

Substance Use Recovery Services Advisory Committee

**Resources to inform a
recommendation for the state's
criminal-legal response to possession
of controlled substances**

First version provided 06-01-2022; Updated 09-08-2022

Committee Charge

5476 Section 1

The authority, in collaboration with the substance use recovery services advisory committee established in subsection (2) of this section, shall establish a substance use recovery services plan. The purpose of the plan is to implement measures to assist persons with substance use disorder in accessing outreach, treatment, and recovery support services that are low barrier, person centered, informed by people with lived experience, and culturally and linguistically appropriate. The plan must articulate the manner in which continual, rapid, and widespread access to a comprehensive continuum of care will be provided to all persons with substance use disorder.

(3) The plan must consider:

(1) Recommendations regarding the appropriate criminal legal system response, if any, to possession of controlled substances

Document Development

At the May 2nd SURSAC meeting, committee members were asked about what information would be helpful to have to formulate a recommendation for the appropriate criminal-legal response to possession of controlled substances, if any. The 5476 support team at HCA gathered several resources to meet those information requests, which were emailed to the SURSAC on Wednesday, June 1st. At the June 6th SURSAC meeting, there was a request to invite additional contributions. On June 6th, Michelle sent an email to all SURSAC meeting attendees titled, "SURSAC: Opportunity to add Criminal-Legal Response resources", inviting contributions to this document by June 24th, so that the revised document could be shared June 27th, providing the SURSAC two full weeks to review before the July 11th meeting.

Summary of Hyperlinked Resources

NEW [A Quiet Revolution: Drug Decriminalization Across the Globe](#) (March 2016)

NEW [Drug Decriminalization in Portugal: Setting the Record Straight](#)

NEW [The Effects of Decriminalization of Drug Use in Portugal](#) (December 2007)

NEW [What can we learn from the Portuguese decriminalization of illicit drugs?](#) (July 2010)

NEW [A social cost perspective in the wake of the Portuguese strategy for the fight against drugs](#) (February 2015)

[Cannabis Legalization and Racial Disparities in Washington State](#)

[Drug Decriminalization in Oregon, One Year Later: Thousands of Lives not Ruined by Possession Arrests, \\$300 million+ in Funding for Services](#)

[Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession](#)

[Drug decriminalization policy: Literature review: Models, implementation and outcomes](#)

[Drug Decriminalization | Drug Policy Alliance](#)

[Racial, Gender, and County Disparities for Simple Drug Possession Convictions in Washington State](#)

[Washington State Court Directory](#)

[Determination of Eligibility \(Therapeutic Courts\) – RCW 2.30.030](#)

[Drug Courts are not the answer: Toward a Health-Centered Approach to Drug Use](#) (Drug Policy Alliance, March 2021)

[America's problem-solving courts: The criminal costs of treatment and the case for reform \(National Association of Criminal Defense Lawyers, September 2009\)](#)

[Addicted to courts: How a growing dependence on drug courts impacts people and communities \(Justice Policy Institute, March 2011\)](#)

[Drug Court Outcomes \(2013\)](#)

[Drug Court Participants: Recidivism and Key Outcome Measures \(DSHS\)](#)

[Chemical Dependency Treatment for Incarcerated individuals: A Review of the Evidence and Benefit-Cost Findings](#)

[RNP: Recovery Navigator Program \(Intercepts 0, 1\)](#)

[The Arrest & Jail Alternatives program](#)

[Seattle's Law Enforcement Assisted Diversion \(LEAD\) Program: Within-Subjects Changes on Housing, Employment, and Income / Benefits Outcomes and Associations with Recidivism](#)

[Seattle's law enforcement assisted diversion \(LEAD\) program effects on criminal justice and legal system utilization and costs](#)

[Seattle's Law Enforcement Assisted Diversion \(LEAD\): Program effects on recidivism outcomes](#)

[LEAD Program Evaluation: Describing LEAD case management in participants' own words \(Harm Reduction Research and Treatment Center, UW, November 2016\)](#)

[DOC Institutional Costs, Average Daily Population, and Cost Per Incarcerated Individual per Day \(FY2019\)](#)

