

2 SHB 2388 - S COMM AMD
3 By Committee on Ways & Means

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and
8 1991 c 104 s 3 are each reenacted and amended to read as follows:

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

11 (1) Except as authorized in subsections (2), (5), and (7) of this
12 section, the court shall impose a sentence within the sentence range
13 for the offense.

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

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

22 (4) An offender convicted of the crime of murder in the first
23 degree shall be sentenced to a term of total confinement not less than
24 twenty years. An offender convicted of the crime of assault in the
25 first degree where the offender used force or means likely to result in
26 death or intended to kill the victim shall be sentenced to a term of
27 total confinement not less than five years. An offender convicted of
28 the crime of rape in the first degree shall be sentenced to a term of

1 total confinement not less than five years, and shall not be eligible
2 for furlough, work release or other authorized leave of absence from
3 the correctional facility during such minimum five-year term except for
4 the purpose of commitment to an inpatient treatment facility. The
5 foregoing minimum terms of total confinement are mandatory and shall
6 not be varied or modified as provided in subsection (2) of this
7 section.

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

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

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

21 (c) Pursue a prescribed, secular course of study or vocational
22 training;

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

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

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

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

9 (7)(a)(i) When an offender is convicted of a sex offense other than
10 a violation of RCW 9A.44.050 or a sex offense that is also a serious
11 violent offense and has no prior convictions for a sex offense or any
12 other felony sex offenses in this or any other state, the sentencing
13 court, on its own motion or the motion of the state or the defendant,
14 may order an examination to determine whether the defendant is amenable
15 to treatment.

16 The report of the examination shall include at a minimum the
17 following: The defendant's version of the facts and the official
18 version of the facts, the defendant's offense history, an assessment of
19 problems in addition to alleged deviant behaviors, the offender's
20 social and employment situation, and other evaluation measures used.
21 The report shall set forth the sources of the evaluator's information.

22 The examiner shall assess and report regarding the defendant'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 (A) Frequency and type of contact between offender and therapist;
27 (B) Specific issues to be addressed in the treatment and
28 description of planned treatment modalities;

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

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

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

12 (ii) After receipt of the reports, the court shall consider whether
13 the offender and the community will benefit from use of this special
14 sexual offender sentencing alternative and consider the victim's
15 opinion whether the offender should receive a treatment disposition
16 under this subsection. If the court determines that this special sex
17 offender sentencing alternative is appropriate, the court shall then
18 impose a sentence within the sentence range. If this sentence is less
19 than eight years of confinement, the court may suspend the execution of
20 the sentence and impose the following conditions of suspension:

21 (A) The court shall place the defendant on community supervision
22 for the length of the suspended sentence or three years, whichever is
23 greater; and

24 (B) The court shall order treatment for any period up to three
25 years in duration. The court in its discretion shall order outpatient
26 sex offender treatment or inpatient sex offender treatment, if
27 available. A community mental health center may not be used for such
28 treatment unless it has an appropriate program designed for sex
29 offender treatment. The offender shall not change sex offender
30 treatment providers or treatment conditions without first notifying the

1 prosecutor, the community corrections officer, and the court, and shall
2 not change providers without court approval after a hearing if the
3 prosecutor or community corrections officer object to the change. In
4 addition, as conditions of the suspended sentence, the court may impose
5 other sentence conditions including up to six months of confinement,
6 not to exceed the sentence range of confinement for that offense,
7 crime-related prohibitions, and requirements that the offender perform
8 any one or more of the following:

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

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

13 (III) Report as directed to the court and a community corrections
14 officer;

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

18 (V) Make recoupment to the victim for the cost of any counseling
19 required as a result of the offender's crime.

20 (iii) The sex offender therapist shall submit quarterly reports on
21 the defendant's progress in treatment to the court and the parties.
22 The report shall reference the treatment plan and include at a minimum
23 the following: Dates of attendance, defendant's compliance with
24 requirements, treatment activities, the defendant's relative progress
25 in treatment, and any other material as specified by the court at
26 sentencing.

27 (iv) At the time of sentencing, the court shall set a treatment
28 termination hearing for three months prior to the anticipated date for
29 completion of treatment. Prior to the treatment termination hearing,
30 the treatment professional and community corrections officer shall

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

13 (v) The court may revoke the suspended sentence at any time during
14 the period of community supervision and order execution of the sentence
15 if: (A) The defendant violates the conditions of the suspended
16 sentence, or (B) the court finds that the defendant is failing to make
17 satisfactory progress in treatment. All confinement time served during
18 the period of community supervision shall be credited to the offender
19 if the suspended sentence is revoked.

