

ESB 5476 - H AMD TO APP COMM AMD (H-1622.1/21) **766**

By Representative Mosbrucker

NOT ADOPTED 04/24/2021

1 On page 1 of the striking amendment, strike all material after
2 line 2 and insert the following:

3
4 "NEW SECTION. **Sec. 1.** The legislature finds that substance use
5 disorder is a disease and should be treated using a public health,
6 rather than a criminal justice-centered, approach. Existing laws
7 criminalizing the possession of drugs have been ineffective in
8 reducing drug use and preventing substance use disorder. These laws
9 cause significant harm to individuals who use drugs by disrupting
10 and further destabilizing their lives. It also contributes to an
11 increased risk of death, the spread of infectious diseases, mass
12 incarceration, the separation of families, and barriers to accessing
13 housing, employment, and other vital services. Furthermore, even
14 though research shows that drugs are used and sold at similar levels
15 across all races, laws criminalizing the use of drugs have
16 disproportionately impacted minority communities.

17 This act takes the important first step of reducing the crime of
18 possession from a felony to a gross misdemeanor and institutes
19 greater opportunities for treatment. In coordination with this act,
20 the legislature intends to increase funding for programs that have a
21 proven track record of assisting individuals to break free from
22 substance use dependency. These programs include LEAD (law
23 enforcement assisted diversion/let everyone advance with dignity
24 program); HOST (homeless outreach stabilization transition teams);
25 peer-run clubhouses; opioid treatment network; project for
26 psychiatric outreach for the homeless; mobile opioid treatment
27 grant; peer support programs; and family navigators.

1 The purpose of this act is to save lives and to help transform
2 Washington's approach to drug use from one based on criminalization
3 and stigma to one based on science and compassion.

4

5

PART I

6

POSSESSION AND USE OF CONTROLLED SUBSTANCES, COUNTERFEIT

7

SUBSTANCES, AND LEGEND DRUGS

8

9 **Sec. 2.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to
10 read as follows:

11 (1) Except as authorized by this chapter, it is unlawful for any
12 person to create, deliver, or knowingly possess a counterfeit
13 substance.

14 (2) (~~Any~~) Except as provided in subsection (3) of this
15 section, any person who violates this section with respect to:

16 (a) A counterfeit substance classified in Schedule I or II which
17 is a narcotic drug, or flunitrazepam classified in Schedule IV, is
18 guilty of a class B felony and upon conviction may be imprisoned for
19 not more than ten years, fined not more than twenty-five thousand
20 dollars, or both;

21 (b) A counterfeit substance which is methamphetamine, is guilty
22 of a class B felony and upon conviction may be imprisoned for not
23 more than ten years, fined not more than twenty-five thousand
24 dollars, or both;

25 (c) Any other counterfeit substance classified in Schedule I,
26 II, or III, is guilty of a class C felony punishable according to
27 chapter 9A.20 RCW;

28 (d) A counterfeit substance classified in Schedule IV, except
29 flunitrazepam, is guilty of a class C felony punishable according to
30 chapter 9A.20 RCW;

31 (e) A counterfeit substance classified in Schedule V, is guilty
32 of a class C felony punishable according to chapter 9A.20 RCW.

33 (3) A violation of this section involving possession is a gross
34 misdemeanor. Where a case is legally sufficient, the prosecutor

1 shall divert the case for treatment if the alleged violation
2 involving possession is the person's first or second violation. On a
3 person's third and subsequent violation involving possession, the
4 prosecutor is encouraged to divert the case for treatment.

5
6 **Sec. 3.** RCW 69.50.4013 and 2017 c 317 s 15 are each amended to
7 read as follows:

8 (1) It is unlawful for any person to knowingly possess a
9 controlled substance unless the substance was obtained directly
10 from, or pursuant to, a valid prescription or order of a
11 practitioner while acting in the course of his or her professional
12 practice, or except as otherwise authorized by this chapter.

13 (2) Except as provided in RCW 69.50.4014, any person who
14 violates this section is guilty of a (~~class C felony~~) gross
15 misdemeanor punishable under chapter 9A.20 RCW.