[Hidden Consequences: The Impact of Incarceration on Dependent Children | National Institute of Justice Cost-Benefit Analysis of public policies and programs](#)

[Peer Reviewed Research About Syringe Service Programs | Washington State Department of Health](#)

[County Profiles of Social Determinants of Health](#)

[Study after study shows ex-prisoners would be better off without intense supervision \(Brookings, July 2018\)](#)

[JustCARE: The development and impact of a multi-faceted collective impact model \(University of Washington, June 2021\)](#)

Summary of Attachments

[A Quiet Revolution: Drug Decriminalization Across the Globe \(March 2016\)](#)

[Effects of Criminalization Key Points 2021 Update](#)

[National Association of Drug Court Professionals \(NADCP\) Equity & Inclusion Research Brief: Exclusionary Criteria and Their Impacts on the Likelihood to Reoffend, Racial Bias, and Outcomes in Treatment Court](#)

[Racial Distribution of Drug Court Participants \(CJTA Panel July 31 2020_Racial Distribution\)](#)

[Drug Offender Sentencing Alternatives \(DOSAs\)](#)

[DOC Substance Abuse Recovery Unit \(SARU\)](#)

[Behavioral Health Agencies Directory](#)

[Behavioral Health Treatment Availability in Rural Counties](#)

NOTE: Hyperlinks are provided as often as possible for easy access to the resources included in this document. Resources that could not be hyperlinked are included as email attachments, noted with “ATTACHMENT”

Drug Criminalization & Racial Disparities

Since Oregon is the first state in the nation to decriminalize (small amount) possession of controlled substances, and the law has only been in effect for one year, it will take time to understand the full racial impact of this policy in OR, and the potential impact for our own state if this policy were to be adopted in WA State long-term. However, we can look at the racial impact of decriminalization – and the legalization of supply – related to cannabis to help us understand potential impacts.

[Cannabis Legalization and Racial Disparities in Washington State](#)

This report from ADAI (March 2019) examines publicly available data on **cannabis use and racial disparities in WA** in three areas of interest: criminal justice, youth consumption, and treatment for substance use disorders. The article notes:

“Before legalization, African American/Blacks were 2.8 times more likely to be arrested for marijuana possession than Whites, in WA State (3.8 times nationwide). Most of these arrests (88%) were for cannabis-possession-only, yet adult marijuana use was similar across racial and ethnic groups.

After legalization, analysis from the Washington State University Crime, Cannabis & Police Research Group indicated that disparities between African American/Black and white adults varied by the type of crime committed. The relative disparity in arrests for selling marijuana has more than doubled since legalization while there was a small decrease in possession-related disparities.

The disparity in court filings for marijuana possession among African American/Black adults has remained unchanged after legalization. African American/Black adults are nearly three times more likely to be prosecuted for a low-level marijuana possession offense than white adults after legalization”

[Drug Decriminalization in Oregon, One Year Later: Thousands of Lives not Ruined by Possession Arrests, \\$300 million+ in Funding for Services](#)

This article from DrugPolicy.org, “[Drug Decriminalization in Oregon, One Year Later](#)” notes a *prediction* from the Oregon Criminal Justice Commission that Measure 110’s passage would result in a 95% reduction in racial disparities in drug arrests.”

[ATTACHMENT: A Quiet Revolution: Drug Decriminalization Across the Globe \(March 2016\)](#)

[Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession](#)

[Drug decriminalization policy : Literature review: Models, implementation and outcomes](#)

[Drug Decriminalization | Drug Policy Alliance](#)

[ATTACHMENT – Effects of Criminalization Key Points 2021 Update](#)

This document provides support information for [HB 1499](#), offered by the Office of Infectious Disease (OID within DCHS) at the WA State Dept of Health, which notes citations for the following findings:

- Criminalization negatively impacts racial justice and health equity
- Criminalization negatively impacts women and families
- Criminalization negatively impacts efforts to prevent and treat infectious disease among people who use drugs
- Criminalization contributes to overdose morbidity and mortality

- Criminalization is expensive and burdens the state budget
- Criminalization of paraphernalia for personal use impacts public health and safety efforts

