

2 SSB 5305 - S AMD - 615

3 By Senators Benton, Hargrove, Fairley and Deccio

4 ADOPTED 2/11/98

5 On page 12, after line 32, strike all of section 4 and insert the
6 following:

7 "Sec. 4. RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c
8 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and
9 amended to read as follows:

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

12 (1) Except as authorized in subsections (2), (4), (5), (6), and (8)
13 of this section, the court shall impose a sentence within the sentence
14 range for the offense.

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

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

23 (4) A persistent offender shall be sentenced to a term of total
24 confinement for life without the possibility of parole or, when
25 authorized by RCW 10.95.030 for the crime of aggravated murder in the
26 first degree, sentenced to death, notwithstanding the maximum sentence
27 under any other law. An offender convicted of the crime of murder in
28 the first degree shall be sentenced to a term of total confinement not
29 less than twenty years. An offender convicted of the crime of assault
30 in the first degree or assault of a child in the first degree where the
31 offender used force or means likely to result in death or intended to
32 kill the victim shall be sentenced to a term of total confinement not
33 less than five years. An offender convicted of the crime of rape in
34 the first degree shall be sentenced to a term of total confinement not
35 less than five years. The foregoing minimum terms of total confinement
36 are mandatory and shall not be varied or modified as provided in

1 subsection (2) of this section. In addition, all offenders subject to
2 the provisions of this subsection shall not be eligible for community
3 custody, earned early release time, furlough, home detention, partial
4 confinement, work crew, work release, or any other form of early
5 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
6 or any other form of authorized leave of absence from the correctional
7 facility while not in the direct custody of a corrections officer or
8 officers during such minimum terms of total confinement except in the
9 case of an offender in need of emergency medical treatment or for the
10 purpose of commitment to an inpatient treatment facility in the case of
11 an offender convicted of the crime of rape in the first degree.

12 (5) In sentencing a first-time offender the court may waive the
13 imposition of a sentence within the sentence range and impose a
14 sentence which may include up to ninety days of confinement in a
15 facility operated or utilized under contract by the county and a
16 requirement that the offender refrain from committing new offenses.
17 The sentence may also include up to two years of community supervision,
18 which, in addition to crime-related prohibitions, may include
19 requirements that the offender perform any one or more of the
20 following:

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

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

25 (c) Pursue a prescribed, secular course of study or vocational
26 training;

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

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

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

34 (6)(a) An offender is eligible for the special drug offender
35 sentencing alternative if:

36 (i) The offender is convicted of the manufacture, delivery, or
37 possession with intent to manufacture or deliver a controlled substance
38 classified in Schedule I or II that is a narcotic drug or a felony that
39 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,

1 criminal solicitation, or criminal conspiracy to commit such crimes,
2 and the violation does not involve a sentence enhancement under RCW
3 9.94A.310 (3) or (4);

4 (ii) The offender has no prior convictions for a felony in this
5 state, another state, or the United States; and

6 (iii) The offense involved only a small quantity of the particular
7 controlled substance as determined by the judge upon consideration of
8 such factors as the weight, purity, packaging, sale price, and street
9 value of the controlled substance.

10 (b) If the midpoint of the standard range is greater than one year
11 and the sentencing judge determines that the offender is eligible for
12 this option and that the offender and the community will benefit from
13 the use of the special drug offender sentencing alternative, the judge
14 may waive imposition of a sentence within the standard range and impose
15 a sentence that must include a period of total confinement in a state
16 facility for one-half of the midpoint of the standard range. During
17 incarceration in the state facility, offenders sentenced under this
18 subsection shall undergo a comprehensive substance abuse assessment and
19 receive, within available resources, treatment services appropriate for
20 the offender. The treatment services shall be designed by the division
21 of alcohol and substance abuse of the department of social and health
22 services, in cooperation with the department of corrections. If the
23 midpoint of the standard range is twenty-four months or less, no more
24 than three months of the sentence may be served in a work release
25 status. The court shall also impose one year of concurrent community
26 custody and community supervision that must include appropriate
27 outpatient substance abuse treatment, crime-related prohibitions
28 including a condition not to use illegal controlled substances, and a
29 requirement to submit to urinalysis or other testing to monitor that
30 status. The court may require that the monitoring for controlled
31 substances be conducted by the department or by a treatment
32 alternatives to street crime program or a comparable court or agency-
33 referred program. The offender may be required to pay thirty dollars
34 per month while on community custody to offset the cost of monitoring.
35 In addition, the court shall impose three or more of the following
36 conditions:

37 (i) Devote time to a specific employment or training;

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

4 (iii) Report as directed to a community corrections officer;

5 (iv) Pay all court-ordered legal financial obligations;

6 (v) Perform community service work;

7 (vi) Stay out of areas designated by the sentencing judge.

8 (c) If the offender violates any of the sentence conditions in (b)
9 of this subsection, the department shall impose sanctions
10 administratively, with notice to the prosecuting attorney and the
11 sentencing court. Upon motion of the court or the prosecuting
12 attorney, a violation hearing shall be held by the court. If the court
13 finds that conditions have been willfully violated, the court may
14 impose confinement consisting of up to the remaining one-half of the
15 midpoint of the standard range. All total confinement served during
16 the period of community custody shall be credited to the offender,
17 regardless of whether the total confinement is served as a result of
18 the original sentence, as a result of a sanction imposed by the
19 department, or as a result of a violation found by the court. The term
20 of community supervision shall be tolled by any period of time served
21 in total confinement as a result of a violation found by the court.

