SENATE BILL REPORT
SB 5035

As of February 5, 2023

Title: An act relating to possession of controlled substances.

Brief Description: Concerning possession of controlled substances.

Sponsors: Senators Padden, Fortunato, Short, Wilson, J., MacEwen, Boehnke, Schoesler, Warnick, Dozier, Wagoner, Holy, McCune, Torres and Wilson, L..

Brief History:
Committee Activity: Law & Justice: 2/06/23.

Brief Summary of Bill

- Classifies possession of a counterfeit substance as a class C felony.

- Encourages prosecutors to divert an individual's first charge of possession of a counterfeit substance or 40 grams or less of cannabis to substance use disorder services.

- Repeals the requirement that law enforcement officers offer a referral to substance use disorder services for an individual's first two arrests for possession of prohibited substances.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Joe McKittrick (786-7287)

Background: Prior to 2021, Washington's statute prohibiting possession of controlled substances created a strict liability crime, meaning an individual could be found guilty of possession of a controlled substance without proof the person knew they possessed the prohibited substance. In 2021, the Washington State Supreme Court decided the case of *State v. Blake*, and found this statute unconstitutional. The court reasoned that the Legislature's criminalization of passive conduct, with no requirement to prove criminal

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intent, violated due process.

In response to the *State v. Blake* decision, the Legislature passed ESB 5476 which in part modified the possession of controlled substances, possession of counterfeit substances, possession of legend drugs, and possession of 40 grams or less of cannabis statutes to prohibit the knowing possession of the prohibited substances. These offenses are classified as misdemeanor crimes, punishable by up to 90 days in jail, a $1,000 fine, or both, and were removed from the felony drug offense seriousness level table. Prosecutors are encouraged to divert such cases for assessment, treatment, and other services. The modifications to these possession statutes are set to expire on July 1, 2023.

In lieu of booking individuals arrested for simple possession in jail, prosecutors and law enforcement must offer the individual a referral to assessment and treatment for the individual's first two arrests and may, but are not required, to continue to offer a referral to assessment and treatment for any subsequent arrest for simple possession.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The expiration date of the 2021 amendments to the possession of controlled substances, possession of counterfeit substances, possession of legend drugs, and possession of 40 grams or less of cannabis statutes are repealed. Possession of a counterfeit controlled substance is classified as a class C felony, punishable by up to five years in prison, a $10,000 fine, or both. Prosecutors are encouraged to divert an individual's first charge of possession of a counterfeit substance or possession of a controlled substance for assessment, treatment, or other services. Possession of controlled substances, possession of legend drugs, and possession of 40 grams or less of cannabis remain classified as misdemeanors.

The statute requiring law enforcement officers to offer a referral to substance use disorder services for an individual's first two arrests for possession of prohibited substances is repealed. The amendments to the felony drug offense seriousness level tables are also repealed.

Appropriation: None.

Fiscal Note: Requested on January 26, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.