
SENATE BILL 5536

State of Washington

68th Legislature

2023 Regular Session

By Senators Robinson, Lovick, Rolfes, Mullet, Dhingra, Billig, Hasegawa, Keiser, Kuderer, Lias, Lovelett, Nobles, Randall, Stanford, Wellman, and C. Wilson

Read first time 01/23/23. Referred to Committee on Law & Justice.

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, 69.50.4121, 69.50.509, 9.96.060, 36.70A.200, and
6 71.24.590; adding new sections to chapter 69.50 RCW; adding a new
7 section to chapter 71.24 RCW; adding a new section to chapter 43.330
8 RCW; repealing RCW 10.31.115; prescribing penalties; and providing an
9 expiration date.

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

11 **Sec. 1.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to
12 read as follows:

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

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

16 (b) Knowingly possess a counterfeit substance.

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

19 (a) A counterfeit substance classified in Schedule I or II which
20 is a narcotic drug, or flunitrazepam classified in Schedule IV, is
21 guilty of a class B felony and upon conviction may be imprisoned for

1 not more than (~~ten~~) 10 years, fined not more than (~~twenty-five~~
2 ~~thousand dollars~~) \$25,000, or both;

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

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

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

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

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

18 (b) In lieu of jail booking and referral to the prosecutor, law
19 enforcement is encouraged to offer a referral to assessment and
20 services available under RCW 10.31.110 or other program or entity
21 responsible for receiving referrals in lieu of legal system
22 involvement, which may include the recovery navigator program
23 established under RCW 71.24.115.

24 (c) Upon arraignment for a violation of subsection (1)(b) of this
25 section, the court shall advise the defendant of the pretrial
26 diversion program as indicated in section 8(1) of this act.

27 **Sec. 2.** RCW 69.50.4013 and 2022 c 16 s 86 are each amended to
28 read as follows:

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

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

1 (b) In lieu of jail booking and referral to the prosecutor, law
2 enforcement is encouraged to offer a referral to assessment and
3 services available under RCW 10.31.110 or other program or entity
4 responsible for receiving referrals in lieu of legal system
5 involvement, which may include the recovery navigator program
6 established under RCW 71.24.115.

7 (c) Upon arraignment for a violation of this section, the court
8 shall advise the defendant of the availability of the pretrial
9 diversion program as indicated in section 8(1) of this act.

10 (3) (a) The possession, by a person (~~(twenty-one)~~) 21 years of age
11 or older, of useable cannabis, cannabis concentrates, or cannabis-
12 infused products in amounts that do not exceed those set forth in RCW
13 69.50.360(3) is not a violation of this section, this chapter, or any
14 other provision of Washington state law.

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

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

- 30 (i) One-half ounce of useable cannabis;
- 31 (ii) Eight ounces of cannabis-infused product in solid form;
- 32 (iii) (~~(Thirty-six)~~) 36 ounces of cannabis-infused product in
33 liquid form; or
- 34 (iv) Three and one-half grams of cannabis concentrates.

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

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

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

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

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

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

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

20 (2) In lieu of jail booking and referral to the prosecutor, law
21 enforcement is encouraged to offer a referral to assessment and
22 services available under RCW 10.31.110 or other program or entity
23 responsible for receiving referrals in lieu of legal system
24 involvement, which may include the recovery navigator program
25 established under RCW 71.24.115.

26 (3) Upon arraignment for violation of this section, the court
27 shall advise the defendant of the availability of the pretrial
28 diversion program as indicated in section 8(1) of this act.

29 **Sec. 4.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to
30 read as follows:

31 (1) It shall be unlawful for any person to sell(~~or~~) or deliver
32 any legend drug, or knowingly possess any legend drug except upon the
33 order or prescription of a physician under chapter 18.71 RCW, an
34 osteopathic physician and surgeon under chapter 18.57 RCW, an
35 optometrist licensed under chapter 18.53 RCW who is certified by the
36 optometry board under RCW 18.53.010, a dentist under chapter 18.32
37 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a
38 veterinarian under chapter 18.92 RCW, a commissioned medical or