22 (d) The department shall determine the rules for calculating the
23 value of a day fine based on the offender's income and reasonable
24 obligations which the offender has for the support of the offender and
25 any dependents. These rules shall be developed in consultation with
26 the administrator for the courts, the office of financial management,
27 and the commission.

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

36 (8)(a)(i) When an offender is convicted of a sex offense other than
37 a violation of RCW 9A.44.050 or a sex offense that is also a serious
38 violent offense and has no prior convictions for a sex offense or any
39 other felony sex offenses in this or any other state, the sentencing

1 court, on its own motion or the motion of the state or the defendant,
2 may order an examination to determine whether the defendant is amenable
3 to treatment.

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

10 The examiner shall assess and report regarding the defendant's
11 amenability to treatment and relative risk to the community. A
12 proposed treatment plan shall be provided and shall include, at a
13 minimum:

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

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

17 (C) Monitoring plans, including any requirements regarding living
18 conditions, lifestyle requirements, and monitoring by family members
19 and others;

20 (D) Anticipated length of treatment; and

21 (E) Recommended crime-related prohibitions.

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

28 (ii) After receipt of the reports, the court shall consider whether
29 the offender and the community will benefit from use of this special
30 sex offender sentencing alternative and consider the victim's opinion
31 whether the offender should receive a treatment disposition under this
32 subsection. If the court determines that this special sex offender
33 sentencing alternative is appropriate, the court shall then impose a
34 sentence within the sentence range. If this sentence is less than
35 eleven years of confinement, the court may suspend the execution of the
36 sentence and impose the following conditions of suspension:

37 (A) The court shall place the defendant on community custody for
38 the length of the suspended sentence or three years, whichever is

1 greater, and require the offender to comply with any conditions imposed
2 by the department of corrections under subsection (14) of this section;

3 (B) The court shall order treatment for any period up to three
4 years in duration. The court in its discretion shall order outpatient
5 sex offender treatment or inpatient sex offender treatment, if
6 available. A community mental health center may not be used for such
7 treatment unless it has an appropriate program designed for sex
8 offender treatment. The offender shall not change sex offender
9 treatment providers or treatment conditions without first notifying the
10 prosecutor, the community corrections officer, and the court, and shall
11 not change providers without court approval after a hearing if the
12 prosecutor or community corrections officer object to the change. In
13 addition, as conditions of the suspended sentence, the court may impose
14 other sentence conditions including up to six months of confinement,
15 not to exceed the sentence range of confinement for that offense,
16 crime-related prohibitions, and requirements that the offender perform
17 any one or more of the following:

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

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

22 (III) Report as directed to the court and a community corrections
23 officer;

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

27 (V) Make recoupment to the victim for the cost of any counseling
28 required as a result of the offender's crime; and

29 (C) Sex offenders sentenced under this special sex offender
30 sentencing alternative are not eligible to accrue any earned early
31 release time while serving a suspended sentence.

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

1 (iv) At the time of sentencing, the court shall set a treatment
2 termination hearing for three months prior to the anticipated date for
3 completion of treatment. Prior to the treatment termination hearing,
4 the treatment professional and community corrections officer shall
5 submit written reports to the court and parties regarding the
6 defendant's compliance with treatment and monitoring requirements, and
7 recommendations regarding termination from treatment, including
8 proposed community supervision conditions. Either party may request
9 and the court may order another evaluation regarding the advisability
10 of termination from treatment. The defendant shall pay the cost of any
11 additional evaluation ordered unless the court finds the defendant to
12 be indigent in which case the state shall pay the cost. At the
13 treatment termination hearing the court may: (A) Modify conditions of
14 community custody, and either (B) terminate treatment, or (C) extend
15 treatment for up to the remaining period of community custody.

16 (v) If a violation of conditions occurs during community custody,
17 the department shall either impose sanctions as provided for in RCW
18 9.94A.205(2)(a) or refer the violation to the court and recommend
19 revocation of the suspended sentence as provided for in (a)(vi) of this
20 subsection.

21 (vi) The court may revoke the suspended sentence at any time during
22 the period of community custody and order execution of the sentence if:
23 (A) The defendant violates the conditions of the suspended sentence, or
24 (B) the court finds that the defendant is failing to make satisfactory
25 progress in treatment. All confinement time served during the period
26 of community custody shall be credited to the offender if the suspended
27 sentence is revoked.

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

32 (viii) A sex offender therapist who examines or treats a sex
33 offender pursuant to this subsection (8) does not have to be certified
34 by the department of health pursuant to chapter 18.155 RCW if the court
35 finds that: (A) The offender has already moved to another state or
36 plans to move to another state for reasons other than circumventing the
37 certification requirements; (B) no certified providers are available
38 for treatment within a reasonable geographical distance of the

1 offender's home; and (C) the evaluation and treatment plan comply with
2 this subsection (8) and the rules adopted by the department of health.