Conviction Rates for Possession of Controlled Substances

Racial, Gender, and County Disparities for Simple Drug Possession Convictions in Washington State

Therapeutic Courts

Washington State Court Directory

Here you can find a list of all the therapeutic courts in Washington, which are generally available at Intercept 3 (Specialty Courts), including:

- Drug Courts
- Juvenile Courts
- Family Treatment
- Mental Health Court

Determination of Eligibility (Therapeutic Courts) – RCW 2.30.030

This statute lays out some statewide therapeutic court eligibility limitations. However, before those limits are reached, there are a lot of differences between counties in terms of what charges they take and what additional exclusionary criteria they apply. For example, some counties will not take drug delivery charges. And, nationwide, according to the National Association of Drug Court Professionals (NADCP), although White individuals are more likely to be involved in trafficking, Black individuals are more likely to be arrested for drug trafficking, so there could certainly be racial disparities that result from various eligibility decisions.

To understand why cases do not qualify, we'd need data from every county prosecutor, and it would involve digging into every case, which is an undertaking that we do not have capacity for. One other thing to note is that one of the main reasons people don't get offered drug court is that their defense attorneys don't request it – either because they don't know about it, don't believe in it, don't think it is the best possible deal, or don't think the case will be approved for entry by the prosecutor. In some cases, drug court may be disincentivized because attorneys may get better deals if their client will just plea mainstream. Defense guidance is a major reason why any individual would or would not end up in drug court, which makes it much harder to quantify than a situation where a prosecutor is actually denying a case entry.

The Administrative Office of the Courts (AOC) Behavioral Health Court Program is working on an assessment that will take a deeper dive into Treatment Court eligibility criteria, but the results of those reports and any court-specific data won't likely be available until mid-late 2023. Tessa Clemments (the AOC BH Court Program Lead) suggests looking at each court's policy and procedure manual to find their stated eligibility criteria.

Drug Courts are not the answer: Toward a Health-Centered Approach to Drug Use (Drug Policy Alliance, March 2021)

America's problem-solving courts: The criminal costs of treatment and the case for reform (National Association of Criminal Defense Lawyers, September 2009)

Addicted to courts: How a growing dependence on drug courts impacts people and communities (Justice Policy Institute, March 2011)

ATTACHMENT: The King County Drug Diversion Court Procedure and Policy Manual (Eligibility begins on page 5)

ATTACHMENT: National Association of Drug Court Professionals (NADCP) Equity & Inclusion Research Brief: Exclusionary Criteria and Their Impacts on the Likelihood to Reoffend, Racial Bias, and Outcomes in Treatment Court

ATTACHMENT: Racial Distribution of Drug Court Participants (CJTA Panel July 31 2020_Racial Distribution)

Drug Court Outcomes (2013)

Describes the criminal and CD treatment participation outcomes of 1,671 adults charged with felonies who were eligible for treatment, primarily funded through CJTA, and who were admitted to formally established drug courts. Three-year outcomes are compared to a statistically matched comparison group of 1,671 adults charged with similar felonies in the same jurisdictions and two-year time period (July 2007 through June 2009), but who were not admitted to a drug court. Arrests, incarceration rates, and treatment participation over a three-year follow-up period are examined, as are net benefits associated with reductions in crime.

- Drug Court Participants were less likely to be incarcerated during the follow-up period than individuals in the comparison group (17 versus 23 percent)
- Controlling for other factors leading to arrest, drug court participants were twice as likely to remain free of arrest as those in the comparison group (30 vs. 15 percent)
- Nearly universal participation in chemical dependency treatment was obtained by drug court participants (97 percent compared to 46 percent in the comparison group)
- Drug court participants were over 3 times more likely to enter treatment within 90 days and 4 times more likely to be in treatment – primarily outpatient – for 90 or more days
- Reductions in crime observed in this analysis translate into a net benefit to taxpayers and society of approximately \$22,000 per participant, or \$4.02 in benefits per dollar spent

Drug Court Participants: Recidivism and Key Outcome Measures (DSHS)

These reports do not include reasons for arrest (they are not specific to arrests related to possession of controlled substance), but they do include demographics, SUD treatment participation, recidivism, employment, and Medicaid enrollment among Drug Court enrollees. These reports present recidivism measures and other key outcomes and characteristics of offenders participating in adult drug courts across Washington State. The reports contain yearly trends for individual courts and for courts statewide. The reports were written in collaboration with the Criminal Justice Treatment Account Panel and the HCA Division of Behavioral Health and Recovery, and will be updated annually. To protect client confidentiality, reports for courts with a small number of participants are not included.