20 (vi) After July 1, 1991, examinations and treatment ordered
21 pursuant to this subsection shall only be conducted by sex offender
22 treatment providers certified by the department of health pursuant to
23 chapter 18.155 RCW.

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

29 (b) When an offender is convicted of any felony sex offense
30 committed before July 1, 1987, and is sentenced to a term of

1 confinement of more than one year but less than six years, the
2 sentencing court may, on its own motion or on the motion of the
3 offender or the state, order the offender committed for up to thirty
4 days to the custody of the secretary of social and health services for
5 evaluation and report to the court on the offender's amenability to
6 treatment at these facilities. If the secretary of social and health
7 services cannot begin the evaluation within thirty days of the court's
8 order of commitment, the offender shall be transferred to the state for
9 confinement pending an opportunity to be evaluated at the appropriate
10 facility. The court shall review the reports and may order that the
11 term of confinement imposed be served in the sexual offender treatment
12 program at the location determined by the secretary of social and
13 health services or the secretary's designee, only if the report
14 indicates that the offender is amenable to the treatment program
15 provided at these facilities. The offender shall be transferred to the
16 state pending placement in the treatment program. Any offender who has
17 escaped from the treatment program shall be referred back to the
18 sentencing court.

19 If the offender does not comply with the conditions of the
20 treatment program, the secretary of social and health services may
21 refer the matter to the sentencing court. The sentencing court shall
22 commit the offender to the department of corrections to serve the
23 balance of the term of confinement.

24 If the offender successfully completes the treatment program before
25 the expiration of the term of confinement, the court may convert the
26 balance of confinement to community supervision and may place
27 conditions on the offender including crime-related prohibitions and
28 requirements that the offender perform any one or more of the
29 following:

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

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

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

6 (iv) Undergo available outpatient treatment.

7 If the offender violates any of the terms of community supervision,
8 the court may order the offender to serve out the balance of the
9 community supervision term in confinement in the custody of the
10 department of corrections.

11 After June 30, 1993, this subsection (b) shall cease to have
12 effect.

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

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

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

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

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

3 (iv) Undergo available outpatient treatment.

4 If the offender violates any of the terms of his community
5 supervision, the court may order the offender to serve out the balance
6 of his community supervision term in confinement in the custody of the
7 department of corrections.

8 Nothing in (c) of this subsection shall confer eligibility for such
9 programs for offenders convicted and sentenced for a sex offense
10 committed prior to July 1, 1987. This subsection (c) does not apply to
11 any crime committed after July 1, 1990.

12 (d) Offenders convicted and sentenced for a sex offense committed
13 prior to July 1, 1987, may, subject to available funds, request an
14 evaluation by the department of corrections to determine whether they
15 are amenable to treatment. If the offender is determined to be
16 amenable to treatment, the offender may request placement in a
17 treatment program within a correctional facility operated by the
18 department. Placement in such treatment program is subject to
19 available funds.

20 (8)(a) When a court sentences a person to a term of total
21 confinement to the custody of the department of corrections for an
22 offense categorized as a sex offense or a serious violent offense
23 committed after July 1, 1988, but before July 1, 1990, assault in the
24 second degree, any crime against a person where it is determined in
25 accordance with RCW 9.94A.125 that the defendant or an accomplice was
26 armed with a deadly weapon at the time of commission, or any felony
27 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
28 1988, the court shall in addition to the other terms of the sentence,
29 sentence the offender to a one-year term of community placement
30 (~~beginning either upon completion of the term of confinement or at~~

1 ~~such time as the offender is transferred to community custody in lieu~~
2 ~~of earned early release in accordance with RCW 9.94A.150 (1) and (2).~~
3 ~~When the court sentences an offender under this subsection to the~~
4 ~~statutory maximum period of confinement then the community placement~~
5 ~~portion of the sentence shall consist entirely of such community~~
6 ~~custody to which the offender may become eligible, in accordance with~~
7 ~~RCW 9.94A.150 (1) and (2). Any period of community custody actually~~
8 ~~served shall be credited against the community placement portion of the~~
9 ~~sentence)).~~

10 (b) When a court sentences a person to a term of total confinement
11 to the custody of the department of corrections for an offense
12 categorized as a sex offense or serious violent offense committed on or
13 after July 1, 1990, the court shall in addition to other terms of the
14 sentence, sentence the offender to community placement for two years or
15 up to the period of earned early release awarded pursuant to RCW
16 9.94A.150 (1) and (2), whichever is longer.