3 (ix) For purposes of this subsection (8), "victim" means any person
4 who has sustained emotional, psychological, physical, or financial
5 injury to person or property as a result of the crime charged.

6 "Victim" also means a parent or guardian of a victim who is a minor
7 child unless the parent or guardian is the perpetrator of the offense.

8 (x) If the defendant was less than eighteen years of age when the
9 charge was filed, the state shall pay for the cost of initial
10 evaluation and treatment.

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

18 Except for an offender who has been convicted of a violation of RCW
19 9A.44.040 or 9A.44.050, if the offender completes the treatment program
20 before the expiration of his or her term of confinement, the department
21 of corrections may request the court to convert the balance of
22 confinement to community supervision and to place conditions on the
23 offender including crime-related prohibitions and requirements that the
24 offender perform any one or more of the following:

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

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

29 (iii) Report as directed to the court and a community corrections
30 officer;

31 (iv) Undergo available outpatient treatment.

32 If the offender violates any of the terms of his or her community
33 supervision, the court may order the offender to serve out the balance
34 of his or her community supervision term in confinement in the custody
35 of the department of corrections.

36 Nothing in this subsection (8)(b) shall confer eligibility for such
37 programs for offenders convicted and sentenced for a sex offense
38 committed prior to July 1, 1987. This subsection (8)(b) does not apply
39 to any crime committed after July 1, 1990.

1 (c) Offenders convicted and sentenced for a sex offense committed
2 prior to July 1, 1987, may, subject to available funds, request an
3 evaluation by the department of corrections to determine whether they
4 are amenable to treatment. If the offender is determined to be
5 amenable to treatment, the offender may request placement in a
6 treatment program within a correctional facility operated by the
7 department. Placement in such treatment program is subject to
8 available funds.

9 (9)(a) When a court sentences a person to a term of total
10 confinement to the custody of the department of corrections for an
11 offense categorized as a sex offense or a serious violent offense
12 committed after July 1, 1988, but before July 1, 1990, assault in the
13 second degree, assault of a child in the second degree, any crime
14 against a person where it is determined in accordance with RCW
15 9.94A.125 that the defendant or an accomplice was armed with a deadly
16 weapon at the time of commission, or any felony offense under chapter
17 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
18 committed on or after July 1, 1988, the court shall in addition to the
19 other terms of the sentence, sentence the offender to a one-year term
20 of community placement beginning either upon completion of the term of
21 confinement or at such time as the offender is transferred to community
22 custody in lieu of earned early release in accordance with RCW
23 9.94A.150 (1) and (2). When the court sentences an offender under this
24 subsection to the statutory maximum period of confinement then the
25 community placement portion of the sentence shall consist entirely of
26 such community custody to which the offender may become eligible, in
27 accordance with RCW 9.94A.150 (1) and (2). Any period of community
28 custody actually served shall be credited against the community
29 placement portion of the sentence.

30 (b) When a court sentences a person to a term of total confinement
31 to the custody of the department of corrections for an offense
32 categorized as a sex offense committed on or after July 1, 1990, but
33 before June 6, 1996, a serious violent offense, vehicular homicide, or
34 vehicular assault, committed on or after July 1, 1990, the court shall
35 in addition to other terms of the sentence, sentence the offender to
36 community placement for two years or up to the period of earned early
37 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
38 longer. The community placement shall begin either upon completion of
39 the term of confinement or at such time as the offender is transferred

1 to community custody in lieu of earned early release in accordance with
2 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
3 this subsection to the statutory maximum period of confinement then the
4 community placement portion of the sentence shall consist entirely of
5 the community custody to which the offender may become eligible, in
6 accordance with RCW 9.94A.150 (1) and (2). Any period of community
7 custody actually served shall be credited against the community
8 placement portion of the sentence. Unless a condition is waived by the
9 court, the terms of community placement for offenders sentenced
10 pursuant to this section shall include the following conditions:

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

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

15 (iii) The offender shall not possess or consume controlled
16 substances except pursuant to lawfully issued prescriptions;

17 (iv) The offender shall pay supervision fees as determined by the
18 department of corrections;

19 (v) The residence location and living arrangements are subject to
20 the prior approval of the department of corrections during the period
21 of community placement; and

22 (vi) The offender shall submit to affirmative acts necessary to
23 monitor compliance with the orders of the court as required by the
24 department.

25 (c) As a part of any sentence imposed under (a) or (b) of this
26 subsection, the court may also order any of the following special
27 conditions:

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

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

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

34 (iv) The offender shall not consume alcohol;

35 (v) The offender shall comply with any crime-related prohibitions;
36 or

37 (vi) For an offender convicted of a felony sex offense against a
38 minor victim after June 6, 1996, the offender shall comply with any
39 terms and conditions of community placement imposed by the department

1 of corrections relating to contact between the sex offender and a minor
2 victim or a child of similar age or circumstance as a previous victim.

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

7 (10)(a) When a court sentences a person to the custody of the
8 department of corrections for an offense categorized as a sex offense
9 committed on or after June 6, 1996, the court shall, in addition to
10 other terms of the sentence, sentence the offender to community custody
11 for three years or up to the period of earned early release awarded
12 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
13 community custody shall begin either upon completion of the term of
14 confinement or at such time as the offender is transferred to community
15 custody in lieu of earned early release in accordance with RCW
16 9.94A.150 (1) and (2).

