

Multiple Agency Fiscal Note Summary

Bill Number: 5467 SB	Title: Controlled sub. possession
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Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	Fiscal note not available					
Loc School dist-SPI						
Local Gov. Other						
Local Gov. Total						

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	Fiscal note not available											
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Washington State Patrol	6.0	2,965,816	2,965,816	2,965,816	6.0	2,619,014	2,619,014	2,619,014	6.0	2,619,014	2,619,014	2,619,014
Department of Children, Youth, and Families	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Department of Corrections	.0	0	0	0	.0	0	0	0	.0	0	0	0
Total \$	6.0	2,965,816	2,965,816	2,965,816	6.0	2,619,014	2,619,014	2,619,014	6.0	2,619,014	2,619,014	2,619,014

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Fiscal note not available								
Loc School dist-SPI									
Local Gov. Other			577,260						
Local Gov. Other	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.								
Local Gov. Total			577,260						

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	Fiscal note not available								
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Washington State Patrol	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Children, Youth, and Families	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Fiscal note not available								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Washington State Patrol	Non-zero but indeterminate cost and/or savings. Please see discussion.
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Prepared by: Cynthia Hollimon, OFM	Phone: (360) 810-1979	Date Published: Preliminary
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Individual State Agency Fiscal Note

Bill Number: 5467 SB	Title: Controlled sub. possession	Agency: 101-Caseload Forecast Council
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Joe McKittrick	Phone: 3607867287	Date: 01/26/2023
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 01/31/2023
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 01/31/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/03/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

See attached.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

See attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

SB 5467
ENCOURAGING TREATMENT FOR POSSESSION
OF CERTAIN COUNTERFEIT DRUGS OR
CONTROLLED SUBSTANCES
101 – Caseload Forecast Council
January 27, 2023

SUMMARY

A brief description of what the measure does that has fiscal impact.

- Section 1 Amends RCW 69.50.4011 by reinserting language that expires as of July 1, 2023, by adding the term “knowingly” in Possession of a Counterfeit Substance. Additionally, establishes the offense as a gross misdemeanor offense and directs the punishment to Section 5 of the bill.
- Section 2 Amends RCW 69.50.4013 by reinserting language that expires as of July 1, 2023, by adding the term “knowingly” in Possession of a Controlled Substance. Additionally, establishes the offense as a gross misdemeanor offense and directs the punishment to Section 5 of the bill.
- Section 3 Amends RCW 69.50.4014 by reinserting language that expires as of July 1, 2023, by adding the term “knowingly” in Possession of 40 grams or less of Cannabis.
- Section 4 Amends RCW 69.41.030 by reinserting language that expires as of July 1, 2023, by adding the term “knowingly” in Sell, Deliver, or Possess any Legend Drug. Additionally, directs the punishment to Section 5 of the bill.
- Section 5 Adds a new section to chapter 69.50 RCW stating that if a sentenced individual convicted of violations of RCW 69.50.4011(1)(b) or 69.50.4013 agrees to a substance use disorder assessment and to comply with recommended treatment, the sentence shall be confinement up to 364 days, all of which shall be suspended for a period not to exceed two years.
- Section 5 Additionally states for individuals convicted of RCW 69.41.030(2)(b), if the person agrees to a substance use disorder assessment and to comply with recommended treatment, the sentence shall be confinement up to 90 days, all of which shall be suspended for a period not to exceed one year.
- Section 5 Additionally states for individuals convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) where the legend drug is classified as schedule II substance, or if the sentenced person refuses to submit to the assessment and comply with treatment, imprisonment shall not be less than 45 days.
- Section 5 Additionally provides information regarding the assessment and funding for services.
- Section 5 Additionally requires that as a condition of probation, the sentenced individual must comply with the treatment recommendations of the substance use disorder assessment and that if performing unsatisfactorily, the court or prosecutor may make a motion for a hearing to consider sanctions. After notice to the individual, the court is required to hold a hearing to determine if a sanction or revocation is warranted.