1 dental officer in the United States armed forces or public health
2 service in the discharge of his or her official duties, a duly
3 licensed physician or dentist employed by the veterans administration
4 in the discharge of his or her official duties, a registered nurse or
5 advanced registered nurse practitioner under chapter 18.79 RCW when
6 authorized by the nursing care quality assurance commission, a
7 pharmacist licensed under chapter 18.64 RCW to the extent permitted
8 by drug therapy guidelines or protocols established under RCW
9 18.64.011 and authorized by the commission and approved by a
10 practitioner authorized to prescribe drugs, a physician assistant
11 under chapter 18.71A RCW when authorized by the Washington medical
12 commission, or any of the following professionals in any province of
13 Canada that shares a common border with the state of Washington or in
14 any state of the United States: A physician licensed to practice
15 medicine and surgery or a physician licensed to practice osteopathic
16 medicine and surgery, a dentist licensed to practice dentistry, a
17 podiatric physician and surgeon licensed to practice podiatric
18 medicine and surgery, a licensed advanced registered nurse
19 practitioner, a licensed physician assistant, or a veterinarian
20 licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the
21 above provisions shall not apply to sale, delivery, or possession by
22 drug wholesalers or drug manufacturers, or their agents or employees,
23 or to any practitioner acting within the scope of his or her license,
24 or to a common or contract carrier or warehouse operator, or any
25 employee thereof, whose possession of any legend drug is in the usual
26 course of business or employment: PROVIDED FURTHER, That nothing in
27 this chapter or chapter 18.64 RCW shall prevent a family planning
28 clinic that is under contract with the health care authority from
29 selling, delivering, possessing, and dispensing commercially
30 prepackaged oral contraceptives prescribed by authorized, licensed
31 health care practitioners: PROVIDED FURTHER, That nothing in this
32 chapter prohibits possession or delivery of legend drugs by an
33 authorized collector or other person participating in the operation
34 of a drug take-back program authorized in chapter 69.48 RCW.

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

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

1 (c) In lieu of jail booking and referral to the prosecutor for a
2 violation of this section involving knowing possession, law
3 enforcement is encouraged to offer a referral to assessment and
4 services available under RCW 10.31.110 or other program or entity
5 responsible for receiving referrals in lieu of legal system
6 involvement, which may include the recovery navigator program
7 established under RCW 71.24.115.

8 (d) Upon arraignment for a violation of this section involving
9 knowing possession, the court shall advise the defendant of the
10 availability of the pretrial diversion program as indicated in
11 section 8(1) of this act.

12 **Sec. 5.** RCW 69.50.4121 and 2022 c 16 s 92 are each amended to
13 read as follows:

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

28 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
29 pipes with or without screens, permanent screens, hashish heads, or
30 punctured metal bowls;

31 (b) Water pipes;

32 (c) Carburetion tubes and devices;

33 (d) Smoking and carburetion masks;

34 (e) Miniature cocaine spoons and cocaine vials;

35 (f) Chamber pipes;

36 (g) Carburetor pipes;

37 (h) Electric pipes;

38 (i) Air-driven pipes; and

39 (j) Ice pipes or chillers.

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

4 (3) Nothing in subsection (1) of this section prohibits legal
5 distribution of injection syringe equipment or smoking equipment
6 through public health and community-based HIV prevention programs,
7 and pharmacies.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 69.50
9 RCW to read as follows:

10 The state of Washington hereby fully occupies and preempts the
11 entire field of drug paraphernalia regulation within the boundaries
12 of the state including regulation of the use, selling, giving,
13 delivery, and possession of drug paraphernalia. Cities, towns, and
14 counties or other municipalities may enact only those laws and
15 ordinances relating to drug paraphernalia that are specifically
16 authorized by state law and are consistent with this chapter. Such
17 local ordinances must have the same penalty as provided for by state
18 law. Local laws and ordinances that are inconsistent with, more
19 restrictive than, or exceed the requirements of state law may not be
20 enacted and are preempted and repealed, regardless of the nature of
21 the code, charter, or home rule status of such city, town, county, or
22 municipality.

23 **Sec. 7.** 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,

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

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 69.50
12 RCW to read as follows:

13 (1) For any violation of RCW 69.50.4011(1)(b), 69.50.4013,
14 69.50.4014, or 69.41.030, the court shall advise the defendant and
15 his or her attorney of the pretrial diversion program. This
16 notification must include all of the following:

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

18 (b) A general explanation of the roles and authorities of the
19 probation department, the prosecuting attorney, the program, and the
20 court in the process;

