2023 Legislative Session Controlled Substances Bills

Bill Number	SB 5035	HB 1415	SB 5467	SB 5467 SB 5536	
Prime Sponsor Status Summary	Sen. Padden No PH date Makes	Rep. Maycumber No PH date Makes	Sen. Salomon No PH date • Makes knowing	Sen. Robinson Introduced 1/23; No PH date • Makes knowing possession of a counterfeit or controlled	Sen. Salomon No PH date • Allows people over
of Controlled Substance Statute Changes	knowing possession of a counterfeit substance a felony	knowing possession of a controlled substance a gross misdemeanor	 possession of a counterfeit or controlled substance a gross misdemeanor Makes knowing possession of a legend drug a misdemeanor When an officer issues a citation for a violation, no warrant may be issued for failure to appear at arraignment unless the person was personally served with notice of the hearing 	 a counterreit or controlled substance a gross misdemeanor Makes knowing possession of a legend drug a misdemeanor Removes "giving" paraphernalia as a civil infraction, so that only selling paraphernalia is a civil infraction The state preempts the field of drug paraphernalia regulation and local jurisdictions may only adopt local ordinances that have the same penalty as the state 	 the age of 21 to use psilocybin in authorized facilities under the supervision of licensed professionals Creates an advisory board to advise the Department of Health on the administration of the RCW Chapter and education of the public The Department of Health has two years to create rules, a permit process to manufacture psilocybin products and provide

					psilocybin service, and a regulatory system.
Diversion	Prosecutor is encouraged to divert first two possession of counterfeit substance offenses	N/A	 In courts of limited jurisdiction, when sentencing a person convicted of possession of a controlled substance, it is required that the sentence suspend confinement and impose probation and treatment if the defendant agrees If the defendant refuses to submit to an assessment and recommended treatment as a condition of probation, the court shall order at term of confinement of not less than 45 days The court is required to order probation and a substance use disorder assessment Subject to state funding, the substance use disorder assessment and recommended treatment and a substance use disorder assessment and recommended treatment must be provided at no 	 Encourages prosecutors to divert possession of counterfeit or controlled substance cases for assessment, treatment, or other services In lieu of jail booking and referral to a prosecutor, law enforcement is encouraged to offer a referral to assessment and services or another alternative to arrest program At arraignment the court is required to advise the defendant of a pretrial diversion program Subject to state funding, the diagnostic investigation and evaluation and recommended treatment must be provided at no cost for individuals who have been found indigent If defendant successfully completes the program the court must dismiss the charges If a person is convicted and subsequently completes treatment the court must vacate the conviction 	

			 cost for individuals who have been found indigent Charges must be dismissed upon successful completion of program and the conviction is to be vacated 		
Referral to Assessment and Services	Repeals RCW 10.31.115 mandating referral to assessment and services twice	N/A	Repeals RCW 10.31.115 mandating referral to assessment and services twice	Repeals RCW 10.31.115 mandating referral to assessment and services twice	
Other				 Requires the Department of Health to adopt rules by December 31, 2023 allowing a substance use disorder treatment program to establish off-site medication units Makes substance use treatment programs essential public facilities under the Growth Management Act States that counties and cities may only require conditional use permits with reasonable conditions for siting of opioid treatment programs to the extent that the reasonable conditional use requirements 	

				 are applied to other essential public facilities and health care settings. Subject to funds appropriated for this purpose, requires the Department of Commerce to establish a program to fund construction costs for start up substance use disorder treatment programs in regions of the state that currently lack the programs 	
Effective Date	90 days after adjournment of session (July in a 105 day session)	Emergency clause – specified date of July 1, 2023	Emergency clause – effective upon signing by Governor	90 days after adjournment of session (July in a 105 day session)	 Sec. 6 (Advisory Board) – effective immediately Sec. 117 (Definitions) – Effective August 1, 2023 Sec. 122 – Effective October 1, 2023 Remainder of bill effective 90 days after session