- Section 6 Amends RCW 9.96.060, requires the court to vacate a conviction for an individual who successfully completes a substance use disorder treatment program required under Section 5 of the act.
- Section 9 Change the expiration date of Sections 8-10, 12, 15, and 15 of 2021 c 311 to the effective date of this section.
- Section 10 Repeals RCW 10.31.115 (Drug Possession Referral to assessment and services) and 2021 c 311 s 13.
- Section 11 States if any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.
- Section 12 States the act takes effect immediately.

EXPENDITURES

Assumptions

None.

Impact on the Caseload Forecast Council.

None.

Background Information

In February 2021, the Washington State Supreme Court ruled in *State v. Blake* that the state’s felony drug possession statute was unconstitutional. Prior to the Blake decision, Drug Possession was a felony offense ranked at Seriousness Level I on the Adult Felony Drug Grid and a Category C on the Juvenile Offender Sentencing Grid.

As a result of the court decision in February 2021, simple drug possession became non-criminal.

The 2021 Legislature addressed the issue and made changes to the statutes ruled unconstitutional by adding the term “knowingly” – effective as of May 13, 2021 (ESB 5476). The bill also lowered the prior felony possession offenses to misdemeanor offenses and encouraged prosecutors to divert cases for assessment, treatment, or other services. The possession offenses were removed from the Adult felony Drug Grid, and lowered to a Category E on the Juvenile Offender Grid.

ESB 5476 contained a sunset clause, making the changes expire as of July 1, 2023, at which time without any changes, simple possession would once again be unconstitutional and no longer a crime.

This bill reintroduces the term “knowingly” to the drug possession statutes and classifies simple possession of a controlled or counterfeit substance a gross misdemeanor. Additionally reintroduces the term “knowingly” to the sale, possession or delivery of a legend drug. The sale, delivery, or possession with intent to sell or deliver a legend drug remains a Class B felony. Knowingly possessing a legend drug remains a misdemeanor offense.

Impact on prison and jail beds and community corrections population:

This bill results in the possession of a controlled or counterfeit substance or legend drug to remain a criminal offense. Rather than encourage the prosecutors to divert such cases to assessment and treatment, a new section regarding punishment of such offenses and treatment options is added to chapter 69.50 RCW.

Possession of a Counterfeit or Controlled Substance is currently a misdemeanor offense that is being raised to a gross misdemeanor offense under the provisions of the bill (rather than become decriminalized as of July 1, 2023.) The CFC does not collect data on misdemeanor and gross misdemeanor offenses, and, therefore, cannot reliably estimate bed impacts resulting from the bill. However, since misdemeanor offenses are punishable by a term of confinement of 0-90 days in jail and gross misdemeanor offenses are punishable by a term of confinement of 0-364 days in jail, any impact of the change from current sentencing would manifest itself as a potential increased need for jail beds only.

However, the bill also adds a new punishment section for such offenses to allow for suspended sentences so it is unknown if confinement time will increase or decrease from current practice as individuals who do not successfully complete their term of probation may be sanctioned or the suspended sentenced may be revoked. Individuals who successfully complete a substance use disorder treatment program under Section 5 of the bill shall have their offense vacated by the court.

The provisions of the bill have no impact to DOC supervision caseload.

Impact on Juvenile Rehabilitation and local beds

This bill results in the possession of a controlled or counterfeit substance or legend drug to remain a criminal offense.

Possession of a Counterfeit or Controlled Substance is currently a misdemeanor offense that is being raised to a gross misdemeanor offense under the provisions of the bill (rather than become decriminalized as of July 1, 2023.) By adding the term “knowingly” to possession offenses, the offenses conform with the issue raised in the Blake decision, and will remain criminal offenses as of July 1, 2023. However, the juvenile offense grid was not amended by the bill, and as such, Possession of a Controlled Substance will be a Category C offense as of July 1, 2023.

