
**Criminal Justice & Corrections
Committee**

E2SSB 6239

Brief Description: Changing provisions relating to controlled substances.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Johnson, Doumit, Oke, Stevens and Esser; by request of Attorney General).

Brief Summary of Engrossed Second Substitute Bill

- Authorizes counties imposing the sales and use tax for mental health services to be eligible for \$100,000 annually to provide for mental health or substance abuse treatment for persons with methamphetamine addiction.
- Provides that the Legislature intends to provide 100 additional placements for therapeutic drug and alcohol treatment in prisons until June 30, 2010.
- Establishes pilot enforcement areas in three regions of the state for the purpose of the enforcement of illegal drug laws.
- Expands the term "drug court" to include juvenile drug courts.
- Expands the definition of *neglect* under the state's abuse of children statute and the vulnerable adults statute to include the crime of endangerment with a controlled substance.
- Requires the Department of Community, Trade, and Economic Development to review various funding sources to determine whether funding is adequate to accomplish the mission of methamphetamine action teams.
- Requires the Department of Social and Health Services (DSHS) to consult with faith-based organizations to discuss their appropriate role in providing support services to persons with chemical dependency disorders.
- Requires the Agency Council on Coordinated Transportation to adopt a plan to provide recovering addicts with increased access to existing special need transportation services.

- Requires the DSHS and the Office of the Attorney General to report to the Legislature on the status of ongoing state multimedia campaigns relating to chemical dependency prevention and treatment.
- Provides a 5 percent workers' compensation premium discount to employers, except public employers, that establish a qualified Drug-Free Workplace Program.
- Clarifies that property affected by the law includes personal property, motels, and hotels.
- Allows a court to issue administrative search warrants so that property suspected of methamphetamine contamination can be inspected.
- Permits a local health officer to issue an emergency order forbidding occupancy of a contaminated property.
- Establishes new requirements for the owners of contaminated properties, including decontamination timelines set by a local health officer.
- Provides new conditions under which a contractor for the decontamination of property may have his or her certification suspended.
- Establishes third-party sampling of decontamination sites.
- Creates a pilot clean-up project to examine funding sources, and a study to assess options to encourage landlords to rent housing to recovering substance abusers.
- Clarifies that all sentence enhancements relating to violations of the Uniform Controlled Substance Act in drug-free zones are to be run consecutively (instead of concurrently) to all other sentencing provisions.
- Expands the prison confinement time for an offender serving a prison-based Drug Offender Sentencing Alternative (DOSA) sentence to one-half of the midpoint of the standard sentencing range or 12 months, whichever is greater.
- Requires the courts to request chemical dependency screening reports before imposing a sentence upon a defendant that has been convicted of "any" type of a felony where it is found that the offender has a chemical dependency that contributed to his or her offense.
- Requires the Washington State Institute for Public Policy (WSIPP) to study criminal sentencing provisions in other states for all crimes involving methamphetamine.
- Requires the WSIPP to conduct a study of the DOSA program.

Hearing Date: 2/21/06

Staff: Yvonne Walker (786-7841), Amy Van Horn (786-7168), Elisabeth Frost (786-5793), Sarah Dylag (786-7109), and Sydney Forrester (786-7120).

Background:

I. Sales and Use Tax. In 2005, the Legislature passed an omnibus Mental and Substance Abuse Disorder Treatment bill that authorized a local option sales and use tax of one-tenth of 1 percent to provide new or expanded chemical dependency or mental health services. Moneys must be used solely for the purpose of providing new or expanded chemical dependency or mental health treatment services and for the operation of new or expanded therapeutic court programs.

As of January 1, 2006, no county has imposed the new authorized tax.

II. Therapeutic Drug and Substance Treatment. The Department of Corrections (DOC) currently limits chemical dependency treatment to certain inmates. Inmates prioritized for treatment include those determined to be at high-risk for violent reoffending and those sentenced under the Drug Offender Sentencing Alternative (DOSA). On January 1, 2006, the DOC had a therapeutic community capacity of 475 beds.

III. Multijurisdictional Narcotics Task Forces. The Department of Community, Trade, and Economic Development (DCTED) provides technical and financial assistance to local governments and community-based organizations. Among other responsibilities, the DCTED solicits and allocates federal funding for local narcotics task forces. The vast majority of federal funding for multijurisdictional narcotics task forces is allocated to local governments by the DCTED, which receives the funding through the Justice Assistance Grant (JAG), a federal grant program. However, some counties receive a small amount of federal funding for narcotics enforcement directly through the JAG program.

