

# HOUSE BILL REPORT

## 2SHB 1767

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### As Amended by the Senate

**Title:** An act relating to establishing a law enforcement grant program to expand alternatives to arrest and jail processes.

**Brief Description:** Establishing a law enforcement grant program to expand alternatives to arrest and jail processes.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Lovick, Leavitt, Davis, Orwall, Appleton, Macri, Gregerson, Jinkins, Ryu, Pellicciotti, Dolan, Ormsby, Stanford, Peterson, Pollet, Slatter, Valdez, Walen, Frame and Tharinger).

### Brief History:

#### Committee Activity:

Public Safety: 2/5/19, 2/21/19 [DPS];

Appropriations: 2/27/19, 2/28/19 [DP2S(w/o sub PS)].

#### Floor Activity:

Passed House: 3/6/19, 89-8.

Senate Amended.

Passed Senate: 4/17/19, 48-0.

### Brief Summary of Second Substitute Bill

- Creates a grant program administered through the Washington Association of Sheriffs and Police Chiefs to support local initiatives to properly identify criminal justice system-involved persons with substance use disorders and other behavioral health needs and engage those persons with therapeutic interventions and other services.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Davis, Vice Chair; Sutherland, Assistant Ranking Minority Member; Appleton, Lovick, Orwall, Pellicciotti and Pettigrew.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Graham.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Omeara Harrington (786-7136).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

**Minority Report:** Do not pass. Signed by 1 member: Representative Kraft.

**Staff:** Linda Merelle (786-7092).

### **Background:**

#### Washington Association of Sheriffs and Police Chiefs.

The Washington Association of Sheriffs and Police Chiefs (WASPC) is a statewide organization consisting of executive and management personnel from law enforcement agencies. Membership includes sheriffs, police chiefs, the Washington State Patrol, the Department of Corrections, and representatives of a number of federal agencies. The 1975 Washington Legislature made the WASPC a statutory entity by designating the association as a "combination of units of local government."

The WASPC has been tasked with managing certain statewide programs, such as the Jail Booking and Reporting System. Additionally, it has been given administrative responsibility for several state-funded grant programs, including grant programs addressing gang crime, graffiti and tagging abatement, denied firearm purchase attempts, sexual assault kits, metal theft, and mental health field response.

#### Law Enforcement Assisted Diversion National Support Bureau.

Law Enforcement Assisted Diversion (LEAD) is a community-based diversion approach with the stated goals of improving public safety and public order and reducing unnecessary justice system involvement of people who participate in the program. The LEAD National Support Bureau (LEAD NSB) provides strategic guidance and technical support to local jurisdictions developing LEAD programs.

### **Summary of Second Substitute Bill:**

Subject to the availability of funding, the WASPC, in consultation with the LEAD NSB, must develop and implement a grant program aimed at supporting local initiatives to properly identify criminal justice system-involved persons with substance use disorders and other

behavioral health needs and engage those persons with therapeutic interventions and other services at or prior to the time of jail booking, or while in custody.

Grants must be awarded to local jurisdictions based on locally developed proposals to establish or expand existing programs. The lead proposing agency may be a law enforcement agency or other local government entity, or a nonprofit community-based organization. All proposals must include governing involvement from community-based organizations, local government, and law enforcement, and must also demonstrate engagement of law enforcement, prosecutors, civil rights advocates, public health experts, harm reduction practitioners, organizations led by and representing individuals with past justice system involvement, and public safety advocates.

Programs preferred for the award of grant funding are those that have a pre-booking diversion focus and contain one or both of the following components:

- employment of tools and strategies to accurately identify individuals with substance use disorders and other behavioral health needs who are known to commit law violations, at or prior to the point of arrest, and immediately engage those individuals with appropriate community-based care and support services that have been proven effective for marginalized populations by either experience or peer-reviewed research, or that are credible promising practices; and
- capacity to receive ongoing referrals to the same community-based care approach for persons with substance use disorders and other behavioral health needs encountered in jail, with an emphasis on securing the release of those individuals whenever possible, consistent with public safety and relevant court rules.

