
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5536

State of Washington

68th Legislature

2023 Regular Session

By Senate Ways & Means (originally sponsored by Senators Robinson, Lovick, Rolfes, Mullet, Dhingra, Billig, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Nobles, Randall, Stanford, Wellman, and C. Wilson)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to justice system and behavioral health responses
2 for persons experiencing circumstances that involve controlled
3 substances, counterfeit substances, legend drugs, and drug
4 paraphernalia; amending RCW 69.50.4011, 69.50.4013, 69.50.4014,
5 69.41.030, 69.50.509, 69.50.4121, 9.96.060, 36.70A.200, 71.24.589,
6 71.24.590, 10.31.110, and 84.36.043; amending 2021 c 311 s 29
7 (uncodified); adding a new section to chapter 43.43 RCW; adding new
8 sections to chapter 69.50 RCW; adding a new section to chapter 43.330
9 RCW; adding a new section to chapter 26.12 RCW; adding new sections
10 to chapter 71.24 RCW; adding new sections to chapter 43.216 RCW;
11 creating new sections; repealing RCW 10.31.115; prescribing
12 penalties; making appropriations; providing effective dates; and
13 declaring an emergency.

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

15 NEW SECTION. **Sec. 1.** The legislature finds that substance use
16 disorders are a public health issue. Solutions must address not only
17 the criminal legal response, but be data-driven, evidence-based, and
18 represent best practices, working directly with people who use drugs
19 to prevent overdose and infectious disease transmission, and improve
20 the physical, mental, and social well-being of those served. The
21 state must follow principles of harm reduction, which means practical

1 strategies aimed at reducing negative consequences associated with
2 drug use. Harm reduction involves safer use of supplies as well as
3 care settings, staffing, and interactions that are person-centered,
4 supportive, and welcoming.

5 The legislature finds that the recommendations of the substance
6 use recovery services advisory committee reflect hours of diligent
7 work by individuals with a range of professional and personal
8 experience, who brought that experience to the committee, and whose
9 expertise is reflected in the recommendations.

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

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

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

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

17 (b) Knowingly possess a counterfeit substance.

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

20 (a) A counterfeit substance classified in Schedule I or II which
21 is a narcotic drug, or flunitrazepam classified in Schedule IV, is
22 guilty of a class B felony and upon conviction may be imprisoned for
23 not more than ~~((ten))~~ 10 years, fined not more than ~~((twenty-five~~
24 ~~thousand dollars))~~ \$25,000, or both;

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

29 (c) Any other counterfeit substance classified in Schedule I, II,
30 or III, is guilty of a class C felony punishable according to chapter
31 9A.20 RCW;

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

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

1 (3) (a) A violation of subsection (1)(b) of this section is a
2 gross misdemeanor. The prosecutor is encouraged to divert such cases
3 for 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 subsection (1)(b) of this
14 section, the court shall advise the defendant of the pretrial
15 diversion program as indicated in section 10(2) of this act.

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

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

23 (2) (a) Except as provided in RCW 69.50.4014, ((any person who
24 violates this section is guilty of a class C felony punishable under
25 chapter 9A.20 RCW)) a violation of this section is a gross
26 misdemeanor. The prosecutor is encouraged to divert such cases for
27 assessment, treatment, or other services.

28 (b) In lieu of jail booking and referral to the prosecutor, law
29 enforcement is encouraged to offer a referral to assessment and
30 services available under RCW 10.31.110 or other program or entity
31 responsible for receiving referrals in lieu of legal system
32 involvement, which may include, but are not limited to, arrest and
33 jail alternative programs established under RCW 36.28A.450, law
34 enforcement assisted diversion programs established under RCW
35 71.24.589, and the recovery navigator program established under RCW
36 71.24.115.

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

1 (3) (a) The possession, by a person (~~(twenty-one)~~) 21 years of age
2 or older, of useable cannabis, cannabis concentrates, or cannabis-
3 infused products in amounts that do not exceed those set forth in RCW
4 69.50.360(3) is not a violation of this section, this chapter, or any
5 other provision of Washington state law.

6 (b) The possession of cannabis, useable cannabis, cannabis
7 concentrates, and cannabis-infused products being physically
8 transported or delivered within the state, in amounts not exceeding
9 those that may be established under RCW 69.50.385(3), by a licensed
10 employee of a common carrier when performing the duties authorized in
11 accordance with RCW 69.50.382 and 69.50.385, is not a violation of
12 this section, this chapter, or any other provision of Washington
13 state law.

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

- 21 (i) One-half ounce of useable cannabis;
- 22 (ii) Eight ounces of cannabis-infused product in solid form;
- 23 (iii) (~~(Thirty-six)~~) 36 ounces of cannabis-infused product in
24 liquid form; or
- 25 (iv) Three and one-half grams of cannabis concentrates.

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

- 29 (i) The delivery must be done in a location outside of the view
30 of general public and in a nonpublic place; or
- 31 (ii) The cannabis or cannabis product must be in the original
32 packaging as purchased from the cannabis retailer.

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

38 (6) The possession by a qualifying patient or designated provider
39 of cannabis concentrates, useable cannabis, cannabis-infused
40 products, or plants in accordance with chapter 69.51A RCW is not a

1 violation of this section, this chapter, or any other provision of
2 Washington state law.

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

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

10 (2) In lieu of jail booking and referral to the prosecutor, 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 (3) Upon arraignment for violation of this section, the court
20 shall advise the defendant of the availability of the pretrial
21 diversion program as indicated in section 10(2) of this act.

