

# SENATE BILL REPORT

## 2SSB 5502

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As Amended by House, April 10, 2023

**Title:** An act relating to ensuring necessary access to substance use disorder treatment for individuals entering the graduated reentry program at the department of corrections.

**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 History:**

**Committee Activity:** Human Services: 1/31/23, 2/07/23 [DPS-WM].

Ways & Means: 2/16/23, 2/24/23 [DP2S].

**Floor Activity:** Passed Senate: 3/2/23, 49-0.

Passed House: 4/10/23, 98-0.

### Brief Summary of Second Substitute Bill

- Requires offenders to undergo a comprehensive substance use disorder (SUD) assessment in order to transfer to the Graduated Reentry (GRE) Program at the Department of Corrections (DOC).
- Requires DOC to assist an offender in enrolling in SUD treatment services at the level deemed appropriate by the assessment.
- Provides offenders must begin receiving treatment services as soon as practicable after transfer to the GRE Program to avoid treatment delays.
- Requires specified data reporting by DOC and the Health Care Authority beginning July 1, 2023.

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### SENATE COMMITTEE ON HUMAN SERVICES

**Majority Report:** That Substitute Senate Bill No. 5502 be substituted therefor, and the

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*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.*

substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Boehnke, Ranking Member; Frame, Nguyen, Warnick and Wilson, J..

**Staff:** Kelsey-anne Fung (786-7479)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5502 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

**Staff:** Sarian Scott (786-7729)

**Background:** Release Prior to Expiration of Sentence. Generally, a person sentenced to the Department of Corrections (DOC) custody may not leave the correctional facility or be released prior to the expiration of the sentence unless a statutory exception applies. Partial confinement is one such exception for qualifying incarcerated individuals, and partial confinement refers to work release, home detention, work crew, electronic home monitoring, or a combination of these programs. Certain incarcerated individuals may not qualify for transfer to partial confinement programs. For instance, individuals serving sentences for offenses with mandatory minimums cannot be released from total confinement prior to serving the minimum prescribed sentence.

Graduated Reentry Program. The Graduated Reentry (GRE) Program at DOC was established in law in 2018. According to DOC, the program improves public safety by targeting interventions and programs for an incarcerated individual's successful transition into the community. DOC administers the program, and must find that the program is an appropriate placement for the offender and will assist the offender's transition from confinement to the community.

In 2021, the Legislature altered the eligibility criteria by creating two participation tracks and modifying the length of participation and minimum total confinement requirements for each track. For track one, offenders who are not subject to deportation order, civil commitment, or interstate compact for adult offender supervision must serve at least six months in total confinement in a state correctional facility to be eligible to serve up to the final five months of the offender's term of confinement in the GRE Program. For track two, offenders who are not currently serving a sentence for a sex, violent, or crime against a person offense, and who are not subject to a deportation order or the jurisdiction of the

Indeterminate Sentence Review Board, must serve at least four months in total confinement at a state correctional facility to be eligible to serve up to the final 18 months of the offender's term of confinement in the GRE Program.

While participating in the program, DOC must:

- require the offender be placed on electronic home monitoring;
- require the offender to participate in programming and treatment that DOC must assign based on the offender's assessed need; and
- assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements.

All participants must have an approved residence and living arrangement prior to transfer to home detention. DOC may issue rental vouchers for up to six months if an approved address cannot be obtained without the assistance of a rental voucher. A participant in the program may be returned to total confinement by DOC for any reason including, but not limited to, the participant's noncompliance with any sentence requirement. DOC performs a quasi-judicial function by selecting offenders to participate in the program and setting, modifying, and enforcing the requirements of the program. DOC is not liable for the acts of participants in the program unless DOC acted with willful and wanton disregard.

DOC must publish a monthly report on its website with the number of offenders who were transferred during the month to home detention as part of the GRE Program. DOC must submit an annual report by December 1st to the appropriate committees of the Legislature with the number of offenders who were transferred to home detention as part of the GRE Program during the prior year.

Substance Use Disorder. During incarceration in a state correctional facility, individuals sentenced under the prison-based drug offender sentencing alternative must undergo a comprehensive substance use disorder (SUD) assessment and receive, within available resources, treatment services appropriate for the person. DOC's policies require these individuals to receive the highest priority for prison SUD programs, and may be admitted 48 months prior to release.

