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**Community Safety, Justice, & Reentry  
Committee**

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**2SSB 5502**

**Brief Description:** Ensuring access to substance use disorder treatment.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Gildon, Boehnke, Torres, Wilson, J. and Wilson, L.).

**Brief Summary of Second Substitute Bill**

- Requires assessment of incarcerated individuals for a substance use disorder prior to participation in the Department of Corrections' graduated reentry program.
- Requires substance use disorder treatment for individuals identified with a disorder during assessment.
- Requires monthly reports identifying the number of individuals assessed with a substance use disorder and the type of treatment received.

**Hearing Date:** 3/14/23

**Staff:** Martha Wehling (786-7067).

**Background:**

Graduated Reentry Program.

The Department of Corrections began providing a graduated reentry program in 2018. The program provides a partial confinement setting for incarcerated individuals while supporting their transition from incarceration through treatment, programs, work education, and participation in cognitive behavioral interventions. "Partial confinement" means the individual is confined for less than a year in a facility or institution, and includes work release, home

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detention, work crew, electronic monitoring, or a combination of those options. An incarcerated individual (referred to as an "offender" in the statute), may not participate in a graduated reentry program until the individual has served at least six months in confinement in a DOC facility. There are additional limitations on participation in the program, depending on the length of time served and the individual's conviction. For example, individuals serving sentences for any sex offense are not eligible to participate in home detention.

The DOC may transfer individuals who are eligible to participate in the graduated reentry program from the DOC facility to home detention, if the DOC determines that the program is appropriate. "Home detention" is a partial confinement program that confines the individual to a private residence 24 hours a day unless the court or supervisor approves, authorizes, or permits an absence. Home confinement requires electronic monitoring. "Electronic monitoring" means tracking the individual through technology, including radio frequency signaling or global positioning system, which may include victim notification technology.

The DOC must assist the individual with the transition from confinement to home detention. Prior to transfer, the individual must provide an approved residence and living arrangement. The DOC may provide up to six months of rental vouchers if necessary to obtain a residence.

After an individual is transferred to the community on home detention, the individual must participate in programming and treatment assigned by the DOC and based on the individual's assessed need. The DOC must assign a community corrections officer to monitor the individual's compliance with the DOC's conditions and requirements. The individual must be placed on electronic home monitoring.

The DOC may require any individual to return to total confinement. Noncompliance with the requirements imposed by the DOC is one basis for return. "Total confinement" means the individual is confined 24 hours a day within a facility or institution that is operated by a governmental unit.

When an individual participates in the graduated reentry program, the DOC is not liable for the individual unless the agency acted with willful and wanton disregard. "Willful and wanton" is intentional behavior that knowingly and intentionally produces an injury, or shows a reckless disregard for the safety of the person injured by the action. The DOC's selection of participants in the program and modifying the conditions are considered quasi-judicial functions. A four-part test has developed in case law to determine whether a particular agency function is quasi-judicial. Certain types of judicial review are available for some quasi-judicial functions, while other quasi-judicial functions are protected by judicial immunity.

The DOC publishes a monthly report identifying the number of individuals transferred to the graduated reentry program. The DOC also provides an annual report to the Legislature. Between July 2021 and February 2023, 1,174 individuals were transferred to home detention through the program.

### Drug Offender Sentencing Alternative.

An individual is eligible for the Drug Offender Sentencing Alternative (DOSA) in certain situations. The DOSA is an alternative sentence that allows the court to waive the standard sentence range and impose either a term of incarceration or a residential substance use disorder treatment-based alternative. There are limitations on participation in alternative sentencing, depending on the individual's conviction and whether the individual received an alternative sentence in the prior 10 years. For example, the individual may not participate in the DOSA if the individual's felony conviction was violent or included a sentence enhancement.

The court may order the DOC to complete either a risk assessment report or a substance use disorder screening report, or both, for the individual. If the individual is incarcerated for domestic violence, the DOC must complete a presentence investigation and a chemical dependency screening report.

If the court is considering using the residential substance use disorder treatment-based alternative, the individual may be required to be examined by an agency certified by the Department of Health (DOH) to provide substance use disorder services. The exam must address:

- whether the individual suffers from a substance use disorder;
- the probability that criminal behavior will occur in the future;
- whether effective treatment for the substance use disorder is available from a provider licensed or certified by the DOH; and
- whether use of the residential substance use disorder treatment-based alternative will benefit the individual and the community.

A residential DOSA sentence requires community custody and treatment in a program. The treatment must:

- be in a residential substance use disorder treatment program certified by the DOH;
- be for a period up to six months;
- include a term of confinement less than 30 days in a facility to facilitate direct transfer to the residential substance use disorder treatment facility; and
- require completion and continued care be in accordance with the Health Care Authority rules, which must consider criteria established by the American Society of Addiction Medicine.

If the court elects to use the DOSA, the court may impose additional conditions. The individual may be required to pay \$30 per month to offset monitoring costs. A treatment plan must be provided to the court within 30 days of the program start, and the court must schedule a progress hearing during treatment and a treatment termination hearing three months prior to the expiration of community custody. "Community custody" means the individual serves a portion of his or her sentence in the community, subject to controls placed by the DOC on his or her movement or activities.

The treatment providers and the DOC must submit written reports addressing the individual's

compliance with treatment and monitoring, and recommendations addressing termination of treatment. An individual may be required to return to court to evaluate progress treatment or determine if any conditions have been violated. The conditions may be modified during the alternative sentence.

The first report on the effectiveness of the DOSA in reducing recidivism was due to the Legislature on November 1, 2022, and additional reports are due every five years beginning November 1, 2028. The November 2022 report found that prison DOSA reduces the likelihood of recidivism by 6.9 percent, while residential DOSA had no effect on the likelihood of recidivism compared to a standard sentence.

### **Summary of Bill:**

#### Substance Use Disorder Treatment.

An individual must be assessed for a substance use disorder before the individual can participate in the graduated reentry program. If the assessment identifies a disorder, the DOC must assist the individual in enrolling in substance use disorder treatment services. The level of service will vary, depending on the assessment, and shall include access to medication-assisted treatment and counseling.

Individuals participating in the graduated reentry program must begin receiving substance use disorder treatment services as soon as practicable after transfer into the program. The DOC must regularly monitor the individual for substance use until treatment begins. The DOC must make changes to the treatment plan based on its monitoring.

#### Reporting.

Beginning in July 2023, the DOC is required to provide additional data in its monthly reports, including:

- the number of individuals transferred to the graduated reentry program with a substance use disorder; and
- the number of individuals in the graduated reentry program who received:
  - outpatient substance use disorder treatment;
  - inpatient substance use disorder treatment; and
  - outpatient and inpatient substance use disorder treatment.

Beginning in July 2023, the Health Care Authority must report monthly to the DOC. The report must identify the number of individuals in the graduated reentry program who received substance use disorder outpatient treatment in the prior month.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is

passed.