In Fiscal Year (FY) 2004, the DCTED allocated approximately \$5.5 million in federal funding to support multijurisdictional narcotics task forces. Approximately \$3.5 million of this funding was allocated to local units of government to continue multijurisdictional narcotics task forces, and \$611,177 was allocated to the DCTED to continue the Drug Prosecution Assistance Program in support of multijurisdictional narcotics task forces.

In FY 2006, the total amount of federal funding available was reduced, and the DCTED allocated \$2.4 million in federal funding to support multijurisdictional narcotics task forces, with approximately \$2 million allocated to local units of government to continue multijurisdictional narcotics task forces, and \$330,000 to the DCTED to continue the Drug Prosecution Assistance Program in support of multijurisdictional narcotics task forces.

While most Washington counties have been part of a federally funded narcotics task force, 12 counties (Columbia, Lincoln, Pacific, Pend Oreille, Stevens, Walla Walla, Island, Jefferson, Kittitas, Klickitat, Mason, and San Juan) have not been members of a federally funded narcotics task force.

IV. Drug Courts. Drug courts, unlike traditional courts, divert non-violent drug offenders into court-ordered treatment programs rather than jail or prison. The program allows defendants arrested for drug possession to choose an intensive, heavily supervised rehabilitation program in lieu of incarceration and a criminal record. The term "drug court" is defined as a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse

among non-violent, substance-abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

In 2002, the Legislature passed 2SHB 2338 (Chapter 290, Laws of 2002) that created a Criminal Justice Treatment Account (Account) in the state treasury. In 2003, the Legislature passed ESSB 5990 (Chapter 379, Laws of 2003) which appropriated a total of \$8.9 million to the Account. Funds in the Account may be spent solely for substance abuse treatment and support services for adult offenders with a chemical dependency problem against whom charges are filed by a prosecuting attorney in Washington and for non-violent adult offenders participating in drug courts. No more than 10 percent of the funds may be spent for support services.

V. Children and Vulnerable Adults. State laws relating to abuse and neglect of children and vulnerable adults include provisions for mandatory reporting and investigation of allegations of neglect or abuse of these populations. A child means any person under the age of 18 years. A vulnerable adult includes a person who: (1) is age 60 years and over who has a functional, physical, or mental inability for self-care; (2) has been found to be incapacitated; (3) has a developmental disability; (4) resides in a nursing home, adult family home, residential habilitation center, or other licensed facility; or (5) is receiving hospice or home health services.

For the purposes of mandatory reporting, investigation, and protective services *abuse and neglect* of a child means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child. Under the vulnerable adults statute, *neglect* "means conduct by a caregiver that: (1) fails to provide goods and services to maintain physical or mental health or that fails to prevent or avoid physical or mental harm to the vulnerable adult; or (2) demonstrates a serious disregard of consequences constituting a clear and present danger to the vulnerable adult's health, welfare, or safety."

Endangerment with a Controlled Substance.

The offense of endangerment with a controlled substance (a seriousness level IV, class B felony) occurs when a person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with (1) methamphetamine; or (2) ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers that are being used in the manufacture of methamphetamine.

VI. The Department of Community, Trade, and Economic Development. The DCTED is responsible for assisting in community and economic development in the state; providing technical and financial assistance to local governments, businesses, and community-based organizations; soliciting private and federal grants for economic and community development programs; and conducting research and analysis to support economic and community development efforts.

VII. Faith-Based Organizations. Residential and outpatient chemical dependency treatment programs may choose to be regulated by the Division of Alcohol and Substance Abuse (DASA) of the Department of Social and Health Services (DSHS). Certification of programs is voluntary. In addition, residential chemical dependency treatment programs must meet licensing requirements established by the Department of Health (DOH).

State and federal treatment funding currently is limited to programs certified by the DASA. To be certified, programs that include a religious component must make participation in that aspect of the program voluntary.

VIII. Agency Council on Coordinated Transportation. In 1998, the Legislature created the Agency Council on Coordinated Transportation (Council), declaring its intent to coordinate transportation services and programs that provide those transportation services to achieve increased efficiencies and to provide a greater number of persons with special transportation needs.

