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**HOUSE BILL 1892**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Rule, Shewmake, and Pollet

AN ACT Relating to establishing a statewide database for tracking diversions offered by law enforcement to individuals using or possessing controlled substances, counterfeit substances, and legend drugs; amending RCW 10.31.115; and adding a new section to chapter 41.05 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 41.05 RCW to read as follows:

(1) Subject to the availability of funds appropriated for this purpose, the Washington state health care authority shall develop, implement, and maintain a statewide drug diversion database accessible to all state law enforcement agencies and officers; superior, district, and municipal courts; and county prosecutors and city attorneys.

(2) The database shall be a centralized, uniform, searchable, and computerized database that contains all required reports by law enforcement agencies and officers in the state related to incidents where an agency or officer refers an individual to assessment and services pursuant to RCW 10.31.115.

(3) Each agency's or officer's report required pursuant to RCW 10.31.115 shall contain the following information:

(a) The date, time, and location of the incident that resulted in a diversion being issued;

(b) The name of the law enforcement agency and officer that issued the diversion;

(c) A physical description of the individual involved in the incident;

(d) The name and date of birth of the individual involved in the incident, if known;

(e) The criminal violation that the individual is alleged to have committed;

(f) Whether any substances the individual possessed were field tested or submitted to a crime laboratory; and

(g) A summary of the diversion information provided by the involved law enforcement agency or officer to the involved individual, subject to the following:

(i) The summary must include, if applicable, the name of the program or entity that the individual was referred to for assessment and services; and

(ii) If no program or entity was available to refer the individual to for an assessment, the summary must describe the information provided to the individual to comply with the diversion.

(4) For the purposes of this section:

(a) "Individual" means a person who would be subject to arrest for possession of a counterfeit substance under RCW 69.50.4011, possession of a controlled substance under RCW 69.50.4013, possession of 40 grams or less of marijuana under RCW 69.50.4014, or possession of a legend drug under RCW 69.41.030(2)(b).

(b) "Law enforcement agency" or "agency" means any general authority Washington law enforcement agency and limited authority Washington law enforcement agency as those terms are defined in RCW 10.93.020.

(c) "Law enforcement officer" or "officer" means any general authority Washington peace officer and limited authority Washington peace officer as those terms are defined in RCW 10.93.020.

**Sec.**  RCW 10.31.115 and 2021 c 311 s 13 are each amended to read as follows:

(1) For all individuals who otherwise would be subject to arrest for possession of a counterfeit substance under RCW 69.50.4011, possession of a controlled substance under RCW 69.50.4013, possession of 40 grams or less of marijuana under RCW 69.50.4014, or possession of a legend drug under RCW 69.41.030(2)(b), in lieu of jail booking and referral to the prosecutor, law enforcement shall offer a referral to assessment and services available pursuant to RCW 10.31.110 or other program or entity responsible for receiving referrals in lieu of legal system involvement, which may include the recovery navigator program established under RCW 71.24.115. When an incident results in a referral pursuant to this section, the involved law enforcement agency or officer shall file a report in the statewide drug diversion database pursuant to section 1 of this act.

(2) If ((~~law enforcement agency~~)) records from the statewide drug diversion database pursuant to section 1 of this act reflect that an individual has been diverted to referral for assessment and services twice or more previously, officers may, but are not required to, make additional diversion efforts.

(3) Nothing in this section precludes prosecutors from diverting or declining to file any charges for possession offenses that are referred under RCW 69.50.4011, 69.50.4013, 69.50.4014, or 69.41.030(2)(b) in the exercise of their discretion.

(4) All records from the statewide drug diversion database and the information contained therein are confidential and may be released to the public only when that information could not reasonably be expected to identify the subject of a diversion, unless for the purpose described in subsection (6) of this section.

(5) All records from the statewide drug diversion database and the information contained therein are not subject to disclosure pursuant to the Washington public records act under chapter 42.56 RCW.

(6) The court and prosecuting authority may establish and maintain a central recordkeeping system which may receive information on an individual who is the subject of a report in the statewide drug diversion database, whether or not a case is currently pending before the court. However, a diversion shall not be reported as a part of the individual's criminal history.

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