

Implementation of SB 5536 The “Blake fix” and Washington’s new drug possession statute

June 6, 2023

Association of Washington Cities
and
Washington Association of Prosecuting Attorneys



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The Basics

- SB 5536 establishes the crimes of:
 - “Knowingly possess” a counterfeit substance, controlled substance, or legend drug; and
 - “Knowingly use” a counterfeit substance, controlled substance, or legend drug.
 - “Use” is defined as “introduce the substance into the human body by injection, inhalation, ingestion, or any other means.”
- Counterfeit substance or controlled substance = **gross misdemeanor**
- Legend drug = **simple misdemeanor**
- Cannot charge possession AND use related to same course of conduct



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The Basics

- Maximum sentence
 - First two convictions = 180 days in jail and a \$1,000 fine
 - Third and subsequent convictions = 364 days in jail and a \$1,000 fine
- Creates a pre-trial diversion process, but must be agreed-to by the prosecuting attorney
- WSP lab “shall aim to complete the necessary analysis” within 45 days of receipt. \$1.26M appropriated.
- A conviction may be vacated if individual (1) completes a substance use disorder program; or (2) has 6-months of substantial compliance with recommended treatment or services.

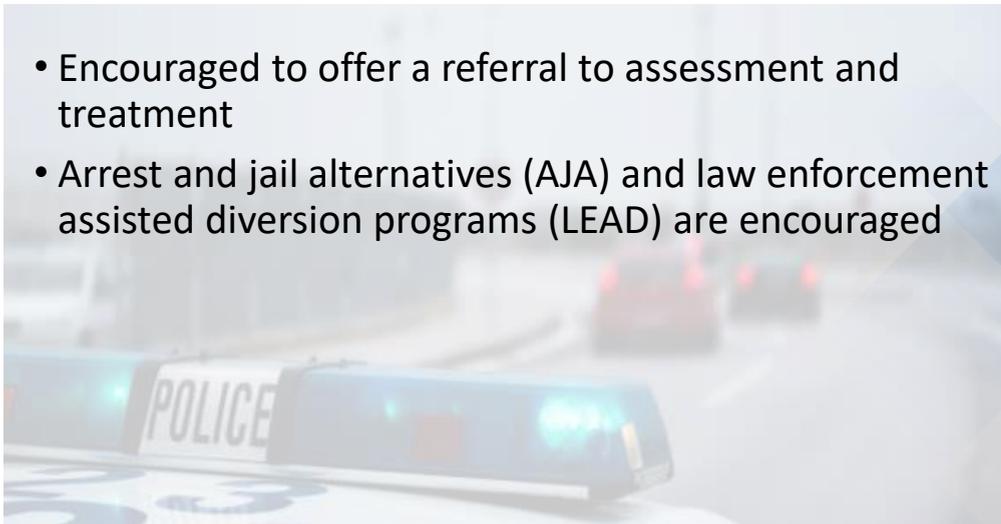


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Role of law enforcement

- Encouraged to offer a referral to assessment and treatment
- Arrest and jail alternatives (AJA) and law enforcement assisted diversion programs (LEAD) are encouraged



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Role of the prosecuting attorney

- Encouraged to offer assessment and treatment in lieu of charges
- May offer a diversion program, therapeutic court, or other alternative
- “Strongly encouraged” to agree to pre-trial diversion if the defendant is only charged with drug use or possession



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Pre-Trial Diversion

- “In all cases, the **court may not grant the motion unless the prosecuting attorney consents** to the defendant’s participation in pre-trial diversion.”
- Other options:
 - Therapeutic courts
 - Community courts
 - Other existing or yet-to-be-created diversion programs
 - Stipulated orders of continuance
 - Traditional judicial process