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

24 (1) It shall be unlawful for any person to sell(~~(7)~~) or deliver
25 any legend drug, or **knowingly** possess any legend drug except upon the
26 order or prescription of a physician under chapter 18.71 RCW, an
27 osteopathic physician and surgeon under chapter 18.57 RCW, an
28 optometrist licensed under chapter 18.53 RCW who is certified by the
29 optometry board under RCW 18.53.010, a dentist under chapter 18.32
30 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a
31 veterinarian under chapter 18.92 RCW, a commissioned medical or
32 dental officer in the United States armed forces or public health
33 service in the discharge of his or her official duties, a duly
34 licensed physician or dentist employed by the veterans administration
35 in the discharge of his or her official duties, a registered nurse or
36 advanced registered nurse practitioner under chapter 18.79 RCW when
37 authorized by the nursing care quality assurance commission, a
38 pharmacist licensed under chapter 18.64 RCW to the extent permitted

1 by drug therapy guidelines or protocols established under RCW
2 18.64.011 and authorized by the commission and approved by a
3 practitioner authorized to prescribe drugs, a physician assistant
4 under chapter 18.71A RCW when authorized by the Washington medical
5 commission, or any of the following professionals in any province of
6 Canada that shares a common border with the state of Washington or in
7 any state of the United States: A physician licensed to practice
8 medicine and surgery or a physician licensed to practice osteopathic
9 medicine and surgery, a dentist licensed to practice dentistry, a
10 podiatric physician and surgeon licensed to practice podiatric
11 medicine and surgery, a licensed advanced registered nurse
12 practitioner, a licensed physician assistant, or a veterinarian
13 licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the
14 above provisions shall not apply to sale, delivery, or possession by
15 drug wholesalers or drug manufacturers, or their agents or employees,
16 or to any practitioner acting within the scope of his or her license,
17 or to a common or contract carrier or warehouse operator, or any
18 employee thereof, whose possession of any legend drug is in the usual
19 course of business or employment: PROVIDED FURTHER, That nothing in
20 this chapter or chapter 18.64 RCW shall prevent a family planning
21 clinic that is under contract with the health care authority from
22 selling, delivering, possessing, and dispensing commercially
23 prepackaged oral contraceptives prescribed by authorized, licensed
24 health care practitioners: PROVIDED FURTHER, That nothing in this
25 chapter prohibits possession or delivery of legend drugs by an
26 authorized collector or other person participating in the operation
27 of a drug take-back program authorized in chapter 69.48 RCW.

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

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

34 (c) In lieu of jail booking and referral to the prosecutor for a
35 violation of this section involving knowing possession, law
36 enforcement is encouraged to offer a referral to assessment and
37 services available under RCW 10.31.110 or other program or entity
38 responsible for receiving referrals in lieu of legal system
39 involvement, which may include, but are not limited to, arrest and
40 jail alternative programs established under RCW 36.28A.450, law

1 enforcement assisted diversion programs established under RCW
2 71.24.589, and the recovery navigator program established under RCW
3 71.24.115.

4 (d) Upon arraignment for a violation of this section involving
5 knowing possession, the court shall advise the defendant of the
6 availability of the pretrial diversion program as indicated in
7 section 10(2) of this act.

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

10 If, upon the sworn complaint of any person, it shall be made to
11 appear to any judge of the superior court, district court, or
12 municipal court that there is probable cause to believe that any
13 controlled substance is being used, manufactured, sold, bartered,
14 exchanged, administered, dispensed, delivered, distributed, produced,
15 knowingly possessed, given away, furnished or otherwise disposed of
16 or kept in violation of the provisions of this chapter, such judge
17 shall, with or without the approval of the prosecuting attorney,
18 issue a warrant directed to any law enforcement officer of the state,
19 commanding him or her to search the premises designated and described
20 in such complaint and warrant, and to seize all controlled substances
21 there found, together with the vessels in which they are contained,
22 and all implements, furniture and fixtures used or kept for the
23 illegal manufacture, sale, barter, exchange, administering,
24 dispensing, delivering, distributing, producing, possessing, giving
25 away, furnishing or otherwise disposing of such controlled
26 substances, and to safely keep the same, and to make a return of said
27 warrant within three days, showing all acts and things done
28 thereunder, with a particular statement of all articles seized and
29 the name of the person or persons in whose possession the same were
30 found, if any, and if no person be found in the possession of said
31 articles, the returns shall so state. The provisions of RCW 10.31.030
32 as now or hereafter amended shall apply to actions taken pursuant to
33 this chapter.

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

36 The Washington state patrol bureau of forensic laboratory
37 services shall aim to complete the necessary analysis for any
38 evidence submitted for a suspected violation of RCW 69.50.4011(1)(b),

1 69.50.4013, or 69.41.030 within 45 days of receipt of the request for
2 analysis.

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

6 NEW SECTION. **Sec. 8.** The following sums, or as much thereof as
7 may be necessary, are each appropriated to the Washington state
8 patrol: \$780,000 from the state general fund for the fiscal year
9 ending June 30, 2024; and \$425,000 from the state general fund for
10 the fiscal year ending June 30, 2025. The amounts in this section are
11 provided solely to support the Washington state patrol bureau of
12 forensic laboratory services in completing the necessary analysis for
13 any evidence submitted for a suspected violation of RCW
14 69.50.4011(1)(b), 69.50.4013, or 69.41.030 within 45 days of receipt
15 of the request for analysis.