21 (c) A clear statement that the court may grant pretrial diversion
22 with respect to any offense under RCW 69.50.4011(1)(b), 69.50.4013,
23 69.50.4014, or 69.41.030 that is charged, provided that the defendant
24 pleads not guilty to the charge or charges, waives the right to a
25 speedy trial and a trial by jury and that upon the defendant's
26 successful completion of the program, as specified in subsection
27 (9)(d) of this section, the positive recommendation of the program
28 authority and motion of the defendant, prosecuting attorney, the
29 court, or the probation department, but no sooner than 12 months and
30 no later than 18 months from the date of the defendant's referral to
31 the program, the court must dismiss the charge or charges against the
32 defendant;

33 (d) A clear statement that upon any failure of treatment or
34 condition under the program, the prosecuting attorney, the probation
35 department, or the court may make a motion to terminate pretrial
36 diversion and schedule further proceedings as otherwise provided in
37 this section; and

38 (e) An explanation of criminal record retention and disposition
39 resulting from participation in the pretrial diversion program and

1 the defendant's rights relative to answering questions about his or
2 her arrest and pretrial diversion following successful completion of
3 the program.

4 (2) Upon a motion of the defendant and agreement to waive his or
5 her right to a speedy trial and trial by jury if granted pretrial
6 diversion, the court may grant the motion and continue the hearing
7 and refer the defendant for a diagnostic investigation and evaluation
8 to an approved substance use disorder treatment program as designated
9 in chapter 71.24 RCW.

10 (3) The treatment program must make a written report to the court
11 stating its findings and recommendations after the examination.

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

15 (5) Subject to the availability of funds appropriated for this
16 purpose, the diagnostic investigation and evaluation and recommended
17 treatment must be provided at no cost for individuals who have been
18 found to be indigent by the court.

19 (6) No statement, or any information procured therefrom, made by
20 the defendant to any treatment or service provider, that is made
21 during the course of any investigation conducted by the treatment
22 program pursuant to subsections (2) through (4) of this section, and
23 before the reporting of the findings and recommendations to the
24 court, must be admissible in any action or proceeding brought
25 subsequent to the investigation.

26 (7) A defendant's participation in pretrial diversion under this
27 section does not constitute a conviction or an admission of guilt for
28 any purpose.

29 (8) (a) The court must hold a hearing and, after consideration of
30 any information relevant to its decision, determine if the defendant
31 consents to further proceedings under this section and if the
32 defendant should be granted pretrial diversion. If the defendant does
33 not consent to participate in pretrial diversion, the proceedings
34 must continue as in any other case.

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

38 (c) The period during which pretrial diversion is granted must be
39 for no less than 12 months and no longer than 18 months. However, the

1 defendant may request, and the court must grant for good cause shown,
2 an extension of time to complete a specified program.

3 (9) (a) If it appears to the prosecuting attorney, the court, or
4 the probation department that the defendant is performing
5 unsatisfactorily in the assigned program, that the defendant is
6 convicted of an offense that reflects the defendant's propensity for
7 violence, or that the defendant is convicted of a felony, the
8 prosecuting attorney, the court on its own, or the probation
9 department may make a motion for termination from pretrial diversion.

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

12 (c) If the court finds that the defendant is not performing
13 satisfactorily in the assigned program, or the court finds that the
14 defendant has been convicted of a crime as indicated in (a) of this
15 subsection, the court must schedule the matter for further
16 proceedings.

17 (d) If the defendant has successfully completed pretrial
18 diversion, including all treatment requirements, at the end of that
19 period, the criminal charge or charges must be dismissed.

20 **Sec. 9.** RCW 9.96.060 and 2022 c 16 s 7 are each amended to read
21 as follows:

22 (1) When vacating a conviction under this section, the court
23 effectuates the vacation by: (a)(i) Permitting the applicant to
24 withdraw the applicant's plea of guilty and to enter a plea of not
25 guilty; or (ii) if the applicant has been convicted after a plea of
26 not guilty, the court setting aside the verdict of guilty; and (b)
27 the court dismissing the information, indictment, complaint, or
28 citation against the applicant and vacating the judgment and
29 sentence.

