

# Initiative No. 1715

March 9, 2020

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## BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: I-3779.1/20

ATTY/TYPIST: MW:roy

BRIEF DESCRIPTION:

# Initiative No. 1715

March 9, 2020

AN ACT Relating to substance use disorder treatment, recovery, and education; amending RCW 69.50.540, 69.50.4011, 69.50.4013, 69.50.4014, 69.50.412, 69.41.030, and 69.50.608; reenacting and amending RCW 42.56.230; adding new sections to chapter 71.24 RCW; adding a new section to chapter 43.101 RCW; adding a new section to chapter 69.50 RCW; adding a new section to chapter 9.94A RCW; adding a new section to chapter 9.96 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

## **PART 1**

### **INTENT**

NEW SECTION. **Sec. 1.** The people find that a significant percentage of people with substance use disorders in our state are not receiving necessary services. Factors contributing to this problem are gaps between the service needs and available system capacities, and gaps in information about substance use disorders and how to get help. The people find it unacceptable that services are either unavailable or inaccessible for people who want and need them, causing a great toll on our entire community, including tragic loss of life through overdose.

The people also find that treating substance use like a crime, arresting and incarcerating people for personal use offenses, makes matters worse by disrupting and further destabilizing their lives. Access to services is cut off, people with opioid use disorder can be put at increased risk of overdose after release, and criminal records erect long-term barriers to education, housing, and employment, undermining efforts to achieve and maintain recovery.

It is the intent of this act to expand availability of and facilitate access to effective, health-based approaches to the

substance use disorder crisis facing our state, funded by existing marijuana taxes and health insurance, and to direct people with substance use disorder to treatment and recovery services through changes to laws criminalizing drug use. Through adoption of this substance use disorder treatment, recovery, and education act, the state will:

(1) Expand treatment, recovery, and education services with redirected marijuana taxes;

(2) Increase the availability and accessibility of educational information regarding substance use disorders and how to get help; and

(3) Help those with substance use disorders access treatment and recovery services through law enforcement training; changing laws regarding drug possession and use so that persons cited for personal use offenses are referred to mandatory service assessments rather than charged with a crime; and facilitating vacation of convictions for past possession and use offenses to remove the barriers these criminal records erect to long-term recovery.

## **PART 2**

### **EXPANSION OF SUBSTANCE USE DISORDER**

#### **TREATMENT, RECOVERY, AND EDUCATION SERVICES**

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

The authority shall, by September 1, 2022, adopt rules to implement the expansion of substance use disorder treatment and recovery services, including the following:

(1) The process by which the authority will establish funding priorities for the expansion of substance use disorder treatment and recovery services under section 4 of this act;

(2) Alignment of definitions, directives, procedures, and criteria in this section, sections 3 and 4 and 6 through 8 of this act and RCW 69.50.540 with other state laws and rules concerning

integrated managed care, American Indian or Alaska Native fee-for-service behavioral health benefits, and private insurance;

(3) Establishment of statewide standards for service assessments, which must be available in all jurisdictions, and standards for treatment and recovery services eligible to receive funding under section 4 of this act and RCW 69.50.540, including but not limited to intensive case management, medically necessary treatments, and job training services, and which must at a minimum incorporate the following principles:

(a) Low barrier entry and reentry;

(b) Improved health and safety of the person;

(c) Integrated and coordinated services throughout the response system;

(d) Cultural competency;

(e) Noncoercive methods of retaining people in treatment and recovery services; and

(f) Services that address social determinants of health;

(4) Data collection methods and records management requirements that comply with existing state and federal privacy requirements for health care services for the services required under this act;

(5) Development and publication of the procedures for local and tribal governments and nonprofit entities to apply for funding under section 4 of this act, for the authority to distribute funds, and for the authority to monitor compliance with the statewide standards and eligibility requirements established via rule making under this section;

(6) Development and adoption of statewide protocols for law enforcement personnel to refer people in possession of nonprescribed, personal use amounts of controlled substances, counterfeit substances, legend drugs, or paraphernalia associated with personal use to a mandatory service assessment that complies with standards established under this section. Service assessments must be available in all jurisdictions in Washington and available within seventy-two hours of referral, and if possible available on

demand, for example, through twenty-four hour, seven days a week triage centers staffed by personnel trained to stabilize persons who may be exhibiting symptoms of severe substance-induced disorder or substance use disorder. The rules may limit those law enforcement personnel that are subject to such protocols;

(7) Development and adoption of procedures for notice to courts of completion of mandatory service assessments of persons cited for personal use offenses as defined under section 9 of this act; and

(8) Development and adoption of maximum amounts of individual controlled substances, counterfeit substances, and legend drugs that will be considered consistent with nonprescribed personal use by people with substance use disorders, as set forth in section 6 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 71.24 RCW to read as follows:

(1) The director shall convene and staff a service advisory group composed of subject matter experts and stakeholders that will provide the authority background information and recommendations regarding the adoption of rules under section 2 of this act. The work group shall prepare a report to the authority that contains its recommendations, provides background information supporting its recommendations, and addresses the following issues:

(a) Each subject identified for rule making in section 2 of this act;

(b) The current nature and scope of substance use disorders in Washington state, including data regarding population demographics and regional prevalence by numbers and rates;

(c) A current regional capacity and gap assessment for existing public and private programs providing substance use disorder service assessments, and treatment and recovery services;

(d) Local jurisdiction rates of arrest and incarceration of persons for violations of possessing controlled substances,

counterfeit substances, and legend drugs, and use of paraphernalia to facilitate possession or consumption of drugs;

(e) Identification of systems and services expansions required to implement section 4 of this act;

(f) Evidence-based, research-based, and promising treatment and recovery services appropriate for each target population, to include but not be limited to case management; mental and physical health care; housing; preapprenticeship, apprenticeship, job training, and employment programs; and treatments that have not traditionally been covered by insurance;

(g) Workforce needs for the expanded substance use disorder treatment and recovery services sector;

(h) Removing barriers to the permitting and siting of substance use disorder service providers within local and tribal jurisdictions;

(i) Options for leveraging existing integrated managed care, American Indian or Alaska Native fee-for-service behavioral health benefits, and private insurance service capacity for substance use disorders, including but not limited to coordination with managed care organizations, Washington apple health, Washington health benefit exchange, and the office of the insurance commissioner; and

(j) Qualitative and quantitative research data about the types of services that people with substance use disorders and who are involved with the criminal justice system desire and currently cannot access, and barriers to accessing existing services, such as housing.

(2) The service advisory group shall be composed of the following twenty-four members:

(a) Two experts in the etiology and stabilization of substance use disorders, one of whom must be an expert in medication-assisted treatment;

(b) One expert in mental health and its comorbidity with substance use disorders;

(c) One person representing the interests of people who are currently using controlled substances outside the legal authority of prescription or valid practitioner order;

(d) One expert in drug user health and harm reduction;

(e) One representative of a statewide association of city governments, selected by the association;

(f) One representative of a statewide association of counties, selected by the association;

(g) One representative of a federally recognized Indian tribe with tribal land in Washington state;

(h) One current police chief of a first-class city with a population of two hundred thousand or more, selected by the Washington association of sheriffs and police chiefs;

(i) One current sheriff of a county with a combined incorporated and unincorporated population of no more than fifty thousand, selected by the Washington association of sheriffs and police chiefs;

(j) One representative of the Washington fire chiefs;

(k) One low-income housing provider;

(l) One expert in peer counseling services;

(m) One expert in substance use disorder recovery services;

(n) One academic researcher with an expertise in drug policy and program evaluation;

(o) One licensed clinical social worker with expertise in substance use disorders;

(p) One person who has been convicted of a violation of the Washington uniform controlled substances act, been incarcerated pretrial or as part of the sentence for the violation, and whose drug use was the cause of or a significant contributing factor to the commission of the violation;

(q) One public defender, selected by the Washington defender association;

(r) One prosecutor, selected by the Washington association of prosecuting attorneys;

(s) One nongovernmental immigration attorney with expertise in the immigration consequences of drug possession and use crimes and findings of substance use disorder;

(t) One public health education expert;

(u) One representative of a racial justice organization;

(v) One youth educator; and

(w) One representative of a statewide association of local public health officers, selected by the association.

(3) The work group shall convene as necessary.

(4) The work group shall publish and deliver its report and recommendations to the director no later than December 1, 2021.

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

(1) The authority shall fund the establishment of and ongoing costs associated with mandatory service assessments created under this act and the expansion of substance use disorder treatment and recovery services that are consistent with the expert report and recommendations of the service advisory group convened under section 3 of this act and the rules adopted under section 2 of this act.

(2) The authority shall determine funding priorities and the scope of the expansion of services under this section.

(3) Funding decisions shall ensure that service assessments and substance use disorder treatment and recovery services are available in all regions of the state and to populations with the greatest and most urgent needs.

(4) Treatment and recovery services funded under this section must:

(a) Meet the statewide standards established by the rules adopted under section 2 of this act to ensure effectiveness and efficiency; and

(b) Provide flexibility for local governments to tailor program implementation to unmet local needs.



(5) The authority shall seek to align priorities for expanded funding of treatment and recovery services with existing integrated managed care services, American Indian or Alaska Native fee-for-service behavioral health benefits, and private insurance.