17 (c) When a court sentences a person to a term of total confinement
18 to the custody of the department of corrections for vehicular homicide
19 or vehicular assault committed after June 30, 1992, and the person has
20 been found pursuant to RCW 46.61.524 to have an alcohol or drug
21 problem, the court shall in addition to other terms of the sentence,
22 sentence the offender to community placement for one year or up to the
23 period of earned early release awarded pursuant to RCW 9.94A.150 (1)
24 and (2), whichever is longer. In ordering community placement under
25 this subsection (c), the court shall waive all conditions of community
26 placement except the following:

27 (i) The offender shall abstain from alcohol and nonprescribed
28 controlled substances;

29 (ii) The offender shall complete any treatment program and comply
30 with any other requirement under RCW 46.61.524;

1 (iii) The offender shall comply with any legal financial
2 obligations imposed by the court;

3 (iv) The offender shall pay supervision fees as determined by the
4 department of corrections; and

5 (v) The offender shall report to and be available for contact with
6 the assigned community corrections officer as directed.

7 (d) The community placement under this subsection (8) shall begin
8 either upon completion of the term of confinement or at such time as
9 the offender is transferred to community custody in lieu of earned
10 early release in accordance with RCW 9.94A.150 (1) and (2). When the
11 court sentences an offender under this subsection to the statutory
12 maximum period of confinement then the community placement portion of
13 the sentence shall consist entirely of the community custody to which
14 the offender may become eligible, in accordance with RCW 9.94A.150 (1)
15 and (2). Any period of community custody actually served shall be
16 credited against the community placement portion of the sentence.
17 Unless a condition is waived by the court, the terms of community
18 placement for offenders sentenced pursuant to this section shall
19 include the following conditions:

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

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

24 (iii) The offender shall not consume controlled substances except
25 pursuant to lawfully issued prescriptions;

26 (iv) An offender in community custody shall not unlawfully possess
27 controlled substances; and

28 (v) The offender shall pay supervision fees as determined by the
29 department of corrections.

1 ~~((e))~~ (e) The court may also order any of the following special
2 conditions:

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

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

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

9 (iv) The offender shall not consume alcohol;

10 (v) The residence location and living arrangements of a sex
11 offender shall be subject to the prior approval of the department of
12 corrections; or

13 (vi) The offender shall comply with any crime-related prohibitions.

14 ~~((d))~~ (f) Prior to transfer to, or during, community placement,
15 any conditions of community placement may be removed or modified so as
16 not to be more restrictive by the sentencing court, upon recommendation
17 of the department of corrections.

18 (9) If the court imposes a sentence requiring confinement of thirty
19 days or less, the court may, in its discretion, specify that the
20 sentence be served on consecutive or intermittent days. A sentence
21 requiring more than thirty days of confinement shall be served on
22 consecutive days. Local jail administrators may schedule court-ordered
23 intermittent sentences as space permits.

24 (10) If a sentence imposed includes payment of a legal financial
25 obligation, the sentence shall specify the total amount of the legal
26 financial obligation owed, and shall require the offender to pay a
27 specified monthly sum toward that legal financial obligation.
28 Restitution to victims shall be paid prior to any other payments of
29 monetary obligations. Any legal financial obligation that is imposed
30 by the court may be collected by the department, which shall deliver

1 the amount paid to the county clerk for credit. The offender's
2 compliance with payment of legal financial obligations shall be
3 supervised by the department. All monetary payments ordered shall be
4 paid no later than ten years after the last date of release from
5 confinement pursuant to a felony conviction or the date the sentence
6 was entered. Independent of the department, the party or entity to
7 whom the legal financial obligation is owed shall have the authority to
8 utilize any other remedies available to the party or entity to collect
9 the legal financial obligation. Nothing in this section makes the
10 department, the state, or any of its employees, agents, or other
11 persons acting on their behalf liable under any circumstances for the
12 payment of these legal financial obligations. If an order includes
13 restitution as one of the monetary assessments, the county clerk shall
14 make disbursements to victims named in the order.

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

19 (12) All offenders sentenced to terms involving community
20 supervision, community service, community placement, or legal financial
21 obligation shall be under the supervision of the secretary of the
22 department of corrections or such person as the secretary may designate
23 and shall follow explicitly the instructions of the secretary including
24 reporting as directed to a community corrections officer, remaining
25 within prescribed geographical boundaries, notifying the community
26 corrections officer of any change in the offender's address or
27 employment, and paying the supervision fee assessment.

