

HOUSE BILL REPORT

E2SSB 5536

As Reported by House Committee On:
Community Safety, Justice, & Reentry
Appropriations

Title: An act relating to justice system and behavioral health responses for persons experiencing circumstances that involve controlled substances, counterfeit substances, legend drugs, and drug paraphernalia.

Brief Description: Concerning controlled substances, counterfeit substances, and legend drug possession and treatment.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Robinson, Lovick, Rolfes, Mullet, Dhingra, Billig, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Nobles, Randall, Stanford, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 3/20/23, 3/28/23 [DPA];
Appropriations: 4/1/23, 4/4/23 [DPA(APP w/o CSJR)].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended By Committee)**

- Modifies certain regulations and prohibitions under the Uniform Controlled Substances Act and related provisions of state law, including by modifying the conduct that constitutes certain drug possession offenses and the related penalties, and establishes the offenses of Knowing Possession and Use of a Controlled Substance, Counterfeit Substance, or Legend Drug in a Public Place as misdemeanors.
- Modifies the scope of the civil infraction for giving, selling, or permitting the giving or selling of drug paraphernalia, and establishes the state's preemption of the entire field of drug paraphernalia regulation within its boundaries.

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.

- Establishes a pretrial diversion opportunity for persons charged with certain drug possession offenses.
- Allows for suspension of a person's sentence for conviction of certain drug possession offenses when the person agrees as a condition of probation to obtain a biopsychosocial assessment and participate in recommended treatment or services, or court-ordered community restitution.
- Requires courts to dismiss an applicable person's charge(s) if the person successfully completed applicable pretrial diversion or vacate an applicable person's conviction if the person successfully completes recommended treatment or services, or court-order community restitution.
- Requires courts to vacate a person's conviction for certain drug possession offenses if the person has no additional arrests, charges, or convictions in the one year after the person's present conviction.
- Repeals the provision requiring law enforcement to offer a person who would otherwise be subject to arrest for certain drug possession offenses two referrals to assessment and services in lieu of legal system involvement prior to booking the person into jail and referring the case for prosecution.
- Requires the Washington State Patrol, beginning January 1, 2025, to aim to complete the necessary analysis for evidence submitted for suspected violations of certain drug possession offenses within 45 days of receiving the request for analysis.
- Requires the Administrative Office of the Courts to collect data and submit reports to the Legislature regarding the utilization and outcome of specific forms of pretrial diversion, sentencing, and postconviction relief.
- Establishes new programs and services and modifies the scope of existing programs and services related to substance use disorder treatment and recovery.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: Do pass as amended. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Davis, Fosse and Ramos.

Minority Report: Do not pass. Signed by 3 members: Representatives Griffey, Assistant Ranking Minority Member; Farivar and Graham.

Staff: Corey Patton (786-7388).

Background:

The Uniform Controlled Substances Act and Related Provisions.

The Uniform Controlled Substances Act (UCSA) regulates the manufacture, distribution, and dispensation of controlled substances, including by prohibiting and penalizing certain conduct related to controlled substances, counterfeit substances, and drug paraphernalia. Related provisions of state law also regulate legend drugs. For example, the following actions constitute either a criminal offense or civil infraction and carry specified penalties depending on the nature of the offense or infraction, subject to certain exceptions:

- Until July 1, 2023, knowingly possessing a controlled substance, counterfeit substance, legend drug, or certain quantities of cannabis constitutes a misdemeanor offense, which is punishable by up to 90 days in jail, a \$1,000 fine, or both. Prosecutors are encouraged to divert related cases for assessment, treatment, or other services.
- Giving, selling, or permitting the giving or selling of drug paraphernalia constitutes a class I civil infraction, which is punishable by up to a \$250 fine.

The first two times a person would otherwise be subject to arrest for certain drug possession offenses, law enforcement is required to offer the person a referral to assessment and services in lieu of legal system involvement. If law enforcement agency records reflect that the person has been referred to assessment and services twice or more, officers may, but are not required to, make additional diversion efforts.

A "controlled substance" is a drug or substance included in Schedules I through V of the UCSA, with some exceptions. Drugs and substances are placed on schedules based on their potential for abuse, medical use, and safety. Substances in Schedule I are the most tightly controlled, while those in Schedule V are the least tightly controlled. A "counterfeit substance" is a controlled substance which has been altered to look like a substance produced or distributed by a manufacturer, distributor, or dispenser. "Drug paraphernalia" includes all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing a controlled substance into the human body. A "legend drug" is a drug which is required to be dispensed on prescription or is restricted to use by practitioners.

State v. Blake.

Prior to 2021, the offense of Possession of a Controlled Substance under the UCSA was classified as a class C felony and was a strict liability offense, meaning that no *mens rea* (state of mind) element had to be proven to convict a person of the offense. In 2021 the Washington Supreme Court held in *State v. Blake (Blake)* that the strict liability nature of

the offense exceeded the state's police power and violated the due process clauses of the state and federal constitutions. Consequently, the Washington Supreme Court's decision in *Blake* invalidated the portion of the UCSA that created the offense of Possession of a Controlled Substance.

