

AN ACT Relating to promoting recovery and improving public safety by providing behavioral health system responses to individuals with substance use disorder in lieu of criminalizing possession of personal use amounts of controlled substances, counterfeit substances, and legend drugs;

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

PART 1

INTENT

NEW SECTION. **Sec.** (1) The legislature finds that substance use disorder is among the only health conditions for which a person can be arrested for displaying symptoms. People use drugs to escape the painful reality of their lives and circumstances, including trauma that's never had a chance to heal. Causing more hurt through the

trauma of incarceration will not produce a willingness to change, only more pain to numb. Arrest and incarceration do not treat substance use disorder, not its root causes. Treating substance abuse disorder like a crime through arrests and incarceration further disrupts and destabilizes the lives of these individuals. Incarceration removes access to insurance and behavioral health services, places people with opioid use disorder at extraordinary risk of overdose upon release, and creates criminal records that erect long-term barriers to education, housing, and employment, all of which undermine efforts to achieve and maintain recovery. The diagnostic criteria for substance use disorder includes continued use despite negative consequences. Therefore, it is implausible that additional negative consequences will lead to a cessation of use.

(2) The legislature also finds that substance use disorder is a treatable brain disease from which people recover. Based on surveys conducted at syringe service programs, the vast majority of people who are using drugs want to reduce or stop their use. The barrier to these individuals engaging in treatment is not an absence of pain, but an absence of hope. When people in active substance use disorder are offered meaningful, person-centered support and interventions from a trusted source, such as a peer recovery coach, they are very likely to accept that support. If recovery support services, such as housing, education, employment pathways, community connection and peer support are available during and after treatment, long-term, sustained recovery is not only possible, but probable.

(3) Therefore, the legislature intends to develop a robust system to provide rapid access to evidence-based and innovative substance use treatment and comprehensive recovery support services in lieu of criminal penalties for individuals in possession of drugs.

PART 2

EXPANSION OF SUBSTANCE USE DISORDER TREATMENT AND RECOVERY

SUPPORT SERVICES

NEW SECTION. **Sec.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The authority shall establish a substance use recovery services plan for the purpose of implementing measures to assist persons with substance use disorder in accessing treatment and recovery support services that are low-barrier, person-centered, informed by people with lived experience, and culturally and linguistically appropriate. The plan shall articulate the manner in which continual, rapid and widespread access to a comprehensive continuum of care must be provided to all persons with substance use disorder regardless of the point at which they present within the continuum of care.

(2) The plan must consider the following: The manner in which persons with substance use disorder currently access and interact with the behavioral health system; the points of intersection that persons with substance use disorder have with the health care, criminal, legal, and child welfare systems, including emergency departments, syringe service programs, law enforcement, correctional facilities, and dependency court; and the various locations in which persons with untreated substance use disorder congregate including homeless encampments, motels and casinos.

(3) The plan must:

(a) Anticipate the decriminalization of personal use amounts of controlled substances, counterfeit substances, and legend drugs

known to be used by people for recreational or nonmedical and nonprescribed purposes as provided in section 5 of this act;

(b) Include potential new community-based care access points, including the safe station model in partnership with fire departments, and strategic grantmaking to community organizations to educate the public and systematically disrupt and dismantle stigma and prejudice against persons with substance use disorder by improving public understanding and promoting hope;

(c) Include creative mechanisms for real time, peer-driven, non-coercive outreach and engagement to individuals in active substance use disorder across all settings and develop measures to enhance the effectiveness of and opportunities for intervention across new and existing points of contact with this population; and

(d) Support diversion to community-based care for individuals who may face criminal consequences for other drug-related law violations, but for whom it is evident that a response that addresses and attends to the underlying needs and social determinants of health may be more effective.

(4) The plan and related rules adopted by the authority must include the following substance use treatment and recovery services, which must be available in or accessible by all jurisdictions: Field based outreach and engagement; peer recovery support services; intensive case management; substance use disorder treatment, including evidence-based treatment, promising practices and innovative approaches; and recovery support services including housing and job training and placement services. These services must be equitably distributed across urban and rural settings and, if possible, made available on demand through twenty-four hour, seven days a week peer recovery coach response, behavioral health triage centers or other innovative rapid response models. These services

must, at a minimum, incorporate the following principles: Low barrier to entry and reentry; improve the health and safety of the individual; reduce the harm of substance use and related activity for the public; integrated and coordinated services; incorporate structural competency and anti-racism; noncoercive methods of retaining people in treatment and recovery services, including contingency management; consideration of the unique needs of rural communities; and services that increase social determinants of health.

(5) In developing the plan, the authority shall strive to adopt and implement the recommendations of the substance use recovery services advisory committee established in section 3 of this act. And where adoption and implementation of recommendations are infeasible, the authority shall notify the advisory committee and request refinement or modification of recommendations for the purpose of implementation.

