
HOUSE BILL 2327

State of Washington

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By Representatives Sterk, Mulliken, Chandler, Benson, Bush, Kessler, Costa, D. Sommers, Sheahan, Smith and Johnson

Read first time 01/12/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to making drunk driving a most serious offense;
2 reenacting and amending RCW 9.94A.030; and prescribing penalties.

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

4 **Sec. 1.** RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c
5 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each
6 reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Collect," or any derivative thereof, "collect and remit," or
10 "collect and deliver," when used with reference to the department of
11 corrections, means that the department is responsible for monitoring
12 and enforcing the offender's sentence with regard to the legal
13 financial obligation, receiving payment thereof from the offender, and,
14 consistent with current law, delivering daily the entire payment to the
15 superior court clerk without depositing it in a departmental account.

16 (2) "Commission" means the sentencing guidelines commission.

17 (3) "Community corrections officer" means an employee of the
18 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

3 (4) "Community custody" means that portion of an inmate's sentence
4 of confinement in lieu of earned early release time or imposed pursuant
5 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
6 controls placed on the inmate's movement and activities by the
7 department of corrections.

8 (5) "Community placement" means that period during which the
9 offender is subject to the conditions of community custody and/or
10 postrelease supervision, which begins either upon completion of the
11 term of confinement (postrelease supervision) or at such time as the
12 offender is transferred to community custody in lieu of earned early
13 release. Community placement may consist of entirely community
14 custody, entirely postrelease supervision, or a combination of the two.

15 (6) "Community service" means compulsory service, without
16 compensation, performed for the benefit of the community by the
17 offender.

18 (7) "Community supervision" means a period of time during which a
19 convicted offender is subject to crime-related prohibitions and other
20 sentence conditions imposed by a court pursuant to this chapter or RCW
21 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
22 may include crime-related prohibitions and other conditions imposed
23 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
24 for out-of-state supervision of parolees and probationers, RCW
25 9.95.270, community supervision is the functional equivalent of
26 probation and should be considered the same as probation by other
27 states.

28 (8) "Confinement" means total or partial confinement as defined in
29 this section.

30 (9) "Conviction" means an adjudication of guilt pursuant to Titles
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
32 acceptance of a plea of guilty.

33 (10) "Court-ordered legal financial obligation" means a sum of
34 money that is ordered by a superior court of the state of Washington
35 for legal financial obligations which may include restitution to the
36 victim, statutorily imposed crime victims' compensation fees as
37 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
38 drug funds, court-appointed attorneys' fees, and costs of defense,
39 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for
2 vehicular assault while under the influence of intoxicating liquor or
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
5 legal financial obligations may also include payment to a public agency
6 of the expense of an emergency response to the incident resulting in
7 the conviction, subject to the provisions in RCW 38.52.430.

8 (11) "Crime-related prohibition" means an order of a court
9 prohibiting conduct that directly relates to the circumstances of the
10 crime for which the offender has been convicted, and shall not be
11 construed to mean orders directing an offender affirmatively to
12 participate in rehabilitative programs or to otherwise perform
13 affirmative conduct. However, affirmative acts necessary to monitor
14 compliance with the order of a court may be required by the department.

15 (12) "Criminal history" means the list of a defendant's prior
16 convictions and juvenile adjudications, whether in this state, in
17 federal court, or elsewhere. The history shall include, where known,
18 for each conviction (a) whether the defendant has been placed on
19 probation and the length and terms thereof; and (b) whether the
20 defendant has been incarcerated and the length of incarceration.

21 (13) "Day fine" means a fine imposed by the sentencing judge that
22 equals the difference between the offender's net daily income and the
23 reasonable obligations that the offender has for the support of the
24 offender and any dependents.

25 (14) "Day reporting" means a program of enhanced supervision
26 designed to monitor the defendant's daily activities and compliance
27 with sentence conditions, and in which the defendant is required to
28 report daily to a specific location designated by the department or the
29 sentencing judge.

30 (15) "Department" means the department of corrections.