The CFC does not collect data on misdemeanor and gross misdemeanor offenses, and, therefore, cannot reliably estimate bed impacts resulting from the bill. However, the offense of Possession of a Controlled Substance would be punishable by a standard range term of between Local Sanctions (0-30 days in local juvenile detention) and 52 weeks (assumed as maximum punishment for a gross misdemeanor is 364 days) in Juvenile Rehabilitation (depending on the number of prior adjudications) for juveniles adjudicated for the offense. Therefore, incidences of this offense would likely impact both local juvenile detention and Juvenile Rehabilitation beds.

However, the bill also adds a new punishment section for such offenses to allow for suspended sentences so it is unknown if confinement time will increase or decrease from current practice as individuals who do not successfully complete their term of probation may be sanctioned or the suspended sentenced may be revoked. Individuals who successfully complete a substance use disorder treatment program shall have their offense vacated by the court.

Individual State Agency Fiscal Note

Bill Number: 5467 SB	Title: Controlled sub. possession	Agency: 225-Washington State Patrol
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	6.0	6.0	6.0	6.0	6.0
Account					
General Fund-State 001-1	1,656,309	1,309,507	2,965,816	2,619,014	2,619,014
Total \$	1,656,309	1,309,507	2,965,816	2,619,014	2,619,014

Estimated Capital Budget Impact:

Non-zero but indeterminate cost and/or savings. Please see discussion.

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

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- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Joe McKittrick	Phone: 3607867287	Date: 01/26/2023
Agency Preparation: Yvonne Ellison	Phone: 360-596-4042	Date: 01/31/2023
Agency Approval: Mario Buono	Phone: (360) 596-4046	Date: 01/31/2023
OFM Review: Tiffany West	Phone: (360) 890-2653	Date: 02/03/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

The proposed legislation will have a fiscal impact on the Washington State Patrol (WSP).

Sections 1 through 4 adds 'knowingly' to the current language making it unlawful to possess a counterfeit substance, controlled substance, or a prescription drug without a valid prescription.

Sections 1(3) and 2(2) make such possession a gross misdemeanor.

Section 5 adds mandatory treatment options as a condition of probation to the sentencing guidelines of counterfeit and controlled substances and prescription drugs, and allows individuals who successfully complete the mandatory treatment program to request that the charges be dismissed or vacated by providing proof of successful completion to the court. The court must then dismiss or vacate the charge.

Section 6 adds the vacating requirements in Section 5 to RCW 9.96.060.

Section 7 requires the WSP Forensic Laboratory Services Bureau to complete the necessary analysis of any evidence submitted for suspected violations of RCWs 69.50.4011, 69.50.4013, and 69.41.030 within 30 days of receipt of the request for analysis.

Section 12 will make the proposed legislation effective immediately upon being signed into law.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

NONE

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

We assume that the courts will be responsible for all vacating actions that result from the proposed legislation and there will be no impact to the WSP Criminal Records Division.

We expect the changes in definition for possession of a counterfeit substance, controlled substance, and prescription drug without a valid prescription, and the requirement to complete the necessary analysis of submitted evidence for suspected violations of RCWs 69.50.4011, 69.50.4013, and 69.41.030 within 30 days to have a significant impact on the WSP Crime Laboratory Division (CLD).

The CLD's current testing capacity for seized drug samples is approximately 9,000 per year. We expect that the changes in definition will increase the number of samples for analysis to more than 14,000 per year.

In order to meet the expected increase of at least 5,000 samples per year and complete testing analysis within the 30 days required in the proposed legislation, we will need to add six full-time seized drug analysts as well as the necessary testing equipment including Gas Chromatography Mass Spectrometers (GC/MS), stereomicroscopes, polarized light microscopes (PLM), analytical balances, and consumable testing supplies including glassware, solvents, and packaging material.