17 (b) Unless a condition is waived by the court, the terms of
18 community custody shall be the same as those provided for in subsection
19 (9)(b) of this section and may include those provided for in subsection
20 (9)(c) of this section. As part of any sentence that includes a term
21 of community custody imposed under this subsection, the court shall
22 also require the offender to comply with any conditions imposed by the
23 department of corrections under subsection (14) of this section.

24 (c) At any time prior to the completion of a sex offender's term of
25 community custody, if the court finds that public safety would be
26 enhanced, the court may impose and enforce an order extending any or
27 all of the conditions imposed pursuant to this section for a period up
28 to the maximum allowable sentence for the crime as it is classified in
29 chapter 9A.20 RCW, regardless of the expiration of the offender's term
30 of community custody. If a violation of a condition extended under
31 this subsection occurs after the expiration of the offender's term of
32 community custody, it shall be deemed a violation of the sentence for
33 the purposes of RCW 9.94A.195 and may be punishable as contempt of
34 court as provided for in RCW 7.21.040.

35 (11) If the court imposes a sentence requiring confinement of
36 thirty days or less, the court may, in its discretion, specify that the
37 sentence be served on consecutive or intermittent days. A sentence
38 requiring more than thirty days of confinement shall be served on

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

3 (12) If a sentence imposed includes payment of a legal financial
4 obligation, the sentence shall specify the total amount of the legal
5 financial obligation owed, and shall require the offender to pay a
6 specified monthly sum toward that legal financial obligation.
7 Restitution to victims shall be paid prior to any other payments of
8 monetary obligations. Any legal financial obligation that is imposed
9 by the court may be collected by the department, which shall deliver
10 the amount paid to the county clerk for credit. The offender's
11 compliance with payment of legal financial obligations shall be
12 supervised by the department for ten years following the entry of the
13 judgment and sentence or ten years following the offender's release
14 from total confinement. All monetary payments ordered shall be paid no
15 later than ten years after the last date of release from confinement
16 pursuant to a felony conviction or the date the sentence was entered
17 unless the superior court extends the criminal judgment an additional
18 ten years. If the legal financial obligations including crime victims'
19 assessments are not paid during the initial ten-year period, the
20 superior court may extend jurisdiction under the criminal judgment an
21 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
22 9.94A.145. If jurisdiction under the criminal judgment is extended,
23 the department is not responsible for supervision of the offender
24 during the subsequent period. Independent of the department, the party
25 or entity to whom the legal financial obligation is owed shall have the
26 authority to utilize any other remedies available to the party or
27 entity to collect the legal financial obligation. Nothing in this
28 section makes the department, the state, or any of its employees,
29 agents, or other persons acting on their behalf liable under any
30 circumstances for the payment of these legal financial obligations. If
31 an order includes restitution as one of the monetary assessments, the
32 county clerk shall make disbursements to victims named in the order.

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

37 (14) All offenders sentenced to terms involving community
38 supervision, community service, community placement, or legal financial
39 obligation shall be under the supervision of the department of

1 corrections and shall follow explicitly the instructions and conditions
2 of the department of corrections. The department may require an
3 offender to perform affirmative acts it deems appropriate to monitor
4 compliance with the conditions of the sentence imposed.

5 (a) The instructions shall include, at a minimum, reporting as
6 directed to a community corrections officer, remaining within
7 prescribed geographical boundaries, notifying the community corrections
8 officer of any change in the offender's address or employment, and
9 paying the supervision fee assessment.

10 (b) For offenders sentenced to terms involving community custody
11 for crimes committed on or after June 6, 1996, the department may
12 include, in addition to the instructions in (a) of this subsection, any
13 appropriate conditions of supervision, including but not limited to,
14 prohibiting the offender from having contact with any other specified
15 individuals or specific class of individuals. The conditions
16 authorized under this subsection (14)(b) may be imposed by the
17 department prior to or during an offender's community custody term. If
18 a violation of conditions imposed by the court or the department
19 pursuant to subsection (10) of this section occurs during community
20 custody, it shall be deemed a violation of community placement for the
21 purposes of RCW 9.94A.207 and shall authorize the department to
22 transfer an offender to a more restrictive confinement status as
23 provided in RCW 9.94A.205. At any time prior to the completion of a
24 sex offender's term of community custody, the department may recommend
25 to the court that any or all of the conditions imposed by the court or
26 the department pursuant to subsection (10) of this section be continued
27 beyond the expiration of the offender's term of community custody as
28 authorized in subsection (10)(c) of this section.

29 The department may require offenders to pay for special services
30 rendered on or after July 25, 1993, including electronic monitoring,
31 day reporting, and telephone reporting, dependent upon the offender's
32 ability to pay. The department may pay for these services for
33 offenders who are not able to pay.

34 (15) All offenders sentenced to terms involving community
35 supervision, community service, or community placement under the
36 supervision of the department of corrections shall not own, use, or
37 possess firearms or ammunition. Offenders who own, use, or are found
38 to be in actual or constructive possession of firearms or ammunition
39 shall be subject to the appropriate violation process and sanctions.

