
HOUSE BILL 2133

State of Washington

55th Legislature

1997 Regular Session

By Representatives Koster, Voloria, Costa, Blalock, Regala, Butler, Lantz, Cody, Conway and Dickerson

Read first time 02/21/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to development of a community justice act; amending
2 RCW 9.94A.127, 9.94A.180, 13.40.135, and 43.43.754; reenacting and
3 amending RCW 9.94A.030 and 9.94A.380; adding new sections to chapter
4 72.09 RCW; creating a new section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 72.09 RCW
7 to read as follows:

8 The legislature finds that citizens and victims of crime need to be
9 active partners in responding to crime, in the management of resources,
10 and in the sentencing and follow-up of convicted offenders in their
11 community. Involvement of citizens and victims of crime increase
12 offender accountability and build healthier communities. The
13 legislature also finds that local governments are in the best position
14 to develop, coordinate, and manage local community corrections programs
15 and to determine local resource priorities. Local management of local
16 community corrections programs will build upon local values and
17 increase local control of resources, encourage the use of a
18 comprehensive range of community-based correctional strategies, and
19 allow for restorative justice processes. In order to increase the

1 credibility, efficiency, and effectiveness of the state's criminal
2 justice system, the legislature authorizes creation of the community
3 justice act, chapter . . . , Laws of 1997 (this act), based on victim
4 and citizen involvement, local control of resources, and the
5 enhancement of public safety.

6 The intended purposes of chapter . . . , Laws of 1997 (this act),
7 the community justice act, are to:

8 (1) Create a mechanism to encourage local community control of
9 community corrections programs;

10 (2) Assist local government in developing community-based
11 correctional programs that meet local community needs for safety,
12 punishment, accountability, treatment, and resources;

13 (3) Encourage the use of a range of community-based correctional
14 strategies;

15 (4) Introduce restorative justice concepts to encourage more
16 frequent opportunities to repair the victim, community, and offender
17 through the sentencing process;

18 (5) Encourage active participation by victims and the community in
19 community-based correctional programs;

20 (6) Hold the offender accountable; and

21 (7) Reduce the likelihood of future criminal behavior.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 72.09 RCW
23 to read as follows:

24 (1) The Washington state law and justice advisory council,
25 established under RCW 72.09.300(7), shall establish application and
26 selection criteria for local governments that choose to develop
27 programs based on restorative justice concepts. The application and
28 selection criteria must:

29 (a) Be compatible with local and state law and justice plans;

30 (b) Target all adult and juvenile offenders and youth populations
31 at risk;

32 (c) Include concepts of restorative justice that reflect the safety
33 interests of the community, accountability of the offender, and
34 encourage active participation by victims and the community in the
35 sentencing process;

36 (d) Support and encourage increased court discretion in imposing
37 community-based correctional strategies as exemplified under RCW
38 9.94A.380;

- 1 (e) Compatible with research that shows what works with offenders;
- 2 (f) Include prevention strategies;
- 3 (g) Be outcome based; and
- 4 (h) Include an evaluation component.

5 (2) Local governments that choose to participate in restorative
6 justice concepts shall establish programs that are consistent with the
7 state-wide comprehensive law and justice plan and are approved by the
8 local law and justice council.

9 (3) Local governments participating in restorative justice programs
10 shall each submit a report on the progress of the program to the
11 Washington state law and justice advisory council twelve months but not
12 longer than fourteen months after implementation of the programs. The
13 Washington state law and justice advisory council then, within three
14 months of the receipt of the reports, shall compile and provide a
15 report to the legislature.

16 (4) The state, acting in accordance with RCW 72.09.300, may make
17 grants to local governments for the provision of community-based
18 correctional strategies. The grants must be made under a grant formula
19 developed by the Washington state law and justice advisory council.
20 The grant formula must recognize the diversity of local needs, and must
21 establish guidelines for the submission, review, and approval of grant
22 requests by the Washington state law and justice advisory council,
23 based upon availability of resources, consistency with the state-wide
24 comprehensive law and justice plan, and the intent of the legislature.
25 Funding may be provided from new resources or state funds formerly used
26 to provide state correctional services.

27 (5) A local government receiving a grant under this section shall
28 agree that any funds received must be used efficiently to encourage the
29 use of existing community-based correctional strategies or in the
30 development of new community-based correctional strategies, that
31 decrease the reliance on incarceration for a target population
32 identified in the local law and justice plan. The local government
33 shall also agree to account for the expenditure of all funds received
34 under the grant and to submit to audits for compliance with the grant
35 criteria developed by the Washington state law and justice advisory
36 council.

