

2SSB 5536 - S AMD 154

By Senator Robinson

ADOPTED AS AMENDED 03/03/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that substance use
4 disorders are a public health issue. Solutions must address not only
5 the criminal legal response, but be data-driven, evidence-based, and
6 represent best practices, working directly with people who use drugs
7 to prevent overdose and infectious disease transmission, and improve
8 the physical, mental, and social well-being of those served. The
9 state must follow principles of harm reduction, which means practical
10 strategies aimed at reducing negative consequences associated with
11 drug use. Harm reduction involves safer use of supplies as well as
12 care settings, staffing, and interactions that are person-centered,
13 supportive, and welcoming.

14 The legislature finds that the recommendations of the substance
15 use recovery services advisory committee reflect hours of diligent
16 work by individuals with a range of professional and personal
17 experience, who brought that experience to the committee, and whose
18 expertise is reflected in the recommendations.

19 **Part I - Prohibiting Knowing Possession of a Controlled Substance,**
20 **Counterfeit Substance, or Legend Drug**

21 **Sec. 2.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to
22 read as follows:

23 (1) Except as authorized by this chapter, it is unlawful for any
24 person to (~~create, deliver, or possess a counterfeit substance~~):

25 (a) Create or deliver a counterfeit substance; or

26 (b) Knowingly possess a counterfeit substance.

27 (2) Any person who violates subsection (1)(a) of this section
28 with respect to:

29 (a) A counterfeit substance classified in Schedule I or II which
30 is a narcotic drug, or flunitrazepam classified in Schedule IV, is

1 guilty of a class B felony and upon conviction may be imprisoned for
2 not more than (~~ten~~) 10 years, fined not more than (~~twenty-five~~
3 ~~thousand dollars~~) \$25,000, or both;

4 (b) A counterfeit substance which is methamphetamine, is guilty
5 of a class B felony and upon conviction may be imprisoned for not
6 more than (~~ten~~) 10 years, fined not more than (~~twenty-five~~
7 ~~thousand dollars~~) \$25,000, or both;

8 (c) Any other counterfeit substance classified in Schedule I, II,
9 or III, is guilty of a class C felony punishable according to chapter
10 9A.20 RCW;

11 (d) A counterfeit substance classified in Schedule IV, except
12 flunitrazepam, is guilty of a class C felony punishable according to
13 chapter 9A.20 RCW;

14 (e) A counterfeit substance classified in Schedule V, is guilty
15 of a class C felony punishable according to chapter 9A.20 RCW.

16 (3)(a) A violation of subsection (1)(b) of this section is a
17 gross misdemeanor. The prosecutor is encouraged to divert such cases
18 for assessment, treatment, or other services.

19 (b) In lieu of jail booking and referral to the prosecutor, law
20 enforcement is encouraged to offer a referral to assessment and
21 services available under RCW 10.31.110 or other program or entity
22 responsible for receiving referrals in lieu of legal system
23 involvement, which may include, but are not limited to, arrest and
24 jail alternative programs established under RCW 36.28A.450, law
25 enforcement assisted diversion programs established under RCW
26 71.24.589, and the recovery navigator program established under RCW
27 71.24.115.

28 (c) Upon arraignment for a violation of subsection (1)(b) of this
29 section, the court shall advise the defendant of the pretrial
30 diversion program as indicated in section 10(2) of this act.

31 **Sec. 3.** RCW 69.50.4013 and 2022 c 16 s 86 are each amended to
32 read as follows:

33 (1) It is unlawful for any person to knowingly possess a
34 controlled substance unless the substance was obtained directly from,
35 or pursuant to, a valid prescription or order of a practitioner while
36 acting in the course of his or her professional practice, or except
37 as otherwise authorized by this chapter.

38 (2)(a) Except as provided in RCW 69.50.4014, (~~any person who~~
39 ~~violates this section is guilty of a class C felony punishable under~~

1 ~~chapter 9A.20 RCW~~) a violation of this section is a gross
2 misdemeanor. The prosecutor is encouraged to divert such cases for
3 assessment, treatment, or other services.

4 (b) In lieu of jail booking and referral to the prosecutor, law
5 enforcement is encouraged to offer a referral to assessment and
6 services available under RCW 10.31.110 or other program or entity
7 responsible for receiving referrals in lieu of legal system
8 involvement, which may include, but are not limited to, arrest and
9 jail alternative programs established under RCW 36.28A.450, law
10 enforcement assisted diversion programs established under RCW
11 71.24.589, and the recovery navigator program established under RCW
12 71.24.115.

13 (c) Upon arraignment for a violation of this section, the court
14 shall advise the defendant of the availability of the pretrial
15 diversion program as indicated in section 10(2) of this act.

16 (3) (a) The possession, by a person (~~(twenty-one)~~) 21 years of age
17 or older, of useable cannabis, cannabis concentrates, or cannabis-
18 infused products in amounts that do not exceed those set forth in RCW
19 69.50.360(3) is not a violation of this section, this chapter, or any
20 other provision of Washington state law.

21 (b) The possession of cannabis, useable cannabis, cannabis
22 concentrates, and cannabis-infused products being physically
23 transported or delivered within the state, in amounts not exceeding
24 those that may be established under RCW 69.50.385(3), by a licensed
25 employee of a common carrier when performing the duties authorized in
26 accordance with RCW 69.50.382 and 69.50.385, is not a violation of
27 this section, this chapter, or any other provision of Washington
28 state law.

29 (4) (a) The delivery by a person (~~(twenty-one)~~) 21 years of age or
30 older to one or more persons (~~(twenty-one)~~) 21 years of age or older,
31 during a single (~~(twenty-four)~~) 24 hour period, for noncommercial
32 purposes and not conditioned upon or done in connection with the
33 provision or receipt of financial consideration, of any of the
34 following cannabis products, is not a violation of this section, this
35 chapter, or any other provisions of Washington state law:

- 36 (i) One-half ounce of useable cannabis;
- 37 (ii) Eight ounces of cannabis-infused product in solid form;
- 38 (iii) (~~(Thirty-six)~~) 36 ounces of cannabis-infused product in
39 liquid form; or
- 40 (iv) Three and one-half grams of cannabis concentrates.

1 (b) The act of delivering cannabis or a cannabis product as
2 authorized under this subsection (4) must meet one of the following
3 requirements:

4 (i) The delivery must be done in a location outside of the view
5 of general public and in a nonpublic place; or

6 (ii) The cannabis or cannabis product must be in the original
7 packaging as purchased from the cannabis retailer.

8 (5) No person under (~~twenty-one~~) 21 years of age may
9 (~~possess~~) manufacture, sell, (~~or~~) distribute, or knowingly
10 possess cannabis, cannabis-infused products, or cannabis
11 concentrates, regardless of THC concentration. This does not include
12 qualifying patients with a valid authorization.

13 (6) The possession by a qualifying patient or designated provider
14 of cannabis concentrates, useable cannabis, cannabis-infused
15 products, or plants in accordance with chapter 69.51A RCW is not a
16 violation of this section, this chapter, or any other provision of
17 Washington state law.

18 **Sec. 4.** RCW 69.50.4014 and 2022 c 16 s 88 are each amended to
19 read as follows:

20 (1) Except as provided in RCW 69.50.401(2)(c) or as otherwise
21 authorized by this chapter, any person found guilty of knowing
22 possession of (~~forty~~) 40 grams or less of cannabis is guilty of a
23 misdemeanor. The prosecutor is encouraged to divert such cases for
24 assessment, treatment, or other services.

25 (2) In lieu of jail booking and referral to the prosecutor, law
26 enforcement is encouraged to offer a referral to assessment and
27 services available under RCW 10.31.110 or other program or entity
28 responsible for receiving referrals in lieu of legal system
29 involvement, which may include, but are not limited to, arrest and
30 jail alternative programs established under RCW 36.28A.450, law
31 enforcement assisted diversion programs established under RCW
32 71.24.589, and the recovery navigator program established under RCW
33 71.24.115.

34 (3) Upon arraignment for violation of this section, the court
35 shall advise the defendant of the availability of the pretrial
36 diversion program as indicated in section 10(2) of this act.