1 "Constructive possession" as used in this subsection means the power
2 and intent to control the firearm or ammunition. "Firearm" as used in
3 this subsection means a weapon or device from which a projectile may be
4 fired by an explosive such as gunpowder.

5 (16) The sentencing court shall give the offender credit for all
6 confinement time served before the sentencing if that confinement was
7 solely in regard to the offense for which the offender is being
8 sentenced.

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

14 (18) The court shall order restitution whenever the offender is
15 convicted of a felony that results in injury to any person or damage to
16 or loss of property, whether the offender is sentenced to confinement
17 or placed under community supervision, unless extraordinary
18 circumstances exist that make restitution inappropriate in the court's
19 judgment. The court shall set forth the extraordinary circumstances in
20 the record if it does not order restitution.

21 (19) As a part of any sentence, the court may impose and enforce an
22 order that relates directly to the circumstances of the crime for which
23 the offender has been convicted, prohibiting the offender from having
24 any contact with other specified individuals or a specific class of
25 individuals for a period not to exceed the maximum allowable sentence
26 for the crime, regardless of the expiration of the offender's term of
27 community supervision or community placement.

28 (20) In any sentence of partial confinement, the court may require
29 the defendant to serve the partial confinement in work release, in a
30 program of home detention, on work crew, or in a combined program of
31 work crew and home detention.

32 (21) All court-ordered legal financial obligations collected by the
33 department and remitted to the county clerk shall be credited and paid
34 where restitution is ordered. Restitution shall be paid prior to any
35 other payments of monetary obligations.

36 (22)(a) If the offense is not one for which the conviction results
37 in the offender's being a persistent offender, the court shall, at the
38 time of sentencing, impose as a condition of release such treatment,
39 including the use of medroxyprogesterone acetate together with any

1 other mental health or chemical dependency treatment, as the court
2 finds appropriate to reduce the likelihood of the offender's commission
3 of a subsequent sex offense upon release, for any of the following
4 offenses:

5 (i) Rape in the first degree;

6 (ii) Rape in the second degree;

7 (iii) Rape of a child in the first degree; and

8 (iv) Child molestation in the first degree, if it is the person's
9 second conviction for child molestation in the first degree.

10 (b)(i) At least thirty days before the department sets a release
11 date for an offender who has had a treatment regimen imposed as a
12 condition of release under (a) of this subsection, the offender must be
13 brought back before the court for a hearing, including an examination
14 by medical experts, for the purpose of determining whether to impose
15 the regimen. At the hearing, the offender has the right to all due
16 process rights including counsel, cross-examination, testimony,
17 experts, and the provision of counsel if the offender is indigent, but
18 not the presence of a jury.

19 (ii) At the hearing under (b)(i) of this subsection, the court
20 shall determine, by a preponderance of the evidence, whether a proposed
21 treatment regimen, including treatment with medroxyprogesterone
22 acetate, makes it likely that the regimen will reduce the chance that
23 the offender will commit a sex offense upon release. In making its
24 determination, the court shall consider:

25 (A) Whether the offender has a mental abnormality as defined in RCW
26 71.09.020;

27 (B) Whether the offender is likely to engage in predatory acts, as
28 defined in RCW 71.09.020, if the regimen is not required; and

29 (C) Whether the regimen is likely to decrease the offender's
30 likelihood to engage in predatory acts, as defined in RCW 71.09.020.

31 (c) If the court decides that the offender and the treatment
32 regimen meet the criteria in (b) of this subsection, the court shall
33 impose the requirement of the treatment regimen as a condition of
34 release and the treatment must begin before the release of the
35 offender. The court may set the treatment regimen period for as long
36 as the court finds it necessary. If the court decides that the
37 criteria are not met, then the court shall suspend the imposition of
38 the treatment regimen, but may reimpose it if, following a hearing, the
39 court finds the offender meets the criteria in (b)(ii) of this

1 subsection. The offender, to the extent private resources are
2 available, shall bear the cost of the treatment regimen.

3 (d) Imposition and successful use of the treatment regimen shall in
4 no way otherwise reduce the time in confinement an offender would
5 otherwise serve.

6 (e) The court may require the offender to return at any time in
7 order for the court to monitor the progress and effect of the treatment
8 regimen.

9 (f) An offender may appeal any determination made under this
10 subsection, but a determination under this subsection is of record and
11 the offender shall continue any treatment regimen imposed under this
12 subsection pending a decision on the appeal.

13 (g) An offender may at any time seek early termination of a
14 treatment regimen imposed under this subsection, but an early
15 termination may not be granted unless, by clear and convincing
16 evidence, the offender proves that the offender no longer has a mental
17 abnormality, as defined in RCW 71.09.020, and that a continued
18 treatment regimen is not necessary to prevent the offender's commission
19 of a predatory act, as defined in RCW 71.09.020.

20 (h) The offender may at any time agree to surgical alternatives to
21 medroxyprogesterone acetate treatment if the offender voluntarily,
22 knowingly, and intelligently petitions the court in writing.

23 (i) An offender who unlawfully stops treatment imposed under this
24 subsection is guilty of a class B felony.

