

SENATE BILL REPORT

SB 5624

As of February 6, 2023

Title: An act relating to implementing the recommendations of the substance use recovery services advisory committee.

Brief Description: Implementing the recommendations of the substance use recovery services advisory committee.

Sponsors: Senators Dhingra, Kuderer, Nguyen, Saldaña, Lovelett, Wellman, Nobles, Valdez and Wilson, C..

Brief History:

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

Brief Summary of Bill

- Enacts recommendations of the Substance Use and Recovery Services Advisory Committee related to legalization of possession of controlled substances and support for and expansion of substance use disorder treatment programs and related services.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kevin Black (786-7747)

Background: Possession of a Controlled Substance in Washington. Prior to 2021, possession of a controlled substance in Washington was a class C felony. In February 2021, the Washington Supreme Court struck down the state's possession of a controlled substance statute in *State v. Blake*, citing the absence of a requirement to prove knowing possession.

Following this, the Legislature passed ESB 5476 (2021), which amended the possession of a controlled substance to cure the constitutional defect, and reclassified the offense as a misdemeanor. Prosecutors were encouraged to divert cases for assessment, treatment, and

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services. These amendments rendering possession of a controlled substance constitutional expire on July 1, 2023.

The Substance Use Recovery Services Advisory Committee. The 2021 legislation also created a Substance Use Recovery Services Advisory Committee (SURSAC). The 26 members appointed to SURSAC started meeting in December 2021 with the charge to develop a Substance Use Recovery Plan. The committee and its four subcommittees met a total of 65 times, and submitted a final plan with 16 recommendations to the Legislature in January 2023.

Summary of Bill: Provisions representing the recommendations of SURSAC are enacted, as detailed below.

Decriminalizing Adult Possession of a Personal Amount of a Counterfeit Substance, Controlled Substance, or Legend Drug. A misdemeanor is created criminalizing possession of more than a personal amount of a controlled substance, counterfeit substance, or unprescribed legend drug, or any amount for a person under age 21. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Earlier amendments which criminalized possession of a controlled substance in any amount for a person over 21 are allowed to expire.

Cities, towns, counties, and other municipalities are preempted from enacting laws and ordinances criminalizing possession of drug paraphernalia which are inconsistent with state law.

Providing Counsel for Parents Affected by Substance Use Disorders in Dependency and Child Custody Cases. Persons in need of receiving mental health, substance use, or behavioral health services are included in the definition of indigent under juvenile court and child dependency laws, qualifying them to receive public defense services.

A right to court appointed counsel is established for the parent, guardian, or custodian in any parenting plan or child custody action in which the court determines the parent, guardian, or custodian is affected by substance use disorders, mental health, or behavioral health concerns. The court may appoint counsel for the child when appointing counsel for the parent, guardian, or custodian if the court finds that such appointment is in the best interests of the child.

Funding, Promotion, and Training for Recovery Residences. Real and personal property owned, rented, or leased by a nonprofit organization to maintaining a registered recovery residence is exempted from taxation if the charge for the housing does not exceed the actual cost of operation and maintenance.

The Health Care Authority (HCA) must make sufficient funding available to establish an adequate and equitable stock of recovery residences in each region of the state, including by

expanding the revolving fund program to make loans or grants available to recovery residence operators to use for necessary capital expenses, subject to funding. HCA must establish a voucher program to allow accredited recovery housing operators to hold bed space for individuals waiting for treatment or who have returned to substance use and need a place to stay while negotiating a return to stable housing. HCA must conduct outreach to underserved and rural areas to support the development of recovery housing, including adequate resources for women, LGBTQIA+ communities, and youth.

HCA must develop a training for housing providers by January 1, 2024, to assist them with providing appropriate services to LGBTQIA+ communities, including consideration of topics like harassment, antiracism, diversity, and gender affirming behavior, and to ensure that applicants for grants or loans related to recovery residences receive access to the training.

Training for Parents of Children with Substance Use Disorders and Caseworkers Within the Department of Children, Youth, and Families. The Department of Children, Youth, and Families (DCYF) must develop a training for parents of children and transition-age youth by June 20, 2024, providing education on substance use disorders, adaptive and functional communication strategies with a person with a substance use disorder, self-care, and how to obtain and use opioid overdose reversal medication.

DCYF must make opioid overdose reversal medication available to case workers and employees who may encounter individuals experiencing overdoses and make appropriate training available.

Legalizing Giving Away Drug Paraphernalia. The class I civil infraction for selling or giving drug paraphernalia in any form is amended to remove the prohibition against giving away paraphernalia. Paraphernalia includes things like pipes, tubes, masks, and vials which are used or intended for use in connection with controlled substances other than cannabis.

Data Support and Effectiveness Studies for Recovery Navigator Programs. HCA must develop a data integration platform by June 30, 2024, to serve as a common database for diversion efforts across the state, to serve as a data collection and management tool for practitioners, and to assist in standardizing definitions and practices.

HCA is to contract with the Washington State Institute for Public Policy (WSIPP) to conduct a study of the long-term effectiveness of the recovery navigator program over 15 years with reports due in 2028, 2033, and 2038.

HCA must establish an expedited pre-approval process by August 1, 2023, allowing requests for the use of data to be forwarded to the Washington State Institutional Review Board without delay when the request is made by WSIPP for the purpose of completing a study that has been directed by the Legislature.

