

# Initiative No. 1870

January 12, 2022

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## BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: I-4343.1/22

ATTY/TYPIST: KT:akl

BRIEF DESCRIPTION: Concerning substance use disorder prevention, outreach and engagement, and recovery support services.

AN ACT Relating to substance use disorder prevention, outreach and engagement, and recovery support services; amending RCW 69.50.540, 43.101.205, 69.50.4011, 69.50.4011, 69.50.4013, 69.50.4013, 69.41.030, 69.41.030, and 69.50.608; adding new sections to chapter 71.24 RCW; adding a new section to chapter 69.50 RCW; adding a new section to chapter 69.41 RCW; adding a new section to chapter 9.94A RCW; adding a new section to chapter 9.96 RCW; repealing RCW 69.50.4014 and 10.31.115; providing an effective date; and providing an expiration date.

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

**PART 1**

**INTENT**

NEW SECTION. **Sec. 1.** The people find that in the 50 years the Washington state uniform controlled substances act has been in effect, treating drug use as a crime has caused more harm than good. It has failed to produce positive outcomes like reduced rates of substance use disorder and drug overdose. It has failed to address root causes of substance use disorder like social isolation, depression, and anxiety. It has instead subjected people to the compounding traumas of arrest, prosecution, and incarceration, and saddled them with criminal records that erect barriers to stable housing, employment, and protective social connections.

The people also find that a significant percentage of people with substance use disorders in our state are not receiving necessary services and finding pathways to recovery. Factors contributing to this problem include a lack of outreach and engagement services, information about how people can get help, and gaps between the service needs and available system capacities. 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 as a crime, arresting and incarcerating people for drug possession offenses, makes matters worse by disrupting and further destabilizing their lives, and in some cases putting people at higher risk of overdose death. 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, including but not limited to substance use disorder prevention, outreach and engagement, and recovery support services, to be funded by existing cannabis taxes, health insurance, and other available funds. It is further the intent of this act to remove barriers to connecting people with substance use disorder to outreach and engagement, treatment, and recovery support services through changes to laws criminalizing drug use. Through adoption of this substance use disorder prevention and recovery act, the state will:

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

(2) Expand substance use disorder prevention, outreach and engagement, and recovery support services with redirected cannabis taxes, health insurance, and other available funds;

(3) Help those with substance use disorders access outreach and engagement, treatment, and recovery support services through (a) law enforcement training; (b) changing laws regarding drug possession and use so that persons are connected with outreach and engagement services rather than charged with a crime; and (c) facilitating vacation of convictions for past possession and use offenses to remove the barriers these criminal records erect to long-term recovery; and

(4) Harmonize the service and funding provisions of this act with the substance use recovery services plan and related rules adopted by the authority in RCW 71.24.546.

## **PART 2**

### **EXPANSION OF SUBSTANCE USE DISORDER PREVENTION, OUTREACH AND ENGAGEMENT, AND RECOVERY SUPPORT SERVICES, AND RELATED FUNDING**

**Sec. 2.** RCW 69.50.540 and 2021 c 334 s 986 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 or as provided in this subsection:

(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 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's addictions, drug and 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) Two hundred fifty thousand dollars to the University of Washington's addictions, drug and alcohol institute to conduct multisite, longitudinal cohort studies of diverse people in Washington who use substances other than cannabis and alcohol, to include but not be limited to opioids and stimulants, for the purpose of increasing understanding of:

(i) Social determinants of health contributing to and influencing use of substances;

(ii) Health, mental health, and substance use disorder care needs and utilization;

(iii) Substance use trajectories and consequences; and

(iv) Impacts of Washington state and local policies, programs, and services on substance use.

The studies must be conducted in partnership with Washington community and tribal organizations that primarily serve people who use substances other than cannabis and alcohol. The institute may use appropriated funds for contracts and grants for this purpose. The institute shall publish annual findings publicly and share them with the legislature and relevant state agencies.

