

FINAL BILL REPORT

E2SSB 6239

C 339 L 06

Synopsis as Enacted

Brief Description: Changing provisions relating to controlled substances.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Johnson, Doumit, Oke, Stevens and Esser; by request of Attorney General).

Senate Committee on Human Services & Corrections

Senate Committee on Ways & Means

House Committee on Criminal Justice & Corrections

House Committee on Appropriations

Background: Methamphetamine (meth) is an addictive stimulant drug. A task force convened by the Attorney General in 2005, which included legislators, law enforcement officers, prosecutors, treatment providers, and other stakeholders, assessed the extent of the meth problem in Washington State.

The task force recommended changes to Washington laws in the areas of substance abuse reduction including: 1) drug-free workplace provisions, pilot programs and task forces; 2) cleanup of contaminated property; and 3) criminal penalties and procedures.

Drug Task Force Funding. Previously, two federal grant programs, the Byrne Formula Grant Program and the Local Law Enforcement Block Grant, provided federal funding for local drug task forces. These grants were administered by the Department of Community, Trade, and Economic Development (CTED). In Fiscal Year (FY) 2004, CTED allocated \$4.163 million in federal funding for local drug task forces. Since then, the federal government combined these two programs into the Justice Assistance Grant (JAG), also administered by CTED. The total amount of funding available was reduced by approximately 40 percent in FY 2006 and is projected to be reduced another 40 percent in FY 2007. The current estimate of federal funding for local drug task forces is \$2.343 million for FY 2007. Counties may receive JAG money either by applying for funding through CTED or applying directly to the Department of Justice. While most Washington counties have been part of a federally funded drug task force, 10 counties have not been included. They are Columbia, Island, Jefferson, Kittitas, Klickitat, Lincoln, Mason, Pacific, Pend Oreille, San Juan, Stevens, and Walla Walla.

Chemical Dependency Treatment at the Department of Corrections. The Department of Corrections (DOC) currently limits chemical dependency treatment for inmates to priority inmates. Inmates prioritized for treatment include those determined to be at high risk for violent reoffending and those sentenced under the Drug Offender Sentencing Alternative (DOSA). In fiscal year 2004, DOC admitted 3,800 inmates to treatment while in prison, out of a total average daily prison population of 16,700.

Senate Bill 5763. Last year the Legislature passed SB 5763. One of the provisions in the legislation provided county governments the authority to impose a 1/10 of 1 percent sales tax

dedicated to new and expanded therapeutic drug courts for dependency proceedings, and a new and expanded mental health and chemical dependency treatment services.

Cleanup of Contaminated Property. The chemicals which are used in the manufacture of meth can contaminate structural materials, furnishings, wastewater systems, and soils. Decontamination of the property is necessary to reduce the public health risks of injuries and hazardous exposures associated with those chemicals.

The State Board of Health and the Department of Health (DOH) establish standards, procedures, and responsibilities for regulating the occupancy and use of property where hazardous chemicals or chemical residues commonly associated with the manufacture of controlled substances are or may be present. DOH Clandestine Drug Lab Program ensures that contaminated sites are cleaned to public health standards. DOH also certifies contractors to decontaminate properties, and provides technical assistance and training to local health jurisdictions, government agencies, and community organizations.

Local health jurisdictions assess properties to determine the degree and extent of contamination due to chemical residues and other biohazards. The local health officers are also responsible for: 1) providing notice regarding the property to occupants and owners; 2) reporting contaminated property to DOH; 3) determining whether a contractor is required for decontamination; 4) verifying that decontamination has occurred; and 5) recording the decontamination with the county auditor.

The Washington State Model Toxics Control Act (MTCA). MTCA outlines the liabilities and responsibilities of the owner or operator of a site that has been contaminated by a hazardous substance or substances. The cleaning of these contaminated sites can be the responsibility of a broad range of individuals.

Drug Offender Sentencing Alternative (DOSA). Offenders convicted of drug offenses, for which the standard range sentence is over 12 months in prison, may be eligible for the drug offense sentencing alternative (DOSA). In addition to the prison-based DOSA sentencing alternative, the 2005 Legislature enacted a residential treatment DOSA. If the court elects to impose a prison-based DOSA sentence, the term of incarceration is one-half of the midpoint of the standard range during which DOC is required to provide an assessment and appropriate drug treatment. The offender must serve the remainder of the midpoint of the standard range in community custody which must include outpatient drug treatment.