37 **Sec. 5.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to
38 read as follows:

1 (1) It shall be unlawful for any person to sell(~~(7)~~) or deliver
2 any legend drug, or knowingly possess any legend drug except upon the
3 order or prescription of a physician under chapter 18.71 RCW, an
4 osteopathic physician and surgeon under chapter 18.57 RCW, an
5 optometrist licensed under chapter 18.53 RCW who is certified by the
6 optometry board under RCW 18.53.010, a dentist under chapter 18.32
7 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a
8 veterinarian under chapter 18.92 RCW, a commissioned medical or
9 dental officer in the United States armed forces or public health
10 service in the discharge of his or her official duties, a duly
11 licensed physician or dentist employed by the veterans administration
12 in the discharge of his or her official duties, a registered nurse or
13 advanced registered nurse practitioner under chapter 18.79 RCW when
14 authorized by the nursing care quality assurance commission, a
15 pharmacist licensed under chapter 18.64 RCW to the extent permitted
16 by drug therapy guidelines or protocols established under RCW
17 18.64.011 and authorized by the commission and approved by a
18 practitioner authorized to prescribe drugs, a physician assistant
19 under chapter 18.71A RCW when authorized by the Washington medical
20 commission, or any of the following professionals in any province of
21 Canada that shares a common border with the state of Washington or in
22 any state of the United States: A physician licensed to practice
23 medicine and surgery or a physician licensed to practice osteopathic
24 medicine and surgery, a dentist licensed to practice dentistry, a
25 podiatric physician and surgeon licensed to practice podiatric
26 medicine and surgery, a licensed advanced registered nurse
27 practitioner, a licensed physician assistant, or a veterinarian
28 licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the
29 above provisions shall not apply to sale, delivery, or possession by
30 drug wholesalers or drug manufacturers, or their agents or employees,
31 or to any practitioner acting within the scope of his or her license,
32 or to a common or contract carrier or warehouse operator, or any
33 employee thereof, whose possession of any legend drug is in the usual
34 course of business or employment: PROVIDED FURTHER, That nothing in
35 this chapter or chapter 18.64 RCW shall prevent a family planning
36 clinic that is under contract with the health care authority from
37 selling, delivering, possessing, and dispensing commercially
38 prepackaged oral contraceptives prescribed by authorized, licensed
39 health care practitioners: PROVIDED FURTHER, That nothing in this
40 chapter prohibits possession or delivery of legend drugs by an

1 authorized collector or other person participating in the operation
2 of a drug take-back program authorized in chapter 69.48 RCW.

3 (2) (a) A violation of this section involving the sale, delivery,
4 or possession with intent to sell or deliver is a class B felony
5 punishable according to chapter 9A.20 RCW.

6 (b) A violation of this section involving knowing possession is a
7 misdemeanor. The prosecutor is encouraged to divert such cases for
8 assessment, treatment, or other services.

9 (c) In lieu of jail booking and referral to the prosecutor for a
10 violation of this section involving knowing possession, law
11 enforcement is encouraged to offer a referral to assessment and
12 services available under RCW 10.31.110 or other program or entity
13 responsible for receiving referrals in lieu of legal system
14 involvement, which may include, but are not limited to, arrest and
15 jail alternative programs established under RCW 36.28A.450, law
16 enforcement assisted diversion programs established under RCW
17 71.24.589, and the recovery navigator program established under RCW
18 71.24.115.

19 (d) Upon arraignment for a violation of this section involving
20 knowing possession, the court shall advise the defendant of the
21 availability of the pretrial diversion program as indicated in
22 section 10(2) of this act.

23 **Sec. 6.** RCW 69.50.509 and 1987 c 202 s 228 are each amended to
24 read as follows:

25 If, upon the sworn complaint of any person, it shall be made to
26 appear to any judge of the superior court, district court, or
27 municipal court that there is probable cause to believe that any
28 controlled substance is being used, manufactured, sold, bartered,
29 exchanged, administered, dispensed, delivered, distributed, produced,
30 knowingly possessed, given away, furnished or otherwise disposed of
31 or kept in violation of the provisions of this chapter, such judge
32 shall, with or without the approval of the prosecuting attorney,
33 issue a warrant directed to any law enforcement officer of the state,
34 commanding him or her to search the premises designated and described
35 in such complaint and warrant, and to seize all controlled substances
36 there found, together with the vessels in which they are contained,
37 and all implements, furniture and fixtures used or kept for the
38 illegal manufacture, sale, barter, exchange, administering,
39 dispensing, delivering, distributing, producing, possessing, giving

1 away, furnishing or otherwise disposing of such controlled
2 substances, and to safely keep the same, and to make a return of said
3 warrant within three days, showing all acts and things done
4 thereunder, with a particular statement of all articles seized and
5 the name of the person or persons in whose possession the same were
6 found, if any, and if no person be found in the possession of said
7 articles, the returns shall so state. The provisions of RCW 10.31.030
8 as now or hereafter amended shall apply to actions taken pursuant to
9 this chapter.

10 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.43
11 RCW to read as follows:

12 The Washington state patrol bureau of forensic laboratory
13 services shall aim to complete the necessary analysis for any
14 evidence submitted for a suspected violation of RCW 69.50.4011(1)(b),
15 69.50.4013, or 69.41.030 within 45 days of receipt of the request for
16 analysis.

17 The Washington state patrol bureau of forensic laboratory
18 services' failure to comply with this section shall not constitute
19 grounds for dismissal of a criminal charge.

20 NEW SECTION. **Sec. 8.** The following sums, or as much thereof as
21 may be necessary, are each appropriated to the Washington state
22 patrol: \$780,000 from the state general fund for the fiscal year
23 ending June 30, 2024; and \$425,000 from the state general fund for
24 the fiscal year ending June 30, 2025. The amounts in this section are
25 provided solely to support the Washington state patrol bureau of
26 forensic laboratory services in completing the necessary analysis for
27 any evidence submitted for a suspected violation of RCW
28 69.50.4011(1)(b), 69.50.4013, or 69.41.030 within 45 days of receipt
29 of the request for analysis.

30 **Part II - Relating to Drug Paraphernalia**

31 **Sec. 9.** RCW 69.50.4121 and 2022 c 16 s 92 are each amended to
32 read as follows:

33 (1) Every person who sells (~~or gives,~~) or permits to be sold
34 (~~or given~~) to any person any drug paraphernalia in any form commits
35 a class I civil infraction under chapter 7.80 RCW. For purposes of
36 this subsection, "drug paraphernalia" means all equipment, products,

1 and materials of any kind which are used, intended for use, or
2 designed for use in planting, propagating, cultivating, growing,
3 harvesting, manufacturing, compounding, converting, producing,
4 processing, preparing, (~~(testing, —analyzing,)~~) packaging,
5 repackaging, storing, containing, concealing, injecting, ingesting,
6 inhaling, or otherwise introducing into the human body a controlled
7 substance other than cannabis. Drug paraphernalia includes, but is
8 not limited to objects used, intended for use, or designed for use in
9 ingesting, inhaling, or otherwise introducing cocaine into the human
10 body, such as:

11 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
12 pipes with or without screens, permanent screens, hashish heads, or
13 punctured metal bowls;

14 (b) Water pipes;

15 (c) Carburetion tubes and devices;

16 (d) Smoking and carburetion masks;

17 (e) Miniature cocaine spoons and cocaine vials;

18 (f) Chamber pipes;

19 (g) Carburetor pipes;

20 (h) Electric pipes;

21 (i) Air-driven pipes; and

22 (j) Ice pipes or chillers.

23 (2) It shall be no defense to a prosecution for a violation of
24 this section that the person acted, or was believed by the defendant
25 to act, as agent or representative of another.

26 (3) Nothing in subsection (1) of this section prohibits (~~(legal)~~)
27 distribution ((of injection)) or use of public health supplies
28 including, but not limited to, syringe equipment, smoking equipment,
29 or drug testing equipment, through public health ((and)) programs,
30 community-based HIV prevention programs, and pharmacies. Public
31 health and syringe service program staff taking samples of substances
32 and using drug testing equipment for the purpose of analyzing the
33 composition of the substances or detecting the presence of certain
34 substances are acting legally and are exempt from arrest and
35 prosecution under RCW 69.50.4011, 69.50.4013, 69.50.4014, or
36 69.41.030.

37 **Part III - Creating a Pretrial Diversion Program for Individuals**
38 **Charged with Possession and Vacating Possession Convictions**

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 69.50
2 RCW to read as follows:

3 (1) Nothing in this section prevents the defense, with the
4 consent of the prosecutor as required by RCW 2.30.030, from seeking
5 to resolve charges of possession under RCW 69.50.4011(1)(b),
6 69.50.4013, 69.50.4014, or 69.41.030 through available therapeutic
7 courts or other alternatives to prosecution.

8 (2) For any charged violation of RCW 69.50.4011(1)(b),
9 69.50.4013, 69.50.4014, or 69.41.030, the court shall advise the
10 defendant and his or her attorney of the pretrial diversion program.
11 This notification must include all of the following:

12 (a) A full description of the procedures for pretrial diversion;

13 (b) A general explanation of the roles and authorities of the
14 probation department, the prosecuting attorney, the program, and the
15 court in the process;

16 (c) A clear statement that the court may grant pretrial diversion
17 with respect to any offense under RCW 69.50.4011(1)(b), 69.50.4013,
18 69.50.4014, or 69.41.030 that is charged, provided that the defendant
19 pleads not guilty to the charge or charges, waives the right to a
20 speedy trial and that upon the defendant's successful completion of
21 the program, as specified in subsection (1)(d) of this section, the
22 positive recommendation of the program authority and motion of the
23 defendant, prosecuting attorney, the court, or the probation
24 department, the court must dismiss the charge or charges against the
25 defendant;

26 (d) A clear statement that if the defendant has not substantially
27 complied with services provided that are appropriate to the
28 defendant's circumstances, the prosecuting attorney may make a motion
29 to terminate pretrial diversion and schedule further proceedings as
30 otherwise provided in this section; and

31 (e) An explanation of criminal record retention and disposition
32 resulting from participation in the pretrial diversion program and
33 the defendant's rights relative to answering questions about his or
34 her arrest and pretrial diversion following successful completion of
35 the program.