Up to 25 percent of the total funds appropriated for the grant program may be allocated to proposals containing the following components:

- utilization of case manager and peer support services for persons with substance use disorders and other behavioral health needs who are incarcerated in jails;
- specialized training for jail staff relating to incarcerated individuals with substance use disorders and other behavioral health needs;
- comprehensive jail reentry programming for incarcerated persons with substance use disorders and other behavioral health needs; and
- other innovative interventions targeted specifically at persons with substance use disorders and other behavioral health needs who are brought to jail for booking or are incarcerated in jails.

Proposals must provide a plan for tracking client engagement and outcomes, and grant recipients must agree to comply with any data collection and reporting requirements established by the WASPC, in consultation with the LEAD NSB. Grant recipients with proposals including pre-booking diversion programs must engage with the LEAD NSB for technical assistance regarding best practices for pre-booking diversion programs, and regarding establishment of an evaluation plan. Subject to appropriated funding, grant awards are eligible for annual renewal conditioned upon the recipient's demonstration that the funded program is operating in alignment with the requirements of the grant program.

A peer review panel appointed by the WASPC, in consultation with the LEAD NSB, integrated managed care organizations, and behavioral health organizations, must review the

grant applications. The peer review panel must include experts in harm reduction and civil rights.

To the extent possible, grant awards should be geographically distributed on both the east and west sides of the crest of the Cascade mountain range. Grant applications that include local matching funds may be prioritized. Grant recipients must be selected no later than March 1, 2020.

The WASPC must submit an annual report to the Governor and appropriate committees of the Legislature each year the program is funded. The report must include information on grant recipients, use of funds, and outcomes and other feedback from the grant recipients. The WASPC may consult with the LEAD NSB in completing the reports.

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

In addition to other listed entities, tribal government entities, tribal organizations, and urban Indian organizations may serve as the lead proposing agency for grant funds.

The grant program must be managed to achieve certain expected, measurable outcomes, which may be used in the future for accountability and program evaluation purposes. Initial expected outcomes of the program include: (1) a reduction in arrests, time in custody, and/or recidivism for clients of the program; (2) an increase in access to and utilization of nonemergency community behavioral health services; (3) a reduction in utilization of emergency services; (4) an increase in resilience, stability, and well-being for clients of the program; and (5) a reduction in costs for the justice system compared to processing cases as usual through the justice system. To be preferred for the award of funding, a program must demonstrate how it will impact the expected outcomes of the grant program, and proposals must describe how the program will impact such outcomes.

The Washington Association of Sheriffs and Police Chiefs, in consultation with the Law Enforcement Assisted Diversion National Support Bureau, must develop a plan, timetable, and budget by December 1, 2019, to transition the grant program into a performance-based contracting format, and to establish an evidence-based evaluation framework. The Research and Data Division of the Department of Social and Health Services and the Washington Institute for Public Policy must provide technical support and consultation to support plan development as requested.

Liability for activities carried out in the administration of the grant program is limited. Absent gross negligence or bad faith, no civil liability may be imposed upon the state or its officers or employees, or an appointed or elected official, public employee, public agency, combination of units of government or its employees, nonprofit community-based organization, tribal government entity, tribal organization, or urban Indian organization, for activities carried out within the purview of a grant award.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Public Safety):**

(In support) This measure expands on legislation from last year to establish mental health field response programs. The needs of communities should be addressed, and communities include people with behavioral health issues. People end up in the criminal justice system not because it is the best system, but because it is the only system. The mental health system is not robust enough to capture people in need. Stakeholder work is occurring to expand more pre-booking options and incorporate community feedback. These changes will help people with primary mental health diagnoses and primary substance use diagnoses, often driven by early trauma and adverse childhood experiences. These issues often land people in the criminal justice system for property crimes and other offenses.