30 (2) Every person convicted of a misdemeanor or gross misdemeanor
31 offense may apply to the sentencing court for a vacation of the
32 applicant's record of conviction for the offense. If the court finds
33 the applicant meets the requirements of this subsection, the court
34 may in its discretion vacate the record of conviction. Except as
35 provided in subsections (3), (4), ~~((and))~~ (5), and (6) of this
36 section, an applicant may not have the record of conviction for a
37 misdemeanor or gross misdemeanor offense vacated if any one of the
38 following is present:

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

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

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

8 (d) The offense was a violation of RCW 46.61.502 (driving while
9 under the influence), 46.61.504 (actual physical control while under
10 the influence), 9.91.020 (operating a railroad, etc. while
11 intoxicated), or the offense is considered a "prior offense" under
12 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
13 violation within ten years of the date of arrest for the prior
14 offense or less than ten years has elapsed since the date of the
15 arrest for the prior offense;

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

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

33 (i) The applicant has not provided written notification of the
34 vacation petition to the prosecuting attorney's office that
35 prosecuted the offense for which vacation is sought, or has not
36 provided that notification to the court;

37 (ii) The applicant has two or more domestic violence convictions
38 stemming from different incidents. For purposes of this subsection,
39 however, if the current application is for more than one conviction

1 that arose out of a single incident, none of those convictions counts
2 as a previous conviction;

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

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

11 (g) For any offense other than those described in (f) of this
12 subsection, less than three years have passed since the person
13 completed the terms of the sentence, including any financial
14 obligations;

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

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

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

36 (4) Every person convicted prior to January 1, 1975, of violating
37 any statute or rule regarding the regulation of fishing activities,
38 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
39 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
40 who claimed to be exercising a treaty Indian fishing right, may apply

1 to the sentencing court for vacation of the applicant's record of the
2 misdemeanor, gross misdemeanor, or felony conviction for the offense.
3 If the person is deceased, a member of the person's family or an
4 official representative of the tribe of which the person was a member
5 may apply to the court on behalf of the deceased person.
6 Notwithstanding the requirements of RCW 9.94A.640, the court shall
7 vacate the record of conviction if:

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

10 (b) The state has been enjoined from taking enforcement action of
11 the statute or rule to the extent that it interferes with a treaty
12 Indian fishing right as determined under *United States v. Washington*,
13 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
14 899 (D. Oregon 1969), and any posttrial orders of those courts, or
15 any other state supreme court or federal court decision.

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

27 (6) An individual who is convicted of a violation of RCW
28 69.50.4011(1)(b), 69.50.4013, 69.50.4014, or 69.41.030 who
29 subsequently completes an approved substance use disorder treatment
30 program as designated in chapter 71.24 RCW and files proof of
31 completion with the court may petition the court for vacation of the
32 conviction or convictions. Upon verification that the individual
33 successfully completed the substance use disorder treatment program,
34 the court must vacate the conviction or convictions.

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

1 (~~(7)~~) (8)(a) Except as provided in (c) of this subsection, once
2 the court vacates a record of conviction under this section, the
3 person shall be released from all penalties and disabilities
4 resulting from the offense and the fact that the person has been
5 convicted of the offense shall not be included in the person's
6 criminal history for purposes of determining a sentence in any
7 subsequent conviction. For all purposes, including responding to
8 questions on employment or housing applications, a person whose
9 conviction has been vacated under this section may state that he or
10 she has never been convicted of that crime. However, nothing in this
11 section affects the requirements for restoring a right to possess a
12 firearm under RCW 9.41.040. Except as provided in (b) of this
13 subsection, nothing in this section affects or prevents the use of an
14 offender's prior conviction in a later criminal prosecution.

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

32 (c) A conviction vacated on or after July 28, 2019, qualifies as
33 a prior conviction for the purpose of charging a present recidivist
34 offense as defined in RCW 9.94A.030 occurring on or after July 28,
35 2019.

36 (~~(8)~~) (9) The clerk of the court in which the vacation order is
37 entered shall immediately transmit the order vacating the conviction
38 to the Washington state patrol identification section and to the
39 local police agency, if any, which holds criminal history information
40 for the person who is the subject of the conviction. The Washington

1 state patrol and any such local police agency shall immediately
2 update their records to reflect the vacation of the conviction, and
3 shall transmit the order vacating the conviction to the federal
4 bureau of investigation. A conviction that has been vacated under
5 this section may not be disseminated or disclosed by the state patrol
6 or local law enforcement agency to any person, except other criminal
7 justice enforcement agencies.

8 ~~((9))~~ (10) For the purposes of this section, "cannabis" has the
9 meaning provided in RCW 69.50.101.

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

12 (1) The department must adopt rules by December 31, 2023,
13 allowing a substance use disorder treatment program to establish off-
14 site medication units which are:

15 (a) Located as a free-standing facility;

16 (b) Colocated in a community setting such as but not limited to a
17 hospital, medical primary care system, pharmacy, federally qualified
18 health center, or correctional health setting; or

19 (c) A mobile medication unit.