The Council consists of nine voting members and eight non-voting legislative members. The nine voting members include the Secretary of Transportation, who serves as chair; the Secretary of the DSHS; the Superintendent of Public Instruction; and six members appointed by the Governor, representing consumers of special needs transportation, pupil transportation, the Community Transportation Association of the Northwest, the Community Action Council Association, and the State Transit Association. The eight non-voting legislative members include four members of the House of Representatives and four members of the Senate (representing each caucus) and the House and Senate Transportation Committees, House Appropriations, and Senate Ways and Means Committee.

The Council is responsible for: (1) developing standards and strategies for coordinating special needs transportation; (2) identifying, developing, funding (as resources are available), and monitoring demonstration projects; (3) identifying barriers to coordinated transportation; (4) recommending statutory changes to the Legislature to assist in coordinated transportation; and (5) working with the Office of Financial Management to make necessary changes for identification of transportation costs in executive agency budgets.

IX. Anti-Methamphetamine Campaigns. The DASA of the DSHS promotes strategies that support healthy lifestyles by preventing the misuse of alcohol, tobacco, and other drugs, and support recovery from the disease of chemical dependency.

The Office of the Attorney General (AG) is responsible for protecting consumers and defending state laws. In 2005, the AG formed an education program partnered with community-based organizations and industry associations to increase the awareness and prevention of the use of methamphetamine.

X. Drug-Free Workplace Program. Industrial insurance is a no-fault state workers' compensation program that provides medical and partial wage replacement benefits to covered workers who are injured on the job or who develop an occupational disease. Employers who are not self-insured must insure with the state fund operated by the Department of Labor and Industries (L&I). Employers that insure with the state fund pay premiums to the L&I. While the L&I has several premium discount programs, the L&I does not have a program that gives premium discounts for employers who maintain drug-free workplaces.

In 1996, the Legislature enacted a law that established a 5 percent workers' compensation premium discount for employers who mandated a drug-free workplace. The legislation expired in 2001.

XI. Contaminated Property. There is a chapter of state law that describes how properties that have been contaminated by the manufacture or use of illegal drugs must be handled (Chapter RCW

64.44). The provisions involve reporting of the contaminated property, notice of the property being unfit for use, decontamination requirements, and contractor certification.

Reporting and notice of a contaminated property.

A law enforcement officer that discovers a property that has been contaminated to the point where it is unfit for human habitation must notify the local health officer. The local health officer must then post a written notice on the property and conduct an inspection of the property within 14 days. Notice of contamination can also be submitted by the property's owner or be discovered by the local health officer directly. If the local health officer suspects a property is contaminated, the officer may enter and inspect the property.

Determining a property unfit for use.

The local health officer may determine if a property is unfit for use due to chemical contamination. If this determination is made, the local health officer must prohibit use of the property. Notice of this prohibition must be delivered to the property's owner and posted on the actual property itself. The property owner may request a hearing to dispute the finding that the property is unfit. In the hearing, the property owner has the burden of showing that the property is not contaminated or has already been cleaned to an acceptable level.

Actions upon finding of contamination.

Cities and counties have the option of condemning or demolishing contaminated properties. The local government must wait until all hearings have been exhausted before a demolition can occur. Alternatively, the owner of the property can pay to have the property decontaminated. If the owner chooses this course, then he or she must hire a contractor certified by the DOH. The contractor must present a decontamination plan to the local health officer, and upon its successful execution, the "unfit for use determination" may be lifted. The local health officer may charge the property owner fees for reviewing the plan and reinspecting the property.

Contractor certification.

A property owner may only hire a contractor for decontamination work if the contractor has been approved by the DOH. The DOH maintains performance standards and standards for training and testing contractors to ensure that they are capable of dealing with the contamination left behind from illegal drug manufacturing. Contractors can lose their certification if they violate certain standards set by the DOH.

XII. Drug-Free School Zones. If an offender is sentenced for committing certain violations of the Uniform Control Substance Act (UCSA) in a drug-free protected zone, a two-year sentence enhancement may be added to the offender's sentence. A person is subject to enhanced sentencing if he or she manufactures, sells, delivers, or possesses with intent to manufacture, sell, or deliver, a controlled substance in public areas such as schools, school buses, school bus stops, school grounds, public parks, public housing projects designated as drug-free zones, public transit vehicles, public transit stop shelters, or civic centers designated as drug-free zones. In addition, the maximum imprisonment sentence and fine may be increased up to double the amount imposed for the underlying conviction (up to the statutory maximum penalty imposed for the offense).

