

Multiple Agency Fiscal Note Summary

Bill Number: 5536 SB	Title: Controlled substances
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Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Health	0	0	4,000	0	0	8,000	0	0	8,000
Total \$	0	0	4,000	0	0	8,000	0	0	8,000

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	.0	1,900	1,900	1,900	.0	0	0	0	.0	0	0	0
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Commerce	.1	36,956	36,956	36,956	.0	0	0	0	.0	0	0	0
Washington State Health Care Authority	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Health	.2	0	0	64,000	.1	0	0	24,000	.1	0	0	24,000
Department of Children, Youth, and Families	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Department of Corrections	.0	2,760	2,760	2,760	.0	0	0	0	.0	0	0	0
Total \$	0.3	41,616	41,616	105,616	0.1	0	0	24,000	0.1	0	0	24,000

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts			45,432,000			45,432,000			45,432,000
Loc School dist-SPI									
Local Gov. Other			3,839,760			1,407,500			
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			3,839,760			1,407,500			

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	.0	0	0	.0	0	0	.0	0	0
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Department of Commerce	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Department of Health	.0	0	0	.0	0	0	.0	0	0
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									
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

Department of Commerce	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: Final 2/13/2023
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Judicial Impact Fiscal Note

Bill Number: 5536 SB	Title: Controlled substances	Agency: 055-Administrative Office of the Courts
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

STATE	FY 2024	FY 2025	2023-25	2025-27	2027-29
State FTE Staff Years					
Account					
General Fund-State 001-1	1,900		1,900		
State Subtotal \$	1,900		1,900		
COUNTY	FY 2024	FY 2025	2023-25	2025-27	2027-29
County FTE Staff Years					
Account					
Local - Counties	13,009,000	13,009,000	26,018,000	26,018,000	26,018,000
Counties Subtotal \$	13,009,000	13,009,000	26,018,000	26,018,000	26,018,000
CITY	FY 2024	FY 2025	2023-25	2025-27	2027-29
City FTE Staff Years					
Account					
Local - Cities	9,707,000	9,707,000	19,414,000	19,414,000	19,414,000
Cities Subtotal \$	9,707,000	9,707,000	19,414,000	19,414,000	19,414,000

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

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 for 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.

Legislative Contact: Joe McKittrick	Phone: 3607867287	Date: 01/26/2023
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 02/06/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 02/06/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/08/2023

182,150.00

Request # 115-1

Form FN (Rev 1/00)

1

Bill # 5536 SB

Part II: Narrative Explanation

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

This bill would amend and add new sections to laws relating to the justice system and behavioral health responses for persons experiencing circumstances that involve controlled substances, counterfeit substances, legend drugs, and drug paraphernalia.

The following sections of the bill would decrease the annual number of cases before superior courts by changing certain drug offenses from a felony to a misdemeanor and, as a result, increase the annual number of cases before the courts of limited jurisdiction. Additionally, these cases are expected to take more court time because additional hearings would be needed in each case.

* Section 1 would make knowing possession of a counterfeit substance as a gross misdemeanor. It encourages prosecutors to divert such cases for assessment, treatment, and other services; encourages law enforcement officers to refer the defendant to assessment and services; and requires the court to advise the defendant of the pretrial diversion program as indicated in Section 8 of the bill.

* Section 2 would make a person who “knowingly” possesses a controlled substance a gross misdemeanor instead of a C Felony. It encourages prosecutors to divert such cases for assessment, treatment, and other services; encourages law enforcement officers to refer the defendant to assessment and services; and requires the court to advise the defendant of the pretrial diversion program as indicated in Section 8 of the bill.

* Section 3 would provide for the same diversion options for possession of forty grams or less of cannabis.

* Section 4 would maintain “knowing” possession of any legend drug as a misdemeanor and add the same diversion options in previous sections of the bill.

* Section 5 would remove the act of giving drug paraphernalia from actions considered as a class 1 civil infraction.

Section 8 would require the court to notify the defendant of the pretrial diversion program which the courts would need to create or, if available, utilize existing therapeutic courts. The assumption is that about 50 percent of the defendants will choose the pretrial diversion program alternative.

Section 9 would edit the vacate rules to allow someone that was convicted of a possession charge to get their charge vacated upon petition if they provide proof of subsequently completing an approved substance use disorder treatment program. This would require an update of court forms.

II. B - Cash Receipts Impact

None

II. C - Expenditures

This bill would have fiscal impact on the Administrative Office of the Courts (AOC), superior courts, and the courts of limited jurisdiction. The impact to the courts difficult to accurately estimate. This judicial impact note makes a best estimate of the number of cases that would shift from superior courts to courts of limited jurisdiction based upon superior court caseload data.

ADMINISTRATIVE OFFICE OF THE COURTS

COURT FORMS

This bill would require changes to the vacatur forms which would take approximately 15 hours of work by a Legal Services Senior Analyst.

Legal Services Senior Analyst. Beginning July 1, 2023 through June 30, 2024, AOC would require salary, benefits, and associated standard costs for 0.01 FTE to update required court forms.

AOC STAFF IMPACTS INCLUDE STANDARD COSTS

Explanation of standard costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 31.89% of salaries.

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2

Request # 115-1

Bill # 5536 SB

Goods and Services are the agency average of \$3,800 per direct program FTE.

Travel is the agency average of \$2,500 per direct program FTE.

One-time IT Equipment is \$4,800 for the first fiscal year per direct program FTE. Ongoing Equipment is the agency average of \$1,600 per direct program FTE.