Following the *Blake* decision, legislation was adopted in 2021 (Engrossed Senate Bill 5476, enacted as chapter 311, Laws of 2021) which, in part, amended statutory provisions related to the offenses of Possession of a Controlled Substance, Possession of a Counterfeit Substance, Possession of a Legend Drug, and Possession of 40 Grams or Less of Cannabis in the following ways:

- added a "knowing" *mens rea* element to all four offenses, which were previously strict liability offenses;
- reclassified Possession of a Controlled Substance and Possession of a Counterfeit Substance as misdemeanors, which were previously classified as class C or B felonies;
- encouraged prosecutors to divert related cases for assessment, treatment, or other services; and
- provided that these amendatory provisions expire on July 1, 2023, at which point the affected statutes will revert back to their pre-*Blake* provisions.

The Growth Management Act and Essential Public Facilities.

The Growth Management Act (GMA) provides a comprehensive land-use-planning framework for county and city governments in Washington. Under the GMA, comprehensive land-use plans must include a process for identifying and siting essential public facilities, which are facilities that are typically difficult to site, such as airports, state education facilities, state or regional transportation facilities, regional transit authority facilities, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, community facilities, and secure community transition facilities.

Recovery Residences.

State law requires the Health Care Authority (HCA) to maintain a registry of approved recovery residences or contract with a nationally recognized recovery residence certification organization based in Washington to maintain the registry. A "recovery residence" is a home-like environment that promotes healthy recovery from substance use disorders (SUD) and supports persons recovering from SUDs through the use of peer recovery support. A recovery residence may choose to be included in the registry if it has been certified as meeting certain criteria.

Law Enforcement Assisted Diversion.

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 for participants. In 2019 the state established a LEAD pilot project and directed the HCA to partner with the LEAD National Support Bureau to award a

contract for two or more geographic areas to implement LEAD programs in Washington.

Recovery Navigator Program.

The Recovery Navigator Program is a statewide program involving a partnership between the HCA and behavioral health administrative service organizations to provide community-based outreach, intake, assessment, and connection to services for individuals with SUDs, including individuals with co-occurring SUDs and mental health conditions.

Summary of Amended Bill:

Drug Possession.

Description of Offenses and Penalties.

Effective July 1, 2023, the conduct that constitutes certain drug possession offenses and the related penalties are modified as follows:

- amendatory provisions adopted in 2021 (Engrossed Senate Bill 5476, enacted as chapter 311, Laws of 2021) related to the offenses of Possession of a Counterfeit Substance, Possession of a Controlled Substance, Possession of a Legend Drug, and Possession of 40 Grams or Less of Cannabis are made permanent, retaining the "knowing" *mens rea* element and the misdemeanor penalties for those offenses; and
- knowing possession and use of a controlled substance, counterfeit substance, or legend drug in a public place constitutes a misdemeanor, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice.

Diversions by Law Enforcement.

Effective July 23, 2023, the provision requiring law enforcement to offer a person who would otherwise be subject to arrest for Possession of a Controlled Substance, Possession of a Counterfeit Substance, Possession of a Legend Drug, or Possession of 40 Grams or Less of Cannabis at least two referrals to assessment and services in lieu of legal system involvement is repealed. Instead, law enforcement is encouraged to offer such referrals in lieu of legal system involvement.

Pretrial Diversion Program and Dismissing Charges.

Effective July 1, 2023, a pretrial diversion program is created for defendants charged with Possession of a Controlled Substance, Possession of a Counterfeit Substance, Possession of a Legend Drug, or Possession of 40 Grams or Less of Cannabis, including when the person was knowingly possessing or using a controlled substance, counterfeit substance, or legend drug in a public place (collectively, "qualifying offense"). The court must determine whether the defendant has been advised by counsel about the pretrial diversion opportunity.

A defendant charged with a qualifying offense may make a motion to participate in pretrial diversion and agree to waive the right to a speedy trial if the motion is granted. The court may not grant the motion unless the prosecuting attorney consents to the diversion. The

prosecuting attorney is strongly encouraged to agree to the diversion if the defendant is only charged with a qualifying offense or if the only other additional charge is for other nonfelony offenses.

If the defendant is only charged with a qualifying offense and has not been convicted of any other offenses on or after July 1, 2023, the court must grant the motion, continue the hearing, and refer the defendant for an evaluation by a designated substance use disorder (SUD) treatment program. In all other cases, granting the motion is discretionary. Prior to granting the motion, the court must provide a full description of the procedures for diversion and certain explanations and clear statements about subjects related to participating in diversion.

The following requirements apply to a defendant obtaining an SUD evaluation and treatment as a part of diversion:

- the state must make resources available to assist the defendant in scheduling the evaluation or expedited assessment within seven days of the agreement to participate in the diversion;
- the evaluation must be provided at no expense if the defendant qualifies for public defense services or is found to be indigent;
- the court must, when necessary and reasonably possible, provide a defendant with a list of available resources to assist the defendant with securing transportation to an SUD evaluation;
- the evaluation must be provided at a location that is accessible to the defendant;
- the SUD counseling agency completing the assessment must make a written report to the court after the examination, which must be filed under seal with the court and a copy given to the prosecutor, the defendant, and the defendant's counsel—the report and its copies are confidential and exempt from public disclosure and the court must endeavor to avoid public discussion of the circumstances, history, or diagnoses that could stigmatize the defendant; and
- the recommended services or treatment must be provided at no expense if the defendant is found to be indigent, subject to the availability of funds.