25 **Sec. 5.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c
26 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each
27 reenacted and amended to read as follows:

28 TABLE 2

29 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

30	XV	Aggravated Murder 1 (RCW 10.95.020)
31	XIV	Murder 1 (RCW 9A.32.030)
32		Homicide by abuse (RCW 9A.32.055)
33		Malicious explosion 1 (RCW 70.74.280(1))
34	XIII	Murder 2 (RCW 9A.32.050)
35		Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1 (RCW
2 70.74.270(1))

3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Rape 1 (RCW 9A.44.040)
6 Rape of a Child 1 (RCW 9A.44.073)
7 Malicious placement of an imitation device
8 1 (RCW 70.74.272(1)(a))

9 XI Rape 2 (RCW 9A.44.050)
10 Rape of a Child 2 (RCW 9A.44.076)
11 Manslaughter 1 (RCW 9A.32.060)

12 X Kidnapping 1 (RCW 9A.40.020)
13 Child Molestation 1 (RCW 9A.44.083)
14 Malicious explosion 3 (RCW 70.74.280(3))
15 Over 18 and deliver heroin (~~(or)~~), a
16 narcotic from Schedule I or II, or
17 flunitrazepam from Schedule IV to
18 someone under 18 (RCW 69.50.406)
19 Leading Organized Crime (RCW
20 9A.82.060(1)(a))
21 Indecent Liberties (with forcible
22 compulsion) (RCW 9A.44.100(1)(a))

23 IX Assault of a Child 2 (RCW 9A.36.130)
24 Robbery 1 (RCW 9A.56.200)
25 Explosive devices prohibited (RCW
26 70.74.180)
27 Malicious placement of an explosive 2 (RCW
28 70.74.270(2))
29 Over 18 and deliver narcotic from Schedule
30 III, IV, or V or a nonnarcotic except
31 for flunitrazepam from Schedule I-V to
32 someone under 18 and 3 years junior
33 (RCW 69.50.406)
34 Controlled Substance Homicide (RCW
35 69.50.415)

1 Sexual Exploitation (RCW 9.68A.040)
2 Inciting Criminal Profiteering (RCW
3 9A.82.060(1)(b))
4 Vehicular Homicide, by being under the
5 influence of intoxicating liquor or
6 any drug (RCW 46.61.520)

7 VIII Arson 1 (RCW 9A.48.020)
8 Promoting Prostitution 1 (RCW 9A.88.070)
9 Selling for profit (controlled or
10 counterfeit) any controlled substance
11 (RCW 69.50.410)
12 Manufacture, deliver, or possess with
13 intent to deliver heroin or cocaine
14 (RCW 69.50.401(a)(1)(i))
15 Manufacture, deliver, or possess with
16 intent to deliver methamphetamine (RCW
17 69.50.401(a)(1)(ii))
18 Possession of ephedrine or pseudoephedrine
19 with intent to manufacture
20 methamphetamine (RCW 69.50.440)
21 Vehicular Homicide, by the operation of any
22 vehicle in a reckless manner (RCW
23 46.61.520)
24 Manslaughter 2 (RCW 9A.32.070)

25 VII Burglary 1 (RCW 9A.52.020)
26 Vehicular Homicide, by disregard for the
27 safety of others (RCW 46.61.520)
28 Introducing Contraband 1 (RCW 9A.76.140)
29 Indecent Liberties (without forcible
30 compulsion) (RCW 9A.44.100(1) (b) and
31 (c))
32 Child Molestation 2 (RCW 9A.44.086)
33 Dealing in depictions of minor engaged in
34 sexually explicit conduct (RCW
35 9.68A.050)

1 Sending, bringing into state depictions of
 2 minor engaged in sexually explicit
 3 conduct (RCW 9.68A.060)
 4 Involving a minor in drug dealing (RCW
 5 69.50.401(f))
 6 Drive-by Shooting (RCW 9A.36.045)
 7 Unlawful Possession of a Firearm in the
 8 first degree (RCW 9.41.040(1)(a))
 9 Malicious placement of an explosive 3 (RCW
 10 70.74.270(3))

 11 VI Bribery (RCW 9A.68.010)
 12 Rape of a Child 3 (RCW 9A.44.079)
 13 Intimidating a Juror/Witness (RCW
 14 9A.72.110, 9A.72.130)
 15 Malicious placement of an imitation device
 16 2 (RCW 70.74.272(1)(b))
 17 Incest 1 (RCW 9A.64.020(1))
 18 Manufacture, deliver, or possess with
 19 intent to deliver narcotics from
 20 Schedule I or II (except heroin or
 21 cocaine) or flunitrazepam from
 22 Schedule IV (RCW 69.50.401(a)(1)(i))
 23 Intimidating a Judge (RCW 9A.72.160)
 24 Bail Jumping with Murder 1 (RCW
 25 9A.76.170(2)(a))
 26 Theft of a Firearm (RCW 9A.56.300)

 27 V Persistent prison misbehavior (RCW
 28 9.94.070)
 29 Criminal Mistreatment 1 (RCW 9A.42.020)
 30 Abandonment of dependent person 1 (RCW
 31 9A.42.060)
 32 Rape 3 (RCW 9A.44.060)
 33 Sexual Misconduct with a Minor 1 (RCW
 34 9A.44.093)
 35 Child Molestation 3 (RCW 9A.44.089)
 36 Kidnapping 2 (RCW 9A.40.030)
 37 Extortion 1 (RCW 9A.56.120)
 38 Incest 2 (RCW 9A.64.020(2))