The estimated onetime equipment costs include:

1. 2 GC/MS - \$200,000
2. 6 Stereomicroscopes - \$30,000
3. 6 PLM - \$60,000
4. 2 electronic balances - \$5,000
5. 6 Workstations - \$60,000

The estimated annual ongoing costs include:

1. Six Forensic Scientist 3 FTEs for Materials Analysis - \$834,000
2. Consumable testing supplies - \$150,000

There is also the possibility of an increase in Latent Print and DNA testing requests as a result of the changes in definition in an effort to demonstrate knowing possession. This would negatively impact the case turn-around times in these functional areas, particularly in DNA as the WSP is currently under a legislatively mandated 45-day turn-around for Sexual Assault kit analysis that could be impacted by having to test touch DNA in drug possession cases. If this occurs, we will seek funding in a future budget period for the necessary personnel to meet any increased demand in those sections.

We base estimated salary expenditures on current levels for the positions requested per published salary schedules, plus any applicable incentive or assignment pay. We compute estimated benefits expenditures based on federal or state mandated rates plus state provided amounts for health insurance and workers' compensation insurance. We assume that any increases in these rates or amounts will be covered by legislation establishing the increase.

We compute estimated support expenditures such as supplies & materials, communications, computer costs (hardware and software), vehicle and vehicle operating costs, among others, using average costs to support agency FTEs. We adjust the estimated support costs to reflect the needs of individual divisions or positions within the agency.

We base our estimate for agency indirect costs on the approved federal indirect cost rate of 31.88 percent. We apply this indirect cost rate percentage to all categories of expenditure with only two exceptions: capital equipment and expenditures after \$25,000 of each projected contract. Indirect costs include, but are not limited to, computer and telecommunications support, payroll processing, vendor payments, general accounting, procurement administration, inventory control, and human resource management.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	1,656,309	1,309,507	2,965,816	2,619,014	2,619,014
Total \$			1,656,309	1,309,507	2,965,816	2,619,014	2,619,014

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	6.0	6.0	6.0	6.0	6.0
A-Salaries and Wages	576,936	576,936	1,153,872	1,153,872	1,153,872
B-Employee Benefits	198,289	198,289	396,578	396,578	396,578
C-Professional Service Contracts					
E-Goods and Other Services	189,912	196,518	386,430	393,036	393,036
G-Travel	14,400	14,400	28,800	28,800	28,800
J-Capital Outlays	362,200	10,950	373,150	21,900	21,900
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-Agency Indirect Costs	314,572	312,414	626,986	624,828	624,828
Total \$	1,656,309	1,309,507	2,965,816	2,619,014	2,619,014

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Forensic Scientist 3	96,156	6.0	6.0	6.0	6.0	6.0
Total FTEs		6.0	6.0	6.0	6.0	6.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

IV. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

Non-zero but indeterminate cost and/or savings. Please see discussion.

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Depending on the ability of current Materials Analysis laboratory locations to reconfigure equipment and staffing layouts, there may be costs related to facility remodels in some locations. Should the addition of personnel be required beyond what is currently identified, significant facilities expansion may be needed. These potential costs are not yet known.

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5467 SB	Title: Controlled sub. possession	Agency: 307-Department of Children, Youth, and Families
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

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- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Joe McKittrick	Phone: 3607867287	Date: 01/26/2023
Agency Preparation: Kevin Keogh	Phone: 360-628-2652	Date: 02/02/2023
Agency Approval: James Smith	Phone: 360-764-9492	Date: 02/02/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/03/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 1 amends the RCW on counterfeit substances to include to include the term “knowingly” for counterfeit substance possession. This language was set to expire on July 1, 2023 rendering the crime unconstitutional as determined by the State v. Blake supreme court decision. It also establishes this crime as a gross misdemeanor.

Section 2 amends the RCW on controlled substances to include to include the term “knowingly” for controlled substances possession. This language was set to expire on July 1, 2023 rendering the crime unconstitutional as determined by the State v. Blake supreme court decision. It also establishes this crime as a gross misdemeanor.

Section 3 amends the RCW on possession of 40 grams or less of marijuana to include to include the term “knowing”. This language was set to expire on July 1, 2023 rendering the crime unconstitutional as determined by the State v. Blake supreme court decision. It also establishes this crime as a gross misdemeanor.

