

SB 5536 (the Blake fix) side-by-side

	Senate version (E2SSB 5536)	House version (Rep. Taylor striker with adopted amendments 720, 705, 709, 719, 694, 695, and 714).	AWC's preferred approach
Charge	Gross misdemeanor (for counterfeit and controlled substances other than cannabis)	<u>Misdemeanor</u> The House amendment and RCW 3.66.068 would still allow for court jurisdiction for a two-year period (in situations of a suspended or deferred sentence).	Given that both a gross misdemeanor and a simple misdemeanor charge allow for court jurisdiction for two-years for a suspended or deferred sentence, AWC is comfortable with either approach provided that the remaining structure of the bill is functional and effective.
What is criminalized	Knowingly possess a counterfeit substance, controlled substance, or legend drug.	Knowingly possess a counterfeit substance, controlled substance, or legend drug. The House amendment also adds the following: <u>Knowingly possess and use in a public place by injection, inhalation, ingestion, or any other means.</u>	AWC is comfortable with including the extra charge but would like to statutorily define "use" to include "actual use or actions that evidence an intent to use a controlled substance in a public place". Alternatively, we would prefer the Senate approach.
Diversion	The prosecutor is encouraged to divert to assessment, treatment, or other services. In lieu of booking, law enforcement is encouraged to offer a referral to assessment and services through a program responsible for receiving referrals including arrest and jail alternatives, law enforcement assisted diversion, or the recovery navigator program.	The prosecutor is encouraged to divert such cases for assessment, treatment, and services <u>through the recovery navigator program or comparable program.</u> In lieu of booking, law enforcement is encouraged to offer a referral to assessment and services through a program responsible for receiving referrals including arrest and jail alternatives, law enforcement assisted diversion, or the recovery navigator program.	The House version includes a much greater role for the recovery navigator program. While AWC is very supportive of this program, we have concerns about statewide capacity given how new the program is and current capacity. This is particularly true given that the House version requires the use of the recovery navigator program, unless a law enforcement assisted diversion program or an arrest and jail alternative program exists. AWC would like this to be an alternative, but not a requirement. Existing SUD treatment and other options in place in communities should be allowed, particularly when they may be the only options with capacity unless/until the recovery navigator program has more capacity than they do currently.

<p>Mandatory minimum jail sentences</p>	<p>The Senate version required imposition of a minimum of 21 days in jail for a second offense, and 45 days in jail for a third or subsequent offense, where the individual consistently refused, abandoned, or failed to comply with substance use disorder treatment.</p>	<p>The House amendment <u>allows for judicial discretion for imposition of jail.</u></p>	<p>While AWC supported the Senate approach, AWC is comfortable with removing the mandatory minimum jail sentences and allowing judicial discretion. Accountability within the criminal justice system is critical but does not need to be prescriptive.</p>
<p>Local preemption</p>	<p>The Senate version does not contain a state preemption of drug paraphernalia law.</p>	<p>The amendment provides a state preemption for cities for drug paraphernalia regulation.</p> <p>The bill, like the Senate version, contains public health provisions allowing public health disbursement of syringe equipment, drug testing equipment, and others.</p>	<p>AWC opposes the preemption language, and believes it is unnecessary. Cities should be able to regulate harmful uses of drug paraphernalia.</p> <p>Both versions contain language regarding public health uses of these items, and we believe this is sufficient to ensure that the state is promoting public health while discouraging harmful uses of the paraphernalia items.</p>
<p>Role of the court</p>	<p>The Senate version required the court to (1) to make a motion to vacate the conviction upon completion of the drug treatment; and (2) provide for transportation arrangements; and (3) scheduling an SUD evaluation; amongst other provisions.</p>	<p>The House amendment clarifies and updates these requirements to restore the court's neutrality in the case. <u>The prosecutor would be required to make the motion to vacate, and the court would not be required to arrange for transportation or schedule the evaluation.</u></p>	<p>AWC supports the clarifying language updates made in the House amendment to ensure there is no appearance of lack of neutrality for the court.</p> <p>However, AWC is opposed to the requirement that the prosecutor make a motion to vacate a case after 2 years if there are no new criminal arrests/convictions. This will add substantial administrative burden for the prosecutor, and will encourage prosecutors to not charge simple possession, eliminating the treatment pathways envisioned in the bill for that individual.</p>
<p>Pretrial diversion program</p>	<p>Upon arraignment for a violation under this section, the court advises the defendant of the availability of the pretrial diversion program.</p>	<p><u>The defendant's counsel advises the defendant of the availability of the pretrial diversion program.</u></p>	<p>AWC does not believe the pre-trial diversion program as established in the current House version is workable in most jurisdictions. We prefer the Senate version of the bill, with the clarifying</p>