36 (3) Upon a motion of the defendant and agreement to waive his or
37 her right to a speedy trial if granted pretrial diversion, the court
38 may grant the motion and continue the hearing and refer the defendant
39 for an assessment by any substance use disorder treatment program as
40 designated in chapter 71.24 RCW.

1 (4) (a) For defendants who agree to participate in the diversion
2 program, the state shall make resources available to assist the
3 defendant in obtaining a substance use disorder evaluation within
4 seven days of the defendant's agreement to participate in the
5 diversion program. The substance use evaluation must be provided at
6 no expense to defendants who qualify for public defense services or
7 who are found to be indigent by the court. The evaluation must be
8 provided at a location that is accessible to the defendant, and the
9 court must provide the defendant with transportation assistance if
10 such assistance is necessary to make the evaluation accessible to the
11 defendant. The court may contract with a third party to provide
12 substance use disorder assessments and services, which may be
13 collocated at the court or be provided at alternative locations.

14 (b) The state shall reimburse local courts for costs associated
15 with the substance use disorder assessments and related travel under
16 this subsection.

17 (5) The treatment program must make a written report to the court
18 stating its findings and recommendations after the examination. The
19 report shall be filed under seal with the court.

20 (6) The report with the treatment or service plan must be filed
21 with the court and a copy given to the prosecutor, the defendant, and
22 the defendant's counsel.

23 (7) Subject to the availability of funds appropriated for this
24 purpose, the assessment and recommended services or treatment must be
25 provided at no cost for individuals who have been found to be
26 indigent by the court.

27 (8) No statement, or any information procured therefrom relating
28 to the charge for which the defendant is receiving treatment or
29 services, made by the defendant to any treatment or service provider,
30 that is made during the course of any assessment or services provided
31 by the treatment program pursuant to subsections (4) through (6) of
32 this section, and before the reporting of the findings and
33 recommendations to the court, may be admissible in any action or
34 proceeding brought subsequent to the investigation.

35 (9) A defendant's participation in pretrial diversion under this
36 section does not constitute a conviction, a stipulation to facts, or
37 an admission of guilt for any purpose.

38 (10) At the time that pretrial diversion is granted, any bail
39 bond on file by or on behalf of the defendant must be exonerated, and
40 the court must enter an order so directing.

1 (11)(a) If it appears to the prosecuting attorney that the
2 defendant is not substantially complying in the recommended treatment
3 or services, that the defendant is convicted of an offense that
4 reflects the defendant's propensity for violence, that the defendant
5 is charged with a subsequent violation of RCW 69.50.4011(1)(b),
6 69.50.4013, or 69.41.030, or that the defendant is convicted of a
7 felony, the prosecuting attorney may make a motion for termination
8 from pretrial diversion.

9 (b) After notice to the defendant, the court must hold a hearing
10 to determine whether pretrial diversion shall be terminated.

11 (c) If the court finds that the defendant is not substantially
12 complying in the recommended treatment or services, or the court
13 finds that the defendant has been convicted of an intervening crime
14 as indicated in (a) of this subsection, the court must schedule the
15 matter for further proceedings.

16 (d) If the defendant has successfully completed pretrial
17 diversion, including meaningful engagement with recommended treatment
18 or services, at the end of that period, the criminal possession
19 charge or charges must be dismissed.

20 NEW SECTION. **Sec. 11.** A new section is added to chapter 69.50
21 RCW to read as follows:

22 (1) In courts of limited jurisdiction, an individual who is
23 convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or
24 69.41.030(2)(b) shall be sentenced as follows:

25 (a) For individuals convicted of a violation of RCW
26 69.50.4011(1)(b) or 69.50.4013, if the sentenced individual agrees as
27 a condition of probation to submit to a substance use disorder
28 assessment and comply with recommended treatment, to a term of
29 confinement of up to 364 days all of which shall be suspended for a
30 period not to exceed two years. The court shall give the individual
31 credit for all confinement time served before the sentence if the
32 confinement was solely in regard to the offense for which the
33 individual is being sentenced;

34 (b) For individuals convicted of a violation of RCW
35 69.41.030(2)(b), if the sentenced individual agrees as a condition of
36 probation to submit to a substance use disorder assessment and comply
37 with recommended treatment, to a term of confinement of up to 90 days
38 all of which shall be suspended for a period not to exceed one year;
39 and

1 (c) For individuals convicted of a violation of RCW
2 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) where the legend
3 drug is classified as schedule II substance under RCW 69.50.206, if
4 the sentenced individual refuses to submit to a substance use
5 disorder assessment and comply with the recommended treatment as a
6 condition of probation, to imprisonment for a term of not less than
7 21 days. The sentencing court shall give the individual credit for
8 all confinement time served before the sentencing if the confinement
9 was solely in regard to the offense for which the individual is being
10 sentenced.

11 (2) For individuals sentenced under subsection (1)(a) or (b) of
12 this section, the court shall order as a condition of probation the
13 individual to submit to a substance use disorder assessment and
14 comply with the recommended treatment.

15 (a) The court shall assist the defendant in obtaining a substance
16 use disorder evaluation within seven days of the defendant's
17 agreement to participate in the diversion program. The substance use
18 evaluation shall be provided at no expense to defendants who qualify
19 for public defense services or who are found to be indigent by the
20 court. The evaluation shall be provided at a location that is
21 accessible to the defendant, and the court shall provide the
22 defendant with transportation assistance if such assistance is
23 necessary to make the evaluation accessible to the defendant. The
24 court may contract with a third party to provide substance use
25 disorder assessments and services, which may be collocated at the
26 court or be provided at alternative locations. The state shall
27 reimburse local courts for costs associated with the substance use
28 disorder assessments under this subsection.

29 (b) A diagnostic evaluation and treatment recommendation shall be
30 prepared by a substance use disorder treatment program licensed or
31 certified by the department of health or a qualified probation
32 department approved by the department of social and health services.
33 A copy of the report shall be forwarded to the court and filed under
34 seal. Based on the diagnostic evaluation, the court shall determine
35 whether the person shall be required to complete a course in an
36 alcohol and drug information school licensed or certified by the
37 department of health or more intensive treatment in an approved
38 treatment program licensed or certified by the department of health.

39 (c) The diagnostic evaluation and treatment recommendation shall
40 include the following:

- 1 (i) Type of treatment;
- 2 (ii) Nature of treatment;
- 3 (iii) Length of treatment;
- 4 (iv) A treatment time schedule; and
- 5 (v) Approximate cost of the treatment.

6 (3) A person subject to substance use disorder assessment and
7 treatment shall be required by the court to complete a course in an
8 alcohol and drug information school certified by the department of
9 health or to complete more intensive treatment in a treatment program
10 licensed or certified by the department of health, as determined by
11 the court.

12 (4) All individuals providing treatment under this section shall
13 implement the integrated and comprehensive screening and assessment
14 process for co-occurring substance use and mental health disorders
15 adopted under RCW 71.24.630.

16 (5) Any agency that provides treatment ordered under this
17 section, must report to the appropriate probation department where
18 applicable, otherwise to the court, any noncompliance by a person
19 with the conditions of the person's ordered treatment.

20 (6) Subject to the availability of funds appropriated for this
21 purpose, the substance use disorder assessment and recommended
22 treatment as ordered by the court shall be provided at no cost for
23 sentenced individuals who have been found to be indigent by the
24 court.

25 (7) As a condition of probation, the sentenced individual must
26 comply with the treatment recommendations of the substance use
27 disorder assessment.

28 (8)(a) If it appears to the prosecuting attorney or the court,
29 that the sentenced individual is performing unsatisfactorily in the
30 recommended treatment program, the prosecuting attorney, or the court
31 on its own, shall make a motion for a hearing to consider sanctions.
32 After notice to the sentenced individual, the court shall hold a
33 hearing to determine if a sanction or revocation of the individual's
34 suspended sentence, or any part thereof, is warranted under RCW
35 3.50.340 or 3.66.069.

36 (b) The court may not sanction an individual for failing to
37 comply with the recommended treatment if the court finds the
38 sentenced individual has made reasonable efforts to comply with the
39 recommended treatment but cannot comply either due to a lack of

1 available treatment or, for sentenced individuals found to be
2 indigent by the court, due to a lack of funding for treatment.

3 (9) For individuals sentenced under subsection (1)(a) of this
4 section, if at any point the court finds by a preponderance of the
5 evidence that the sentenced individual has willfully abandoned or
6 demonstrated a consistent failure to comply with the recommended
7 treatment, the court shall reinstate a portion of the individual's
8 suspended sentence as follows:

9 (a) For an individual's first instance of being sentenced under
10 this section, the court shall use its discretion in determining an
11 appropriate amount of time of the individual's suspended sentence to
12 reinstate given the facts and circumstances of the particular case;

13 (b) For an individual's second instance of being sentenced under
14 this section, the court shall reinstate no less than 21 days of the
15 individual's suspended sentence; and

16 (c) For an individual's third instance of being sentenced under
17 this section, the court shall reinstate no less than 45 days of the
18 individual's suspended sentence.

