
**Criminal Justice & Corrections
Committee**

HB 2105

Brief Description: Ensuring that offender populations do not exceed prison capacity.

Sponsors: Representatives Kagi and Darneille.

Brief Summary of Bill

- Requires the release of offenders from state prisons when prison populations are about to exceed prison capacity.

Hearing Date: 3/3/03

Staff: Jim Morishima (786-7191).

Background:

In general, adult offenders sentenced to more than a year of total confinement are committed to the custody of the Department of Corrections (DOC). The Caseload Forecast Council (CFC) prepares official state caseload forecasts, which include forecasts of the DOC offender populations. The CFC is required to submit a forecast at least three times a year.

If the Governor finds that an emergency exists because the population of a state residential correctional facility exceeds its reasonable maximum capacity, he or she may:

- Call the Sentencing Guidelines Commission (SGC) into an emergency meeting. The SGC may then revise the standard sentencing ranges or other standards as it deems appropriate to deal with the emergency; or
- Call the Clemency and Pardons Board into an emergency meeting for the purpose of recommending whether the Governor's commutation or pardon power should be exercised to meet the present emergency.

Summary of Bill:

The CFC, in consultation with the DOC, the SGC, and the Indeterminate Sentence Review Board, must, by rule, establish a methodology for determining the maximum statewide operating capacity for correctional facilities operated by the DOC. The methodology must

take into account methods for increasing facility capacity without making improvements or additions to infrastructure. "Maximum statewide operating capacity for correctional facilities operated by the DOC" is defined as the number of offenders that all of the correctional facilities operated by the DOC can house at a given time based on space, staff, existing programs, and services.

Beginning on July 1, 2004 and annually thereafter, the CFC must use the methodology to determine the maximum statewide operating capacity for correctional facilities operated by the DOC for the fiscal year. If one of the CFC's forecasts indicates that the capacity will be exceeded, the CFC must notify the DOC and the SGC within seven days of adopting the forecast. The CFC's findings and determinations are not subject to administrative appeal. The CFC's notification must include:

- A copy of the CFC's most recent determination of the maximum capacity;
- A copy of the forecast indicating that the capacity will be exceeded; and
- The estimated number of offenders currently incarcerated by which the offender population must be reduced in order for the capacity not to be exceeded.

Upon receipt of the CFC's notification, the SGC must certify whether the information in the notification was correctly determined. The SGC must grant or deny the certification within 14 days. If it grants certification, it must send the certification to the DOC. If it denies certification, it must notify the CFC; the CFC may then revise the information in the notification and resubmit it to the SGC. The SGC's certification is not subject to administrative appeal.

The DOC must perform a risk assessment and classify certain offenders into at least four categories between highest and lowest risk. The classification must be performed on every offender who:

- Was committed to the DOC for an offense that was not a violent offenses, sex offense, offense sentenced under the Drug Offender Sentencing Alternative (DOSA), or crime against persons; and
- Has a criminal history that does not contain a violent offense, sex offense, or crime against persons.

Within 14 days of receiving certification from the SGC, the DOC must prepare a list of qualified offenders for release. A "qualified offender" is an offender who:

- Was committed to the DOC for an offense that was not a violent offenses, sex offense, offense sentenced under the DOSA, or crime against persons;
- Has a criminal history that does not contain a violent offense, sex offense, or crime against persons; and
- Was evaluated by the DOC in the two lowest risk categories.

The number of qualified offenders on the list may not exceed the estimate developed by the CFC of the number of offenders that must be released in order for prison capacity not to be exceeded. If the number of qualified offenders exceeds the estimate, the DOC must give priority to offenders who are closest to their release dates. Within 14 days of the list's completion, the DOC must release the offenders on the list.

The classification of offenders, the development of the list, and the release of offenders are

not subject to administrative appeal, do not create a vested right to early release for any offender, and may not be the basis of any civil or criminal liability for the state, the DOC, or any state employee.

A released offender must be on community custody status for the difference between his or her release and the expiration of his or her term of confinement imposed by a court, subject to conditions imposed by the DOC. The community custody for an offender released from custody imposed because of a drug related conviction must include affirmative conditions relating to drug treatment.

Appropriation: None.

Fiscal Note: Requested on February 25, 2003.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed, except Section 7 of this act takes effect July 1, 2004.