	<p>The defendant makes a motion to participate in pretrial diversion and agrees to waive their right to a speedy trial.</p> <p>The court grants the motion and refers the defendant for an assessment by any substance use disorder treatment program.</p> <p>The state shall make resources available to assist the defendant in obtaining a substance use disorder evaluation within seven days of agreeing to participate in the program, provided at no expense to defendants who qualify for public defense or who are deemed indigent.</p> <p>The evaluation must be provided at a location that is accessible to the defendant and the court must provide the defendant with transportation assistance. The court may contract with a third party to provide substance use disorder assessments and services, which may be collocated at the court or provided at alternative locations.</p> <p>The treatment program makes a written report to the court stating the findings, filed under seal of the court with a copy given to certain parties.</p> <p>The state shall reimburse courts for the costs related to assessments and related travel.</p> <p>The treatment program must make a written report to the court stating its findings and recommendations after the</p>	<p>The defendant makes a motion to participate in pretrial diversion and agrees to waive their right to a speedy trial.</p> <p><u>If the prosecuting attorney consents, the court grants the motion and refers the defendant for a biopsychosocial assessment.</u></p> <p><u>The biopsychosocial assessment report can recommend no treatment or services, a course in a certified alcohol and drug information school, or more sustained services provided by a licensed behavioral health care provider, peer counseling program, or other case management program.</u></p> <p><u>If the biopsychosocial assessment report recommends no treatment or services, the court must require the defendant to complete up to 120 hours of community service.</u></p> <p><u>The prosecuting attorney may only make a motion for termination from pretrial diversion when it appears that the defendant is not meaningfully engaging with the recommended treatment of services and that noncompliance was willful.</u></p> <p><u>If the defendant meaningfully engages with recommended treatment or services for six months, the criminal possession charge or charges must be dismissed.</u></p> <p><u>Regardless of whether the defendant completes recommended treatment or</u></p>	<p>changes made by the House regarding the role of the prosecutor, defense, and the court.</p>
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	<p>examination, filed under seal with the court and a copy given to certain parties.</p> <p>The defendant engages with recommended services or treatment, at no cost to individuals who have been found indigent.</p> <p>If the defendant successfully completes pretrial diversion, including compliance with assessment, recommended treatment, and services, the criminal possession charge or charges must be dismissed.</p>	<p><u>services, if the defendant has no additional criminal arrests, charges, or convictions in the one year after their conviction, the conviction shall be vacated.</u></p>	
Probation standard of compliance	<p>The Senate version requires substantial compliance with SUD treatment as a condition of probation.</p>	<p>The amendment requires <u>six months</u> of substantial compliance with assessment and recommended treatment or services and progress towards recovery goals or <u>by completing the community service, as recommended.</u></p>	<p>AWC does not support the mandated for pre-trial diversion and post-conviction requirements to impose community service as an alternative where SUD treatment is not recommended. We ask that judicial discretion be allowed in all cases, to direct the individual to available and appropriate treatment, or to community service, or to another sentence/sanction/requirement as appropriate in the given circumstances.</p>
Opioid treatment facility siting	<p>The Senate version maintains the current law requirement for the Department of Health to hold at least one public hearing in the community where a new opioid facility is to be located.</p>	<p>The amendment removes the requirement for DOH to hold a public hearing in the community where the opioid facility is to be located.</p>	<p>AWC supports current law regarding holding a public hearing. Transparency and public participation are important, and we would like to see this provision of current law maintained as it is in the Senate version.</p>