

SENATE BILL REPORT

2SSB 5695

As Amended by House, March 2, 2022

Title: An act relating to a body scanner pilot program at the department of corrections.

Brief Description: Concerning a body scanner pilot program at the department of corrections.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Wagoner, Brown, Gildon, Kuderer, Lovick, Mullet, Wellman and Wilson, C.).

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/18/22, 1/28/22 [DPS-WM].

Ways & Means: 2/04/22, 2/07/22 [DP2S].

Floor Activity: Passed Senate: 2/12/22, 49-0.

Passed House: 3/2/22, 96-0.

Brief Summary of Second Substitute Bill

- Requires Department of Corrections (DOC) to establish a comprehensive body scanner program at the Washington Corrections Center for Women and a male correctional facility as part of an expanded pilot program to create drug-free prisons.
- Requires DOC to develop policies and procedures necessary to establish a comprehensive body scanner program that must be used to conduct security screenings for certain persons entering the secure perimeter of the facility.
- Directs DOC to develop alternative search methods for certain individuals.
- Provides that incarcerated individuals with body scans for substance-related contraband must be, if appropriate, assessed for and receive substance use disorder treatment.

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

- Directs DOC to submit an annual report to the Governor and Legislature and sunsets the pilot on June 30, 2024.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 5695 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Nguyen, Vice Chair; Gildon, Ranking Member; Dozier, Saldaña and Trudeau.

Staff: Kelsey-anne Fung (786-7479)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5695 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Billig, Braun, Carlyle, Conway, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Staff: Sarian Scott (786-7729)

Background: Pilot Program Report. According to the Department of Corrections (DOC), one of the greatest risks to operating safe and secure facilities is the introduction and movement of contraband, whether it be weapons, tools used to aid escape attempts, or illegal drugs that disrupt normal operations and cause health and safety concerns. Strip searches allow for greater visual certainty that the individual is not concealing contraband, and are often conducted when incarcerated individuals have had contact with the public or when the individual returns from work. Strip searches also aid in identifying health and safety concerns such as self-harm behavior, illegal drug use, or signs of fighting or assault. DOC policy requires strip searches to be conducted by two employees of the same gender as the individual being searched, except in limited circumstances.

In 2018, the Legislature provided funding for DOC to install a body scanner at the Washington Corrections Center for Women as a pilot project to reduce strip searches. DOC was required to collect data on its change in practices, benefits or issues with using the body scanner, and provide a report to the Legislature. DOC reported a reduction in average employee time for searches, enhancement of the safety and security of the facility, and other benefits to both employees and inmates from not having to perform strip searches. With the use of the body scanner, strip searches are only performed if there is a positive or suspicious

body scan, the individual is being placed into restricted housing or a mental health unit, or in emergent situations where the individual cannot be transported to the scanner location safely and securely. DOC reported several issues with using body scan technology, including that some scans still required additional screening and monitoring, the scanner was permanently installed in one location, and addressing individuals with positive body scans.

Dry Cell Watch. DOC has established policies for placing an incarcerated individual in a secure room or cell for the safe recovery of suspected swallowed or internally concealed contraband or foreign objects to ensure the individual's safety and health and to safeguard facility security. Per DOC policy, initial placement on dry cell watch must be concluded within 72 hours or after three consecutive normal bowel movements, whichever occurs first. A 24- hour extension may be authorized up to three times after initial placement under certain circumstances. DOC policy specifies conditions of confinement for individuals placed on dry cell watch, such as lighting, ventilation, room temperature, meals, undergarments and coveralls, access to personal hygiene items, and shower and mail access, unless there are safety or security concerns.

There is a schedule specified in DOC policy for health services to conduct physical assessments, monitor vital signs, and document behavioral observations for individuals placed on dry cell watch. Assessments will be conducted as least every hour on the first day, every 2 hours on the second day, every 3 hours on the third day, and every 4 hours on the fourth and subsequent days.

Substance Use Disorder. During incarceration in a state facility, individuals sentenced under the prison-based drug offender sentencing alternative must undergo a comprehensive substance use disorder assessment and receive, within available resources, treatment services appropriate for the person. The substance use disorder treatment services must be licensed by the Department of Health (DOH).

