

SENATE BILL REPORT

SB 6664

As Passed Senate, February 18, 2002

Title: An act relating to the department of corrections' authority to require offenders eligible for release to community custody status in lieu of earned release to propose a release plan that complies with the department's program for placing offenders in the community in lieu of early release.

Brief Description: Requiring offenders to propose a release plan.

Sponsors: Senators Costa and Hargrove.

Brief History:

Committee Activity: Human Services & Corrections: 2/1/02 [DP].

Passed Senate: 2/18/02, 48-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Carlson, Franklin, Hewitt, Kastama, Kohl-Welles, Long and Stevens.

Staff: Fara Daun (786-7459)

Background: The Department of Corrections (DOC) has established, under its statutory authority in the Community Placement Act of 1988, a program of supervising offenders in the community that has several aspects. Under the community custody aspect of the program, sex offenders and violent offenders who receive community custody in lieu of earned release time must propose a release plan including an approved address and living arrangement prior to a transfer to the community. This requirement has meant that some offenders have been unable to access their earned release time because they were unable to provide a plan that met DOC requirements. The requirement to propose an acceptable address and living situation is particularly challenging for some sex offenders and serious violent offenders and many of these offenders have reached the end of their determinate sentence in prison and were released on the date of their maximum term of incarceration.

On June 4, 2001, the Court of Appeals for Division I decided *In re Capello*, 106 Wn.App. 576. The *Capello* decision held that the authority conferred on DOC to establish a community placement program to supervise offenders in the community could not require DOC approval of residence addresses for sex offenders and serious violent offenders who committed crimes between 1988 and 1992 unless that requirement was part of the offender's sentence. At that time, the condition for residence approval was a special condition that could have been imposed by the sentencing court. The *Capello* court said that DOC did not have the authority to impose an approval condition where the court did not do so. In 1992, residence approval became a condition of sentence, unless waived by the court. The *Capello*

decision does not address whether DOC could impose an address approval condition on offenders when the court waived the standard condition of address approval.

Certain offenses committed between 1988 and 1992, are still eligible for prosecution.

Summary of Bill: DOC has, and has had since the enactment of the Community Placement Act of 1988, the authority to require all offenders eligible for release to the community in lieu of earned release, to provide the department with a release plan that includes an approved address and living arrangement prior to any transfer to the community. This authority is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement.

DOC must require all offenders with community custody or community placement terms who are eligible for release to community custody status in lieu of earned release, to propose a release plan that includes an approved residence and living arrangement prior to release to the community. DOC may deny transfer to the community if the proposed release plan, including the residence provisions of the proposed plan may:

- Violate the conditions of sentence or the conditions of supervision;
- Place the offender at risk to violate the conditions of the sentence;
- Place the offender at risk to reoffend; or
- Present a risk to victim safety or community safety.

This act applies retroactively.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This corrects a court decision that took away DOC authority to approve offender residence plans 1988-1992 sex offenders and 1988 through 1996 serious violent offenders. Without this authority, DOC cannot prevent offenders from choosing residences that permit the offender to develop a victim pool. The ruling has also created the impression among affected offenders that DOC cannot impose other conditions of community custody. These persons are still technically on inmate status because they are on community custody in lieu of earned release. Denied plans must be reviewed by a supervisor.

Testimony Against: None.

Testified: Victoria Roberts, DOC (pro); Scott Lee, DOC (pro); Karen Adamson, DOC (pro).