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

(ii) One million three hundred twenty-three thousand dollars for fiscal year 2020 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 four hundred fifty-three thousand dollars for fiscal year 2020 and two million four hundred twenty-three thousand dollars for fiscal years 2021, 2022, and 2023 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))~~ (f) Four hundred sixty-five thousand dollars for fiscal year 2020, four hundred sixty-four thousand dollars for fiscal year 2021, two hundred seventy thousand dollars in fiscal year 2022, and two hundred seventy-six thousand dollars in fiscal year 2023 to the department of ecology for implementation of accreditation of marijuana product testing laboratories;

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

~~((g))~~ (h) Eight hundred eight thousand dollars for each of fiscal years 2020 through 2023 to the department of health for the administration of the marijuana authorization database;

~~((h))~~ (i) Six hundred thirty-five thousand dollars for fiscal year 2020, six hundred thirty-five thousand dollars for fiscal year 2021, six hundred twenty-one thousand dollars for fiscal year 2022, and six hundred twenty-seven thousand dollars for fiscal year 2023 to the department of agriculture for compliance-based laboratory analysis of pesticides in marijuana;

~~((i))~~ (j) One million six hundred fifty thousand dollars for fiscal year 2022 and one million six hundred fifty thousand dollars for fiscal year 2023 to the department of commerce to fund the ~~((marijuana))~~ cannabis social equity technical assistance ~~((competitive))~~ grant program under RCW 43.330.540; and

~~((+j))~~ (k) One hundred sixty-three thousand dollars for fiscal year 2022 and one hundred fifty-nine thousand dollars for fiscal year 2023 to the department of commerce to establish a roster of mentors as part of the cannabis social equity technical assistance grant program under Engrossed Substitute House Bill No. 1443 (cannabis industry/equity) (~~(chapter 169, Laws of 2021)~~) chapter 169, Laws of 2021; and

(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)~~) this term is defined in the most current edition of 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~~) addictions, drug and alcohol 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~~) use disorder 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 2019-2021 and 2021-2023 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 2019-2021 and 2021-2023 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 2023-2025 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, 2023, the legislature must appropriate at least two million five hundred sixty-five thousand dollars to the Washington state health care authority for the purpose of convening and staffing the work of the substance use recovery services advisory committee, and the experts and stakeholders to be consulted under RCW 71.24.546, 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, 2023, and for each subsequent fiscal year thereafter, the legislature must appropriate at least one hundred fifty thousand dollars to the criminal justice training commission for the purpose of establishing and maintaining substance use disorder training in accordance with RCW 43.101.205;

(i) For the fiscal year beginning July 1, 2023, 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, substance use disorder, and harm reduction public education program to be implemented through grants to local health departments and tribal public health programs 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 and tribal public health programs 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 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, explain that harm reduction promotes health and engagement, and encourage people not to be afraid to seek help;

(ii) Messages that publicize where people can learn about places to find help via telephone and internet searches;

(iii) Messages targeted to families who have relatives with substance use disorders, that provide clear, accessible, and easily understandable information about how they can find treatment and recovery services funded by the health care authority under RCW 71.24.546;

(iv) Scientifically accurate information about the health and safety risks posed by substance use and the role of harm reduction services and supplies as means to help reduce those risks and engage people who use substances;

(j) For the fiscal year beginning July 1, 2023, and every fiscal year thereafter, the legislature must appropriate to the Washington state health care authority a minimum of one hundred fifteen million dollars for substance use disorder prevention, outreach and engagement, and recovery support services as provided under RCW 71.24.546, and for necessary evaluations under section 18 of this act. To maximize the availability of substance use disorder prevention, outreach and engagement, and recovery support 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 RCW 71.24.546, with an emphasis on continuity of care;

(k) For the fiscal year beginning July 1, 2023, and every fiscal year thereafter, the legislature must appropriate to the department of health a minimum of ten million dollars for harm reduction services, supplies, and staffing support at local harm reduction organizations;