Section 4 amends the RCW on legend drugs to include to include the term “knowingly” for legend drug possession. This language was set to expire on July 1, 2023 rendering the crime unconstitutional as determined by the State v. Blake supreme court decision. It also establishes this crime as a gross misdemeanor.

Section 5 requires courts to sentence individuals with the drug possession charges amended in this bill to suspended sentences if they agree to comply with substance use disorder assessment and treatment. This section also requires that individuals on these suspended sentences are subject to sanction or revocation of the suspended sentence if they don't comply with the treatment program. Upon completion of a substance use disorder treatment program courts are order to vacate the suspended sentence.

Section 6 adds completion of a substance use disorder treatment program as a reason the court must vacate a sentence given under section 5.

Section 10 repeals the RCW that requires law enforcement officers to offer a referral to assessment services for individuals with the drug possession charges amended above.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Indeterminate fiscal impact.

The amendments to the drug possession RCWs, which effectively maintain drug possession as a prosecutable crime would likely result in an increase in Average Daily Population (ADP). The bill also allows for individuals to complete a substance use disorder treatment program and have their sentences vacated which could result in a reduction in ADP. It is unknown at this time how many youth will be impacted; therefore the caseload forecast and per capita adjustments are not known at this time.

DCYF assumes the impact will result when the ADP caseload changes in the JR residential facilities forecast. The impact would be reflected in the forecasted maintenance level budget step. DCYF will true up our fiscal impact in subsequent budget submittals if the legislation is enacted into law.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

None

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5467 SB	Title: Controlled sub. possession	Agency: 310-Department of Corrections
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
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Legislative Contact: Joe McKittrick	Phone: 3607867287	Date: 01/26/2023
Agency Preparation: James Cerna	Phone: (360) 725-8428	Date: 02/05/2023
Agency Approval: Ronell Witt	Phone: (360) 725-8428	Date: 02/05/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/05/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This bill results in the possession of a controlled or counterfeit substance or legend drug to remain a criminal offense. Rather than encourage the prosecutors to divert such cases to assessment and treatment, a new section regarding punishment of such offenses and treatment options is added to chapter 69.50 RCW.

Section 1 adds, “Knowingly possess a counterfeit substance; “Knowingly” possess a controlled substance without exceptions, and “Establishes the offense as a gross misdemeanor offense and directs the punishment to Section 5 of the bill.”

Section 2 adds, “Knowingly” possess a controlled substance without exceptions; “knowingly” possess, manufacture, sell, or distribute cannabis products or concentrates. Deletes “class C felony punishable under chapter 9A.20 RCW” and replaces this language with “gross misdemeanor offense and directs the punishment to Section 5 of the bill.”

Section 3 adds “knowing” possession of 40 grams or less of Cannabis is guilty of a misdemeanor. Establishes the offense as a gross misdemeanor offense and directs the punishment to Section 5 of the bill.

Section 4(1) adds, “knowingly” possess any legend drug with some exceptions associated with prescriptions Adds, “punishable under section 5 of this act.”

Section 5 (New Section) adds a new section to chapter 69.50 RCW stating that if a sentenced individual convicted of violations of RCW 69.50.4011(1)(b) or 69.50.4013 agrees to a substance use disorder assessment and to comply with recommended treatment, the sentence shall be confinement up to 364 days, all of which shall be suspended for a period not to exceed two years. States for individuals convicted of RCW 69.41.030(2)(b), if the person agrees to a substance use disorder assessment and to comply with recommended treatment, the sentence shall be confinement up to 90 days, all of which shall be suspended for a period not to exceed one year. Additionally states for individuals convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) where the legend drug is classified as schedule II substance, or if the sentenced person refuses to submit to the assessment and comply with treatment, imprisonment shall not be less than 45 days. Additionally provides information regarding the assessment and funding for services. Additionally requires that as a condition of probation, the sentenced individual must comply with the treatment recommendations of the substance use disorder assessment and that if performing unsatisfactorily, the court or prosecutor may make a motion for a hearing to consider sanctions. After notice to the individual, the court is required to hold a hearing to determine if a sanction or revocation is warranted.

