

Substance Use Recovery Services Advisory Committee Meeting Notes

August 1, 2022, 9:00-11:00am PDT

Meeting Recording

[WA State Substance Use Recovery Services Advisory Committee \(SURSAC\) - YouTube](#)

Attendance

HCA Executive & Administrative Support

<input type="checkbox"/>	Jason McGill, Executive Co-Sponsor	<input checked="" type="checkbox"/>	Tony Walton, 5476 Project Manager	<input checked="" type="checkbox"/>	Michael Zayas, Admin Assistant
<input checked="" type="checkbox"/>	Michelle Martinez, Administrator	<input checked="" type="checkbox"/>	Brianna Peterson, Plan Writer	<input checked="" type="checkbox"/>	Sandy Sander, Admin Assistant
<input checked="" type="checkbox"/>	Blake Ellison, Meeting Facilitator				

Committee Members (28)

<input checked="" type="checkbox"/>	Michael Langer	<input checked="" type="checkbox"/>	Amber Daniel	<input checked="" type="checkbox"/>	Donnell Tanksley
<input type="checkbox"/>	Amber Leaders	<input checked="" type="checkbox"/>	Brandie Flood	<input checked="" type="checkbox"/>	Malika Lamont
<input checked="" type="checkbox"/>	Sen. Manka Dhingra	<input checked="" type="checkbox"/>	Stormy Howell	<input checked="" type="checkbox"/>	Addy Adwell
<input checked="" type="checkbox"/>	Sen. John Braun	<input checked="" type="checkbox"/>	Chad Enright	<input checked="" type="checkbox"/>	Kevin Ballard
<input checked="" type="checkbox"/>	Rep. Lauren Davis	<input type="checkbox"/>	John Hayden	<input checked="" type="checkbox"/>	Hunter McKim
<input type="checkbox"/>	Rep. Dan Griffey	<input checked="" type="checkbox"/>	Sarah Melfi-Klein	<input type="checkbox"/>	Kendall Simmonds
<input type="checkbox"/>	Caleb Banta-Green	<input checked="" type="checkbox"/>	Sherri Candelario		
<input checked="" type="checkbox"/>	Don Julian Saucier	<input type="checkbox"/>	Hallie Burchinal		Alternates / Optional Attendees:
<input type="checkbox"/>	Kierra Fisher	<input checked="" type="checkbox"/>	Theresa Adkison	<input checked="" type="checkbox"/>	Rep. Jamila Taylor
<input type="checkbox"/>	Alexie Orr	<input checked="" type="checkbox"/>	Sarah Gillard	<input type="checkbox"/>	Rep. Gina Mosbrucker

Teams Meeting Attachments

1. Policy Options with Comments
2. Agenda

New Members

- Stormy Howell, Representative of a Federally Recognized Tribe

Discussion Notes

Conflict of Interest

HCA updated the Conflict-of-Interest guidelines and shared with the committee. There were no additional concerns or questions. Full text of the guidelines can be found in the Committee Norms & Expectations document updated 7-28-2022.

Public Comment

Lisa Daugaard offered two points:

- (1) The criminal legal response to possession of controlled substances is one of the most contested, fraught charged and important areas in American Society today. It is easy to become rapidly polarized on this discussion and miss the fact that there really is a tremendous amount of common values and common ground in our state. It is important to have a process that can pull those shared values and goals into alignment behind a public policy package that meets and accomplishes what most stakeholders need to see in order to get behind something and that is difficult but doable. The process and conversations behind Initiative 940 did this in a way that we're still drawing on today and that could be replicated in discussions around the criminal legal system.
- (2) There is not presently any limit on the number of times that any criminal charge for adults can be diverted by police in the field, so framing diversion as three instances would be eligible for diversion implies that they would not be eligible for diversion after three. That could set us back, not move us forward in the actual use of diversion around the state and that's not a unintended consequence. Better language would be diversion being encouraged or required.

Thea Oliphant-Wells: Criminal legal responses to substance use often contribute to the deaths of people with SUD, and there are some people in the community who have been losing people for decades. While it may be more politically popular to use other strategies, ending prohibition would be our best bet at the community surviving. The focus should be on doing the absolute best we can do for our communities and really focusing on evidence-based practice.