1 Perjury 1 (RCW 9A.72.020)
2 Extortionate Extension of Credit (RCW
3 9A.82.020)
4 Advancing money or property for
5 extortionate extension of credit (RCW
6 9A.82.030)
7 Extortionate Means to Collect Extensions of
8 Credit (RCW 9A.82.040)
9 Rendering Criminal Assistance 1 (RCW
10 9A.76.070)
11 Bail Jumping with class A Felony (RCW
12 9A.76.170(2)(b))
13 Sexually Violating Human Remains (RCW
14 9A.44.105)
15 Delivery of imitation controlled substance
16 by person eighteen or over to person
17 under eighteen (RCW 69.52.030(2))
18 Possession of a Stolen Firearm (RCW
19 9A.56.310)
20 Unlawful termination of sex offender
21 reoffense reduction treatment (RCW
22 9.94A.120(22))

23 IV Residential Burglary (RCW 9A.52.025)
24 Theft of Livestock 1 (RCW 9A.56.080)
25 Robbery 2 (RCW 9A.56.210)
26 Assault 2 (RCW 9A.36.021)
27 Escape 1 (RCW 9A.76.110)
28 Arson 2 (RCW 9A.48.030)
29 Commercial Bribery (RCW 9A.68.060)
30 Bribing a Witness/Bribe Received by Witness
31 (RCW 9A.72.090, 9A.72.100)
32 Malicious Harassment (RCW 9A.36.080)
33 Threats to Bomb (RCW 9.61.160)
34 Willful Failure to Return from Furlough
35 (RCW 72.66.060)
36 Hit and Run--Injury Accident (RCW
37 46.52.020(4))
38 Hit and Run with Vessel--Injury Accident
39 (RCW 88.12.155(3))

1 Vehicular Assault (RCW 46.61.522)
2 Manufacture, deliver, or possess with
3 intent to deliver narcotics from
4 Schedule III, IV, or V or nonnarcotics
5 from Schedule I-V (except marijuana
6 ((or)) methamphetamines, or
7 flunitrazepam) (RCW 69.50.401 (a)(1)
8 (iii) through (v))
9 Influencing Outcome of Sporting Event (RCW
10 9A.82.070)
11 Use of Proceeds of Criminal Profiteering
12 (RCW 9A.82.080 (1) and (2))
13 Knowingly Trafficking in Stolen Property
14 (RCW 9A.82.050(2))

15 III Criminal Gang Intimidation (RCW 9A.46.120)
16 Criminal Mistreatment 2 (RCW 9A.42.030)
17 Abandonment of dependent person 2 (RCW
18 9A.42.070)
19 Extortion 2 (RCW 9A.56.130)
20 Unlawful Imprisonment (RCW 9A.40.040)
21 Assault 3 (RCW 9A.36.031)
22 Assault of a Child 3 (RCW 9A.36.140)
23 Custodial Assault (RCW 9A.36.100)
24 Unlawful possession of firearm in the
25 second degree (RCW 9.41.040(1)(b))
26 Harassment (RCW 9A.46.020)
27 Promoting Prostitution 2 (RCW 9A.88.080)
28 Willful Failure to Return from Work Release
29 (RCW 72.65.070)
30 Burglary 2 (RCW 9A.52.030)
31 Introducing Contraband 2 (RCW 9A.76.150)
32 Communication with a Minor for Immoral
33 Purposes (RCW 9.68A.090)
34 Patronizing a Juvenile Prostitute (RCW
35 9.68A.100)
36 Escape 2 (RCW 9A.76.120)
37 Perjury 2 (RCW 9A.72.030)
38 Bail Jumping with class B or C Felony (RCW
39 9A.76.170(2)(c))

1 Intimidating a Public Servant (RCW
2 9A.76.180)
3 Tampering with a Witness (RCW 9A.72.120)
4 Manufacture, deliver, or possess with
5 intent to deliver marijuana (RCW
6 69.50.401(a)(1)(iii))
7 Delivery of a material in lieu of a
8 controlled substance (RCW
9 69.50.401(c))
10 Manufacture, distribute, or possess with
11 intent to distribute an imitation
12 controlled substance (RCW
13 69.52.030(1))
14 Recklessly Trafficking in Stolen Property
15 (RCW 9A.82.050(1))
16 Theft of livestock 2 (RCW 9A.56.080)
17 Securities Act violation (RCW 21.20.400)
18 II Unlawful Practice of Law (RCW 2.48.180)
19 Malicious Mischief 1 (RCW 9A.48.070)
20 Possession of Stolen Property 1 (RCW
21 9A.56.150)
22 Theft 1 (RCW 9A.56.030)
23 Class B Felony Theft of Rental, Leased, or
24 Lease-purchased Property (RCW
25 9A.56.096(4))
26 Trafficking in Insurance Claims (RCW
27 48.30A.015)
28 Unlicensed Practice of a Profession or
29 Business (RCW 18.130.190(7))
30 Health Care False Claims (RCW 48.80.030)
31 Possession of controlled substance that is
32 either heroin or narcotics from
33 Schedule I or II or flunitrazepam from
34 Schedule IV (RCW 69.50.401(d))
35 Possession of phencyclidine (PCP) (RCW
36 69.50.401(d))
37 Create, deliver, or possess a counterfeit
38 controlled substance (RCW
39 69.50.401(b))