Section 6 amends RCW 9.96.060 and requires the court to vacate a conviction for an individual who successfully completes a substance use disorder treatment program required under Section 5 of the act.

Section 9 changes the expiration date of Sections 8-10, 12, 15, and 15 of 2021 c 311 to the effective date of this section.

Section 10 repeals RCW 10.31.115 (Drug Possession Referral to assessment and services) and 2021 c 311 s 13.

Section 11 states if any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 12 states the act takes effect immediately.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

We assume this bill will have a fiscal impact to DOC less than \$50,000 per Fiscal Year (FY).

Possession or a Counterfeit or Controlled Substance is currently a misdemeanor offense that is being raised to a gross misdemeanor offense under the provisions of the bill (rather than become decriminalized as of July 1, 2023.)

The Case Forecast Council does not collect data on misdemeanor and gross misdemeanor offenses, and, therefore, cannot reliably estimate bed impacts resulting from the bill. However, since misdemeanor offenses are punishable by a term of confinement of 0-90 days in jail and gross misdemeanor offenses are punishable by a term of confinement of 0-364 days in jail, any impact of the change from current sentencing would manifest itself as a potential increased need for jail beds only.

However, the bill also adds a new punishment section for such offenses to allow for suspended sentences so it is unknown if confinement time will increase or decrease from current practice as individuals who do not successfully complete their term of probation may be sanctioned or the suspended sentenced may be revoked. Individuals who successfully complete a substance use disorder treatment program under Section 5 of the bill shall have their offense vacated by the court.

The Caseload Forecast Council (CFC) has no information concerning how many incidents of gross misdemeanors may will occur. As such, the CFC cannot reliably predict bed impacts resulting from the bill.

The DOC assumes this bill would likely result in an Average Daily Population (ADP) increase, although the impact cannot be reliably estimated. Therefore, the fiscal impact is indeterminate, assumed to be less than \$50,000 per FY.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5467 SB

Title: Controlled sub. possession

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

Cities: Approximately \$442,860 to provide training to law enforcement officers on modified criminal offenses, referral requirements and warrant procedures; indeterminate expenditure impact on local law enforcement due to processing incidents of upgraded gross misdemeanor offenses; indeterminate expenditure impact due to change in demand for jail beds

Counties: Approximately \$134,400 to provide training to law enforcement officers on modified criminal offenses, referral requirements and warrant procedures; indeterminate expenditure impact on law enforcement, prosecutors, and public defenders as a result of processing incidents of upgraded gross misdemeanor offenses; indeterminate expenditure impact on prosecutors and public defenders as a result of new sentencing requirements; indeterminate expenditure impact due to change in demand for jail, juvenile detention beds

Special Districts:

Specific jurisdictions only:

Variance occurs due to:

Part II: Estimates

No fiscal impacts.

Expenditures represent one-time costs: Approximately \$577,260 to provide training to local law enforcement officers on modified criminal offenses, referral requirements and warrant procedures

Legislation provides local option:

Key variables cannot be estimated with certainty at this time: Number of incidents of upgraded gross misdemeanor offenses that may occur; number of people who accept probation conditions in exchange for a suspended sentence and subsequently violate those conditions

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Jurisdiction	FY 2024	FY 2025	2023-25	2025-27	2027-29
City	442,860		442,860		
County	134,400		134,400		
TOTAL \$	577,260		577,260		
GRAND TOTAL \$					577,260

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: James Vogl	Phone: 360-480-9429	Date: 02/02/2023
Leg. Committee Contact: Joe McKittrick	Phone: 3607867287	Date: 01/26/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/02/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/03/2023

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

The proposed legislation would amend several RCW sections related to drug possession and would prescribe penalties.

Section 1 would amend RCW 69.50.4011, specifying that knowing possession of a counterfeit substance would be a gross misdemeanor punishable under section 5 of this act.