Cont'd Discussion: Evaluating options for a criminal-legal response to controlled substances

Michelle shared an overview of the process to be used during the meeting to narrow down policy options and potentially arrive at a formal recommendation for the SURS Plan:

1. Yes/No voting for each policy option to indicate willingness to work on a recommendation with that criminal legal response (e.g., misdemeanor, felony, decriminalization, legalization, etc.)
2. Discuss top 3 voted policy options
3. Vote (one vote per member) on the top 3 options to arrive at recommendation

Comments

- Brandie Flood: Speaking on behalf of black and brown communities, there needs to be a criminal legal response. People have been hurt by police, but without a criminal legal response, people are going to get lost in the cracks. We could intercept it before people even go to jail and give some other alternatives. When the issue is really substance use and not necessarily their criminal activity, we can do something differently. Right now, drug use is criminalized, and

homelessness is criminalized, in our state. We need to have some type of interception. We do have evidence based practices that show how the criminal legal response is a way to provide more robust services to these populations. There have been a lot of populations we've been able to help in working in conjunction with prosecutors and law enforcement. I wouldn't have said this 12 years ago, but I'm saying it now. We've been able to help a lot of people, particularly black, brown and queer communities change their social situation by resolving their legal issues and reducing or eliminating their encounters with law enforcement by intercepting at zero [referring to the Sequential Intercept Model, intercept 0]. There is no way to provide drug user support without this initial piece; otherwise it's just social services. Social services alone have never worked, and law enforcement alone has never worked. We need to do something that's integrated, and we do have evidence to show that that integrated approach, while complicated, does work.

- Malika Lamont: The committee is engaging in a binary process around this vote, which contradicts the guidelines for this particular group [to use “both/and” rather than “either/or”]. We can't do justice to these complex issues by having a straight up and down vote. The voting options are not necessarily worded in a way that's in alignment with the way that they were originally presented, which is concerning, from a process perspective.
- Senator John Braun: SURSAC should consider the option to maintain possession of controlled substance as a *gross* misdemeanor. There is a significant difference if you're trying to get people into diversion between a misdemeanor, and a gross misdemeanor which gives a prosecutor more ability to leverage folks to stay in treatment.

Tony Walton: [RCW 9.92.020: Punishment of gross misdemeanor when not fixed by statute. \(wa.gov\)](#)

- Representative Lauren Davis: A safe supply option should be added. Safe Supply is an option that exists between decriminalization and the last two options, decriminalization of controlled substances and commercialization. In the model used in Canada, if an individual is diagnosed with opioid use disorder, they have access to morphine, so essentially legal grade heroin, but it is not commercialized. It is not commercially sold in the way that we see cannabis, for instance, in the state of Washington.
 - Michelle clarified that the suggestion could supplement any of these options, and/or be its own type of criminal legal response.
 - Malika Lamont: Expressed concern that regulated commercialization was a very brief last minute conversation at the last meeting, regarding a regulated supply. Commercialization was never mentioned in a positive context or as something that was wanted. More clarification is needed about what having a regulated safe supply initiative means, that is more in alignment with a medical model and does not include full retail commercialization.
- Representative Lauren Davis: There's a lot of nuance that is lost in the choices are they are presented, particularly public use vs. non-public use – for example, the difference between using a substance in public vs. having a personal use amount in one's pocket. Difficult to know whether to support these options or not without making distinctions about how a possession

charge could or would be applied. The public policy options I'd support aren't captured in the options enumerated here.

