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## Public Safety Committee

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### HB 1499

**Brief Description:** Providing behavioral health system responses to individuals with substance use disorder.

**Sponsors:** Representatives Davis, Harris-Talley, Ramel, Macri, Simmons, Peterson, Bateman, Fitzgibbon, Duerr, Ortiz-Self, Hackney, Slatter, Ryu, Berry, Sells, Thai, Chopp, Valdez, Pollet, Eslick, Ormsby, Morgan, Stonier and Frame.

#### Brief Summary of Bill

- Requires the Health Care Authority (HCA) to establish a substance use recovery services plan to assist persons with substance use disorder in accessing treatment and recovery services.
- Requires the HCA to establish a substance use recovery services advisory committee to advise the HCA in the development and implementation of the substance use recovery services plan.
- Eliminates criminal penalties for certain violations of the Uniform Controlled Substances Act and related provisions when the amount of the substance at issue is within a "personal use amount" threshold established by the HCA.
- Allows persons with certain prior controlled substances violations to vacate their record of conviction without having to meet current qualifying criteria.
- Expands provisions authorizing alternatives to arrest for persons with behavioral health disorders.
- Requires basic law enforcement training to include training on interactions with persons with substance use disorders.

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

**Hearing Date:** 2/12/21

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

**Background:**

Behavioral Health Services.

The Health Care Authority (HCA) provides medical care services to eligible low-income state residents and their families, primarily through the Medicaid program. While some clients receive services through the HCA on a fee-for-service basis, the large majority receive coverage for medical services through managed care systems. Managed care is a prepaid, comprehensive system for delivering a complete medical benefits package that is available for eligible families, children under age 19, low-income adults, certain disabled individuals, and pregnant women. Since January 1, 2020, all behavioral health services and medical care services have been fully integrated in a managed care health system for most Medicaid clients.

While most Medicaid clients receive behavioral health services through a managed health care system, behavioral health administrative service organizations administer certain behavioral health services that are not covered by the managed health care system within a specific regional service area. There are 10 behavioral health administrative service organizations in Washington. The services provided by a behavioral health administrative service organization include maintaining continuously available crisis response services, administering services related to the involuntary commitment of adults and minors, coordinating planning for persons transitioning from long-term commitments, maintaining an adequate network of evaluation and treatment services, and providing services to non-Medicaid clients in accordance with contract criteria.

Criminal Offenses Under the Uniform Controlled Substances Act and Related Provisions.

The Uniform Controlled Substances Act regulates the manufacture, distribution, and dispensation of controlled substances. It also criminalizes certain conduct related to controlled substances and counterfeit substances. The criminal penalties for violating the Uniform Controlled Substances Act depend upon the nature of the violation and the type of substance. A "controlled substance" means a drug or substance included in Schedules I through V, 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. Related provisions regulate legend drugs (prescription drugs).

Among others, crimes contained in the Uniform Controlled Substances Act and related provisions include:

- possession of a controlled substance, unless authorized by law or obtained through a valid prescription, which is a class C felony;
- possession of 40 grams or less of marijuana, unless authorized by law, which is a

misdemeanor;

- possession, manufacture, or distribution of a counterfeit substance unless authorized by law, which is a class B or class C felony depending on the substance;
- possession, sale, or delivery of any legend drug, except pursuant to a prescription, which is a class B felony if the offense involves sale, delivery, or possession with intent to deliver, or a misdemeanor for a simple possession offense; and
- use, delivery, or possession or manufacture with intent to deliver, drug paraphernalia, which is generally a misdemeanor but becomes a gross misdemeanor if the drug paraphernalia is delivered to a minor at least three years younger than the defendant.

