

---

HOUSE BILL 2388

---

State of Washington

52nd Legislature

1992 Regular Session

By Representatives H. Myers, Padden, Belcher, Appelwick, Riley, Paris, Ludwig, Hargrove, Scott, Vance, Bowman, Carlson, Ferguson, Orr, Brough, May, Broback and Hochstatter

Read first time 01/16/92. Referred to Committee on Judiciary.

1 AN ACT Relating to alcohol and drug evaluation and treatment for  
2 persons convicted of vehicular homicide or vehicular assault; amending  
3 RCW 9.94A.150; reenacting and amending RCW 9.94A.120; prescribing  
4 penalties; and providing an effective date.

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

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

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

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

13 (2) The court may impose a sentence outside the standard sentence  
14 range for that offense if it finds, considering the purpose of this

1 chapter, that there are substantial and compelling reasons justifying  
2 an exceptional sentence.

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

7 (4) An offender convicted of the crime of murder in the first  
8 degree shall be sentenced to a term of total confinement not less than  
9 twenty years. An offender convicted of the crime of assault in the  
10 first degree where the offender used force or means likely to result in  
11 death or intended to kill the victim shall be sentenced to a term of  
12 total confinement not less than five years. An offender convicted of  
13 the crime of rape in the first degree shall be sentenced to a term of  
14 total confinement not less than five years, and shall not be eligible  
15 for furlough, work release or other authorized leave of absence from  
16 the correctional facility during such minimum five-year term except for  
17 the purpose of commitment to an inpatient treatment facility. The  
18 foregoing minimum terms of total confinement are mandatory and shall  
19 not be varied or modified as provided in subsection (2) of this  
20 section.

21 (5) In sentencing a first-time offender the court may waive the  
22 imposition of a sentence within the sentence range and impose a  
23 sentence which may include up to ninety days of confinement in a  
24 facility operated or utilized under contract by the county and a  
25 requirement that the offender refrain from committing new offenses.  
26 The sentence may also include up to two years of community supervision,  
27 which, in addition to crime-related prohibitions, may include  
28 requirements that the offender perform any one or more of the  
29 following:

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

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

4 (c) Pursue a prescribed, secular course of study or vocational  
5 training;

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

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

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

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

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

28 The report of the examination shall include at a minimum the  
29 following: The defendant's version of the facts and the official  
30 version of the facts, the defendant's offense history, an assessment of

1 problems in addition to alleged deviant behaviors, the offender's  
2 social and employment situation, and other evaluation measures used.  
3 The report shall set forth the sources of the evaluator's information.

4 The examiner shall assess and report regarding the defendant's  
5 amenability to treatment and relative risk to the community. A  
6 proposed treatment plan shall be provided and shall include, at a  
7 minimum:

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

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

11 (C) Monitoring plans, including any requirements regarding living  
12 conditions, lifestyle requirements, and monitoring by family members  
13 and others;

14 (D) Anticipated length of treatment; and

15 (E) Recommended crime-related prohibitions.

16 The court on its own motion may order, or on a motion by the state  
17 shall order, a second examination regarding the offender's amenability  
18 to treatment. The evaluator shall be selected by the party making the  
19 motion. The defendant shall pay the cost of any second examination  
20 ordered unless the court finds the defendant to be indigent in which  
21 case the state shall pay the cost.

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

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

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

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

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

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

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

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

1 (iii) The sex offender therapist shall submit quarterly reports on  
2 the defendant's progress in treatment to the court and the parties.  
3 The report shall reference the treatment plan and include at a minimum  
4 the following: Dates of attendance, defendant's compliance with  
5 requirements, treatment activities, the defendant's relative progress  
6 in treatment, and any other material as specified by the court at  
7 sentencing.

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

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

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

5 For purposes of this subsection, "victim" means any person who has  
6 sustained emotional, psychological, physical, or financial injury to  
7 person or property as a result of the crime charged. "Victim" also  
8 means a parent or guardian of a victim who is a minor child unless the  
9 parent or guardian is the perpetrator of the offense.