Review of State Drug Possession Laws

City of Tacoma January 24, 2023

••• Overview of Presentation



- Introductions
- Summary of State v. Blake
- Impacts of the Blake decision
- Legislative response (Summary of the current law)
- Current state of enforcement
- Review of the 2023 legislative proposals to-date

Blake Decision

- RCW 69.50.4013 made possession of a controlled substance a felony
- In 2016 police executed a search warrant in Spokane
- They arrested three individuals including Shannon Blake
- At the jail the jailers discovered a small bag of methamphetamine in the coin pocket of Blake's jeans
- At trial Blake relied on the affirmative defense of "unwitting possession"

Blake Decision

- Blake said a friend bought the jeans secondhand and gave them to Blake two days before her arrest
- Blake claimed she didn't know they contained drugs and that she has never used drugs
- Trial court found Blake possessed the drugs without finding her possession was intentional or knowing –and that Blake did not meet her burden proving her possession was unwitting, Blake was convicted
- Blake appealed her conviction to the State Supreme Court



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Blake Decision

- In 2021 the St. Supreme Court in 5-4 decision held RCW 69.50.4013 was unconstitutional
- The Court held the state drug possession law was a strict liability statute because it allows for a conviction based on the <u>unintentional</u> and <u>unknowing possession</u> of drugs
- The statute must contain a "mental element" such as knowing or intentional to charge and convict someone with drug possession
- Based on the decision all prosecutions for drug possession ended and all prior convictions were to be vacated

••• Impacts of State v. Blake

- Retroactive application
 - Convictions vacated
 - Legal Financial Obligation refunds
- Possession of controlled substance statute unenforceable
- Manufacture, sale, delivery statutes were not affected by *Blake*





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Legislative Response to Blake

- In 2021, the legislature passed ESB 5476
 - Added element of "knowing" to controlled substance possession
 - Made unlawful possession of a controlled substance a misdemeanor
 - Required two diversions prior to charging
- Expiration date added bill to expire the addition of "knowing" in the controlled substance statutes

Current State of Enforcement

- Local jurisdictions engaging differently, but few cases charged
- Potential reasons for lack of criminal charges:
 - Inability to track prior diversions
 - Lack of funding for necessary services through municipal court

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••• 2023 Controlled Substance Bills

Discussion of bills introduced in the 2023 legislative session



Review State Drug Possession Laws

City of Tacoma January 24, 2023

1/24/2023

A Brief Summary of Outcome Evaluations in Washington Therapeutic Courts

Table of Contents

- 1) Thurston District Mental Health and Veterans' Courts
- 2) Snohomish County Mental Health Court
- 3) King County District Mental Health Court
- 4) Spokane Municipal Community Court
- 5) Comments Published on Other WA Therapeutic Courts
- 6) References

Attached separately-Washington State Institute for Public Policy Mental Health Court Cost-Benefit Analysis

The following information outlines the key findings from recent WA Therapeutic Court outcome evaluations. For full details on evaluation findings and research design please see references on page 6.

Thurston District Mental Health and Veterans' Courts

2022 Evaluation—Washington State Center for Court Research

The Thurston District MH and Veterans' Courts have been in operation for approximately 18 years. From 2018-2022, they served 155 participants. The program is limited to 55 participants at any given time in order to maximize the available support from the therapeutic court team. District Court staff report program graduation rates in the high-90% range. (personal communication, January 20, 2023)

In 2022, an outcome evaluation examined reoffending rates between program participants (281 MH court participants and 102 Veterans court participants) and a control group of individuals who met program criteria, but did not participate in the program (168 in MH control group and 48 in Veterans control group). The control group declined the program for reasons that evaluators believe did not suggest they were more likely to reoffend or fail the program (ex: accepting a plea agreement, deferral, or dismissal).