Agency Indirect is calculated at a rate of 24.73% of direct program salaries and benefits.

SUPERIOR COURT

No Fiscal Impact

Where the bill changes the seriousness of certain drug offenses from a felony to a misdemeanor, this judicial impact note assumes fewer cases will remain in superior court and be heard in district or municipal court. However, there will not be a cost savings to superior court. These savings can only be realized if the number of judicial officers is reduced together with a corresponding reduction in staff. It is unlikely that actual staffing reductions would occur. Rather, it is more likely that judges and staff would redirect their efforts to provide adequate time and attention to other cases before the court and to reducing caseload backlogs. The number of superior and district court judge positions in each county is established by statute. Positions cannot be eliminated during the term of office.

COURTS OF LIMITED JURISDICTION

Because the bill changes the seriousness of certain drug offenses from a felony to a misdemeanor and offers the option of pretrial diversion programs, this judicial impact note assumes three fiscal impacts to the courts of limited jurisdiction: the cost of additional cases, the cost of additional hearings per case, and the cost of pretrial diversion programs.

ADDITIONAL CASES

12,000 additional cases would be heard in district or municipal court each year – approximately 58 percent of them in district court and 42 percent of them in municipal court. This would equal an estimated annual court cost of \$1,341,000.

Counties annual cost = \$642,000

Cities annual cost = \$699,000

ADDITIONAL HEARINGS PER CASE

These additional cases would also require an estimated 3 additional hearings as the person facing charges considers diversion. The hearings are estimated to take 15 minutes each. For all 12,000 cases, this would add judicial officer time and associated court costs with an overall estimated annual cost of \$4,375,000.

Counties annual cost = \$2,450,000

Cities annual cost = \$1,925,000

PRETRIAL DIVERSION PROGRAM TO THERAPEUTIC COURTS

Pretrial diversion can take many forms in different jurisdictions. For the purposes of this judicial impact note, the cost assumption is based on diversion to therapeutic courts. Various studies have found a net benefit to taxpayers per participant in drug and therapeutic courts. But, that savings information is not included in this fiscal analysis: Washington State Institute for Public Policy net benefit \$9,438 per participant (www.wsipp.wa.gov/BenefitCost/Program/14), Washington State Department of Social and Health Services net benefit \$22,000 per participant (www.dshs.wa.gov/sites/default/files/rda/reports/research-4-89.pdf), and Stanford Network on Addiction Policy estimates, “One dollar spent on drug courts is estimated to save approximately \$4 in avoided costs of incarceration and health care” (addictionpolicy.stanford.edu/sites/g/files/sbiybj25011/files/media/file/snap_criminaljustice_drugcourts.pdf).

Judges assume 6,000 cases (50 percent of total cases) will result in diversion. Based on caseloads in five King County therapeutic courts, the assumption is that each therapeutic court would have 120 cases per year. And, an average cost of therapeutic courts (\$340,000) based on the courts of limited jurisdiction participating in AOC’s therapeutic court grant program in the 2021-23 biennium. This is likely a low estimate of the actual costs of therapeutic courts.

The costs of the pretrial diversion program would be:

6,000 cases divided by 120 cases per therapeutic court = 50 therapeutic courts statewide multiplied by \$340,000 per court = \$17,000,000 per year

Counties annual cost = \$9,917,000

Cities annual cost = \$7,083,000

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3

Request # 115-1

Bill # 5536 SB

Part III: Expenditure Detail

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

<u>State</u>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
Salaries and Wages	1,100		1,100		
Employee Benefits	400		400		
Professional Service Contracts					
Goods and Other Services					
Travel					
Capital Outlays					
Inter Agency/Fund Transfers					
Grants, Benefits & Client Services					
Debt Service					
Interagency Reimbursements					
Intra-Agency Reimbursements	400		400		
Total \$	1,900		1,900		

III. B - Expenditure By Object or Purpose (County)

<u>County</u>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
Salaries and Benefits					
Capital					
Other	13,009,000	13,009,000	26,018,000	26,018,000	26,018,000
Total \$	13,009,000	13,009,000	26,018,000	26,018,000	26,018,000

III. C - Expenditure By Object or Purpose (City)

<u>City</u>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
Salaries and Benefits					
Capital					
Other	9,707,000	9,707,000	19,414,000	19,414,000	19,414,000
Total \$	9,707,000	9,707,000	19,414,000	19,414,000	19,414,000

III. D - FTE Detail

<u>Job Classification</u>	<u>Salary</u>	FY 2024	FY 2025	2023-25	2025-27	2027-29
Legal Services Senior Analyst	114,400	0.0		0.0		
Total FTEs		0.0		0.0		0.0

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

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IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

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

NONE

None

Individual State Agency Fiscal Note

Bill Number: 5536 SB	Title: Controlled substances	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 5536

CONCERNING POSSESSION OF CONTROLLED AND COUNTERFEIT SUBSTANCES AND LEGEND DRUGS

**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. States the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.
- 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. States the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.
- 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. Additionally, states the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.
- Section 4 Amends RCW 69.41.030 by reinserting language that expires as of July 1, 2023, by adding the term “knowingly” for possession in the offense of Sell, Deliver, or Possess any Legend Drug. States the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.
- Section 5 Amends RCW 69.50.4121 by contracting the definition of a class I civil infraction regarding drug paraphernalia.
- Section 8 Adds a new section to chapter 69.50 RCW requiring the court to advise the defendant and his/her attorney of the pretrial diversion program for certain drug offenses.
- Section 9 Amends RCW 9.96.060, adding a new subsection that states for individuals convicted of certain drug offenses who subsequently complete an approved substance use disorder treatment program, they may apply to the court for vacation of the conviction(s). Upon verification of successful completion, the court must vacate.

