and monitoring by family members  
36 and others;

37 (iv) Anticipated length of treatment; and

38 (v) Recommended crime-related prohibitions.

1 (c) The court on its own motion may order, or on a motion by the  
2 state shall order, a second examination regarding the offender's  
3 amenability to treatment. The examiner shall be selected by the party  
4 making the motion. The offender shall pay the cost of any second  
5 examination ordered unless the court finds the defendant to be indigent  
6 in which case the state shall pay the cost.

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

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

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

32 ((+5)) (6) As conditions of the suspended sentence, the court may  
33 impose one or more of the following:

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

36 (b) Crime-related prohibitions;

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

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

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

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

8 (g) Perform community restitution work; or

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

11 ~~((+6+))~~ (7) At the time of sentencing, the court shall set a  
12 treatment termination hearing for three months prior to the anticipated  
13 date for completion of treatment.

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

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

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

1        ~~((10))~~ (11) The court may revoke the suspended sentence at any  
2 time during the period of community custody and order execution of the  
3 sentence if: (a) The offender violates the conditions of the suspended  
4 sentence, or (b) the court finds that the offender is failing to make  
5 satisfactory progress in treatment. All confinement time served during  
6 the period of community custody shall be credited to the offender if  
7 the suspended sentence is revoked.

8        ~~((11))~~ (12) The offender's sex offender treatment provider may  
9 not be the same person who examined the offender under subsection (4)  
10 of this section or any person who employs, is employed by, or shares  
11 profits with the person who examined the offender under subsection (4)  
12 of this section. Examinations and treatment ordered pursuant to this  
13 subsection shall only be conducted by sex offender treatment providers  
14 certified by the department of health pursuant to chapter 18.155 RCW  
15 unless the court 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. 3. 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) "Victim" means any person who has sustained emotional,  
37 psychological, physical, or financial injury to person or property as

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

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

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

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

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

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

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

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

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

25 (ii) The offender's offense history;

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

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

29 (v) Other evaluation measures used.

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

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

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

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



1 (iii) Monitoring plans, including any requirements regarding living  
2 conditions, lifestyle requirements, and monitoring by family members  
3 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 the  
7 state shall order, a second examination regarding the offender's  
8 amenability to treatment. The examiner shall be selected by the party  
9 making the motion. The offender shall pay the cost of any second  
10 examination ordered unless the court finds the defendant to be indigent  
11 in which case the state shall pay the cost.

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

32 (a) The court shall order the offender to serve a term of  
33 confinement of twelve months or the maximum term within the standard  
34 range, whichever is less. The court may order the offender to serve  
35 all or part of his or her term of confinement in partial confinement.  
36 An offender sentenced to a term of confinement under this subsection is  
37 not eligible for earned release under RCW 9.92.151.

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

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

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

16 (a) Crime-related prohibitions;

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

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

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

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

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

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

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

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

1 (b) The court shall conduct a hearing on the offender's progress in  
2 treatment at least once a year. At least fourteen days prior to the  
3 hearing, notice of the hearing shall be given to the victim. The  
4 victim shall be given the opportunity to make statements to the court  
5 regarding the offender's supervision and treatment.

6 (9) At least fourteen days prior to the treatment termination  
7 hearing, notice of the hearing shall be given to the victim. The  
8 victim shall be given the opportunity to make statements to the court  
9 regarding the offender's supervision and treatment. Prior to the  
10 treatment termination hearing, the treatment provider and community  
11 corrections officer shall submit written reports to the court and  
12 parties regarding the offender's compliance with treatment and  
13 monitoring requirements, and recommendations regarding termination from  
14 treatment, including proposed community custody conditions. The court  
15 shall order an evaluation regarding the advisability of termination  
16 from treatment by a sex offender treatment provider who may not be the  
17 same person who treated the offender under subsection (5) of this  
18 section or any person who employs, is employed by, or shares profits  
19 with the person who treated the offender under subsection (5) of this  
20 section. The offender shall pay the cost of the evaluation. At the  
21 treatment termination hearing the court may: (a) Modify conditions of  
22 community custody, and either (b) terminate treatment, or (c) extend  
23 treatment in two-year increments for up to the remaining period of  
24 community custody.

25 (10) If a violation of conditions occurs during community custody,  
26 the department shall either impose sanctions as provided for in RCW  
27 9.94A.737(2)(a) or refer the violation to the court and recommend  
28 revocation of the suspended sentence as provided for in subsections (7)  
29 and (9) of this section.

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

37 (12) The offender's sex offender treatment provider may not be the  
38 same person who examined the offender under subsection (4) of this

1 section or any person who employs, is employed by, or shares profits  
2 with the person who examined the offender under subsection (4) of this  
3 section. Examinations and treatment ordered pursuant to this  
4 subsection shall only be conducted by sex offender treatment providers  
5 certified by the department of health pursuant to chapter 18.155 RCW  
6 unless the court finds that:

7 (a) The offender has already moved to another state or plans to  
8 move to another state for reasons other than circumventing the  
9 certification requirements; or

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

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

14 **Sec. 4.** RCW 9.92.151 and 1990 c 3 s 201 are each amended to read  
15 as follows:

16 (1) Except as provided in subsection (2) of this section, the  
17 sentence of a prisoner confined in a county jail facility for a felony,  
18 gross misdemeanor, or misdemeanor conviction may be reduced by earned  
19 release credits in accordance with procedures that shall be developed  
20 and promulgated by the correctional agency having jurisdiction. The  
21 earned early release time shall be for good behavior and good  
22 performance as determined by the correctional agency having  
23 jurisdiction. Any program established pursuant to this section shall  
24 allow an offender to earn early release credits for presentence  
25 incarceration. The correctional agency shall not credit the offender  
26 with earned early release credits in advance of the offender actually  
27 earning the credits. In the case of an offender convicted of a serious  
28 violent offense or a sex offense that is a class A felony committed on  
29 or after July 1, 1990, the aggregate earned early release time may not  
30 exceed fifteen percent of the sentence. In no other case may the  
31 aggregate earned early release time exceed one-third of the total  
32 sentence.

33 (2) An offender serving a term of confinement imposed under section  
34 3(5)(a) of this act is not eligible for earned release credits under  
35 this section.

1        NEW SECTION.    **Sec. 5.**    The Washington institute for public policy  
2 shall conduct a comprehensive study of sex offender sentencing  
3 policies. The study will evaluate the effectiveness of sex offender  
4 policies and programs, including the special sex offender sentencing  
5 alternative, the department of corrections' treatment program for  
6 offenders in prison, and the validity of the risk assessment conducted  
7 by the end of sentence review committee prior to release from prison.  
8 Using detailed information from offender files as well as court  
9 records, the research will examine whether any changes to sentencing  
10 policies and sex offender programming could cost-effectively increase  
11 public safety, as well as how the risk assessment instruments and  
12 procedures could be improved. The institute shall report its results  
13 to the appropriate standing committees of the legislature no later than  
14 December 31, 2004.

15        NEW SECTION.    **Sec. 6.**    If specific funding for the purposes of this  
16 act, referencing this act by bill or chapter number, is not provided by  
17 June 30, 2004, in the omnibus appropriations act, this act is null and  
18 void.

19        NEW SECTION.    **Sec. 7.**    If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23        NEW SECTION.    **Sec. 8.**    This act takes effect July 1, 2004.

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