



Comparison of Senate, House, and Proposed Conference Committee Versions of E2SSB 5536

Subject	Senate Version (E2SSB 5536)	House Version (H-1919.E)	Conference Committee Report (H-1994.4)	Special Session Striker
Drug Possession Offenses and Penalties	<p>Possession of a Controlled Substance or a Counterfeit Substance are reclassified as gross misdemeanors.</p> <p>Possession of a Legend Drug or 40 Grams or Less of Cannabis are retained as misdemeanors.</p>	<p>Possession of a Controlled Substance, a Counterfeit Substance, a Legend Drug, or 40 Grams or Less of Cannabis are retained as misdemeanors.</p> <p>Misdemeanor offenses are established for the knowing possession of a controlled substance, counterfeit substance, or legend drug and use in a public place.</p>	<p>Same as the Senate version, except: (1) gross misdemeanor offenses are established for the knowing Possession of a Controlled Substance or Counterfeit Substance and Use in a Public Place; and (2) a misdemeanor offense is established for the knowing possession of a legend drug and use in a public place.</p>	<p>Knowing Possession of Counterfeit or Controlled Substances and knowing Use in a Public Place are gross misdemeanor crimes punishable by up to 180 days in jail and/or a \$1,000 fine, unless the defendant has at least two prior convictions for these crimes after July 1, 2023, in which case the potential confinement increases to up to 364 days in jail. The terms "public place" and "use" are</p>

				defined.
Testing Evidence for Suspected Drug Violations	Beginning January 1, 2025, the Washington State Patrol (WSP) must aim to complete the necessary analysis for evidence submitted for suspected violations of certain drug possession offenses within 45 days of receiving a request, but failure to do so does not constitute grounds for dismissal.	Same as the Senate version, except the specific appropriation is eliminated.	Same as the Senate version.	Same as the Conference Committee Report.
Drug Paraphernalia	<p>The prohibition on giving or permitting the giving of drug paraphernalia is eliminated.</p> <p>Certain items used for testing or analyzing controlled substances are eliminated from the definition of "drug paraphernalia" for the purpose of certain civil infractions.</p>	Same as the Senate version, except: (1) "smoking equipment" is removed from the list of public health supplies exempt from certain civil infractions; (2) "outreach, shelter, and housing programs" are added to the list of entities that may distribute public health supplies; and (3) state preemption of the field of drug paraphernalia regulation is established.	Same as the House version, except: (1) "smoking equipment" is restored to the list of public health supplies exempt from certain civil infractions; and (2) the preemption of drug paraphernalia regulation does not prohibit local laws or ordinances relating to public hearing or notice requirements for the establishment of	Same as the Conference Committee Report, except the preemption of paraphernalia regulation does not prohibit cities and counties from enacting laws and ordinances related to the establishment or regulation of harm reduction services related to drug paraphernalia.

	<p>Distribution or use of public health supplies through public health programs, community-based HIV prevention programs, and pharmacies, is exempt from certain civil infractions.</p> <p>Public health and syringe service program staff are exempt from arrest and prosecution for certain drug possession offenses.</p>		<p>public health program, community-based HIV prevention program, or outreach, shelter, and housing program facilities or the operation of such facilities, where consistent with state law and consistent with or approved by local public health policies.</p>	
Pretrial Diversion	<p>A pretrial diversion program is established for persons charged with certain drug possession offenses.</p> <p>The court may grant a defendant's motion for diversion, continue the hearing, and refer the defendant for an</p>	<p>A pretrial diversion opportunity is established for persons charged with certain drug possession offenses.</p> <p>The "applicable programs" for pretrial diversion are recovery navigator programs (RNP), law enforcement assisted</p>	<p>Same as the House version, except: (1) references to "biopsychosocial assessment" are eliminated and the term "applicable program" is replaced with references to RNPs, LEAD programs, and arrest and jail alternative programs; (2) language encouraging the</p>	<p>Same as the Conference Committee Report except:</p> <p>In all cases the court may not grant pretrial diversion unless the prosecutor consents.</p>