(6) The authority shall submit the substance use recovery services plan to the governor and the legislature by December 1, 2021. After submitting the plan, the authority shall adopt rules and enter contracts with providers to implement the plan by December 1, 2022. In addition to seeking public comment under chapter 34.05 RCW, the authority shall adopt the rules in accordance with the recommendations of the substance use recovery services advisory committee as provided in subsection (5) of this section. The rules must be informed by existing diversion models that the authority administers in multiple jurisdictions in the state.

(7) In consultation with the substance use recovery services advisory committee, the authority shall submit a report on the implementation of the substance use recovery services plan to the

appropriate committees of the legislature and governor by December 1st of each year, beginning in 2022.

(8) For the purposes of this section, "recovery support services" means a collection of non-treatment resources that sustain long-term recovery from substance use disorder, including recovery housing, employment and education supports, peer recovery coaching, family education, technological recovery supports, transportation and childcare assistance to facilitate treatment participation and early recovery, and social connectedness.

NEW SECTION. **Sec.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The authority shall establish the substance use recovery services advisory committee for the purposes of advising the authority in the development and implementation of the substance use disorder recovery services plan under section 2 of this act.

(2) The authority shall, in consultation with the University of Washington Department of Psychiatry and Behavioral Sciences and an organization that represents the interests of people who have been directly impacted by substance use and the criminal legal system, appoint members to the advisory committee who have relevant background related to the needs of persons with substance use disorder. The membership of the advisory committee must include, but is not limited to, experts in the etiology and stabilization of substance use disorders, including expertise in medication-assisted treatment and other innovative medication therapies; experts in mental health and trauma and their comorbidity with substance use disorders; people who are currently using controlled substances outside the legal authority of prescription or valid practitioner order; experts in the relationship between social determinant of

health, including housing and substance use disorder; experts in drug user health and harm reduction; representatives of city and county governments; a representative of urban police chiefs; a representative of rural county sheriffs; a representative of the interests of rural communities; a representative of fire chiefs; experts in peer support services; experts in substance use disorder recovery support services; experts in diversion from the criminal legal system to community-based care for people with complex behavioral health needs; experts in reducing racial disparity in exposure to the criminal legal system; an academic researcher with an expertise in drug policy and program evaluation; a substance use disorder professional; a representative of public defenders; a representative of prosecutors; a representative of the criminal justice training commission; a nongovernmental immigration attorney with expertise in the immigration consequences of drug possession and use crimes and findings of substance use disorder; recovery housing providers; low barrier housing providers; representatives of racial justice organizations, including organizations promoting anti-racism and equity in health care; a representative of a local health jurisdiction with expertise in overdose prevention and harm reduction; representatives of the interests of tribes; at least three adults in recovery from substance use disorder, including individuals with previous contact with the criminal legal system due to substance use; at least three youth in recovery from substance use disorder, including youth with previous criminal legal system contact due to substance use; and at least three family members of persons with substance use disorder. The advisory committee shall be reflective of the community of individuals living with substance use disorder, including people who are Black, indigenous and people of

color and individuals who can represent the unique needs of rural communities.

(3) The advisory committee must make recommendations and provide perspectives to the authority regarding:

(a) Current regional capacity for existing public and private programs providing substance use disorder assessments, each of the American society of addiction medicine levels of care, and recovery support services;

(b) Barriers to accessing the existing health system for those populations chronically exposed to criminal legal system responses relating to complex behavioral health conditions and the consequences of trauma, and possible innovations that could reduce those barriers and improve the quality and accessibility of care for those populations;

(c) Evidence-based, research-based, and promising treatment and recovery services appropriate for target populations, to include, but not be limited to, field-based outreach and engagement, case management, mental and physical health care, contingency management, medication-assisted treatment and other innovative medication therapies, peer support services, family education, housing, job training and employment programs, and treatments that have not traditionally been covered by insurance;

(d) Workforce needs for the behavioral health services sector, including wage and retention challenges;

(e) Options for leveraging existing integrated managed care, medicaid waiver, 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, behavioral health administrative services organizations, the Washington health benefit

exchange, accountable communities of health, and the office of the insurance commissioner;

(f) Framework and design assistance for jurisdictions to assist in compliance with the requirements of RCW 10.31.110 for diversion of individuals with complex behavioral health conditions to community-based care whenever possible and appropriate, and identifying resource gaps that impede jurisdictions in fully realizing the potential impact of this approach;

(g) The design of a referral mechanism for referring people with substance use disorder or problematic behaviors resulting from drug use into the supportive services described in this section, including intercepting individuals who likely would otherwise be referred into the criminal legal system, with the express intention of ensuring that decriminalization of possession of personal use amounts does not inadvertently contribute to increased racial disparity among those who continue to be exposed to the criminal legal system due to income instability and involvement in the illicit economy to meet basic needs;

(h) The design of ongoing qualitative and quantitative research about the types of services desired by people with substance use disorders and barriers they experience in accessing existing and recommended services; and

(i) Proposing a funding framework in which, over time, resources are shifted from punishment sectors to community-based care interventions such that community-based care becomes the primary strategy for addressing and resolving public order issues related to behavioral health conditions.