16 (3) Where a case is legally sufficient, the prosecutor shall
17 divert the case for treatment if the alleged violation is the
18 person's first or second violation of this section. On a person's
19 third and subsequent violation of this section, the prosecutor is
20 encouraged to divert the case for treatment.

21 (4)(a) The possession, by a person twenty-one years of age or
22 older, of useable marijuana, marijuana concentrates, or marijuana-
23 infused products in amounts that do not exceed those set forth in
24 RCW 69.50.360(3) is not a violation of this section, this chapter,
25 or any other provision of Washington state law.

26 (b) The possession of marijuana, useable marijuana, marijuana
27 concentrates, and marijuana-infused products being physically
28 transported or delivered within the state, in amounts not exceeding
29 those that may be established under RCW 69.50.385(3), by a licensed
30 employee of a common carrier when performing the duties authorized
31 in accordance with RCW 69.50.382 and 69.50.385, is not a violation
32 of this section, this chapter, or any other provision of Washington
33 state law.

34

1 (~~(4)~~) (5)(a) The delivery by a person twenty-one years of age
2 or older to one or more persons twenty-one years of age or older,
3 during a single twenty-four hour period, for noncommercial purposes
4 and not conditioned upon or done in connection with the provision or
5 receipt of financial consideration, of any of the following
6 marijuana products, is not a violation of this section, this
7 chapter, or any other provisions of Washington state law:

8 (i) One-half ounce of useable marijuana;

9 (ii) Eight ounces of marijuana-infused product in solid form;

10 (iii) Thirty-six ounces of marijuana-infused product in liquid
11 form; or

12 (iv) Three and one-half grams of marijuana concentrates.

13 (b) The act of delivering marijuana or a marijuana product as
14 authorized under this subsection (~~(4)~~) (5) must meet one of the
15 following requirements:

16 (i) The delivery must be done in a location outside of the view
17 of general public and in a nonpublic place; or

18 (ii) The marijuana or marijuana product must be in the original
19 packaging as purchased from the marijuana retailer.

20 (~~(5)~~) (6) No person under twenty-one years of age may possess,
21 manufacture, sell, or distribute marijuana, marijuana-infused
22 products, or marijuana concentrates, regardless of THC
23 concentration. This does not include qualifying patients with a
24 valid authorization.

25 (~~(6)~~) (7) The possession by a qualifying patient or designated
26 provider of marijuana concentrates, useable marijuana, marijuana-
27 infused products, or plants in accordance with chapter 69.51A RCW is
28 not a violation of this section, this chapter, or any other
29 provision of Washington state law.

30

31 **Sec. 4.** RCW 69.50.412 and 2019 c 64 s 22 are each amended to
32 read as follows:

33 (1) It is unlawful for any person to use drug paraphernalia to
34 plant, propagate, cultivate, grow, harvest, manufacture, compound,

1 convert, produce, process, or prepare(~~(, test, analyze, pack,~~
2 ~~repack, store, contain, conceal, inject, ingest, inhale, or~~
3 ~~otherwise introduce into the human body)~~) a controlled substance
4 other than marijuana. Any person who violates this subsection is
5 guilty of a misdemeanor.

6 (2) It is unlawful for any person to deliver, possess with
7 intent to deliver, or manufacture with intent to deliver drug
8 paraphernalia, knowing, or under circumstances where one reasonably
9 should know, that it will be used to plant, propagate, cultivate,
10 grow, harvest, manufacture, compound, convert, produce, process, or
11 prepare(~~(, test, analyze, pack, repack, store, contain, conceal,~~
12 ~~inject, ingest, inhale, or otherwise introduce into the human body)~~)
13 a controlled substance other than marijuana. Any person who violates
14 this subsection is guilty of a misdemeanor.

15 (3) Any person eighteen years of age or over who violates
16 subsection (2) of this section by delivering drug paraphernalia to a
17 person under eighteen years of age who is at least three years his
18 or her junior is guilty of a gross misdemeanor.

19 (4) It is unlawful for any person to place in any newspaper,
20 magazine, handbill, or other publication any advertisement, knowing,
21 or under circumstances where one reasonably should know, that the
22 purpose of the advertisement, in whole or in part, is to promote the
23 sale of objects designed or intended for use as drug paraphernalia.
24 Any person who violates this subsection is guilty of a misdemeanor.