DOC has established policies and guidelines for the clinical management of individuals with a substance use disorder. Individuals arriving at a reception diagnostic center may be administered an authorized substance use disorder screening instrument, within available resources, to determine the need for an assessment. Those individuals with initial screening results indicating the probability of a substance use disorder may be assessed using the substance use disorder assessment. An assessment indicating a substance use disorder is required for admission into DOH certified substance use disorder treatment provided by DOC.

Searches of Visitors. DOC employees who are limited authority peace officers may use reasonable force to detain, search, or remove any person who enters or remains on facility grounds without permission, appears to have committed or is attempting to commit a crime on facility grounds, or is found in possession of contraband. DOC must immediately notify the appropriate local law enforcement agency, and DOC may detain the person for a

reasonable time to search the person and confiscate any contraband.

DOC also has policies requiring searches of contract staff, volunteers, vendors and their agents, and other visitors on facility grounds. Searches are conducted as needed to enhance security and safety for personnel, inmates, and the public by minimizing the introduction of contraband into DOC facilities. Types of searches include electronic metal detectors, container search, pat search, canine search, and locker search.

Searches of Inmates and Facilities. DOC has policies and guidelines governing searches of areas within the secure perimeter of facilities, cells and living areas, common areas and recreation yards, and general areas of the facility accessible by the public. There are policies on routine and random searches of inmates, which can include canine search, pat searches, strip searches, and body cavity searches. DOC employees are subject to drug and alcohol-free workplace policies.

State Radiation Control Agency. DOH is designated as the state radiation control agency with sole responsibility for the administration of regulatory, licensing, and radiation control laws. DOH's Office of Radiation Protection protects and improves the health of people in the state by ensuring exposure to radiation is as low as reasonably achievable. DOH also has rules on radiation protection standards and dosage limits on a person's exposure to radiation.

Summary of Second Substitute Bill: DOC must establish a comprehensive body scanner program at the Washington Corrections Center for Women and a male state correctional facility as part of an expanded pilot program to create drug-free prisons. The scanner must be capable of detecting contraband contained under clothing and within body cavities, and must meet applicable federal and state radiation and safety standards.

DOC must develop policies and procedures necessary to establish a comprehensive body scanner program that must be used to conduct security screenings for employees, contractors, visitors, volunteers, incarcerated individuals, and other persons entering the secure perimeter of the participating correctional facility. Alternative search methods must be used for minors, individuals who are health compromised, individuals with disabilities, individuals who may be pregnant, and individuals who may meet the maximum allowable monthly or annual radiation dosage limit specified by DOH.

DOC must provide appropriate custody and nursing staff levels for the body scanners. Staffing must be adequate to provide for subsequent searches and dry cell watches if a body scan indicates the presence of contraband. "Dry cell watch" means the placement of an incarcerated person in a secure room or cell for the safe recovery of internally concealed contraband. An incarcerated individual with a body scan indicating the presence of substance-related contraband must undergo, if appropriate, a comprehensive substance use disorder assessment and receive relevant substance use disorder treatment services, including medication-assisted treatment. DOC must prioritize substance use disorder

treatment services for incarcerated individuals with cognitive, behavioral, and physiological symptoms indicating the incarcerated individual is experiencing a substance use disorder rather than transporting the substance for another. A DOC employee, contractor, visitor, or volunteer with a body scan indicating the presence of contraband must be disciplined in accordance with DOC policies.

DOC must provide appropriate radiation safety and scanner operation training to all staff who will administer the body scan. Only staff who have completed all related trainings may operate the body scanner and review body scans. DOC must develop policies, in consultation and collaboration with DOH, on scanner use and screening procedures, including frequency and radiation exposure limits, to minimize harmful radiation exposure while safely and effectively using the body scanners to create drug-free prisons. DOC must develop a method to track and maintain records on the frequency of body scans conducted on any individual subject to the comprehensive body scanner program to comply with any maximum allowable monthly and annual radiation dose limits that may be set by DOH.

The DOC secretary is required to adopt any rules and policies necessary to implement the bill.