**Sec. 5.** RCW 69.50.540 and 2019 c 415 s 978 are each amended to read as follows:

The legislature must annually appropriate moneys in the dedicated marijuana account created in RCW 69.50.530 as follows:

(1) For the purposes listed in this subsection (1), the legislature must appropriate to the respective agencies amounts sufficient to make the following expenditures on a quarterly basis:

(a) One hundred twenty-five thousand dollars to the health care authority to design and administer the Washington state healthy youth survey, analyze the collected data, and produce reports, in collaboration with the office of the superintendent of public instruction, department of health, department of commerce, family policy council, and state liquor and cannabis board. The survey must be conducted at least every two years and include questions regarding, but not necessarily limited to, academic achievement, age at time of substance use initiation, antisocial behavior of friends, attitudes toward antisocial behavior, attitudes toward substance use, laws and community norms regarding antisocial behavior, family conflict, family management, parental attitudes toward substance use, peer rewarding of antisocial behavior, perceived risk of substance use, and rebelliousness. Funds disbursed under this subsection may be used to expand administration of the healthy youth survey to student populations attending institutions of higher education in Washington;

(b) Fifty thousand dollars to the health care authority for the purpose of contracting with the Washington state institute for public policy to conduct the cost-benefit evaluation and produce the reports described in RCW 69.50.550. This appropriation ends after production of the final report required by RCW 69.50.550;

(c) Five thousand dollars to the University of Washington alcohol and drug abuse institute for the creation, maintenance, and timely updating of web-based public education materials providing medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(d)(i) An amount not less than one million two hundred fifty thousand dollars to the state liquor and cannabis board for administration of this chapter as appropriated in the omnibus appropriations act;

(ii) Two million six hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2018 and three hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2019 to the health professions account established under RCW 43.70.320 for the development and administration of the marijuana authorization database by the department of health;

(iii) Two million seven hundred twenty-three thousand dollars for fiscal year 2020 and two million five hundred twenty-three thousand dollars for fiscal year 2021 to the Washington state patrol for a drug enforcement task force. It is the intent of the legislature that this policy will be continued in the 2021-2023 fiscal biennium; and

(iv) Ninety-eight thousand dollars for fiscal year 2019 to the department of ecology for research on accreditation of marijuana product testing laboratories;

(e) Four hundred sixty-five thousand dollars for fiscal year 2020 and four hundred sixty-four thousand dollars for fiscal year 2021 to the department of ecology for implementation of accreditation of marijuana product testing laboratories;

(f) One hundred eighty-nine thousand dollars for fiscal year 2020 to the department of health for rule making regarding compassionate care renewals;

(g) Eight hundred eight thousand dollars for fiscal year 2020 and eight hundred eight thousand dollars for fiscal year 2021 to the

department of health for the administration of the marijuana authorization database; and

(h) (~~(\$635,000 [Six hundred thirty five thousand dollars])~~) Six hundred thirty-five thousand dollars for fiscal year 2020 and (~~(\$635,000 [six hundred thirty five thousand dollars])~~) six hundred thirty-five thousand dollars for fiscal year 2021 to the department of agriculture for compliance-based laboratory analysis of pesticides in marijuana.

(2) From the amounts in the dedicated marijuana account after appropriation of the amounts identified in subsection (1) of this section, the legislature must appropriate for the purposes listed in this subsection (2) as follows:

(a)(i) Up to fifteen percent to the health care authority for the development, implementation, maintenance, and evaluation of programs and practices aimed at the prevention or reduction of maladaptive substance use, substance use disorder, substance abuse or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, among middle school and high school-age students, whether as an explicit goal of a given program or practice or as a consistently corresponding effect of its implementation, mental health services for children and youth, and services for pregnant and parenting women; PROVIDED, That:

(A) Of the funds appropriated under (a)(i) of this subsection for new programs and new services, at least eighty-five percent must be directed to evidence-based or research-based programs and practices that produce objectively measurable results and, by September 1, 2020, are cost-beneficial; and

(B) Up to fifteen percent of the funds appropriated under (a)(i) of this subsection for new programs and new services may be directed to proven and tested practices, emerging best practices, or promising practices.

(ii) In deciding which programs and practices to fund, the director of the health care authority must consult, at least

annually, with the University of Washington's social development research group and the University of Washington's alcohol and drug abuse institute.

(iii) For each fiscal year, the legislature must appropriate a minimum of twenty-five million five hundred thirty-six thousand dollars under this subsection (2)(a);

(b)(i) Up to ten percent to the department of health for the following, subject to (b)(ii) of this subsection (2):

(A) Creation, implementation, operation, and management of a marijuana education and public health program that contains the following:

(I) A marijuana use public health hotline that provides referrals to substance abuse treatment providers, utilizes evidence-based or research-based public health approaches to minimizing the harms associated with marijuana use, and does not solely advocate an abstinence-only approach;

(II) A grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth; and

(III) Media-based education campaigns across television, internet, radio, print, and out-of-home advertising, separately targeting youth and adults, that provide medically and scientifically accurate information about the health and safety risks posed by marijuana use; and

(B) The Washington poison control center.