31 (16) "Determinate sentence" means a sentence that states with
32 exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community supervision, the
34 number of actual hours or days of community service work, or dollars or
35 terms of a legal financial obligation. The fact that an offender
36 through "earned early release" can reduce the actual period of
37 confinement shall not affect the classification of the sentence as a
38 determinate sentence.

1 (17) "Disposable earnings" means that part of the earnings of an
2 individual remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (18) "Drug offense" means:

14 (a) Any felony violation of chapter 69.50 RCW except possession of
15 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
16 controlled substance (RCW 69.50.403);

17 (b) Any offense defined as a felony under federal law that relates
18 to the possession, manufacture, distribution, or transportation of a
19 controlled substance; or

20 (c) Any out-of-state conviction for an offense that under the laws
21 of this state would be a felony classified as a drug offense under (a)
22 of this subsection.

23 (19) "Escape" means:

24 (a) Escape in the first degree (RCW 9A.76.110), escape in the
25 second degree (RCW 9A.76.120), willful failure to return from furlough
26 (RCW 72.66.060), willful failure to return from work release (RCW
27 72.65.070), or willful failure to be available for supervision by the
28 department while in community custody (RCW 72.09.310); or

29 (b) Any federal or out-of-state conviction for an offense that
30 under the laws of this state would be a felony classified as an escape
31 under (a) of this subsection.

32 (20) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
34 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
35 and-run injury-accident (RCW 46.52.020(4)); or

36 (b) Any federal or out-of-state conviction for an offense that
37 under the laws of this state would be a felony classified as a felony
38 traffic offense under (a) of this subsection.

1 (21) "Fines" means the requirement that the offender pay a specific
2 sum of money over a specific period of time to the court.

3 (22) "First-time offender" means any person who is convicted of a
4 felony (a) not classified as a violent offense or a sex offense under
5 this chapter, or (b) that is not the manufacture, delivery, or
6 possession with intent to manufacture or deliver a controlled substance
7 classified in schedule I or II that is a narcotic drug, nor the
8 manufacture, delivery, or possession with intent to deliver
9 methamphetamine, its salts, isomers, and salts of its isomers as
10 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
11 controlled substance or counterfeit substance classified in schedule I,
12 RCW 69.50.204, except leaves and flowering tops of marihuana, who
13 previously has never been convicted of a felony in this state, federal
14 court, or another state, and who has never participated in a program of
15 deferred prosecution for a felony offense.

16 (23) "Most serious offense" means any of the following gross
17 misdemeanors or felonies or a felony attempt to commit any of the
18 following felonies, as now existing or hereafter amended:

19 (a) Any felony defined under any law as a class A felony or
20 criminal solicitation of or criminal conspiracy to commit a class A
21 felony;

22 (b) Assault in the second degree;

23 (c) Assault of a child in the second degree;

24 (d) Child molestation in the second degree;

25 (e) Controlled substance homicide;

26 (f) Extortion in the first degree;

27 (g) Incest when committed against a child under age fourteen;

28 (h) Indecent liberties;

29 (i) Kidnapping in the second degree;

30 (j) Leading organized crime;

31 (k) Manslaughter in the first degree;

32 (l) Manslaughter in the second degree;

33 (m) Promoting prostitution in the first degree;

34 (n) Rape in the third degree;

35 (o) Robbery in the second degree;

36 (p) Sexual exploitation;

37 (q) Vehicular assault;

38 (r) Vehicular homicide, when proximately caused by the driving of
39 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation of
2 any vehicle in a reckless manner;

3 (s) Any other class B felony offense with a finding of sexual
4 motivation, as "sexual motivation" is defined under this section;

5 (t) Any other felony with a deadly weapon verdict under RCW
6 9.94A.125;

7 (u) Any felony offense in effect at any time prior to December 2,
8 1993, that is comparable to a most serious offense under this
9 subsection, or any federal or out-of-state conviction for an offense
10 that under the laws of this state would be a felony classified as a
11 most serious offense under this subsection;

12 (v)(i) A prior conviction for indecent liberties under RCW
13 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
14 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
15 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
16 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

17 (ii) A prior conviction for indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
19 if: (A) The crime was committed against a child under the age of
20 fourteen; or (B) the relationship between the victim and perpetrator is
21 included in the definition of indecent liberties under RCW
22 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
23 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
24 through July 27, 1997;

25 (w) A third or subsequent commission by the same offender of either
26 driving or being in physical control of a motor vehicle while under the
27 influence of intoxicating liquor or any drug.

