
HOUSE BILL 1757

State of Washington

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By Representatives Ferguson, Van Luven, Heavey, D. Sommers, Dorn, Miller, R. Meyers, Paris, Hargrove, Silver, Prentice, Moyer, Betrozoff, Winsley, Horn, Chandler, Tate, Vance, Nealey, Edmondson, Fuhrman, Broback, Wynne, Ballard, Hochstatter, Jacobsen, Wineberry, Roland, Bowman, Brough and Forner.

Read first time February 7, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to driving under the influence of intoxicating
2 liquor or any drug; and amending RCW 2.56.110, 3.66.070, 9.94A.030,
3 43.59.140, 46.61.990, and 70.96A.120.

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

5 **Sec. 1.** RCW 2.56.110 and 1987 c 202 s 109 are each amended to read
6 as follows:

7 The administrator for the courts may assign one or more district
8 judges from other judicial districts to serve as visiting district
9 judges in a judicial district which the administrator determines is
10 experiencing an increase in case filings as the result of enhanced
11 enforcement of laws related to driving, or being in physical control
12 of, a motor vehicle while (~~intoxicated~~) under the influence of
13 intoxicating liquor or any drug. The prosecuting, city, or town
14 attorney of the county, city, or town in which a judicial district
15 lies, or the presiding judge of the judicial district, may request the

1 administrator for the courts to designate the district as an enhanced
2 enforcement district and to make assignments under this section. An
3 assignment shall be for a specified period of time not to exceed thirty
4 days. A visiting district judge has the same powers as a district
5 judge of the district to which he or she is assigned. A visiting
6 district judge shall be reimbursed for expenses under RCW 2.56.070.

7 **Sec. 2.** RCW 3.66.070 and 1984 c 258 s 47 are each amended to read
8 as follows:

9 All criminal actions shall be brought in the district where the
10 alleged violation occurred: PROVIDED, That (1) the prosecuting
11 attorney may file felony cases in the district in which the county seat
12 is located, (2) with the consent of the defendant criminal actions
13 other than those arising out of violations of city ordinances may be
14 brought in or transferred to the district in which the county seat is
15 located, and (3) if the alleged violation relates to driving, or being
16 in actual physical control of, a motor vehicle while (~~intoxicated~~)
17 under the influence of intoxicating liquor or any drug and the alleged
18 violation occurred within a judicial district which has been designated
19 an enhanced enforcement district under RCW 2.56.110, the charges may be
20 filed in that district or in a district within the same county which is
21 adjacent to the district in which the alleged violation occurred.

22 **Sec. 3.** RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read
23 as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Collect," or any derivative thereof, "collect and remit," or
27 "collect and deliver," when used with reference to the department of
28 corrections, means that the department is responsible for monitoring

1 and enforcing the offender's sentence with regard to the legal
2 financial obligation, receiving payment thereof from the offender, and,
3 consistent with current law, delivering daily the entire payment to the
4 superior court clerk without depositing it in a departmental account.

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

6 (3) "Community corrections officer" means an employee of the
7 department who is responsible for carrying out specific duties in
8 supervision of sentenced offenders and monitoring of sentence
9 conditions.

10 (4) "Community custody" means that portion of an inmate's sentence
11 of confinement in lieu of earned early release time served in the
12 community subject to controls placed on the inmate's movement and
13 activities by the department of corrections.

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

21 (6) "Community service" means compulsory service, without
22 compensation, performed for the benefit of the community by the
23 offender.

24 (7) "Community supervision" means a period of time during which a
25 convicted offender is subject to crime-related prohibitions and other
26 sentence conditions imposed pursuant to this chapter by a court. For
27 first-time offenders, the supervision may include crime-related
28 prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5).
29 For purposes of the interstate compact for out-of-state supervision of
30 parolees and probationers, RCW 9.95.270, community supervision is the

1 functional equivalent of probation and should be considered the same as
2 probation by other states.

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

5 (9) "Conviction" means an adjudication of guilt pursuant to Titles
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
7 acceptance of a plea of guilty.

8 (10) "Court-ordered legal financial obligation" means a sum of
9 money that is ordered by a superior court of the state of Washington
10 for legal financial obligations which may include restitution to the
11 victim, statutorily imposed crime victims' compensation fees as
12 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
13 drug funds, court-appointed attorneys' fees, and costs of defense,
14 fines, and any other financial obligation that is assessed to the
15 offender as a result of a felony conviction.

16 (11) "Crime-related prohibition" means an order of a court
17 prohibiting conduct that directly relates to the circumstances of the
18 crime for which the offender has been convicted, and shall not be
19 construed to mean orders directing an offender affirmatively to
20 participate in rehabilitative programs or to otherwise perform
21 affirmative conduct.

