

SENATE BILL REPORT

SB 5290

As Reported by Senate Committee On:
Law & Justice, February 20, 2025

Title: An act relating to allowing persons who complete substance abuse programs to seek dismissal of certain controlled substance related charges.

Brief Description: Allowing persons who complete substance abuse programs to seek dismissal of certain controlled substance related charges.

Sponsors: Senators Salomon, Dhingra, Nobles, Saldaña, Trudeau and Valdez.

Brief History:

Committee Activity: Law & Justice: 1/28/25, 2/20/25 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Permits individuals charged with possession of drugs to seek a dismissal of the charge by successfully completing court approved treatment.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5290 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Lovick, Salomon and Valdez.

Minority Report: That it be referred without recommendation.

Signed by Senators Holy, Ranking Member; Fortunato, Torres and Wagoner.

Staff: Joe McKittrick (786-7287)

Background: It is unlawful for a person to knowingly possess a controlled substance, counterfeit substance, or legend drug, or to knowingly use such substances in a public place.

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.

Possession of a controlled substance and possession of a counterfeit substance are classified as gross misdemeanor crimes punishable by up to 180 days in jail, a \$1,000 fine, or both. However, if a person is convicted of either of these crimes, and the person has two or more prior possession convictions occurring after July 1, 2023, the person is subject to imprisonment for up to 364 days, a fine of up to \$1,000, or both. Possession of a legend drug is a simple misdemeanor punishable by up to 180 days in jail, a \$1,000 fine, or both.

Individuals convicted of these crimes may be able to seek a pretrial diversion of the charges, in either superior court or courts of limited jurisdiction, by making a motion to the court and substantially complying with the treatment and services recommended by the following relevant referral source: the Recovery Navigator Program, the Arrest and Jail Alternative Program, or the Law Enforcement Assisted Diversion Program.

Summary of Bill (First Substitute): In courts of limited jurisdiction, a person charged with possession of controlled substance, counterfeit substance, legend drug, or possession of 40 grams or less of cannabis, or charged with knowingly using a controlled substance or controlled substance in a public place, may seek a dismissal of the charge by receiving a court approved substance use disorder or a co-occurring mental health and substance use disorder assessment and successfully completing the recommended treatment.

The assessment conducted in conjunction with the treatment program must consider the person's criminal history and must show the individual has a substance use disorder which requires treatment.

If the person, at or before the readiness hearing, files the assessment report and proof of successful completion of the recommended treatment under seal, the court must dismiss the possession charges if the court finds:

- the assessment considered the individual's criminal history and substance use history and shows the person has a substance use disorder that requires treatment;
- the individual successfully completed the recommended treatment program through a court-approved and state certified treatment provider; and
- the interests of justice warrant dismissal.

If the person is also charged with nonpossession charges filed under the same cause number and arising from the same course of conduct as the possession charge, the court may dismiss those other charges unless the prosecutor objects.

In dismissing the charge or charges the court must set forth its reasons for dismissing the charge or charges in writing and on the record.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Provides an intent section.

- Permits individuals charged with possession related offenses in courts of limited jurisdiction to seek dismissal of those charges after showing proof of successfully completing SUD or co-occurring SUD and MH treatment.
- Requires the court to dismiss possession charges if, at or before the readiness hearing, if the court finds:
 1. the assessment considered the individual’s criminal history and substance use history and shows the person has a substance use disorder which requires treatment;
 2. the individual successfully completed the recommended treatment through a court-approved and state certified treatment provider; and
 3. the interests of justice warrant dismissal.
- Permits the court to dismiss other non-possession charges filed under the same cause number unless the prosecutor objects.
- Requires the court in dismissing charges to state the reasons for the dismissal in writing and on the record.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Open public drug use is a problem, and when looking at the problem we must consider what solution we want. We want those who commit these crimes to get treatment and get better. This bill provides a simple off-ramp for individuals who use drugs to complete treatment and avoid a conviction. This does not apply to accompanying charges. In cases where there are accompanying charges, the prosecutor will decide if those other charges deserve to be dismissed. The current laws say prosecutors are encouraged to redirect possession charges into treatment and this is in line with the rehabilitative goal of misdemeanor courts. Not every jurisdiction has robust therapeutic options, and not every prosecutor is on board with the legislative encouragement to divert these cases. This gives all people in Washington to receive the chance to get treatment and avoid a conviction.

CON: This bill raises issues with separations of powers, because the judge, under this bill, would make the decision of whether a case moves forward which is in the authority of the executive branch. This simply cuts the executive branch, represented by the prosecutor, out of the equation. Current policy already allows for diversion of possession charges to treatment. Taking away prosecutorial discretion only enables drug users.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor; Ramona Brandes,

Washington Defender Association/Washington Association of Criminal Defense Lawyers.

CON: Russell Brown, WA Association of Prosecuting Attorneys; Anne Anderson, Washington State Narcotics Investigators Association.

Persons Signed In To Testify But Not Testifying: No one.