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

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

19 (1) Every person who sells (~~or gives,~~) or permits to be sold
20 (~~or given~~) to any person any drug paraphernalia in any form commits
21 a class I civil infraction under chapter 7.80 RCW. For purposes of
22 this subsection, "drug paraphernalia" means all equipment, products,
23 and materials of any kind which are used, intended for use, or
24 designed for use in planting, propagating, cultivating, growing,
25 harvesting, manufacturing, compounding, converting, producing,
26 processing, preparing, (~~testing, —analyzing,~~) packaging,
27 repackaging, storing, containing, concealing, injecting, ingesting,
28 inhaling, or otherwise introducing into the human body a controlled
29 substance other than cannabis. Drug paraphernalia includes, but is
30 not limited to objects used, intended for use, or designed for use in
31 ingesting, inhaling, or otherwise introducing cocaine into the human
32 body, such as:

33 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
34 pipes with or without screens, permanent screens, hashish heads, or
35 punctured metal bowls;

36 (b) Water pipes;

37 (c) Carburetion tubes and devices;

- 1 (d) Smoking and carburetion masks;
- 2 (e) Miniature cocaine spoons and cocaine vials;
- 3 (f) Chamber pipes;
- 4 (g) Carburetor pipes;
- 5 (h) Electric pipes;
- 6 (i) Air-driven pipes; and
- 7 (j) Ice pipes or chillers.

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

11 (3) Nothing in subsection (1) of this section prohibits (~~legal~~)
12 distribution (~~of injection~~) or use of public health supplies
13 including, but not limited to, syringe equipment, smoking equipment,
14 or drug testing equipment, through public health (~~and~~) programs,
15 community-based HIV prevention programs, and pharmacies. Public
16 health and syringe service program staff taking samples of substances
17 and using drug testing equipment for the purpose of analyzing the
18 composition of the substances or detecting the presence of certain
19 substances are acting legally and are exempt from arrest and
20 prosecution under RCW 69.50.4011, 69.50.4013, 69.50.4014, or
21 69.41.030.

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

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

26 (1) Nothing in this section prevents the defense, with the
27 consent of the prosecutor as required by RCW 2.30.030, from seeking
28 to resolve charges of possession under RCW 69.50.4011(1)(b),
29 69.50.4013, 69.50.4014, or 69.41.030 through available therapeutic
30 courts or other alternatives to prosecution.

31 (2) For any charged violation of RCW 69.50.4011(1)(b),
32 69.50.4013, 69.50.4014, or 69.41.030, the court shall advise the
33 defendant and his or her attorney of the pretrial diversion program.
34 This notification must include all of the following:

- 35 (a) A full description of the procedures for pretrial diversion;
- 36 (b) A general explanation of the roles and authorities of the
37 probation department, the prosecuting attorney, the program, and the
38 court in the process;

1 (c) A clear statement that the court may grant pretrial diversion
2 with respect to any offense under RCW 69.50.4011(1)(b), 69.50.4013,
3 69.50.4014, or 69.41.030 that is charged, provided that the defendant
4 pleads not guilty to the charge or charges, waives the right to a
5 speedy trial and that upon the defendant's successful completion of
6 the program, as specified in subsection (12)(d) of this section, the
7 positive recommendation of the program authority and motion of the
8 defendant, prosecuting attorney, the court, or the probation
9 department, the court must dismiss the charge or charges against the
10 defendant;

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

16 (e) An explanation of criminal record retention and disposition
17 resulting from participation in the pretrial diversion program and
18 the defendant's rights relative to answering questions about his or
19 her arrest and pretrial diversion following successful completion of
20 the program; and

21 (f) A clear statement that under federal law it is unlawful for
22 any person who is an unlawful user of or addicted to any controlled
23 substance to ship or transport in interstate or foreign commerce, or
24 possess in or affecting commerce, any firearm or ammunition, or to
25 receive any firearm or ammunition which has been shipped or
26 transported in interstate or foreign commerce.

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

32 (4)(a) For defendants who agree to participate in the diversion
33 program, the state shall make resources available to assist the
34 defendant in obtaining a substance use disorder evaluation within
35 seven days of the defendant's agreement to participate in the
36 diversion program. The substance use evaluation must be provided at
37 no expense to defendants who qualify for public defense services or
38 who are found to be indigent by the court. The evaluation must be
39 provided at a location that is accessible to the defendant, and the
40 court must provide the defendant with transportation assistance if

1 such assistance is necessary to make the evaluation accessible to the
2 defendant. The court may contract with a third party to provide
3 substance use disorder assessments and services, which may be
4 collocated at the court or be provided at alternative locations.

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

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

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

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

18 (8) Once the diagnostic and treatment recommendation has been
19 filed with the court, if the report indicates the individual has a
20 substance use disorder, the court shall inform the individual that
21 under federal law the individual may not possess any firearm or
22 ammunition. The court shall thereafter sign an order of ineligibility
23 to possess firearms as required by RCW 9.41.800 and shall require the
24 individual to surrender all firearms in accordance with RCW 9.41.804.

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

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

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

39 (12)(a) If it appears to the prosecuting attorney that the
40 defendant is not substantially complying in the recommended treatment

1 or services, that the defendant is convicted of an offense that
2 reflects the defendant's propensity for violence, that the defendant
3 is charged with a subsequent violation of RCW 69.50.4011(1)(b),
4 69.50.4013, or 69.41.030, or that the defendant is convicted of a
5 felony, the prosecuting attorney may make a motion for termination
6 from pretrial diversion.

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

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

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

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

20 (1) Prior to sentencing any person convicted of violating RCW
21 69.50.4011(1)(b), 69.50.4013, 69.50.4014, or 69.41.030(2)(b), the
22 court shall inform the person that under federal law it is unlawful
23 for any person who is an unlawful user of or addicted to any
24 controlled substance to ship or transport in interstate or foreign
25 commerce, or possess in or affecting commerce, any firearm or
26 ammunition, or to receive any firearm or ammunition which has been
27 shipped or transported in interstate or foreign commerce.