#### Alternatives to Arrest for Persons with Behavioral Health Disorders.

When a police officer has reasonable cause to believe that an individual has committed a crime, and the individual is known by history or consultation with the relevant behavioral health administrative services organization, managed care organization, crisis hotline, or local crisis services providers to suffer from a mental disorder, as an alternative to arrest, the arresting officer is authorized and encouraged to take certain action to facilitate the person receiving treatment services. The officer may take the individual to a crisis stabilization unit or triage facility, or refer the individual to a mental health professional, for evaluation for possible civil commitment proceedings. The officer may also release the individual upon the individual's agreement to voluntarily participate in outpatient treatment. The officer's decision as to whether to refer the individual to treatment in lieu of arrest must be guided by the local law enforcement diversion guidelines for behavioral health developed and mutually agreed upon with the prosecuting authority.

#### Vacating Criminal Records.

In certain circumstances authorized in statute, a person's record of conviction may be vacated by a sentencing judge. If the court vacates a record of conviction, the offense is no longer included in the person's criminal history. Criminal history is a factor in sentencing, professional licensing, employment, housing, and other matters. For all purposes, a person whose conviction has been vacated may state that he or she has never been convicted of that crime, including when responding to questions on employment or other applications.

A person may not have a felony conviction vacated under certain circumstances, including when:

- the person has not received a certificate of discharge for completing all sentencing conditions for the offense, including payment of legal financial obligations;
- there are criminal charges pending against the person;
- the offense was a felony impaired driving offense, a violent offense, or a crime against persons, with some exceptions;
- fewer than 10 years for a class B felony, or five years for a class C felony, have elapsed since release from community custody, release from full and partial confinement, or the sentencing date, whichever is latest; or
- the person was convicted of a new crime during the applicable 10- or five-year waiting period.

With some exceptions, a person may not have a nonfelony conviction vacated when:

- the terms of the sentence have not been completed, including payment of legal financial obligations;
- there are pending criminal charges against the person;
- the offense was a violent offense, an impaired driving offense, a non-felony sex offense other than failure to register, or a domestic violence offense meeting certain criteria;
- less than three years have elapsed since completion of the terms of sentence;
- the person was convicted of a new crime during the three-year waiting period; or
- the person is currently restrained under a protective order, or was previously restrained by such an order and was found to have committed one or more violations of the order in the past five years.

#### Basic Law Enforcement Training.

The Criminal Justice Training Commission provides basic law enforcement training and educational programs for law enforcement, corrections officers, and other public safety professionals in Washington. Basic law enforcement officer training is required of all law enforcement personnel, with the exception of volunteers and reserve officers. The Basic Law Enforcement Academy consists of a 720-hour program covering a wide variety of subjects including: criminal law and procedures; traffic enforcement; cultural awareness; communication and writing skills; emergency vehicle operations; firearms; crisis intervention; patrol procedures; criminal investigation; and defensive tactics.

#### **Summary of Bill:**

#### Substance Use Disorder Services.

*Development of a Substance Use Recovery Services Plan.* The HCA must establish a substance use recovery services plan (plan) to implement measures that assist persons with substance use disorder in accessing treatment and recovery support services. The plan must articulate the manner in which continual, rapid, and widespread access to a comprehensive continuum of care is provided to all persons with substance use disorder, regardless of the point at which they present within the continuum of care.

The HCA's plan must consider: the manner in which persons with substance use disorder currently access and interact with the behavioral health system; the points of intersection that persons with substance use disorder have with the health care, criminal, legal, and child welfare systems; and the various locations in which persons with untreated substance use disorder congregate. Additionally, the plan must: anticipate the decriminalization of personal use amounts of controlled substances, counterfeit substances, and legend drugs; include potential new community-based care access points and strategic grants to community organizations to educate the public; include creative mechanisms for real time, peer-driven, noncoercive outreach and engagement to individuals in active substance use disorder and develop measures to enhance the effectiveness of interventions; and support diversion to community-based care for individuals who may face criminal consequences for other drug-related law violations, but for whom a response that addresses underlying needs may be more effective.

The plan must include specified substance use disorder services, including: field-based outreach and engagement; peer recovery support services; intensive case management; substance use disorder treatment; and recovery support services including housing, job training, and placement services. These services must be made available in or accessible to all jurisdictions, must be equitably distributed across urban and rural settings, and, if possible, made available on-demand through 24-hour-a-day, seven-day-a-week peer recovery coach response, behavioral health triage centers, or other innovative rapid response models. Services must, at a minimum, adhere to certain specified principles.