(ii) For each fiscal year, the legislature must appropriate a minimum of nine million seven hundred fifty thousand dollars under this subsection (2)(b);

(c)(i) Up to six-tenths of one percent to the University of Washington and four-tenths of one percent to Washington State University for research on the short and long-term effects of marijuana use, to include but not be limited to formal and informal

methods for estimating and measuring intoxication and impairment, and for the dissemination of such research.

(ii) For each fiscal year, except for the 2017-2019 and 2019-2021 fiscal biennia, the legislature must appropriate a minimum of one million twenty-one thousand dollars to the University of Washington. For each fiscal year, except for the 2017-2019 and 2019-2021 fiscal biennia, the legislature must appropriate a minimum of six hundred eighty-one thousand dollars to Washington State University under this subsection (2)(c). It is the intent of the legislature that this policy will be continued in the 2019-2021 fiscal biennium;

(d) Fifty percent to the state basic health plan trust account to be administered by the Washington basic health plan administrator and used as provided under chapter 70.47 RCW;

(e) Five percent to the Washington state health care authority to be expended exclusively through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services as provided under RCW 41.05.220;

(f)(i) Up to three-tenths of one percent to the office of the superintendent of public instruction to fund grants to building bridges programs under chapter 28A.175 RCW.

(ii) For each fiscal year, the legislature must appropriate a minimum of five hundred eleven thousand dollars to the office of the superintendent of public instruction under this subsection (2)(f);  
(~~and~~)

(g) For the fiscal year beginning July 1, 2021, the legislature must appropriate one million dollars to the Washington state health care authority for the purpose of convening and staffing the work of the service advisory group established under section 3 of this act, and the experts and stakeholders to be consulted under section 6 of this act, including travel and accommodation expenses to support statewide regional diversity among the service advisory group and expert and stakeholder consultants;

(h) For the fiscal year beginning July 1, 2021, and for each subsequent fiscal year thereafter, the legislature must appropriate five hundred thousand dollars to the criminal justice training commission for the purpose of establishing and maintaining substance use disorder training in accordance with section 7 of this act;

(i) For the fiscal year beginning July 1, 2021, and for each subsequent fiscal year thereafter, the legislature must appropriate ten million dollars to the department of health, in consultation with the University of Washington school of public health, to establish and maintain a substance use disorder public education program to be implemented through grants to local health departments to further the purposes intent and directives of this act. The director of the department of health may adopt rules to implement this program. Public education materials will be translated into all languages utilized by the secretary of state for voting purposes and provided to communities in languages they use. Local health departments should tailor programs to the specific needs of their jurisdictions, but all local programs funded under this subsection must include the following:

(i) Messages that destigmatize issues surrounding substance use disorders, including messages that describe the medical nature of substance use disorders, explain that treatments are available that can help a person stabilize their condition, explain that people do recover from substance use disorders, and that encourage people not to be afraid to seek help;

(ii) Messages that publicize the Washington recovery help line as a place to find help;

(iii) Messages targeted to families who have relatives with substance use disorders and provide clear, accessible, and easily understandable information about how they can find treatment and recovery services funded by the health care authority under section 4 of this act;

(iv) Scientifically accurate information about the health and safety risks posed by substance use;

(j) For the fiscal year beginning July 1, 2022, and every fiscal year thereafter, the legislature must appropriate to the Washington state health care authority a minimum of one hundred twenty-five million dollars for treatment and recovery services as provided under section 4 of this act, and for necessary evaluations under section 19 of this act. To maximize the availability of treatment and recovery services to the people of the state of Washington, the health care authority must leverage all available private and public insurance to provide reimbursements for treatment and recovery services provided under section 4 of this act, with an emphasis on continuity of care; and

(k) At the end of each fiscal year, the treasurer must transfer any amounts in the dedicated marijuana account that are not appropriated pursuant to subsection (1) of this section and this subsection (2) into the general fund, except as provided in ~~((g))~~ (k)(i) of this subsection (2).

(i) Beginning in fiscal year 2018, if marijuana excise tax collections deposited into the general fund in the prior fiscal year exceed twenty-five million dollars, then each fiscal year the legislature must appropriate an amount equal to thirty percent of all marijuana excise taxes deposited into the general fund the prior fiscal year to the treasurer for distribution to counties, cities, and towns as follows:

(A) Thirty percent must be distributed to counties, cities, and towns where licensed marijuana retailers are physically located. Each jurisdiction must receive a share of the revenue distribution under this subsection ~~(2)((g))~~ (k)(i)(A) based on the proportional share of the total revenues generated in the individual jurisdiction from the taxes collected under RCW 69.50.535, from licensed marijuana retailers physically located in each jurisdiction. For purposes of this subsection ~~(2)((g))~~ (k)(i)(A), one hundred percent of the proportional amount attributed to a retailer physically located in a city or town must be distributed to the city or town.