Summary: Substance Abuse Reduction. Counties that impose the tax authorized in SB 5763 are eligible to seek up to \$100,000 from the Legislature for additional mental health or substance abuse treatment programs for persons addicted to methamphetamine, beginning in fiscal year 2008 and ending in fiscal year 2010. Three pilot projects are established to provide rural drug task forces to the three parts of the state. Each pilot project will receive four additional deputy sheriffs, two deputy prosecutors, and one clerk. Legislative intent is declared to provide the pilot projects with \$1.6 million in funding, and to provide a minimum of \$4 million in funding for multijurisdictional task forces currently in operation. The definition of "neglect" of vulnerable adults and children is amended to include exposure to meth or ingredients of meth when there is intent to manufacture meth. CTED will review funding sources for local meth action teams through the Washington State meth initiative and

drug task forces to determine their adequacy and report its findings to the Legislature by November 2006.

Authority and Discretion of Local Health Officers. When they have probable cause, local health officers (LHOs), in consultation with law enforcement officers, are granted the authority to seek a warrant to conduct inspections of property. LHOs are granted the authority to issue emergency, seventy-two-hour orders when they determine the order is necessary to protect the public health, safety, or the environment.

In addition to condemning or demolishing contaminated property, city or county officials may take additional actions such as prohibiting the use, occupancy, or removal of property, or ordering its decontamination. These actions are appealable; however, restrictions on use, occupancy, or removal of property are enforceable while the appeal is pending. City and county personnel, and their cleanup contractors, must comply with the local health officer's orders.

It is a misdemeanor for anyone to enter property after an order declaring it to be unfit has been issued. Exceptions are provided for governmental officials performing their duties, occupants recovering uncontaminated property, and for others as authorized by a public health officer or superior court.

In addition to decontamination, the owners or authorized contractors are required to submit written work plans for demolition or disposal activities. Property owners are responsible for: 1) the costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and 2) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer. Within 30 days of issuing an order of unfitness, the local health officer must establish a time period in which decontamination, demolition, and disposal will be completed and fines or legal actions may be taken upon failure to meet the deadline.

Modification to Certification Requirements for Cleanup Workers. DOH authority to deny, suspend, revoke, or place restrictions on certificates is expanded to include: 1) failing to perform decontamination, demolition, or disposal work using department certified decontamination personnel; 2) failing to perform work that meets the requirements of the local health officers; 3) failing to properly dispose of contaminated property; 4) failing to cooperate with DOH or the local health officer; or 5) failing the evaluation and inspection of decontamination projects. Additionally certified workers' fraudulent acts or acts of misrepresentation are expanded to include: 1) applying for, or obtaining a certification, recertification, or reinstatement; 2) seeking approval of a work plan; and 3) documenting completion of work to DOH or local health officer.

Department of Health Cleanup Evaluations. DOH must modify its rules to include methods for the testing of porous and nonporous surfaces. DOH must also adopt rules about independent third party sampling to verify satisfactory decontamination of property.

DOH may annually evaluate a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension and is prohibited from performing additional work until deficiencies have been corrected.

Department of Ecology. Department of Ecology (DOE), in consultation with local health jurisdictions and their corresponding city or county governments, will conduct a pilot program to demonstrate application of existing MTCA and other available resources to cleanup methamphetamine contaminated property for public purpose. DOE will report to the Legislature on the effects of the pilot program by January 1, 2007.

Sentencing Modifications. Sentence enhancements for ranked drug offenses are to be served consecutively. Drug Offender Sentencing Alternative offenders will serve 12 months or up to the half point of a sentence, whichever is greater. When the court determines that chemical dependency contributed to the felony offense, the offender, not just drug offenders, must receive a chemical dependency screening report prior to sentencing.

Washington State Institute for Public Policy. Washington State Institute for Public Policy (WSIPP) must conduct two studies and report its findings to the Legislature by January 1, 2007. First, WSIPP will study neighboring states criminal sentencing provisions related to methamphetamine to determine if these provisions provide an incentive for traffickers and manufacturers to relocate to Washington. Second, the WSIPP will study DOSA's impact on recidivism rates for offenders participating in DOSA relative to offenders receiving community treatment or no treatment at all.

Votes on Final Passage:

| | | | |
|--------|----|---|--------------------|
| Senate | 42 | 0 | |
| House | 98 | 0 | (House amended) |
| Senate | 48 | 0 | (Senate concurred) |

Effective: June 7, 2006

January 1, 2007 (Section 108)