(l) For the fiscal year beginning July 1, 2023, and every fiscal year thereafter, the legislature must appropriate to the department of health a minimum of three million dollars solely to fund grants for local health departments and tribal public health programs to test controlled substances seized by law enforcement or presented for testing by members of the public. The department of health must allocate grant funding based upon a formula established by the department that incorporates equipment purchasing, maintenance, staffing, data systems, and local advisory boards. The formula must distribute the grant funding equitably between local health departments and tribal public health programs located east of the crest of the Cascade mountains and located west of the crest of the Cascade mountains. Local health departments and tribal public health

programs receiving grant funding must follow guidelines for testing, reporting, and public health education protocols for controlled substances that are approved by the department of health in consultation with the University of Washington addictions, drug and alcohol institute and the Washington state patrol forensic laboratory services bureau; and

(m) 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))~~ (m) (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))~~ (m) (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))~~ (m) (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 board must provide the state treasurer the annual distribution amount, if any, for each county and city as determined in (~~(g)~~) (m)(i) of this subsection (2).

(iv) The total share of marijuana excise tax revenues distributed to counties and cities in (~~(g)~~) (m)(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.

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

In consultation with the department of children, youth, and families and the substance use recovery services advisory committee established under RCW 71.24.546, the authority shall design a mechanism for follow-up care for youth found in possession of a controlled substance, legend drug, or counterfeit substance. These services must at a minimum include additional outreach and recovery support services, including longer-term follow-up care. The authority is authorized to adopt rules to implement this section.

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

The implementation of the statewide substance use recovery services plan and related rules established under RCW 71.24.546 must be funded in the following manner:

(1) Responsibility for payment of substance use disorder treatment services including outpatient treatment, withdrawal management, residential treatment, medications for opioid use

disorder, and crisis stabilization services are as follows: (a) Payment for covered services for individuals enrolled in medicaid managed care plans is the responsibility of the managed care plan to whom the enrollee is assigned; (b) payment for individuals enrolled in the medicaid fee-for-service program is the responsibility of the health care authority; (c) payment for covered services for individuals enrolled in private health care plans is the responsibility of the private health care plan; and (d) payment for all other individuals as well as services not covered by medicaid or private plans is the responsibility of the behavioral health administrative services organization; and

(2) Outreach and engagement services and recovery support services that are not reimbursable through insurance will be funded through a combination of: Appropriations from the dedicated marijuana account as specified in RCW 69.50.540; targeted investments from the federal substance abuse block grant, if permissible under the grant; and funds recovered by the state through lawsuits against opioid manufacturers, if permissible; and

(3) Appropriations from the state general fund based on a calculation of the savings captured from reduced expenses for the department of corrections and other criminal justice-related costs resulting from this act, to be determined by a methodology created by the department of corrections, the health care authority, the sentencing guidelines commission, the office of financial management, and the caseload forecast council. Savings shall be projected for the fiscal biennium beginning July 1, 2025, and for each biennium thereafter. By September 1, 2024, the proposed methodology shall be submitted to the governor and the appropriate committees of the legislature. The methodology is deemed approved unless the legislature enacts legislation to modify or reject the methodology.

### **PART 3**

**DECRIMINALIZATION OF POSSESSION AND REFERRAL TO SUBSTANCE USE  
DISORDER PREVENTION, OUTREACH AND ENGAGEMENT, AND RECOVERY SUPPORT  
SERVICES**

**Sec. 5.** RCW 43.101.205 and 2021 c 311 s 7 are each amended 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 must receive training on law enforcement interaction with persons with substance use disorders, including persons with co-occurring substance use disorders and mental health conditions, and referral to treatment and recovery services and the unique referral processes for youth, as part of the basic law enforcement training. The training must be developed by the commission in collaboration with the University of Washington behavioral health institute, addictions, drug and alcohol institute, and agencies that have expertise in the area of working with persons with substance use disorders, including law enforcement diversion of such individuals to community-based care. In developing the training, the commission must also examine existing courses certified by the commission that relate to persons (~~with~~) using substances and persons who may have a substance use disorder, and should draw on existing training partnerships with the Washington association of sheriffs and police chiefs.