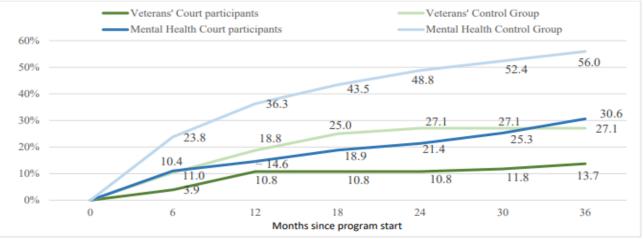
Key Findings:

- Reduced recidivism at every point along the 36 month follow up period since program start:
- 12 Months:
 -MH Court 14.6% vs 36.3%
 -Veterans Court 10.8% vs 18.8%
- 24 Months:

-MH court 21.4% vs 48.8% -Veterans court 10.8% vs 27.1%

• 36 Months:

-MH court 30.6% vs 56.0% -Veterans court 13.7% vs 27.1%



Study Limitations:

- Further data collection on non-participants would help confirm that the control group is an accurate comparison
- Further evaluation on other outcomes (such as mental health status, employment, housing, etc.) would provide information on how the treatment program has improved participants' quality of life. (Washington State Center for Court Research, 2022)

Snohomish County Mental Health Court

2014-2016 Evaluation — Snohomish County Human Services Department

A sample of six mental health court graduates were evaluated on the utilization of the community crisis system during 12 month period pre-enrollment and 12 month period post-graduation. Criminal charges incurred or crisis services utilized during the mental health court participation period was considered separate from this evaluation.

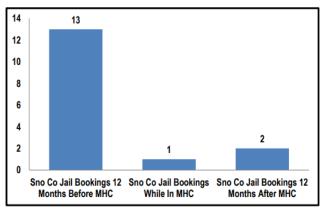
Key Findings:

- Bookings into Snohomish County Jail reduced by 84.6%
- Days in Snohomish County Jail reduced by 98.4%
- Criminal charges reduced by 68.2%

Study Limitations:

- Small sample size
- Further research should be done to see if the same outcomes apply to a larger participant pool

Bookings into the Snohomish County Jail



Days spent in the Snohomish County Jail decreased from 247 during the 12 months before entry into Mental Health Court to 22 while in Mental Health Court to 4 in the 12 months after Mental Health Court graduation.

Criminal Charges

Criminal Charges While

In MHC

7

Criminal Charges 12

Months After MHC

25

20

15

10

5

0

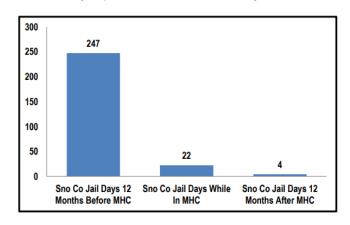
22

Criminal Charges 12

Months Before MHC

Bookings into the Snohomish County Jail decreased from 13 during the 12 months before entry into Mental Health Court to one while in Mental Health Court and then increased to 2 in the 12 months after Mental Health Court graduation.

Days Spent in the Snohomish County Jail



Criminal charges decreased from 22 during the 12 months before entry into Mental Health Court to 4 while in Mental Health Court and then increased to 7 in the 12 months after Mental Health Court graduation.

After graduation from Mental Health Court, clients are no longer seen by the Bridgeways Mental Health Court Liaison. The elimination of this supervision may be a causal factor in the increase in criminal charges.

(Fenn, 2016)

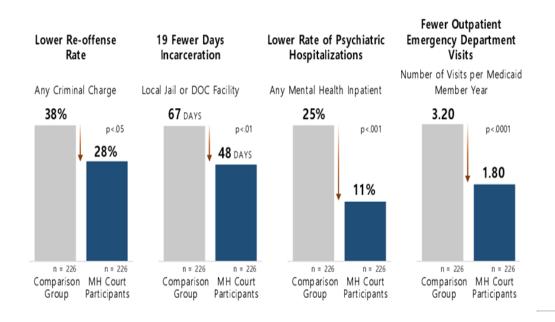
King County District Mental Health Court

2018 Evaluation — WA State Department of Social and Health Services

An evaluation of the one-year outcomes of 226 primarily felony mental health court participants who attended MH court between January 2013-August 2017. The comparison group comprised of 226 individuals charged with similar offenses and statistically similar socio-economic characteristics, however, these individuals were not referred to mental health court and proceeded through traditional criminal court. The outcome period was measured one year from participant's start date in MH Court.