19 (10) For individuals sentenced under subsection (1)(a) of this
20 section, the court may deem any subsequent charge filed against the
21 individual for violation of RCW 69.50.4011(1)(b), 69.50.4013, or
22 69.41.030 a willful abandonment of treatment.

23 (11) If the individual has successfully completed the recommended
24 treatment program, the individual must file proof of successful
25 completion with the court at which time the court must terminate
26 probation and enter an order vacating the individual's conviction
27 under RCW 9.96.060(6).

28 **Sec. 12.** RCW 9.96.060 and 2022 c 16 s 7 are each amended to read
29 as follows:

30 (1) When vacating a conviction under this section, the court
31 effectuates the vacation by: (a)(i) Permitting the applicant to
32 withdraw the applicant's plea of guilty and to enter a plea of not
33 guilty; or (ii) if the applicant has been convicted after a plea of
34 not guilty, the court setting aside the verdict of guilty; and (b)
35 the court dismissing the information, indictment, complaint, or
36 citation against the applicant and vacating the judgment and
37 sentence.

38 (2) Every person convicted of a misdemeanor or gross misdemeanor
39 offense may apply to the sentencing court for a vacation of the

1 applicant's record of conviction for the offense. If the court finds
2 the applicant meets the requirements of this subsection, the court
3 may in its discretion vacate the record of conviction. Except as
4 provided in subsections (3), (4), ~~((and))~~ (5), and (6) of this
5 section, an applicant may not have the record of conviction for a
6 misdemeanor or gross misdemeanor offense vacated if any one of the
7 following is present:

8 (a) The applicant has not completed all of the terms of the
9 sentence for the offense;

10 (b) There are any criminal charges against the applicant pending
11 in any court of this state or another state, or in any federal or
12 tribal court, at the time of application;

13 (c) The offense was a violent offense as defined in RCW 9.94A.030
14 or an attempt to commit a violent offense;

15 (d) The offense was a violation of RCW 46.61.502 (driving while
16 under the influence), 46.61.504 (actual physical control while under
17 the influence), 9.91.020 (operating a railroad, etc. while
18 intoxicated), or the offense is considered a "prior offense" under
19 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
20 violation within ten years of the date of arrest for the prior
21 offense or less than ten years has elapsed since the date of the
22 arrest for the prior offense;

23 (e) The offense was any misdemeanor or gross misdemeanor
24 violation, including attempt, of chapter 9.68 RCW (obscenity and
25 pornography), chapter 9.68A RCW (sexual exploitation of children), or
26 chapter 9A.44 RCW (sex offenses), except for failure to register as a
27 sex offender under RCW 9A.44.132;

28 (f) The applicant was convicted of a misdemeanor or gross
29 misdemeanor offense as defined in RCW 10.99.020, or the court
30 determines after a review of the court file that the offense was
31 committed by one family or household member against another or by one
32 intimate partner against another, or the court, after considering the
33 damage to person or property that resulted in the conviction, any
34 prior convictions for crimes defined in RCW 10.99.020, or for
35 comparable offenses in another state or in federal court, and the
36 totality of the records under review by the court regarding the
37 conviction being considered for vacation, determines that the offense
38 involved domestic violence, and any one of the following factors
39 exist:

1 (i) The applicant has not provided written notification of the
2 vacation petition to the prosecuting attorney's office that
3 prosecuted the offense for which vacation is sought, or has not
4 provided that notification to the court;

5 (ii) The applicant has two or more domestic violence convictions
6 stemming from different incidents. For purposes of this subsection,
7 however, if the current application is for more than one conviction
8 that arose out of a single incident, none of those convictions counts
9 as a previous conviction;

10 (iii) The applicant has signed an affidavit under penalty of
11 perjury affirming that the applicant has not previously had a
12 conviction for a domestic violence offense, and a criminal history
13 check reveals that the applicant has had such a conviction; or

14 (iv) Less than five years have elapsed since the person completed
15 the terms of the original conditions of the sentence, including any
16 financial obligations and successful completion of any treatment
17 ordered as a condition of sentencing;

18 (g) For any offense other than those described in (f) of this
19 subsection, less than three years have passed since the person
20 completed the terms of the sentence, including any financial
21 obligations;

22 (h) The offender has been convicted of a new crime in this state,
23 another state, or federal or tribal court in the three years prior to
24 the vacation application; or

25 (i) The applicant is currently restrained by a domestic violence
26 protection order, a no-contact order, an antiharassment order, or a
27 civil restraining order which restrains one party from contacting the
28 other party or was previously restrained by such an order and was
29 found to have committed one or more violations of the order in the
30 five years prior to the vacation application.

31 (3) If the applicant is a victim of sex trafficking,
32 prostitution, or commercial sexual abuse of a minor; sexual assault;
33 or domestic violence as defined in RCW 9.94A.030, or the prosecutor
34 applies on behalf of the state, the sentencing court may vacate the
35 record of conviction if the application satisfies the requirements of
36 RCW 9.96.080. When preparing or filing the petition, the prosecutor
37 is not deemed to be providing legal advice or legal assistance on
38 behalf of the victim, but is fulfilling an administrative function on
39 behalf of the state in order to further their responsibility to seek
40 to reform and improve the administration of criminal justice. A

1 record of conviction vacated using the process in RCW 9.96.080 is
2 subject to subsections (~~((6) and~~) (7) and (8) of this section.

3 (4) Every person convicted prior to January 1, 1975, of violating
4 any statute or rule regarding the regulation of fishing activities,
5 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
6 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
7 who claimed to be exercising a treaty Indian fishing right, may apply
8 to the sentencing court for vacation of the applicant's record of the
9 misdemeanor, gross misdemeanor, or felony conviction for the offense.
10 If the person is deceased, a member of the person's family or an
11 official representative of the tribe of which the person was a member
12 may apply to the court on behalf of the deceased person.
13 Notwithstanding the requirements of RCW 9.94A.640, the court shall
14 vacate the record of conviction if:

15 (a) The applicant is a member of a tribe that may exercise treaty
16 Indian fishing rights at the location where the offense occurred; and

17 (b) The state has been enjoined from taking enforcement action of
18 the statute or rule to the extent that it interferes with a treaty
19 Indian fishing right as determined under *United States v. Washington*,
20 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
21 899 (D. Oregon 1969), and any posttrial orders of those courts, or
22 any other state supreme court or federal court decision.

23 (5) Every person convicted of a misdemeanor cannabis offense, who
24 was (~~(twenty-one)~~) 21 years of age or older at the time of the
25 offense, may apply to the sentencing court for a vacation of the
26 applicant's record of conviction for the offense. A misdemeanor
27 cannabis offense includes, but is not limited to: Any offense under
28 RCW 69.50.4014, from July 1, 2004, onward, and its predecessor
29 statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1,
30 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and
31 any offense under an equivalent municipal ordinance. If an applicant
32 qualifies under this subsection, the court shall vacate the record of
33 conviction.

34 (6) If an individual who successfully completes a substance use
35 disorder treatment program as required under section 11 of this act
36 files proof of completion with the court, upon verification that the
37 individual successfully completed the substance use disorder
38 treatment program, the court must vacate the conviction or
39 convictions.

1 (7) A person who is a family member of a homicide victim may
2 apply to the sentencing court on the behalf of the victim for
3 vacation of the victim's record of conviction for prostitution under
4 RCW 9A.88.030. If an applicant qualifies under this subsection, the
5 court shall vacate the victim's record of conviction.

6 ~~((7))~~ (8)(a) Except as provided in (c) of this subsection, once
7 the court vacates a record of conviction under this section, the
8 person shall be released from all penalties and disabilities
9 resulting from the offense and the fact that the person has been
10 convicted of the offense shall not be included in the person's
11 criminal history for purposes of determining a sentence in any
12 subsequent conviction. For all purposes, including responding to
13 questions on employment or housing applications, a person whose
14 conviction has been vacated under this section may state that he or
15 she has never been convicted of that crime. However, nothing in this
16 section affects the requirements for restoring a right to possess a
17 firearm under RCW 9.41.040. Except as provided in (b) of this
18 subsection, nothing in this section affects or prevents the use of an
19 offender's prior conviction in a later criminal prosecution.

20 (b) When a court vacates a record of domestic violence as defined
21 in RCW 10.99.020 under this section, the state may not use the
22 vacated conviction in a later criminal prosecution unless the
23 conviction was for: (i) Violating the provisions of a restraining
24 order, no-contact order, or protection order restraining or enjoining
25 the person or restraining the person from going on to the grounds of
26 or entering a residence, workplace, school, or day care, or
27 prohibiting the person from knowingly coming within, or knowingly
28 remaining within, a specified distance of a location, a protected
29 party's person, or a protected party's vehicle (RCW 10.99.040,
30 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
31 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
32 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
33 violence protection order or vulnerable adult protection order
34 entered under chapter 7.105 RCW. A vacated conviction under this
35 section is not considered a conviction of such an offense for the
36 purposes of 27 C.F.R. 478.11.

37 (c) A conviction vacated on or after July 28, 2019, qualifies as
38 a prior conviction for the purpose of charging a present recidivist
39 offense as defined in RCW 9.94A.030 occurring on or after July 28,
40 2019.