(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 the recovery navigator program in accordance with RCW 71.24.115;

(b) The etiology of substance use disorders, including the role of trauma;

(c) Barriers to treatment engagement experienced by many with such disorders who have contact with the legal system;

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

(e) Conflict resolution and de-escalation techniques for potentially dangerous situations involving persons (~~(with)~~) using substances and persons who may have a substance use disorder;

(f) Appropriate language usage when interacting with persons (~~(with)~~) using substances and persons who may have a substance use disorder;

(g) Alternatives to lethal force when interacting with potentially dangerous persons (~~(with)~~) using substances and persons who may have a substance use disorder;

(h) The principles of recovery and the multiple pathways to recovery; (~~(and)~~)

(i) Community and state resources available to serve persons (~~(with)~~) using substances and persons who may have substance use disorders and how these resources can be best used by law enforcement to support such persons (~~(with a substance use disorder)~~) in their communities;

(j) How to determine in the field whether a person is in possession of a controlled substance, legend drug, or counterfeit substance and procedures for seizure of substances as specified in sections 7 and 8 of this act; and

(k) The importance and role of harm reduction in serving the needs of people who use substances to reduce the risks of harm including infection and overdose as well as an essential engagement point for people who use drugs.

(3) In addition to incorporation into the basic law enforcement training under RCW 43.101.200, training must be made available to law enforcement agencies, through electronic means, for use during in-service training.

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



Law enforcement officers who discover that a person is in possession of a controlled substance, counterfeit substance, or legend drug shall provide information to the person about outreach and engagement services, including their local recovery navigator program established under RCW 71.24.115, and shall offer assistance in connecting the person with the services, including calling outreach and engagement services, including recovery navigators, to the location if available and desired. Law enforcement may provide transportation to outreach and engagement service providers with the person's consent.

NEW SECTION. **Sec. 7.** A new section is added to chapter 69.50 RCW to read as follows:

(1) Controlled substances possessed without a valid prescription and counterfeit substances are contraband and may be seized by any law enforcement officer. All such seized controlled substance or counterfeit substance shall be forfeited in accordance with RCW 69.50.505.

(2) Law enforcement are authorized to and encouraged to provide samples of any seized controlled substances or counterfeit substances to the department of health or a local public health department for testing and reporting purposes, in accordance with RCW 69.50.540(1). Any state or local official is authorized to possess controlled substances or counterfeit substances as part of a testing program.

(3) The department of health, in consultation with the University of Washington's addictions, drug and alcohol institute and the Washington state patrol forensic laboratory services bureau, shall adopt guidelines for controlled substance and counterfeit substance testing, reporting, and public health education protocols.

NEW SECTION. **Sec. 8.** A new section is added to chapter 69.41 RCW to read as follows:

Legend drugs possessed without a valid prescription are contraband and may be seized by any law enforcement officer. All such seized legend drugs shall be forfeited in accordance with RCW 69.50.505.

**Sec. 9.** RCW 69.50.4011 and 2021 c 311 s 8 are each amended to read as follows:

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

(2) Any person who violates subsection (1) (~~(a)~~) of 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.

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

**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(~~(7)~~) or deliver(~~(7 or possess)~~) a counterfeit substance.

(2) 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 2021 c 311 s 9 are each amended to read as follows:

~~(1) ((It is unlawful for any person to knowingly 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 RCW 69.50.4014, any person who violates this section is guilty of a misdemeanor.~~

~~(3) The prosecutor is encouraged to divert cases under this section for assessment, treatment, or other services.~~

~~(4))~~ (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.