- Chad Enright: As a county prosecutor, when I see “misdemeanor,” I assume divergence so I naturally read that into that proposal. That’s what most prosecutors do with misdemeanors and gross misdemeanors.
- Brandie Flood: The goal of our efforts is to not criminalize drug users, but the way this is set up lays it out that way. Can we just name diversion across every option where there is a potential criminal charge?
- Charissa Fotinos: If what Rep. Davis was referring to earlier [re: safe supply] was the administration of opioids in a clinic setting as an alternative to illicit use, providers can do that currently. The DEA allows me to use a different drug for the treatment of opioid use disorder. Unless I’m in an OTP, I cannot prescribe methadone, but I don’t know about the other drugs such as morphine or Dilaudid for opioid use disorder in a clinic setting.
- Malika Lamont: The word “commercialization” should be removed from the legalization option, since it implies that the reason something is being offered/run is for purposes of financial gain, which is not what this is about. A regulated market can exist without commercialization.
 - Rep. Davis: To legalize is to commercialize. There’s not a scenario or a world in which you create market regulation and avoid exactly what happened with cannabis; in the midst of legalizing cannabis we created a massive for-profit industry with massive incentives for highly addictive, highly potent products that could be massively proliferated and advertised.
 - Malika Lamont: There are legalization methods that do not have to utilize a capitalist framework; it can look like an expanded medical market, that hopefully doesn’t not repeat the same mistakes we had with the opioid epidemic. We can start learning from those experiences and creating a regulated market that can address a lot of the harm and increase access to safer versions of substances that people are going to be using anyway.
 - Rep. Davis: The difference for me between safe supply and what’s being discussed as a legalization option, is that safe supply would be for an individual who has opiate use disorder, or a stimulant use disorder. Market regulation means that you are giving drugs to individuals who do *not* have a substance use disorder, and as somebody who cares deeply about prevention and sees the devastation that has occurred with legalized cannabis and young people and psychotic disorder, I just want to make sure that whatever it’s called, we understand that market regulation would open the door to provide a highly potent substance to individuals who do not have a substance use disorder and that is very dangerous.

Questions

Q: Does “possession” in this context refer to simple, personal use levels of possession or also mass distribution amounts of supply?

A: This applies to the personal amounts of possession, it would not apply to the laws around bulk amounts that seem to be intended for distribution.

Sen. Dhingra: There is a separate felony charge for possession with intent to distribute

Q: Why was diversion only coupled with felony, and not the misdemeanor options? Was that intentional?

A: The initial options were written this way because diversion options, during the conversation at the last meeting, were only brought up with regard to categorizing possession as a felony, and because criminal charges are generally not being pursued / prosecuted with the current categorization of possession as a misdemeanor. However, diversion options could still be applied in those scenarios. (“Diversion options” were added to misdemeanor policy choices in the list)

Straw Poll: Yes/No voting for each option (10 mins)

Votes in favor of each option were as follows (from most to least supported):

14 VOTES: Safe Supply Initiative

12 VOTES: Maintain possession of a controlled substance as a misdemeanor with diversion options

9 VOTES: Decriminalize possession of controlled substances & paraphernalia with no civil penalty or fines

8 VOTES: Decriminalize possession of controlled substances & paraphernalia and make it a civil penalty, punishable by fine/community service, an/or waived with the completion of a health assessment

8 VOTES: Legalize possession of all controlled substances/create a regulated market

4 VOTES: Maintain possession of a controlled substance as a gross misdemeanor with diversion options (added during meeting)

2 VOTES: Make possession of a controlled substance a felony, with diversion eligibility options for the first 3 offenses

1 VOTE: Maintain possession of a controlled substance as a misdemeanor, punishable only by fine (jail time cannot be imposed), with options to divert from fines

1 VOTE: Make possession of a controlled substance a felony, with diversion encouraged

Discussion of top 3 options (40 mins)

Misdemeanor with diversion options

Malika: Voted for this one out of concern that there wouldn't be any will to do something more progressive, and this would cause less harm than some other options.

Theresa: Not in favor of criminalization, but feedback from police officers has been that they don't know what to do and they're not going to intervene at all, because they don't feel they have the authority to, and it has led to a lot of confusion. Would love to do something more progressive, but if we aren't overhauling all the systems in place, we need a system that gives police officers a way to divert people to something that is more supportive than jail.

Sen. Braun: I support the gross misdemeanor. I think with this policy option, we'll see more of what we're getting right now, which is virtually no prosecutions whatsoever and therefore no leverage to get folks into, and keep people in, treatment and get them on a healthy track. Prosecutors still have the option of reducing the charge to a misdemeanor if they think that's the right thing, or to use more leverage to get people in treatment. A gross misdemeanor with diversion options would give prosecutors more leverage and diversion would get people into a system that helps them get to better future.

