

FINAL BILL REPORT

ESB 5476

PARTIAL VETO

C 311 L 21

Synopsis as Enacted

Brief Description: Responding to the State v. Blake decision by addressing justice system responses and behavioral health prevention, treatment, and related services.

Sponsors: Senators Dhingra, Hasegawa, Hunt, Kuderer, Lovelett, Nguyen, Pedersen, Rivers, Robinson, Saldaña and Wellman.

Senate Committee on Ways & Means

House Committee on Appropriations

Background: Uniform Controlled Substances Act. 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" means a controlled substance that 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

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.

- 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.

State v. Blake. Washington's statute governing possession of a controlled substance is a strict liability offense. That is, a person can be found guilty of possession without proof that the defendant knew they possessed the substance. In February of 2021, the Washington Supreme Court found this statute to be unconstitutional, holding that the Legislature's criminalization of passive conduct with no requirement to prove criminal intent is a violation of due process. This decision invalidated any Washington sentence for simple possession of a controlled substance.

Summary: It is unlawful for a person to knowingly possess a controlled substance or counterfeit substance unless the use is subject to a valid prescription.

A person who is guilty of possession of a controlled substance or counterfeit substance is guilty of a misdemeanor. Unlawful possession of a legend drug remains a misdemeanor. When a case involving possession is legally sufficient, the prosecutor is encouraged to divert cases for assessment, treatment, or other services.

The statutory provisions addressing possession of controlled substances, counterfeit substances, and legend drugs expire July 1, 2023, at which time the statutes revert to the current language.

Using or manufacturing drug paraphernalia is not illegal to the extent the drug paraphernalia is for personal use. A person who would otherwise be subject to arrest for possession of a controlled substance, counterfeit substance, legend drug, or 40 grams or less of marijuana shall be offered referral for assessment and services by law enforcement in lieu of jail booking and referral to a prosecutor. If a person has been diverted on two previous occasions, law enforcement is not required to make additional diversion efforts.

The Health Care Authority (HAC) is required to establish a substance use recovery services advisory committee. The HCA must appoint members to the committee who have relevant background related to the needs of persons with substance use disorders and be reflective of the community of individuals living with substance use disorders. The committee shall include four legislative members representing each of the two largest caucuses of the House of Representatives and the Senate.

The committee shall establish a substance use recovery services plan with a preliminary report due on December 1, 2021, and the final report due on December 1, 2022. The plan

shall be implemented by December 1, 2023. Subject to appropriation, the HCA shall create a grant program to provide treatment services to low-income individuals, establish an expanded recovery support services program to increase access to services for individuals in recovery from substance use disorder, and establish a homeless outreach stabilization transition program.

Each behavioral health administrative services organization (BHASO) must establish a recovery navigator program that provides community-based outreach, intake, assessment, and connection to services to youth and adults with substance use disorders. The HCA must provide funding to each BHASO for the recovery navigator programs, subject to appropriation.

Court commissioners may be appointed by presiding judges of superior courts to assist the court in adult criminal cases including resentencing hearings and to vacate convictions pursuant to *State v. Blake*

Persons confined in correctional facilities entitled to vacation of a conviction or recalculation of an offender score pursuant to *State v. Blake* may be released from confinement pursuant to a court order.

All law enforcement personnel required to complete basic law enforcement training must receive training on interaction with persons with substance use disorders including persons with co-occurring substance use and mental health conditions. The training must include referral to treatment and recovery services for adults and juveniles.

Appropriations are made to the Health Care Authority Community Behavioral Health Program, the Administrative Office of the Courts, the Department of Commerce, and the Criminal Justice Training Commission.

Votes on Final Passage:

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| Senate | 28 | 20 | |
| House | 80 | 18 | (House amended) |
| Senate | 26 | 23 | (Senate concurred) |

Effective: July 25, 2021

May 13, 2021 (Sections 1 through 11 and Sections 13-21)

July 1, 2022 (Section 12)

Partial Veto Summary:

Section 21 creating the *State v. Blake* reimbursement account was vetoed. Since the bill does not specify a revenue source for the account, and the fund is not being used, the account was considered unnecessary.