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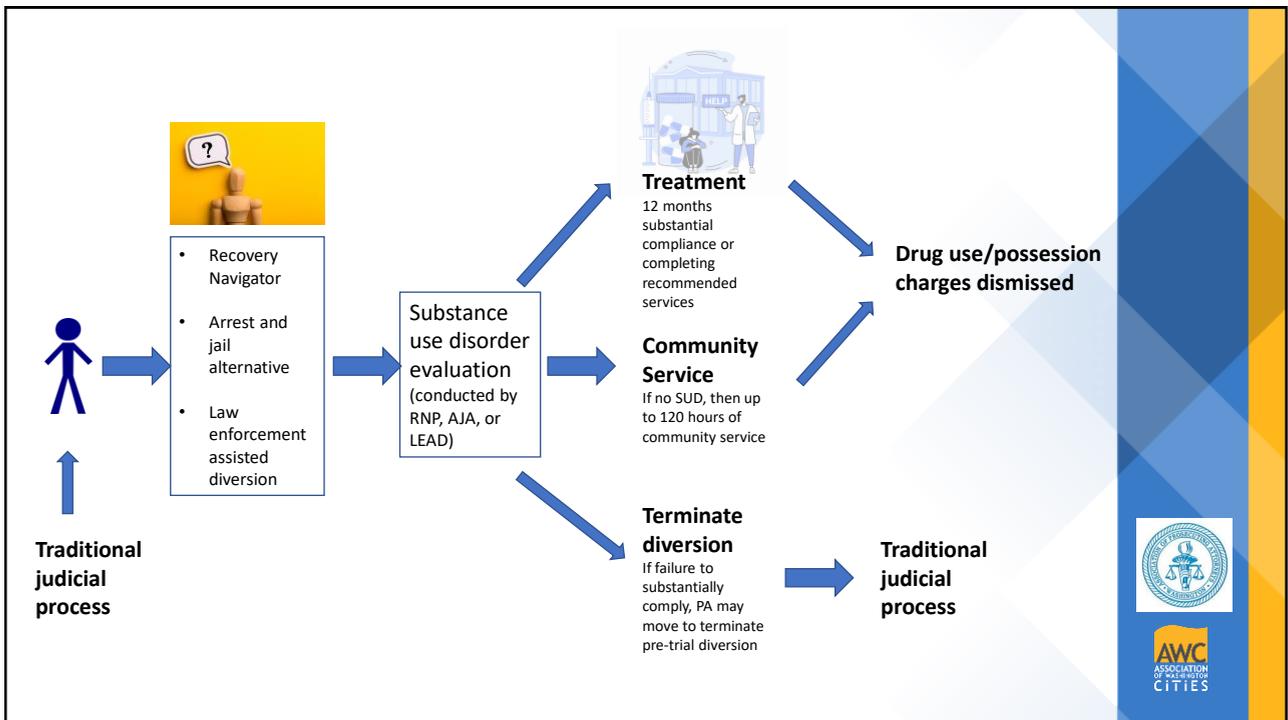
Pre-Trial Diversion

- In any jurisdiction with RNP, AJA, or LEAD
 - All jurisdictions have RNP, but likely does not have capacity
- When is court required to grant motion for pre-trial diversion?
 - Only charged with one count of simple possession or use
 - Individual does not have any criminal convictions after July 1, 2023
 - Prosecutor agrees



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Drug Paraphernalia

- State preempts the field of drug paraphernalia regulation.
- Public health uses are expanded → public health programs are expressly allowed to distribute smoking equipment and drug testing equipment. Public health staff may conduct drug tests of substances.
- Cities and counties are still allowed to regulate harm reduction services operating in their community.
- RCW 69.50.4121 establishes a civil infraction for selling drug paraphernalia. The bill eliminates the prohibition on “giving.”
- RCW 69.50.412 remains, and establishes a misdemeanor to use or deliver drug paraphernalia (exception that hypodermic needles are expressly allowed for those 18+)



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Other items of note

- “Essential public facility” now includes: opioid treatment programs (mobile and fixed-site), recovery residences, and harm reduction programs. Safe injection sites are *not* included.
- Opioid use disorder treatment facilities may only be regulated similarly to other essential public facilities and health care settings.
- Cities cannot establish a maximum capacity for opioid treatment programs.
- Law enforcement assisted diversion pilot program is converted into an ongoing grant program. \$5M appropriated.



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Implementation Date

- Section 16 of the bill repeals RCW 10.31.115, requiring two referrals to assessment prior to filing charges.
- Section 16 is *not* included in the emergency clause provisions of the bill and does *not* go into effect July 1st.
- Bill title language is being modified.
- **August 15th is functional effective date of the bill.**



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Indigent Defense Funding

- OPD to provide reimbursable grant funds to cities and counties for defense representation services for indigent adults charged with possession or public use of a controlled substance, counterfeit substance, or legend drug.
- Eligible cities = population less than 200,000
- Eligible counties = population less than 500,000
- \$3M in 2023-2024 and \$6M in 2024-2025
- Contracts likely around September, 2023



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What we need from you



Cost data

- Prosecutorial
- Indigent defense
- Clerk/court
- Jail
- Other



Diversion

- Use of pre-trial diversion in the bill?
- Use of therapeutic courts?
- Use of stipulated orders of continuance?
- Other?



Challenges

- What challenges are you facing, and is additional state legislation needed to address the issue?



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Questions?

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