1 Computer Trespass 1 (RCW 9A.52.110)
2 Escape from Community Custody (RCW
3 72.09.310)
4 I Theft 2 (RCW 9A.56.040)
5 Class C Felony Theft of Rental, Leased, or
6 Lease-purchased Property (RCW
7 9A.56.096(4))
8 Possession of Stolen Property 2 (RCW
9 9A.56.160)
10 Forgery (RCW 9A.60.020)
11 Taking Motor Vehicle Without Permission
12 (RCW 9A.56.070)
13 Vehicle Prowl 1 (RCW 9A.52.095)
14 Attempting to Elude a Pursuing Police
15 Vehicle (RCW 46.61.024)
16 Malicious Mischief 2 (RCW 9A.48.080)
17 Reckless Burning 1 (RCW 9A.48.040)
18 Unlawful Issuance of Checks or Drafts (RCW
19 9A.56.060)
20 Unlawful Use of Food Stamps (RCW 9.91.140
21 (2) and (3))
22 False Verification for Welfare (RCW
23 74.08.055)
24 Forged Prescription (RCW 69.41.020)
25 Forged Prescription for a Controlled
26 Substance (RCW 69.50.403)
27 Possess Controlled Substance that is a
28 Narcotic from Schedule III, IV, or V
29 or Non-narcotic from Schedule I-V
30 (except phencyclidine or
31 flunitrazepam) (RCW 69.50.401(d))"

32 **SSB 5305** - S COMM AMD
33 By Committee on Health & Long-Term Care

34 ADOPTED 2/11/98

35 On page 30, after line 27, insert the following:

1 **"Sec. 6.** RCW 9A.44.050 and 1997 c 392 s 514 are each amended to
2 read as follows:

3 (1) A person is guilty of rape in the second degree when, under
4 circumstances not constituting rape in the first degree, the person
5 engages in sexual intercourse with another person:

6 (a) By forcible compulsion;

7 (b) When the victim is incapable of consent by reason of being
8 physically helpless or mentally incapacitated, including controlled
9 substance-induced physical helplessness or mental incapacity caused by
10 the perpetrator of the rape;

11 (c) When the victim is developmentally disabled and the perpetrator
12 is a person who is not married to the victim and who has supervisory
13 authority over the victim;

14 (d) When the perpetrator is a health care provider, the victim is
15 a client or patient, and the sexual intercourse occurs during a
16 treatment session, consultation, interview, or examination. It is an
17 affirmative defense that the defendant must prove by a preponderance of
18 the evidence that the client or patient consented to the sexual
19 intercourse with the knowledge that the sexual intercourse was not for
20 the purpose of treatment;

21 (e) When the victim is a resident of a facility for mentally
22 disordered or chemically dependent persons and the perpetrator is a
23 person who is not married to the victim and has supervisory authority
24 over the victim; or

25 (f) When the victim is a frail elder or vulnerable adult and the
26 perpetrator is a person who is not married to the victim and who has a
27 significant relationship with the victim.

28 (2) Rape in the second degree is a class A felony.

29 **Sec. 7.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
30 read as follows:

31 (1) A person is guilty of indecent liberties when he or she
32 knowingly causes another person who is not his or her spouse to have
33 sexual contact with him or her or another:

34 (a) By forcible compulsion;

35 (b) When the other person is incapable of consent by reason of
36 being mentally defective, mentally incapacitated, or physically
37 helpless, including controlled substance-induced physical helplessness
38 or mental incapacity caused by the perpetrator of the rape;

1 (c) When the victim is developmentally disabled and the perpetrator
2 is a person who is not married to the victim and who has supervisory
3 authority over the victim;

4 (d) When the perpetrator is a health care provider, the victim is
5 a client or patient, and the sexual contact occurs during a treatment
6 session, consultation, interview, or examination. It is an affirmative
7 defense that the defendant must prove by a preponderance of the
8 evidence that the client or patient consented to the sexual contact
9 with the knowledge that the sexual contact was not for the purpose of
10 treatment;

11 (e) When the victim is a resident of a facility for mentally
12 disordered or chemically dependent persons and the perpetrator is a
13 person who is not married to the victim and has supervisory authority
14 over the victim; or

15 (f) When the victim is a frail elder or vulnerable adult and the
16 perpetrator is a person who is not married to the victim and who has a
17 significant relationship with the victim.

18 (2) Indecent liberties is a class B felony.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 9A.44 RCW
20 to read as follows:

21 Rape crisis centers, law enforcement, and hospital emergency rooms
22 shall provide to all personnel investigating cases of sexual assault
23 training on how to recognize the presence of sedating substances, how
24 to test for such substances, and the appropriate chain of custody
25 procedure to follow so that such evidence may be used in a court of
26 law. The training required by this section may be incorporated into
27 existing training programs."

28 Renumber the remaining sections consecutively and correct any
29 internal references accordingly.

30 **SSB 5305** - S AMD - 615

31 By Senators Benton, Hargrove, Fairley and Deccio

32
33

ADOPTED 2/11/98

