

SENATE BILL REPORT

SB 6585

As of February 11, 2020

Title: An act relating to encouraging the use of medication-assisted treatment within jails.

Brief Description: Encouraging the use of medication-assisted treatment within jails. [**Revised for 1st Substitute:** Requiring county jails to use medication-assisted treatment.]

Sponsors: Senators Zeiger, Walsh, Darneille, O'Ban, Conway, Nguyen and Wilson, C.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/05/20, 2/06/20 [DPS-WM].

Ways & Means: 2/10/20.

Brief Summary of First Substitute Bill

- Requires, to the extent funding is appropriated, county jails to provide medication assisted treatment (MAT) for persons in custody experiencing opioid use disorders.
- Requires the Health Care Authority to consult and provide technical assistance to county jails upon request regarding use of MAT.
- Removes the authority to transfer funds from the criminal justice treatment account to the state general fund or home security fund account.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 6585 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

Staff: Kelsey-anne Fung (786-7479)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Travis Sugarman (786-7446)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Medications to Treat Opioid Use Disorder. Medications to treat opioid use disorder (OUD), also referred to as MAT, is a form of treatment which uses medications approved by the Federal Drug Administration (FDA). Methadone, buprenorphine, and naltrexone are common medications used to treat OUD.

Opioid Use Disorder Legislation. In 2019, the Legislature passed legislation aimed at addressing the statewide opioid epidemic. Included were several provisions relating to MAT in jails. Any region or county that uses state criminal justice treatment account funds to support a therapeutic court must allow therapeutic court participants to use medications approved by the FDA for the treatment of OUD as medically appropriate. The Health Care Authority may assist the courts with acquiring the medication. To the extent funding is provided, city and county jails must provide OUD medication to individuals in custody who received OUD medication through a legally authorized medical program or valid prescription immediately before incarceration, or at least 30 days before release if deemed medically appropriate. City and county jails must make reasonable efforts to directly connect incarcerated individuals receiving OUD medication to an appropriate provider or treatment site.

Criminal Justice Treatment Account. The criminal justice treatment account was created in statute in 2002. Funds in the account may be spent solely for substance abuse treatment for offenders, treatment services for nonviolent offenders participating in drug courts, and administrative costs associated with operation of a drug court. The Legislature was authorized during the 2017-2019 biennium to direct the state treasurer to transfer monies in the criminal justice treatment account to the state general fund. During the 2019-2021 biennium, the Legislature may direct the state treasurer transfer monies in the criminal justice treatment account to the home security fund account. In subsequent biennia, it is the intent of the Legislature to continue the policy of transferring monies from the criminal justice treatment account to the home security fund account.

Whatcom County Jail. In June 2018, a class-action lawsuit was filed on behalf of people with OUD in the Whatcom County jail who were not receiving access to medications. According to the American Civil Liberties Union (ACLU), the lawsuit challenged Whatcom County's refusal to provide access to MAT even though it provides other clinically appropriate medications to inmates. The ACLU alleged the jail was discriminating against those individuals and that opioid use disorder is a chronic condition protected by the Americans with Disabilities Act. In the settlement agreement, the Whatcom County jail must provide MAT services to medically appropriate inmates with OUD, regardless of whether they were already taking MAT at their time of entry to the Whatcom County jail. The jail must allow inmates with existing MAT prescriptions for OUD to continue on their prescription as long as clinically needed. If an inmate is reasonably expected to be transferred or otherwise released from custody within 24 to 36 hours, the person will receive supportive care until release so they may continue their MAT upon release.

Department of Social and Health Services Study. According to a July 2018 study prepared for the Division of Behavioral Health Recovery of the Department of Social and Health Services, *Providing Medication to Treat Opioid Use Disorder in Washington State Jails*, 14 of the 33 surveyed jails are actively providing opioid treatment medications. The most commonly used medication is buprenorphine, used in 12 of the 14 jails. The most common

use of opioid treatment medications was for the maintenance of treatment that began prior to the individual's incarceration.

Fees for Medication. Medicaid and private insurance will not generally pay for an inmate's health care while the person is in jail. Many jails charge a fee for certain types of health care services, including prescription medication.

Summary of Bill (First Substitute): To the extent funding is specifically appropriated by the Legislature for this purpose, county jails must provide MAT therapies for persons in custody experiencing OUDs. The Health Care Authority must consult with and provide technical assistance, upon a request by a county jail, regarding the use of appropriate FDA-approved MAT as deemed medically appropriate by a medical professional during the custody period.

The authority of the Legislature to direct the state treasurer to make transfers of monies in the criminal justice treatment account to the state general fund and home security fund account is removed.

The requirement for county jails to provide MAT is null and void if funding is not appropriated for this purpose.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):

- Requires, subject to funds specifically appropriated by the Legislature for this purpose, county jails to provide MAT therapies for persons in custody experiencing opioid use disorders.
- Removes the authority to transfer funds from the criminal justice treatment account to the state general fund or home security fund account.
- Requires the Health Care Authority to consult and provide technical assistance to county jails that request assistance regarding the use of appropriate MAT.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Substitute (Human Services, Reentry & Rehabilitation): *The committee recommended a different version of the bill than what was heard.* PRO: City and county jails need MAT but need to find funding for it, and need to find new funding. Stopping the sweeper of the Criminal Justice Treatment Account could help 200 more people in drug court. Anywhere where society can divert people to MAT, they should, and they need to keep them on MAT. If the person is in custody in jail, and MAT is appropriate, it is a good place to catch them and get them on MAT.

OTHER: Support assistance for jails to combat public health problem and help people stop addiction and start their way to recovery to become productive citizens. Need to consider the range of sizes of city and county jails. If providing MAT becomes a requirement for counties, we need to provide sufficient funding because smaller jails do not have 24 hour medical services or pharmacies nearby. There are some jails with as few as 12 beds, and some with as many as 89 beds.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Senator Hans Zeiger, Prime Sponsor; Bob Cooper, Washington State Association of Drug Court Professionals and National Association of Social Workers, Washington Chapter.

OTHER: Juliana Roe, Washington State Association of Counties; Sharon Swanson, Association of Washington Cities; James McMahan, Washington Association of Sheriffs and Police Chiefs; Dennis Weber, Cowlitz County Commissioner.

Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: City and county jails need MAT, but need to find funding for it, and need to find new funding. Stopping the sweeper of the Criminal Justice Treatment Account could help 200 more people in drug court. Need to consider the range of sizes of city and county jails. If providing MAT becomes a requirement for counties, we need to provide sufficient funding because smaller jails do not have 24-hour medical services or pharmacies nearby.

OTHER: There were two different lawsuits around the provision of MAT services and both were settled.

Persons Testifying (Ways & Means): PRO: James McMahan, WA Association of Sheriffs and Police Chiefs; Juliana Roe, Washington State Association of Counties; Bob Cooper, National Association of Social Workers, Washington Chapter, and Washington State Association of Drug Court Professionals.

OTHER: Eric Gonzalez Alfaro, Legislative Director, ACLU of Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.