In *State v. Jacobs*, 120 Wn. App. 1059 (2004), the defendants challenged the statutory language regarding the sentence enhancements for violations of the UCSA on the grounds that they believed multiple sentence enhancements should be applied concurrently instead of consecutively. The courts concluded that the statutory language appeared ambiguous and as a

result, under the rule of lenity, it was ruled that sentencing courts should apply multiple sentencing enhancements concurrently to each other.

XIII. Prison-Based Special Drug Offender Sentencing Alternative. The prison-based DOSA is an alternative sentencing program that allows a court to waive imposition of an offender's sentence within the standard sentencing range. However, the standard sentence range for the offender's current offense must be greater than one year for the offense that he or she is being charged with. If the court determines that a prison-based DOSA sentence is appropriate for an offender then it may impose an alternative sentence that includes confinement in a state facility for one-half of the midpoint of the standard sentencing range. While in confinement, the offender must complete a substance abuse assessment and receive, within available resources, substance abuse treatment and counseling.

The offender must spend the remainder of the midpoint of the standard sentencing range in community custody following incarceration. The community custody portion of the sentence must include alcohol and substance abuse treatment. Offenders may also be required to adhere to crime related prohibitions and affirmative conditions as part of their sentence, as well as pay a \$30 per month fee while on community custody to offset the cost of monitoring.

XIV. Chemical Dependency Screening Reports. Before imposing a sentence upon a defendant, the court must conduct a sentencing hearing. As part of that sentencing hearing, the court must order the DOC to complete a chemical dependency screening report before imposing a sentence only if the defendant has been convicted of a violation (or a criminal solicitation to commit a violation) of the UCSA. Generally the reports are ordered any time the court finds that the offender has a chemical dependency that contributed to his or her offense.

XV. Washington State Institute for Public Policy (WSIPP). The WSIPP carries out non-partisan research at the direction of the Legislature. Various studies over the years have centered around the following issues: education, criminal justice, welfare, children and adult services, health, utilities, and general government. Fiscal and administrative services for the WSIPP are provided by The Evergreen State College.

Summary of Bill:

I. Sales and Use Tax. Any county imposing the sales and use tax for new or expanded mental health services is eligible to seek a state appropriation of \$100,000 annually in Fiscal Years 2008, 2009, and 2010. The funds must be used to provide additional mental health or substance abuse services for persons with methamphetamine addiction. Local governments receiving appropriated funds are prohibited from supplanting existing funding.

Any county receiving funding must: (1) provide an expenditure plan prior to funds being awarded; (2) report annually to the appropriate committees of the Legislature regarding the number of clients served, services provided, and a statement of expenditures; and (3) spend no more than 10 percent for administrative or information technology costs.

II. Therapeutic Drug and Substance Treatment. The Legislature intends to provide 100 additional placements above the level of treatment placements provided on January 1, 2006, for therapeutic drug and alcohol treatment in prisons until June 30, 2010. The statutory language authorizing this legislative intent expires on June 30, 2010.

III. Multijurisdictional Narcotics Task Forces. The Legislature intends to provide a minimum of \$4 million for an annual combined level of state and federal funding for multijurisdictional drug task forces and local government drug prosecution assistance.

The Legislature further intends to provide assistance for jurisdictions enforcing illegal-drug laws who have historically been under-served by federally funded state narcotics task forces and are considered to be major transport areas of narcotic traffickers.

Pilot enforcement areas

Beginning July 1, 2006, three pilot enforcement areas are established for a period of four fiscal years. The pilot enforcement areas will work together to establish and implement a regional strategy to enforce illegal drug laws. The pilot enforcement areas are to be comprised of the following groups of counties:

- Pacific, Wahkiakum, Lewis, Grays Harbor and Cowlitz counties;
- Walla Walla, Columbia, Garfield, and Asotin counties; and
- Stevens, Ferry, Pend Oreille, and Lincoln counties.

The Legislature intends to provide a minimum of \$1.575 million annually, to be divided equally among the three pilot enforcement areas. This funding is intended to provide at the minimum, for each of the pilot areas, four additional sheriff deputies, two deputy prosecutors, a court clerk, and clerical staff. The Legislature intends that those counties that have not previously received significant federal narcotics task force funding must be allocated funding for at least one additional sheriff's deputy.