DOC has internal policies and guidelines for the clinical management of individuals with a SUD. 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. Individuals with initial screening results indicating the probability of a SUD may be assessed using the SUD assessment. An assessment indicating a SUD is required for admission into Department of Health certified SUD treatment provided by DOC.

Referrals for DOC-funded treatment program services in the community will only be made if the individual has at least 90 days remaining until the scheduled end date of supervision to allow for completion of treatment. Referrals for treatment program services in prisons

may be accepted for individuals who have a SUD and are determined to need services.

**Summary of Second Substitute Bill:** An offender may not be transferred to participate in the GRE Program until DOC has conducted a comprehensive assessment for SUD. If the offender is assessed to have a SUD, DOC must assist the offender in enrolling in SUD treatment services at the level deemed appropriate by the SUD assessment.

Offenders transferred to the GRE Program must begin receiving SUD treatment services as soon as practicable after transfer to avoid any delays in treatment. SUD treatment services must include, as deemed necessary by the SUD assessment, access to medication-assisted treatment and counseling programs. While awaiting placement into SUD treatment in the community, DOC must regularly monitor the offender for substance use and make changes to the treatment plan accordingly.

Beginning July 1, 2023, DOC must collect and post to its website monthly data on the number of offenders who were transferred to the GRE Program who were assessed to have a SUD during the prior calendar month; and the number of offenders in the GRE Program during the prior calendar month who received outpatient SUD treatment, inpatient SUD treatment, or both outpatient and inpatient SUD treatment.

Beginning July 1, 2023, the Health Care Authority (HCA) must report monthly to DOC on the number of offenders in the GRE program who received SUD outpatient treatment, while in the community, during the prior calendar month.

**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):** *The committee recommended a different version of the bill than what was heard.* PRO: DOC is required to publish reports on unexpected fatalities, and the last seven have involved individuals who were released to the Graduated Reentry Program and subsequently died of overdose. At DOC, if screening happens, a person may be given an SUD assessment, but it does not happen in all cases. If a SUD assessment indicates the person has an SUD, an auto-generated referral for SUD treatment is triggered but a referral does not guarantee that the person will be automatically enrolled in treatment. If a person is in need of SUD treatment, the person should get enrolled into the proper treatment program before releasing into the community. Treatment should start on day one of entry into a DOC facility, but this bill will prevent negative consequences on the backend.

OTHER: There are concerns about the timing and availability of SUD assessment and treatment with the process outlined in the bill. An SUD assessment should be required at intake rather than before transferring to the Graduated Reentry Program. It is important incarcerated individuals be enrolled in and receive SUD treatment. Treatment and services should be available on day one.

**Persons Testifying (Human Services):** PRO: Senator Chris Gildon, Prime Sponsor; Mark Johnson, Washington Retail Association.

OTHER: Taylor Gardner, WASPC.

**Persons Signed In To Testify But Not Testifying (Human Services):** 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.* PRO: I receive the unexpected fatality reviews. Over the course of time, I started to see a trend where individuals being released into the graduated reentry program and shortly thereafter they were overdosing. I count at least seven instances, and they subsequently died. There is a gap in the linkage between the release into the graduated reentry program. It could be medically assisted treatment or narcotics anonymous or other treatments. Looking to fill the gap to connect people with the treatment services they need.

OTHER: We wish treatment was more available. There are concerns about the timing and process. Rather than assessments prior to transfer, the assessment should occur at intake to prison.

**Persons Testifying (Ways & Means):** PRO: Senator Chris Gildon, Prime Sponsor.

OTHER: Taylor Gardner, WA Assn of Sheriffs and Police Chiefs.

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

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Instead of requiring DOC to monitor and update treatment plans, requires DOC to provide GRE participants with access to self-administered fentanyl testing supplies and medications designed to reverse the effects of opioid overdose, when clinically appropriate.
- Extends the reporting period from the prior calendar month to the prior 12 months for data on GRE participants receiving SUD treatment.
- Requires DOC to share data with HCA on GRE participants.
- Adds a null and void clause.