Sarah Melfi-Klein: Strongly feel that substance use disorder is a public health issue, not a criminal issue, and would love to see it treated as such. Voted for this option out of concern that the infrastructure we currently have in place to intercept people and get them to support does lean heavily on the criminal legal system, whether that's therapeutic courts like Drug Court or community court models or the more traditional court system. From these, we have seen diverse impacts on racial minorities and sexual minorities and gender minorities that should be considered; but I worry that the public health response won't be robust enough to capture folks who would otherwise fall through the cracks.

Donnell Tanksley: There's not a silver bullet to figure this out – incarceration is not the silver bullet and neither is offering therapeutic services. I supported this option because I've talked to a small sample of people throughout my career that said it wasn't until they had to do 60 days in jail or 90 days in jail that realized they needed some help. Intercepting before jail is important as well. I just don't want to have short-term incarceration lost as an option, though I do agree with many people that it's not the only solution.

Don Julian Saucier: There are many people who use drugs that are never affected by the criminal justice system, or don't commit any crimes aside from having a substance use disorder, and criminalizing the health condition when there are no other legal issues keeps it stigmatized. WE need to work on destigmatizing it, and we need to draw that line between what's a crime and what's needing help and seeking help. Making opportunities easily accessible, desirable, and available, would work.

Kevin Ballard: I would hope that at the end on our tenure here, we have some meaningful solutions that work. There have been a number of comments made by prosecutors and law enforcement that a misdemeanor approach is currently not working within the system, and there are instances where incarceration has changed minds. There are communities and neighborhoods that are directly impacted by substance use in a negative way where crime levels, property crime levels are directly related to the number of people in the community dealing with substance use disorder. When those people were

taken off the street, there was an immediate impact on the number of property crimes going down when there had been serial burglaries and car thefts. I don't hear this part of the conversation being addressed. There are impacts on communities outside of those dealing with substance use that should be acknowledged.

Brandie Flood: Our more meaningful options wouldn't include jail time at all. The fact that we are settling on an option that we all think is a less-than-ideal option is a problem; we should be envisioning the best option possible. Many of these options support the status quo and do not support people who are black and brown, in extreme poverty, unhoused, and/or chronic drug users.

Rep. Lauren Davis: It's important to remember that the criminal legal system wasn't "catching" people into treatment pre-Blake. Only 3% of individuals arrested for possession were in drug court. Meaning approx 97% were not ever connected to treatment. They did, however, get a conviction, which prevents access to employment and housing--both of which are crucial for long-term recovery

Sarah Melfi-Klein: Drug court is not the only entry route into treatment by way of court system. there's community court, DOSA, and therapeutic diversion from traditional court. I'm not advocating for using the legal system to solve a health issue. I just want that captured. I do agree the current system isn't working.

Rep. Lauren Davis: Correct, there are other options. But community court exists at the district/municipal court level, so was not an option when possession was a felony. DOSA is used for more serious drug-related offenses, e.g., residential burglary, not possession. SOCs were an option pre-Blake.

Chad Enright: What I'm hearing from the public is that the status quo -- option one [misdemeanor] -- is not working right now. People are upset, and from a practical standpoint, prosecutors are not going to do anything with this, because this is what happens:

- Someone in possession of controlled substances will not be arrested, but the drugs will be seized and a referral will be sent to the prosecutor to review for charges
- Those drugs go to the crime lab and it will take a year to get results
- A year later, that person will be summoned to court with a misdemeanor charge, which is not eligible for drug court because there's not enough of a penalty for those (they'll do 2-5 days in jail). Even if they were offered Drug Court, most people would opt for 3 days in jail over a year and a half of Drug Court, so this doesn't provide any leverage to get people into treatment.

Decriminalizing possession & paraphernalia with no civil penalty or fines

Julian Saucier: This is the only option that treats substance use as a health issue, rather than a criminal issue

Addy Adwell: People do not need to be punished to create incentive to access treatment. The idea that for people to access care, we need to make their lives untenable or more difficult doesn't bear out; layering on additional struggles doesn't help people get their needs met. Fines will just generate paper pushing; most of my patients aren't able to pay their fines.