The court may contract with a third party to provide evaluations and services, which may be collocated at the court or be provided at alternative locations, and the state must reimburse the court for costs associated with evaluations and related travel.

After receiving the assessment, if the report indicates the defendant has an SUD, the court must inform the defendant that the defendant is prohibited under federal law from possessing any firearm or ammunition, sign an order of ineligibility to possess firearms, and require the defendant to surrender all firearms.

The prosecutor may make a motion to terminate diversion if it appears that the defendant is not meaningfully engaging in the recommended treatment services.

If the defendant successfully completes diversion, including substantial engagement with assessment, recommended treatment, or services, the court must dismiss the charge or charges.

Sentencing Requirements and Vacating Convictions.

Effective July 1, 2023, a court of limited jurisdiction must impose a term of confinement of up to 90 days, all of which must be suspended for a period not to exceed one year, if the defendant is convicted of a qualifying offense and agrees as a condition of probation to obtain an SUD assessment and participate in any recommended treatment or services.

The following requirements apply to a defendant obtaining an SUD evaluation and treatment pursuant to an agreed condition of probation for an applicable conviction:

- the court must assist the defendant in scheduling the evaluation or expedited assessment within seven days of the agreement;
- the court must, when necessary and reasonably possible, provide a defendant with a list of available resources to assist the defendant with securing transportation to an SUD evaluation;
- the evaluation must be provided at a location that is accessible to the defendant;
- an SUD assessment must be prepared by an SUD services or counseling program licensed or certified by the Department of Health (DOH), and a copy of the report must be filed under seal with the court;
- the assessment must include: available background on the defendant's circumstances, barriers, and past service history; recommendations for services available in the defendant's community that are likely to work with the defendant and provide relevant support; a statement of unavailability if there are no known suitable services presently available in the defendant's community that would meaningfully assist the defendant; and the approximate cost of the services if not publicly provided;
- based on the assessment, the court must determine whether to require the defendant to complete a course in an alcohol and drug information school licensed or certified by the DOH, or more sustained services provided by a licensed behavioral health care provider, peer counseling program, or other case management program;
- the recommended services or treatment must be provided at no expense if the defendant is found to be indigent, subject to the availability of funds; and
- if the court directs a service plan after receiving an assessment, the court must confirm with the indicated service provider that the service provider consents to providing the court with occasional updates on the individual's progress on a schedule acceptable to the court, but at least monthly.

The court may contract with a third party to provide evaluations and services, which may be collocated at the court or be provided at alternative locations, and the state must reimburse the court for costs associated with evaluations.

If the SUD treatment program's report indicates the defendant has an SUD, the court must inform the defendant that the defendant is prohibited under federal law from possessing any

firearm or ammunition, and sign an order of ineligibility to possess firearms.

The prosecutor may make a motion for a hearing to consider sanctions if it appears that the defendant is not meaningfully engaging in the recommended treatment or services. The court may not sanction the defendant for failing to comply with the recommended treatment or services if the court finds the defendant has made reasonable efforts but cannot comply due to a lack of available treatment or services or, if the defendant is indigent, due to a lack of funding for treatment or services. At the hearing, if the court finds by a preponderance of the evidence that the defendant has willfully abandoned or demonstrated a consistent failure to meaningfully participate in the recommended treatment or services, the court must use its discretion in determining an appropriate sanction.

If the defendant successfully completes treatment or services, the defendant must file proof of completion with the court. Upon verification that the defendant successfully completed the recommended treatment or services, the court must terminate probation and enter an order vacating the defendant's conviction or convictions.

Analysis of Evidence.

Effective January 1, 2025, subject to available funds, the Washington State Patrol (WSP) must aim to complete the necessary analysis for evidence submitted for a suspected qualifying offense within 45 days of receiving the request for analysis.

Data Collection and Reporting Requirements.

Beginning August 1, 2024, the Administrative Office of the Courts (AOC) must report to the Legislature annually on data and information it must collect as provided below.

The AOC must collect specified data related to the utilization and outcomes of pretrial diversions, convictions, and postconviction relief for qualifying offenses, including but not limited to: (1) the recidivism rate for persons participating in such processes; (2) the number of pretrial diversions offered and the outcomes; (3) demographic data for pretrial diversions identifying trends or disparities; (4) statistical data comparing utilization and outcomes of pretrial diversions in different regions of Washington; (5) the number of qualifying offense convictions; (6) the number of people sentenced for a conviction of a qualifying offense who agreed as a condition of probation to obtain an SUD assessment and participate in treatment or services; (7) demographic data for people convicted for a qualifying offense identifying trends or disparities in sentencing and vacating of such convictions; and (8) statistical data comparing sentencing for qualifying offenses in specific courts and different regions of Washington.