28 (24) "Nonviolent offense" means an offense which is not a violent
29 offense.

30 (25) "Offender" means a person who has committed a felony
31 established by state law and is eighteen years of age or older or is
32 less than eighteen years of age but whose case is under superior court
33 jurisdiction under RCW 13.04.030 or has been transferred by the
34 appropriate juvenile court to a criminal court pursuant to RCW
35 13.40.110. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.

37 (26) "Partial confinement" means confinement for no more than one
38 year in a facility or institution operated or utilized under contract
39 by the state or any other unit of government, or, if home detention or

1 work crew has been ordered by the court, in an approved residence, for
2 a substantial portion of each day with the balance of the day spent in
3 the community. Partial confinement includes work release, home
4 detention, work crew, and a combination of work crew and home detention
5 as defined in this section.

6 (27) "Persistent offender" is an offender who:

7 (a)(i) Has been convicted in this state of any felony considered a
8 most serious offense; and

9 (ii) Has, before the commission of the offense under (a) of this
10 subsection, been convicted as an offender on at least two separate
11 occasions, whether in this state or elsewhere, of felonies that under
12 the laws of this state would be considered most serious offenses and
13 would be included in the offender score under RCW 9.94A.360; provided
14 that of the two or more previous convictions, at least one conviction
15 must have occurred before the commission of any of the other most
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
18 of a child in the first degree, child molestation in the first degree,
19 rape in the second degree, rape of a child in the second degree, or
20 indecent liberties by forcible compulsion; (B) murder in the first
21 degree, murder in the second degree, homicide by abuse, kidnapping in
22 the first degree, kidnapping in the second degree, assault in the first
23 degree, assault in the second degree, assault of a child in the first
24 degree, or burglary in the first degree, with a finding of sexual
25 motivation; or (C) an attempt to commit any crime listed in this
26 subsection (27)(b)(i); and

27 (ii) Has, before the commission of the offense under (b)(i) of this
28 subsection, been convicted as an offender on at least one occasion,
29 whether in this state or elsewhere, of an offense listed in (b)(i) of
30 this subsection. A conviction for rape of a child in the first degree
31 constitutes a conviction under subsection (27)(b)(i) only when the
32 offender was sixteen years of age or older when the offender committed
33 the offense. A conviction for rape of a child in the second degree
34 constitutes a conviction under subsection (27)(b)(i) only when the
35 offender was eighteen years of age or older when the offender committed
36 the offense.

37 (28) "Postrelease supervision" is that portion of an offender's
38 community placement that is not community custody.

1 (29) "Restitution" means the requirement that the offender pay a
2 specific sum of money over a specific period of time to the court as
3 payment of damages. The sum may include both public and private costs.
4 The imposition of a restitution order does not preclude civil redress.

5 (30) "Serious traffic offense" means:

6 (a) Driving while under the influence of intoxicating liquor or any
7 drug (RCW 46.61.502), actual physical control while under the influence
8 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
9 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
10 or

11 (b) Any federal, out-of-state, county, or municipal conviction for
12 an offense that under the laws of this state would be classified as a
13 serious traffic offense under (a) of this subsection.

14 (31) "Serious violent offense" is a subcategory of violent offense
15 and means:

16 (a) Murder in the first degree, homicide by abuse, murder in the
17 second degree, manslaughter in the first degree, assault in the first
18 degree, kidnapping in the first degree, or rape in the first degree,
19 assault of a child in the first degree, or an attempt, criminal
20 solicitation, or criminal conspiracy to commit one of these felonies;
21 or

22 (b) Any federal or out-of-state conviction for an offense that
23 under the laws of this state would be a felony classified as a serious
24 violent offense under (a) of this subsection.