37 (6) The department, acting in accordance with RCW 72.09.300, may
38 provide support and technical assistance to local government for

1 training and education regarding community-based correctional
2 strategies.

3 **Sec. 3.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are
4 each reenacted and amended to read as follows:

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

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

13 (3) "Community" means a group of people in a local jurisdiction, or
14 a combination of people in multiple jurisdictions, that could include
15 but is not limited to community service agencies, schools, neighborhood
16 associations, and the governments, that undertake joint efforts and
17 shared responsibilities for purposes of providing community-based
18 correctional strategies in their jurisdiction or jurisdictions, in
19 accordance with the purposes and requirements of chapter . . . , Laws of
20 1997 (this act), the community justice act.

21 (4) "Community-based correctional strategies" means any of a number
22 of alternative punishments and sanctions that are served by an offender
23 in the community, including the alternatives listed in RCW 9.94A.380.

24 (5) "Community corrections officer" means an employee of the
25 department who is responsible for carrying out specific duties in
26 supervision of sentenced offenders and monitoring of sentence
27 conditions.

28 ~~((+4))~~ (6) "Community custody" means that portion of an inmate's
29 sentence of confinement in lieu of earned early release time or imposed
30 pursuant to RCW 9.94A.120 (6), (8), or (10) served in the community
31 subject to controls placed on the inmate's movement and activities by
32 the department of corrections.

33 ~~((+5))~~ (7) "Community placement" means that period during which
34 the offender is subject to the conditions of community custody and/or
35 postrelease supervision, which begins either upon completion of the
36 term of confinement (postrelease supervision) or at such time as the
37 offender is transferred to community custody in lieu of earned early

1 release. Community placement may consist of entirely community
2 custody, entirely postrelease supervision, or a combination of the two.

3 ~~((+6))~~ (8) "Community service" means compulsory service, without
4 compensation, performed for the benefit of the community by the
5 offender.

6 ~~((+7))~~ (9) "Community supervision" means a period of time during
7 which a convicted offender is subject to crime-related prohibitions and
8 other sentence conditions imposed by a court pursuant to this chapter
9 or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the
10 supervision may include crime-related prohibitions and other conditions
11 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate
12 compact for out-of-state supervision of parolees and probationers, RCW
13 9.95.270, community supervision is the functional equivalent of
14 probation and should be considered the same as probation by other
15 states.

16 ~~((+8))~~ (10) "Confinement" means total or partial confinement as
17 defined in this section.

18 ~~((+9))~~ (11) "Conviction" means an adjudication of guilt pursuant
19 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
20 guilty, and acceptance of a plea of guilty.

21 ~~((+10))~~ (12) "Court-ordered legal financial obligation" means a
22 sum of money that is ordered by a superior court of the state of
23 Washington for legal financial obligations which may include
24 restitution to the victim, statutorily imposed crime victims'
25 compensation fees as assessed pursuant to RCW 7.68.035, court costs,
26 county or interlocal drug funds, court-appointed attorneys' fees, and
27 costs of defense, fines, and any other financial obligation that is
28 assessed to the offender as a result of a felony conviction. Upon
29 conviction for vehicular assault while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular
31 homicide while under the influence of intoxicating liquor or any drug,
32 RCW 46.61.520(1)(a), legal financial obligations may also include
33 payment to a public agency of the expense of an emergency response to
34 the incident resulting in the conviction, subject to the provisions in
35 RCW 38.52.430.

36 ~~((+11))~~ (13) "Crime-related prohibition" means an order of a court
37 prohibiting conduct that directly relates to the circumstances of the
38 crime for which the offender has been convicted, and shall not be
39 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct.

3 ~~((12))~~ (14)(a) "Criminal history" means the list of a defendant's
4 prior convictions, whether in this state, in federal court, or
5 elsewhere. The history shall include, where known, for each conviction
6 (i) whether the defendant has been placed on probation and the length
7 and terms thereof; and (ii) whether the defendant has been incarcerated
8 and the length of incarceration.

9 (b) "Criminal history" shall always include juvenile convictions
10 for sex offenses and serious violent offenses and shall also include a
11 defendant's other prior convictions in juvenile court if: (i) The
12 conviction was for an offense which is a felony or a serious traffic
13 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
14 the defendant was fifteen years of age or older at the time the offense
15 was committed; and (iii) with respect to prior juvenile class B and C
16 felonies or serious traffic offenses, the defendant was less than
17 twenty-three years of age at the time the offense for which he or she
18 is being sentenced was committed.