The AOC must also, in cooperation with the WSP and Washington Association of Sheriffs and Police Chiefs, collect data and information concerning reported violations of certain drug possession offenses responded to by law enforcement, including: (1) whether violations were deferred to treatment in lieu of further legal system involvement or referred for prosecution; (2) the number of violations involving repeat offenders; and (3) the number

of violations involving people who previously participated in pretrial diversion or were sentenced under the provisions of this act.

Giving and Selling Drug Paraphernalia.

Effective July 1, 2023, the class I civil infraction for giving, selling, or permitting the giving or selling of drug paraphernalia is modified as follows:

- The prohibition on giving or permitting the giving of drug paraphernalia is eliminated.
- Equipment, products, and materials that are used, intended to be used, or designed for testing or analyzing a controlled substance are eliminated from the definition of "drug paraphernalia."
- The distribution or use of public health supplies including, but not limited to, syringe equipment, smoking equipment, and drug testing equipment, through public health programs, community-based human immunodeficiency virus (HIV) prevention programs, outreach, shelter, and housing programs, and pharmacies is exempt from the infraction.
- Public health and syringe service program staff taking samples of substances and using drug testing equipment for the purpose of analyzing the composition of the substances or detecting the presence of certain substances are exempt from arrest and prosecution for applicable drug offenses.

The State of Washington fully occupies and preempts the entire field of drug paraphernalia regulation within its boundaries, including regulation of the use, selling, giving, delivery, and possession of drug paraphernalia. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to drug paraphernalia that are specifically authorized by, and consistent with, state law. Such local ordinances must have the same penalty as provided by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law may not be enacted and are preempted and repealed, regardless of the nature of the code, charger, or home rule status of the city, town, county or municipality.

Programs and Services Related to Substance Use Disorder Treatment and Recovery.

Opioid Treatment Programs and Other Essential Public Facilities.

The list of facilities that are considered essential public facilities for the purpose of local land-use regulations is expanded to include opioid treatment programs (OTPs), recovery residences, SUD treatment facilities, and harm reduction programs, excluding safe injection sites. Counties and cities may only impose reasonable conditional use requirements on OTPs that are similarly applied to other essential public facilities and health care settings. The requirement for the DOH to hold a public hearing before making a decision on an application for licensing or certifying an opioid treatment program is removed. Counties and cities are prohibited from imposing a maximum capacity on an OTP. A mobile or fixed-site medication unit may be established as part of a licensed OTP.

Program to Fund Substance Use Disorder Treatment Programs.

Subject to appropriation, a program is established in the Department of Commerce to fund the construction costs necessary to start up SUD treatment and services programs in underserved regions of the state that lack access to such programs.

Recovery Residences.

Subject to availability of funding, the Health Care Authority (HCA) must:

- make sufficient funding available to support establishment of an adequate and equitable stock of recovery residences in each region of the state;
- establish a voucher program to allow accredited recovery housing operators to hold bed space for applicable individuals;
- conduct outreach to underserved and rural areas to support the development of recovery housing, including adequate resources for women, youth, and lesbian, gay, bisexual, trans, queer, intersex, and asexual plus (LGBTQIA+) communities; and
- by January 1, 2024, develop a training for housing providers to assist with providing appropriate service to LGBTQIA+ communities, including consideration of specific topics, and ensure applicants for grants or loans related to recovery residences receive access to the training.

Real and personal property used by a nonprofit organization in maintaining an approved recovery residence is exempt from taxes levied for collection in calendar years 2024 through 2033 if the property is owned by the nonprofit organization and the charge for the housing does not exceed the actual cost of operating and maintaining the housing, or if the property is rented or leased by the nonprofit organization and the benefit of the exemption inures to the nonprofit organization. A tax preference performance statement is included.

Law Enforcement Assisted Diversion Grant Program.

The Law Enforcement Assisted Diversion (LEAD) pilot project is converted to a grant program administered by the HCA. The LEAD grant program is expanded to provide that cities, counties, and tribes; subdivisions thereof; public development authorities; and community-based organizations demonstrating support from necessary public partners, may apply for funding. Funds may be used to scale existing projects and to invite additional jurisdictions to launch diversion programs. Sufficient funds must be allocated from grant program funds to secure technical assistance for the HCA and implementing jurisdictions. Certain governmental entities and employees thereof, nonprofit community-based organizations; tribal government entities; tribal organizations; and urban Indian organizations are granted immunity from civil liability based on the administration of LEAD programs or activities, except upon proof of bad faith or gross negligence.

Recovery Navigator Program.

By June 30, 2024, the HCA must develop and implement a data integration platform to serve as a common database available for diversion efforts across Washington, to serve as a data collection and management tool for practitioners, and to assist in standardizing definitions and practices. If possible, the HCA must leverage and interact with existing platforms already in use. The HCA must establish a quality assurance process for

Behavioral Health Administrative Services Organizations and employ data validation for fields in the data collection workbook. The HCA must engage and consult with the LEAD National Support Bureau on data integration approaches, platforms, qualify assurance protocols, and validation practices.