Section 2 would amend RCW 69.50.4013, specifying that no person may knowingly possess a controlled substance and no person under 21 may “knowingly possess, manufacture, sell, or distribute cannabis, cannabis-infused products, or cannabis concentrates.” Violation of this section would be a gross misdemeanor punishable under section 5 of this act.

Section 3 would amend RCW 69.50.4014, specifying that “except as provided in RCW 69.50.401(2)(c) or as otherwise authorized by [chapter 69.50 RCW], any person found guilty of knowing possession of forty grams or less of cannabis is guilty of a misdemeanor.”

Section 4 would amend RCW 69.41.030, specifying that “it shall be unlawful for any person to sell, deliver, or knowingly possess any legend drug,” with some exceptions. Violations of this section would be a misdemeanor punishable under section 5 of this act.

Sections 1 through 4 would specify that “if a peace officer cites an individual for a violation of this section involving knowing possession, no warrant may be issued for a failure to appear at arraignment if the individual was not personally served with the notice to appear which shall include the time and place which the individual is to appear in court.”

Section 5 would add a new section to chapter 69.50 RCW, specifying that for individuals convicted of violations of sections 1, 2 or 4 of this act, “if the sentenced individual agrees as a condition of probation to submit to a substance use disorder assessment and comply with recommended treatment,” they shall be sentenced to a term of confinement of no more than 364 or 90 days, all of which shall be suspended for no more than one or two years. A person subject to substance use disorder assessment and treatment would be required by the court to complete a course in an alcohol and drug information school or to complete more intensive treatment in a treatment program, as determined by the court. The suspended sentence length and suspension period would vary based on the offense an individual was convicted of.

This section would also specify that if the individuals above do not agree to the conditions of probations, they would be sentenced to a term of confinement of no less than 45 days.

Subject to state funding, this section would make a substance use disorder assessment available to individuals who agree to the conditions of probation at the courthouse at the time of sentencing. This section would also specify that subject to the availability of appropriated funds, the substance use disorder assessment and treatment shall be provided at no cost for individuals deemed to be indigent.

In certain circumstances specified by this section, individuals who violated the conditions of probation may be sentenced to a term of confinement of no less than 45 days of their suspended sentence.

Finally, this section would specify that “an individual charged with violating RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030, who subsequently enrolls in and completes a substance use disorder treatment program licensed or certified by the department of health and files proof of completion with the court prior to conviction on the charge, may make a motion to dismiss the charge.” When someone files such proof, the court would be required to “terminate probation and enter an order vacating the individual’s conviction.”

Section 6 would amend RCW 9.96.060, specifying that “if an individual who successfully completes a substance use disorder treatment program as required under section 5 of this act files proof of completion with the court, upon

verification that the individual successfully completed the substance use disorder treatment program, the court must vacate the conviction or convictions.”

Section 10 would repeal RCW 10.31.115, related to drug possession, and referral to assessment and services.

Section 12 states that the proposed legislation would take effect immediately.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

The proposed legislation would have both determinate and indeterminate impacts on local government expenditures.

According to the Washington Association of Sheriffs and Police Chiefs (WASPC), all local law enforcement officers would need to go through training regarding the modifications this bill would make to existing criminal offenses, as well as the changes it would make to referral requirements and warrant procedures. WASPC estimates that approximately one hour of training would be required per law enforcement officer. This training would require a one-time cost of \$442,860 for cities and \$134,400 for counties, for a total one-time cost to local governments of \$577,260.

The 2021 Crime in Washington Report conducted by WASPC states that there are 6,710 commissioned officers in police departments and 2,240 commissioned officers in sheriff’s departments, for a total of 8,950 commissioned law enforcement employees that would require training. The 2023 Local Government Fiscal Note Program Criminal Justice Cost Model estimates the average hourly salary (including benefits and overhead) for an officer employed by a city to be \$66, and the same figure for an officer employed by a county to be \$60. If every officer in Washington had to complete approximately one hour of training, the cost to local governments would be:

Cities:

6,710 officers X 1 hour X \$66 = \$442,860

Counties:

2,240 officers X 1 hour X \$60 = \$134,400

Total:

\$442,860 + \$134,400 = \$577,260

Training materials and time required may differ among different departments, however.