Sen. Braun: In practice, our current policy of "Misdemeanor with diversion" and "decriminalization" are the same thing, and we can't claim the current situation is working. There's been a huge rise in overdose deaths; and while fentanyl is a part of that, our growth rate in overdoses is twice the national average, and not all overdose deaths are related to fentanyl, so our policy is contributing as well. While it is noble to want to get people into treatment and to get them help, simply offering to help is not working. In many cases you need leverage to get folks to stay in treatment. If we want to save lives, decriminalization is the wrong answer.

Sen. John Braun: The CDC announced in May that over 107,000 Americans died of a drug overdose in 2021, a 14.9% increase from the record high of 2020. The same data shows that Washington drug overdose deaths rose by 30.6%, more than twice the national average increase. Of states with at least 1,000 drug overdose deaths, Washington ranked 2nd highest in percentage increase, trailing only Oregon (33.6% increase).

<https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

Julian Saucier: Today's stats are from the existing policy with nothing in place and where people are in the shadows afraid to ask for help.

Malika Lamont: Decriminalization is not the status quo; we have never had a paradigm where possession is officially decriminalized, and we were able to focus our resources on expanding the infrastructure for treatment, care, and housing. We've made an initial investment and efforts to create intervention across the state over the last two years, but we have never made a concerted, concentrated, intentional effort to invest in and create services and meaningful access to services for people that experience substance use disorder, that is at the scope that we need for people to engage in it. Washington State has never made it official policy that we will not criminalize simple possession and paraphernalia. And the evidence does bear out that fentanyl has greatly contributed to the overdose crisis.

Rep. Lauren Davis: The vision of 5467 is just rolling out, with the primary diversion mechanism as the statewide recovery navigator program funded with \$45 million. We don't have data yet on what this will look like, but I can tell you two success stories anecdotally, shared by a friend hired as the Okanogan RNP manager:

- 1) "We received a social referral from law enforcement regarding an individual who's been in and out of jail on a weekly basis. She had experienced multiple overdoses in recent weeks and

continued to use. Our team established rapport and performed an intake within 48 hours. During that time we got involved in peer support programming, assisted her in getting housing. She remains highly motivated in her recovery and in a little over one month, has gone from interacting with law enforcement multiple times per day/week to having sustainable housing, no interaction with law enforcement, and being involved with various nonprofits and narcotics anonymously.

- 2) "A woman was using methamphetamine again; got that woman into a peer support network and into housing, and she's thriving in recovery."

We've always known that person-centered care and peer based work, connecting people and treating them with dignity, actually works. We've just never funded it. We finally funded it in the form of the Recovery Navigator Program, and it's just starting. What we have now isn't working because it is not yet the full realization of what we penned in that bill.

Sarah Melfi-Klein: It feels like we're having this conversation about policy in a vacuum that doesn't consider how money could be saved from not prosecuting these crimes, or the funds that were established as part of 5476, that we can divert to programs to make access to treatment easier and more equitable. These recommendations don't happen in a vacuum. We need those robust efforts to get folks into treatment and to improve health equity across the spectrum for people who *want* treatment being able to access it, so we don't have to go the way of the criminal legal system. Concern that this won't happen quickly enough and that we don't have the workforce to support this, is why I voted for some of the misdemeanor options.

Addy Adwell: We've never had truly decriminalized possession of controlled substances and a treatment system that is meeting the needs of people with substance use disorder or people who even have a law enforcement contact around possession. In our current context, law enforcement officers feel that there's nothing they can do because they don't have the authority to criminalize this in the way that they have in the past. And to me, that's a real indication that we have never truly tried the strategies that we're looking at now, where contact with law enforcement could result in something different.

Legalization / Regulated Market

Malika Lamont: If we have a legalized market:

- We can engage in meaningful research
- We can look at the actual impacts of substances on people not within a prohibition based paradigm, where often we're measuring the impacts of the prohibition based paradigm, not the actual impacts of the substances
- Doctors will be able to engage with their patients more honestly
- Stigma will be reduced so we can better meet the needs of people experiencing SUD
- We can dedicate more funding to housing across the whole entire spectrum, including people that are not in a place where they are willing to engage in abstinence
- We could mitigate the harm of being kept from resources they need because they are experience physical and legal consequences of their substance use
- We could work toward eliminating much of the violence related to the drug war, both within communities and also within the criminal legal system

Kevin Ballard: Having heard from our elected reps and senators, the political will of option nine [legalization], I don't believe is there in 2022-2023, and it's certainly not there in my community as an elected person. I believe that as we move forward with some not-as-progressive options at this moment, we may be more successful in the long term, potentially arriving at legalization down the line.