The HCA must contract with the Washington State Institute for Public Policy (WSIPP) to conduct a study of the long-term effectiveness of the recovery navigator program, with reports due on June 30 of 2028, 2033, and 2038. The WSIPP must collaborate with the HCA, the LEAD National Support Bureau, and the Substance Use Recovery Services Advisory Committee to determine the parameters of the reports. The LEAD National Support Bureau may supplement the report with additional recommendations. By August 1, 2023, the HCA must establish an expedited preapproval process to facilitate certain data requests made by the WSIPP.

Health Engagement Hubs.

By January 1, 2025, the HCA must develop payment structures for health engagement hubs that:

- serve as an all-in-one location where people who use drugs can access a range of medical, harm reduction, treatment, and social services, excluding supervised injection services;
- may be affiliated with certain existing programs and entities;
- provide referrals or access to methadone and other medications for opioid addiction;
- function as a patient-centered medical home by offering high-quality, cost-effective patient-centered care, including wound care;
- provide harm reduction services and supplies;
- provide linkage to housing, transportation, and other support services; and
- are open to youth and adults.

The HCA must direct Medicaid managed care organizations to adopt a value-based bundled payment methodology in contracts with health engagement hubs and other OTPs. The HCA must make sufficient funding available to ensure that a health engagement hub is available within a two-hour drive for all communities and that there is at least one health engagement hub available per 200,000 residents in Washington.

Statewide Treatment and Services Mapping Tool.

Subject to the availability of funding, the HCA must collaborate with the DOH and the Department of Social and Health Services to expand the Washington Recovery Help Line and the recovery readiness asset tool to provide a dynamically updated statewide behavioral health treatment and recovery support services mapping tool that includes specific functions and interface capabilities.

Work Group on Treatment Intake, Screening, and Assessments.

The HCA must convene a work group to recommend changes to systems, policies, and processes related to intake, screening, and assessment for SUD services. The work group

must include care providers, payors, people who use drugs, and other individuals recommended by the HCA. The work group must present its recommendations to the Governor and the Legislature by December 1, 2024.

Education and Employment Pathways.

Subject to the availability of funding, the HCA must establish a grant program for providers of employment, education, training, certification, and other supportive programs designed to provide persons recovering from SUDs with employment opportunities. The grant program must employ a low-barrier application and give priority to programs that engage with specific historically underserved communities.

Training and Resources for Parents and Caseworkers.

By June 30, 2024, the HCA must, in consultation with the Department of Children, Youth, and Families (DCYF), develop training for parents of children and transition age youth with SUDs. The training must address specific subjects, be made publicly available, and be promoted to licensed foster parents and caregivers, including any tribally licensed foster parents and tribal caregivers. The DCYF must make appropriate training and opioid overdose reversal medication available for use by caseworkers or employees that may come in contact with individuals experiencing overdose.

Appropriations.

Subject to the availability of funds appropriated for this specific purpose, the HCA shall:

- continue to expand efforts to provide opioid use disorder medication in city, county, regional, and tribal jails;
- provide support to new and established DOH certified clubhouses throughout the state;
- award grants to an equivalent number of crisis services providers to the west and east of the Cascade Mountains to establish and expand 23-hour crisis relief center capacity;
- maintain a memorandum of understanding with the Criminal Justice Training Commission to provide ongoing funding for certain community grants related to therapeutic interventions; and
- provide ongoing grants to LEAD programs.

The act contains a severability clause.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill:

1. reclassifies the offenses of Possession of a Controlled Substance and Possession of a Counterfeit Substance as misdemeanors, rather than gross misdemeanors;
2. provides that knowing possession and use of a controlled substance, counterfeit substance, or legend drug in a public place constitutes a misdemeanor offense, subject to certain exceptions;

3. provides that, upon arraignment for applicable drug offenses, the court is required to determine whether the defendant has been advised by the defendant's attorney about pretrial diversion, rather than give such advisement directly to the defendant;
4. eliminates the specific appropriation made for the Washington State Patrol related to testing evidence submitted for suspected drug offenses within 45 days, and instead makes such testing requirements subject to the availability of funds;
5. provides that the prohibition on selling or permitting the sale of drug paraphernalia does not apply to distribution of certain supplies by outreach, shelter, and housing programs;
6. provides that the state occupies and preempts the field of drug paraphernalia regulation;
7. modifies provisions related to pretrial diversions for certain drug offenses, including by:
 - expanding the circumstances when pretrial diversion is available to include when a person is charged with knowing possession and use of a controlled substance, counterfeit substance, or legend drug in a public place;
 - providing that a court may not grant a motion for pretrial diversion without the prosecuting attorney's consent;
 - encouraging prosecuting attorneys to divert cases meeting certain criteria;
 - providing that, if the prosecuting attorney consents, the court must grant a motion for pretrial diversion in circumstances when the defendant is only charged with a particular drug offense, and the defendant has not been convicted of any offenses committed after July 1, 2023;
 - requiring the court to provide the defendant and the defendant's counsel with specific information prior to granting a motion for pretrial diversion;
 - requiring the state to make resources available to assist applicable defendants with scheduling, rather than obtaining, a substance use disorder (SUD) evaluation or expedited assessment within seven days of the defendant's agreement to participate in pretrial diversion;
 - requiring the court, when necessary and to the extent reasonably possible, to provide an applicable defendant with a list of available resources to assist the defendant with securing transportation to an SUD evaluation;
 - providing that an SUD counseling agency, rather than treatment program, must make a written report to the court stating its findings and recommendations, and that such report must be filed under seal with the court, with a copy given to certain parties;
 - exempting the written report and its copies from disclosure under the Public Records Act;
 - requiring the court to endeavor to avoid public discussion of certain stigmatizing topics;
 - limiting when the prosecuting attorney may make a motion for termination from pretrial diversion to when it appears that the defendant is not meaningfully engaging in the recommended treatment or services; and
 - providing that successful completion of pretrial diversion includes substantial

engagement, rather than compliance, with assessment, recommended treatment, or services;

