

# SENATE BILL REPORT

## 2SHB 1767

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As Passed Senate - Amended, April 17, 2019

**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:** Passed House: 3/06/19, 89-8.

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care: 3/22/19, 3/29/19 [DPA-WM].

Ways & Means: 4/05/19, 4/09/19 [DPA (BH), w/oRec, DNP].

**Floor Activity:**

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

### Brief Summary of Bill (As Amended by Senate)

- Requires the Washington Association of Sheriffs and Police Chiefs to develop and implement a grant program to engage persons who are involved with the criminal justice system and have substance use disorder or other behavioral health needs in therapeutic programs and services.

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### SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

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

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille, Frockt and O'Ban.

**Staff:** Kevin Black (786-7747)

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

**Majority Report:** Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Bailey, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers and Van De Wege.

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

Signed by Senators Braun, Ranking Member; Wagoner and Warnick.

**Minority Report:** Do not pass.

Signed by Senators Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker and Schoesler.

**Staff:** Claire Goodwin (786-7736)

**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 WASPC a statutory entity by designating the association as a "combination of units of local government."

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 Amended Bill:** Subject to appropriations, WASPC 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 prior to or at the time of jail booking, or while in custody. The interventions or services must have efficacy demonstrated by experience, peer-reviewed research, or must be credible promising practices. WASPC must consult with LEAD NSB.

WASPC must award grants by March 1, 2020, to local jurisdictions based on locally-developed proposals which establish new programs or expand existing programs. Proposals must include lead involvement from community-based organizations, local government, tribal government, a tribal or urban Indian organization, or law enforcement, and must demonstrate engagement with law enforcement, prosecutors, civil rights advocates, public

health experts, harm reduction practitioners, organizations led by and representing persons with past criminal justice system involvement, and public safety advocates. Grant applications must be reviewed by a peer review panel appointed by WASPC, including experts in harm reduction and civil rights experts. When appointing the peer review panel WASPC must consult with LEAD NSB, integrated managed care organizations, and behavioral health organizations.

Programs preferred for grant funding must be those with a pre-booking diversion focus that demonstrate how they will impact one or more of the expected outcomes of the program. Preferred programs must either engage persons at risk of criminal justice system involvement in community-based care and support services, or provide similar services to persons being released from jail. Up to 25 percent of total funds may be allocated to the following services inside jail for persons with behavioral health needs:

- use of case management and peer support services;
- specialized training for jail staff;
- comprehensive jail reentry programming; or
- other innovative interventions.

All proposals must track client engagement and outcomes and describe how they will impact the expected outcomes of the program, with technical support available from LEAD NSB. Annual renewal must be conditioned on demonstration that the funded program is operating in alignment with grant requirements. Grant funds must be separate from the Mental Health Field Response Grant Program and may not be used to fulfill minimum medical and treatment services in jail. Grant recipients should be geographically distributed to the extent possible. Priority must be given to jurisdictions providing local matching funds. WASPC may solicit or accept private funds to support the grant program.

WASPC must manage the grant program to achieve expected outcomes which are measurable and may be used in the future to evaluate the performance of grant recipients and hold them accountable for the use of funding. The initial expected outcomes for the grant program must include:

- reductions in arrests, time spent in custody, and/or recidivism;
- increased access to and utilization of nonemergency community behavioral health services;
- reductions in utilization of emergency services;
- increased resilience, stability, and well-being; and
- reductions in costs for the criminal justice system.

Programs may focus on a subset of these outcomes. WASPC, in consultation with LEAD NSB, must develop a plan, timetable, and budget to transition the grant program to a performance-based contracting format and to establish an evidence-based evaluation framework, which may include making modifications to the initial expected outcomes for use in grant contracts. The Research & Data Administration of the Department of Social and Health Services and the Washington Institute for Public Policy must provide consultation and technical support to plan development as requested. The plan must be submitted to the Governor and Legislature by December 1, 2019.