Key Findings:

- Lower rates of recidivism (28% vs 38%) The decrease in new charges was most significant in misdemeanor property crimes and assault.
- Fewer days of incarceration (48 vs 67 days in jail on average—a difference of 19 days)
- Lower rates of psychiatric hospitalization (11% vs 25%) and fewer emergency department visits (average of 1.8 visits vs 3.2 visits)
- MH participants were more likely to participate in substance use disorder treatment (62% vs 25%)



Study Limitations:

- Researchers took great effort to control for differences between MH participants and the comparison group; however, selection bias may still remain. The comparison group may have included individuals lacking the motivation to participate in treatment; whereas MH court participants have voluntarily entered the program and demonstrated a willingness to participate.
- Future research should evaluate a longer follow
 -up period to determine whether the program
 has a lasting impact on outcomes.

(Ditton Henzel et al., 2018)

Spokane Municipal Community Court

2019 Evaluation — Washington State University Institute for Criminal Justice

Recidivism was measured in a sample of 293 community court participants and contrasted against two comparison groups:

- one historical group of individuals who would have met criteria for community court, but their arrests and convictions occurred before community court was in existence
- one contemporary group of individuals with the same eligibility criteria as community court participants, but not included in the program

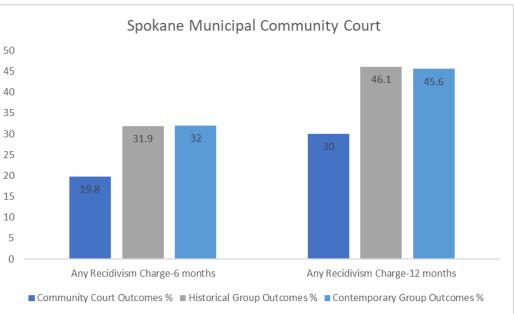
Outcomes were measured 6– and 12-months after a participant's initial assessment in the program.

Key Findings:

- Lower recidivism at 6 months: 20% compared to 32% in the historical and contemporary groups
- Lower recidivism at 12 months: 30% compared to 46% in historical and contemporary groups
- 75% of community court participants had their conviction deferred
- Over 90% of participants engaged in self-improvement events through programming and services
- 90% received a housing referral
- 71% graduated the program

Study Limitations:

- Data collection was limited by the records kept by court and administrators—unknown information on participant needs and interventions may have been overlooked
- Limited sample size
- Lack of information on the categories of charges captured in recidivism data



⁽Hamilton et al., 2019)

Comments Published on Other WA Therapeutic Courts

Olympia Community Court:

"Olympia Community Court has had 356 participants and 155 graduates. 86% of graduates have not been convicted of new offenses." (Whaley, 2020)

Pierce County Felony Mental Health Court:

"At the end of 2019, the court had 64 participants, 56 graduates and 7 recidivists since its inception [2015]" (Pierce County Therapeutic Courts Website)

Bellingham Municipal Mental Health Court:

- "Over the first two years of the program, the rate of crimes committed by participants in the city's Mental Health Court fell by 80 percent"
- "The number of crimes charged decreased from 71 during the 2 years before entering the program to 14 in the 2 years following"
- "The decrease in crimes charged ranges from 90 91 percent among those who completed all or some of the five
 phases of the program, compared to 50 percent among participants who started but did not successfully complete
 the program"

(Nelson, 2018)

King County Mental Illness and Drug Dependency (MIDD) Fund 2021 Report:

- -Seattle Municipal Mental Health Court
- 60 participants engaged in services
- 88% decrease in adult jail bookings
- 35% participants linked to publicly-funded behavioral health treatment (does not include medicare-funded services) -King County Community Court
- 141 participants engaged in services
- 87% decrease in jail bookings
- 38% participants linked to publicly-funded behavioral health treatment (does not include medicare-funded services)
- 80% of participants successfully completed the program