8. modifies provisions related to sentencing requirements for certain drug offenses, including by:

- expanding the circumstances when a court is required to impose certain sentences and conditions for drug offense convictions to include when a person convicted of knowing possession and use of a controlled substance, counterfeit substance, or legend drug in a public place agrees to obtain an SUD assessment and recommended treatment or services as a condition of probation;
- providing that the state, rather than the court, must assist the defendant in scheduling, rather than obtaining, an SUD evaluation or expedited assessment within seven days of the defendant's agreement;
- eliminating the provisions requiring the court to grant a person credit for all confinement time served presentencing for certain drug offenses when such confinement was solely in regard to the offense for which the person is being sentenced;
- eliminating the 21-day mandatory minimum sentences for persons convicted of certain drug offenses who refuse to obtain an SUD assessment and recommended treatment or services as a condition of probation;
- requiring the court, when necessary and to the extent reasonably possible, to provide an applicable defendant with a list of available resources to assist the defendant with securing transportation to an SUD evaluation as a part of an agreed term of probation;
- providing that a licensed SUD services or counseling program, rather than a treatment program, must prepare an SUD assessment, rather than a diagnostic evaluation and treatment recommendation, as a part of probationary conditions imposed on applicable persons;
- requiring the court to determine whether an applicable person, based on the person's SUD assessment, must be required to complete sustained services from a licensed behavioral health care provider, peer counseling program, or other case management program, rather than complete intensive treatment in an approved treatment program;
- modifying the specific information that must be included in an applicable person's SUD assessment;
- requiring the court to confirm that an applicable person's service provider consents to providing the court with occasional updates on the person's progress on a schedule acceptable to the court, but no more frequent than monthly;
- requiring meaningful engagement, rather than compliance, with treatment or services as a condition of probation for applicable persons;
- providing that only the prosecuting attorney, rather than the prosecuting attorney or the court, must make a motion for a hearing to consider sanctions when it appears that an applicable person is not meaningfully engaging in treatment or services;

- eliminating the mandatory minimum sanctions that the court must impose if it finds that an applicable person has willfully abandoned or demonstrated a consistent failure to meaningfully participate in treatment or services; and
 - requiring the court to terminate probation and enter an order vacating an applicable person's conviction upon verification that the person successfully completed treatment and services;
9. provides that if a person convicted of certain drug offenses successfully completes an SUD treatment or services program and files proof of completion, the prosecuting attorney must make a motion to vacate the person's conviction or convictions, and the court must grant the motion upon verifying successful completion;
 10. requires the Administrative Office of the Courts (AOC) to collect data and information, and submit an annual report, on the following:
 - the recidivism rate for persons who participate in pretrial diversion or agree to obtain an SUD assessment and participate in recommended treatment or services as a condition of probation for certain drug offenses; and
 - the utilization and outcomes of specific forms of pretrial diversion, sentencing, and postconviction relief for certain drug offenses;
 11. requires the AOC, in cooperation with the Washington State Patrol and the Washington Association of Sheriffs and Police Chiefs, to collect data, and submit on annual report, on information related to reported violations of certain drug offenses responded to by law enforcement;
 12. provides that harm reduction programs include programs that offer low threshold options for accessing SUD treatment and other services, rather than other health care services;
 13. eliminates the requirement for the Department of Health (DOH) to hold a public hearing before making a decision on an application for licensing or certifying an opioid treatment program;
 14. eliminates the amendatory provisions related to the reporting obligations of behavioral health or service providers, and the authority of the prosecuting attorney to file charges, when an applicable person diverted to a provider violates the terms of the diversion;
 15. eliminates the provision creating a right to court-appointed counsel for certain parenting plan or child custody proceedings;
 16. codifies the provision related to the Health Care Authority (HCA) and the Department of Children, Youth, and Families' training for parents of children with SUDs in chapter 71.24 RCW, rather than in chapter 43.216 RCW;
 17. requires the HCA to engage and consult with the Law Enforcement Assisted Diversion National Support Bureau (LEAD National Support Bureau) on data integration approaches, platforms, quality assurance protocols, and validation practices for the HCA's development and implementation of a data integration platform to support recovery navigator programs;
 18. modifies the Washington State Institute for Public Policy's contracted study on the long-term effectiveness of recovery navigator programs to also include collaboration with and supplementation from the LEAD National Support Bureau;

19. eliminates the specific appropriations made for the HCA related to funding for opioid use disorder medication, DOH certified clubhouses, 23-hour crisis relief centers, certain community grants, and LEAD programs, and instead makes those provisions subject to the availability of appropriated funds;
20. provides that the amendatory provisions related to certain drug offenses, and the provisions related to the AOC's data and information collection and reports, are effective July 1, 2023;
21. adds a severability clause; and
22. modifies language in the intent section.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 29, 2023.