25 (5) It is lawful for any person over the age of eighteen to
26 possess sterile hypodermic syringes and needles for the purpose of
27 reducing blood-borne diseases.

28

29 **Sec. 5.** RCW 69.41.030 and 2019 c 55 s 9 are each amended to
30 read as follows:

31 (1) (~~(1t)~~) Except as provided in subsection (2) of this section,
32 it shall be unlawful for any person to sell, deliver, or knowingly
33 possess any legend drug (~~(except)~~).

34

1 (2) The sale, delivery, or possession of a legend drug does not
2 constitute a violation of this section upon the order or
3 prescription of a physician under chapter 18.71 RCW, an osteopathic
4 physician and surgeon under chapter 18.57 RCW, an optometrist
5 licensed under chapter 18.53 RCW who is certified by the optometry
6 board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a
7 podiatric physician and surgeon under chapter 18.22 RCW, a
8 veterinarian under chapter 18.92 RCW, a commissioned medical or
9 dental officer in the United States armed forces or public health
10 service in the discharge of his or her official duties, a duly
11 licensed physician or dentist employed by the veterans
12 administration in the discharge of his or her official duties, a
13 registered nurse or advanced registered nurse practitioner under
14 chapter 18.79 RCW when authorized by the nursing care quality
15 assurance commission, a pharmacist licensed under chapter 18.64 RCW
16 to the extent permitted by drug therapy guidelines or protocols
17 established under RCW 18.64.011 and authorized by the commission and
18 approved by a practitioner authorized to prescribe drugs, an
19 osteopathic physician assistant under chapter 18.57A RCW when
20 authorized by the board of osteopathic medicine and surgery, a
21 physician assistant under chapter 18.71A RCW when authorized by the
22 Washington medical commission, or any of the following professionals
23 in any province of Canada that shares a common border with the state
24 of Washington or in any state of the United States: A physician
25 licensed to practice medicine and surgery or a physician licensed to
26 practice osteopathic medicine and surgery, a dentist licensed to
27 practice dentistry, a podiatric physician and surgeon licensed to
28 practice podiatric medicine and surgery, a licensed advanced
29 registered nurse practitioner, a licensed physician assistant, a
30 licensed osteopathic physician assistant, or a veterinarian licensed
31 to practice veterinary medicine: PROVIDED, HOWEVER, That the above
32 provisions shall not apply to sale, delivery, or possession by drug
33 wholesalers or drug manufacturers, or their agents or employees, or
34 to any practitioner acting within the scope of his or her license,

1 or to a common or contract carrier or warehouse operator, or any
2 employee thereof, whose possession of any legend drug is in the
3 usual course of business or employment: PROVIDED FURTHER, That
4 nothing in this chapter or chapter 18.64 RCW shall prevent a family
5 planning clinic that is under contract with the health care
6 authority from selling, delivering, possessing, and dispensing
7 commercially prepackaged oral contraceptives prescribed by
8 authorized, licensed health care practitioners: PROVIDED FURTHER,
9 That nothing in this chapter prohibits possession or delivery of
10 legend drugs by an authorized collector or other person
11 participating in the operation of a drug take-back program
12 authorized in chapter 69.48 RCW.

13 ~~((+2))~~ (3)(a) A violation of this section involving the sale,
14 delivery, or possession with intent to sell or deliver is a class B
15 felony punishable according to chapter 9A.20 RCW.

16 (b) A violation of this section involving possession is a
17 misdemeanor. Where a case is legally sufficient, the prosecutor
18 shall divert the case for treatment if the alleged violation
19 involving possession is the person's first or second violation. On a
20 person's third and subsequent violation involving possession, the
21 prosecutor is encouraged to divert the case for treatment.

22

23 **Sec. 6.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to
24 read as follows:

25 (1) ~~((+t))~~ Except as provided in subsection (2) of this section,
26 it shall be unlawful for any person to sell, deliver, or knowingly
27 possess any legend drug (~~except~~).