19 ~~((13))~~ (15) "Day fine" means a fine imposed by the sentencing
20 judge that equals the difference between the offender's net daily
21 income and the reasonable obligations that the offender has for the
22 support of the offender and any dependents.

23 ~~((14))~~ (16) "Day reporting" means a program of enhanced
24 supervision designed to monitor the defendant's daily activities and
25 compliance with sentence conditions, and in which the defendant is
26 required to report daily to a specific location designated by the
27 department or the sentencing judge.

28 ~~((15))~~ (17) "Department" means the department of corrections.

29 ~~((16))~~ (18) "Determinate sentence" means a sentence that states
30 with exactitude the number of actual years, months, or days of total
31 confinement, of partial confinement, of community supervision, the
32 number of actual hours or days of community service work, or dollars or
33 terms of a legal financial obligation. The fact that an offender
34 through "earned early release" can reduce the actual period of
35 confinement shall not affect the classification of the sentence as a
36 determinate sentence.

37 ~~((17))~~ (19) "Disposable earnings" means that part of the earnings
38 of an individual remaining after the deduction from those earnings of
39 any amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal
2 services, whether denominated as wages, salary, commission, bonuses, or
3 otherwise, and, notwithstanding any other provision of law making the
4 payments exempt from garnishment, attachment, or other process to
5 satisfy a court-ordered legal financial obligation, specifically
6 includes periodic payments pursuant to pension or retirement programs,
7 or insurance policies of any type, but does not include payments made
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
9 or Title 74 RCW.

10 ~~((18))~~ (20) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of
12 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
13 controlled substance (RCW 69.50.403);

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

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

20 ~~((19))~~ (21) "Escape" means:

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

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

29 ~~((20))~~ (22) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
32 and-run injury-accident (RCW 46.52.020(4)); or

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

36 ~~((21))~~ (23) "Fines" means the requirement that the offender pay
37 a specific sum of money over a specific period of time to the court.

38 ~~((22))~~ (24)(a) "First-time offender" means any person who is
39 convicted of a felony (i) not classified as a violent offense or a sex

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

13 (b) For purposes of (a) of this subsection, a juvenile adjudication
14 for an offense committed before the age of fifteen years is not a
15 previous felony conviction except for adjudications of sex offenses and
16 serious violent offenses.

17 (~~((23))~~) (25) "Most serious offense" means any of the following
18 felonies or a felony attempt to commit any of the following felonies,
19 as now existing or hereafter amended:

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

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

38 (q) Vehicular assault;

1 (r) Vehicular homicide, when proximately caused by the driving of
2 any vehicle by any person while under the influence of intoxicating
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of
4 any vehicle in a reckless manner;

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

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.125;

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

14 (~~((24))~~) (26) "Nonviolent offense" means an offense which is not a
15 violent offense.

16 (~~((25))~~) (27) "Offender" means a person who has committed a felony
17 established by state law and is eighteen years of age or older or is
18 less than eighteen years of age but whose case has been transferred by
19 the appropriate juvenile court to a criminal court pursuant to RCW
20 13.40.110. Throughout this chapter, the terms "offender" and
21 "defendant" are used interchangeably.

22 (~~((26))~~) (28) "Partial confinement" means confinement for no more
23 than one year in a facility or institution operated or utilized under
24 contract by the state or any other unit of government, or, if home
25 detention or work crew has been ordered by the court, in an approved
26 residence, for a substantial portion of each day with the balance of
27 the day spent in the community. Partial confinement includes work
28 release, home detention, work crew, and a combination of work crew and
29 home detention as defined in this section.

30 (~~((27))~~) (29) "Persistent offender" is an offender who:

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

33 (ii) Has, before the commission of the offense under (a) of this
34 subsection, been convicted as an offender on at least two separate
35 occasions, whether in this state or elsewhere, of felonies that under
36 the laws of this state would be considered most serious offenses and
37 would be included in the offender score under RCW 9.94A.360; provided
38 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of (A) rape in the first degree, rape in
4 the second degree, or indecent liberties by forcible compulsion; (B)
5 murder in the first degree, murder in the second degree, kidnapping in
6 the first degree, kidnapping in the second degree, assault in the first
7 degree, assault in the second degree, or burglary in the first degree,
8 with a finding of sexual motivation; or (C) an attempt to commit any
9 crime listed in this (~~subsection (27)~~)(b)(i) of this subsection; and

10 (ii) Has, before the commission of the offense under (b)(i) of this
11 subsection, been convicted as an offender on at least one occasion,
12 whether in this state or elsewhere, of an offense listed in (b)(i) of
13 this subsection.