*Substance Use Recovery Services Advisory Committee.* The HCA must establish a substance use recovery services advisory committee (advisory committee) to advise in the development and implementation of the HCA's plan. The HCA must consult with the University of Washington Department of Psychiatry and Behavioral Sciences and an organization that represents the interests of people who have been directly affected by substance use and the criminal legal system in appointing members to the advisory committee who have relevant background related to the needs of persons with substance use disorder. The membership of the committee must include individuals with specified backgrounds, including, but not limited to: specified subject matter experts; persons who are currently using controlled substances without legal authority; adults and youth who are in recovery, and family members of persons with substance use disorder; substance use disorder professionals; representatives of city and county governments, law enforcement, and the legal system; a representative of fire chiefs; the Criminal Justice Training Commission; housing providers; representatives of racial justice organizations; a representative of a local health jurisdiction; and representatives of tribes.

The advisory committee must make recommendations to the HCA concerning:

- current regional capacity for existing public and private programs providing substance use disorder assessments, care, and recovery support services;
- barriers to accessing the existing health system for those populations chronically exposed to the criminal legal system, and possible innovations to improve accessibility;
- evidence-based, research-based, and promising treatment and recovery services appropriate for target populations;
- workforce needs for the behavioral health sector;
- options for leveraging existing integrated managed care, Medicaid waiver, American Indian or Alaska Native fee-for-service behavioral health benefits, and private insurance service capacity for substance use disorders;
- assistance to jurisdictions in complying with requirements relating to diversion of individuals with complex behavioral health conditions to community-based care whenever possible and appropriate;
- design of a mechanism for referring people with substance use disorder or problematic behaviors resulting from drug use into supportive services, including intercepting individuals who likely would otherwise be referred into the criminal legal system;
- design of ongoing qualitative and quantitative research about the types of services desired by people with substance use disorders and barriers they experience in accessing existing

and recommended services; and

- proposing a funding framework in which resources are eventually shifted from punishment sectors to community-based care interventions such that community-based care becomes the primary strategy for addressing and resolving public order issues related to behavioral health conditions.

*Plan Submission and Implementation.* The HCA must submit the plan to the Governor and the Legislature by December 1, 2021, and must adopt rules and enter into contracts with providers to implement the plan by December 1, 2022. In addition to seeking public comment, the HCA must adopt rules in accordance with the recommendations of the advisory committee. The rules must be informed by existing diversion models administered by the HCA. In consultation with the advisory committee, the HCA must submit a report on the implementation of the plan to the Legislature and the Governor by December 1st of each year, beginning in 2022.

In implementing the plan, responsibility for payment of substance use disorder treatment services including outpatient treatment, withdrawal management, residential treatment, medications for opioid use disorder, and crisis stabilization services is assigned as follows:

- Payment for covered services for individuals enrolled in Medicaid managed care plans is the responsibility of the managed care plan to whom the enrollee is assigned.
- Payment for individuals enrolled in the Medicaid fee-for-service program is the responsibility of the HCA.
- Payment for covered services for individuals enrolled in private health care plans is the responsibility of the private health care plan.
- Payment for all other individuals as well as services not covered by Medicaid or private plans is the responsibility of the behavioral health administrative services organization.

Outreach and engagement services and recovery support services that are not reimbursable through insurance must be funded through a combination of: appropriations from the Recovery Pathways Account, if that account is created through legislation; targeted investments from the Federal Substance Abuse Block Grant, if permissible under the grant; funds recovered by the state through lawsuits against opioid manufacturers, if permissible; and appropriations from the State General Fund based on a calculation of the savings captured from reduced expenses for the Department of Corrections resulting from the changes in the bill.