References

- Washington State Center for Court Research (2022, June). *Thurston Mental Health and Veterans' Courts*. Washington Courts. Retrieved January 23, 2023, from https://www.courts.wa.gov/subsite/wsccr/docs/MHVC%20exec%20summary.pdf
- Fenn, R. (2016). Snohomish County Mental Health Court Evaluation of Program to Date: October 2012 through April 2016 (pp. 1–13) Snohomish County Human Services Department.
- Ditton Henzel, P., Mayfield, J., Black, C., & Felver, B. E. M. (2018). *The Impact of Mental Health Court on Recidivism and Other Key Outcomes* (pp. 1–14) Olympia, WA: Washington State Department of Social and Health Services.
- Hamilton, Z., Abboud Holbrook, M., Kigerl, A. (2019) *City of Spokane Municipal Community Court: Process and Outcome Evaluation* (pp. 30-56) Washington State University.
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- 2021 MIDD Annual Report. King County Behavioral Health and Recovery Division. Accessed on: https://kingcounty.gov/depts/communityhuman-services/mental-health-substance-abuse/midd/reports.aspx#dashboard

Mental health courts

Adult Criminal Justice

Benefit-cost estimates updated December 2019. Literature review updated October 2016.

Current estimates replace old estimates. Numbers will change over time as a result of model inputs and monetization methods.

The WSIPP benefit-cost analysis examines, on an apples-to-apples basis, the monetary value of programs or policies to determine whether the benefits from the program exceed its costs. WSIPP's research approach to identifying evidence-based programs and policies has three main steps. First, we determine "what works" (and what does not work) to improve outcomes using a statistical technique called meta-analysis. Second, we calculate whether the benefits of a program exceed its costs. Third, we estimate the risk of investing in a program by testing the sensitivity of our results. For more detail on our methods, see our Technical Documentation.

Program Description: Mental health courts, modeled after other therapeutic courts (e.g., drug courts, DUI courts), divert individuals with mental health issues from incarceration to treatment in the community. These courts use mental health assessments, individualized treatment plans, intensive case management, and judicial monitoring with the goal of providing participants with the resources needed to avoid criminal behavior while improving public safety. Most programs have a graduated system of requirements, meaning that as participants progress through the program, assessment and monitoring become less frequent. In some courts, charges are dropped with successful completion of the program. Programs can vary in length; the programs represented in this meta-analysis range from 6-24 months of delivered services.

Benefit-Cost Summary Statistics Per Participant							
Benefits to:							
Taxpayers	\$5,260	Benefit to cost ratio	\$5.56				
Participants	\$0	Benefits minus costs	\$14,878				
Others	\$11,887	Chance the program will produce					
Indirect	\$997	benefits greater than the costs	96 %				
Total benefits	\$18,144						
Net program cost	(\$3,266)						
Benefits minus cost	\$14,878						

The estimates shown are present value, life cycle benefits and costs. All dollars are expressed in the base year chosen for this analysis (2018). The chance the benefits exceed the costs are derived from a Monte Carlo risk analysis. The details on this, as well as the economic discount rates and other relevant parameters are described in our Technical Documentation.

Meta-Analysis of Program Effects											
Outcomes measured Treatment age No. of effect sizes Treatment N Adjusted effect sizes and standard errors used in the benefit-cost analysis Unaction of the size (response) First time ES is estimated Second time ES is								djusted effect andom effects model)			
				ES	SE	Ago	ES ES	stimated SE	Ago	ES	n valuo
Crime	36	6	1424	-0.168	0.075	Age 38	-0.168	0.075	Age 48	-0.223	p-value 0.001
		6									
Psychiatric symptoms [^]	36	2	211	-0.316	0.330	36	n/a	n/a	n/a	-0.309	0.359

[^]WSIPP's benefit-cost model does not monetize this outcome.