(B) Seventy percent must be distributed to counties, cities, and towns ratably on a per capita basis. Counties must receive sixty percent of the distribution, which must be disbursed based on each county's total proportional population. Funds may only be distributed to jurisdictions that do not prohibit the siting of any state licensed marijuana producer, processor, or retailer.

(ii) Distribution amounts allocated to each county, city, and town must be distributed in four installments by the last day of each fiscal quarter.

(iii) By September 15th of each year, the state liquor and cannabis board must provide the state treasurer the annual distribution amount, if any, for each county and city as determined in ~~((g))~~ (k)(i) of this subsection (2).

(iv) The total share of marijuana excise tax revenues distributed to counties and cities in ~~((g))~~ (k)(i) of this subsection (2) may not exceed fifteen million dollars in fiscal years 2018, 2019, 2020, and 2021, and twenty million dollars per fiscal year thereafter. It is the intent of the legislature that the policy for the maximum distributions in the subsequent fiscal biennia will be no more than fifteen million dollars per fiscal year.

For the purposes of this section, "marijuana products" means "useable marijuana," "marijuana concentrates," and "marijuana-infused products" as those terms are defined in RCW 69.50.101.

### PART 3

#### REDUCTION OF PENALTIES FOR PERSONAL USE OFFENSES FROM CRIMES TO CIVIL INFRACTIONS WITH REFERRAL TO MANDATORY SERVICE ASSESSMENT

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

(1) The purpose of this section is to create an advisory group of experts and stakeholders with relevant expertise to assist the director in the development of rules to implement the replacement of  
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criminal justice system responses to personal drug possession and use with referral to the expanded treatment and recovery services created by this act.

(2) By September 1, 2022, the director, in consultation with the department of health, shall develop and adopt rules establishing maximum personal use amounts of controlled substances, counterfeit substances, and legend drugs known to be used by people for recreational or nonmedical and nonprescribed purposes. In developing these rules, the director shall convene, consult, and record the recommendations of the following experts and stakeholders:

(a) Pharmacology or addiction psychiatry faculty from Washington's institutions of higher education, including but not necessarily limited to the University of Washington and Washington State University, with a research interest in the pharmacokinetics and pharmacodynamics of controlled substances such as intoxicants, psychedelics, stimulants, and depressants used by people primarily for mood-altering or sensory-altering purposes;

(b) Representatives of the interests of people who currently use controlled substances outside the legal authority of prescription or valid practitioner order;

(c) Experts in drug user health and harm reduction;

(d) Emergency medicine physicians from Washington's hospitals, including but not necessarily limited to the University of Washington medical center and providence sacred heart medical center, with extensive experience providing medical treatment to persons with substance use disorders and people experiencing controlled substance overdose;

(e) Substance use disorder treatment and recovery professionals;

(f) A representative of a statewide association of local public health officers, selected by the association of local public health officers;

(g) The state attorney general or the attorney general's designee;

(h) The executive director of the Washington state criminal justice training commission or the executive director's designee;

(i) The executive director of the Washington association of sheriffs and police chiefs or the executive director's designee;

(j) The executive director of the Washington association of prosecuting attorneys or the executive director's designee;

(k) The executive director of the Washington defender association or the executive director's designee;

(l) The executive director of the Washington association of criminal defense lawyers or the executive director's designee; and

(m) A nongovernmental immigration attorney with expertise in the immigration consequences of drug possession and use crimes and findings of substance use disorder.

(3) Whenever the authority learns of recreational or nonmedical and nonprescribed use of a controlled substance, counterfeit substance, or legend drug for which a maximum personal use amount has not been established, the director must consult with and record the recommendations of the stakeholders identified in subsection (1) of this section and develop and adopt a maximum personal use amount for that substance within one year of learning of its recreational or nonmedical and nonprescribed use.

(4) By September 1, 2022, in consultation with the Washington state criminal justice training commission and the administrative office of the courts, the director must develop and adopt rules establishing processes for law enforcement personnel to refer people cited for personal use offenses as defined under section 9 of this act to mandatory service assessments meeting the standards set under section 2 of this act, and for the authority to report to courts when referred persons have met the requirements for waiver of monetary penalties and statutory costs associated with these civil infractions. Officers are permitted to transport people to service assessments.