	<p>evaluation by a designated substance use disorder (SUD) treatment program.</p> <p>The court must make resources available to assist defendants with obtaining an SUD evaluation and assist the defendant with transportation to the evaluation, and the state must provide reimbursement for certain associated costs.</p> <p>The prosecutor may motion to terminate diversion if it appears that the defendant is: (1) not substantially complying with the recommended treatment or services; (2) convicted of an offense that reflects the propensity for violence; (3) subsequently charged with a drug possession offense; or (4) convicted of a</p>	<p>diversion (LEAD) programs, and arrest and jail alternative programs, and such programs must: (1) conduct a biopsychosocial assessment; (2) make written reports stating findings and recommendations based on the biopsychosocial assessment; (3) and provide written status updates at least monthly.</p> <p>If the applicable program's written report does not recommend any treatment or services, the defendant must instead complete an amount of community service as determined by the court, but not to exceed 120 hours.</p> <p>The court is required to grant a motion for pretrial diversion in circumstances when the defendant is only charged with an applicable</p>	<p>prosecutor to consent to diversion if a defendant is only charged with other nonfelony offenses that are not crimes against persons is eliminated; (3) the RNP, LEAD program, or arrest and jail alternative program must provide the court with a confirmation of the defendant's completion of assessment and a statement indicating the defendant's enrollment or referral to any specific service or program, instead of a written report; (4) monthly status updates may be provided by the defendant's service provider; (5) the procedures for a hearing on a motion for termination from pretrial diversion are modified, including by eliminating the requirement for prosecutors to prove noncompliance by clear and convincing evidence;</p>	
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	<p>felony.</p> <p>If a defendant successfully completes diversion, including substantial compliance with recommended treatment or services, the court must dismiss the charge or charges.</p>	<p>offense, and prosecuting attorneys are encouraged to divert other cases meeting certain criteria.</p> <p>Provisions in the Senate version related to assisting an applicable defendant with obtaining an evaluation and transportation to the evaluation, and state reimbursement for certain associated costs, are eliminated.</p> <p>The prosecutor may motion to terminate diversion if it appears that the defendant is not substantially complying with the recommended treatment or services, or, if applicable, completing the community service; the court must consider certain factors at the hearing; and the prosecutor must establish by clear and convincing evidence that the noncompliance was willful,</p>	<p>(6) a defendant completes pretrial diversion either by having 12 months of substantial compliance with recommended treatment and services, or by completing recommended treatment and services, whichever occurs first, or, if no treatment or services were recommended, by completing up to 120 hours of community service; (7) RNPs, LEAD programs, and arrest and jail alternative programs, rather than prosecutors, must input information about applicable cases in the Health Care Authority's (HCA) data integration platform, beginning January 1, 2025; and (8) the definition of "substantial compliance" is eliminated.</p>	
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		<p>and that the defendant should be terminated from pretrial diversion.</p> <p>Beginning January 1, 2024, prosecutors must input certain data and information about applicable cases in the statewide pretrial diversion tracking and reporting system.</p> <p>A defendant successfully completes pretrial diversion by having six months of substantial compliance with assessment and recommended treatment or services and progress toward recovery goals as reflected by a written status update from the applicable program, or by completing community service and submitting proof of completion to the court.</p> <p>"Substantial compliance" is</p>		
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		defined as a defendant actively engaging with or making himself or herself available to treatment and services, and not willfully abandoning treatment and services.		
Sentencing and Vacating Qualifying Offenses	<p>The court must impose specific sentences for applicable drug offense convictions based on the defendant's willingness to comply with certain agreed conditions of probation, including imposing a 21-day minimum sentence if the defendant refuses treatment and services, and imposing minimum sanctions for violating agreed conditions of probation.</p> <p>A person convicted of an applicable drug offense may vacate the conviction by completing an SUD</p>	<p>The court must impose specific sentences for applicable drug offense convictions based on the defendant's willingness to comply with certain agreed conditions of probation.</p> <p>The mandatory minimum sentences for refusing treatment and services and the mandatory minimum sanctions for violating agreed conditions of probation in the Senate version are eliminated.</p> <p>A person convicted of an applicable drug offense may vacate the conviction by</p>	<p>The court is encouraged to utilize any other resolution of the charges or terms of supervision that suit the circumstances of the defendant's situation and advance stabilization, recovery, crime reduction, and justice when sentencing the defendant for applicable drug offenses.</p> <p>A person convicted of an applicable drug offense may vacate the conviction by</p> <p>completing an SUD program and filing proof of completion with the</p>	Same as the Conference Committee Report.