Meta-analysis is a statistical method to combine the results from separate studies on a program, policy, or topic in order to estimate its effect on an outcome. WSIPP systematically evaluates all credible evaluations we can locate on each topic. The outcomes measured are the types of program impacts that were measured in the research literature (for example, crime or educational attainment). Treatment N represents the total number of individuals or units in the treatment group across the included studies.

An effect size (ES) is a standard metric that summarizes the degree to which a program or policy affects a measured outcome. If the effect size is positive, the outcome increases. If the effect size is negative, the outcome decreases.

Adjusted effect sizes are used to calculate the benefits from our benefit cost model. WSIPP may adjust effect sizes based on methodological characteristics of the study. For example, we may adjust effect sizes when a study has a weak research design or when the program developer is involved in the research. The magnitude of these adjustments varies depending on the topic area.

WSIPP may also adjust the second ES measurement. Research shows the magnitude of some effect sizes decrease over time. For those effect sizes, we estimate outcome-based adjustments which we apply between the first time ES is estimated and the second time ES is estimated. We also report the unadjusted effect size to show the effect sizes before any adjustments have been made. More details about these adjustments can be found in our Technical Documentation.

	Detailed Mone	tary Benefit Es	timates Per Pa	articipant		
Affected outcome:	Resulting benefits: ¹		Benef	its accrue to	:	
		Taxpayers	Participants	Others ²	Indirect ³	Total
Crime	Criminal justice system	\$5,260	\$0	\$11,887	\$2,630	\$19,777
Program cost	Adjustment for deadweight cost of program	\$0	\$0	\$0	(\$1,633)	(\$1,633)
Totals		\$5,260	\$0	\$11,887	\$997	\$18,144

¹In addition to the outcomes measured in the meta-analysis table, WSIPP measures benefits and costs estimated from other outcomes associated with those reported in the evaluation literature. For example, empirical research demonstrates that high school graduation leads to reduced crime. These associated measures provide a more complete picture of the detailed costs and benefits of the program.

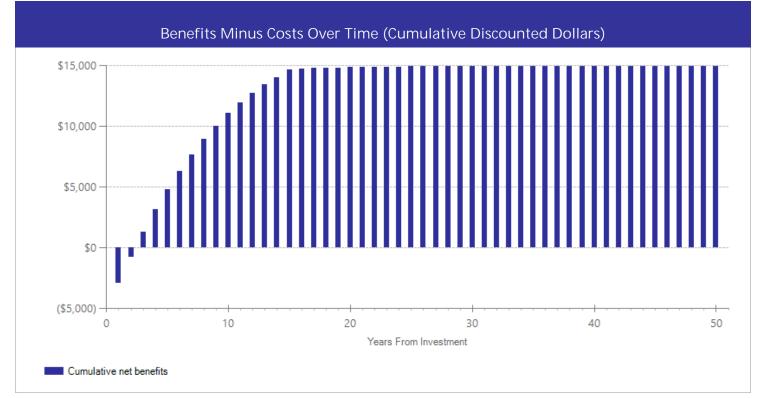
²"Others" includes benefits to people other than taxpayers and participants. Depending on the program, it could include reductions in crime victimization, the economic benefits from a more educated workforce, and the benefits from employer-paid health insurance.

³"Indirect benefits" includes estimates of the net changes in the value of a statistical life and net changes in the deadweight costs of taxation.