14 (~~(28)~~) (30) "Postrelease supervision" is that portion of an
15 offender's community placement that is not community custody.

16 (~~(29)~~) (31) "Restitution" means the requirement that the offender
17 pay a specific sum of money over a specific period of time to the court
18 as payment of damages. The sum may include both public and private
19 costs. The imposition of a restitution order does not preclude civil
20 redress.

21 (~~(30)~~) (32) "Restorative justice" means a framework that can be
22 used to guide the structure and process of the criminal justice system.
23 The restorative justice framework is based on the following
24 assumptions: (a) That crime results in injuries to victims,
25 communities, and offenders; (b) that the victim, the community, and the
26 offender should be included in the response to crime; (c) that criminal
27 justice agencies and communities play a complementary role in the
28 response to crime; (d) that offender accountability is based upon
29 acknowledgement of responsibility and effort to repair the harm done;
30 and (e) that the community becomes directly involved in supporting
31 victims, holding offenders accountable, and providing opportunities for
32 offenders to reintegrate into the community. In the restorative
33 justice framework, victims and the community may influence the sentence
34 outcome through direct input to the court or through community
35 restoration boards.

36 (33) "Serious traffic offense" means:

37 (a) Driving while under the influence of intoxicating liquor or any
38 drug (RCW 46.61.502), actual physical control while under the influence
39 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving

1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
2 or

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

6 (~~((31))~~) (34) "Serious violent offense" is a subcategory of violent
7 offense and means:

8 (a) Murder in the first degree, homicide by abuse, murder in the
9 second degree, assault in the first degree, kidnapping in the first
10 degree, or rape in the first degree, assault of a child in the first
11 degree, or an attempt, criminal solicitation, or criminal conspiracy to
12 commit one of these felonies; or

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

16 (~~((32))~~) (35) "Sentence range" means the sentencing court's
17 discretionary range in imposing a nonappealable sentence.

18 (~~((33))~~) (36) "Sex offense" means:

19 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
20 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
21 criminal attempt, criminal solicitation, or criminal conspiracy to
22 commit such crimes;

23 (b) A felony with a finding of sexual motivation under RCW
24 9.94A.127 or 13.40.135; or

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

28 (~~((34))~~) (37) "Sexual motivation" means that one of the purposes
29 for which the defendant committed the crime was for the purpose of his
30 or her sexual gratification.

31 (~~((35))~~) (38) "Total confinement" means confinement inside the
32 physical boundaries of a facility or institution operated or utilized
33 under contract by the state or any other unit of government for twenty-
34 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

35 (~~((36))~~) (39) "Transition training" means written and verbal
36 instructions and assistance provided by the department to the offender
37 during the two weeks prior to the offender's successful completion of
38 the work ethic camp program. The transition training shall include

1 instructions in the offender's requirements and obligations during the
2 offender's period of community custody.

3 ~~((+37+))~~ (40) "Victim" means any person who has sustained
4 emotional, psychological, physical, or financial injury to person or
5 property as a direct result of the crime charged.

6 ~~((+38+))~~ (41) "Violent offense" means:

7 (a) Any of the following felonies, as now existing or hereafter
8 amended: Any felony defined under any law as a class A felony or an
9 attempt to commit a class A felony, criminal solicitation of or
10 criminal conspiracy to commit a class A felony, manslaughter in the
11 first degree, manslaughter in the second degree, indecent liberties if
12 committed by forcible compulsion, kidnapping in the second degree,
13 arson in the second degree, assault in the second degree, assault of a
14 child in the second degree, extortion in the first degree, robbery in
15 the second degree, vehicular assault, and vehicular homicide, when
16 proximately caused by the driving of any vehicle by any person while
17 under the influence of intoxicating liquor or any drug as defined by
18 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

22 (c) 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 violent
24 offense under (a) or (b) of this subsection.

25 ~~((+39+))~~ (42) "Work crew" means a program of partial confinement
26 consisting of civic improvement tasks for the benefit of the community
27 of not less than thirty-five hours per week that complies with RCW
28 9.94A.135. The civic improvement tasks shall have minimal negative
29 impact on existing private industries or the labor force in the county
30 where the service or labor is performed. The civic improvement tasks
31 shall not affect employment opportunities for people with developmental
32 disabilities contracted through sheltered workshops as defined in RCW
33 82.04.385. Only those offenders sentenced to a facility operated or
34 utilized under contract by a county or the state are eligible to
35 participate on a work crew. Offenders sentenced for a sex offense (~~as~~
36 ~~defined in subsection (33) of this section~~) are not eligible for the
37 work crew program.