1 (~~(8)~~) (9) The clerk of the court in which the vacation order is
2 entered shall immediately transmit the order vacating the conviction
3 to the Washington state patrol identification section and to the
4 local police agency, if any, which holds criminal history information
5 for the person who is the subject of the conviction. The Washington
6 state patrol and any such local police agency shall immediately
7 update their records to reflect the vacation of the conviction, and
8 shall transmit the order vacating the conviction to the federal
9 bureau of investigation. A conviction that has been vacated under
10 this section may not be disseminated or disclosed by the state patrol
11 or local law enforcement agency to any person, except other criminal
12 justice enforcement agencies.

13 (~~(9)~~) (10) For the purposes of this section, "cannabis" has the
14 meaning provided in RCW 69.50.101.

15 **Part IV – Opioid Treatment Rural Access and Expansion**

16 **Sec. 13.** RCW 36.70A.200 and 2021 c 265 s 2 are each amended to
17 read as follows:

18 (1)(a) The comprehensive plan of each county and city that is
19 planning under RCW 36.70A.040 shall include a process for identifying
20 and siting essential public facilities. Essential public facilities
21 include those facilities that are typically difficult to site, such
22 as airports, state education facilities and state or regional
23 transportation facilities as defined in RCW 47.06.140, regional
24 transit authority facilities as defined in RCW 81.112.020, state and
25 local correctional facilities, solid waste handling facilities,
26 opioid treatment programs including both mobile and fixed-site
27 medication units, recovery residences, harm reduction programs
28 excluding safe injection sites, and inpatient facilities including
29 substance (~~abuse~~) use disorder treatment facilities, mental health
30 facilities, group homes, community facilities as defined in RCW
31 72.05.020, and secure community transition facilities as defined in
32 RCW 71.09.020.

33 (b) Unless a facility is expressly listed in (a) of this
34 subsection, essential public facilities do not include facilities
35 that are operated by a private entity in which persons are detained
36 in custody under process of law pending the outcome of legal
37 proceedings but are not used for punishment, correction, counseling,
38 or rehabilitation following the conviction of a criminal offense.

1 Facilities included under this subsection (1)(b) shall not include
2 facilities detaining persons under RCW 71.09.020 (~~((6) or (15))~~) (7)
3 or (16) or chapter 10.77 or 71.05 RCW.

4 (c) The department of children, youth, and families may not
5 attempt to site new community facilities as defined in RCW 72.05.020
6 east of the crest of the Cascade mountain range unless there is an
7 equal or greater number of sited community facilities as defined in
8 RCW 72.05.020 on the western side of the crest of the Cascade
9 mountain range.

10 (d) For the purpose of this section, "harm reduction programs"
11 means programs that emphasize working directly with people who use
12 drugs to prevent overdose and infectious disease transmission,
13 improve the physical, mental, and social well-being of those served,
14 and offer low threshold options for accessing substance use disorder
15 treatment and other health care services.

16 (2) Each county and city planning under RCW 36.70A.040 shall, not
17 later than September 1, 2002, establish a process, or amend its
18 existing process, for identifying and siting essential public
19 facilities and adopt or amend its development regulations as
20 necessary to provide for the siting of secure community transition
21 facilities consistent with statutory requirements applicable to these
22 facilities.

23 (3) Any city or county not planning under RCW 36.70A.040 shall,
24 not later than September 1, 2002, establish a process for siting
25 secure community transition facilities and adopt or amend its
26 development regulations as necessary to provide for the siting of
27 such facilities consistent with statutory requirements applicable to
28 these facilities.

29 (4) The office of financial management shall maintain a list of
30 those essential state public facilities that are required or likely
31 to be built within the next six years. The office of financial
32 management may at any time add facilities to the list.

33 (5) No local comprehensive plan or development regulation may
34 preclude the siting of essential public facilities.

35 (6) No person may bring a cause of action for civil damages based
36 on the good faith actions of any county or city to provide for the
37 siting of secure community transition facilities in accordance with
38 this section and with the requirements of chapter 12, Laws of 2001
39 2nd sp. sess. For purposes of this subsection, "person" includes, but
40 is not limited to, any individual, agency as defined in RCW

1 42.17A.005, corporation, partnership, association, and limited
2 liability entity.

3 (7) Counties or cities siting facilities pursuant to subsection
4 (2) or (3) of this section shall comply with RCW 71.09.341.

5 (8) The failure of a county or city to act by the deadlines
6 established in subsections (2) and (3) of this section is not:

7 (a) A condition that would disqualify the county or city for
8 grants, loans, or pledges under RCW 43.155.070 or 70A.135.070;

9 (b) A consideration for grants or loans provided under RCW
10 43.17.250(3); or

11 (c) A basis for any petition under RCW 36.70A.280 or for any
12 private cause of action.

13 **Sec. 14.** RCW 71.24.589 and 2019 c 314 s 29 are each amended to
14 read as follows:

15 (1) Subject to funds appropriated by the legislature, the
16 authority shall (~~implement a pilot project~~) administer a grant
17 program for law enforcement assisted diversion which shall adhere to
18 law enforcement assisted diversion core principles recognized by the
19 law enforcement assisted diversion national support bureau, the
20 efficacy of which have been demonstrated in peer-reviewed research
21 studies.

22 (2) (~~Under the pilot project, the~~) The authority must partner
23 with the law enforcement assisted diversion national support bureau
24 to award (~~a contract~~) contracts, subject to appropriation, for
25 (~~two or more geographic areas~~) jurisdictions in the state of
26 Washington for law enforcement assisted diversion. Cities, counties,
27 and tribes (~~may compete for participation in a pilot project~~),
28 subdivisions thereof, public development authorities, and community-
29 based organizations demonstrating support from necessary public
30 partners, may serve as the lead agency applying for funding. Funds
31 may be used to scale existing projects, and to invite additional
32 jurisdictions to launch law enforcement assisted diversion programs.

33 (3) The (~~pilot projects~~) program must provide for securing
34 comprehensive technical assistance from law enforcement assisted
35 diversion implementation experts to develop and implement a law
36 enforcement assisted diversion program (~~in the pilot project's~~
37 ~~geographic areas~~) in a way that ensures fidelity to the research-
38 based law enforcement assisted diversion model. Sufficient funds must

1 be allocated from grant program funds to secure technical assistance
2 for the authority and for the implementing jurisdictions.

3 (4) The key elements of a law enforcement assisted diversion
4 (~~(pilot project)~~) program must include:

5 (a) Long-term case management for individuals with substance use
6 disorders;

7 (b) Facilitation and coordination with community resources
8 focusing on overdose prevention;

9 (c) Facilitation and coordination with community resources
10 focused on the prevention of infectious disease transmission;

11 (d) Facilitation and coordination with community resources
12 providing physical and behavioral health services;

13 (e) Facilitation and coordination with community resources
14 providing medications for the treatment of substance use disorders;

15 (f) Facilitation and coordination with community resources
16 focusing on housing, employment, and public assistance;

17 (g) (~~(Twenty-four)~~) 24 hours per day and seven days per week
18 response to law enforcement for arrest diversions; and

19 (h) Prosecutorial support for diversion services.

20 (5) No civil liability may be imposed by any court on the state
21 or its officers or employees, an appointed or elected official,
22 public employee, public agency as defined in RCW 4.24.470,
23 combination of units of government and its employees as provided in
24 RCW 36.28A.010, nonprofit community-based organization, tribal
25 government entity, tribal organization, or urban Indian organization,
26 based on the administration of a law enforcement assisted diversion
27 program or activities carried out within the purview of a grant
28 received under this program except upon proof of bad faith or gross
29 negligence.

30 **Sec. 15.** RCW 71.24.590 and 2019 c 314 s 30 are each amended to
31 read as follows:

32 (1) When making a decision on an application for licensing or
33 certification of (~~(a)~~) an opioid treatment program, the department
34 shall:

35 (a) Consult with the county legislative authorities in the area
36 in which an applicant proposes to locate a program and the city
37 legislative authority in any city in which an applicant proposes to
38 locate a program;

1 (b) License or certify only programs that will be sited in
2 accordance with the appropriate county or city land use ordinances.
3 Counties and cities may require conditional use permits with
4 reasonable conditions for the siting of programs only to the extent
5 that such reasonable conditional use requirements applied to opioid
6 treatment programs are similarly applied to other essential public
7 facilities and health care settings. Pursuant to RCW 36.70A.200, no
8 local comprehensive plan or development regulation may preclude the
9 siting of essential public facilities;

10 (c) Not discriminate in its licensing or certification decision
11 on the basis of the corporate structure of the applicant;

12 (d) Consider the size of the population in need of treatment in
13 the area in which the program would be located and license or certify
14 only applicants whose programs meet the necessary treatment needs of
15 that population;

16 (e) Consider the availability of other certified opioid treatment
17 programs near the area in which the applicant proposes to locate the
18 program;

19 (f) Consider the transportation systems that would provide
20 service to the program and whether the systems will provide
21 reasonable opportunities to access the program for persons in need of
22 treatment;

23 (g) Consider whether the applicant has, or has demonstrated in
24 the past, the capability to provide the appropriate services to
25 assist the persons who utilize the program in meeting goals
26 established by the legislature in RCW 71.24.585. The department shall
27 prioritize licensing or certification to applicants who have
28 demonstrated such capability and are able to measure their success in
29 meeting such outcomes;

30 (h) Hold one public hearing in the community in which the
31 facility is proposed to be located. The hearing shall be held at a
32 time and location that are most likely to permit the largest number
33 of interested persons to attend and present testimony. The department
34 shall notify all appropriate media outlets of the time, date, and
35 location of the hearing at least three weeks in advance of the
36 hearing.