28 (2) The sale, delivery, or possession of a legend drug does not
29 constitute a violation of this section upon the order or
30 prescription of a physician under chapter 18.71 RCW, an osteopathic
31 physician and surgeon under chapter 18.57 RCW, an optometrist
32 licensed under chapter 18.53 RCW who is certified by the optometry
33 board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a
34 podiatric physician and surgeon under chapter 18.22 RCW, a

1 veterinarian under chapter 18.92 RCW, a commissioned medical or
2 dental officer in the United States armed forces or public health
3 service in the discharge of his or her official duties, a duly
4 licensed physician or dentist employed by the veterans
5 administration in the discharge of his or her official duties, a
6 registered nurse or advanced registered nurse practitioner under
7 chapter 18.79 RCW when authorized by the nursing care quality
8 assurance commission, a pharmacist licensed under chapter 18.64 RCW
9 to the extent permitted by drug therapy guidelines or protocols
10 established under RCW 18.64.011 and authorized by the commission and
11 approved by a practitioner authorized to prescribe drugs, a
12 physician assistant under chapter 18.71A RCW when authorized by the
13 Washington medical commission, or any of the following professionals
14 in any province of Canada that shares a common border with the state
15 of Washington or in any state of the United States: A physician
16 licensed to practice medicine and surgery or a physician licensed to
17 practice osteopathic medicine and surgery, a dentist licensed to
18 practice dentistry, a podiatric physician and surgeon licensed to
19 practice podiatric medicine and surgery, a licensed advanced
20 registered nurse practitioner, a licensed physician assistant, or a
21 veterinarian licensed to practice veterinary medicine: PROVIDED,
22 HOWEVER, That the above provisions shall not apply to sale,
23 delivery, or possession by drug wholesalers or drug manufacturers,
24 or their agents or employees, or to any practitioner acting within
25 the scope of his or her license, or to a common or contract carrier
26 or warehouse operator, or any employee thereof, whose possession of
27 any legend drug is in the usual course of business or employment:
28 PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW
29 shall prevent a family planning clinic that is under contract with
30 the health care authority from selling, delivering, possessing, and
31 dispensing commercially prepackaged oral contraceptives prescribed
32 by authorized, licensed health care practitioners: PROVIDED FURTHER,
33 That nothing in this chapter prohibits possession or delivery of
34 legend drugs by an authorized collector or other person

1 participating in the operation of a drug take-back program
2 authorized in chapter 69.48 RCW.

3 ~~((+2))~~ (3)(a) A violation of this section involving the sale,
4 delivery, or possession with intent to sell or deliver is a class B
5 felony punishable according to chapter 9A.20 RCW.

6 (b) A violation of this section involving possession is a
7 misdemeanor. Where a case is legally sufficient, the prosecutor
8 shall divert the case for treatment if the alleged violation
9 involving possession is the person's first or second violation. On a
10 person's third and subsequent violation involving possession, the
11 prosecutor is encouraged to divert the case for treatment.

12
13
14 **PART II**

15 **SUBSTANCE USE RECOVERY SERVICES ADVISORY COMMITTEE**

16 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.05
17 RCW to read as follows:

18 (1) The authority shall establish the substance use recovery
19 services advisory committee to make recommendations for
20 implementation of a substance use recovery services plan.

21 (2) The authority must, in consultation with the University of
22 Washington department of psychiatry and behavioral sciences and an
23 organization that represents the interests of people who have been
24 directly impacted by substance use and the criminal legal system,
25 appoint members to the advisory committee who have relevant
26 background related to the needs of persons with substance use
27 disorder. The membership of the advisory committee must include, but
28 is not limited to, experts in the etiology and stabilization of
29 substance use disorders, including expertise in medication-assisted
30 treatment and other innovative medication therapies; experts in
31 mental health and trauma and their comorbidity with substance use
32 disorders; people who are currently using controlled substances
33 outside the legal authority of prescription or valid practitioner
34