28 (2) In courts of limited jurisdiction, an individual who is
29 convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or
30 69.41.030(2)(b) shall be sentenced as follows:

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

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

7 (c) For individuals convicted of a violation of RCW
8 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) where the legend
9 drug is classified as schedule II substance under RCW 69.50.206, if
10 the sentenced individual refuses to submit to a substance use
11 disorder assessment and comply with the recommended treatment as a
12 condition of probation, to imprisonment for a term of not less than
13 21 days. The sentencing court shall give the individual credit for
14 all confinement time served before the sentencing if the confinement
15 was solely in regard to the offense for which the individual is being
16 sentenced.

17 (3) For individuals sentenced under subsection (2)(a) or (b) of
18 this section, the court shall order as a condition of probation the
19 individual to submit to a substance use disorder assessment and
20 comply with the recommended treatment.

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

35 (b) A diagnostic evaluation and treatment recommendation shall be
36 prepared by a substance use disorder treatment program licensed or
37 certified by the department of health or a qualified probation
38 department approved by the department of social and health services.
39 A copy of the report shall be forwarded to the court and filed under
40 seal. Based on the diagnostic evaluation, the court shall determine

1 whether the person shall be required to complete a course in an
2 alcohol and drug information school licensed or certified by the
3 department of health or more intensive treatment in an approved
4 treatment program licensed or certified by the department of health.

5 (c) Once the diagnostic evaluation and treatment recommendation
6 has been filed with the court, if the report indicates the individual
7 has a substance use disorder, the court shall inform the individual
8 that under federal law the individual may not possess any firearm or
9 ammunition. The court shall thereafter sign an order of ineligibility
10 to possess firearms as required by RCW 9.41.800.

11 (d) The diagnostic evaluation and treatment recommendation shall
12 include the following:

13 (i) Type of treatment;

14 (ii) Nature of treatment;

15 (iii) Length of treatment;

16 (iv) A treatment time schedule; and

17 (v) Approximate cost of the treatment.

18 (4) A person subject to substance use disorder assessment and
19 treatment shall be required by the court to complete a course in an
20 alcohol and drug information school certified by the department of
21 health or to complete more intensive treatment in a treatment program
22 licensed or certified by the department of health, as determined by
23 the court.

24 (5) All individuals providing treatment under this section shall
25 implement the integrated and comprehensive screening and assessment
26 process for co-occurring substance use and mental health disorders
27 adopted under RCW 71.24.630.

28 (6) Any agency that provides treatment ordered under this
29 section, must report to the appropriate probation department where
30 applicable, otherwise to the court, any noncompliance by a person
31 with the conditions of the person's ordered treatment.

32 (7) Subject to the availability of funds appropriated for this
33 purpose, the substance use disorder assessment and recommended
34 treatment as ordered by the court shall be provided at no cost for
35 sentenced individuals who have been found to be indigent by the
36 court.

37 (8) As a condition of probation, the sentenced individual must
38 comply with the treatment recommendations of the substance use
39 disorder assessment.

1 (9) (a) If it appears to the prosecuting attorney or the court,
2 that the sentenced individual is performing unsatisfactorily in the
3 recommended treatment program, the prosecuting attorney, or the court
4 on its own, shall make a motion for a hearing to consider sanctions.
5 After notice to the sentenced individual, the court shall hold a
6 hearing to determine if a sanction or revocation of the individual's
7 suspended sentence, or any part thereof, is warranted under RCW
8 3.50.340 or 3.66.069.

9 (b) The court may not sanction an individual for failing to
10 comply with the recommended treatment if the court finds the
11 sentenced individual has made reasonable efforts to comply with the
12 recommended treatment but cannot comply either due to a lack of
13 available treatment or, for sentenced individuals found to be
14 indigent by the court, due to a lack of funding for treatment.

15 (10) For individuals sentenced under subsection (2)(a) of this
16 section, if at any point the court finds by a preponderance of the
17 evidence that the sentenced individual has willfully abandoned or
18 demonstrated a consistent failure to comply with the recommended
19 treatment, the court shall reinstate a portion of the individual's
20 suspended sentence as follows:

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

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

28 (c) For an individual's third or subsequent instance of being
29 sentenced under this section, the court shall reinstate no less than
30 45 days of the individual's suspended sentence.

31 (11) For individuals sentenced under subsection (2)(a) of this
32 section, the court may deem any subsequent charge filed against the
33 individual for violation of RCW 69.50.4011(1)(b), 69.50.4013, or
34 69.41.030 a willful abandonment of treatment.

35 (12) If the individual has successfully completed the recommended
36 treatment program, the individual must file proof of successful
37 completion with the court at which time the court must terminate
38 probation and enter an order vacating the individual's conviction
39 under RCW 9.96.060(6).

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

3 (1) When vacating a conviction under this section, the court
4 effectuates the vacation by: (a)(i) Permitting the applicant to
5 withdraw the applicant's plea of guilty and to enter a plea of not
6 guilty; or (ii) if the applicant has been convicted after a plea of
7 not guilty, the court setting aside the verdict of guilty; and (b)
8 the court dismissing the information, indictment, complaint, or
9 citation against the applicant and vacating the judgment and
10 sentence.

