

P2SSB 5536 (S-1697.2/23) - S COMM AMD
By Committee on Ways & Means

1 On page 7, after line 30, insert the following:

2 "NEW SECTION. Sec. 7. A new section is added to chapter 43.43
3 RCW to read as follows:

4 The Washington state patrol bureau of forensic laboratory
5 services must complete the necessary analysis for any evidence
6 submitted for a suspected violation of RCW 69.50.4011(1)(b),
7 69.50.4013, or 69.41.030 within 45 days of receipt of the request for
8 analysis.

9 NEW SECTION. Sec. 8. The following sums, or as much thereof as
10 may be necessary, are each appropriated to the Washington state
11 patrol: \$780,000 from the state general fund for the fiscal year
12 ending June 30, 2024; and \$425,000 from the state general fund for
13 the fiscal year ending June 30, 2025. The amounts in this section are
14 provided solely to support the Washington state patrol bureau of
15 forensic laboratory services in completing the necessary analysis for
16 any evidence submitted for a suspected violation of RCW
17 69.50.4011(1)(b), 69.50.4013, or 69.41.030 within 45 days of receipt
18 of the request for analysis."

19 Renumber the remaining sections consecutively and correct any
20 internal references accordingly.

21 On page 11, after line 35, insert the following:

22 "NEW SECTION. Sec. 10. A new section is added to chapter 69.50
23 RCW to read as follows:

24 (1) In courts of limited jurisdiction, an individual who is
25 convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or
26 69.41.030(2)(b) shall be sentenced as follows:

27 (a) For individuals convicted of a violation of RCW
28 69.50.4011(1)(b) or 69.50.4013, if the sentenced individual agrees as

1 a condition of probation to submit to a substance use disorder
2 assessment and comply with recommended treatment, to a term of
3 confinement of up to 364 days all of which shall be suspended for a
4 period not to exceed two years. The court shall give the individual
5 credit for all confinement time served before the sentence if the
6 confinement was solely in regard to the offense for which the
7 individual is being sentenced;

8 (b) For individuals convicted of a violation of RCW
9 69.41.030(2)(b), if the sentenced individual agrees as a condition of
10 probation to submit to a substance use disorder assessment and comply
11 with recommended treatment, to a term of confinement of up to 90 days
12 all of which shall be suspended for a period not to exceed one year;
13 and

14 (c) For individuals convicted of a violation of RCW
15 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) where the legend
16 drug is classified as schedule II substance under RCW 69.50.206, if
17 the sentenced individual refuses to submit to a substance use
18 disorder assessment and comply with the recommended treatment as a
19 condition of probation, to imprisonment for a term of not less than
20 21 days. The sentencing court shall give the individual credit for
21 all confinement time served before the sentencing if the confinement
22 was solely in regard to the offense for which the individual is being
23 sentenced.

24 (2) For individuals sentenced under subsection (1)(a) or (b) of
25 this section, the court shall order as a condition of probation the
26 individual to submit to a substance use disorder assessment and
27 comply with the recommended treatment.

28 (a) The court shall assist the defendant in obtaining a substance
29 use disorder evaluation within seven days of the defendant's
30 agreement to participate in the diversion program. The substance use
31 evaluation shall be provided at no expense to defendants who qualify
32 for public defense services or who are found to be indigent by the
33 court. The evaluation shall be provided at a location that is
34 accessible to the defendant, and the court shall provide the
35 defendant with transportation assistance if such assistance is
36 necessary to make the evaluation accessible to the defendant. The
37 court may contract with a third party to provide substance use
38 disorder assessments and services, which may be collocated at the
39 court or be provided at alternative locations. The state shall

1 reimburse local courts for costs associated with the substance use
2 disorder assessments under this subsection.

3 (b) A diagnostic evaluation and treatment recommendation shall be
4 prepared under the direction of the court by a substance use disorder
5 treatment program licensed or certified by the department of health
6 or a qualified probation department approved by the department of
7 social and health services. A copy of the report shall be forwarded
8 to the court. Based on the diagnostic evaluation, the court shall
9 determine whether the person shall be required to complete a course
10 in an alcohol and drug information school licensed or certified by
11 the department of health or more intensive treatment in an approved
12 treatment program licensed or certified by the department of health.

13 (c) The diagnostic evaluation and treatment recommendation shall
14 include the following:

- 15 (i) Type of treatment;
- 16 (ii) Nature of treatment;
- 17 (iii) Length of treatment;
- 18 (iv) A treatment time schedule; and
- 19 (v) Approximate cost of the treatment.

20 (3) A person subject to substance use disorder assessment and
21 treatment shall be required by the court to complete a course in an
22 alcohol and drug information school certified by the department of
23 health or to complete more intensive treatment in a treatment program
24 licensed or certified by the department of health, as determined by
25 the court.