(5) In consultation with the Washington state criminal justice training commission and the administrative office of the courts, the

director must develop, periodically review, and revise as appropriate a notice of referral to mandatory service assessment form to accompany every notice of infraction for a personal use offense. The notice must provide the cited person with multiple options for attending a service assessment. The notice must explain the purpose of the referral and possible benefits of connecting with the referred organization, the possible risks of not connecting before being contacted again by law enforcement personnel for a new infraction, and procedures for contesting the issuance of the infraction and referral to mandatory service assessment. The notice must be translated into all languages utilized by the secretary of state for voting purposes and provided in the language used by the cited person.

(6) For the purpose of this chapter, "personal use amount" means the maximum amount of a particular controlled substance, counterfeit substance, or legend drug that the authority has determined to be consistent with personal, nonprescribed use patterns of people with substance use disorders.

NEW SECTION. **Sec. 7.** A new section is added to chapter 43.101 RCW to read as follows:

(1) Beginning July 1, 2022, all law enforcement personnel required to complete basic law enforcement training under RCW 43.101.200 shall receive training on law enforcement interaction with persons with substance use disorders, including referral to treatment and recovery services, as part of the basic law enforcement training. The training must be developed by the commission in consultation with appropriate self advocate and peer advocate groups and with appropriate community, local, and state organizations and agencies that have expertise in the area of working with persons with substance use disorders. In developing the course, the commission must also examine existing courses certified by the commission that relate to persons with a substance use disorder.

(2) The training must consist of classroom instruction or internet instruction and shall replicate likely field situations to the maximum extent possible. The training should include, at a minimum, core instruction in all of the following:

(a) Proper procedures for referring persons to mandatory service assessments in accordance with section 8 of this act;

(b) The cause and nature of substance use disorders;

(c) How to identify indicators of substance use disorder and how to respond appropriately in a variety of common situations;

(d) Conflict resolution and de-escalation techniques for potentially dangerous situations involving persons with a substance use disorder;

(e) Appropriate language usage when interacting with persons with a substance use disorder;

(f) Alternatives to lethal force when interacting with potentially dangerous persons with a substance use disorder; and

(g) Community and state resources available to serve persons with substance use disorders and how these resources can be best used by law enforcement to benefit persons with a substance use disorder in their communities.

(3) In addition to incorporation into the basic law enforcement training under RCW 43.101.200, the training shall be made available to law enforcement agencies, through electronic means, for use at their convenience and determined by the internal training needs and resources of each agency.

(4) For personnel initially employed before July 1, 2022, such training shall be successfully completed by July 1, 2023, unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment.

(5) The commission shall make all reasonable efforts to secure private and nonstate public funds to implement this section.

NEW SECTION. **Sec. 8.** A new section is added to chapter 71.24 RCW to read as follows:

(1) A person cited for a personal use offense as defined under section 9 of this act shall be referred to a mandatory service assessment meeting standards established under section 2 of this act to connect the person to available treatment and recovery services, including but not limited to intensive case management and job training services. The law enforcement officer issuing the citation shall provide the person a written notice of the referral that complies with section 6(4) of this act.

(2) The service assessment must be completed within seventy-two hours of citation and referral unless the person cited and referred requests and is granted an extension as provided under rules adopted by the director. Service assessments must be available in all jurisdictions in Washington and available within seventy-two hours of referral, and if possible available on demand, for example, through twenty-four hour, seven days a week triage centers staffed by personnel trained to stabilize persons who may be exhibiting symptoms of severe substance-induced disorder or substance use disorder, and accessible by immediate transport by the citing officer or on-site response by on-call representatives of assessment providers. The authority shall contract with one or more local or tribal government or private entities in each regional service area established under RCW 74.09.870 to provide the service assessments. The authority shall provide regional flexibility so that the service assessment can be tailored to meet local needs.

(3) The failure to attend the mandatory service assessment within seventy-two hours, or within the time frame of an extension requested and granted under rules adopted by the director and explained in the written notice of referral, constitutes a failure to appear under RCW 7.80.080.

(4) By September 1, 2022, in consultation with the expert and stakeholder group established under section 6 of this act, the director shall adopt rules establishing a process for cited persons to request extension of the deadline to complete the mandatory service assessment for good cause. The process shall be explained in

the written notice of referral provided to the person at the time of citation.

(5) The director shall seek to align implementation of the referral process with existing integrated managed care services, American Indian or Alaska Native fee-for-service behavioral health benefits, and private insurance.

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

(1) "Personal use offense" means any of the following possession or use violations when the amount of substance involved in the violation does not exceed a personal use amount as set by rules adopted by the director of the Washington state health care authority pursuant to section 6 of this act:

(a) Possession of a controlled substance under RCW 69.50.4013;

(b) Possession of forty grams or less of marijuana under RCW 69.50.4014;

(c) Possession of a counterfeit substance under RCW 69.50.4011;

(d) Use of drug paraphernalia to prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance other than marijuana under RCW 69.50.412; and

(e) Possession of a legend drug under RCW 69.41.030.