11 (2) Every person convicted of a misdemeanor or gross misdemeanor
12 offense may apply to the sentencing court for a vacation of the
13 applicant's record of conviction for the offense. If the court finds
14 the applicant meets the requirements of this subsection, the court
15 may in its discretion vacate the record of conviction. Except as
16 provided in subsections (3), (4), ~~((and))~~ (5), and (6) of this
17 section, an applicant may not have the record of conviction for a
18 misdemeanor or gross misdemeanor offense vacated if any one of the
19 following is present:

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

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

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

27 (d) The offense was a violation of RCW 46.61.502 (driving while
28 under the influence), 46.61.504 (actual physical control while under
29 the influence), 9.91.020 (operating a railroad, etc. while
30 intoxicated), or the offense is considered a "prior offense" under
31 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
32 violation within ten years of the date of arrest for the prior
33 offense or less than ten years has elapsed since the date of the
34 arrest for the prior offense;

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

1 (f) The applicant was convicted of a misdemeanor or gross
2 misdemeanor offense as defined in RCW 10.99.020, or the court
3 determines after a review of the court file that the offense was
4 committed by one family or household member against another or by one
5 intimate partner against another, or the court, after considering the
6 damage to person or property that resulted in the conviction, any
7 prior convictions for crimes defined in RCW 10.99.020, or for
8 comparable offenses in another state or in federal court, and the
9 totality of the records under review by the court regarding the
10 conviction being considered for vacation, determines that the offense
11 involved domestic violence, and any one of the following factors
12 exist:

13 (i) The applicant has not provided written notification of the
14 vacation petition to the prosecuting attorney's office that
15 prosecuted the offense for which vacation is sought, or has not
16 provided that notification to the court;

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

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

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

30 (g) For any offense other than those described in (f) of this
31 subsection, less than three years have passed since the person
32 completed the terms of the sentence, including any financial
33 obligations;

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

37 (i) The applicant is currently restrained by a domestic violence
38 protection order, a no-contact order, an antiharassment order, or a
39 civil restraining order which restrains one party from contacting the
40 other party or was previously restrained by such an order and was

1 found to have committed one or more violations of the order in the
2 five years prior to the vacation application.

3 (3) If the applicant is a victim of sex trafficking,
4 prostitution, or commercial sexual abuse of a minor; sexual assault;
5 or domestic violence as defined in RCW 9.94A.030, or the prosecutor
6 applies on behalf of the state, the sentencing court may vacate the
7 record of conviction if the application satisfies the requirements of
8 RCW 9.96.080. When preparing or filing the petition, the prosecutor
9 is not deemed to be providing legal advice or legal assistance on
10 behalf of the victim, but is fulfilling an administrative function on
11 behalf of the state in order to further their responsibility to seek
12 to reform and improve the administration of criminal justice. A
13 record of conviction vacated using the process in RCW 9.96.080 is
14 subject to subsections (~~((6) and~~) (7) and (8) of this section.

15 (4) Every person convicted prior to January 1, 1975, of violating
16 any statute or rule regarding the regulation of fishing activities,
17 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
18 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
19 who claimed to be exercising a treaty Indian fishing right, may apply
20 to the sentencing court for vacation of the applicant's record of the
21 misdemeanor, gross misdemeanor, or felony conviction for the offense.
22 If the person is deceased, a member of the person's family or an
23 official representative of the tribe of which the person was a member
24 may apply to the court on behalf of the deceased person.
25 Notwithstanding the requirements of RCW 9.94A.640, the court shall
26 vacate the record of conviction if:

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

29 (b) The state has been enjoined from taking enforcement action of
30 the statute or rule to the extent that it interferes with a treaty
31 Indian fishing right as determined under *United States v. Washington*,
32 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
33 899 (D. Oregon 1969), and any posttrial orders of those courts, or
34 any other state supreme court or federal court decision.

35 (5) Every person convicted of a misdemeanor cannabis offense, who
36 was (~~(twenty-one)~~) 21 years of age or older at the time of the
37 offense, may apply to the sentencing court for a vacation of the
38 applicant's record of conviction for the offense. A misdemeanor
39 cannabis offense includes, but is not limited to: Any offense under
40 RCW 69.50.4014, from July 1, 2004, onward, and its predecessor

1 statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1,
2 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and
3 any offense under an equivalent municipal ordinance. If an applicant
4 qualifies under this subsection, the court shall vacate the record of
5 conviction.

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

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

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

31 (b) When a court vacates a record of domestic violence as defined
32 in RCW 10.99.020 under this section, the state may not use the
33 vacated conviction in a later criminal prosecution unless the
34 conviction was for: (i) Violating the provisions of a restraining
35 order, no-contact order, or protection order restraining or enjoining
36 the person or restraining the person from going on to the grounds of
37 or entering a residence, workplace, school, or day care, or
38 prohibiting the person from knowingly coming within, or knowingly
39 remaining within, a specified distance of a location, a protected
40 party's person, or a protected party's vehicle (RCW 10.99.040,

1 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
2 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
3 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
4 violence protection order or vulnerable adult protection order
5 entered under chapter 7.105 RCW. A vacated conviction under this
6 section is not considered a conviction of such an offense for the
7 purposes of 27 C.F.R. 478.11.

8 (c) A conviction vacated on or after July 28, 2019, qualifies as
9 a prior conviction for the purpose of charging a present recidivist
10 offense as defined in RCW 9.94A.030 occurring on or after July 28,
11 2019.

12 ~~((8))~~ (9) The clerk of the court in which the vacation order is
13 entered shall immediately transmit the order vacating the conviction
14 to the Washington state patrol identification section and to the
15 local police agency, if any, which holds criminal history information
16 for the person who is the subject of the conviction. The Washington
17 state patrol and any such local police agency shall immediately
18 update their records to reflect the vacation of the conviction, and
19 shall transmit the order vacating the conviction to the federal
20 bureau of investigation. A conviction that has been vacated under
21 this section may not be disseminated or disclosed by the state patrol
22 or local law enforcement agency to any person, except other criminal
23 justice enforcement agencies.