These grants will make new resources available for innovative programs to advance public safety and get people back on track. Officers are often called to respond to crimes like theft or disorderly conduct committed by a person with a behavioral health disorder. Sometimes the only tool is arrest. Jail and incarceration are appropriate in some cases, but not always. An example of a program that would be funded is Law Enforcement Assisted Diversion (LEAD). Programs like this leverage the entire system to get people on track—holding people responsible while getting them the resources they need. Any tool for providing services to persons with behavioral health needs should be supported. The bill will help expand on successful programs.

Some refinements are needed to incorporate more upstream interventions and avoid the unintended consequence of incentivizing booking people into jail. Also, nonprofits and other kinds of organizations should be eligible for grant funding. Law enforcement agencies may not have the capacity to manage a grant, so there should be a coalition of interested groups involved. Local government behavioral health administrators should be named.

(Opposed) None.

(Other) In order to meaningfully improve responses to public safety issues, what is utilized in place of jail must be a better option than jail. The LEAD program was born eight years ago out of the fact that police, prosecutors, and civil rights advocates did not agree on what was wrong with the response to drug-related crime; LEAD was the compromise. Much has been learned since the program started. Hopefully these minimum standards will be included in the bill. Local LEAD programs have been transformational for involved individuals. Sites vary widely, and the model has been proven to work in many settings. This program utilizes a harm-reduction model that addresses the issues that brought individuals into contact with the police upstream. It is hard work to bring officers, case workers, and prosecutors together, but clients benefit when it works.

The focus of the bill is too much on arrest and jail booking, and not enough on community engagement. This bill will have disproportionate impacts on people of color and will increase the number of people who end up in jail, as it creates an incentive to book people into jail to get them services. This poses a particular risk for immigrant refugee

communities. Jail does not support the therapeutic emphasis of the bill. Once in jail, people lose community supports, and jail-based programs are less effective than community-based programs. Public safety is best served by engaging individuals prior to arrest. Emphasizing pre-arrest interventions and collaboration would further a harm-reducing criminal justice system response. Empowering law enforcement in the community to work together with providers is the best way to address the underlying issues that contribute to public safety concerns.

The bill should be restructured to incentivize partnerships between law enforcement, community groups, and providers, and not be solely focused on law enforcement. Funding should also be available to a broader range of groups. Everyone loses when there are not diverse voices working together. People with past incarceration and recovery experience should be working alongside others in implementing these programs. There should be further stakeholder participation in putting the bill together.

There has been much success with the diversion programs funded by the fines associated with the *Trueblood* litigation. It is good that the grants cannot be used for minimal medical treatment in jails. An oversight component is needed to ensure that grant recipients are in compliance with this requirement, as there were issues with this with the *Trueblood* programs.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The grants for local jurisdictions would allow an opportunity to increase community partnerships and would work in concert with the existing efforts to address the behavioral health issues in communities. The services funded by these grants would allow those who need help to get help. Individuals who are dealing with behavioral health issues do not belong in jail.

(Opposed) None.

**Persons Testifying (Public Safety):** (In support) Representative Lovick, prime sponsor; Representative Davis; Steve Strachan, Washington Association of Sheriffs and Police Chiefs; Sharon Swanson, Association of Washington Cities; and Celia Jackson, King County Executive Office.

(Other) Lisa Daugaard, Public Defender Association; Eric Gonzalez, American Civil Liberties Union of Washington; Kimberly Mosolf, Disability Rights Washington; Sara Sluzska, Washington Defender Association; Jorge Baron, Northwest Immigrant Rights Project; Tarra Simmons, Civil Survival; Natalie Walton-Anderson, King County Prosecuting Attorney's Office, Law Enforcement Assisted Diversion Program; and Najja Morris, Public Defender Association's Law Enforcement Assisted Diversion National Support Bureau.

**Persons Testifying (Appropriations):** Tim Candela, Public Defender Association; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying (Public Safety):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations): None.**