10 (b) When an offender is convicted of any felony sex offense  
11 committed before July 1, 1987, and is sentenced to a term of  
12 confinement of more than one year but less than six years, the  
13 sentencing court may, on its own motion or on the motion of the  
14 offender or the state, order the offender committed for up to thirty  
15 days to the custody of the secretary of social and health services for  
16 evaluation and report to the court on the offender's amenability to  
17 treatment at these facilities. If the secretary of social and health  
18 services cannot begin the evaluation within thirty days of the court's  
19 order of commitment, the offender shall be transferred to the state for  
20 confinement pending an opportunity to be evaluated at the appropriate  
21 facility. The court shall review the reports and may order that the  
22 term of confinement imposed be served in the sexual offender treatment  
23 program at the location determined by the secretary of social and  
24 health services or the secretary's designee, only if the report  
25 indicates that the offender is amenable to the treatment program  
26 provided at these facilities. The offender shall be transferred to the  
27 state pending placement in the treatment program. Any offender who has  
28 escaped from the treatment program shall be referred back to the  
29 sentencing court.

1 If the offender does not comply with the conditions of the  
2 treatment program, the secretary of social and health services may  
3 refer the matter to the sentencing court. The sentencing court shall  
4 commit the offender to the department of corrections to serve the  
5 balance of the term of confinement.

6 If the offender successfully completes the treatment program before  
7 the expiration of the term of confinement, the court may convert the  
8 balance of confinement to community supervision and may place  
9 conditions on the offender including crime-related prohibitions and  
10 requirements that the offender perform any one or more of the  
11 following:

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

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

16 (iii) Report as directed to the court and a community corrections  
17 officer;

18 (iv) Undergo available outpatient treatment.

19 If the offender violates any of the terms of community supervision,  
20 the court may order the offender to serve out the balance of the  
21 community supervision term in confinement in the custody of the  
22 department of corrections.

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

25 (c) When an offender commits any felony sex offense on or after  
26 July 1, 1987, and is sentenced to a term of confinement of more than  
27 one year but less than six years, the sentencing court may, on its own  
28 motion or on the motion of the offender or the state, request the  
29 department of corrections to evaluate whether the offender is amenable

1 to treatment and the department may place the offender in a treatment  
2 program within a correctional facility operated by the department.

3 Except for an offender who has been convicted of a violation of RCW  
4 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
5 before the expiration of his term of confinement, the department of  
6 corrections may request the court to convert the balance of confinement  
7 to community supervision and to place conditions on the offender  
8 including crime-related prohibitions and requirements that the offender  
9 perform any one or more of the following:

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

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

14 (iii) Report as directed to the court and a community corrections  
15 officer;

16 (iv) Undergo available outpatient treatment.

17 If the offender violates any of the terms of his community  
18 supervision, the court may order the offender to serve out the balance  
19 of his community supervision term in confinement in the custody of the  
20 department of corrections.

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

25 (d) Offenders convicted and sentenced for a sex offense committed  
26 prior to July 1, 1987, may, subject to available funds, request an  
27 evaluation by the department of corrections to determine whether they  
28 are amenable to treatment. If the offender is determined to be  
29 amenable to treatment, the offender may request placement in a  
30 treatment program within a correctional facility operated by the

1 department. Placement in such treatment program is subject to  
2 available funds.

3 (8)(a) When a court sentences a person to a term of total  
4 confinement to the custody of the department of corrections for an  
5 offense categorized as a sex offense or a serious violent offense  
6 committed after July 1, 1988, but before July 1, 1990, assault in the  
7 second degree, any crime against a person where it is determined in  
8 accordance with RCW 9.94A.125 that the defendant or an accomplice was  
9 armed with a deadly weapon at the time of commission, or any felony  
10 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,  
11 1988, the court shall in addition to the other terms of the sentence,  
12 sentence the offender to a one-year term of community placement  
13 beginning either upon completion of the term of confinement or at such  
14 time as the offender is transferred to community custody in lieu of  
15 earned early release in accordance with RCW 9.94A.150 (1) and (2).  
16 When the court sentences an offender under this subsection to the  
17 statutory maximum period of confinement then the community placement  
18 portion of the sentence shall consist entirely of such community  
19 custody to which the offender may become eligible, in accordance with  
20 RCW 9.94A.150 (1) and (2). Any period of community custody actually  
21 served shall be credited against the community placement portion of the  
22 sentence.

23 (b) When a court sentences a person to a term of total confinement  
24 to the custody of the department of corrections for vehicular homicide  
25 or vehicular assault committed after June 30, 1992, or for an offense  
26 categorized as a sex offense or serious violent offense committed on or  
27 after July 1, 1990, the court shall in addition to other terms of the  
28 sentence, sentence the offender to community placement for two years or  
29 up to the period of earned early release awarded pursuant to RCW  
30 9.94A.150 (1) and (2), whichever is longer. The community placement

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

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

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

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

19 (iv) An offender in community custody shall not unlawfully possess  
20 controlled substances; ~~((and))~~

21 (v) The offender shall pay supervision fees as determined by the  
22 department of corrections; and

23 (vi) Any condition required by RCW 46.61.524.