24 ~~((9))~~ (10) For the purposes of this section, "cannabis" has the
25 meaning provided in RCW 69.50.101.

26 **Part IV - Opioid Treatment Rural Access and Expansion**

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

29 (1)(a) The comprehensive plan of each county and city that is
30 planning under RCW 36.70A.040 shall include a process for identifying
31 and siting essential public facilities. Essential public facilities
32 include those facilities that are typically difficult to site, such
33 as airports, state education facilities and state or regional
34 transportation facilities as defined in RCW 47.06.140, regional
35 transit authority facilities as defined in RCW 81.112.020, state and
36 local correctional facilities, solid waste handling facilities,
37 opioid treatment programs including both mobile and fixed-site
38 medication units, recovery residences, harm reduction programs

1 excluding safe injection sites, and inpatient facilities including
2 substance ((abuse)) use disorder treatment facilities, mental health
3 facilities, group homes, community facilities as defined in RCW
4 72.05.020, and secure community transition facilities as defined in
5 RCW 71.09.020.

6 (b) Unless a facility is expressly listed in (a) of this
7 subsection, essential public facilities do not include facilities
8 that are operated by a private entity in which persons are detained
9 in custody under process of law pending the outcome of legal
10 proceedings but are not used for punishment, correction, counseling,
11 or rehabilitation following the conviction of a criminal offense.
12 Facilities included under this subsection (1)(b) shall not include
13 facilities detaining persons under RCW 71.09.020 ((+6) or (15)) (7)
14 or (16) or chapter 10.77 or 71.05 RCW.

15 (c) The department of children, youth, and families may not
16 attempt to site new community facilities as defined in RCW 72.05.020
17 east of the crest of the Cascade mountain range unless there is an
18 equal or greater number of sited community facilities as defined in
19 RCW 72.05.020 on the western side of the crest of the Cascade
20 mountain range.

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

27 (2) Each county and city planning under RCW 36.70A.040 shall, not
28 later than September 1, 2002, establish a process, or amend its
29 existing process, for identifying and siting essential public
30 facilities and adopt or amend its development regulations as
31 necessary to provide for the siting of secure community transition
32 facilities consistent with statutory requirements applicable to these
33 facilities.

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

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

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

7 (6) No person may bring a cause of action for civil damages based
8 on the good faith actions of any county or city to provide for the
9 siting of secure community transition facilities in accordance with
10 this section and with the requirements of chapter 12, Laws of 2001
11 2nd sp. sess. For purposes of this subsection, "person" includes, but
12 is not limited to, any individual, agency as defined in RCW
13 42.17A.005, corporation, partnership, association, and limited
14 liability entity.

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

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

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

21 (b) A consideration for grants or loans provided under RCW
22 43.17.250(3); or

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

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

27 (1) Subject to funds appropriated by the legislature, the
28 authority shall ~~((implement a pilot project))~~ administer a grant
29 program for law enforcement assisted diversion which shall adhere to
30 law enforcement assisted diversion core principles recognized by the
31 law enforcement assisted diversion national support bureau, the
32 efficacy of which have been demonstrated in peer-reviewed research
33 studies.

34 (2) ~~((Under the pilot project, the))~~ The authority must partner
35 with the law enforcement assisted diversion national support bureau
36 to award ~~((a contract))~~ contracts, subject to appropriation, for
37 ~~((two or more geographic areas))~~ jurisdictions in the state of
38 Washington for law enforcement assisted diversion. Cities, counties,
39 and tribes ~~((may compete for participation in a pilot project)),~~

1 subdivisions thereof, public development authorities, and community-
2 based organizations demonstrating support from necessary public
3 partners, may serve as the lead agency applying for funding. Funds
4 may be used to scale existing projects, and to invite additional
5 jurisdictions to launch law enforcement assisted diversion programs.

6 (3) The (~~pilot projects~~) program must provide for securing
7 comprehensive technical assistance from law enforcement assisted
8 diversion implementation experts to develop and implement a law
9 enforcement assisted diversion program (~~in the pilot project's~~
10 ~~geographic areas~~) in a way that ensures fidelity to the research-
11 based law enforcement assisted diversion model. Sufficient funds must
12 be allocated from grant program funds to secure technical assistance
13 for the authority and for the implementing jurisdictions.

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

16 (a) Long-term case management for individuals with substance use
17 disorders;

18 (b) Facilitation and coordination with community resources
19 focusing on overdose prevention;

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

22 (d) Facilitation and coordination with community resources
23 providing physical and behavioral health services;

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

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

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

30 (h) Prosecutorial support for diversion services.

31 (5) No civil liability may be imposed by any court on the state
32 or its officers or employees, an appointed or elected official,
33 public employee, public agency as defined in RCW 4.24.470,
34 combination of units of government and its employees as provided in
35 RCW 36.28A.010, nonprofit community-based organization, tribal
36 government entity, tribal organization, or urban Indian organization,
37 based on the administration of a law enforcement assisted diversion
38 program or activities carried out within the purview of a grant
39 received under this program except upon proof of bad faith or gross
40 negligence.