- [King](#)
- [Kitsap](#)
- [Pierce](#)
- [Snohomish](#)
- [Spokane](#)
- [Thurston](#)

Drug Offender Sentencing Alternatives Outcomes

ATTACHMENT - Drug Offender Sentencing Alternatives (DOSA)

The Fact sheet including demographic and county data for the DOSA program (attached), designed to provide SUD treatment and community supervision for individuals diagnosed with an SUD who have committed a drug or other statutory eligible crime. Individuals sentenced to a DOSA are required to participate in SUD treatment in lieu of prison time, or a reduced prison sentence.

SUD Treatment Programs & Outcomes for Incarcerated Individuals

ATTACHMENT - DOC Substance Abuse Recovery Unit (SARU)

The DOC Substance Abuse Recovery Unit is one of the largest certified treatment agencies in the State of Washington, with services located in 11 of 12 state prison facilities (as of July 2021) and nine work release locations. The Washington State Institute for Public Policy found that incarcerated individuals who participate in Substance Use treatment programs have lower recidivism rates than those who did not participate by 4 to 9 percent.

The SARU statistics document (attached) outlines the SUD treatment recovery programs available to incarcerated individuals and provides some data by gender but not by race.

[Chemical Dependency Treatment for Incarcerated individuals: A Review of the Evidence and Benefit-Cost Findings](#)

In this The Washington State Institute for Public Policy found that for each dollar spent on drug treatment in confinement and partial confinement there is a taxpayer benefit ranging between \$5.05 to \$13.91 (depending on level of care and sentencing type).

Diversion Programs for Youth & Adults

RNP: [Recovery Navigator Program \(Intercepts 0, 1\)](#)

The intent of the RNP is to provide behavioral health services to individuals who intersect with police because of simple drug possession, people who have frequent criminal-legal system contact, and others who are referred from community sources. These programs are to serve people who are at risk of arrest, or already have been involved in the criminal legal system due to unmet behavioral health needs.

- [Fact Sheet](#)
- [Uniform Program Standards](#)
- [RCW 71.24.115](#)

AJA: Arrest & Jail Alternatives Grant Program

[The Arrest & Jail Alternatives program](#) was established per [HB 1767](#), [RCW 36.28A.450](#), and created a partnership between WASPC and the LEAD National Support Bureau, to develop and implement a grant program aimed at supporting local initiatives to properly identify criminal justice system-involved persons with substance use disorders and other behavioral health needs and engage those persons with therapeutic interventions and other services. Grants for this work have been provided to the following 3 organizations:

- Catholic Community Services (Olympia)
- Olympic Peninsula Community Clinic (Port Angeles)
- Comprehensive Healthcare (Walla Walla)

[Click here for the AJA 2021 Annual Report.](#)

LEAD in Seattle/King County

Seattle's Law Enforcement Assisted Diversion (LEAD) program is the first known pre-booking diversion program for people arrested on narcotics and prostitution charges in the United States. Launched in October 2011, LEAD is the product of a multi-year collaboration involving a wide range of organizations, including The Defender Association's Racial Disparity Project, the Seattle Police Department, the ACLU of Washington, the King County Prosecuting Attorney's Office, the Seattle City Attorney's office, the King County Sheriff's Office, Evergreen Treatment Services, the King County Executive, the Washington State Department of Corrections, and others.