DOC must submit an annual report by December 1st to the Governor and Legislature on:

- the number and types of individuals, including visitors, employees, contractors, and volunteers, with positive body scans in the prior year and the disciplinary action taken;
- the types of contraband detected by the body scanner;
- the number of confiscated substances in the prior five years;
- the number of incarcerated individuals with positive body scans for substance-related contraband in the prior year who were assessed for and received substance use disorder treatment services while incarcerated; and
- the number and length of time incarcerated individuals with positive body scans were placed on dry cell watch in the prior year.

The pilot program expires June 30, 2024.

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 Original Bill (Human Services, Reentry & Rehabilitation): *The committee recommended a different version of the bill than what was heard.* PRO: It is important to make sure persons in government institutions are provided

with access to the treatment that they need when they need it. More than 38 percent of inmate admissions are diagnosed with drug or alcohol use disorder, and most did not receive substance use disorder treatment while in prison. DOC must have the resources they need to purchase scanners that are safe for everyone to go through, have proper staff and dry cell rooms, and funding for treatment services. Drug-free prisons make prisons safer for everyone, including visitors, those living there, and those working there. Serious efforts are needed to understand where the drugs are coming from and how to stop it. There is no single category of persons who are bringing drugs into prisons and this bill is about making sure the same rule applies to everyone. This builds on the work of the previous pilot and takes it to the next level by connecting it to the services, resources, and treatment.

CON: This bill removes the original intent behind the body scanner pilot program at WCCW, which was to create a gender responsive, trauma-informed alternative to strip searches that preserving human dignity and enhancing safety. There is no data to inform how and why contraband is entering facilities, especially during pandemic restrictions, or how funding for dry cell watch staff has been used. Without this data and analysis, expanding the pilot to other prisons or to include visitors is not prudent. Dry cell is very traumatic and the female anatomy dramatically increases length of time on dry cell watch. The pilot should not be expanded without changes to dry cell confinement. Currently, body scan images are not protected and can be publicly disclosed.

OTHER: Before moving forward with a system-wide plan, DOC and the Legislature must develop operational policies and procedures that govern training, usage, and data collection so that the inhumane practice of strip searches and dry cell watches are eventually eliminated. There should be a plan to address racial profiling and disproportionality. Many people with medical conditions, birth control devices, or who have undergone other procedures, can cause the scan to come up abnormal, which may cause unnecessary scrutiny over disabled bodies, transgender, and gender non-conforming bodies. Protecting women who are pregnant from procedures that put the woman or fetus at risk should be considered paramount.

Unintended consequences of the pilot need to be addressed before expansion. The scans themselves are subject to public disclosure laws. Due to the female anatomy, there is a dramatic difference in the amount of time that women must spend in dry cell to prove or disprove they have contraband. Dry cell is many times worse than solitary confinement and is a traumatic experience.

This bill has a lot of implementation issues. Adding new staff, new requirements, new procedures while the correctional facilities are under many pressures related to the pandemic is troublesome. This could create delays in staff reporting to shifts, shift times may be longer, and there may be other delays to the safety of the facility. One option would be to randomly scan employees, which is consistent with current policy. Time spent waiting in line for the scanner should be compensated if it is required for staff to enter the prison. There is a concern about fiscal costs due to staffing, substance use disorder services,

and capital costs. While the clear intent is to provide support for substance use disorder, DOC does not find that the persons who are bringing in contraband into prisons are the users of the substance. The body scanner is not the best way to identify those who need substance use disorder treatment.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Senator Manka Dhingra, Prime Sponsor.

CON: Laurie Dawson, Member of the WCCW Family Council.

OTHER: Melena Thompson, Department of Corrections; Brenda Wiest, Teamsters117; Paula Bond.

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

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* OTHER: I am grateful for this bill. It increases access to appropriate treatment, and adds an additional scanner at the visit rooms. Investing in gender responsive and trauma informed assessment, classification, treatment and programming should be prioritized.

Persons Testifying (Ways & Means): OTHER: Laurie Dawson.

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

EFFECT OF HOUSE AMENDMENT(S):

- Clarifies language regarding prioritization of substance use disorder treatment services.
- Requires DOC to distinguish between incarcerated individuals who have symptoms indicating a substance use disorder and incarcerated individuals who transport substances for other individuals and do not have symptoms indicating a substance use disorder.
- Adds a null and void clause.