Effective Date of Amended Bill: Sections 2 through 6, 8 through 12, and 32 of the bill contain an emergency clause and take effect on July 1, 2023. The remainder of the bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

Please refer to the March 20, 2023, recording of the public hearing on the bill.

Persons Testifying: (In support) Senator June Robinson, prime sponsor; Nadine Woodward, City of Spokane; Andrew Rolwes, Downtown Spokane Partnership; Armondo Pavone, City of Renton; Jon Nehring, City of Marysville; Josh Weiss, Snohomish County; Amy Ockerlander, City of Duvall and Association of Washington Cities; Lindsey Hueer, Association of Washington Cities; Taylor Gardner and Steve Strachan, Washington Association of Sheriffs and Police Chiefs; Anne Anderson, Washington State Narcotics Investigators Association; Dave Hayes, Washington Council of Police and Sheriffs; Dana Ralph, City of Kent; Nancy Backus, City of Auburn; and Dan Templeman, City of Everett.

(Opposed) David Trieweiler, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Heather Kelly, League of Women Voters of Washington; Kim Thorburn; and Joe Coniff.

(Other) Chad Enright, Kitsap County Prosecutor and Washington Association of Prosecuting Attorneys; Mandy Owens and Caleb Banta-Green, University of Washington Addictions, Drug and Alcohol Institute; Cole Meckle, Gather Church; Larry Jefferson, Washington State Office of Public Defense; Malika Lamont; Lisa Daugaard; Michael White, King County; Mary Lou Pauly, City of Issaquah; Juliana Roe, Washington State Association of Counties; Eric Richey; Mark Johnson, Washington Retail Association; Christina Mason, Washington Association of Drug Courts; Melissa Johnson, District and Municipal Court Judges Association; Sarah Hudson and Kelly Vomacka, Washington

Defender Association and Washington Association of Criminal Defense Lawyers; and Prachi Dave, Civil Survival.

Persons Signed In To Testify But Not Testifying: Aaron Rivkin; John Worthington; Chelle Wilder; Jude Ahmed; Adam Palayew; Don Julian Saucier; Carmen Pacheco-Jones; Vanya Sandberg; Karen Thompson; Everett Maroon; Deaunte Damper; Allyn Hershey; Johnny Bousquet; Jenna Van Draanen; Courtney Wettemann; Brandie Flood; Michelle Conley; and Ashley Dawson.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Community Safety, Justice, & Reentry. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Sandlin, Schmick and Steele.

Minority Report: Without recommendation. Signed by 1 member: Representative Rude.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Community Safety, Justice, & Reentry:

The Appropriations Committee recommended an amended bill that:

1. specifies that prosecutors are encouraged to divert applicable drug offenses for assessment, treatment, or other services, through a recovery navigator program (RNP) or a comparable program;
2. modifies provisions related to pretrial diversions for applicable drug offenses, including by:
 - providing that completion of pretrial diversion involves the defendant obtaining a biopsychosocial assessment from an RNP or comparable program, rather than an assessment by a substance use disorder (SUD) treatment program, and having six months of meaningful engagement with the assessment and recommended treatment or services and progress toward recovery goals as reflected by a written status update from the applicable program;
 - providing that if the biopsychosocial assessment does not contain a recommendation for any treatment or services, the defendant must instead

- complete community restitution as determined by the court, in an amount not to exceed 120 hours, and file proof of competition; and
- eliminating the provisions related to making resources available to assist an applicable defendant with obtaining an SUD evaluation, assisting the defendant with transportation to the evaluation, allowing the court to contract with a third party to provide SUD assessments and services, and requiring state reimbursement of associated costs;
3. modifies provisions related to sentencing requirements for applicable drug offenses, including by:
- modifying the conditions of probation that the court must order when sentencing a person for certain drug offenses to include, when agreed, a condition to obtain a biopsychosocial assessment by an RNP or comparable program, rather than an assessment by an SUD treatment program, and to meaningfully engage with treatment and services;
 - providing that if no treatment or services are recommended, the court must instead order the person to complete an amount of community restitution not to exceed 120 hours;
 - providing that, upon verification that the person successfully completed treatment and services, or the court-ordered community restitution, the court must terminate any remaining probation and enter an order vacating the person's conviction;
 - providing that if the person has had no new arrests, charges, or criminal convictions in the one year following the person's conviction, the court must vacate the conviction even if the person did not complete the treatment, services, or community restitution;
 - eliminating the provision requiring all individuals providing assessments to implement a specific integrated and comprehensive screening and assessment process for co-occurring SUDs and mental health disorders; and
 - eliminating the provisions related to making resources available to assist an applicable defendant with obtaining an SUD evaluation, assisting the defendant with transportation to the evaluation, allowing the court to contract with a third party to provide SUD assessments and services, and requiring state reimbursement of associated costs;
4. provides that if any person convicted of an applicable drug offense goes one year without any new arrests, charges, or convictions, the prosecuting attorney must make a motion to vacate the person's conviction or convictions, and the court must grant the motion;
5. requires the Department of Commerce, subject to the availability of funds, to fund the construction costs of SUD treatment and services programs and recovery housing, rather than just SUD treatment and services programs;
6. eliminates the provision requiring the Health Care Authority (HCA) to make sufficient funding available to support establishment of an adequate and equitable stock of recovery residences in each region of the state;
7. modifies the provisions related to the HCA and the Department of Children, Youth,