Section 14 Repeals RCW 10.31.115 (Drug Possession Referral to assessment and services) and 2021 c 311 s 13.

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 as 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.

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 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

Revised

Bill Number: 5536 SB	Title: Controlled substances	Agency: 103-Department of Commerce
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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	0.2	0.0	0.1	0.0	0.0
Account					
General Fund-State 001-1	36,956	0	36,956	0	0
Total \$	36,956	0	36,956	0	0

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:

- 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: Buck Lucas	Phone: 360-725-3180	Date: 02/12/2023
Agency Approval: Jason Davidson	Phone: 360-725-5080	Date: 02/12/2023
OFM Review: Myra Baldini	Phone: (360) 688-8208	Date: 02/13/2023

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 11 amends RCW 36.70A.200 to modify the essential facilities that cities and counties planning under the Growth Management Act would add into their processes for identifying and siting such facilities within their comprehensive plans.

Section 13 adds a new section to RCW 43.330 requiring the Department of Commerce (department) to form and operate a program for the capital construction needs of substance use disorder treatment programs. Awards must be made to unserved areas of the state and specifically Eastern and Central Washington.

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.

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.

Section 11: Growth Management Services essential facilities guidance.

Assumptions:

- The department assumes minor updates to existing essential facilities guidance and rulemaking to update WAC 396-550.
- Guidance includes outreach and engagement in coordination with the staff of the grant program developed by the department in Section 13 with emphasis on siting issues and opportunities at the local level.

0.20 FTE Commerce Specialist 3 (418 hours) in FY24 to provide essential facility guidance, technical assistance to cities and counties, and to update department rules for essential facilities. Staff would be responsible for coordinating with opioid treatment grant program staff during outreach and engagement.

Salaries and Benefits:

FY24: \$22,211

Goods and Services:

FY24: \$3,433

Travel:

Outreach and engagement to Eastern and Central Washington for 10 days, all of which are likely overnight trips.

FY24: \$4,005

Intra-agency Reimbursements:

FY24: \$7,307

Note: Standard goods and services costs include supplies and materials, employee development and training, Attorney General costs, central services charges and agency administration. Agency administration costs (e.g., payroll, HR, IT) are funded under a federally approved cost allocation plan.

Total Costs:
 FY24: \$36,956

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	36,956	0	36,956	0	0
Total \$			36,956	0	36,956	0	0

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.2		0.1		
A-Salaries and Wages	16,411		16,411		
B-Employee Benefits	5,800		5,800		
C-Professional Service Contracts					
E-Goods and Other Services	3,433		3,433		
G-Travel	4,005		4,005		
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	7,307		7,307		
9-					
Total \$	36,956	0	36,956	0	0

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
Administrative Services - Indirect	111,168	0.0		0.0		
Commerce Specialist 3	82,056	0.2		0.1		
Total FTEs		0.2		0.1		0.0

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

Section 13: Development and implementation of a substance use disorder treatment capital program.

Assumptions:

- The proposed legislation creates a new substance use disorder treatment capital grant program that is subject to appropriation and does not identify a funding source.
- The department assumes 3% of a potential appropriation for administrative costs, but without a clearly identified funding level, the costs outlined for the department to implement the proposed legislation are illustrative only.
- The department assumes a process to develop the grant program criteria, including eligibility, funding prioritization, application question development, and scoring process would be in consultation with state partners from the Health Care Authority (HCA) and the Department of Health (DOH), Health Systems Quality Assurance Team. The department would convene virtually for between four and six half-day meetings between July 1, 2023 and December 31, 2023.
- The timeline to form and develop the program would take approximately eight months, with hiring to occur in alignment with budget authority on July 1, 2023. The department assumes the program would be operational by March 1, 2023 and would begin its first grant cycle thereafter to generate a prioritized project list by September 1, 2024.
- The department would leverage existing Behavioral Health Facilities staff to develop the program required in Section 13.
- Application review and scoring would be in consultation with the HCA and DOH and require approximately 40 hours of staff time depending on the number of applications received. It could be higher if there is a significant volume of applications, such as more than 10.
- The department assumes outreach and engagement with existing providers to assess interest and opportunity to retrofit or build new substance use disorder treatment facilities in Central and/or Eastern Washington.
- The level of appropriation required for implementing Section 13 and to form a new substance use disorder treatment capital program in the department is unknown. The level of demand for state funding to support providers to expand substance use disorder treatment services in Central and Eastern Washington and the number of grants awarded are also unknown.

1.0 FTE Commerce Specialist 3 (2,088 hours) in FY24-FY29, for general program administration and consultation with providers and interagency partners. This position will be responsible for ongoing program operations, including contract management and coordinating outreach to providers and communities. Compliance may include site visits and corresponding compliance reports. Staff will manage capital contracts, validate invoices, monitor contract implementation and commitment period, and develop project communications.

1.0 FTE Commerce Specialist 5 (2,088 hours) in FY24-FY29, to provide staff management, including assigning and negotiating contracts and project support services. Staff will also provide rule development oversight, as required. Staff will also support application development, outreach, and application scoring and prioritization. Staff will present advanced technical business information to higher education institutions and coordinate with key stakeholders. Staff will present advanced technical business information to eligible providers. Staff will oversee program development, including application,

scoring and other relevant process with interagency partners.