#### Decriminalization of Personal Use Amounts of Controlled Substances, Counterfeit Substances, and Legend Drugs.

An exception is made to certain crimes under the Uniform Controlled Substances Act and related provisions when the offense involved possession or use of a controlled substance, counterfeit substance, or legend drug at or below a personal use amount. A "personal use amount" means the maximum amount of a substance that the HCA has determined to be consistent with personal, nonprescribed use patterns of people with substance use disorder. Specifically, the crimes for which a personal use amount is decriminalized include: possession of a controlled substance; possession of 40 grams or less of marijuana; possession of a counterfeit substance; possession of a legend drug; and use of drug paraphernalia. An exception is also made to the offense of

delivery, or possession or manufacture with intent to deliver, drug paraphernalia, for social services or health care agencies distributing drug paraphernalia to others for personal use.

By September 1, 2022, the HCA, in consultation with the Department of Health and the Pharmacy Quality Assurance Commission, must adopt rules establishing maximum personal use amounts of controlled substances, counterfeit substances, and legend drugs known to be used by people for recreational or nonmedical and nonprescribed purposes. When any new recreational or nonmedical use of a substance is discovered after that date, a personal use amount must be established for that substance within one year. In establishing personal use amounts, the HCA must convene and consult with a work group including, at a minimum: persons who currently use controlled substances outside the legal authority of a prescription or valid practitioner order; persons in recovery from substance use disorder who previously used substances outside the legal authority of a prescription or valid practitioner order; representatives from law enforcement; a representative of public defenders; a representative of prosecutors; and relevant experts.

#### Alternatives to Arrest for Persons with Behavioral Health Disorders.

The provisions outlining alternatives to arrest for persons with mental health disorders are modified to also expressly apply to persons with substance use disorder. Community health providers are among those who may consult with law enforcement about a contacted individual's history. Options for the officer are changed to reference referral to a designated crisis responder for an involuntary treatment evaluation, rather than a mental health professional, and to add options to refer the individual to youth, adult, or geriatric mobile crisis response services, as appropriate, or to an available on-demand provider responsible to receive referrals in lieu of legal system involvement. The referral may be for the purpose of supportive services, in addition to treatment.

#### Vacating Criminal Records.

Any person convicted of possession of a controlled substance, counterfeit substance, or legend drug, or use of paraphernalia, before December 1, 2022, may apply to the sentencing court for vacation of the conviction. The person may apply regardless of whether the conditions of sentence have been satisfied or the current law criteria for vacating a conviction are met. Upon receipt of the application, the court must clear the record of conviction. A vacated conviction may not be included in the person's criminal history for determining the sentence in any subsequent conviction, and the person must be released from all penalties and disabilities related to the offense.

#### Basic Law Enforcement Training.

Beginning July 1, 2022, as part of basic law enforcement training, all law enforcement personnel must receive training on law enforcement interaction with persons with substance use disorders, including referral to treatment and recovery services. The training must also be made available to law enforcement agencies, through electronic means, for use at their convenience for internal training.

The training must be developed by the Criminal Justice Training Commission in consultation with appropriate substance use disorder recovery advocacy organizations and with other organizations and agencies that have expertise working with persons with substance use disorders. The Criminal Justice Training Commission must also examine existing courses that relate to persons with a substance use disorder, and should draw on existing training partnerships with the Washington Association of Sheriffs and Police Chiefs.

The training must replicate field situations as much as possible and must include core instruction in:

- proper procedures for referring persons to treatment and supportive services;
- the cause and nature of substance use disorders, including the role of trauma;
- barriers to treatment engagement experienced by many with such disorders who have contact with the legal system;
- how to identify indicators of substance use disorder and respond appropriately;
- conflict resolution and de-escalation techniques for potentially dangerous situations involving persons with a substance use disorder;
- appropriate language usage when interacting with persons with a substance use disorder;
- alternatives to lethal force when interacting with potentially dangerous persons with a substance use disorder;
- principles of recovery and the multiple pathways to recovery; and
- community and state resources available to serve persons with substance use disorders.

**Appropriation:** None.

**Fiscal Note:** Requested on February 4, 2021.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 6 through 12 and 14 through 18, relating to criminal offenses, alternatives to arrest, and vacating criminal records, which take effect December 1, 2022.