According to the Washington State Caseload Forecast Council’s (CFC) fiscal note on this bill, raising knowing possession of a counterfeit or controlled substance from a misdemeanor to a gross misdemeanor could increase demand for jail beds. Gross misdemeanors are punishable by a term of confinement of 0-364 days in jail, while misdemeanors are punishable by a term of confinement of 0-90 days in jail.

However, since CFC does not collect data on misdemeanor and gross misdemeanor offenses, it cannot predict the jail bed impacts that could result from this bill. In addition, the sentencing requirements that section 5 would create would give people the option to submit to substance use disorder assessment and comply with recommended treatment as a condition for a suspended sentence. People successfully meeting the conditions of their probation under the requirements of this section would reduce demand for jail beds, while people who violate their probation conditions could have their suspended sentence revoked and be required to serve a term of confinement in jail. Accordingly, the associated expenditure impact on local governments stemming from a change in demand for jail beds as a result of the proposed legislation is indeterminate. The 2023 Local Government Fiscal Note Program Criminal Justice Cost Model estimates that the average daily cost of occupying a jail bed is \$145.

According to the CFC fiscal note for this bill, continuing to classify knowing possession of a counterfeit or controlled

substance as criminal offenses could also affect demand for county juvenile detention beds. The proposed legislation would not amend the juvenile sentencing grid, so possession of a controlled substance would be a category C offense, punishable by between 0-30 days in juvenile detention and 52 weeks in juvenile rehabilitation, beginning July 1, 2023. The Local Government Fiscal Note Program does not have detailed information on the costs of juvenile detention, however the average daily rate for juvenile detention beds is generally higher than the same figure for a jail bed. Additionally, it is unknown how many future juvenile incidents of knowing possession of a counterfeit or controlled substance may occur as a result of this bill's provisions, so the resulting impact on county juvenile detention expenditures is indeterminate.

In addition to bed impacts, upgrading knowing possession of a counterfeit or controlled substance from misdemeanor to gross misdemeanor offenses could also increase law enforcement, prosecution and public defense expenditures as a result of processing incidents of the upgraded offenses. According to the 2023 Local Government Fiscal Note Program Criminal Justice Cost Model, the combined law enforcement, prosecution and public defense costs to process an incident of a misdemeanor, and a gross misdemeanor are as follows:

Misdemeanor: \$2,073

Gross misdemeanor: \$5,660

However, given that it is unknown how many incidents of the upgraded offenses may occur, the magnitude of the expenditure impacts on local governments from processing incidents of these offenses is indeterminate.

The Washington Association of Prosecuting Attorneys (WAPA) indicates that the new sentencing requirements that section 5 of the proposed legislation would create could require additional prosecutor time, as prosecuting attorneys would review probation violations and participate in accompanying hearings. WAPA estimates that this would require approximately 30 minutes of prosecutor time per case. According to the 2023 Local Government Fiscal Note Program Unit Cost Model, the average hourly salary plus benefits and overhead for a prosecuting attorney is \$82. It is reasonable to assume such cases would require a similar amount of time from public defenders.

It is unknown, however, how many people may accept probation conditions in exchange for a suspended sentence under section 5 of the proposed legislation, or how many of those people may violate the conditions of their probation, so the total local government expenditure impact resulting from additional prosecutor and public defender time is indeterminate.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

The proposed legislation would have no impact on local government revenues.

SOURCES:

Crime in Washington Report, 2021

Local Government Fiscal Note Program Criminal Justice Cost Model, 2023

Local Government Fiscal Note Program Unit Cost Model, 2023

Washington Association of Prosecuting Attorneys

Washington Association of Sheriffs and Police Chiefs

Washington State Caseload Forecast Council