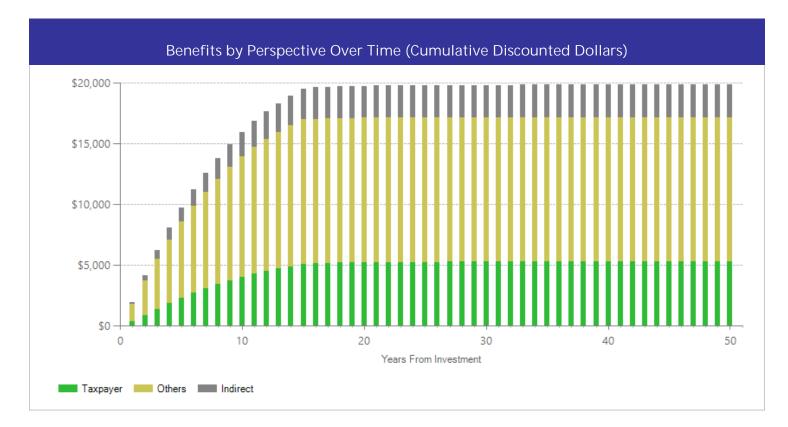
	Deta	iled Annual Co	st Estimates Per Participant	
	Annual cost	Year dollars	Summary	
Program costs Comparison costs	\$2,656 \$0	2006 2006	Present value of net program costs (in 2018 dollars) Cost range (+ or -)	(\$3,266) 10 %

Per-participant cost estimate from Ridgely, M.S., Engberg, J., Greenberg, M.D., Turner, S., DeMartini, C., & Dembosky, J.W. (2007). Justice, treatment, and cost: An evaluation of the fiscal impact of Allegheny County Mental Health Court. Santa Monica, CA: RAND.

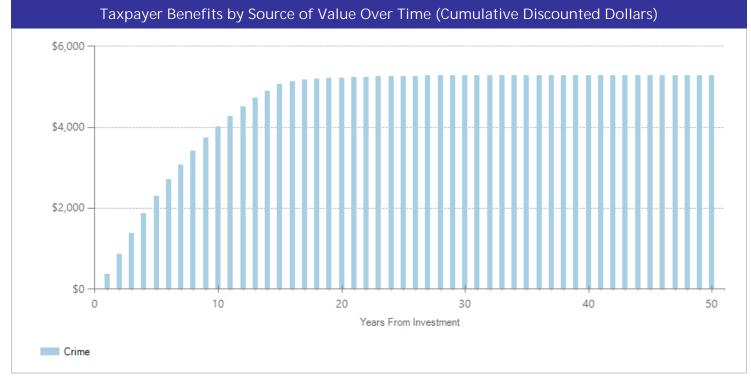
The figures shown are estimates of the costs to implement programs in Washington. The comparison group costs reflect either no treatment or treatment as usual, depending on how effect sizes were calculated in the meta-analysis. The cost range reported above reflects potential variation or uncertainty in the cost estimate; more detail can be found in our Technical Documentation.



The graph above illustrates the estimated cumulative net benefits per-participant for the first fifty years beyond the initial investment in the program. We present these cash flows in discounted dollars. If the dollars are negative (bars below \$0 line), the cumulative benefits do not outweigh the cost of the program up to that point in time. The program breaks even when the dollars reach \$0. At this point, the total benefits to participants, taxpayers, and others, are equal to the cost of the program. If the dollars are above \$0, the benefits of the program exceed the initial investment.



The graph above illustrates the breakdown of the estimated cumulative benefits (not including program costs) per-participant for the first fifty years beyond the initial investment in the program. These cash flows provide a breakdown of the classification of dollars over time into four perspectives: taxpayer, participant, others, and indirect. "Taxpayers" includes expected savings to government and expected increases in tax revenue. "Participants" includes expected increases in earnings and expenditures for items such as health care and college tuition. "Others" includes benefits to people other than taxpayers and participants. Depending on the program, it could include reductions in crime victimization, the economic benefits from a more educated workforce, and the benefits from employer-paid health insurance. "Indirect benefits" includes estimates of the changes in the value of a statistical life and changes in the deadweight costs of taxation. If a section of the bar is below the \$0 line, the program is creating a negative benefit, meaning a loss of value from that perspective.



The graph above focuses on the subset of estimated cumulative benefits that accrue to taxpayers. The cash flows are divided into the source of the value.

Citations Used in the Meta-Analysis

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For further information, contact: (360) 664-9800, institute@wsipp.wa.gov

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Washington State Institute for Public Policy

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