24 (c) The court may also order any of the following special  
25 conditions:

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

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

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

3 (iv) The offender shall not consume alcohol;

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

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

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

12 (9) If the court imposes a sentence requiring confinement of thirty  
13 days or less, the court may, in its discretion, specify that the  
14 sentence be served on consecutive or intermittent days. A sentence  
15 requiring more than thirty days of confinement shall be served on  
16 consecutive days. Local jail administrators may schedule court-ordered  
17 intermittent sentences as space permits.

18 (10) If a sentence imposed includes payment of a legal financial  
19 obligation, the sentence shall specify the total amount of the legal  
20 financial obligation owed, and shall require the offender to pay a  
21 specified monthly sum toward that legal financial obligation.  
22 Restitution to victims shall be paid prior to any other payments of  
23 monetary obligations. Any legal financial obligation that is imposed  
24 by the court may be collected by the department, which shall deliver  
25 the amount paid to the county clerk for credit. The offender's  
26 compliance with payment of legal financial obligations shall be  
27 supervised by the department. All monetary payments ordered shall be  
28 paid no later than ten years after the last date of release from  
29 confinement pursuant to a felony conviction or the date the sentence  
30 was entered. Independent of the department, the party or entity to

1 whom the legal financial obligation is owed shall have the authority to  
2 utilize any other remedies available to the party or entity to collect  
3 the legal financial obligation. Nothing in this section makes the  
4 department, the state, or any of its employees, agents, or other  
5 persons acting on their behalf liable under any circumstances for the  
6 payment of these legal financial obligations. If an order includes  
7 restitution as one of the monetary assessments, the county clerk shall  
8 make disbursements to victims named in the order.

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

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

22 (13) All offenders sentenced to terms involving community  
23 supervision, community service, or community placement under the  
24 supervision of the department of corrections shall not own, use, or  
25 possess firearms or ammunition. Offenders who own, use, or are found  
26 to be in actual or constructive possession of firearms or ammunition  
27 shall be subject to the appropriate violation process and sanctions.  
28 "Constructive possession" as used in this subsection means the power  
29 and intent to control the firearm or ammunition. "Firearm" as used in

1 this subsection means a weapon or device from which a projectile may be  
2 fired by an explosive such as gunpowder.

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

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

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

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

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

1 (19) All court-ordered legal financial obligations collected by the  
2 department and remitted to the county clerk shall be credited and paid  
3 where restitution is ordered. Restitution shall be paid prior to any  
4 other payments of monetary obligations.

5 **Sec. 2.** RCW 9.94A.150 and 1990 c 3 s 202 are each amended to read  
6 as follows:

7 No person serving a sentence imposed pursuant to this chapter and  
8 committed to the custody of the department shall leave the confines of  
9 the correctional facility or be released prior to the expiration of the  
10 sentence except as follows:

11 (1) Except as otherwise provided for in subsection (2) of this  
12 section, the term of the sentence of an offender committed to a  
13 correctional facility operated by the department, may be reduced by  
14 earned early release time in accordance with procedures that shall be  
15 developed and promulgated by the correctional agency having  
16 jurisdiction in which the offender is confined. The earned early  
17 release time shall be for good behavior and good performance, as  
18 determined by the correctional agency having jurisdiction. The  
19 correctional agency shall not credit the offender with earned early  
20 release credits in advance of the offender actually earning the  
21 credits. Any program established pursuant to this section shall allow  
22 an offender to earn early release credits for presentence  
23 incarceration. If an offender is transferred from a county jail to the  
24 department of corrections, the county jail facility shall certify to  
25 the department the amount of time spent in custody at the facility and  
26 the amount of earned early release time. In the case of an offender  
27 convicted of a serious violent offense or a sex offense that is a class  
28 A felony committed on or after July 1, 1990, the aggregate earned early  
29 release time may not exceed fifteen percent of the sentence. In no

1 other case shall the aggregate earned early release time exceed one-  
2 third of the total sentence;

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

12 (3) An offender may leave a correctional facility pursuant to an  
13 authorized furlough or leave of absence. In addition, offenders may  
14 leave a correctional facility when in the custody of a corrections  
15 officer or officers;

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

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

23 (6) The governor may pardon any offender;

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

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

1      NEW SECTION.    **Sec. 3.**      This act shall take effect July 1, 1992.