0.20 FTE WMS2 (418 hours) in FY24-29, to provide leadership, oversight, supervision, rules coordination and final decision making over all grantmaking activities of the program. Staff will provide expert leadership, oversight, rules coordination and decision making over all capital elements of the program.

0.10 WMS3 (209 hours) in FY24-29, to coordinate project delivery in compliance with established rules and laws, provide guidance on new capital grant solicitations, contract negotiation, as needed, and oversight of any consultant agreements.

0.10 Administrative Assistant 3 (209 Hours) in FY24-FY29, to review contract documents, facilitate accounting and project financial data management in the Contracts Management System, and records retention. Composes program correspondence regarding grantee projects, such as requests for documentation and responses to requests for information. Provides project support services and facilitates planning for for grantee meetings.

Salaries and Benefits:

FY24: \$294,914

FY25-FY29: \$304,862 each fiscal year

Goods and Services:

An annual ZoomGrants license at \$2,458 and 50 hours of Assistant Attorney General (AAG) consultation at \$210 per hour in FY24.

FY24: \$55,899

FY25-FY29: \$45,416 each fiscal year

Travel:

Outreach and engagement to Eastern and Central Washington for 10 days, all of which are likely overnight trips.

FY24-FY29: \$4,005 each fiscal year

Equipment:

Standard workstations for new team members and a replacement computer on the agency's five-year lifecycle replacement schedule.

FY24: \$10,000

FY28: \$4,800

Intra-agency Reimbursements:

FY24: \$97,027

FY25-FY29: \$100,300 each fiscal year

Note: Standard goods and services costs include supplies and materials, employee development and training, Attorney General costs, central services charges and agency administration. Agency administration costs (e.g., payroll, HR, IT) are funded under a federally approved cost allocation plan.

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Total costs:

FY24: \$462,685

FY25-FY27: \$454,583 each fiscal year

FY28: \$459,383

FY29: \$454,583

Part V: New Rule Making Required

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

The department would update rules under WAC 396-550 for essential facilities.

Individual State Agency Fiscal Note

Bill Number: 5536 SB	Title: Controlled substances	Agency: 107-Washington State Health Care Authority
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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: Marcia Boyle	Phone: 360-725-0850	Date: 01/31/2023
Agency Approval: Cliff Hicks	Phone: 360-725-0875	Date: 01/31/2023
OFM Review: Robyn Williams	Phone: (360) 704-0525	Date: 02/02/2023

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 narrative.

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.

See attached narrative.

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 narrative.

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.

HCA Fiscal Note

Bill Number: 5536 Controlled Substances

HCA Request #: 23-07

Part II: Narrative Explanation

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

This bill amends various statutes related to controlled substances, counterfeit substances, legend drugs, and drug paraphernalia.

Section 1 - Amends RCW 69.50.4011 to add 'knowingly' to possession of counterfeit substances. It makes the violation a gross misdemeanor and encourages prosecutors to divert cases for assessment, treatment, or other services identified in RCW 10.31.110 or 71.24.115. Courts are instructed to advise defendants of the pretrial diversion program.

Section 2 - Amends RCW 69.50.4013 to add 'knowingly' to possession of a controlled substances. It makes the violation a gross misdemeanor and encourages prosecutors to divert cases for assessment, treatment, or other services identified in RCW 10.31.110 or 71.24.115. Courts are instructed to advise defendants of the pretrial diversion program.

Section 3 - Amends RCW 69.50.4014 to add 'knowingly' to cannabis possession of 40 grams or less. Prosecutors are encouraged to divert cases for assessment, treatment, or other services identified in RCW 10.31.110 or 71.24.115. Courts are instructed to advise defendants of the pretrial diversion program.

Section 4 - Amends RCW 69.41.030 to add 'knowingly' to possession of legend drugs. Prosecutors are encouraged to divert cases for assessment, treatment, or other services identified in RCW 10.31.110 or 71.24.115. Courts are instructed to advise defendants of the pretrial diversion program.

Section 8 - Adds a new section to chapter 69.50 RCW, outlining pretrial diversion options and process. Requires the treatment program to make a written report on findings and recommendation. Report to be filed with the court and copies to the prosecutor, defendant, and defendant's counsel. Treatment costs to be waived for indigent defendants if funds are available. Outlines the admissibility of statements made during the treatment program. States that participation in pretrial diversion is not an admission of guilt. Outlines the requirements under which a hearing would be held to enter into pretrial diversion, exoneration of any bail bond if so granted, and the time frame and potential for extension of the time frame if needed to complete a treatment program. Outlines the circumstances by which a pretrial diversion could be revoked due to unsatisfactory participation or other factors, the hearings required if so identified, and the dismissal of criminal charges upon successful completion of a treatment program.

Section 9 - Amends RCW 9.96.060 to add language regarding vacating a conviction. Language is provided on how an individual may petition for a vacation of a conviction upon verification of completing the substance use treatment program.

Section 10 - Adds a new section to chapter 71.24 RCW requiring the Washington State Department of Health to adopt new rules and soliciting public input by December 31, 2023.

Section 11 - Amends RCW 36.70A.200 to enhance definitions of essential public facilities to include substance use disorder treatment programs, recovery residences, and harm reduction sites for planning purposes and specifically excludes safe injection sites from that definition.