- and Families' (DCYF) training for parents, including by:
- specifying that the training is for parents of adolescents with SUDs, rather than children with SUDs;
 - providing that the training must build on and be consistent and compatible with existing training developed by the HCA for families impacted by SUDs; and
 - including suicide prevention in the training;
8. requires the DCYF to provide opioid overdose reversal medication and training in the use of such medication to all DCYF staff whose job duties require in-person service or case management for certain clients;
9. modifies provisions related to RNPs, including by:
- requiring that RNPs be overseen and directed by policy coordinating groups comprised of local officials, public safety agencies, and human services organizations;
 - requiring project management for RNPs to be provided by entities that are independent of a behavioral health administrative services organization;
 - allowing funding for RNPs to support law enforcement assisted diversion (LEAD) programs that are operating with high fidelity to the core principles;
 - defining "core principles" to be the core principles of a LEAD program, as established by the LEAD National Support Bureau as of May 1, 2023;
 - requiring RNPs to be organized on a scale to allow meaningful direction from and coordination with law enforcement and municipal agencies;
 - directing RNPs to prioritize individuals who are actually or potentially exposed to the criminal legal system;
 - directing the HCA to revise its RNP standards following consultation with an organization with significant experience with implementing LEAD programs (consulting entity);
 - requiring, as a condition for receiving funds, RNPs to submit a program plan for approval by the HCA by January 1, 2024, or to reprocure to meet the revised standards by July 1, 2024;
 - requiring the HCA to confer with the consulting entity when approving plans or requiring revisions and to arrange for the consulting entity to provide technical assistance to RNPs;
 - requiring the HCA to revise the RNP standards to incorporate the LEAD framework for police diversion prior to arrest, without arrest, and post-arrest and prior to jail booking and referral to prosecution; and
 - providing immunity from civil liability for several identified entities for their administration of an RNP;
10. requires the HCA to implement a pilot program, rather than develop payment structures, for health engagement hubs by August 1, 2024, rather than January 1, 2025;
11. modifies provisions related to remote dispensing sites, including by:
- allowing remote dispensing sites to dispense medications used for the treatment of the symptoms of opioid use disorder and removing the express requirement that the medications be approved by the US Food and Drug Administration;

- and
 - allowing the dispensing technology to be owned by either the pharmacy or the remote dispensing site; and
12. adds a null and void clause, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 31, 2023.

Effective Date of Amended Bill: Sections 2 through 6, 8 through 12, and 34 of the bill contain an emergency clause and take effect on July 1, 2023. The remainder of the bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) In a recent emphasis control, police contacted and offered services to over 350 individuals experiencing homelessness and addiction. Less than 10 people were open to treatment. There is a continual presence of people refusing treatment and staying unsafe in an unhealthy environment. This has led to an increasing number of complaints and concerns by residents, businesses, and the community. Although there is support for people to take advantage of treatment, accountability is vital. People need to be motivated to comply with treatment. There is support for the original bill as provided by the Senate.

This bill will add costs to cities including costs for courts, clerks, and prosecutorial and defense costs at an estimated \$10 million. There are funds in both the House and Senate budgets for *Blake* expenses and the cities would like the flexibility for those funds to be used for the expenses related to this bill.

(Opposed) Although this issue is important, there is no support for the version of the bill that passed out of the Community Safety, Justice, and Reentry Committee. The original bill from the Senate was carefully crafted to get individuals in the criminal justice system into treatment. However, the current version of this bill from the policy committee will result in people getting less treatment, more jail time, more criminal histories, and as a result, these individuals will not get the help that they need.

(Other) Washingtonians are dying in record numbers due to overdose deaths. The original policy bill passed in the Senate was much better than the current version of the bill that passed out of the House policy committee. The Senate's version of the bill contained treatment, accountability, and consequences for those who were either unwilling or unable to go through treatment and diversion. However, there are concerns in regard to some of those provisions that were removed and whether there will be sufficient funding for the criminal justice system to enforce penalties since many jails are currently full and overcrowded.

Persons Testifying: (In support) Lindsey Hueer, Association of Washington Cities; Dana Ralph, City of Kent; and Armondo Pavone, City of Renton.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Michael White, King County; Larry Jefferson, Washington State Office of Public Defense; Scott Brandon; Lisa Daugaard; DeAunte Damper; Everett Maroon; Vanessa Martin; Bethany Barnard; Anne Anderson, Washington State Narcotics Investigators Association; Russell Brown, Washington Association of Prosecuting Attorneys; Jeff DeVere, Washington Council of Police and Sheriffs; and Michael Transue, Washington Fraternal Order of Police.

Persons Signed In To Testify But Not Testifying: None.