Establishing Health Engagement Hubs. HCA must develop licensure standards and payment structures by January 1, 2024, for health engagement hubs (hubs), defined as mobile or fixed-site opioid treatment program medication units. Hubs must be open to youth and adults, and function as a patient-centered medical home by offering cost-effective patient-centered care including wound care, provide harm reduction services and supplies, and provide linkages to housing, transportation, and support services. HCA must direct Medicaid managed care organizations to adopt a value-based bundled payment methodology in contracting with hubs and other opioid treatment programs, to the extent permitted by federal law.

HCA must make sufficient funding available to ensure that a hub is available within a two-hour drive for all communities, and that there is one health engagement hub available per 200,000 residents in Washington State.

Creating Education and Employment Pathways. HCA must establish a grant program for programs designed to provide persons recovering from substance use disorders with employment opportunities, with priority given to programs that engage with Black, Indigenous, persons of color, and other historically underserved communities.

Providing a Statewide Directory of Recovery Services. Subject to funding, the Department of Health (DOH) must contract with a vendor to provide a dynamically updated, statewide tool to direct individuals with behavioral health disorders to treatment and recovery support locations.

Intent to Increase Investments in Statewide Diversion Services. A legislative intent is declared to increase investments in evidence-based pre-arrest and pre-filing diversion programs substantially over baseline levels established in the 2021-2023 operating and capital budgets, so that services such as crisis stabilization units, mobile crisis response services for youth and adults, recovery navigator programs, and law enforcement assisted diversion are present in every region of the state.

Streamlining Substance Use Disorder Treatment Intakes. HCA must convene a work group to recommend changes to intake, screening and assessment for substance use disorder services by December 1, 2023, with goal of shortening the intake process and broadening the workforce capable of processing substance use disorder intakes. HCA must include providers, payors, and people who use drugs in the work group, and other individuals recommended by HCA.

Establishing a Safe-Supply Work Group. HCA must establish and staff a Statewide Safe Supply Work Group with members appointed by the Governor to make recommendations related to providing a regulated, tested supply of controlled substances to individuals at risk of drug overdoses, with a preliminary report due to the Governor and Legislature on December 1, 2023, and a final report due on December 1, 2024.

Opioid Treatment Program Rural Access and Expansion. Opioid treatment programs (OTPs), including mobile or fixed-site programs, recovery residences, and harm reduction programs including syringe service programs, are recognized as essential public facilities for the purpose of local land-use regulations. Counties and cities may only impose such reasonable conditional use requirements as are similarly applied to other essential public facilities and health care settings. A requirement for DOH to hold a public hearing in a community where an OTP is proposed to be located is removed. Cities and counties are prohibited from imposing a maximum capacity on OTPs.

The Department of Commerce must establish a program to fund the construction costs necessary to start up OTPs in underserved regions.

Appropriation: None.

Fiscal Note: Requested on January 31, 2023.

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: PRO: SURSAC did tremendous work. It had stakeholders with diverse voices looking at best practices which are evidence-based. Substance use disorder is a public health issue that must be separated from the criminal activity associated with drug use. Diversion and civil treatment can make a difference where criminal justice interventions cannot. This is what data tells us. What process would you want for your loved one? This bill rejects a punitive one-size-fits-all response and focuses on prevention and life-saving treatment. We should legislate based on what we know actually changes behavior. Taken together the SURSAC recommendations will make substantial improvements. Evidence should drive us, not anecdote. This is a once-in-a-generation opportunity to fix this broken non-system. We offer too many services to people who use drugs that are not wanted or welcomed. Health engagement hubs draw from research in New York and Washington and is a service people want that supports engagement and reduces substance use. Treatment and related health services must be easier to get than fentanyl. Drug users are trying to achieve temporary wellness. They need help, not stigma. Peer work engages people in their own recovery. Intrinsic motivation works better than force and shame. Public defense will need to be fully funded if drugs are recriminalized. Officers should use the civil laws we have, including civil commitment. This bill does what the Legislature asked for. Homelessness drives drug use. People need protection from cartels and fentanyl by having access to a safe supply. Going to jail is traumatic. Adding trauma to trauma doesn't help address root causes. Understand that people use drugs not to be difficult but to find some relief. The iron law of prohibition states that as punishments become more severe, the potency of banned substances increase. A regulated supply of drugs would reduce harm from street drugs, and reduce crime. Drug criminalization is failing just like alcohol prohibition. Addressing the social determinants of

health will uplift us out of cycles of poverty and violence. Lawmakers should listen to people with lived experience and experts and invest in public health approaches.

CON: Our experiment with effective legalization of drugs has failed. Parks and sidewalks are filled with drug users. Treatment caseloads are down and there have never been more overdose deaths. It is neither humane nor compassionate to leave persons with a substance disorder to their own devices, or to require the police to stand by and do nothing. California's personal use amount law has been in continual litigation since 1963.

OTHER: This bill correctly sets forth the SURSAC recommendations, but committee members did not unanimously support decriminalization. Before the *Blake* decision there were 20 therapeutic courts, now there are 70. Each situation calls out for different levels of accountability and intervention. Funding district and municipal courts will reduce disparities by geography.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Heather Kelly, League of Women Voters of Washington; Caleb Banta-Green, University of Washington, Addictions, Drug & Alcohol Institute; Larry Jefferson, Director, Washington State Office of Public Defense; Don Julian; Malika Lamont, VOCAL-WA; Adam Palayew; Jude Ahmed, Urban League of Metropolitan Seattle & Tacoma; Joshua Wallace, Peer Washington.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs.

OTHER: Chad Enright, Kitsap County Prosecutor; Judge Kevin Ringus, District & Municipal Court Judges Association.

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