(2) A personal use offense is a class 3 civil infraction under chapter 7.80 RCW and is subject to referral to a mandatory service assessment as established by the health care authority under sections 2 and 8 of this act. The monetary penalties and statutory costs associated with this class 3 civil infraction shall be suspended for the periods set forth in subsection (8)(2) and waived upon completion of the service assessment.

**Sec. 10.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to read as follows:

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

(2) (~~Any~~) Except as provided in section 9 of this act, any person who violates this section with respect to:

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

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

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

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

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

**Sec. 11.** RCW 69.50.4013 and 2017 c 317 s 15 are each amended to read as follows:

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

(2) Except as provided in section 9 of this act and RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3)(a) The possession, by a person twenty-one years of age or older, of useable marijuana, marijuana concentrates, or marijuana-

infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section, this chapter, or any other provision of Washington state law.

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

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

- (i) One-half ounce of useable marijuana;
- (ii) Eight ounces of marijuana-infused product in solid form;
- (iii) Thirty-six ounces of marijuana-infused product in liquid form; or
- (iv) Three and one-half grams of marijuana concentrates.

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

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

(5) No person under twenty-one years of age may possess, manufacture, sell, or distribute marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC



concentration. This does not include qualifying patients with a valid authorization.

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

**Sec. 12.** RCW 69.50.4014 and 2015 2nd sp.s. c 4 s 505 are each amended to read as follows:

Except as provided in section 9 of this act or RCW 69.50.401(2)(c), or as otherwise authorized by this chapter, any person found guilty of possession of forty grams or less of marijuana is guilty of a misdemeanor.

**Sec. 13.** RCW 69.50.412 and 2019 c 64 s 22 are each amended to read as follows:

(1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor except as provided in section 9 of this act.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his or her junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing blood-borne diseases.

**Sec. 14.** RCW 69.41.030 and 2019 c 55 s 9 are each amended to read as follows:

(1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, a pharmacist licensed under chapter 18.64 RCW to the extent permitted by drug therapy guidelines or protocols established under RCW 18.64.011 and authorized by the commission and approved by a practitioner authorized to prescribe drugs, an osteopathic physician assistant under chapter 18.57A RCW

when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the Washington medical commission, or any of the following professionals in any province of Canada that shares a common border with the state of Washington or in any state of the United States: A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed advanced registered nurse practitioner, a licensed physician assistant, a licensed osteopathic physician assistant, or a veterinarian licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouse operator, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the health care authority from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners: PROVIDED FURTHER, That nothing in this chapter prohibits possession or delivery of legend drugs by an authorized collector or other person participating in the operation of a drug take-back program authorized in chapter 69.48 RCW.

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

(b) ((A)) Except as provided in section 9 of this act, a violation of this section involving possession is a misdemeanor.

**Sec. 15.** RCW 42.56.230 and 2019 c 470 s 8, 2019 c 239 s 2, and 2019 c 213 s 2 are each reenacted and amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of children, youth, and families;

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs;

(iii) For the family members or guardians of a child who is subject to the exemption under this subsection (2) if the family member or guardian has the same last name as the child or if the family member or guardian resides at the same address as the child and disclosure of the family member's or guardian's information would result in disclosure of the personal information exempted under (a)(i) and (ii) of this subsection; or

(iv) For substitute caregivers who are licensed or approved to provide overnight care of children by the department of children, youth, and families.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such

persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330,

an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse;

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure;

(9) Voluntarily submitted information contained in a database that is part of or associated with enhanced 911 emergency communications systems, or information contained or used in emergency notification systems as provided under RCW 38.52.575 and 38.52.577;

(10) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter 29A.08 RCW, that relates to a future voter, except for the purpose of processing and delivering ballots;

(11) All information submitted by a person to the state, either directly or through a state-licensed gambling establishment, or Indian tribes, or tribal enterprises that own gambling operations or facilities with class III gaming compacts, as part of the self-exclusion program established in RCW 9.46.071 or 67.70.040 for people with a gambling problem or gambling disorder; ~~((and))~~

(12) Names, addresses, or other personal information of individuals who participated in the bump-fire stock buy-back program under RCW 43.43.920;

(13) Names, addresses, or other personal information of individuals cited for personal use offenses under section 9 of this act; and

(14) Names, addresses, or other personal information of individuals who participate in an assessment for services related to

a potential substance use disorder, as established by the health care authority under sections 2 and 8 of this act.