Counties are encouraged to utilize drug courts and treatment programs and to share resources that operate in the region through the use of interlocal agreements. Funding appropriated must be used for the enforcement of illegal drug laws and cannot be used to supplant existing funding.

Funds will be allocated as follows: the Criminal Justice Training Commission will allocate funds to the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC). The WAPA is responsible for the administration of the funding and programs for the prosecution of crimes and court proceedings. The WASPC is responsible for the administration of the funds provided for law enforcement.

The WAPA, the WASPC, and the Washington Association of County Officials shall jointly develop measures to determine the efficacy of the pilot programs. They shall present their findings regarding these measures to the Legislature by December 1, 2008. These measures shall include a comparison of arrest rates before and after the implementation of the pilot program, the reduction of recidivism, and any other factors that are determined to be relevant to evaluating the programs.

IV. Drug Courts. The definition of "drug court" is expanded to include juvenile drug courts in addition to adult drug courts. As a result, in addition to funding substance abuse treatment and support services for adult offenders with a chemical dependency problem, revenues to the Criminal Justice Treatment Account may also be spent for juvenile offenders participating in drug courts.

V. Children and Vulnerable Adults. The definition of *neglect* within both the vulnerable adults statute and the abuse of children statute and is expanded to include the crime of endangerment with a controlled substance.

"Language is removed from the child abuse and neglect statute that will take effect January 1, 2007, regarding: (1) no entitlement to services; and (2) no judicial authority to order the provision of services."

VI. The Department of Community, Trade, and Economic Development. The DCTED is charged with reviewing federal, state, and local funding sources and levels available to local methamphetamine action teams through the Washington State Methamphetamine Initiative to determine whether funding is adequate to accomplish the mission of the methamphetamine action teams. The DCTED must also review the funding levels for individual drug task forces in Washington to determine if they require additional resources to successfully interdict drug trafficking organizations and clandestine labs statewide. A report on their findings and recommendations must be submitted to the Legislature by November 1, 2006.

The requirement for the DCTED to review the funding sources for the methamphetamine action teams is null and void unless funded in the Omnibus Appropriations Act.

VII. Faith-Based Organizations. The DSHS must consult with faith-based organizations to discuss the appropriate role that such organizations may have in filling support service delivery needs for persons with chemical dependency disorders. The DSHS recommendations and findings must be submitted to the Legislature by November 1, 2006.

VIII. Agency Council on Coordinated Transportation (Council). As part of its strategic plan, the Council must adopt a plan to provide recovering addicts with increased access to existing special needs transportation services already provided by Medicaid brokerages and local transportation coalitions. The Council is authorized to implement an awareness campaign to focus helping recovering addicts use special need transportation services, the Council website, and the statewide trip planner. The Council must submit a report to the Legislature regarding the implementation of these strategies by November 1, 2006.

IX. Anti-Methamphetamine Campaigns. The DSHS, in consultation with the AG, must submit a report to the Legislature by January 15, 2007, on the status of ongoing multimedia campaigns for the prevention of methamphetamine use, underage drinking, and the promotion of chemical dependency treatment within Washington.

X. Drug-Free Workplace Program. Employers, except public employers, that establish a Drug-Free Workplace Program qualify for a 5 percent workers' compensation premium discount. The premium discount does not apply to self-insured employers. However, L&I must inform self-insured employers of the value of Drug-Free Workplace Programs and encourage them to implement these programs.

Under the Drug-Free Workplace Program, an employer must establish a written policy and conduct drug testing on job applicants who receive an employment offer and on employees who contribute to workplace injuries. Employers must also establish an employee assistance program, employee education, and supervisor training.

Industrial Insurance Premium Discount

An employer that establishes and maintains a Drug-Free Workplace program is eligible for a 5 percent workers' compensation premium discount if the employer meets the following requirements:

- the employer is certified by the DASA as maintaining a Drug-Free Workplace program;

- the employer is in good standing and remains in good standing with the L&I with respect to workers' compensation obligations; and
- the employer has medical insurance available to its full time employees through an employer, union, or jointly sponsored medical plan.

The premium discount is effective as long as the employer is certified by the DSHS. Total premium discounts must not exceed \$5 million in any one fiscal year.