37 (2) ((A)) No city or county legislative authority may impose a
38 maximum capacity for ((a)) an opioid treatment program ~~((of not less~~
39 ~~than three hundred fifty participants if necessary to address~~
40 ~~specific local conditions cited by the county))~~.

1 (3) A program applying for licensing or certification from the
2 department and a program applying for a contract from a state agency
3 that has been denied the licensing or certification or contract shall
4 be provided with a written notice specifying the rationale and
5 reasons for the denial.

6 (4) Opioid treatment programs may order, possess, dispense, and
7 administer medications approved by the United States food and drug
8 administration for the treatment of opioid use disorder, alcohol use
9 disorder, tobacco use disorder, and reversal of opioid overdose. For
10 an opioid treatment program to order, possess, and dispense any other
11 legend drug, including controlled substances, the opioid treatment
12 program must obtain additional licensure as required by the
13 department, except for patient-owned medications.

14 (5) Opioid treatment programs may accept, possess, and administer
15 patient-owned medications.

16 (6) Registered nurses and licensed practical nurses may dispense
17 up to a (~~thirty-one~~) 31 day supply of medications approved by the
18 United States food and drug administration for the treatment of
19 opioid use disorder to patients of the opioid treatment program,
20 under an order or prescription and in compliance with 42 C.F.R. Sec.
21 8.12.

22 (7) For the purpose of this chapter, "opioid treatment program"
23 means a program that:

24 (a) Engages in the treatment of opioid use disorder with
25 medications approved by the United States food and drug
26 administration for the treatment of opioid use disorder and reversal
27 of opioid overdose, including methadone; and

28 (b) Provides a comprehensive range of medical and rehabilitative
29 services.

30 (8) A mobile or fixed-site medication unit may be established as
31 part of a licensed opioid treatment program.

32 NEW SECTION. Sec. 16. A new section is added to chapter 43.330
33 RCW to read as follows:

34 (1) Subject to funds appropriated for this specific purpose, a
35 program is established in the department to fund the construction
36 costs necessary to start up substance use disorder treatment programs
37 in regions of the state that currently lack access to such programs.

1 (2) This funding must be used to increase the number of substance
2 use disorder treatment programs in underserved areas such as central
3 and eastern Washington and rural areas.

4 **Sec. 17.** RCW 10.31.110 and 2021 c 311 s 6 are each amended to
5 read as follows:

6 (1) When a police officer has reasonable cause to believe that
7 the individual has committed acts constituting a crime, and the
8 individual is known by history or consultation with the behavioral
9 health administrative services organization, managed care
10 organization, crisis hotline, local crisis services providers, or
11 community health providers to have a mental disorder or substance use
12 disorder, in addition to existing authority under state law or local
13 policy, as an alternative to arrest, the arresting officer is
14 authorized and encouraged to:

15 (a) Take the individual to a crisis stabilization unit as defined
16 in RCW 71.05.020. Individuals delivered to a crisis stabilization
17 unit pursuant to this section may be held by the facility for a
18 period of up to twelve hours. The individual must be examined by a
19 mental health professional or substance use disorder professional
20 within three hours of arrival;

21 (b) Take the individual to a triage facility as defined in RCW
22 71.05.020. An individual delivered to a triage facility which has
23 elected to operate as an involuntary facility may be held up to a
24 period of twelve hours. The individual must be examined by a mental
25 health professional or substance use disorder professional within
26 three hours of arrival;

27 (c) Refer the individual to a designated crisis responder for
28 evaluation for initial detention and proceeding under chapter 71.05
29 RCW;

30 (d) Release the individual upon agreement to voluntary
31 participation in outpatient treatment;

32 (e) Refer the individual to youth, adult, or geriatric mobile
33 crisis response services, as appropriate; or

34 (f) Refer the individual to the regional entity responsible to
35 receive referrals in lieu of legal system involvement, including the
36 recovery navigator program described in RCW 71.24.115.

37 (2) If the individual is released to the community from the
38 facilities in subsection (1)(a) through (c) of this section, the
39 mental health provider or substance use disorder professional shall

1 make reasonable efforts to inform the arresting officer of the
2 planned release prior to release if the arresting officer has
3 specifically requested notification and provided contact information
4 to the provider.

5 (3) In deciding whether to refer the individual to treatment
6 under this section, the police officer must be guided by local law
7 enforcement diversion guidelines for behavioral health developed and
8 mutually agreed upon with the prosecuting authority with an
9 opportunity for consultation and comment by the defense bar and
10 disability community. These guidelines must address, at a minimum,
11 the length, seriousness, and recency of the known criminal history of
12 the individual, the mental health history of the individual, if
13 available, the substance use disorder history of the individual, if
14 available, the opinions of a mental health professional, if
15 available, the opinions of a substance use disorder professional, if
16 available, and the circumstances surrounding the commission of the
17 alleged offense. The guidelines must include a process for clearing
18 outstanding warrants or referring the individual for assistance in
19 clearing outstanding warrants, if any, and issuing a new court date,
20 if appropriate, without booking or incarcerating the individual or
21 disqualifying the individual from referral to treatment under this
22 section, and define the circumstances under which such action is
23 permissible. Referrals to services, care, and treatment for substance
24 use disorder must be made in accordance with protocols developed for
25 the recovery navigator program described in RCW 71.24.115.

26 (4) Any agreement to participate in treatment or services in lieu
27 of jail booking or referring a case for prosecution shall not require
28 individuals to stipulate to any of the alleged facts regarding the
29 criminal activity as a prerequisite to participation in the
30 alternative response described in this section. Any agreement is
31 inadmissible in any criminal or civil proceeding. Such agreements do
32 not create immunity from prosecution for the alleged criminal
33 activity.

34 (5) If there are required terms of participation in the services
35 or treatment to which an individual was referred under this section,
36 and if the individual violates such terms and is therefore no longer
37 participating in services:

38 (a) The behavioral health or service provider shall inform the
39 referring law enforcement agency of the violation, if consistent with
40 (~~the terms of the program and~~) applicable law; and

1 (b) The original charges may be filed or referred to the
2 prosecutor, as appropriate, and the matter may proceed accordingly(~~(7~~
3 ~~unless filing or referring the charges is inconsistent with the terms~~
4 ~~of a local diversion program or a recovery navigator program~~
5 ~~described in RCW 71.24.115))~~).

6 (6) The police officer is immune from liability for any good
7 faith conduct under this section.

8 NEW SECTION. **Sec. 18.** RCW 10.31.115 (Drug possession—Referral
9 to assessment and services) and 2021 c 311 s 13 are each repealed.

10 **Part V - Providing Legal Advocacy for Parents and Families Affected**
11 **by Substance Use Disorders in Dependency and Child Custody Cases**

12 NEW SECTION. **Sec. 19.** A new section is added to chapter 26.12
13 RCW to read as follows:

14 (1) In any parenting plan or child custody proceeding in which
15 the court determines that a child's parent, guardian, or custodian is
16 affected by substance use disorders, mental health disorders, or
17 behavioral health concerns such that it leaves the parent, guardian,
18 or custodian unable to adequately represent his or her own interests
19 or his or her parental rights may be restricted, either by way of
20 long-term supervision or limited contact with the child, the parent,
21 guardian, or custodian may have the right to court-appointed counsel,
22 who, if appropriate, must have understanding of the Indian child
23 welfare act and knowledge about tribal child welfare systems. In
24 determining whether to appoint counsel, the court must consider the
25 financial ability of the parties, the degree such disorder impacts
26 the ability of the parent, guardian, or custodian to understand the
27 proceedings and represent their own interests, and any professional
28 assessment or evaluation or any other evidence submitted to the court
29 on the parent, guardian, or custodian's behalf.

30 (2) The court may, in its discretion, appoint counsel for the
31 child or a guardian ad litem as set forth in RCW 26.09.110 and
32 26.09.220.

33 **Part VI - Funding, Promotion, and Training for Recovery Residences**

34 NEW SECTION. **Sec. 20.** A new section is added to chapter 71.24
35 RCW to read as follows:

1 Subject to the availability of amounts provided for this specific
2 purpose, the authority shall:

3 (1) Make sufficient funding available to support establishment of
4 an adequate and equitable stock of recovery residences in each region
5 of the state, including by expansion of a revolving fund program to
6 make loans or grants available for recovery residence operators to
7 use for necessary capital expenses;

8 (2) Establish a voucher program to allow accredited recovery
9 housing operators to hold bed space for individuals who are waiting
10 for treatment or who have returned to use and need a place to stay
11 while negotiating a return to stable housing;

12 (3) Conduct outreach to underserved and rural areas to support
13 the development of recovery housing, including adequate resources for
14 women, LGBTQIA+ communities, and youth; and

15 (4) Develop a training for housing providers by January 1, 2024,
16 to assist them with providing appropriate service to LGBTQIA+
17 communities, including consideration of topics like harassment,
18 communication, antiracism, diversity, and gender affirming behavior,
19 and ensure applicants for grants or loans related to recovery
20 residences receive access to the training.