26 (4) All individuals providing treatment under this section shall
27 implement the integrated and comprehensive screening and assessment
28 process for co-occurring substance use and mental health disorders
29 adopted under RCW 71.24.630.

30 (5) Any agency that provides treatment ordered under this
31 section, must immediately report to the appropriate probation
32 department where applicable, otherwise to the court, any
33 noncompliance by a person with the conditions of the person's ordered
34 treatment. The court shall notify the department of health of any
35 failure by an agency to report noncompliance. Any agency with
36 knowledge of noncompliance that fails to report shall be fined \$250
37 by the department of health. Upon three such failures by an agency
38 within one year, the department of health shall revoke the agency's
39 license or certification under this section.

1 (6) Subject to the availability of funds appropriated for this
2 purpose, the substance use disorder assessment and recommended
3 treatment as ordered by the court shall be provided at no cost for
4 sentenced individuals who have been found to be indigent by the
5 court.

6 (7) As a condition of probation, the sentenced individual must
7 comply with the treatment recommendations of the substance use
8 disorder assessment.

9 (8)(a) If it appears to the prosecuting attorney or the court,
10 that the sentenced individual is performing unsatisfactorily in the
11 recommended treatment program, the prosecuting attorney, or the court
12 on its own, shall make a motion for a hearing to consider sanctions.
13 After notice to the sentenced individual, the court shall hold a
14 hearing to determine if a sanction or revocation of the individual's
15 suspended sentence, or any part thereof, is warranted under RCW
16 3.50.340 or 3.66.069.

17 (b) If the court finds the sentenced individual has made
18 reasonable efforts to comply with the recommended treatment but
19 cannot comply either due to a lack of available treatment or, for
20 sentenced individuals found to be indigent by the court, due to a
21 lack of funding for treatment, no sanction for a failure to comply
22 with the recommended treatment may include jail.

23 (9) For individuals sentenced under subsection (1)(a) of this
24 section, if at any point the court finds by a preponderance of the
25 evidence that the sentenced individual has willfully abandoned or
26 demonstrated a consistent failure to comply with the recommended
27 treatment, the court shall reinstate a portion of the individual's
28 suspended sentence as follows:

29 (a) For an individual's first instance of being sentenced under
30 this section, the court shall use its discretion in determining an
31 appropriate amount of time of the individual's suspended sentence to
32 reinstate given the facts and circumstances of the particular case;

33 (b) For an individual's second instance of being sentenced under
34 this section, the court shall reinstate no less than 21 days of the
35 individual's suspended sentence; and

36 (c) For an individual's third instance of being sentenced under
37 this section, the court shall reinstate no less than 45 days of the
38 individual's suspended sentence.

39 (10) For individuals sentenced under subsection (1)(a) of this
40 section, the court may deem any subsequent charge filed against the

1 individual for violation of RCW 69.50.4011(1)(b), 69.50.4013, or
2 69.41.030 a willful abandonment of treatment.

3 (11) If the individual has successfully completed the recommended
4 treatment program, the individual must file proof of successful
5 completion with the court at which time the court must terminate
6 probation and enter an order vacating the individual's conviction
7 under RCW 9.96.060(6)."

8 Renumber the remaining sections consecutively and correct any
9 internal references accordingly.

10 On page 15, beginning on line 1, after "(6)" strike all material
11 through "convictions." on line 7 and insert "If an individual who
12 successfully completes a substance use disorder treatment program as
13 required under section 10 of this act files proof of completion with
14 the court, upon verification that the individual successfully
15 completed the substance use disorder treatment program, the court
16 must vacate the conviction or convictions."

17 On page 22, after line 9, insert the following:

18 **"Sec. 15.** RCW 10.31.110 and 2021 c 311 s 6 are each amended to
19 read as follows:

20 (1) When a police officer has reasonable cause to believe that
21 the individual has committed acts constituting a crime, and the
22 individual is known by history or consultation with the behavioral
23 health administrative services organization, managed care
24 organization, crisis hotline, local crisis services providers, or
25 community health providers to have a mental disorder or substance use
26 disorder, in addition to existing authority under state law or local
27 policy, as an alternative to arrest, the arresting officer is
28 authorized and encouraged to:

29 (a) Take the individual to a crisis stabilization unit as defined
30 in RCW 71.05.020. Individuals delivered to a crisis stabilization
31 unit pursuant to this section may be held by the facility for a
32 period of up to twelve hours. The individual must be examined by a
33 mental health professional or substance use disorder professional
34 within three hours of arrival;

35 (b) Take the individual to a triage facility as defined in RCW
36 71.05.020. An individual delivered to a triage facility which has
37 elected to operate as an involuntary facility may be held up to a

1 period of twelve hours. The individual must be examined by a mental
2 health professional or substance use disorder professional within
3 three hours of arrival;

4 (c) Refer the individual to a designated crisis responder for
5 evaluation for initial detention and proceeding under chapter 71.05
6 RCW;

7 (d) Release the individual upon agreement to voluntary
8 participation in outpatient treatment;

9 (e) Refer the individual to youth, adult, or geriatric mobile
10 crisis response services, as appropriate; or

11 (f) Refer the individual to the regional entity responsible to
12 receive referrals in lieu of legal system involvement, including the
13 recovery navigator program described in RCW 71.24.115.