(4) The advisory committee shall convene as necessary for the development of the substance use disorder recovery services plan and the development and adoption of rules for implementing the plan, and

shall continue to convene to monitor implementation of the plan and advise the authority.

(5) This section expires December 31, 2026.

NEW SECTION. **Sec.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The implementation of the statewide substance use recovery services plan established under section 2 of this act must be funded in the following manner:

(a) 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: (i) 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; (ii) payment for individuals enrolled in the medicaid fee-for service program is the responsibility of the health care authority; (iii) payment for covered services for individuals enrolled in private health care plans is the responsibility of the private health care plan; and (iv) 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

(b) Outreach and engagement services and recovery support services that are not reimbursable through insurance will be funded through a combination of: Appropriations from the recovery pathways account under chapter . . . , Laws of 2021 (House Bill No. . . .); targeted investments from the federal substance abuse block grant, if permissible under the grant; funds recovered by the state through lawsuits against opioid manufacturers, if permissible; and

appropriations from the state general fund based on a calculation of the savings captured from reduced expenses for the department of corrections resulting from this act.

PART 3

ELIMINATION OF CRIMINAL PENALTIES FOR POSSESSION OF PERSONAL USE AMOUNTS OF CONTROLLED SUBSTANCES, COUNTERFEIT SUBSTANCES, AND LEGEND DRUGS

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

(1) By September 1, 2022, the director, in consultation with the department of health, and the pharmacy quality assurance commission, 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.

(2) Whenever the subcommittee 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 shall develop and adopt a maximum personal use amount for that substance within one year of learning of its recreational or nonmedical and nonprescribed use.

(3) In developing the rules under this section, the director shall convene and consult with a work group, which must include, at a minimum: persons who currently use controlled substances outside the legal authority of a prescription or valid practitioner order; persons in recovery from substance use disorder who previously used substances outside the legal authority of a prescription or valid

practitioner order; representatives from law enforcement; a representative of public defenders; a representative of prosecutors; and experts relevant to setting threshold amounts of controlled substances.

(4) For the purposes of this section, the term "personal use amount" has the same meaning as in RCW 69.50.101 and RCW 69.41.030.

Sec. RCW 69.50.101 and 2020 c 133 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the Washington state liquor and cannabis board.

(d) "CBD concentration" has the meaning provided in RCW 69.51A.010.

(e) "CBD product" means any product containing or consisting of cannabidiol.

(f) "Commission" means the pharmacy quality assurance commission.

(g) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal

or state laws, or federal or commission rules, but does not include hemp or industrial hemp as defined in RCW 15.140.020.

(h) (1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or chapter 69.77 RCW to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(i) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(j) "Department" means the department of health.

(k) "Designated provider" has the meaning provided in RCW 69.51A.010.

(l) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(m) "Dispenser" means a practitioner who dispenses.

(n) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(o) "Distributor" means a person who distributes.

(p) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(q) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(r) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not

include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(s) "Immature plant or clone" means a plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(t) "Immediate precursor" means a substance:

(1) that the commission has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(u) "Isomer" means an optical isomer, but in subsection (gg)(5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b) (4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a) (35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(v) "Lot" means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(w) "Lot number" must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.

(x) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(y) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or

(2) Hemp or industrial hemp as defined in RCW 15.140.020, seeds used for licensed hemp production under chapter 15.140 RCW.

(z) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(aa) "Marijuana processor" means a person licensed by the board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

(bb) "Marijuana producer" means a person licensed by the board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(cc) "Marijuana products" means useable marijuana, marijuana concentrates, and marijuana-infused products as defined in this section.

(dd) "Marijuana researcher" means a person licensed by the board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

(ee) "Marijuana retailer" means a person licensed by the board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

(ff) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (y) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

(gg) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in (1) through (7) of this subsection.

(hh) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled

under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(ii) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(jj) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(kk) "Plant" has the meaning provided in RCW 69.51A.010.

(ll) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(mm) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in 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 registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute,

dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, 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 physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(nn) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(oo) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(pp) "Qualifying patient" has the meaning provided in RCW 69.51A.010.

(qq) "Recognition card" has the meaning provided in RCW 69.51A.010.

(rr) "Retail outlet" means a location licensed by the board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

(ss) "Secretary" means the secretary of health or the secretary's designee.

(tt) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(uu) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(vv) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(ww) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(xx) "Youth access" means the level of interest persons under the age of twenty-one may have in a vapor product, as well as the degree to which the product is available or appealing to such persons, and the likelihood of initiation, use, or addiction by adolescents and young adults.