1 order; experts in the relationship between social determinants of
2 health, including housing and substance use disorder; experts in
3 drug user health and harm reduction; representatives of city and
4 county governments; a representative of urban police chiefs; a
5 representative of rural county sheriffs; a representative of the
6 interests of rural communities; a representative of fire chiefs;
7 experts in peer support services; experts in substance use disorder
8 recovery support services; experts in diversion from the criminal
9 legal system to community-based care for people with complex
10 behavioral health needs; experts in reducing racial disparity in
11 exposure to the criminal legal system; an academic researcher with
12 an expertise in drug policy and program evaluation; a substance use
13 disorder professional; a representative of public defenders; a
14 representative of prosecutors; a representative of the criminal
15 justice training commission; a nongovernmental immigration attorney
16 with expertise in the immigration consequences of drug possession
17 and use crimes and findings of substance use disorder; recovery
18 housing providers; low-barrier housing providers; representatives of
19 racial justice organizations, including organizations promoting
20 antiracism and equity in health care; a representative of a local
21 health jurisdiction with expertise in overdose prevention and harm
22 reduction; representatives of the interests of tribes; at least
23 three adults in recovery from substance use disorder, including
24 individuals with previous contact with the criminal legal system due
25 to substance use; at least three youths in recovery from substance
26 use disorder, including youths with previous criminal legal system
27 contact due to substance use; and at least three family members of
28 persons with substance use disorder. The advisory committee shall be
29 reflective of the community of individuals living with substance use
30 disorder, including people who are Black, indigenous, and people of
31 color, and individuals who can represent the unique needs of rural
32 communities.

33 (3) The advisory committee must make recommendations and provide
34 perspectives to the authority regarding:

1 (a) Reforms to state laws that align with the goal of treating
2 substance use disorder as a disease, rather than a criminal behavior;

3 (b) Current regional capacity for existing public and private
4 programs providing substance use disorder assessments, each of the
5 American society of addiction medicine levels of care, and recovery
6 support services;

7 (c) Barriers to accessing the existing health system for those
8 populations chronically exposed to criminal legal system responses
9 relating to complex behavioral health conditions and the
10 consequences of trauma, and possible innovations that could reduce
11 those barriers and improve the quality and accessibility of care for
12 those populations;

13 (d) Evidence-based, research-based, and promising treatment and
14 recovery services appropriate for target populations, to include,
15 but not be limited to, field-based outreach and engagement, case
16 management, mental and physical health care, contingency management,
17 medication-assisted treatment and other innovative medication
18 therapies, peer support services, family education, housing, job
19 training and employment programs, and treatments that have not
20 traditionally been covered by insurance;

21 (e) Workforce needs for the behavioral health services sector,
22 including wage and retention challenges;

23 (f) Options for leveraging existing integrated managed care,
24 medicaid waiver, American Indian or Alaska Native fee-for-service
25 behavioral health benefits, and private insurance service capacity
26 for substance use disorders, including but not limited to
27 coordination with managed care organizations, behavioral health
28 administrative services organizations, the Washington health benefit
29 exchange, accountable communities of health, and the office of the
30 insurance commissioner;

31 (g) Framework and design assistance for jurisdictions to assist
32 in compliance with the requirements of RCW 10.31.110 for diversion
33 of individuals with complex behavioral health conditions to
34 community-based care whenever possible and appropriate, and

1 identifying resource gaps that impede jurisdictions in fully
2 realizing the potential impact of this approach;

3 (h) The design of a referral mechanism for referring people with
4 substance use disorder or problematic behaviors resulting from drug
5 use into the supportive services described in this section,
6 including intercepting individuals who likely would otherwise be
7 referred into the criminal legal system, with the express intention
8 of ensuring that decriminalization of possession of personal use
9 amounts does not inadvertently contribute to increased racial
10 disparity among those who continue to be exposed to the criminal
11 legal system due to income instability and involvement in the
12 illicit economy to meet basic needs;

13 (i) The establishment of regional programs to serve persons who
14 are homeless and living with serious substance use disorders;

15 (j) The implementation of a comprehensive statewide substance
16 misuse prevention effort;

17 (k) The establishment of a competitive grant process to broaden
18 existing local community coalition efforts to prevent substance
19 misuse by increasing protective factors and reducing risk factors;

20 (l) The establishment of programs that meet the needs of youth,
21 including family support services;

22 (m) The establishment of programs that prioritize access to
23 treatment and services for parents with substance use disorder who
24 are involved with the state child welfare system;

25 (n) The design of ongoing qualitative and quantitative research
26 about the types of services desired by people with substance use
27 disorders and barriers they experience in accessing existing and
28 recommended services; and

29 (o) Proposing a funding framework in which, over time, resources
30 are shifted from punishment sectors to community-based care
31 interventions such that community-based care becomes the primary
32 strategy for addressing and resolving public order issues related to
33 behavioral health conditions.