21 **Sec. 21.** RCW 84.36.043 and 1998 c 174 s 1 are each amended to
22 read as follows:

23 (1) The real and personal property used by a nonprofit
24 organization in providing emergency or transitional housing for low-
25 income homeless persons as defined in RCW 35.21.685 or 36.32.415 or
26 victims of domestic violence who are homeless for personal safety
27 reasons is exempt from taxation if:

28 (a) The charge, if any, for the housing does not exceed the
29 actual cost of operating and maintaining the housing; and

30 (b) (i) The property is owned by the nonprofit organization; or
31 (ii) The property is rented or leased by the nonprofit
32 organization and the benefit of the exemption inures to the nonprofit
33 organization.

34 (2) The real and personal property used by a nonprofit
35 organization in maintaining an approved recovery residence registered
36 under RCW 41.05.760 is exempt from taxation if:

37 (a) The charge for the housing does not exceed the actual cost of
38 operating and maintaining the housing; and

39 (b) (i) The property is owned by the nonprofit organization; or

1 (ii) The property is rented or leased by the nonprofit
2 organization and the benefit of the exemption inures to the nonprofit
3 organization.

4 (3) As used in this section:

5 (a) "Homeless" means persons, including families, who, on one
6 particular day or night, do not have decent and safe shelter nor
7 sufficient funds to purchase or rent a place to stay.

8 (b) "Emergency housing" means a project that provides housing and
9 supportive services to homeless persons or families for up to sixty
10 days.

11 (c) "Transitional housing" means a project that provides housing
12 and supportive services to homeless persons or families for up to two
13 years and that has as its purpose facilitating the movement of
14 homeless persons and families into independent living.

15 ~~((3))~~ (d) "Recovery residence" has the same meaning as under
16 RCW 41.05.760.

17 (4) The exemption in subsection (2) of this section applies to
18 taxes levied for collection in calendar years 2024 through 2033.

19 (5) This exemption is subject to the administrative provisions
20 contained in RCW 84.36.800 through 84.36.865.

21 NEW SECTION. Sec. 22. (1) This section is the tax preference
22 performance statement for the tax preference contained in section 21,
23 chapter . . ., Laws of 2023 (section 21 of this act). This
24 performance statement is only intended to be used for subsequent
25 evaluation of the tax preference. It is not intended to create a
26 private right of action by any party or to be used to determine
27 eligibility for preferential tax treatment.

28 (2) The legislature categorizes this tax preference as one
29 intended to provide tax relief for certain businesses or individuals,
30 as indicated in RCW 82.32.808(2)(e).

31 (3) By exempting property used by nonprofit organizations
32 maintaining approved recovery residences, it is the legislature's
33 specific public policy objective to maximize funding for recovery
34 residences to the extent possible, thereby increasing availability of
35 such residences.

36 (4) To measure the effectiveness of the tax exemption provided in
37 section 21 of this act in achieving the specific public policy
38 objectives described in subsection (3) of this section, the joint
39 legislative audit and review committee must evaluate:

1 (a) Annual changes in the total number of parcels qualifying for
2 the exemption under section 21 of this act;

3 (b) The amount of annual property tax relief resulting from the
4 tax exemption under section 21 of this act;

5 (c) The average annual number of people housed at recovery
6 residences located on property qualifying for the exemption under
7 section 21 of this act;

8 (d) The annualized amount charged for housing at recovery
9 residences located on property qualifying for the exemption under
10 section 21 of this act and the annualized estimated increase in the
11 charge for housing if the properties had not been eligible for the
12 exemption; and

13 (e) The annual amount of expenditures by nonprofits to maintain
14 recovery residences located on property qualifying for the exemption
15 under section 21 of this act.

16 (5) The legislature intends to extend the expiration date of the
17 property tax exemption under section 21 of this act if the review by
18 the joint legislative audit and review committee finds that:

19 (a) The number of properties qualifying for the exemption under
20 section 21 of this act has increased;

21 (b) The number of individuals using recovery housing located on
22 property qualifying for the exemption under section 21 of this act
23 has increased; and

24 (c) The amount charged for recovery housing is reasonably
25 consistent with the actual cost of operating and maintaining the
26 housing.

27 (6) In order to obtain the data necessary to perform the review
28 in subsection (4) of this section, the joint legislative audit and
29 review committee may refer to:

30 (a) Initial applications for the tax exemption under section 21
31 of this act as approved by the department of revenue under RCW
32 84.36.815;

33 (b) Annual financial statements prepared by nonprofit entities
34 claiming the tax exemption under section 21 of this act;

35 (c) Filings with the federal government to maintain federal tax
36 exempt status by nonprofit organizations claiming the tax exemption
37 under section 21 of this act; and

38 (d) Any other data necessary for the evaluation under subsection
39 (4) of this section.

1 **Part VII – Training for Parents of Children with Substance Use**
2 **Disorder and Caseworkers Within the Department of Children, Youth,**
3 **and Families**
4

5 NEW SECTION. **Sec. 23.** A new section is added to chapter 43.216
6 RCW to read as follows:

7 (1) The health care authority in consultation with the department
8 shall develop a training for parents of children and transition age
9 youth with substance use disorders by June 30, 2024, addressing the
10 following:

11 (a) Science and education related to substance use disorders;

12 (b) Adaptive and functional communication strategies for
13 communication with a loved one about their substance use disorder,
14 including positive communication skills and strategies to influence
15 motivation and behavioral change;

16 (c) Self-care and means of obtaining support; and

17 (d) Means to obtain opioid overdose reversal medication when
18 appropriate and instruction on proper use.

19 (2) The health care authority and the department shall make this
20 training publicly available and the department must promote the
21 training to licensed foster parents and caregivers, including any
22 tribally licensed foster parents and tribal caregivers.

23 NEW SECTION. **Sec. 24.** A new section is added to chapter 43.216
24 RCW to read as follows:

25 The department must make opioid overdose reversal medication
26 available for use by caseworkers or employees that may come in
27 contact with individuals experiencing overdose and must make
28 appropriate training available.

29 **Part VIII – Data Support for Recovery Navigator Programs**

30 NEW SECTION. **Sec. 25.** To support recovery navigator programs,
31 the health care authority must develop and implement a data
32 integration platform by June 30, 2024, to serve as a common database
33 for diversion efforts across the state, to serve as a data collection
34 and management tool for practitioners, and to assist in standardizing
35 definitions and practices. If possible, the health care authority
36 must leverage and interact with existing platforms already in use in

1 efforts funded by the authority. The health care authority must
2 establish a quality assurance process for behavioral health
3 administrative services organizations, and employ data validation for
4 fields in the data collection workbook.

5 NEW SECTION. **Sec. 26.** A new section is added to chapter 71.24
6 RCW to read as follows:

7 (1) The authority shall contract with the Washington state
8 institute for public policy to conduct a study of the long-term
9 effectiveness of the recovery navigator program under RCW 71.24.115
10 with reports due by June 30th in the years 2028, 2033, and 2038. The
11 Washington state institute for public policy shall collaborate with
12 the authority and substance use recovery services advisory committee
13 under RCW 71.24.546 on the topic of data collection and to determine
14 the parameters of the report, which shall include recommendations, if
15 any, for modification and improvement of the recovery navigator
16 program. The authority shall cooperate with the Washington state
17 institute for public policy to provide data for this report.

18 (2) The authority shall establish an expedited preapproval
19 process by August 1, 2023, which allows requests for the use of data
20 to be forwarded to the Washington state institutional review board
21 without delay when the request is made by the Washington state
22 institute for public policy for the purpose of completing a study
23 that has been directed by the legislature.

24 **Part IX - Establishing Rules and Payment Structures for Health**
25 **Engagement Hubs**

26 NEW SECTION. **Sec. 27.** A new section is added to chapter 71.24
27 RCW to read as follows:

28 (1) The authority shall develop payment structures for health
29 engagement hubs by January 1, 2025.

30 (2) A health engagement hub:

31 (a) Serves as an all-in-one location where people who use drugs
32 can access a range of medical, harm reduction, treatment, and social
33 services. A health engagement hub may not provide supervised
34 injection services;

35 (b) May be affiliated with existing syringe service programs,
36 federally qualified health centers, community health centers,
37 overdose prevention sites, safe consumption sites, patient-centered

1 medical homes, tribal behavioral health programs, peer run
2 organizations such as clubhouses, services for unhoused people,
3 supportive housing, and opioid treatment programs including mobile
4 and fixed-site medication units established under an opioid treatment
5 program, or other appropriate entity;

6 (c) Provides referrals or access to methadone and other
7 medications for opioid addiction;

8 (d) Functions as a patient-centered medical home by offering
9 high-quality, cost-effective patient-centered care, including wound
10 care;

11 (e) Provides harm reduction services and supplies;

12 (f) Provides linkage to housing, transportation, and other
13 support services; and

14 (g) Is open to youth as well as adults.

