

# HOUSE BILL REPORT

## SB 6664

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### As Reported by House Committee On:

Criminal Justice & Corrections

**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:

Criminal Justice & Corrections: 2/26/02 [DP].

#### Brief Summary of Bill

- Authorizes the Department of Corrections (DOC) to deny an offender's transfer to community custody if he or she does not have an approved residential plan.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi, Kirby and Morell.

**Staff:** Yvonne Walker (786-7841).

### Background:

In general: The terms community placement, community custody, and post-release supervision essentially all refer to supervision following release from the DOC. The terms were devised in part to indicate when the department could sanction an offender for violating conditions of release administratively (community custody), and when the department had to return to court to ask the court to impose sanctions (post-release supervision).

Community custody is that portion of an inmate's sentence of confinement served, in lieu of earned early release time, in the community subject to "controls placed on the inmate's movement and activities" by the DOC. Generally, transfer to community custody cannot occur until the department approves the offender's proposed release plan. An inmate not approved for community custody must remain in prison until his or her maximum release date, and begin the sentence of post-release supervision at that time.

Post-release supervision begins upon completion of the term of total confinement, and is that portion of community placement which is not community custody.

Community placement is that period during which an offender is subject to the conditions of community custody or post-release supervision. It may consist entirely of community custody, entirely post-release supervision, or a combination of the two.

Terms and Conditions: Certain crimes, specifically sex offenses and serious violent offenses, carry a term of community placement or community custody. Depending on the crime, and when it is committed, the term is for a specified period of one to three years. Unless waived by the court, certain mandatory conditions are required to be included in the term of community placement or community custody. Some of these conditions include: reporting as directed to a community corrections officer; working at an approved job, education, or community service; refraining from possessing or consuming controlled substances; paying a supervision fee; submitting to affirmative acts; and obtaining prior departmental approved residence location and living arrangements.

Court Decision: In 1991, Ricardo Capello was sentenced for the offense of first degree kidnapping with sexual motivation which is both a sex offense and a serious violent offense. In 1992, approximately one year after Capello's sentence, the Legislature amended the community custody statute by making preapproval of residence location and living arrangements a standard condition of community custody, unless expressly waived by the court.

During Capello's sentence he accumulated earned early release credits for good conduct. Prior to his release to community custody, the DOC informed Capello that the statute required him to obtain a preapproved residence location and living arrangement before he could be transferred to community custody in lieu of earned early release. Capello filed a personal restraint petition challenging the DOC's decision. He felt that the DOC's refusal to release him until he had an approved residence deprived him of his earned early release into community custody.

On June 4, 2001, the Court of Appeals for Division I decided, *In re Capello*, 106 Wn.App. 576. The court held that the DOC could not lawfully impose preapproved residence requirements for sex offenders and serious violent offenders who committed crimes prior to 1992, unless that requirement was part of the offender's original sentence. Furthermore, the court held that the DOC did not have the authority to impose an

approval condition where the court did not do so.

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**Summary of Bill:**

Effective immediately (and retroactively), the DOC must require all offenders, that are eligible for community custody in lieu of earned early release, to propose a release plan that includes an approved residence and living arrangement prior to his or her release to the community. The department may deny an offender's transfer to the community if the department determines the offender's release plan, in particular his or her residence location and living arrangements, may do any of the following:

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

The department's authority regarding an offender's release to community placement status is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** In accordance with the DOC's policy, offenders who are granted early release to the community are considered to be under inmate status until they reach their maximum custody date. In order to be released during that time, offenders are required to submit a release plan and their perspective residential addresses are investigated by community corrections officers. Plans can be denied if the plan happens to put the offender at risk to reoffend or violates the conditions of the offender's sentence.

Under the Capello decision, offenders would not have to submit an approved released plan and can live anywhere they choose. If the department is directed to release all sex offenders similar to Capello, than it is estimated that 25 level III sex offenders would be released to the streets without an approved residential plan. If the court directed the DOC to release all serious violent offenders under the Capello case, than approximately 70 offenders would be released without approved living arrangements.

Some of the most dangerous and most unsupervised offenders are those offenders released directly from the DOC who can essentially live anywhere they want and who do not qualify as sexually violent predators. The primary difficulty of supervising offenders without the tool of controlling their addresses is that they can go wherever they want and

often put the community at risk.

**Testimony Against:** None.

**Testified:** Victoria Roberts and Scott Lee, Department of Corrections; and Suzanne Brown, Washington Coalition of Sexual Assault Programs.