38 ~~((+40+))~~ (43) "Work ethic camp" means an alternative incarceration
39 program designed to reduce recidivism and lower the cost of corrections

1 by requiring offenders to complete a comprehensive array of real-world
2 job and vocational experiences, character-building work ethics
3 training, life management skills development, substance abuse
4 rehabilitation, counseling, literacy training, and basic adult
5 education.

6 ~~((+41+))~~ (44) "Work release" means a program of partial confinement
7 available to offenders who are employed or engaged as a student in a
8 regular course of study at school. Participation in work release shall
9 be conditioned upon the offender attending work or school at regularly
10 defined hours and abiding by the rules of the work release facility.

11 ~~((+42+))~~ (45) "Home detention" means a program of partial
12 confinement available to offenders wherein the offender is confined in
13 a private residence subject to electronic surveillance.

14 **Sec. 4.** RCW 9.94A.380 and 1988 c 157 s 4 and 1988 c 155 s 3 are
15 each reenacted and amended to read as follows:

16 (1) Alternatives to total confinement are available for offenders
17 with sentences of one year or less. These alternatives include the
18 following sentence conditions that the court may order as substitutes
19 for total confinement: ~~((+1+))~~ (a) One day of partial confinement may
20 be substituted for one day of total confinement; ~~((+2+))~~ (b) in
21 addition, for offenders convicted of nonviolent offenses only, eight
22 hours of community service may be substituted for one day of total
23 confinement, with a maximum conversion limit of two hundred forty hours
24 or thirty days. Community service hours must be completed within the
25 period of community supervision or a time period specified by the
26 court, which shall not exceed twenty-four months, pursuant to a
27 schedule determined by the department.

28 (2) For sentences of nonviolent offenders for one year or less, the
29 court shall consider and give priority to available alternatives to
30 total confinement and shall state its reasons in writing on the
31 judgment and sentence form if the alternatives are not used. In
32 determining the sentence for a nonviolent offender, the court shall
33 balance the interests of the victim, the community, the offender, and
34 the state. In addition to the alternatives sentences listed in
35 subsection (1) of this section, the court may impose alternatives to
36 total confinement that include but are not limited to the following
37 community-based correctional strategies: Day reporting; electronic
38 monitoring; fines, restitution, and legal financial obligations;

1 partial confinement; restitution; reparative boards or restorative
2 justice programs, or both, that may include affirmative conduct
3 requirements; mediation; treatment; work crews and other options as are
4 acceptable to the local community.

5 (3) Before imposing a restorative justice element or other
6 community-based correctional sentencing alternative under subsection
7 (2) of this section, the court may suspend the imposition of all or any
8 portion of a sentence of total confinement. If the offender fails to
9 comply with the terms and conditions of the sentencing alternative, the
10 court may impose sanctions under RCW 9.94A.200 or the court may revoke
11 the suspended sentence and order execution of the sentence of total
12 confinement. All confinement time served before or during the
13 sentencing alternative shall be credited to the offender if the
14 suspended sentence is revoked.

15 **Sec. 5.** RCW 9.94A.127 and 1990 c 3 s 601 are each amended to read
16 as follows:

17 (1) The prosecuting attorney shall file a special allegation of
18 sexual motivation in every criminal case other than sex offenses as
19 defined in RCW 9.94A.030(~~((+29+))~~) (36) (a) or (c) when sufficient
20 admissible evidence exists, which, when considered with the most
21 plausible, reasonably foreseeable defense that could be raised under
22 the evidence, would justify a finding of sexual motivation by a
23 reasonable and objective fact-finder.

24 (2) In a criminal case wherein there has been a special allegation
25 the state shall prove beyond a reasonable doubt that the accused
26 committed the crime with a sexual motivation. The court shall make a
27 finding of fact of whether or not a sexual motivation was present at
28 the time of the commission of the crime, or if a jury trial is had, the
29 jury shall, if it finds the defendant guilty, also find a special
30 verdict as to whether or not the defendant committed the crime with a
31 sexual motivation. This finding shall not be applied to sex offenses
32 as defined in RCW 9.94A.030(~~((+29+))~~) (36) (a) or (c).