	<p>treatment program as part of an agreed condition of probation.</p>	<p>having six months of substantial compliance with assessment and recommended treatment or services and progress toward recovery goals</p> <p>as reflected by a written status update from an RNP, LEAD program, or arrest and jail alternative program, or by completing court-ordered community service, as part of an agreed condition of probation.</p> <p>A person convicted of an applicable drug offense may vacate the conviction if the person has not been arrested, charged, or convicted in the two years following the current conviction.</p>	<p>court, or by obtaining an assessment from an RNP, LEAD program, or arrest and jail alternative program and having six months of substantial compliance with recommended treatment or services.</p>	
<p>Data Collection by the Administrative Office of the Courts</p>	<p>Not in the Senate version.</p>	<p>The Administrative Office of the Courts (AOC) must collect data and information, and submit an annual report, related to utilization and outcomes of</p>	<p>Removed.</p>	<p>Same as the Conference Committee Report.</p>

		<p>specific forms of pretrial diversion, sentencing, and postconviction relief for applicable drug offenses, and the rates of recidivism for certain offenders.</p> <p>AOC must establish and maintain a statewide pretrial diversion tracking and reporting system by January 1, 2024.</p>		
Opioid Use Disorder Treatment	<p>The list of facilities that are considered "essential public facilities" for the purpose of local land-use regulations is expanded to include opioid treatment programs (OTPs), recovery residences, SUD treatment facilities, and harm reduction programs excluding safe injection sites.</p> <p>Counties and cities may only impose reasonable</p>	<p>Same as the Senate version, except: (1) the definition of "harm reduction programs" is expanded to include SUD treatment and other services, rather than other health care services; and (2) the current law requirement for the Department of Health (DOH) to hold a public hearing before licensing or certifying an OTP is eliminated.</p>	Same as the House version.	<p>Same as the Conference Committee Report except:</p> <p>When making a decision on an application for licensing or certification of an OTP, DOH must provide public notice to all appropriate media outlets in the community in which the OTP is proposed to be</p>

	conditional use requirements on OTPs that are similarly applied to other essential public facilities and health care settings, and counties and cities are prohibited from imposing a maximum capacity on an OTP.			located.
Law Enforcement Assisted Diversion Grant Program	The existing LEAD pilot project is converted to a grant program administered by the HCA.	Same as the Senate version.	Same as the House version.	Same as the Conference Committee Report.
Funding Substance Use Disorder Treatment Programs	A program is established in the Department of Commerce to fund the construction costs necessary to start up SUD treatment programs in underserved regions of the state.	Same as the Senate version, but the program is expanded to include SUD services programs and recovery housing.	Same as the House version.	Same as the Conference Committee Report.
Mandatory Law Enforcement	The provision in current law requiring law enforcement to offer a	Same as the Senate version.	Same as the House version.	Same as the Conference Committee Report.

Diversion	person who would otherwise be subject to arrest for qualifying drug possession offenses at least two referrals to assessment and services in lieu of legal system involvement is repealed.			
Reporting Obligations of Behavioral Health and Service Providers	The provision in current law that requires behavioral health and service providers to inform the referring law enforcement agency of certain violations by persons referred to the provider by the agency for treatment and services is modified to require reporting and permit filing of criminal charges regardless of whether such reporting or filing of charges is consistent with the terms of the program.	Removed.	Same as the House version.	Same as the Conference Committee Report.
Right to	A child's parent, guardian,	Removed.	Same as the House	Same as the Conference

Counsel in Family Law Proceedings	or custodian in a parenting plan or child custody proceeding may have the right to court-appointed counsel, subject to certain conditions.		version.	Committee Report.
Recovery Residences	The HCA must: (1) make sufficient funding available to support establishment of an adequate and equitable stock of recovery residences in each region of the state, including by expansion of a revolving fund program; (2) establish a voucher program to allow recovery housing operators to hold bed space for individuals who are waiting for treatment or who have returned to use and need a place to stay while negotiating a return to stable housing; (3) conduct outreach to underserved and rural areas to support the	Same as the Senate version, except: (1) the reference to expansion of a revolving fund program is eliminated; and (2) the provisions requiring outreach to underserved and rural areas and training for housing providers are modified to include "Black, indigenous, and people of color communities and immigrant communities."	Same as the House version.	Same as the Conference Committee Report except: The voucher program for recovery residences is limited to providing vouchers to hold bed space for individuals who are waiting for treatment.