Section 12 - Amends RCW 71.24.590 to clarify language around licensing and certification of an opioid treatment program by requiring parity in how Opioid Treatment Programs are permitted in comparison

HCA Fiscal Note

Bill Number: 5536 Controlled Substances

HCA Request #: 23-07

with other essential public facilities, strikes language requiring a public hearing, and removes the imposition of a maximum capacity. Adds language to the definition of an opioid treatment program to allow for being either a mobile or fixed-site medication unit.

Section 13 - Adds a new section to chapter 43.330 RCW instructing the Department of Commerce to construct and provide start-up funds, if available, for substance use disorder treatment programs in underserved areas of the state.

Section 14 - Repeals RCW 10.31.115, which directs law enforcement to offer services identified in RCW 10.31.110 and 71.24.115.

As the recovery navigator program, established in RCW 71.24.115, is overseen by the Washington State Health Care Authority (HCA) any changes to statutes that impact this program may have an impact to HCA.

II. B - Cash Receipts Impact

No fiscal impact.

II. C – Expenditures

No fiscal impact.

HCA anticipates that there will be no administrative impacts to implement this bill.

HCA further assumes that any service impact from the repeal of RCW 10.31.115 and the modifications to chapter 69 will be offsetting and captured through the caseload forecast process.

Part IV: Capital Budget Impact

None

Part V: New Rule Making Require

None

Individual State Agency Fiscal Note

Bill Number: 5536 SB	Title: Controlled substances	Agency: 303-Department of Health
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2024	FY 2025	2023-25	2025-27	2027-29
Health Professions Account-State 02G-1		4,000	4,000	8,000	8,000
Total \$		4,000	4,000	8,000	8,000

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.1	0.3	0.2	0.1	0.1
Account					
General Fund-Private/Local 001 -7	19,000	32,000	51,000	14,000	14,000
Health Professions Account-State 02G-1	0	13,000	13,000	10,000	10,000
Total \$	19,000	45,000	64,000	24,000	24,000

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: Donna Compton	Phone: 360-236-4538	Date: 02/08/2023
Agency Approval: Kristin Bettridge	Phone: 3607911657	Date: 02/08/2023
OFM Review: Robyn Williams	Phone: (360) 704-0525	Date: 02/10/2023

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 updates justice system and behavioral health responses for persons experiencing circumstances that involve controlled substances. It allows substance use disorder treatment programs to operate off-site medication units and adds substance use disorder programs as essential public facilities.

Section 10: Adds a new chapter to 71.24 RCW (Community Behavioral Health Services Act) directing the Department of Health (department) to adopt rules allowing a substance use disorder treatment program to establish off-site medication units.

Section 12(7)(b): Amends the definition of opioid treatment program in RCW 71.24.590 (Opioid treatment—Program Licensing or Certification by Department, Department Duties—Use of Medications by Program—Definition) requiring the program to be a mobile or fixed-site medication unit.

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.

Current law, RCW 43.70.250 (License fees for professions, occupations, and businesses) requires that a business-licensing program be self-supporting and sufficient revenue be collected through fees to fund expenditures. The department does not anticipate the need to increase Pharmacy Commission licensing fees to support the changes proposed in this bill. However, the department anticipates raising Behavior Health Agency licensing fees over the next year to maintain a healthy fund balance. The department will monitor the program fund balance and adjust fees over a six (6) year period to ensure that fees are sufficient to cover all program expenditures.

Behavioral Health Agencies

Based on the departments work with mobile units, the department anticipates 10 off-site medication units as a result of this bill; however, this is deemed to be an extension of the behavioral health agency license and will not generate additional revenue for this program.

Pharmacy Commission

The Pharmacy Commission (commission) anticipates all off-site medication units will apply to become licensed under “other controlled substance registration” to give them the authority to purchase, possess, administer, and dispense controlled substances. The commission will charge fees based on WAC 246-945-990 (Pharmaceutical Licensing Fees and Renewal Cycle) and anticipates \$360 per application.

FY 2025 – (\$4,000) 10 Applications

FY 2026 – (\$4,000) 10 Renewals

FY 2027 – (\$4,000) 10 Renewals

FY 2028 – (\$4,000) 10 Renewals

FY 2029 – (\$4,000) 10 Renewals

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.

Section 12(7)(b): The department, in consultation with the Office of the Attorney General, views the amended definition of an opioid treatment program requiring the program to be a mobile or fixed-site medication unit as a technical error in the bill

as it would eliminate currently licensed opioid treatment programs by requiring them to be a mobile or fixed-site medication unit. Mobile and fixed-site medication units would not be able to meet state or federal opioid treatment program regulations as they are required to be an extension of a brick-and-mortar opioid treatment program. For the purposes of this fiscal note the department will not include costs requiring all opioid treatment programs to be a mobile or fixed-site medication unit.

Rulemaking

Section 10: The department will develop and adopt rules to allow a substance use disorder treatment program to establish off-site medication units. This bill directs the department to adopt rules by December 31, 2023, however rulemaking takes a minimum of 12 months to complete therefore the department anticipates adopting rules by June 30, 2024. The department anticipates utilizing a team of subject matter experts to implement this bill. This team will consist of the program manager and a community engagement specialist to identify underreached communities and engage them in the rulemaking process. This process will include two meetings with interested parties as well as one formal rules hearing, all held virtually, and will take approximately 12 months to complete. The department anticipates providing the rules hearing announcement and materials in both English and Spanish and providing ASL and Spanish interpretation services at the rules hearing.

Costs include staff, associated expenses (including goods and services, travel, intra-agency, and indirect charges), and Office of Attorney General support in the amount of \$3,000.

FY 2024 costs will be 0.1 FTE and \$19,000 (GF-L).