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

3 (1) When making a decision on an application for licensing or
4 certification of ((a)) an opioid treatment program, the department
5 shall:

6 (a) Consult with the county legislative authorities in the area
7 in which an applicant proposes to locate a program and the city
8 legislative authority in any city in which an applicant proposes to
9 locate a program;

10 (b) License or certify only programs that will be sited in
11 accordance with the appropriate county or city land use ordinances.
12 Counties and cities may require conditional use permits with
13 reasonable conditions for the siting of programs only to the extent
14 that such reasonable conditional use requirements applied to opioid
15 treatment programs are similarly applied to other essential public
16 facilities and health care settings. Pursuant to RCW 36.70A.200, no
17 local comprehensive plan or development regulation may preclude the
18 siting of essential public facilities;

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

21 (d) Consider the size of the population in need of treatment in
22 the area in which the program would be located and license or certify
23 only applicants whose programs meet the necessary treatment needs of
24 that population;

25 (e) Consider the availability of other certified opioid treatment
26 programs near the area in which the applicant proposes to locate the
27 program;

28 (f) Consider the transportation systems that would provide
29 service to the program and whether the systems will provide
30 reasonable opportunities to access the program for persons in need of
31 treatment;

32 (g) Consider whether the applicant has, or has demonstrated in
33 the past, the capability to provide the appropriate services to
34 assist the persons who utilize the program in meeting goals
35 established by the legislature in RCW 71.24.585. The department shall
36 prioritize licensing or certification to applicants who have
37 demonstrated such capability and are able to measure their success in
38 meeting such outcomes;

39 (h) Hold one public hearing in the community in which the
40 facility is proposed to be located. The hearing shall be held at a

1 time and location that are most likely to permit the largest number
2 of interested persons to attend and present testimony. The department
3 shall notify all appropriate media outlets of the time, date, and
4 location of the hearing at least three weeks in advance of the
5 hearing.

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

10 (3) A program applying for licensing or certification from the
11 department and a program applying for a contract from a state agency
12 that has been denied the licensing or certification or contract shall
13 be provided with a written notice specifying the rationale and
14 reasons for the denial.

15 (4) Opioid treatment programs may order, possess, dispense, and
16 administer medications approved by the United States food and drug
17 administration for the treatment of opioid use disorder, alcohol use
18 disorder, tobacco use disorder, and reversal of opioid overdose. For
19 an opioid treatment program to order, possess, and dispense any other
20 legend drug, including controlled substances, the opioid treatment
21 program must obtain additional licensure as required by the
22 department, except for patient-owned medications.

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

25 (6) Registered nurses and licensed practical nurses may dispense
26 up to a ((~~thirty-one~~)) 31 day supply of medications approved by the
27 United States food and drug administration for the treatment of
28 opioid use disorder to patients of the opioid treatment program,
29 under an order or prescription and in compliance with 42 C.F.R. Sec.
30 8.12.

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

33 (a) Engages in the treatment of opioid use disorder with
34 medications approved by the United States food and drug
35 administration for the treatment of opioid use disorder and reversal
36 of opioid overdose, including methadone; and

37 (b) Provides a comprehensive range of medical and rehabilitative
38 services.

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

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.330
2 RCW to read as follows:

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

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

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

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

21 (a) Take the individual to a crisis stabilization unit as defined
22 in RCW 71.05.020. Individuals delivered to a crisis stabilization
23 unit pursuant to this section may be held by the facility for a
24 period of up to twelve hours. The individual must be examined by a
25 mental health professional or substance use disorder professional
26 within three hours of arrival;

27 (b) Take the individual to a triage facility as defined in RCW
28 71.05.020. An individual delivered to a triage facility which has
29 elected to operate as an involuntary facility may be held up to a
30 period of twelve hours. The individual must be examined by a mental
31 health professional or substance use disorder professional within
32 three hours of arrival;

33 (c) Refer the individual to a designated crisis responder for
34 evaluation for initial detention and proceeding under chapter 71.05
35 RCW;

36 (d) Release the individual upon agreement to voluntary
37 participation in outpatient treatment;

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

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

4 (2) If the individual is released to the community from the
5 facilities in subsection (1)(a) through (c) of this section, the
6 mental health provider or substance use disorder professional shall
7 make reasonable efforts to inform the arresting officer of the
8 planned release prior to release if the arresting officer has
9 specifically requested notification and provided contact information
10 to the provider.

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

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

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

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

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

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

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

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

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

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

1 (2) The court may, in its discretion, appoint counsel for the
2 child or a guardian ad litem as set forth in RCW 26.09.110 and
3 26.09.220.

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

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

7 Subject to the availability of amounts provided for this specific
8 purpose, the authority shall:

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

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

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

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

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

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

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

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

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

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

10 (ii) The property is rented or leased by the nonprofit
11 organization and the benefit of the exemption inures to the nonprofit
12 organization.

13 (3) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (c) The amount charged for recovery housing is reasonably
34 consistent with the actual cost of operating and maintaining the
35 housing.

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

1 (a) Initial applications for the tax exemption under section 21
2 of this act as approved by the department of revenue under RCW
3 84.36.815;

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

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

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

11 **Part VII - Training for Parents of Children with Substance Use**
12 **Disorder and Caseworkers Within the Department of Children, Youth,**
13 **and Families**
14

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

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

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

22 (b) Adaptive and functional communication strategies for
23 communication with a loved one about their substance use disorder,
24 including positive communication skills and strategies to influence
25 motivation and behavioral change;

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

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

29 (2) The health care authority and the department shall make this
30 training publicly available and the department must promote the
31 training to licensed foster parents and caregivers, including any
32 tribally licensed foster parents and tribal caregivers.

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

35 The department must make opioid overdose reversal medication
36 available for use by caseworkers or employees that may come in

1 contact with individuals experiencing overdose and must make
2 appropriate training available.