	<p>development of recovery housing, including adequate resources for certain demographics and communities; and (4) by January 1, 2024, develop a training for housing providers to assist with providing appropriate services to certain communities.</p> <p>Real and personal property used by a nonprofit organization in maintaining an approved recovery residence is exempt from taxes levied for collection in calendar years 2024 through 2033, under certain conditions.</p>			
Training and Resources for Parents and Caseworkers	By June 30, 2024, the HCA must, in consultation with the Department of Children, Youth, and Families (DCYF), develop	Same as the Senate version, except: (1) the provision related to HCA and DCYF's training is codified in chapter 71.24 RCW, rather	Same as the House version.	Same as the Conference Committee Report.

	<p>training for parents of children and transition age youth with SUDs.</p> <p>The DCYF must make appropriate training and opioid overdose reversal medication available for use by caseworkers or employees that may encounter individuals experiencing overdose</p>	<p>than chapter 43.21 RCW; (2) the training is for parents of transition age youth and adolescents, rather than children, with SUDs; (3) the training must include suicide prevention; and (4) the DCYF must provide opioid overdose reversal medication and training to DCYF staff whose job duties require in person service or case management for child welfare or juvenile rehabilitation clients.</p>		
Data Integration Platform	<p>By June 30, 2024, the HCA must develop and implement a data integration platform: (1) to serve as a common database for diversion efforts across Washington; (2) to serve as a data collection and management tool for practitioners; and (3) to assist in standardizing</p>	<p>Same as the Senate version, except HCA must engage and consult with the LEAD National Support Bureau on data integration approaches, platforms, quality assurance protocols, and validation practices for the platform.</p>	<p>Same as the House version, except: (1) the platform is expanded to include tracking of pretrial diversion outcomes and demographic data about participants, rather than requiring similar data tracking by the AOC; (2) the platform is developed to support RNPs, LEAD programs, arrest and jail</p>	<p>Same as the Conference Committee Report.</p>

	definitions and practices.		alternative programs, and similar diversion efforts; and (3) information submitted to the platform is exempt from public disclosure requirements.	
Study on Long-Term Effectiveness of Diversion Efforts	<p>The HCA must contract with the Washington State Institute for Public Policy (WSIPP) to conduct a study of the long-term effectiveness of the RNPs, with reports due on June 30 of 2028, 2033, and 2038.</p> <p>The WSIPP must collaborate with the HCA and the Substance Use Recovery Services Advisory Committee to determine the parameters of the reports.</p>	Same as the Senate version, except: (1) the study includes the long-term effectiveness of the RNPs and LEAD programs, rather than just the RNPs; (2) reports related to the study are due December 31 in the years 2024, 2026, and 2028, rather than June 30 in the years 2028, 2033, and 2038; and (3) the HCA may provide additional recommendations in the reports related to improving the RNPs and LEAD programs by enhancing their ability to provide alternatives to jail and prosecution in both urban and rural communities.	Same as the House version, except: (1) the study dates are changed to match the Senate version; (2) the study parameters are expanded to include an additional assessment by June 30, 2024, of whether the state's RNPs are implemented in fidelity with the core principals of LEAD, rather than requiring the Criminal Justice Training Commission (CJTC) to conduct a similar assessment.	Same as the Conference Committee Report.
Scope and	Not in the Senate version.	Provisions in current law	Same as the House	Same as the Conference

