

SENATE BILL REPORT

SB 5388

As of February 17, 2025

Title: An act relating to department of corrections behavioral health certification.

Brief Description: Concerning department of corrections behavioral health certification.

Sponsors: Senators Dhingra, Nobles, Saldaña, Trudeau and Wilson, C..

Brief History:

Committee Activity: Human Services: 1/29/25, 2/05/25 [DP-WM, w/oRec].

Ways & Means: 2/17/25.

Brief Summary of Bill

- Removes the requirement for substance use disorder treatment services at the Department of Corrections (DOC) to be licensed by the Department of Health.
- Requires DOC to seek accreditation through the National Commission of Correctional Health Care Standards by July 1, 2028, subject to appropriations.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Frame, Vice Chair; Orwall.

Minority Report: That it be referred without recommendation.

Signed by Senators Christian, Ranking Member; Warnick.

Staff: Kelsey-anne Fung (786-7479)

SENATE COMMITTEE ON WAYS & MEANS

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: Monica Fontaine (786-7341)

Background: Behavioral Health Agencies. The Department of Health (DOH) licenses and regulates inpatient and outpatient behavioral health agencies that may be certified to provide mental health, substance use disorder (SUD), problem gambling or gambling disorder services, or any combination of these types of services. Licensure and certification is required if any agency intends to seek Medicaid reimbursement, provide court-ordered mental health or SUD services, or as otherwise specified by state law.

Substance Use Recovery Unit. According to the Department of Corrections (DOC), their Substance Abuse Recovery Unit (SARU) is one of the largest certified treatment agencies in the state, with services in 25 state-certified facilities located within prisons and reentry centers. SARU treatment services provide a specialized focus on correcting thinking errors, relapse prevention and management, and gender-specific trauma-based therapy. Individuals found to have a SUD are assessed and referred for treatment services in a certain priority, and treatment services are provided, within available resources, to individuals who meet eligibility criteria based on clinical need and sentencing requirements.

Treatment services include:

- therapeutic community—the most intensive form of treatment within DOC facilities and community settings with a highly structured environment and separate living area;
- intensive inpatient—a highly structured residential treatment that is delivered by a DOC contract provider specifically designed for incarcerated individuals in need of treatment;
- intensive day treatment—a highly structured residential treatment that is similar to intensive inpatient, but designed to deliver treatment to individuals with needs greater than intensive outpatient;
- intensive outpatient—similar to intensive day treatment, but intended for individuals who will benefit from the least intensive primary level of care; and
- outpatient—individuals completing prison-based treatment and entering a reentry center are transitioned to an outpatient program.

Prison-Based Special Drug Offender Sentencing Alternative. During incarceration in a state correctional facility, individuals sentenced under the prison-based drug offender sentencing alternative must undergo a comprehensive SUD assessment and receive, within available resources, treatment services appropriate for the person. The SUD treatment services shall be licensed by DOH. DOC policies require these individuals to receive the highest priority for prison SUD programs.

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 SUD 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 DOH-certified SUD treatment provided by DOC.

National Commission on Correctional Health Care. The mission of the National Commission on Correctional Health Care (NCCHC) is to improve the quality of health care in jails, prisons, and juvenile confinement facilities. Since the 1970s, NCCHC establishes standards for health services in correctional facilities, operates a voluntary accreditation program for institutions that meet those standards, offers certification for correctional health professionals, conducts educational conferences and webinars, and produces industry-specific publications and resources.

Accreditation. NCCHC's accreditation program uses external peer review by a team of correctional health care experts to determine whether the carceral facility being surveyed meets the relevant standards. According to NCCHC, they are the only accrediting body authorized by the Substance Abuse and Mental Health Services Administration that focuses on corrections. NCCHC has an accreditation program for health services, mental health services, and opioid treatment programs. When seeking accreditation, a NCCHC survey team of correctional health experts will review health records, policies, and procedures, interview health staff, correctional officers, and incarcerated individuals, and tour the facility. Once accredited, the facility must submit an annual maintenance report with updates on relevant information. Additional on-site visits occur every three years.

Summary of Bill: Instead of requiring SUD treatment services to be licensed by DOH, the SUD treatment services must be provided by individuals licensed by the state of Washington. Subject to appropriations, DOC must seek accreditation through the National Commission on Correctional Health Care Standards by July 1, 2028.