No civil liability may be imposed on the grant administrators or grantees based on the administration of the grant program or activities carried out within the purview of a grant received except upon proof of bad faith or gross negligence. WASPC must submit an annual report to the Governor and appropriate committees of the Legislature regarding the grant program by December 1st of each year.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**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 Second Substitute House Bill (Behavioral Health Subcommittee to Health & Long Term Care):** *The committee recommended a different version of the bill than what was heard.* PRO: The passage of legislation related to the use of deadly force brought law enforcement agencies and community leadership advocates together in a meaningful way to build trust and new relationships. This bill is the fruit of that work. This bill would reward innovations as communities build tools and strategies to divert the most vulnerable away from jail and into the treatment system. Thirty-five jurisdictions around the country have followed the footsteps of Seattle and implemented LEAD programs, with more on the way. This is a best practice for addressing local issues including racially disproportionate sentencing, overincarceration, overcrowded jails, overburdened court systems, public health and safety, and the opioid epidemic. Persons with behavioral health issues do not fare well in jails. Repeated incarceration does not help people address their behavioral health issues. Prosecutors think this is a wonderful idea. We want people to get the services they need so they do not return. Not everyone deserves to go to jail. Please help police officers direct persons who need help to get the help they need. The complexity of 21st century policing creates the need for creative solutions. We support the LEAD program and know it will help reduce crime and divert persons to needed care. This program helps build trust and engagement with populations who are skeptical about law enforcement. It gives police an effective tool to place people in distress in a more conducive environment while reducing the burden on an overstressed criminal justice system. WASPC has a proven track record for innovative programs to keep people with behavioral health needs out of jail. WASPC was helpful during the *Trueblood* settlement. Pre-diversion emphasis is a real strength of this program. Diversion is followed by long-term health care coordination. Arrests interrupt continuity of care and can lead to treatment reversals. We are grateful to law enforcement and community leaders for making LEAD a reality in King County; the rest of Washington now deserves this opportunity. The Bremerton LEAD project has been transformative, in a place where harm reduction principles have not been historically embraced. The program has built authentic, respectful relationships between law enforcement and other key stakeholders. Buy-in from multiple parties is necessary for programs to succeed. LEAD now needs resources to move forward. This program will alleviate the need for prison construction. Putting together a therapeutic court taught us about the need to build trust between persons with behavioral health disorders and service providers. Coordination is needed to avoid duplication of services and avoid conflicts. We

need an integrated approach and to look through the eyes of the people we serve. The same group of providers should be available to the public, the courts, and the police. Early intervention is needed the first time people appear in court before matters get out of control. Diversion by itself is worthless if it is not backed up with appropriate treatment and care. There is no lack of will for diversion, but the tools are absent to effectively handle behavioral health needs. From a law enforcement perspective if no crisis bed is available, no shelter bed, and the person does not meet involuntary treatment hold criteria, jail can seem like the only humane choice. This bill puts the ingredients in place to combine diversion with care. The focus on pre-booking is positive and I have confidence in the LEAD NSB. This bill has a city perspective, and gives cities an opportunity to apply for funding to pair with community partners and make a difference. Small experimental programs make bigger programs more effective. The magic comes from treating people with dignity and respect. I started the state's largest outpatient substance use disorder, mental health, and domestic violence program, and I am an example of what can happen when a person involved in the justice system is given the opportunity to be involved in treatment.

**Persons Testifying (Behavioral Health Subcommittee to Health & Long Term Care):**

PRO: Representative John Lovick, Prime Sponsor; David Larson, Federal Way Municipal Court; Malika Lamont, LEAD NSB; James McMahan, WASPC; Russ Brown, Washington Association of Prosecuting Attorneys; Lynetter Buffington, Washington State Fraternal Order of Police (WAFOP); James Schrimpsner, WAFOP; David Lord, Disability Rights Washington; Tarra Simmons, Civil Survival; Tim Candela, Public Defenders Association; Kimberly Hendrickson, City of Poulsbo Behavioral Health Outreach Program; Brad Bresolin, Social Treatment Opportunity Programs.

**Persons Signed In To Testify But Not Testifying (Behavioral Health Subcommittee to Health & Long Term Care):** No one.

**Staff Summary of Public Testimony on the Bill as Amended by Behavioral Health Subcommittee to Health & Long Term Care (Ways & Means):**

PRO: We want those who need help, to get help. Sometimes the best way to address public safety is to get individuals services they may need. Some issues related to measuring goals are problematic. Transitioning to performance-based contracting is confusing to us and WASPC does not know how to conduct this. The LEAD program does target low-level drug offenses, which intersects with those with mental health issues. There is a value-add cost for the grant program. Incarceration does not provide therapeutic treatment to people with drug issues. Placing individuals into jails is not the solution to the public safety challenges that officers are facing. The LEAD program would need \$10 million to go statewide in a meaningful way in the biennium.

**Persons Testifying (Ways & Means):** PRO: Lynnette Buffington, Washington Fraternal Order of Police; James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys; Tim Candela, Public Defender Association; Malika Lamont, Olympia Buprenorphine Clinic.

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