<p>Operation of Recovery Navigator Programs</p>		<p>related to the scope and operation of RNPs are modified to: (1) state that the goal of the RNPs is to provide law enforcement and other criminal legal system personnel with alternatives to legal system involvement for criminal activity stemming from behavioral</p> <p>health needs or poverty; (2) require that each RNP have a dedicated project manager and be governed by policy coordinating groups; (3) define "core principles" to be the core principles of a LEAD</p> <p>program, as established by the LEAD National Support Bureau as of May 1, 2023; (4) require RNPs to be organized on a scale to allow meaningful engagement, collaboration, and coordination with law enforcement and municipal agencies through the policy coordinating groups; (5)</p>	<p>version, except: (1) the HCA is directed to revise its RNP standards by June 30, 2024, rather than December 31, 2023; and (2) the assessment by the CJTC is eliminated.</p>	<p>Committee Report.</p>
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		<p>direct the HCA to revise its RNP standards by December 31, 2023, to achieve fidelity with the core principles and incorporate the LEAD framework for diversion; (6) direct RNPs to prioritize individuals who are actually or</p> <p>potentially exposed to the criminal legal system; (7) direct the CJTC to conduct</p> <p>an assessment of the status of statewide implementation of the RNPs in fidelity with core principles and report to the Governor and the Legislature by December 1, 2023; and (8) provide immunity from civil liability for several identified</p> <p>entities for their administration of RNPs.</p>		
Health Engagement	The HCA must develop payment structures for	The HCA must implement a pilot program for health	Same as the House version, except: (1) the	Same as the Conference Committee Report

Hubs	<p>health engagement hubs by January 1, 2025.</p> <p>The HCA must make sufficient funding available to ensure that a health engagement hub is available within a two-hour drive for all communities and that there is at least one health engagement hub available per 200,000 state residents.</p>	<p>engagement hubs in at least two sites, with one site located in an urban area and one located in a rural area, by August 1, 2024.</p>	<p>HCA must also develop payment structures for health engagements hubs by June 30, 2024; and (2) the HCA is prohibited from implementing certain requirements related to value-based bundled payment methodology in managed care contracts unless expressly authorized by the legislature.</p>	<p>except:</p> <p>Health engagement hubs are limited to serving persons who are 18 years of age or older.</p>
Education and Employment Pathways	<p>The HCA must establish a grant program for providers of employment, education, training, certification, and other supportive programs designed to provide persons recovering from SUDs with employment opportunities.</p>	<p>Same as the Senate version, except the grant program applies to programs designed to provide persons recovering from SUDs with employment and education opportunities, rather than only employment opportunities.</p>	<p>Same as the House version.</p>	<p>Same as the Conference Committee Report.</p>
Statewide	<p>The HCA must collaborate</p>	<p>Same as the Senate version.</p>	<p>Same as the Senate</p>	<p>Same as the Conference</p>

Treatment and Services Mapping Tool	with the DOH and the Department of Social and Health Services (DSHS) to expand the Washington Recovery Help Line and the recovery readiness asset tool.		version.	Committee Report.
Work Group on Treatment Intake, Screening, and Assessments	The HCA must convene a work group to recommend changes to systems, policies, and processes related to intake, screening, and assessment for SUD services, and the work group must present its recommendations to the Governor and the Legislature by December 1, 2024.	Same as the Senate version.	Same as the Senate version.	Same as the Conference Committee Report.
Remote Dispensing of Medication	Not in the Senate version.	Remote dispensing sites may dispense medications used for the treatment of the symptoms of opioid use disorder, and the dispensing technology may be owned by either a pharmacy or a remote dispensing site.	Same as the House version.	Same as the Conference Committee Report.

Data Collection Related to Substance Use Disorders	Not in the Senate version.	<p>The HCA is responsible for regular assessments of the prevalence of SUDs and interactions of persons with SUDs with service providers, nonprofit service providers, health care facilities, and law enforcement agencies.</p> <p>The HCA must identify the necessary types and sources of data to implement appropriate data gathering to provide the information in its regular assessments, and report to the Governor and the Legislature regarding the available data and the new data needed to provide the information in the regular assessments.</p> <p>Beginning July 1, 2024, and each July 1 thereafter until July 1, 2028, the HCA must provide an implementation</p>	Same as the House version.	Same as the Conference Committee Report.