NEW SECTION. **Sec. 16.** A new section is added to chapter 9.94A RCW to read as follows:

(1) The purpose of this section is to remove obstacles to the effectiveness of substance use disorder treatment and recovery services created by criminal justice system responses to personal drug possession and use. Criminal records erect long-term barriers to education, housing, and employment, undermining efforts to achieve and maintain recovery.

(2) Notwithstanding any other provision of this chapter, every person convicted of possession of a controlled substance or counterfeit substance prior to December 1, 2022, may immediately apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. This subsection applies to offenses under RCW 69.50.401, 69.50.4011, 69.50.4013, and their predecessor statutes, including but not limited to RCW 69.50.401. If the offense of conviction is one of the offenses listed under this subsection, the court shall clear the record of conviction by (a) permitting the person to withdraw the plea of guilty and to enter a plea of not guilty; (b) if the person has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (c) the court dismissing the information or indictment against the person.

NEW SECTION. **Sec. 17.** A new section is added to chapter 9.96 RCW to read as follows:

(1) The purpose of this section is to remove obstacles to the effectiveness of substance use disorder treatment and recovery services created by criminal justice system responses to personal drug possession and use. Criminal records erect long-term barriers to education, housing, and employment, undermining efforts to achieve and maintain recovery.

(2) Notwithstanding any other provision of this chapter, every person convicted of possession of a controlled substance, counterfeit substance, or legend drug, or use of paraphernalia, prior to December 1, 2022, may immediately apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. This subsection applies to offenses under RCW 69.50.4011, 69.50.4013, 69.50.4014, 69.50.412(1), 69.41.030, and their predecessor statutes, including but not limited to RCW 69.50.401, and any offense under an equivalent municipal ordinance. If the offense of conviction is one of the offenses listed under this subsection, the court shall clear the record of conviction by (a) permitting the person to withdraw the plea of guilty and to enter a plea of not guilty; (b) if the person has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (c) the court dismissing the information or indictment against the person.

**Sec. 18.** RCW 69.50.608 and 1989 c 271 s 601 are each amended to read as follows:

The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act, including conduct constituting personal use offenses under section 9 of this act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

**PART 4**  
**EVALUATIONS**



NEW SECTION. **Sec. 19.** A new section is added to chapter 71.24 RCW to read as follows:

(1) The Washington state health care authority shall facilitate cost-benefit, cost-offset, effectiveness or other evaluations of the implementation of this act and shall contract with a third-party evaluator to conduct the evaluations. A preliminary report, and recommendations to appropriate committees of the legislature, shall be made by September 1, 2023, and the first final report by September 1, 2024. Subsequent reports shall be due September 1, 2028, and September 1, 2032.

(2) The evaluation of the implementation of this act shall include, but not necessarily be limited to, consideration of the following factors:

(a) Public health, to include but not be limited to:

(i) Health costs associated with nonprescribed use of controlled substances and legend drugs; and

(ii) Health costs associated with criminalization of nonprescribed use of controlled substances and legend drugs, including but not limited to arrest, booking, prosecution, conviction, and incarceration of persons with substance use disorders.

(b) Public safety, to include but not be limited to:

(i) Accidental and intentional injuries and deaths caused or contributed to by nonprescribed use of one or more controlled substances or legend drugs, separately evaluating injuries and deaths in which alcohol use also played a role; and

(ii) Accidental and intentional injuries and deaths caused or contributed to by enforcement of criminal laws prohibiting nonprescribed use of controlled substances and legend drugs, including but not limited to overdose deaths following periods of incarceration;

(c) Youth and adult rates of substance use disorders;

(d) Economic impacts in the private and public sectors, including but not limited to:

(i) Employment of persons in recovery from substance use disorders and corresponding impacts on utilization of public benefits, participation in the economy, and generation of tax revenues; and

(ii) Workplace safety;

(e) Criminal justice impacts, to include but not be limited to:

(i) Use of public resources like law enforcement personnel and equipment, prosecuting attorneys and public defenders, judges and court staff, the Washington state patrol crime lab and identification and criminal history section, jails and prisons, and misdemeanor and felon supervision officers to enforce state criminal laws regarding controlled substances and legend drugs; and

(ii) Short-term and long-term consequences of involvement in the criminal justice system for persons accused of crimes relating to nonprescribed use of controlled substances and legend drugs, their families, and their communities; and

(f) State and local agency administrative costs and revenues.

## PART 5

### CONSTRUCTION

NEW SECTION. **Sec. 20.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 21.** Sections 9 through 18 of this act take effect December 1, 2022.

NEW SECTION. **Sec. 22.** The administrator for the courts and the chief of the Washington state patrol may take the necessary steps to ensure that sections 16 and 17 of this act are implemented on their effective dates.

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