An employer that already has a Drug-Free Workplace program in place on July 1, 2006, is generally not eligible for the 5 percent discount. However, an employer that has had a Drug-Free Workplace program in place for two years prior to July 1, 2006, may be eligible for a 2 percent premium discount if the employer adds a provision to the existing Drug-Free Workplace program to allow, after a first verified positive alcohol or drug test, job continuation through a last chance agreement.

An employer may not receive premium discounts from L&I under more than one premium discount program. If participating in another premium discount program, the employer is entitled only to the premium discount that is the highest. The retrospective rating program is not considered a premium discount.

Drug-Free Workplace Program

To receive the workers' compensation premium discount, the Drug-Free Workplace program must contain the following five elements.

1) Written Policy Statement- An employer must maintain a written substance abuse policy statement that includes the following:

- notice to employees that use or being under any influence is prohibited;
- notice to employees that use, purchase, possession, transfer of drugs, or having drugs in one's system is prohibited, except for prescription or nonprescription medication;
- identification of the types of testing that an employee or job applicant may be required to submit to, the actions the employer may take against an employee on the basis of a verified positive test result, and the consequences of refusing to submit to a test;
- notification to employees of the law, including federal Drug-Free Workplace Act, if applicable;
- notification that the employer has an employee assistance program;
- notification of an employee's or applicant's right to contest or explain a verified positive test result; and
- notification that an employer may discipline an employee for failing to report an injury in the workplace.

Unless the employer had a substance abuse testing program in place before July 1, 2006, an employer implementing a program must allow 60 days to elapse between giving a general one-time notice to all employees of the program and beginning actual testing.

Notice of substance abuse testing must be given to all job applicants, and the policy must be posted in an appropriate and conspicuous location on the employer's premises. Copies of the policy must be available for inspection by employees or job applicants. An employer with employees or job applicants who have trouble communicating in English must make reasonable efforts to help the employees understand the policy statement.

2) *Substance Abuse Testing Program*- An employer's substance abuse testing program must:

- Require job applicants to submit to a drug test after extending an offer. A refusal to submit can be basis for not hiring.
- Investigate workplace injuries and require employees to submit to a drug and alcohol test if the employer reasonably believes the employee contributed to an injury that resulted in the need for off-site medical attention, with some exceptions.
- Require an employee to submit to drug and alcohol testing in conjunction with rehabilitation if the employee is referred to the employee assistance program by the employer as the result of a positive alcohol or drug test or an alcohol or drug-related incident in violation of employer rules. A positive follow-up test will normally result in termination of the employee.
- Conduct specimen collection in accordance with regulations and procedures approved by the United States Department of Health and Human Services and the United States Department of Transportation. Procedures must include due regard for privacy and the prevention of substitution or contamination of the specimen, labeling of the specimen, an opportunity for the employee or job applicant to provide information, and conducting the test in a laboratory approved by the Substance Abuse and Mental Health Administration or the College of American Pathologists, using specified procedures.

Testing may include tests for amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines, propoxyphene, or a metabolite of any such substances. Testing must include tests for marijuana, cocaine, amphetamines, opiates, and PCP.

Under the substance abuse testing program, a first-time verified positive drug test must not be the basis for termination of an employee, but the employee must be given an opportunity to keep his or her job through an employee assistance program. In addition, an employer must notify an employee or job applicant, in writing, of a verified positive test result within five working days after receiving the positive result. If the employee or job applicant requests a copy of the test result, the employer must provide a copy. Any initial test having a positive test result must be verified by a confirmation test. An employee must pay the costs of all tests required by the employer.

An employer following the substance abuse testing program requirements is not prohibited from conducting other drug or alcohol testing, including upon reasonable suspicion or on a random basis.

3) *Employee Assistance Program*- The employer must have an employee assistance program to deal with employees whose job performances are declining due to unresolved problems, including alcohol or other drug-related problems, marital problems, or legal or financial problems. A list of approved employee assistance programs must be provided by the DSHS according to recognized program standards.

The employer must notify employees of the benefits and services, including publication in conspicuous places, and of the procedures to use the program. The primary focus of employee assistance programs must be rehabilitation of employees suffering from alcohol or drug addiction.

Employees must be given a chance to keep their job after a first-time verified positive drug test, through the use of a "last chance agreement." A last chance agreement must require the

employee, after a first-time verified positive drug test, to submit to an employee assistance program evaluation for chemical dependency, comply with treatment recommendations, be subject to follow-up testing for two years, meet regular performance standards, and authorize the employer to receive information about the employee's treatment.