		report to the Governor and Legislature regarding recovery residences, RNPs, the health engagement pilot programs, and the LEAD grants programs, and the data obtained by the HCA for the reports must be integrated with WSIPP's study on the long-term effectiveness of RNPs and LEAD programs.		
Appropriations	Appropriations are provided from multiple sources for the following purposes: (1) \$1.205 million to WSP for completing the analysis of evidence in certain drug possession offense investigations; (2) \$34.551 million to the HCA for expanding efforts to provide opioid use disorder medication in city, county, regional, and tribal jails; (3) \$7 million to the HCA for providing support for new and	All specific appropriations in the Senate version are stricken, and the related provisions are made subject to appropriation.	Appropriations are provided from multiple sources for the following purposes: (1) \$60,000 to DOH for adopting rules and conducting inspections of mobile medication units; (2) \$734,000 to the Department of Revenue for administering the recovery residence tax exemption; (3) \$23,000 to the Joint Legislative Audit and Review Committee for	Maintains all appropriations from the Conference Committee Report, with the following additions: An additional \$1.4 million to HCA for the purpose of maintaining a memorandum of understanding with the CJTC to provide funding for community grants.

	<p>established clubhouses throughout the state; (4) \$3.166 million to the HCA for establishing and expanding 23-hour crisis relief centers; (5) \$3.6 million to the HCA for maintaining a memorandum of understanding with the CJTC to provide ongoing funding for community grants; and (6) \$5 million to the HCA for providing ongoing grants to LEAD programs.</p>		<p>conducting a tax preference review of the recovery residence tax exemption;</p> <p>(4) \$1.263 million to the WSP for completing the analysis of evidence in certain drug possession offense investigations;</p> <p>(5) \$7.593 million to the HCA for administering this act;</p> <p>(6) \$4 million to the HCA for establishing a health engagement hub pilot program;</p> <p>(7) \$3.6 million to the HCA for maintaining a memorandum of understanding with the CJTC to provide ongoing funding for community grants;</p> <p>(8) \$2 million to the HCA for establishing and expanding 23-hour crisis relief center capacity;</p> <p>(9) \$3.768 million to the</p>	<p>An additional \$2.5 million to HCA for the purpose of providing short-term housing vouchers to individuals with substance use disorders.</p> <p>\$5 million to HCA for the purpose of awarding contracts through grant programs for LEAD.</p> <p>An additional \$1.7 million to the Office of Homeless Youth to administer a competitive grant process to award funding to youth shelters, HOPE centers, and crisis residential centers to provide behavioral health support services.</p> <p>\$9 million is appropriated to the</p>
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			<p>HCA for increasing the number of mobile methadone units operated by existing OTPs, increasing the number of OTP fixed medication units operated by existing OTPs, and expanding OTPs with a prioritization for rural areas;</p> <p>(10) \$5.242 million to the HCA for providing grants to providers of employment and educational services for individuals with SUDs;</p> <p>(11) \$2 million to the HCA for providing grants to support SUD family navigator programs;</p> <p>(12) \$5 million to the HCA to provide short-term housing vouchers for individuals with SUDs, with a focus on the five most populous counties of the state;</p> <p>(13) \$4 million to the HCA for providing grants</p>	<p>Office of Public Defense to provide public defense services for defendants charged with possession or public use of drugs in counties with a population of 500,000 or less and cities with a population of 2000,000 or less.</p>
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			<p>for operational costs of recovery residences, with a focus on the five most populous counties of the state;</p> <p>(14) \$2 million to the HCA for providing behavioral health co-responder services on nonlaw enforcement emergency medical response teams;</p> <p>(15) \$500,000 to the HCA for continued and increased contracting services to provide information and support on safe housing and support services for certain youth; and</p> <p>(16) \$1.3 million to the Department of Commerce for the Office of Homeless Youth to administer grant funding to youth shelters and centers to provide behavioral health support services, including SUD services.</p>	
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Null and Void and Severability Clauses	Not in the Senate version.	Adds a null and void clause and a severability clause.	Same as House version, except the null and void clause is removed.	Same as the Conference Committee Report.
Intent Section	Contains an intent section.	Contains a modified intent section.	Removed.	Same as the Conference Committee Report.