34

1 (4) The plan adopted by the authority must give due
2 consideration to the needs of youth. The authority shall submit a
3 summary report of the substance use recovery services plan and
4 recommended changes to the law to the appropriate committees of the
5 legislature by October 1, 2022. The authority shall submit an
6 interim report on the progress of the advisory committee to the
7 appropriate committees of the legislature by December 1, 2021.

8 (5) This section expires December 31, 2023.
9

10
11 **PART III**

12 **RESENTENCING AND RELEASE OF PERSONS IMPACTED BY STATE V. BLAKE**

13
14 **Sec. 8.** RCW 2.24.010 and 2013 c 27 s 3 are each amended to read
15 as follows:

16 (1) There may be appointed in each county or judicial district,
17 by the judges of the superior court having jurisdiction therein, one
18 or more court commissioners for said county or judicial district.
19 Each such commissioner shall be a citizen of the United States and
20 shall hold the office during the pleasure of the judges making the
21 appointment.

22 (2)(a) There may be appointed (~~in counties with a population of~~
23 ~~more than four hundred thousand,~~) by the presiding judge of the
24 superior court having jurisdiction (~~therein~~), one or more
25 attorneys to act as criminal commissioners to assist the superior
26 court in disposing of adult criminal cases. Such criminal
27 commissioners shall have power, authority, and jurisdiction,
28 concurrent with the superior court and the judges thereof, in adult
29 criminal cases, to preside over arraignments, preliminary
30 appearances, initial extradition hearings, and noncompliance
31 proceedings pursuant to RCW 9.94A.6333 or 9.94B.040; accept pleas if
32 authorized by local court rules; appoint counsel; make
33 determinations of probable cause; set, amend, and review conditions
34 of pretrial release; set bail; set trial and hearing dates;

1 authorize continuances; accept waivers of the right to speedy trial;
2 and authorize and issue search warrants and orders to intercept,
3 monitor, or record wired or wireless telecommunications or for the
4 installation of electronic taps or other devices to include, but not
5 be limited to, vehicle global positioning system or other mobile
6 tracking devices with all the powers conferred upon the judge of the
7 superior court in such matters. Criminal commissioners also shall
8 have the authority to conduct resentencing hearings and to vacate
9 convictions pursuant to State v. Blake, No. 96873-0 (Feb. 25, 2021).

10 (b) The county legislative authority must approve the creation
11 of criminal commissioner positions.

12
13 **Sec. 9.** RCW 2.24.040 and 2009 c 28 s 1 are each amended to read
14 as follows:

15 Such court commissioner shall have power, authority, and
16 jurisdiction, concurrent with the superior court and the judge
17 thereof, in the following particulars:

18 (1) To hear and determine all matters in probate, to make and
19 issue all proper orders therein, and to issue citations in all cases
20 where same are authorized by the probate statutes of this state.

21 (2) To grant and enter defaults and enter judgment thereon.

22 (3) To issue temporary restraining orders and temporary
23 injunctions, and to fix and approve bonds thereon.

24 (4) To act as referee in all matters and actions referred to him
25 or her by the superior court as such, with all the powers now
26 conferred upon referees by law.

27 (5) To hear and determine all proceedings supplemental to
28 execution, with all the powers conferred upon the judge of the
29 superior court in such matters.

30 (6) To hear and determine all petitions for the adoption of
31 children and for the dissolution of incorporations.

32 (7) To hear and determine all applications for the commitment of
33 any person to the hospital for the insane, with all the powers of
34 the superior court in such matters: PROVIDED, That in cases where a

1 jury is demanded, same shall be referred to the superior court for
2 trial.