References to offender are replaced with individual.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

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 (Human Services): PRO: This bill will undo changes to the law made in 2020 because of the extremely tough financial situation that the state is in currently. It will cost the state \$20 million to comply with current law. People should get the right services whether they are in or out of custody, and that remains the goal; however, given the financial situation, this bill moves towards that goal instead of pausing certification in order to save money. Pursuing NCCHC accreditation uses

comparable standards and will save DOC \$10 million, while continuing the work towards treatment certification. A return towards DOH certification can be explored when the state is back in a robust financial situation.

CON: Some are in favor of getting rid of DOH licensure over SUD services in prisons. The DOH regulations can be overbearing and difficult, and while DOC should adhere to community standards, the context of corrections is different. NCCHC accreditation is not the solution. The money should be going towards treatment instead of administrative process and improvements to become accredited. The solution should be asking DOH and DOC to work on existing standards that are developed collaboratively and specific to Washington's corrections setting and overseen by DOH.

This bill will remove critical DOH oversight on SUD and mental health programming at DOC. DOH's audit reports have found critical errors in patient care, basic failures in medical record keepings, and inconsistent mental health assessments and care. NCCHC accreditation is not a substitute for DOH licensure because it is focused entirely on policy and process, and not on substantive care or implementation. SUD treatment is medically necessary so DOC's obligation will exist with or without DOH oversight, but their presence ensures it is being done in a safe way.

DOH has cited DOC for conditions that violate state and federal law, not just DOH regulations. The problem is DOC's failure to provide treatment, and eliminating DOH oversight will not make the problem or costs go away. The savings from this bill are savings from a plan that would perpetuate DOC's failure to provide proper medical care. NCCHC standards are not comparable because they do not evaluate the quality of care. Money should be spent on patient care.

Substitution of certification by NCCHC for licensure by DOH will compromise the quality of health care services. Necessary services must not be sacrificed during this constrained budget environment. NCCHC standards permit a lower standard of care than state licensing. As prisons nationwide struggle to meet their constitutional obligation to provide for the health of their incarcerated population, NCCHC accreditation would exacerbate these problems, and NCCHC would not be accountable to state lawmakers.

OTHER: This bill will allow DOC to adopt NCCHC standards that are a right fit for treatment delivery in the correctional environment. NCCHC accreditation ensures mental health and SUD services in prisons meet constitutional requirements but also improve care effectiveness. To achieve accreditation, DOC will be required to conduct regular assessments, train staff, and demonstrate compliance with national standards. Those with prison sentences are often the most overlooked when it comes to health care assess, chronic disease, and mental health and SUD, and they need immediate, frequent, and high quality care. The cost for accreditation is far less than meeting DOH current regulations. DOH's regulations are not specific to the correctional setting and do not consider the criminogenic needs that DOC must address in its patients.

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

CON: Marc Stern; Rachael Seevers, Disability Rights Washington; Ethan Frenchman, Columbia Legal Services; Vanessa Saavedra, Northwest Health Law Advocates.

OTHER: David Flynn, Department of Corrections.

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

Staff Summary of Public Testimony (Ways & Means): PRO: The National Commission on Correctional Health Care is the right fit for correctional facilities because they are familiar with the health care needs specific to corrections. This accreditation accounts for the unique system of services provided within correctional facilities. Recent statutory changes inadvertently required the Department of Corrections to be licensed by the Department of Health. The estimated cost of implementation for Department of Health licensure is \$20.5 million. Carceral facilities should not be treated the same way as other behavioral health facilities because they are not built, resourced, or operated the same. Funding to reach compliance with Department of Health standards was not provided in Governor Inslee's budget, but this is the right way forward.

CON: This removes critical Department of Health oversight. Audits of Department of Corrections facilities by the Department of Health have flagged serious issues that are essential to patient safety. The National Commission on Correctional Health Care is not an adequate substitute to the Department of Health because the Commission is focused on patient care, and is entirely focused on policy and processes. The Department of Health oversight is focused on patient care. The Arizona prison system was found unconstitutional in their systems of care while accredited by the Commission. Continued oversight is necessary, but the fiscal concerns are understood. The Department of Health and Department of Corrections should jointly identify standards specific to carceral facilities and shift to monitoring instead of licensing. This proposal would be cost neutral and focused on patient care.

Persons Testifying (Ways & Means): PRO: Kellett Sayre, Department of Corrections; David Flynn, Department of Corrections.

CON: Rachael Seevers, Disability Rights Washington.

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