FY 2025 costs will be 0.1 FTE and \$21,000 (GF-L).

Health Technology Solutions

Section 10: Health Technology Solutions staff will be required to make new workflows and user defined license data fields in the Healthcare Enforcement and Licensing Modernization Solution (HELMS) for off-site medication units. Configuration in HELMS will require 10 additional hours from the integration vendor at a rate of \$262.50 per hour, for a total of \$3,000.

FY 2025 costs will be \$4,000 (GF-L).

Inspection

Section 10: The department will conduct inspections and clinical record reviews based on the three-year survey cycle for each behavioral health agency for compliance with the minimum operating and patient care standards. The average inspection is expected to take 3 hours per off-side medication location and 14 hours for each clinical record review.

FY 2025 and ongoing, costs will be 0.1 FTE and \$7,000 (GF-L).

Pharmacy Commission

Section 10: The commission will conduct initial facility inspections and review facility inspections once within a two-year period for compliance with the minimum operating and patient care standards.

FY 2025 costs will be 0.1 FTE and \$13,000 (02G).

FY 2026 and ongoing, costs will be \$5,000 (02G).

Total costs to implement this bill are:

FY 2024 – 0.1 FTE and \$19,000 (GF-L)

FY 2025 – 0.3 FTE and \$32,000 (GF-L), and \$13,000 (02G)

FY 2026 and ongoing – 0.1 FTE and \$7,000 (GF-L), and \$5,000 (02G)

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-7	General Fund	Private/Local	19,000	32,000	51,000	14,000	14,000
02G-1	Health Professions Account	State	0	13,000	13,000	10,000	10,000
Total \$			19,000	45,000	64,000	24,000	24,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.1	0.3	0.2	0.1	0.1
A-Salaries and Wages	11,000	29,000	40,000	16,000	16,000
B-Employee Benefits	3,000	6,000	9,000	4,000	4,000
C-Professional Service Contracts		3,000	3,000		
E-Goods and Other Services	4,000	6,000	10,000	4,000	4,000
T-Intra-Agency Reimbursements	1,000	1,000	2,000		
Total \$	19,000	45,000	64,000	24,000	24,000

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
Fiscal Analyst 2	53,000		0.1	0.1		
HEALTH SERVICES CONSULTANT 4	82,896				0.1	0.1
NURSING CONSULTATION ADVISOR	147,360	0.1	0.1	0.1		
PHARMACIST - INVESTIGATOR	120,132		0.1	0.1		
Total FTEs		0.1	0.3	0.2	0.1	0.1

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.

Sections 10: The department will adopt rules in 246-341 WAC (Behavioral Health Agency Licensing and Certification Requirements) as necessary to implement the bill.

Individual State Agency Fiscal Note

Bill Number: 5536 SB	Title: Controlled substances	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.

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: Kevin Keogh	Phone: 360-628-2652	Date: 02/01/2023
Agency Approval: James Smith	Phone: 360-764-9492	Date: 02/01/2023
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 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 establishes this crime as a gross misdemeanor and encourages prosecutors and law enforcement to refer violators of this statute to assessment and treatment services in lieu of criminal prosecution.

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 establishes this crime as a gross misdemeanor and encourages prosecutors and law enforcement to refer violators of this statute to assessment and treatment services in lieu of criminal prosecution.

Section 3 amends the RCW on possession of 40 grams or less of marijuana to include to include the term “knowingly”. 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 encourages prosecutors and law enforcement to refer violators of this statute to assessment and treatment services in lieu of criminal prosecution.

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 encourages prosecutors and law enforcement to refer violators of this statute to assessment and treatment services in lieu of criminal prosecution.

Section 5 amends the RCW on drug paraphernalia to decriminalize “giving” drug paraphernalia to another person.

Section 8 requires the court to inform defendants of pretrial diversion programs for the drug possession crimes being amended in the previous sections of this bill.

Section 9 allows individuals with the drug possession charges amended in this bill to petition the court for vacation of their conviction upon completion of a substance use disorder treatment program.

Section 14 repeals the RCW that requires law enforcement officers to offer a referral to assessment services for individuals with the drug possession charges amended above. Much of this language is included in the amendments above, but law enforcement officers are encouraged rather than required to offer referrals.

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: 5536 SB	Title: Controlled substances	Agency: 310-Department of Corrections
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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
Account					
General Fund-State 001-1	2,760	0	2,760	0	0
Total \$	2,760	0	2,760	0	0

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: James Cerna	Phone: (360) 725-8428	Date: 01/31/2023
Agency Approval: Ronell Witt	Phone: (360) 725-8428	Date: 01/31/2023
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.

ESB 5476 (State v. Blake Decision) 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 as 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.

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. States the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.

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. States the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.

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. Additionally, states the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.

Section 4 Amends RCW 69.41.030 by reinserting language that expires as of July 1, 2023, by adding the term “knowingly” for possession in the offense of Sell, Deliver, or Possess any Legend Drug. States the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. Additionally states in lieu of booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and available services.

Section 5 Amends RCW 69.50.4121 by contracting the definition of a class I civil infraction regarding drug paraphernalia.

Section 8 Adds a new section to chapter 69.50 RCW requiring the court to advise the defendant and his/her attorney of the pretrial diversion program for certain drug offenses.

Section 9 Amends RCW 9.96.060, adding a new subsection that states for individuals convicted of certain drug offenses who subsequently complete an approved substance use disorder treatment program, they may apply to the court for vacation of the conviction(s). Upon verification of successful completion, the court must vacate.