33 (3) The prosecuting attorney shall not withdraw the special
34 allegation of sexual motivation without approval of the court through
35 an order of dismissal of the special allegation. The court shall not
36 dismiss this special allegation unless it finds that such an order is
37 necessary to correct an error in the initial charging decision or

1 unless there are evidentiary problems which make proving the special
2 allegation doubtful.

3 **Sec. 6.** RCW 9.94A.180 and 1991 c 181 s 4 are each amended to read
4 as follows:

5 (1) An offender sentenced to a term of partial confinement shall be
6 confined in the facility for at least eight hours per day or, if
7 serving a work crew sentence shall comply with the conditions of that
8 sentence as set forth in RCW 9.94A.030(~~(+23+)~~) (28) and 9.94A.135. The
9 offender shall be required as a condition of partial confinement to
10 report to the facility at designated times. An offender may be
11 required to comply with crime-related prohibitions during the period of
12 partial confinement.

13 (2) An offender in a county jail ordered to serve all or part of a
14 term of less than one year in work release, work crew, or a program of
15 home detention who violates the rules of the work release facility,
16 work crew, or program of home detention or fails to remain employed or
17 enrolled in school may be transferred to the appropriate county
18 detention facility without further court order but shall, upon request,
19 be notified of the right to request an administrative hearing on the
20 issue of whether or not the offender failed to comply with the order
21 and relevant conditions. Pending such hearing, or in the absence of a
22 request for the hearing, the offender shall serve the remainder of the
23 term of confinement as total confinement. This subsection shall not
24 affect transfer or placement of offenders committed to the state
25 department of corrections.

26 **Sec. 7.** RCW 13.40.135 and 1990 c 3 s 604 are each amended to read
27 as follows:

28 (1) The prosecuting attorney shall file a special allegation of
29 sexual motivation in every juvenile offense other than sex offenses as
30 defined in RCW 9.94A.030(~~(+29+)~~) (36) (a) or (c) when sufficient
31 admissible evidence exists, which, when considered with the most
32 plausible, reasonably consistent defense that could be raised under the
33 evidence, would justify a finding of sexual motivation by a reasonable
34 and objective fact-finder.

35 (2) In a juvenile case wherein there has been a special allegation
36 the state shall prove beyond a reasonable doubt that the juvenile
37 committed the offense with a sexual motivation. The court shall make

1 a finding of fact of whether or not the sexual motivation was present
2 at the time of the commission of the offense. This finding shall not
3 be applied to sex offenses as defined in RCW 9.94A.030(~~((+29+))~~) (36) (a)
4 or (c).

5 (3) The prosecuting attorney shall not withdraw the special
6 allegation of "sexual motivation" without approval of the court through
7 an order of dismissal. The court shall not dismiss the special
8 allegation unless it finds that such an order is necessary to correct
9 an error in the initial charging decision or unless there are
10 evidentiary problems which make proving the special allegation
11 doubtful.

12 **Sec. 8.** RCW 43.43.754 and 1994 c 271 s 402 are each amended to
13 read as follows:

14 Every adult or juvenile individual convicted of a felony or
15 adjudicated guilty of an equivalent juvenile offense defined as a sex
16 offense under RCW 9.94A.030(~~((+31+))~~) (36)(a) or a violent offense as
17 defined in RCW 9.94A.030 shall have a blood sample drawn for purposes
18 of DNA identification analysis. For persons convicted of such offenses
19 or adjudicated guilty of an equivalent juvenile offense who are serving
20 a term of confinement in a county jail or detention facility, the
21 county shall be responsible for obtaining blood samples prior to
22 release from the county jail or detention facility. For persons
23 convicted of such offenses or adjudicated guilty of an equivalent
24 juvenile offense, who are serving a term of confinement in a department
25 of corrections facility or a division of juvenile rehabilitation
26 facility, the facility holding the person shall be responsible for
27 obtaining blood samples prior to release from such facility. Any blood
28 sample taken pursuant to RCW 43.43.752 through 43.43.758 shall be used
29 solely for the purpose of providing DNA or other blood grouping tests
30 for identification analysis and prosecution of a sex offense or a
31 violent offense.

32 This section applies to all adults who are convicted after July 1,
33 1990. This section applies to all juveniles who are adjudicated guilty
34 after July 1, 1994.

1 NEW SECTION. **Sec. 9.** Chapter . . ., Laws of 1997 (this act) may
2 be known as the community justice act.

--- **END** ---