22 (12)(a) "Criminal history" means the list of a defendant's prior
23 convictions, whether in this state, in federal court, or elsewhere.
24 The history shall include, where known, for each conviction (i) whether
25 the defendant has been placed on probation and the length and terms
26 thereof; and (ii) whether the defendant has been incarcerated and the
27 length of incarceration.

28 (b) "Criminal history" shall always include juvenile convictions
29 for sex offenses and shall also include a defendant's other prior
30 convictions in juvenile court if: (i) The conviction was for an

1 offense which is a felony or a serious traffic offense and is criminal
2 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
3 fifteen years of age or older at the time the offense was committed;
4 and (iii) with respect to prior juvenile class B and C felonies or
5 serious traffic offenses, the defendant was less than twenty-three
6 years of age at the time the offense for which he or she is being
7 sentenced was committed.

8 (13) "Department" means the department of corrections.

9 (14) "Determinate sentence" means a sentence that states with
10 exactitude the number of actual years, months, or days of total
11 confinement, of partial confinement, of community supervision, the
12 number of actual hours or days of community service work, or dollars or
13 terms of a legal financial obligation. The fact that an offender
14 through "earned early release" can reduce the actual period of
15 confinement shall not affect the classification of the sentence as a
16 determinate sentence.

17 (15) "Disposable earnings" means that part of the earnings of an
18 individual remaining after the deduction from those earnings of any
19 amount required by law to be withheld. For the purposes of this
20 definition, "earnings" means compensation paid or payable for personal
21 services, whether denominated as wages, salary, commission, bonuses, or
22 otherwise, and, notwithstanding any other provision of law making the
23 payments exempt from garnishment, attachment, or other process to
24 satisfy a court-ordered legal financial obligation, specifically
25 includes periodic payments pursuant to pension or retirement programs,
26 or insurance policies of any type, but does not include payments made
27 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
28 or Title 74 RCW.

29 (16) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

10 (17) "Escape" means:

11 (a) Escape in the first degree (RCW 9A.76.110), escape in the
12 second degree (RCW 9A.76.120), willful failure to return from furlough
13 (RCW 72.66.060), willful failure to return from work release (RCW
14 72.65.070), or willful failure to comply with any limitations on the
15 inmate's movements while in community custody (RCW 72.09.310); or

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

19 (18) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
21 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
22 and-run injury-accident (RCW 46.52.020(4)); or

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

26 (19) "Fines" means the requirement that the offender pay a specific
27 sum of money over a specific period of time to the court.

28 (20)(a) "First-time offender" means any person who is convicted of
29 a felony (i) not classified as a violent offense or a sex offense under
30 this chapter, or (ii) that is not the manufacture, delivery, or

1 possession with intent to manufacture or deliver a controlled substance
2 classified in schedule I or II that is a narcotic drug, and except as
3 provided in (b) of this subsection, who previously has never been
4 convicted of a felony in this state, federal court, or another state,
5 and who has never participated in a program of deferred prosecution for
6 a felony offense.

7 (b) For purposes of (a) of this subsection, a juvenile adjudication
8 for an offense committed before the age of fifteen years is not a
9 previous felony conviction except for adjudications of sex offenses.

10 (21) "Nonviolent offense" means an offense which is not a violent
11 offense.

12 (22) "Offender" means a person who has committed a felony
13 established by state law and is eighteen years of age or older or is
14 less than eighteen years of age but whose case has been transferred by
15 the appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 (23) "Partial confinement" means confinement for no more than one
19 year in a facility or institution operated or utilized under contract
20 by the state or any other unit of government, or, if home detention has
21 been ordered by the court, in the residence of either the defendant or
22 a member of the defendant's immediate family, for a substantial portion
23 of each day with the balance of the day spent in the community.
24 Partial confinement includes work release and home detention as defined
25 in this section.

26 (24) "Postrelease supervision" is that portion of an offender's
27 community placement that is not community custody.

28 (25) "Restitution" means the requirement that the offender pay a
29 specific sum of money over a specific period of time to the court as

1 payment of damages. The sum may include both public and private costs.
2 The imposition of a restitution order does not preclude civil redress.

3 (26) "Serious traffic offense" means:

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

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

12 (27) "Serious violent offense" is a subcategory of violent offense
13 and means:

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

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

22 (28) "Sentence range" means the sentencing court's discretionary
23 range in imposing a nonappealable sentence.

24 (29) "Sex offense" means:

25 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
26 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
27 attempt, criminal solicitation, or criminal conspiracy to commit such
28 crimes;

29 (b) A felony with a finding of sexual motivation under RCW
30 9.94A.127; or

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

4 (30) "Sexual motivation" means that one of the purposes for which
5 the defendant committed the crime was for the purpose of his or her
6 sexual gratification.