If substance abuse treatment is necessary, the employee must use a program approved by the DSHS. The employee assistance program will monitor progress in treatment and notify the employer when the employee is not complying with the program's treatment recommendations.

An employer may terminate an employee for refusal to submit to a drug test, refusal to agree or comply with a last-chance agreement, for a second verified positive test result, and for a violation of the employer's rules pertaining to alcohol or drugs.

4) *Annual Employee Education*- Employers must establish an annual employee education program on substance abuse that explains: (a) the "disease model of addiction," (b) the effects and dangers of commonly abused substances, and (c) employer policies and procedures regarding substance abuse and opportunities for treatment.

5) *Supervisor Training*- Employers must provide supervisors with at least two hours of training, including how to recognize signs of employee substance abuse, how to document and collaborate signs of employee substance abuse, how to refer employees to the employee assistance program or proper treatment providers, and circumstances and procedures for post injury testing.

Confidentiality Provisions

Information, interviews, reports, statements, memoranda, and test results under the substance abuse testing program are confidential communications, and may not be used as evidence in a civil or administrative proceeding, except an employer is not prohibited from using information concerning an employee or job applicant's substance abuse test results in a lawful manner, and other entities are not prohibited from disclosing or using the information in a lawful manner as part of a matter relating to the test, the test result, or an employer action with respect to the employee or applicant.

Release of information must be done pursuant to a written consent form that is voluntarily signed by the employee or job applicant, unless the release is compelled by the DSHS or a court. The consent form must contain the name of the person authorized to obtain the information, the purpose of the disclosure, the precise information to be disclosed, the duration of the consent, and the signature of the person authorizing release of the information.

Information on test results is inadmissible as evidence against the employee or job applicant in a criminal proceeding.

Other

A physician-patient relationship is not created between the employee or job applicant and the employer or person evaluating a drug or alcohol test solely by the implementation of a drug or alcohol testing program.

An employer following the requirements of the Drug-Free Workplace program still has a right to conduct medical screening or other test required, permitted, or not disallowed by a statute or rule for the purpose of monitoring exposure of employees to toxic materials. The screening must be

limited to the specific material identified in statute or rule unless prior written consent of the employee is obtained.

A legal duty for employers to conduct alcohol or drug tests is not established. The provisions do not operate retroactively and do not abrogate the employer's right to implement drug and alcohol testing programs under state or federal law.

A cause of action may not arise based on the failure of an employer to establish a substance abuse testing program or to conduct a program in conformance with the statutory standards. The substance abuse testing program requirements may be enforced only by denial of the workers' compensation premium discount.

These provisions do not create or alter an obligation to bargain with a collective bargaining representative of employees.

Rules and Reporting Requirements

The DSHS must adopt rules for the certification and decertification of employers who establish and maintain a Drug-Free Workplace program. Certification of an employer is required for each year in which a premium discount is granted. The DSHS may charge a fee for certification in an amount reflecting administrative costs. The DSHS must also conduct an evaluation to determine costs and benefits of the law. If the DSHS contracts out for the evaluation, no more than 10 percent of the contract amount may be used to cover indirect expenses. The DSHS is required to report preliminary findings to the Legislature on September 1, 2007 and 2008, and must issue a final report on December 1, 2009.

The L&I may adopt rules for implementation, including penalties and rules relating to repayment of premium discounts by decertified employers. The L&I must conduct an evaluation of the effect of the premium discount on workplace safety and on the industrial insurance fund. The L&I is required to report preliminary findings to the Legislature on September 1, 2007 and 2008, and must issue a final report on December 1, 2009.

XI. Contaminated Property- *Definitions.* Two definitions are expanded. The definition of "hazardous chemical" is expanded to include the final product of drug manufacturing, and not just the precursor elements needed to manufacture illegal drugs. In addition, the definition of "property" is expanded to include personal property (in addition to real property), and a clarification is added that real property includes motels, hotels, and storage sheds.

Reporting and notice of a contaminated property.

If a local health officer is denied access to a property he or she reasonably suspects is contaminated due to the manufacture of illegal drugs, the officer, in consultation with law enforcement, may seek an administrative warrant from a court in order to perform administrative inspections and to seize property. The court must determine that probable cause exists that the property is contaminated.

Determining a property unfit for use.

