

# SENATE BILL REPORT

## SSB 5101

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As Amended by House, April 5, 2023

**Title:** An act relating to extraordinary medical placement for incarcerated individuals at the department of corrections.

**Brief Description:** Concerning extraordinary medical placement for incarcerated individuals at the department of corrections.

**Sponsors:** Senate Committee on Human Services (originally sponsored by Senators Saldaña, Warnick, Dhingra, Kuderer, Nguyen, Nobles, Shewmake and Wilson, C.).

**Brief History:**

**Committee Activity:** Human Services: 1/19/23, 1/26/23 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 2/8/23, 37-11.

Passed House: 4/5/23, 59-39.

**Brief Summary of First Substitute Bill**

- Expands eligibility criteria and modifies electronic monitoring requirements for individuals granted extraordinary medical placement by the Department of Corrections.

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### SENATE COMMITTEE ON HUMAN SERVICES

**Majority Report:** That Substitute Senate Bill No. 5101 be substituted therefor, and the substitute bill do pass.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Frame, Nguyen and Warnick.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Boehnke, Ranking Member; Wilson, J..

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

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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.*

**Background:** The Secretary of the Department of Corrections (DOC) may authorize an extraordinary medical placement (EMP) and transfer an offender to an alternative care setting outside of DOC if:

- the offender has a serious medical condition expected to require costly care and treatment;
- granting the placement is expected to result in savings to the state; and
- the offender poses a low risk to the community because they are currently physically incapacitated due to age or the medical condition, or is expected to be so at the time of release.

Offenders authorized for an EMP must be placed on electronic monitoring unless the monitoring equipment interferes with the function of medical equipment or results in the loss of funding for the offender's medical care, in which case, alternative monitoring must be used. An EMP can be revoked at any time. Persistent offenders and offenders sentenced to life imprisonment without the possibility of release or parole are not eligible for EMP.

DOC has policies establishing criteria and procedures for referring, screening, placing, and monitoring individuals who are eligible for EMP. Per policy, the individual must be seriously ill or have a medical condition that is physically or mentally debilitating or incapacitating, rendering the individual unable or unlikely to engage in activities of daily living without assistance, perform gainful employment, and participate in criminal behavior.

Since 1999, the Secretary of DOC has been required to report annually to the Legislature on:

- the number of offenders considered for an EMP;
- the number of offenders who were granted an EMP;
- the number of offenders who were denied an EMP;
- the length of time between initial consideration and the placement decision for each offender who was granted an EMP;
- the number of offenders granted an EMP who were later returned to total confinement; and
- the cost savings realized by the state.

Based on these annual reports, as of October 2022, during the prior year, 44 incarcerated individuals were considered for EMP and two were granted. In 2020, 75 incarcerated individuals were considered for EMP and four were granted. In 2019, 32 incarcerated individuals were considered for EMP and zero were granted.

**Summary of First Substitute Bill:** Eligibility criteria for EMP is expanded to require a permanent or terminal physical disability or a medical condition that is serious and complex. Restrictions limiting eligibility based on current or expected physical incapacitation due to age or the individual's medical condition are removed.

When an incarcerated individual is granted an EMP, electronic monitoring may be waived if

the medical condition, as certified by the individual's treating physician, from being independently mobile. An alternative form of monitoring must be used if the electronic monitoring equipment is detrimental to the individual's health.

References to offender are replaced with incarcerated individual.

**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:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is about compassion and common sense. The corrections system brings in people when there has been harm to rehabilitate the person or protect vulnerable individuals. There are people in DOC's care who are no longer a threat, who have been rehabilitated, or who are themselves vulnerable, and they should not be in prison anymore.

This bill adds chronic medical conditions to eligibility criteria for compassionate release. It is currently very hard and rare to be granted an extraordinary medical placement by DOC. Many individuals with late stages of cancer have been denied multiple times, even with the recommendation of the prosecutor in the case or DOC medical staff. More people die while waiting for a determination on their extraordinary medical placement request than are granted placement. The extraordinary medical placement process should not be so difficult for incarcerated individuals with terminal illnesses and creates false hope. The requirement that the person be physically incapacitated means individuals with terminal illnesses, heart attacks, and strokes often do not qualify. It is inhumane to have people sick and dying while locked behind closed doors. No one is sentenced to die in prison, and DOC is not equipped or funded to be a nursing home or provide the level of medical care needed in assisted living units. Even though this bill would increase those who could apply for extraordinary medical placement, there is still an extensive DOC process with six levels of review that one must go through. By releasing people who are low risk and expensive to care for, resources can be redirected to positive programming and community resources to support people on release.

The bill does not remove accountability because the person must be on electronic home monitoring and the person's sentence is not terminated. Family members often apply with the incarcerated individual and are willing to provide care.

CON: The problem is not with the statute but with implementation. The bill would make the eligibility criteria overly broad by adding chronic medical conditions. Chronic medical

conditions could include illnesses that last a year or more such as asthma or a bacterial infection, and someone with a temporary illness who is assessed as low risk could qualify for extraordinary medical placement under the bill. Additional guardrails are needed to ensure someone granted an extraordinary medical placement is not a risk to the public.

**Persons Testifying:** PRO: Senator Rebecca Saldaña, Prime Sponsor; Jim Chambers; Melody Simle; Meagan Kineman; Anthony Powers; Rachael Seevers, Disability Rights Washington; Jennifer Smith, Seattle Clemency Project; MaryAnn Curl, MD, Department of Corrections; Mary McQueen.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs; Russell Brown, WA Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** No one.

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

- Alters eligibility criteria by requiring an incarcerated individual to be assessed by two physicians and be determined to be either (1) affected by a permanent or degenerative medical condition to such a degree that the individual does not presently, and likely will not in the future, pose a threat to public safety, or (2) in ill health and expected to die within six months and does not presently, and likely will not in the future, pose a threat to public safety.
- Removes the requirement that electronic monitoring be waived if the medical condition presents the individual from being independently mobile.