25 (32) "Sentence range" means the sentencing court's discretionary
26 range in imposing a nonappealable sentence.

27 (33) "Sex offense" means:

28 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
29 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
30 criminal attempt, criminal solicitation, or criminal conspiracy to
31 commit such crimes;

32 (b) A felony with a finding of sexual motivation under RCW
33 9.94A.127 or 13.40.135; or

34 (c) Any federal or out-of-state conviction for an offense that
35 under the laws of this state would be a felony classified as a sex
36 offense under (a) of this subsection.

37 (34) "Sexual motivation" means that one of the purposes for which
38 the defendant committed the crime was for the purpose of his or her
39 sexual gratification.

1 (35) "Total confinement" means confinement inside the physical
2 boundaries of a facility or institution operated or utilized under
3 contract by the state or any other unit of government for twenty-four
4 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 (36) "Transition training" means written and verbal instructions
6 and assistance provided by the department to the offender during the
7 two weeks prior to the offender's successful completion of the work
8 ethic camp program. The transition training shall include instructions
9 in the offender's requirements and obligations during the offender's
10 period of community custody.

11 (37) "Victim" means any person who has sustained emotional,
12 psychological, physical, or financial injury to person or property as
13 a direct result of the crime charged.

14 (38) "Violent offense" means:

15 (a) Any of the following felonies, as now existing or hereafter
16 amended: Any felony defined under any law as a class A felony or an
17 attempt to commit a class A felony, criminal solicitation of or
18 criminal conspiracy to commit a class A felony, manslaughter in the
19 first degree, manslaughter in the second degree, indecent liberties if
20 committed by forcible compulsion, kidnapping in the second degree,
21 arson in the second degree, assault in the second degree, assault of a
22 child in the second degree, extortion in the first degree, robbery in
23 the second degree, drive-by shooting, vehicular assault, and vehicular
24 homicide, when proximately caused by the driving of any vehicle by any
25 person while under the influence of intoxicating liquor or any drug as
26 defined by RCW 46.61.502, or by the operation of any vehicle in a
27 reckless manner;

28 (b) Any conviction for a felony offense in effect at any time prior
29 to July 1, 1976, that is comparable to a felony classified as a violent
30 offense in (a) of this subsection; and

31 (c) Any federal or out-of-state conviction for an offense that
32 under the laws of this state would be a felony classified as a violent
33 offense under (a) or (b) of this subsection.

34 (39) "Work crew" means a program of partial confinement consisting
35 of civic improvement tasks for the benefit of the community of not less
36 than thirty-five hours per week that complies with RCW 9.94A.135. The
37 civic improvement tasks shall have minimal negative impact on existing
38 private industries or the labor force in the county where the service
39 or labor is performed. The civic improvement tasks shall not affect

1 employment opportunities for people with developmental disabilities
2 contracted through sheltered workshops as defined in RCW 82.04.385.
3 Only those offenders sentenced to a facility operated or utilized under
4 contract by a county or the state are eligible to participate on a work
5 crew. Offenders sentenced for a sex offense as defined in subsection
6 (33) of this section are not eligible for the work crew program.

7 (40) "Work ethic camp" means an alternative incarceration program
8 designed to reduce recidivism and lower the cost of corrections by
9 requiring offenders to complete a comprehensive array of real-world job
10 and vocational experiences, character-building work ethics training,
11 life management skills development, substance abuse rehabilitation,
12 counseling, literacy training, and basic adult education.

13 (41) "Work release" means a program of partial confinement
14 available to offenders who are employed or engaged as a student in a
15 regular course of study at school. Participation in work release shall
16 be conditioned upon the offender attending work or school at regularly
17 defined hours and abiding by the rules of the work release facility.

18 (42) "Home detention" means a program of partial confinement
19 available to offenders wherein the offender is confined in a private
20 residence subject to electronic surveillance.

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