

# SENATE BILL REPORT

## SB 5188

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As Reported By Senate Committee On:  
Human Services & Corrections, February 12, 1997

**Title:** An act relating to offenders.

**Brief Description:** Revising policies concerning health care and information about the health status of inmates.

**Sponsors:** Senators Goings, Long, Hargrove, Zarelli, Schow, Winsley and Rasmussen.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/29/97, 2/12/97 [DPS].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5188 be substituted therefor, and the substitute bill do pass.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Schow and Stevens.

**Staff:** Andrea McNamara (786-7483)

**Background:** Generally, medical records and information about a patient's health care status are confidential and protected from disclosure unless the patient authorizes their release. The confidentiality protections in current state law are not forfeited by offenders when they are convicted of crimes or incarcerated.

Current law requires disclosure of a patient's medical information without the patient's authorization under limited circumstances.

Mandatory disclosure may only occur when: (a) the disclosure is to federal, state, or local public health authorities for the purposes of protecting the public health or when necessary to determine a provider's compliance with federal or state regulations; (b) the disclosure is to federal, state, or local law enforcement agencies as required by law; or (c) the disclosure is pursuant to a compulsory process as provided in state law and the patient has not obtained a protective order.

Additional exceptions exist to the medical confidentiality laws which allow disclosure without a patient's authorization. They include, among others things, disclosures made among medical professionals involved in the treatment or care of the patient; made for the protection of the health and safety of others; made orally to immediate family members; and those disclosures made for the purposes of research, quality control, and audits.

**Summary of Substitute Bill:** An additional exception is added to the circumstances under which a patient's medical information must be disclosed without the patient's authorization.

The Department of Corrections (DOC) and local correctional facilities are required, upon request, to disclose health care information about inmates when: (1) an offender is sentenced to death; and (2) an offender puts his or her health status at issue by using it as a grounds for an appeal, personal restraint petition, pardon, or clemency petition.

**Substitute Bill Compared to Original Bill:** The substitute changes the intent section to clarify the bill's application to death row inmates as well as inmates who put their medical conditions at issue as a grounds for seeking release from confinement.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill creates a very narrow exception to existing medical confidentiality laws to address two specific instances in which the public's right to know outweighs an offender's right to privacy. This issue has cost both the taxpayers and media organizations hundreds of thousands of dollars in litigation due to the differing interpretations of current law and circumstances under which medical records of inmates should be disclosed to the public: this bill would clarify those circumstances in favor of public disclosure in limited, but important, cases.

**Testimony Against:** An exception already exists for disclosures necessary to protect public health or safety. Current rules of evidence and trial practice already allow opposing counsel to cross examine witnesses on their medical conditions if they raise the issue themselves as an element of their legal case. This bill could have a chilling effect on inmates' willingness to report medical conditions or seek medical assistance.

**Testified:** Senator Calvin Goings, prime sponsor (pro); Terry Kohl, Washington Association of Criminal Defense Lawyers and Washington Defender Association (con); Beth Anderson, Administrator of Health Care Services, Department of Corrections.