15 (3) To the extent allowed under federal law, the authority shall
16 direct medicaid managed care organizations to adopt a value-based
17 bundled payment methodology in contracts with health engagement hubs
18 and other opioid treatment providers.

19 (4) The authority shall make sufficient funding available to
20 ensure that a health engagement hub is available within a two-hour
21 drive for all communities and that there is at least one health
22 engagement hub available per 200,000 residents in Washington state.

23 **Part X - Education and Employment Pathways**

24 NEW SECTION. **Sec. 28.** A new section is added to chapter 71.24
25 RCW to read as follows:

26 Subject to funding provided for this specific purpose, the
27 authority shall establish a grant program for providers of
28 employment, education, training, certification, and other supportive
29 programs designed to provide persons recovering from a substance use
30 disorder with employment opportunities. The grant program shall
31 employ a low-barrier application and give priority to programs that
32 engage with black, indigenous, persons of color, and other
33 historically underserved communities.

34 **Part XI - Providing a Statewide Directory of Recovery Services**

35 NEW SECTION. **Sec. 29.** A new section is added to chapter 71.24
36 RCW to read as follows:

1 Subject to funding provided for this specific purpose, the
2 authority must collaborate with the department and the department of
3 social and health services to expand the Washington recovery helpline
4 and the recovery readiness asset tool to provide a dynamically
5 updated statewide behavioral health treatment and recovery support
6 services mapping tool that includes a robust resource database for
7 those seeking services and a referral system to be incorporated
8 within the locator tool to help facilitate the connection between an
9 individual and a facility that is currently accepting new referrals.
10 The tool must include dual interface capability, one for public
11 access and one for internal use and management.

12 **Part XII - Investing Adequately in Statewide Diversion Services**

13 NEW SECTION. **Sec. 30.** (1) It is the intent of the legislature
14 to increase investments in the 2023-2025 biennium substantially over
15 baseline levels established in the 2021-2023 operating and capital
16 budgets to increase the provision of evidence-based prearrest and
17 prefiling diversion programs in all regions of the state. Services
18 which shall be increased and included in every health purchasing
19 region include crisis stabilization units, 23-hour crisis relief
20 centers, mobile crisis response services for youth and adults,
21 recovery navigator programs, and law enforcement assisted diversion.

22 (2) The appropriations in this subsection are provided to the
23 state health care authority and are subject to the following
24 conditions and limitations:

25 (a) The following sums, or so much thereof as may be necessary,
26 are each appropriated: \$18,114,000 from the state general fund for
27 the fiscal year ending June 30, 2024; and \$16,437,000 from the state
28 general fund for the fiscal year ending June 30, 2025. The amounts in
29 this subsection are provided solely for the authority to continue and
30 expand efforts to provide opioid use disorder medication in city,
31 county, regional, and tribal jails.

32 (b) The following sums, or so much thereof as may be necessary,
33 are each appropriated: \$3,500,000 from the state general fund for the
34 fiscal year ending June 30, 2024; and \$3,500,000 from the state
35 general fund for the fiscal year ending June 30, 2025. The amounts in
36 this subsection are provided solely for the authority to provide
37 support funds to new and established clubhouses throughout the state.

1 (c) The following sums, or so much thereof as may be necessary,
2 are each appropriated: \$1,583,000 from the state general fund for the
3 fiscal year ending June 30, 2024; and \$1,583,000 from the state
4 general fund for the fiscal year ending June 30, 2025. The amounts in
5 this subsection are provided solely for the authority to award grants
6 to crisis services providers to establish and expand 23-hour crisis
7 relief center capacity. It is the intent of the legislature that
8 grants are awarded to an equivalent number of providers to the west
9 and the east of the Cascade mountains. The authority must consider
10 the geographic distribution of proposed grant applicants and the
11 regional need for 23-hour crisis relief centers when awarding grant
12 funds.

13 (d) The following sums, or so much thereof as may be necessary,
14 are each appropriated: \$900,000 from the state general fund for the
15 fiscal year ending June 30, 2024; \$900,000 from the state general
16 fund for the fiscal year ending June 30, 2025; and \$1,800,000 from
17 the state general fund—federal for the fiscal biennium ending June
18 30, 2025. The amounts in this subsection are provided solely for the
19 authority to maintain a memorandum of understanding with the criminal
20 justice training commission to provide ongoing funding for community
21 grants pursuant to RCW 36.28A.450.

22 (e) The following sums, or so much thereof as may be necessary,
23 are each appropriated: \$1,250,000 from the state general fund for the
24 fiscal year ending June 30, 2024; \$1,250,000 from the state general
25 fund for the fiscal year ending June 30, 2025; and \$2,500,000 from
26 the state general fund—federal for the fiscal biennium ending June
27 30, 2025. The amounts in this subsection are provided solely for the
28 authority to provide ongoing grants to law enforcement assistant
29 diversion programs under RCW 71.24.590.

30 **Part XIII - Streamlining Substance Use Disorder Treatment Intakes**

31 NEW SECTION. **Sec. 31.** A new section is added to chapter 71.24
32 RCW to read as follows:

33 (1) The authority shall convene a work group to recommend changes
34 to systems, policies, and processes related to intake, screening, and
35 assessment for substance use disorder services, with the goal to
36 broaden the workforce capable of processing intakes and to make the
37 intake process as brief as possible, including only what is necessary
38 to manage utilization and initiate care. The intake shall be low

1 barrier, person-centered, and amenable to administration in diverse
2 health care settings and by a range of health care professionals. The
3 intake assessment shall consider the person's self-identified needs
4 and preferences when evaluating direction of treatment and may
5 include different components based on the setting, context, and past
6 experience with the client.

7 (2) The work group must include care providers, payors, people
8 who use drugs, and other individuals recommended by the authority.
9 The work group shall present its recommendations to the governor and
10 appropriate committees of the legislature by December 1, 2024.

11 **Part XIV - Miscellaneous Provisions**

12 **Sec. 32.** 2021 c 311 s 29 (uncodified) is amended to read as
13 follows:

14 Sections 8 through 10(~~(7)~~) and 12(~~(7, 15, and 16)~~) of this act
15 expire July 1, 2023.

16 NEW SECTION. **Sec. 33.** Sections 2 through 12 and 32 of this act
17 are necessary for the immediate preservation of the public peace,
18 health, or safety, or support of the state government and its
19 existing public institutions, and take effect July 1, 2023."

2SSB 5536 - S AMD 154
By Senator Robinson

ADOPTED AS AMENDED 03/03/2023

20 On page 1, line 4 of the title, after "paraphernalia;" strike the
21 remainder of the title and insert "amending RCW 69.50.4011,
22 69.50.4013, 69.50.4014, 69.41.030, 69.50.509, 69.50.4121, 9.96.060,
23 36.70A.200, 71.24.589, 71.24.590, 10.31.110, and 84.36.043; amending
24 2021 c 311 s 29 (uncodified); adding a new section to chapter 43.43
25 RCW; adding new sections to chapter 69.50 RCW; adding a new section
26 to chapter 43.330 RCW; adding a new section to chapter 26.12 RCW;
27 adding new sections to chapter 71.24 RCW; adding new sections to
28 chapter 43.216 RCW; creating new sections; repealing RCW 10.31.115;
29 prescribing penalties; making appropriations; providing an effective
30 date; and declaring an emergency."

EFFECT: (1) Provides guidance that the Washington state patrol should aim to complete the necessary analysis of suspected drugs in possession cases within 45 days of receipt of the request for analysis, and provides that the Washington state patrol's failure to meet the 45 day timeline does not constitute grounds to dismiss a criminal case.

(2) Requires the state to make resources available to assist defendants in obtaining a substance use disorder evaluation within 7 days of the defendant's agreement to participate in the pretrial diversion program.

(3) Requires the state to reimburse local courts for costs associated with travel related to obtaining a substance use disorder evaluation.

(4) Removes the direction to the court to avoid discussing circumstances, history, or diagnoses that could be embarrassing to the defendant.

(5) Requires defendants to substantially comply with, rather than meaningfully engage with, recommended treatment in order to successfully complete pretrial diversion.

(6) Provides that the prosecutor may make a motion for termination of pretrial diversion if the defendant is charged with simple possession subsequent to acceptance into pretrial diversion.

(7) Removes the requirement that the postconviction diagnostic evaluation and treatment recommendation be prepared under the direction of the court.

(8) Requires the postconviction diagnostic evaluation and treatment recommendations be filed with the court under seal.

(9) Permits agencies providing treatment to report any noncompliance with treatment in accordance with the agency's standard practices.

(10) Removes the requirement that courts notify the department of health of any failure by an agency to report noncompliance and the associated fine.

(11) Provides that courts may not sanction an individual for failing to comply with recommended treatment if the individual has made reasonable efforts to comply but cannot, either due to a lack of available treatment or, if the individual is indigent, due to a lack of funding for treatment.

(12) Restores requirement for the Department of Health to hold a hearing in the community before approval of the siting of an opioid treatment program.

(13) Prohibits a health engagement hub from providing supervised injection services.

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