14 (2) If the individual is released to the community from the
15 facilities in subsection (1)(a) through (c) of this section, the
16 mental health provider or substance use disorder professional shall
17 make reasonable efforts to inform the arresting officer of the
18 planned release prior to release if the arresting officer has
19 specifically requested notification and provided contact information
20 to the provider.

21 (3) In deciding whether to refer the individual to treatment
22 under this section, the police officer must be guided by local law
23 enforcement diversion guidelines for behavioral health developed and
24 mutually agreed upon with the prosecuting authority with an
25 opportunity for consultation and comment by the defense bar and
26 disability community. These guidelines must address, at a minimum,
27 the length, seriousness, and recency of the known criminal history of
28 the individual, the mental health history of the individual, if
29 available, the substance use disorder history of the individual, if
30 available, the opinions of a mental health professional, if
31 available, the opinions of a substance use disorder professional, if
32 available, and the circumstances surrounding the commission of the
33 alleged offense. The guidelines must include a process for clearing
34 outstanding warrants or referring the individual for assistance in
35 clearing outstanding warrants, if any, and issuing a new court date,
36 if appropriate, without booking or incarcerating the individual or
37 disqualifying the individual from referral to treatment under this
38 section, and define the circumstances under which such action is
39 permissible. Referrals to services, care, and treatment for substance

1 use disorder must be made in accordance with protocols developed for
2 the recovery navigator program described in RCW 71.24.115.

3 (4) Any agreement to participate in treatment or services in lieu
4 of jail booking or referring a case for prosecution shall not require
5 individuals to stipulate to any of the alleged facts regarding the
6 criminal activity as a prerequisite to participation in the
7 alternative response described in this section. Any agreement is
8 inadmissible in any criminal or civil proceeding. Such agreements do
9 not create immunity from prosecution for the alleged criminal
10 activity.

11 (5) If there are required terms of participation in the services
12 or treatment to which an individual was referred under this section,
13 and if the individual violates such terms and is therefore no longer
14 participating in services:

15 (a) The behavioral health or service provider shall inform the
16 referring law enforcement agency of the violation, if consistent with
17 ~~((the terms of the program and))~~ applicable law; and

18 (b) The original charges may be filed or referred to the
19 prosecutor, as appropriate, and the matter may proceed accordingly(
20 ~~unless filing or referring the charges is inconsistent with the terms~~
21 ~~of a local diversion program or a recovery navigator program~~
22 ~~described in RCW 71.24.115)).~~

23 (6) The police officer is immune from liability for any good
24 faith conduct under this section."

25 Renumber the remaining sections consecutively and correct any
26 internal references accordingly.

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27 On page 1, line 6 of the title, after "71.24.590," insert
28 "10.31.110," and at the beginning of line 7 of the title, insert
29 "adding a new section to chapter 43.43 RCW;"

EFFECT: (1) Requires the Washington state patrol bureau of
forensic laboratory services to complete testing of drugs in
possession cases within 45 days of receipt of the request for
analysis and provides appropriations.

(2) Provides required sentencing and probation for individuals convicted of possession.

(3) Requires the court, in simple possession cases, to sentence individuals to no less than 21 days in jail if the individual will not comply with substance use disorder treatment as a condition of probation.

(4) Requires the court to vacate a conviction of simple possession if the individual completes treatment as a condition of probation.

(5) Permits the court, related to an individual's first instance of being sentenced under this act, to use its discretion in determining the appropriate amount of the individual's suspended sentence to reinstate if the individual demonstrates a consistent failure to comply with or willfully abandons treatment.

(6) Requires the court, related to an individual's second instance of being sentenced under this act, to reinstate 21 days of the individual's suspended sentence if the individual demonstrates a consistent failure to comply with or willfully abandons treatment.

(7) Requires the court, related to an individual's third instance of being sentenced under this act, to reinstate 45 days of the individual's suspended sentence if the individual demonstrates a consistent failure to comply with or willfully abandons treatment.

(8) Requires behavioral health service providers who provide treatment to an individual in lieu of the referring law enforcement officer booking the individual, to inform the referring law enforcement agency if the individual violates the terms of treatment, and in such a case, permits the officer to refer the original charge to the prosecutor.

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