20 (2) The department must include invited stakeholders in the rule-
21 making process which must include, but not be limited to, individuals
22 from geographic regions in Washington with lower population density,
23 eastern Washington, rural areas, and tribal nations.

24 (3) This section expires June 30, 2024.

25 **Sec. 11.** RCW 36.70A.200 and 2021 c 265 s 2 are each amended to
26 read as follows:

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

1 disease transmission, improve the physical, mental, and social well-
2 being of those served, and offer low threshold options for accessing
3 substance use disorder treatment and other health care services, and
4 inpatient facilities including substance abuse facilities, mental
5 health facilities, group homes, community facilities as defined in
6 RCW 72.05.020, and secure community transition facilities as defined
7 in RCW 71.09.020.

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

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

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

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

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

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

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

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

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

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

17 (b) A consideration for grants or loans provided under RCW
18 43.17.250(3); or

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

21 **Sec. 12.** RCW 71.24.590 and 2019 c 314 s 30 are each amended to
22 read as follows:

23 (1) When making a decision on an application for licensing or
24 certification of ((a)) an opioid treatment program, the department
25 shall:

26 (a) Consult with the county legislative authorities in the area
27 in which an applicant proposes to locate a program and the city
28 legislative authority in any city in which an applicant proposes to
29 locate a program;

30 (b) License or certify only programs that will be sited in
31 accordance with the appropriate county or city land use ordinances.
32 Counties and cities may require conditional use permits with
33 reasonable conditions for the siting of programs only to the extent
34 that such reasonable conditional use requirements applied to opioid
35 treatment programs are similarly applied to other essential public
36 facilities and health care settings. Pursuant to RCW 36.70A.200, no
37 local comprehensive plan or development regulation may preclude the
38 siting of essential public facilities;

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

3 (d) Consider the size of the population in need of treatment in
4 the area in which the program would be located and license or certify
5 only applicants whose programs meet the necessary treatment needs of
6 that population;

7 (e) Consider the availability of other certified opioid treatment
8 programs near the area in which the applicant proposes to locate the
9 program;

10 (f) Consider the transportation systems that would provide
11 service to the program and whether the systems will provide
12 reasonable opportunities to access the program for persons in need of
13 treatment;

14 (g) Consider whether the applicant has, or has demonstrated in
15 the past, the capability to provide the appropriate services to
16 assist the persons who utilize the program in meeting goals
17 established by the legislature in RCW 71.24.585. The department shall
18 prioritize licensing or certification to applicants who have
19 demonstrated such capability and are able to measure their success in
20 meeting such outcomes((↗

21 ~~(h) Hold one public hearing in the community in which the~~
22 ~~facility is proposed to be located. The hearing shall be held at a~~
23 ~~time and location that are most likely to permit the largest number~~
24 ~~of interested persons to attend and present testimony. The department~~
25 ~~shall notify all appropriate media outlets of the time, date, and~~
26 ~~location of the hearing at least three weeks in advance of the~~
27 ~~hearing)).~~

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

32 (3) A program applying for licensing or certification from the
33 department and a program applying for a contract from a state agency
34 that has been denied the licensing or certification or contract shall
35 be provided with a written notice specifying the rationale and
36 reasons for the denial.

37 (4) Opioid treatment programs may order, possess, dispense, and
38 administer medications approved by the United States food and drug
39 administration for the treatment of opioid use disorder, alcohol use
40 disorder, tobacco use disorder, and reversal of opioid overdose. For

1 an opioid treatment program to order, possess, and dispense any other
2 legend drug, including controlled substances, the opioid treatment
3 program must obtain additional licensure as required by the
4 department, except for patient-owned medications.

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

7 (6) Registered nurses and licensed practical nurses may dispense
8 up to a (~~thirty-one~~) 31 day supply of medications approved by the
9 United States food and drug administration for the treatment of
10 opioid use disorder to patients of the opioid treatment program,
11 under an order or prescription and in compliance with 42 C.F.R. Sec.
12 8.12.

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

15 (a) Engages in the treatment of opioid use disorder with
16 medications approved by the United States food and drug
17 administration for the treatment of opioid use disorder and reversal
18 of opioid overdose; (~~and~~)

19 (b) Is either a mobile or fixed-site medication unit; and

20 (c) Provides a comprehensive range of medical and rehabilitative
21 services.

22 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.330
23 RCW to read as follows:

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

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

31 NEW SECTION. **Sec. 14.** RCW 10.31.115 (Drug possession—Referral
32 to assessment and services) and 2021 c 311 s 13 are each repealed.

--- END ---