28 (13) All offenders sentenced to terms involving community
29 supervision, community service, or community placement under the
30 supervision of the department of corrections shall not own, use, or

1 possess firearms or ammunition. Offenders who own, use, or are found
2 to be in actual or constructive possession of firearms or ammunition
3 shall be subject to the appropriate violation process and sanctions.
4 "Constructive possession" as used in this subsection means the power
5 and intent to control the firearm or ammunition. "Firearm" as used in
6 this subsection means a weapon or device from which a projectile may be
7 fired by an explosive such as gunpowder.

8 (14) The sentencing court shall give the offender credit for all
9 confinement time served before the sentencing if that confinement was
10 solely in regard to the offense for which the offender is being
11 sentenced.

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

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

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

1 (18) In any sentence of partial confinement, the court may require
2 the defendant to serve the partial confinement in work release, in a
3 program of home detention, on work crew, or in a combined program of
4 work crew and home detention.

5 (19) All court-ordered legal financial obligations collected by the
6 department and remitted to the county clerk shall be credited and paid
7 where restitution is ordered. Restitution shall be paid prior to any
8 other payments of monetary obligations."

9 "Sec. 2. RCW 9.94A.150 and 1990 c 3 s 202 are each amended to read
10 as follows:

11 No person serving a sentence imposed pursuant to this chapter and
12 committed to the custody of the department shall leave the confines of
13 the correctional facility or be released prior to the expiration of the
14 sentence except as follows:

15 (1) Except as otherwise provided for in subsection (2) of this
16 section, the term of the sentence of an offender committed to a
17 correctional facility operated by the department, may be reduced by
18 earned early release time in accordance with procedures that shall be
19 developed and promulgated by the correctional agency having
20 jurisdiction in which the offender is confined. The earned early
21 release time shall be for good behavior and good performance, as
22 determined by the correctional agency having jurisdiction. The
23 correctional agency shall not credit the offender with earned early
24 release credits in advance of the offender actually earning the
25 credits. Any program established pursuant to this section shall allow
26 an offender to earn early release credits for presentence
27 incarceration. If an offender is transferred from a county jail to the
28 department of corrections, the county jail facility shall certify to
29 the department the amount of time spent in custody at the facility and

1 the amount of earned early release time. In the case of an offender
2 convicted of a serious violent offense or a sex offense that is a class
3 A felony committed on or after July 1, 1990, the aggregate earned early
4 release time may not exceed fifteen percent of the sentence. In no
5 other case shall the aggregate earned early release time exceed one-
6 third of the total sentence;

7 (2) A person convicted of a sex offense or an offense categorized
8 as a serious violent offense, assault in the second degree, vehicular
9 homicide, vehicular assault, any crime against a person where it is
10 determined in accordance with RCW 9.94A.125 that the defendant or an
11 accomplice was armed with a deadly weapon at the time of commission, or
12 any felony offense under chapter 69.50 or 69.52 RCW may become
13 eligible, in accordance with a program developed by the department, for
14 transfer to community custody status in lieu of earned early release
15 time pursuant to subsection (1) of this section;

16 (3) An offender may leave a correctional facility pursuant to an
17 authorized furlough or leave of absence. In addition, offenders may
18 leave a correctional facility when in the custody of a corrections
19 officer or officers;

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

24 (5) No more than the final six months of the sentence may be served
25 in partial confinement designed to aid the offender in finding work and
26 reestablishing him or herself in the community;

27 (6) The governor may pardon any offender;

28 (7) The department of corrections may release an offender from
29 confinement any time within ten days before a release date calculated
30 under this section; and

1 (8) An offender may leave a correctional facility prior to
2 completion of his sentence if the sentence has been reduced as provided
3 in RCW 9.94A.160."

4 "NEW SECTION. **Sec. 3.** This act shall take effect July 1, 1993.
5 If specific funding for the purposes of this act, referencing this act
6 by bill number, is not provided by June 30, 1993, in the omnibus
7 appropriations act, this act shall be null and void."

8 **SHB 2388** - S COMM AMD
9 By Committee on Ways & Means

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11 On page 1, line 2 of the title, after "assault;" strike the
12 remainder of the title and insert "amending RCW 9.94A.150; reenacting
13 and amending RCW 9.94A.120; prescribing penalties; and providing an
14 effective date."