Local health officers may issue emergency orders that a property is unfit for use if immediate action is necessary to protect public health, safety, or the environment. Affected persons must comply with emergency orders immediately, and the orders may remain in place for up to 72 hours. If the local health officer believes the property is still unfit for use after this time, the non-emergency procedures for declaring a property unfit for use must be followed.

Actions upon finding of contamination.

The local city and county authority is expanded beyond condemning or demolishing the property. The local government can also prohibit use of the property, remove personal property, or act to decontaminate the property. Demolition and condemnation must still wait until after all appeals have been heard, but prohibition of use can occur immediately. Any person violating an order to not enter a contaminated property may be prosecuted for a misdemeanor.

The property owner is permitted to contract for more than just the decontamination of the property. The owner may also contract for the property to be demolished. Demolition, like decontamination, must still be done by a certified contractor.

The local health officer has 30 days to establish a time-line for the decontamination or demolition of the property, which property owners may appeal. Property owners are responsible for the costs of property testing, all costs of decontamination, and all costs incurred by the local health officer as a result of enforcing the decontamination law.

Contractor Certification.

The training and testing requirements that decontamination contractors must satisfy are expanded to include the workers of contractors. In addition, the DOH is given the authority to place restrictions on the certification of contractors, instead of only being able to suspend or revoke a certification. The list of infractions that may result in the conditioning or revoking of a contractor's certification are expanded to include failure to properly dispose of contaminated property, committing fraud or misrepresentation, failure to properly complete the decontamination work, failure to cooperate with the local health officer, or failing ongoing evaluations and inspections.

In addition to contractors, supervisors and workers may also be fined \$500 for violations of this law. Contractors must pay for their own training, certification, and background checks, according to a fee schedule set by the DOH.

Third-Party Sampling.

The DOH is given the authority to hire third parties to annually evaluate a sample of decontamination projects. The evaluations must be done by independent environmental contractors or a state or local agency. The State Board of Health is required to adopt rules governing independent third-party sampling, including rules for background checks and certification of third-party samplers. If a contractor's decontamination work does not satisfy the third-party inspection, the contractor may be subject to a license suspension and a fine of up to \$500.

Study on Providing Housing to Recovering Substance Abusers.

The DOH must study the feasibility of providing incentives and protections to landlords to encourage them to rent housing to recovering substance abusers or convicted drug offenders. The DOH must make a final report to the Legislature by January 1, 2007.

Cleanup Pilot Project.

The Department of Ecology (DOE), in partnership with local governments and health departments, must conduct a pilot program to demonstrate contamination clean-up under existing legal frameworks and grant programs under the Model Toxics Control Act, and other available authorities and funds to clean up property for a public purpose. The pilot will include sites with

soil or groundwater contamination and structure and solid waste contamination. The DOE must issue a report to the Legislature by January 1, 2007.

XII. Drug-Free School Zones. Statutory language is clarified to specify that all sentence enhancements relating to violations of the UCSA in drug-free zones are to be run consecutively to all other sentencing provisions for all sentences under the Sentencing Reform Act.

XIII. Prison-Based Special Drug Offender Sentencing Alternative (DOSA). The prison confinement time for an offender serving a prison-based DOSA sentence is expanded. If the court determines that a prison-based DOSA sentence is appropriate for an offender then it may impose an alternative sentence that includes confinement in a state facility for one-half of the midpoint of the standard sentencing range or 12 months, whichever is greater.

XIV. Chemical Dependency Screening Reports. In addition to those offenders that have been convicted of a drug crime, the court must order the DOC to complete a chemical dependency screening report before imposing a sentence upon a defendant that has been convicted of "any" type of a felony where the court finds that the offender has a chemical dependency that contributed to his or her offense.

XV. Washington State Institute for Public Policy (WSIPP). The WSIPP must conduct a study of criminal sentencing provisions of neighboring states for all crimes involving methamphetamine. The report must include any criminal sentencing increases necessary under Washington law to reduce or remove any incentives methamphetamine traffickers and manufacturers may have to locate in Washington. The report must be completed and submitted to the Legislature by January 1, 2007.

The WSIPP must also conduct a study of the DOSA program. The WSIPP must study recidivism rates for offenders who received substance abuse treatment while in confinement as compared to offenders who received treatment in the community or received no treatment. The WSIPP must report its findings to the Legislature by January 1, 2007.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed, except for sections 110 and 111, which takes effect January 1, 2007. However, section 113, of the bill is null and void unless funded in the budget.