Section 14 Repeals RCW 10.31.115 (Drug Possession Referral to assessment and services) and 2021 c 311 s 13.

Effective date is assumed 90 days after adjournment of session in which this bill is passed.

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).

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.) 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 shall have their offense vacated by the court.

The Caseload Forecast Council (CFC) has no information concerning how many incidents of knowingly possess a controlled substance may 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.

Customization of the Offender Management Network Information (OMNI) system is needed to meet the requirements of this legislation. Due to the complexity to complete the development, testing and implementation of the statutory changes, contracted services are necessary in FY2043.

To implement this legislation, OMNI data tables need to be updated to RCW for technical corrections.

Cost Calculation Estimate:

IT Application Developer| \$120 per hour x 10 hours = \$1,200

IT Quality Assurance| \$120 per hour x 8 hours = \$960

IT Business Analyst| \$120 per hour x 5 hours = \$600

Total One-Time Costs - FY2024 \$2,760

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	2,760	0	2,760	0	0
Total \$			2,760	0	2,760	0	0

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts	2,760		2,760		
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	2,760	0	2,760	0	0

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)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Administrative & Support Services (100) (100)	2,760		2,760		
Total \$	2,760		2,760		

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: 5536 SB	Title: Controlled substances
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities:** Approximately \$3,270,000 to update comprehensive plans; approximately \$442,860 to provide training to law enforcement officers on modified criminal offenses, referral requirements and other procedures; indeterminate expenditure impact on local law enforcement due to processing incidents of upgraded gross misdemeanor offense; indeterminate expenditure impact due to change in demand for jail beds
- Counties:** Approximately \$1,400,000 to update comprehensive plans; approximately \$134,400 to provide training to law enforcement officers on modified criminal offenses, referral requirements and other procedures; indeterminate expenditure impact on law enforcement, prosecutors, and public defenders as a result of processing incidents of upgraded gross misdemeanor offense; 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 \$4,670,000 to update comprehensive plans; approximately \$577,200 to train local law enforcement officers on modified criminal offenses, referral requirements and other procedures
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:** Number of incidents of upgraded gross misdemeanor offense that may occur; net change in demand for prosecutor, public defender time that may result from diversion language in section 8

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Jurisdiction	FY 2024	FY 2025	2023-25	2025-27	2027-29
City	1,725,360	1,080,000	2,805,360	907,500	
County	534,400	500,000	1,034,400	500,000	
TOTAL \$	2,259,760	1,580,000	3,839,760	1,407,500	
GRAND TOTAL \$					5,247,260

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: 02/03/2023
Leg. Committee Contact: Joe McKittrick	Phone: 3607867287	Date: 01/26/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/03/2023
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 prescribe penalties, among other changes.

Section 1 would amend RCW 69.50.4011, specifying that knowing possession of a counterfeit substance is a gross misdemeanor.

Section 2 would amend RCW 69.50.4013, specifying that knowing possession of a controlled substance under certain circumstances, or knowing possession of “cannabis, cannabis-infused products, or cannabis concentrates” by someone under 21 is a gross misdemeanor.

Section 3 would amend RCW 69.50.4014, specifying that “any person found guilty of knowing possession of 40 grams or less of cannabis is guilty of a misdemeanor.”

Section 4 would amend RCW 69.41.030, specifying that knowing possession of a legend drug under certain circumstances is a misdemeanor.

Sections 1 through 4 would specify that “law enforcement is encouraged to offer a referral to assessment and services available under RCW 10.31.110 or other program or entity responsible for receiving referrals in lieu of legal system involvement,” and that “upon arraignment for a violation of this section involving knowing possession, the court shall advise the defendant of the availability of the pretrial diversion program as indicated in section 8(1) of this act.” Prosecutors would also be “encouraged to divert such cases for assessment, treatment, or other services.”

Section 5 would amend RCW 69.50.4121, removing giving or allowing drug paraphernalia to be given from the definition of actions that constitute a class I civil infraction, and adding smoking equipment to the list of items that may be legally distributed “through public health and community-based HIV prevention programs, and pharmacies.”

Section 6 would add a new section to chapter 69.50 RCW, specifying that the state of Washington “fully occupies and preempts the entire field of drug paraphernalia regulation within the boundaries of the state including regulation of the use, selling, giving, delivery, and possession of drug paraphernalia.”

Section 7 amend RCW 69.50.509, specifying that judges shall authorize warrants for search and seizure based on a sworn complaint of knowing possession of any controlled substance in violation of chapter 69.50 RCW.

Section 8 would add a new section to chapter 69.50 RCW, requiring courts to advise individuals charged with violations of RCW 69.50.4011(1)(b), 69.50.4013, 14 69.50.4014, or 69.41.030 of the pretrial diversion program. This section would define certain required criteria for such notification.

This section would also specify that if an individual agrees “to waive his or her right to a speedy trial and trial by jury if granted pretrial diversion, the court may grant the motion and continue the hearing and refer the defendant for a diagnostic investigation and evaluation to an approved substance use disorder treatment program as designated in chapter 71.24 RCW.” Subject to the availability of appropriated funds, this investigation and evaluation would be required to be provided at no cost to an individual deemed to be indigent.

Finally, this section would describe requirements related to the above diversion program and any violations of its conditions, and would require that individuals who successfully complete this program have their charges dismissed.

Section 9 would amend RCW 9.96.060, requiring that a court vacate the conviction or convictions of “an individual who is convicted of a violation of RCW 28 69.50.4011(1)(b), 69.50.4013, 69.50.4014, or 69.41.030 who subsequently completes

an approved substance use disorder treatment program” if the court verifies the individual’s proof of completion.