~~((5))~~ (2) (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 ~~((5))~~ (2) 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.

~~((6))~~ (3) 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.

~~((7))~~ (4) 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 69.50.4013 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 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))~~ (2) (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))~~ (2) 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))~~ (3) 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))~~ (4) 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. 13.** RCW 69.41.030 and 2021 c 311 s 12 are each amended to read as follows:

(1) It shall be unlawful for any person to sell~~((7))~~ or deliver~~((7-or-knowingly-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, 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, 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 violation of this section involving possession is a misdemeanor. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.))~~

**Sec. 14.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to read as follows:

(1) It shall be unlawful for any person to sell ~~((r))~~ or 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, 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, 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 violation of this section involving possession is a misdemeanor.))~~

NEW SECTION. **Sec. 15.** 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 drug possession and use. Criminal records erect long-term barriers to education, housing, and employment, undermining efforts to achieve and maintain recovery.

(2) Notwithstanding RCW 9.94A.640 or any other provision of this chapter, every person convicted of possession of a controlled substance or counterfeit substance prior to December 8, 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, and any attempt, conspiracy, or solicitation to commit any of these offenses. If the offense of conviction is one of the offenses listed under this subsection, the court shall clear the record of conviction: (a) (i) By permitting the person to withdraw the plea of guilty and to enter a plea of not guilty; or (ii) if the person has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; (b) by the court dismissing the information or indictment against the person; and (c) where the conviction was entered prior to May 13, 2021, by inclusion of a statement that the conviction was unconstitutional and is void under the decision issued by the Washington state supreme court in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). Under no circumstances may any resentencing under this section result in the imposition of a term longer than the original sentence, or in the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(3) Once the court vacates a record of conviction under subsection (2) of this section, the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction, and the person shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, a person whose conviction has been vacated may state

that the person has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person or agency.

NEW SECTION. **Sec. 16.** 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 drug possession and use. Criminal records erect long-term barriers to education, housing, and employment, undermining efforts to achieve and maintain recovery.

(2) Notwithstanding RCW 9.96.060 or 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 8, 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 (a) (i) By permitting the person to withdraw the plea of guilty and to enter a plea of not guilty; or (ii) if the person has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (b) by the court dismissing the information or indictment against the person. Under no circumstances may any resentencing under this section result in the imposition of a term longer than the original sentence, or in the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(3) Once the court vacates a record of conviction under subsection (2) of this section, the fact that the person has been

convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction, and the person shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, a person whose conviction has been vacated may state that the person has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person or agency.

**Sec. 17.** 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 establishing crimes and infractions related to controlled substances, counterfeit substances, and paraphernalia, and setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances, counterfeit substances, and paraphernalia 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**

#### **EVALUATION**

NEW SECTION. **Sec. 18.** 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, 2024, and the first final report by September 1, 2025. Subsequent reports shall be due September 1, 2030, and September 1, 2034.

(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;

(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, and disruption of access to services; and

(iii) Outcomes from provision of services delivered under RCW 71.24.546;

(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;
  - (f) Racial disparities in any factors examined; and
  - (g) State and local agency administrative costs and revenues.

**PART 5**  
**CONSTRUCTION**

NEW SECTION. **Sec. 19.** 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. 20.** The following acts or parts of acts are each repealed:

(1) RCW 69.50.4014 (Possession of forty grams or less of marijuana—Penalty) and 2021 c 311 s 10, 2015 2nd sp.s. c 4 s 505, & 2003 c 53 s 335; and

(2) RCW 10.31.115 (Drug possession—Referral to assessment and services) and 2021 c 311 s 13.

NEW SECTION. **Sec. 21.** Sections 9, 11, and 13 of this act expire July 1, 2023.

NEW SECTION. **Sec. 22.** Sections 10, 12, and 14 of this act take effect July 1, 2023.

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