3 (8) To hear and determine all complaints for the commitments of
4 minors with all powers conferred upon the superior court in such
5 matters.

6 (9) To hear and determine ex parte and uncontested civil matters
7 of any nature.

8 (10) To grant adjournments, administer oaths, preserve order,
9 compel attendance of witnesses, and to punish for contempts in the
10 refusal to obey or the neglect of the court commissioner's lawful
11 orders made in any matter before the court commissioner as fully as
12 the judge of the superior court.

13 (11) To take acknowledgments and proofs of deeds, mortgages and
14 all other instruments requiring acknowledgment under the laws of
15 this state, and to take affidavits and depositions in all cases.

16 (12) To provide an official seal, upon which shall be engraved
17 the words "Court Commissioner," and the name of the county for which
18 he or she may be appointed, and to authenticate his official acts
19 therewith in all cases where same is necessary.

20 (13) To charge and collect, for his or her own use, the same
21 fees for the official performance of official acts mentioned in
22 subsections (4) and (11) of this section as are provided by law for
23 referees and notaries public.

24 (14) To hear and determine small claims appeals as provided in
25 chapter 12.36 RCW.

26 (15) In adult criminal cases, to preside over arraignments,
27 preliminary appearances, initial extradition hearings, and
28 noncompliance proceedings pursuant to RCW 9.94A.6333 or 9.94B.040;
29 accept pleas if authorized by local court rules; appoint counsel;
30 make determinations of probable cause; set, amend, and review
31 conditions of pretrial release; set bail; set trial and hearing
32 dates; authorize continuances; (~~and~~) accept waivers of the right
33 to speedy trial; and conduct resentencing hearings and to vacate
34 convictions pursuant to State v. Blake, No. 96873-0 (Feb. 25, 2021).

1 **Sec. 10.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to
2 read as follows:

3 (1) No person serving a sentence imposed pursuant to this
4 chapter and committed to the custody of the department shall leave
5 the confines of the correctional facility or be released prior to
6 the expiration of the sentence except as follows:

7 (a) An offender may earn early release time as authorized by RCW
8 9.94A.729;

9 (b) An offender may leave a correctional facility pursuant to an
10 authorized furlough or leave of absence. In addition, offenders may
11 leave a correctional facility when in the custody of a corrections
12 officer or officers;

13 (c)(i) The secretary may authorize an extraordinary medical
14 placement for an offender when all of the following conditions exist:

15 (A) The offender has a medical condition that is serious and is
16 expected to require costly care or treatment;

17 (B) The offender poses a low risk to the community because he or
18 she is currently physically incapacitated due to age or the medical
19 condition or is expected to be so at the time of release; and

20 (C) It is expected that granting the extraordinary medical
21 placement will result in a cost savings to the state.

22 (ii) An offender sentenced to death or to life imprisonment
23 without the possibility of release or parole is not eligible for an
24 extraordinary medical placement.

25 (iii) The secretary shall require electronic monitoring for all
26 offenders in extraordinary medical placement unless the electronic
27 monitoring equipment interferes with the function of the offender's
28 medical equipment or results in the loss of funding for the
29 offender's medical care, in which case, an alternative type of
30 monitoring shall be utilized. The secretary shall specify who shall
31 provide the monitoring services and the terms under which the
32 monitoring shall be performed.

33 (iv) The secretary may revoke an extraordinary medical placement
34 under this subsection (1)(c) at any time.

1 (v) Persistent offenders are not eligible for extraordinary
2 medical placement;

3 (d) The governor, upon recommendation from the clemency and
4 pardons board, may grant an extraordinary release for reasons of
5 serious health problems, senility, advanced age, extraordinary
6 meritorious acts, or other extraordinary circumstances;

7 (e) No more than the final twelve months of the offender's term
8 of confinement may be served in partial confinement for aiding the
9 offender with: Finding work as part of the work release program
10 under chapter 72.65 RCW; or reestablishing himself or herself in the
11 community as part of the parenting program in RCW 9.94A.6551. This
12 is in addition to that period of earned early release time that may
13 be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