Section 11 would amend RCW 36.70A.200, adding substance use disorder treatment programs, that include “both mobile and fixed-site medication units, recovery residences, harm reduction programs, excluding safe injection sites, that emphasize working directly with people who use drugs to prevent overdose and infectious disease transmission, improve the physical, mental, and social well-being of those served, and offer low threshold options for accessing substance use disorder treatment and other health care services” under the definition of essential public facilities. The comprehensive plans of certain cities and counties are required to include a process for identifying and siting such facilities.

Section 12 would amend RCW 71.24.590, specifying that “Counties and cities may require conditional use permits with reasonable conditions for the siting of programs only to the extent that such reasonable conditional use requirements applied to opioid treatment programs are similarly applied to other essential public facilities and health care settings.” This section would also specify that “no city or county legislative authority may impose a maximum capacity for an opioid treatment program.”

Section 14 would repeal RCW 10.31.115.

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, and the changes it would make to referral requirements and other current 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 resulting from this bill. In addition, section 8 would require courts to advise people charged with violations of sections 1 through 4 of the option to enter a pre-trial diversion program, which could decrease demand for jail beds. People who violate the conditions of this program could have their case proceed to trial and face a sentence of 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 increase 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, or how many juveniles may enter pre-trial diversion per section 8, 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 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 8 of the proposed legislation would create could require additional prosecutor time. While it is unknown what the implementation details of the pre-trial diversion program this section references might be, WAPA indicates that it could be structured in a similar way to existing county drug courts. According to WAPA, diversion supervision typically requires time from a prosecutor, a probation officer or other court staffer, a defender, and in some cases, a judge. These supervision cases often require regular meetings, however the total time required of participating parties in a given case can vary. It is reasonable to assume such cases would require a similar amount of time from both prosecutors and public defenders.

If a person who entered a pre-trial diversion program under section 8 of the bill were to be found "performing unsatisfactorily in the assigned program," or if they were convicted of an offense that reflects a propensity for violence, or a felony, that person would face trial, requiring additional prosecutor and public defender time.

It is unknown, however, how many people may choose to enter the pre-trial diversion program under section 8 of the proposed legislation, and how many of those people may violate the conditions of the program and require a subsequent trial. It is also unknown how the time required for a diversion case would compare with the time that would not be required for a trial. Finally, under the requirements of Chapter 311, Laws of 2021, prosecutors are already "encouraged to divert" cases concerning knowing drug possession "for assessment, treatment, or other services," and the proposed legislation would keep that language. It is unknown if or how section 8 of the proposed legislation may change the number

of people who enter pre-trial diversion compared to the present.

Accordingly, the local government expenditure impact resulting from any changes in demand for prosecutor and public defender time related to section 8 of the proposed legislation is indeterminate. The 2023 Local Government Fiscal Note Program Unit Cost Model estimates that the average hourly salary plus benefits and overhead for a prosecuting attorney is \$82.

Section 11 of the proposed legislation would require Growth Management Act fully planning cities and counties to update their comprehensive plans to “include a process for identifying and siting” substance use disorder treatment programs. This requirement would result in one-time costs of approximately \$3,270,000 for cities and \$1,400,000 for counties, for a total one-time cost to local governments of approximately \$4,670,000.

It is assumed that qualifying cities and counties would incur the costs of this required update during the next scheduled periodic comprehensive update specified by RCW 36.70A.130 (5). In a fiscal note for a bill that required a similar update to comprehensive plans, the Washington State Association of Counties estimated that each update would cost a qualifying county approximately \$50,000. The Association of Washington Cities estimates that the same figure for cities would be approximately \$15,000.

The following lists the numbers of cities and counties with planning deadlines at the end of calendar years 2024-2027, and the total local planning costs to update comprehensive plans in accordance with section 11 of the proposed legislation in each year:

Calendar year 2024:

$(82 \text{ cities} \times \$15,000 \text{ per update}) + (4 \text{ counties} \times \$50,000 \text{ per update}) = \$1,430,000$

Calendar year 2025:

$(48 \text{ cities} \times \$15,000 \text{ per update}) + (10 \text{ counties} \times \$50,000 \text{ per update}) = \$1,220,000$

Calendar year 2026:

$(55 \text{ cities} \times \$15,000 \text{ per update}) + (8 \text{ counties} \times \$50,000 \text{ per update}) = \$1,225,000$

Calendar year 2027:

$(33 \text{ cities} \times \$15,000 \text{ per update}) + (6 \times \$50,000 \text{ per update}) = \$795,000$

Total: \$4,670,000

These following approximate fiscal year spending estimates are based on planning work occurring two years before the submission date of a periodic update as per RCW 36.70A.130(5). These figures also assume work on the development regulations would begin 90 days after the effective date of the bill and all planning jurisdictions with 2024 and 2025 due dates would begin in fiscal year 2024.

Fiscal year 2024:

City: \$1,282,500

County: \$400,000

Combined: \$1,682,500

Fiscal year 2025:

City: \$1,080,000

County: \$500,000
Combined: \$1,580,000

Fiscal year 2026:
City: \$660,000
County: \$350,000
Combined: \$1,010,000

Fiscal year 2027:
City: \$247,500
County: \$150,000
Combined: \$397,500

Total: \$4,670,000

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:

Association of Washington Cities
Crime in Washington Report, 2021
Local government fiscal note for HB 1799, 2022
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