7 (31) "Total confinement" means confinement inside the physical
8 boundaries of a facility or institution operated or utilized under
9 contract by the state or any other unit of government for twenty-four
10 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (32) "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 (33) "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, extortion in
22 the first degree, robbery in the second degree, vehicular assault, and
23 vehicular homicide, when proximately caused by the driving of any
24 vehicle by any person while under the influence of intoxicating liquor
25 or any drug as defined by RCW 46.61.502, or by the operation of any
26 vehicle in a reckless manner;

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

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

4 (34) "Work release" means a program of partial confinement
5 available to offenders who are employed or engaged as a student in a
6 regular course of study at school. Participation in work release shall
7 be conditioned upon the offender attending work or school at regularly
8 defined hours and abiding by the rules of the work release facility.

9 (35) "Home detention" means a program of partial confinement
10 available to offenders wherein the offender is confined in a private
11 residence subject to electronic surveillance. Home detention may not
12 be imposed for offenders convicted of a violent offense, any sex
13 offense, any drug offense, reckless burning in the first or second
14 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
15 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
16 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
17 detention may be imposed for offenders convicted of possession of a
18 controlled substance (RCW 69.50.401(d)) or forged prescription for a
19 controlled substance (RCW 69.50.403) if the offender fulfills the
20 participation conditions set forth in this subsection and is monitored
21 for drug use by treatment alternatives to street crime (TASC) or a
22 comparable court or agency-referred program. (a) Home detention may be
23 imposed for offenders convicted of burglary in the second degree as
24 defined in RCW 9A.52.030 or residential burglary conditioned upon the
25 offender: ~~((a))~~ (i) Successfully completing twenty-one days in a
26 work release program, ~~((b))~~ (ii) having no convictions for burglary
27 in the second degree or residential burglary during the preceding two
28 years and not more than two prior convictions for burglary or
29 residential burglary, ~~((c))~~ (iii) having no convictions for a violent
30 felony offense during the preceding two years and not more than two

1 prior convictions for a violent felony offense, (~~(d)~~) (iv) having no
2 prior charges of escape, and (~~(e)~~) (v) fulfilling the other
3 conditions of the home detention program. (b) Participation in a home
4 detention program shall be conditioned upon: (~~(a)~~) (i) The offender
5 obtaining or maintaining current employment or attending a regular
6 course of school study at regularly defined hours, or the offender
7 performing parental duties to offspring or minors normally in the
8 custody of the offender, (~~(b)~~) (ii) abiding by the rules of the home
9 detention program, and (~~(e)~~) (iii) compliance with court-ordered
10 legal financial obligations. The home detention program may also be
11 made available to offenders whose charges and convictions do not
12 otherwise disqualify them if medical or health-related conditions,
13 concerns or treatment would be better addressed under the home
14 detention program, or where the health and welfare of the offender,
15 other inmates, or staff would be jeopardized by the offender's
16 incarceration. Participation in the home detention program for medical
17 or health-related reasons is conditioned on the offender abiding by the
18 rules of the home detention program and complying with court-ordered
19 restitution.

20 **Sec. 4.** RCW 43.59.140 and 1983 c 165 s 42 are each amended to read
21 as follows:

22 The Washington traffic safety commission shall produce and
23 disseminate through all possible media, informational and educational
24 materials explaining the extent of the problems caused by drinking
25 drivers, the need for public involvement in their solution, and the
26 penalties of existing and new laws against driving while
27 (~~intoxicated~~) under the influence of intoxicating liquor or any drug.

1 **Sec. 5.** RCW 46.61.990 and 1965 ex.s. c 155 s 92 are each amended
2 to read as follows:

3 Sections 1 through 52 and 54 through 86 of this amendatory act are
4 added to chapter 12, Laws of 1961 and shall constitute a new chapter in
5 Title 46 of the Revised Code of Washington and sections 54, 55 and 63
6 as herein amended and RCW 46.48.012, 46.48.014, 46.48.015, 46.48.016,
7 46.48.023, 46.48.025, 46.48.026, 46.48.041, 46.48.046, 46.48.050,
8 46.48.060, 46.48.080, 46.48.110, 46.48.120, 46.48.150, 46.48.160,
9 46.48.340, 46.56.030, 46.56.070, 46.56.100, 46.56.130, 46.56.135,
10 46.56.190, 46.56.200, 46.56.210, 46.56.220, 46.56.230, 46.56.240,
11 46.60.260, 46.60.270, 46.60.330, 46.60.340 shall be recodified as and
12 be a part of said chapter. The sections of the new chapter shall be
13 organized under the following captions: "OBEDIENCE TO AND EFFECT OF
14 TRAFFIC LAWS", "TRAFFIC SIGNS, SIGNALS AND MARKINGS", "DRIVING ON RIGHT
15 SIDE OF ROADWAY--OVERTAKING AND PASSING--USE OF ROADWAY", "RIGHT OF
16 WAY", "PEDESTRIANS' RIGHTS AND DUTIES", "TURNING AND STARTING AND
17 SIGNALS ON STOPPING AND TURNING", "SPECIAL STOPS REQUIRED", "SPEED
18 RESTRICTIONS", "RECKLESS DRIVING, DRIVING WHILE ((~~INTOXICATED~~)) UNDER
19 THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG, AND NEGLIGENT
20 HOMICIDE BY VEHICLE", "STOPPING, STANDING AND PARKING", "MISCELLANEOUS
21 RULES", and "OPERATION OF BICYCLES AND PLAY VEHICLES". Such captions
22 shall not constitute any part of the law.

23 **Sec. 6.** RCW 70.96A.120 and 1990 c 151 s 8 are each amended to read
24 as follows:

25 (1) An intoxicated person may come voluntarily to an approved
26 treatment program for treatment. A person who appears to be
27 intoxicated in a public place and to be in need of help, if he or she
28 consents to the proffered help, may be assisted to his or her home, an
29 approved treatment program or other health facility.

1 (2) Except for a person who may be apprehended for possible
2 violation of laws not relating to alcoholism, drug addiction, or
3 intoxication and except for a person who may be apprehended for
4 possible violation of laws relating to driving or being in physical
5 control of a vehicle while (~~intoxicated~~) under the influence of
6 intoxicating liquor or any drug and except for a person who may wish to
7 avail himself or herself of the provisions of RCW 46.20.308, a person
8 who appears to be incapacitated or gravely disabled by alcohol or other
9 drugs and who is in a public place or who has threatened, attempted, or
10 inflicted physical harm on himself, herself, or another, shall be taken
11 into protective custody by a peace officer or staff designated by the
12 county and as soon as practicable, but in no event beyond eight hours
13 brought to an approved treatment program for treatment. If no approved
14 treatment program is readily available he or she shall be taken to an
15 emergency medical service customarily used for incapacitated persons.
16 The peace officer or staff designated by the county, in detaining the
17 person and in taking him or her to an approved treatment program, is
18 taking him or her into protective custody and shall make every
19 reasonable effort to protect his or her health and safety. In taking
20 the person into protective custody, the detaining peace officer or
21 staff designated by the county may take reasonable steps including
22 reasonable force if necessary to protect himself or herself or effect
23 the custody. A taking into protective custody under this section is
24 not an arrest. No entry or other record shall be made to indicate that
25 the person has been arrested or charged with a crime.

26 (3) A person who comes voluntarily or is brought to an approved
27 treatment program shall be examined by a qualified person. He or she
28 may then be admitted as a patient or referred to another health
29 facility, which provides emergency medical treatment, where it appears

1 that such treatment may be necessary. The referring approved treatment
2 program shall arrange for his or her transportation.

3 (4) A person who is found to be incapacitated or gravely disabled
4 by alcohol or other drugs at the time of his or her admission or to
5 have become incapacitated or gravely disabled at any time after his or
6 her admission, may not be detained at the program for more than
7 seventy-two hours after admission as a patient, unless a petition is
8 filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED,
9 That the treatment personnel at an approved treatment program are
10 authorized to use such reasonable physical restraint as may be
11 necessary to retain an incapacitated or gravely disabled person for up
12 to seventy-two hours from the time of admission. The seventy-two hour
13 periods specified in this section shall be computed by excluding
14 Saturdays, Sundays, and holidays. A person may consent to remain in
15 the program as long as the physician in charge believes appropriate.

16 (5) A person who is not admitted to an approved treatment program,
17 is not referred to another health facility, and has no funds, may be
18 taken to his or her home, if any. If he or she has no home, the
19 approved treatment program shall provide him or her with information
20 and assistance to access available community shelter resources.

21 (6) If a patient is admitted to an approved treatment program, his
22 or her family or next of kin shall be notified as promptly as possible
23 by the treatment program. If an adult patient who is not incapacitated
24 requests that there be no notification, his or her request shall be
25 respected.

26 (7) The peace officer, staff designated by the county, or treatment
27 facility personnel, who act in compliance with this chapter and are
28 performing in the course of their official duty are not criminally or
29 civilly liable therefor.

1 (8) If the person in charge of the approved treatment program
2 determines that appropriate treatment is available, the patient shall
3 be encouraged to agree to further diagnosis and appropriate voluntary
4 treatment.