3 **Part VIII - Data Support for Recovery Navigator Programs**

4 NEW SECTION. **Sec. 25.** To support recovery navigator programs,
5 the health care authority must develop and implement a data
6 integration platform by June 30, 2024, to serve as a common database
7 for diversion efforts across the state, to serve as a data collection
8 and management tool for practitioners, and to assist in standardizing
9 definitions and practices. If possible, the health care authority
10 must leverage and interact with existing platforms already in use in
11 efforts funded by the authority. The health care authority must
12 establish a quality assurance process for behavioral health
13 administrative services organizations, and employ data validation for
14 fields in the data collection workbook.

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

17 (1) The authority shall contract with the Washington state
18 institute for public policy to conduct a study of the long-term
19 effectiveness of the recovery navigator program under RCW 71.24.115
20 with reports due by June 30th in the years 2028, 2033, and 2038. The
21 Washington state institute for public policy shall collaborate with
22 the authority and substance use recovery services advisory committee
23 under RCW 71.24.546 on the topic of data collection and to determine
24 the parameters of the report, which shall include recommendations, if
25 any, for modification and improvement of the recovery navigator
26 program. The authority shall cooperate with the Washington state
27 institute for public policy to provide data for this report.

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

34 **Part IX - Establishing Rules and Payment Structures for Health**
35 **Engagement Hubs**

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

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

5 (2) A health engagement hub:

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

10 (b) May be affiliated with existing syringe service programs,
11 federally qualified health centers, community health centers,
12 overdose prevention sites, safe consumption sites, patient-centered
13 medical homes, tribal behavioral health programs, peer run
14 organizations such as clubhouses, services for unhoused people,
15 supportive housing, and opioid treatment programs including mobile
16 and fixed-site medication units established under an opioid treatment
17 program, or other appropriate entity;

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

20 (d) Functions as a patient-centered medical home by offering
21 high-quality, cost-effective patient-centered care, including wound
22 care;

23 (e) Provides harm reduction services and supplies;

24 (f) Provides linkage to housing, transportation, and other
25 support services; and

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

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

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

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

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

1 Subject to funding provided for this specific purpose, the
2 authority shall establish a grant program for providers of
3 employment, education, training, certification, and other supportive
4 programs designed to provide persons recovering from a substance use
5 disorder with employment opportunities. The grant program shall
6 employ a low-barrier application and give priority to programs that
7 engage with black, indigenous, persons of color, and other
8 historically underserved communities.

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

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

12 Subject to funding provided for this specific purpose, the
13 authority must collaborate with the department and the department of
14 social and health services to expand the Washington recovery helpline
15 and the recovery readiness asset tool to provide a dynamically
16 updated statewide behavioral health treatment and recovery support
17 services mapping tool that includes a robust resource database for
18 those seeking services and a referral system to be incorporated
19 within the locator tool to help facilitate the connection between an
20 individual and a facility that is currently accepting new referrals.
21 The tool must include dual interface capability, one for public
22 access and one for internal use and management.

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

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

33 (2) The appropriations in this subsection are provided to the
34 state health care authority and are subject to the following
35 conditions and limitations:

1 (a) The following sums, or so much thereof as may be necessary,
2 are each appropriated: \$18,114,000 from the state general fund for
3 the fiscal year ending June 30, 2024; and \$16,437,000 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 continue and
6 expand efforts to provide opioid use disorder medication in city,
7 county, regional, and tribal jails.

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

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

26 (d) The following sums, or so much thereof as may be necessary,
27 are each appropriated: \$900,000 from the state general fund for the
28 fiscal year ending June 30, 2024; \$900,000 from the state general
29 fund for the fiscal year ending June 30, 2025; and \$1,800,000 from
30 the state general fund—federal for the fiscal biennium ending June
31 30, 2025. The amounts in this subsection are provided solely for the
32 authority to maintain a memorandum of understanding with the criminal
33 justice training commission to provide ongoing funding for community
34 grants pursuant to RCW 36.28A.450.

35 (e) The following sums, or so much thereof as may be necessary,
36 are each appropriated: \$1,250,000 from the state general fund for the
37 fiscal year ending June 30, 2024; \$1,250,000 from the state general
38 fund for the fiscal year ending June 30, 2025; and \$2,500,000 from
39 the state general fund—federal for the fiscal biennium ending June
40 30, 2025. The amounts in this subsection are provided solely for the

1 authority to provide ongoing grants to law enforcement assistant
2 diversion programs under RCW 71.24.590.

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

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

6 (1) The authority shall convene a work group to recommend changes
7 to systems, policies, and processes related to intake, screening, and
8 assessment for substance use disorder services, with the goal to
9 broaden the workforce capable of processing intakes and to make the
10 intake process as brief as possible, including only what is necessary
11 to manage utilization and initiate care. The intake shall be low
12 barrier, person-centered, and amenable to administration in diverse
13 health care settings and by a range of health care professionals. The
14 intake assessment shall consider the person's self-identified needs
15 and preferences when evaluating direction of treatment and may
16 include different components based on the setting, context, and past
17 experience with the client.

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

22 **Part XIV - Miscellaneous Provisions**

23 NEW SECTION. **Sec. 32.** Section 7 of this act takes effect
24 January 1, 2025.

25 **Sec. 33.** 2021 c 311 s 29 (uncodified) is amended to read as
26 follows:

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

29 NEW SECTION. **Sec. 34.** Sections 2, 6, 8 through 12, and 33 of
30 this act are necessary for the immediate preservation of the public
31 peace, health, or safety, or support of the state government and its
32 existing public institutions, and take effect July 1, 2023.

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