[Seattle’s Law Enforcement Assisted Diversion \(LEAD\) Program: Within-Subjects Changes on Housing, Employment, and Income / Benefits Outcomes and Associations with Recidivism](#)

[Seattle’s law enforcement assisted diversion \(LEAD\) program effects on criminal justice and legal system utilization and costs](#)

[Seattle’s Law Enforcement Assisted Diversion \(LEAD\): Program effects on recidivism outcomes](#)

[LEAD Program Evaluation: Describing LEAD case management in participants’ own words \(Harm Reduction Research and Treatment Center, UW, November 2016\)](#)

HCA LEAD Expansion Pilot Program

Per [SSB5380 Sec. 29](#), the Health Care Authority partnered with the Public Defender’s Association and LEAD National Support Bureau to expand availability of LEAD programs statewide / outside King County. In 2020, HCA contracted with four different sites (\$4.1 million total) to provide and implement LEAD programs in the following counties, which receive technical assistance from PDA’s National Support Bureau:

- Whatcom
- Snohomish
- Mason
- Thurston

Cost & Benefits of Incarceration vs. Community-Based Harm Reduction and Treatment Programs

Fiscal Cost of Incarceration

[DOC Institutional Costs, Average Daily Population, and Cost Per Incarcerated Individual per Day \(FY2019\)](#)

Does not include MOUD, SUD-treatment specific, or other healthcare specific expenses, but provides a snapshot of total cost to incarcerate someone

Social Cost: Impact on Children of Incarcerated Parents

[Hidden Consequences: The Impact of Incarceration on Dependent Children | National Institute of Justice](#)

Discusses “cost” of incarceration in terms of the impact on the children of incarcerated parents, which disproportionately impacts communities of color.

“One consequence of this dramatic increase is that more mothers and fathers with dependent children are in prison. Since the war on drugs began in the 1980s, for example, the rate of children with incarcerated mothers has increased 100 percent, and the rate of those with incarcerated fathers has increased more than 75 percent.”

“Data from 2007 (the most recent data available) show that African-American children and Hispanic children were 7.5 times more likely and 2.3 times more likely, respectively, than white children to have an incarcerated parent.”

[Cost-Benefit Analysis of public policies and programs](#)

This report from RDA includes several diversion and community-based treatment programs:

- Drug Offender Sentencing Alternative (for persons convicted of drug offenses)
- Case management (“swift, certain, and fair”) for drug-involved persons

- Mental health courts
- [Drug Courts](#)
- Inpatient or intensive outpatient drug treatment during incarceration
- Therapeutic communities (in the community) for individuals with co-occurring disorders
- Drug Offender Sentencing Alternatives (for persons convicted of property offenses)
- [Outpatient or non-intensive drug treatment during incarceration](#)
- Outpatient or non-intensive drug treatment in the community
- Housing assistance without services
- Housing assistance with services
- Police diversion for low-severity offenses (pre-arrest)
- Police diversion for individuals with mental illness (pre-arrest)

[Peer Reviewed Research About Syringe Service Programs | Washington State Department of Health](#)

“These analyses indicate that it would be highly cost-saving to invest additional funds to expand syringe exchange services in the US.”

Community Behavioral Health Services

Social Determinants of Health by County

[County Profiles of Social Determinants of Health](#)

This report includes data by county including:

- Drug Trafficking Zone
- Drugs deaths per 100,000
- Opioid hospitalizations per 100,000
- Opioid deaths per 100,000
- Mental health providers per 100,000
- Specialist providers (e.g., gastroenterology, hepatology, infectious disease, addiction medicine) per 100,000
- HIV cases per 100,000
- HCV cases per 100,000

ATTACHMENT - Behavioral Health Agencies Directory

Attached is the DOH’s [Behavioral Health Agency Directory](#), which includes information about the number of behavioral health agencies in each county, and what services they provide (Mental Health, SUD, or both). The patient capacities of the agencies are not listed.

ATTACHMENT - Behavioral Health Treatment Availability in Rural Counties

Also attached is an excel spreadsheet that summarizes the BH agencies in Washington’s rural counties, alongside recent population and population growth rate data, to provide a starting point for identifying areas that are under-resourced with behavioral health services provided through these agencies.

Additional Resource Contributions

[Study after study shows ex-prisoners would be better off without intense supervision \(Brookings, July 2018\)](#)

[JustCARE: The development and impact of a multi-faceted collective impact model \(University of Washington, June 2021\)](#)