

HOUSE BILL REPORT

SSB 5101

As Passed House - Amended:

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:

Community Safety, Justice, & Reentry: 3/9/23, 3/23/23 [DPA].

Floor Activity:

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

Brief Summary of Substitute Bill (As Amended by House)

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

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Goodman, Chair; Simmons, Vice Chair; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse and Ramos.

Minority Report: Without recommendation. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Graham.

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.

Staff: Lena Langer (786-7192).

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 the DOC if:

- the person has a serious medical condition expected to require costly care and treatment;
- granting the placement is expected to result in savings to the state;
- the person 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; and
- the person is not serving a sentence of life without the possibility of release.

Persons 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 person's medical care, in which case, alternative monitoring may be used. The Secretary of the DOC may revoke an EMP at any time.

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

The Secretary of the DOC is 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 an EMP and two were granted. In 2020, 75 incarcerated individuals were considered for an EMP and four were granted. In 2019, 32 incarcerated individuals were considered for an EMP and zero were granted.

Summary of Amended Bill:

The eligibility criteria for an EMP is modified so that an incarcerated individual may be

authorized for an EMP if:

- the incarcerated individual has been assessed by two physicians and is determined to be either:
 - 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
 - in ill health and is expected to die within six months and does not presently, and likely will not in the future, pose a threat to public safety;
- the incarcerated individual has been assessed as low risk to the community at the time of release;
- the incarcerated individual is not serving a sentence of life without the possibility of release; and
- granting the placement is expected to result in savings to the state.

The list of reasons for when an alternative type of monitoring in lieu of electronic monitoring may be used is expanded to include when the monitoring equipment is detrimental to the individual's health.

References to "person" and "offender" are replaced with "incarcerated individual."

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 24, 2023.

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

Staff Summary of Public Testimony:

(In support) This bill sets criteria for an EMP that is more nuanced than the current criteria so that people who are at the end of their lives and low risk to the community will receive compassionate release, and this in turn will save the state money. This type of compassionate release should be attainable. The qualifications for an EMP need to be adjusted. The existing statutory language for an EMP, especially the requirement of physical incapacitation, is too restrictive. Broadening eligibility requirements for an EMP is a step in the direction of a more humane and merciful justice system. The criteria language in the bill narrowed as the bill moved through the Senate committee.

The statutory restrictions on an EMP are currently too strict and prevent almost everyone from being released. The referral numbers for an EMP are much higher than the placement numbers. When the DOC determines whether an individual may be authorized for an EMP, the custody department first reviews the individual's risk level, then there is a clinical review to determine whether the individual is incapacitated. In this process, very few people are approved during the clinical review. Most people who are denied an EMP are

not denied because they are too high risk, but because of the physical incapacitation standard. The language in the bill is intended to address that clinical standard while maintaining community safety.

The one disability unit that is currently in our state prisons is an awful place for anyone to die. Overall, the population in prison is aging. For many incarcerated people, dying in prison is their most pressing fear. Our prisons were never intended to meet the medical, physical, or mental health needs of the aging or ill. Release through clemency is a long process and takes years. The prison system is not humane. People are locked behind closed doors not because they pose a safety risk but because they are sick and dying.

Although the EMP option has existed for years, the DOC rarely uses it. The process for obtaining an EMP should not be so hard for someone with a serious, terminal illness. There would be huge cost savings for the DOC if this bill were adopted. This is a compassionate bill and a good approach for the state to take. The Legislature should show compassion as leaders for others to follow.

(Opposed) The language in the bill is too broad and opens up an EMP to individuals who are not physically incapacitated and do have a terminal illness. Most state statutes and the Federal Bureau of Prisons have language that requires some sort of physical incapacitation or a terminal illness to qualify for this type of release. There is a need to balance compassionate release and public safety. The balance in the current statute is more appropriate.

Under this bill, the most significant standard set forth in the new criteria for an EMP is that the individual has a permanent or terminal physical disability that is serious or complex and is expected to be costly. There are a lot of conditions that would qualify under this language. People who are not a threat to the community should be released, but the language in the bill is too broad.

Persons Testifying: (In support) Senator Rebecca Saldaña, prime sponsor; Jim Chambers; Melody Simle; Rachael Seevers, Disability Rights Washington; Willa Osborn, Seattle Clemency Project; Anthony Powers; Meagan Kineman; and Melena Thompson, Department of Corrections.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.