Safe Supply Initiative

Julian Saucier: Tangible definitions are needed for both the legalization option and the safe supply initiative to have a meaningful conversation.

Malika Lamont:

- In Canada there's an initiative going forward where supply is tested and then distributed to individuals as part of a Buyer's Club. The government is fully aware of this. There is also prescribed heroin from doctors.
- However, because they still have a prohibition-based paradigm, they are still experiencing an overdose crisis, because the increased access to safe supply is for a limited number of people.
- There are researchers that are willing to come and speak to this group if people would like to learn more about the process and the research that they have been doing with the BC Center for Excellence.
- Ideally, the goal of safe supply that you recognize that people are not going to stop using substances. If they are using substances, use something that is going to be less harmful for them
- Research has shown that people are more likely to engage in other health preserving activities and such as primary care, and their usage often regulates and decreases, because they are engaging in the uptake of other healthier behaviors. It is a harm reduction approach.

Civil Penalty Punishable by Fine/Community Service (or waived with completion of health assessment)

Amber Daniel:

- Diversion should also be a part of this, but it isn't named
- In Walla Walla, getting a health assessment is difficult and there's only one outpatient treatment center that does them, so limiting the response to possession to "assessment" or "fine" doesn't seem reasonable
- This would be a great option if there were detox or treatment centers in my area (rural southwest Washington), and if it took less than a month to get somebody an assessment.
- Most people I know who use drugs are struggling financially and expecting them to pay fines is not a realistic expectation; it won't generate any revenue and it will create more barriers for people to have their license, get jobs, and it will create a type of debtor's prison

Brandie Flood:

- One of the biggest problems with any type of health support, drug support, is that we don't have core pathways in our state to get adequate healthcare, mental healthcare, housing and other resources.
- We can use this group to also create better core pathways for that. The only real way to get treatment support is to go to jail or prison. We need to create some core pathways to get all those services in crisis services to people somehow, by leveraging this committee to push that along as well.

Malika Lamont:

- The scope of services are not adequate in the more populated areas either; we could have a landscape where we've made adequate investments in the needed infrastructure for expansion

Special Meeting to Continue Conversation with Additional SMEs

Michael Langer: This recommendation needs to be finalized by mid-September for the legislature. Additional recommendations related to building a stronger workforce, more capacity for outreach, treatment, and recovery are coming through the subcommittees and will take longer to integrate into a plan, but we need to submit a recommendation on the criminal legal response as a first step. Does SURSAC want an additional ad hoc meeting, between now and September 15th, to continue discussion around that recommendation with guest speakers/presenters?

Chad Enright: My only hesitancy in having another meeting is not knowing whether any of the discussion from today changed anybody's minds on their positions. It seems that everybody has dug their feet into what their positions are. The narrow issue, as I see it, is decriminalizing possession vs. keeping it a crime. If the majority here want decriminalization, I'm not sure working together to try to find a criminal response is going to be a great use of time.

Malika Lamont: Even if we don't change each other's minds, we can gain a better understanding of where we're coming from. It is a process of learning that we all need to go through. There are implications that a lot of people don't understand and the purpose of having that conversation goes beyond changing someone's mind.

Votes for Ad-Hoc Special Meeting

Votes in favor of holding an additional meeting: 16

Votes against holding an additional meeting: 1

Wrap Up & Next Steps

- Senator Dhingra left closing words for the committee: "I just want us to all understand that I have heard everyone with the same goal. That is, to get people into treatment and to save lives."
- Michelle will work to arrange a special 3-4 hour meeting before September 15th for SURSAC to continue discussion around a recommendation for the criminal legal response to possession of controlled substances

Resources Shared

- [Today's fentanyl crisis: Prohibition's Iron Law, revisited \(PubMed.gov\)](#)
- [CDC Provisional Drug Overdose Death Counts](#)
- [Fentanyl from the Government? A Vancouver Experiment Aims to Stop Overdoses \(New York Times\)](#)
- [The Effects of Drug Control Policies on Individual and Community Health for People of Color](#)