14 (f) No more than the final six months of the offender's term of
15 confinement may be served in partial confinement as home detention
16 as part of the graduated reentry program developed by the department
17 under RCW 9.94A.733;

18 (g) The governor may pardon any offender;

19 (h) The department may release an offender from confinement any
20 time within ten days before a release date calculated under this
21 section;

22 (i) An offender may leave a correctional facility prior to
23 completion of his or her sentence if the sentence has been reduced
24 as provided in RCW 9.94A.870;

25 (j) Notwithstanding any other provisions of this section, an
26 offender sentenced for a felony crime listed in RCW 9.94A.540 as
27 subject to a mandatory minimum sentence of total confinement shall
28 not be released from total confinement before the completion of the
29 listed mandatory minimum sentence for that felony crime of
30 conviction unless allowed under RCW 9.94A.540; and

31 (k) Any person convicted of one or more crimes committed prior
32 to the person's eighteenth birthday may be released from confinement
33 pursuant to RCW 9.94A.730.

34

1 (2) Notwithstanding any other provision of this section, an
2 offender entitled to vacation of a conviction or the recalculation
3 of his or her offender score pursuant to State v. Blake, No. 96873-0
4 (Feb. 25, 2021), may be released from confinement pursuant to a
5 court order if the offender has already served a period of
6 confinement that exceeds his or her new standard range. This
7 provision does not create an independent right to release from
8 confinement prior to resentencing.

9 (3) Offenders residing in a juvenile correctional facility
10 placement pursuant to RCW 72.01.410(1)(a) are not subject to the
11 limitations in this section.

12
13 NEW SECTION. **Sec. 11.** The *State v. Blake* reimbursement account
14 is created in the state treasury. Moneys in the account may be spent
15 only after appropriation. Expenditures from the account may be used
16 only for state and local government costs resulting from the supreme
17 court's decision in *State v. Blake* and to reimburse individuals for
18 legal financial obligations paid in connection with sentences that
19 have been invalidated as a result of the decision in *State v. Blake*.

20
21 **PART IV**

22 **MISCELLANEOUS PROVISIONS**

23
24 NEW SECTION. **Sec. 12.** Section 5 of this act expires July 1,
25 2022.

26
27 NEW SECTION. **Sec. 13.** Section 6 of this act takes effect July
28 1, 2022.

29
30 NEW SECTION. **Sec. 14.** Sections 1 through 5, and 7 through 11
31 of this act are necessary for the immediate preservation of the
32 public peace, health, or safety, or support of the state government
33 and its existing public institutions, and take effect immediately.

1 Correct the title."

2

EFFECT: Restores all provisions in the underlying bill which includes provisions:

- reclassifying the crimes of possession of controlled substance and possession of a counterfeit substance as a gross misdemeanor;
- requiring a prosecutor to divert a person's first two drug possession offenses to treatment;
- modifying the elements of the crime of unlawful use or delivery of drug paraphernalia by excluding use or delivery for the purposes of introduction into the human body, or for analyzing, testing, or storing a controlled substance;
- requiring the Health Care Authority to establish the Substance Use Recovery Services Advisory Committee to make recommendations for implementation of a substance use recovery services plan;
- allowing the presiding judge of the superior court of a county of any population size to appoint criminal court commissioners and allowing commissioners to conduct resentencing hearings and vacate convictions pursuant to *State v. Blake*; and
- clarifying the circumstances under which a person who is entitled to a shorter confinement period due to an invalidated possession conviction may be released from the Department of Corrections pursuant to court order.

Modifies the provisions of the underlying bill by adding to the responsibilities of the Substance Use Recovery Services Advisory Committee, the development of recommendations related to the establishment of:

- a comprehensive statewide substance misuse prevention effort;
- regional programs to serve persons who are homeless and living with serious substance use disorders;
- a competitive grant process to broaden existing local community coalition efforts to prevent substance misuse by increasing protective factors and reducing risk factors;
- programs that meet the needs of youth including family support services; and
- programs that prioritize access to treatment and services for parents with substance use disorder who are involved with the state child welfare system.

Directs the Health Care Authority to give due consideration to the needs of youth in the substance use recovery services plan.

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