(yy) "Personal use amount" means the maximum amount of a particular controlled substance or counterfeit substance that the

authority has determined to be consistent with personal, nonprescribed use patterns of people with substance use disorder, as provided under section 5 of this act.

Sec. RCW 69.50.101 and 2020 c 133 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the Washington state liquor and cannabis board.

(d) "CBD concentration" has the meaning provided in RCW 69.51A.010.

(e) "CBD product" means any product containing or consisting of cannabidiol.

(f) "Commission" means the pharmacy quality assurance commission.

(g) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include hemp or industrial hemp as defined in RCW 15.140.020.

(h) (1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or chapter 69.77 RCW to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(i) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(j) "Department" means the department of health.

(k) "Designated provider" has the meaning provided in RCW 69.51A.010.

(l) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(m) "Dispenser" means a practitioner who dispenses.

(n) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(o) "Distributor" means a person who distributes.

(p) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(q) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(r) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(s) "Immature plant or clone" means a plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(t) "Immediate precursor" means a substance:

(1) that the commission has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(u) "Isomer" means an optical isomer, but in subsection (gg) (5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b) (4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a) (35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(v) "Lot" means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(w) "Lot number" must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.

(x) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of

natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(y) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or

(2) Hemp or industrial hemp as defined in RCW 15.140.020, seeds used for licensed hemp production under chapter 15.140 RCW.

(z) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(aa) "Marijuana processor" means a person licensed by the board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

(bb) "Marijuana producer" means a person licensed by the board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(cc) "Marijuana products" means useable marijuana, marijuana concentrates, and marijuana-infused products as defined in this section.

(dd) "Marijuana researcher" means a person licensed by the board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

(ee) "Marijuana retailer" means a person licensed by the board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

(ff) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (y) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

(gg) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in (1) through (7) of this subsection.

(hh) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(ii) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(jj) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(kk) "Plant" has the meaning provided in RCW 69.51A.010.

(ll) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(mm) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A 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 subject to any limitations in 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 registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, 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 physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(nn) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(oo) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(pp) "Qualifying patient" has the meaning provided in RCW 69.51A.010.

(qq) "Recognition card" has the meaning provided in RCW 69.51A.010.

(rr) "Retail outlet" means a location licensed by the board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

(ss) "Secretary" means the secretary of health or the secretary's designee.

(tt) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(uu) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(vv) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(ww) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(xx) "Youth access" means the level of interest persons under the age of twenty-one may have in a vapor product, as well as the degree to which the product is available or appealing to such persons, and the likelihood of initiation, use, or addiction by adolescents and young adults.

(yy) "Personal use amount" means the maximum amount of a particular controlled substance or counterfeit substance that the authority has determined to be consistent with personal, nonprescribed use patterns of people with substance use disorder, as provided under section 5 of this act.

Sec. 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(~~((~~(~~(~~)))~~)) or deliver a counterfeit substance, or~~

possess a counterfeit substance in excess of the applicable personal use amount.

(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. 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 in excess of the applicable personal use amount, 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) (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. RCW 69.50.4014 and 2015 2nd sp.s. c 4 s 505 are each amended to read as follows:

Except as provided in 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, unless: the amount of marijuana does not exceed the applicable personal use amount; or otherwise authorized by this chapter.

Sec. 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, unless the drug paraphernalia is used to prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a personal use amount of a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

(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. This subsection does not apply to a social service agency or health care agency possessing or distributing drug paraphernalia for the purposes of distributing the paraphernalia to others for personal use. 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. 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(~~(7)~~) or deliver(~~(7)~~) any legend drug, or possess any legend drug in excess of an applicable personal use amount, 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.

(3) For the purpose of this section, "personal use amount" means the maximum amount of a legend drug that the authority has determined to be consistent with personal, nonprescribed use patterns of people with substance use disorder, as provided under section 3 of this act.

Sec. RCW 10.31.110 and 2019 c 326 s 3 are each amended to read as follows:

(1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a crime, and the individual is known by history or consultation with the behavioral health administrative services organization, managed care organization, behavioral health administrative services organization, crisis hotline, ~~((or))~~ local crisis services providers, or community health providers to suffer from a mental disorder, including substance use disorder, in addition to existing authority under state law, as an alternative to arrest, the arresting officer is authorized and encouraged to:

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

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

(c) Refer the individual to a ~~((mental health professional))~~ designated crisis responder for evaluation for initial detention and proceeding under chapter 71.05 RCW; ~~((or))~~ (d) Refer the individual to youth, adult or geriatric mobile crisis response services as appropriate;

(e) Refer the individual to an available on-demand provider responsible to receive referrals in lieu of legal system involvement; or

(f) Release the individual upon agreement to voluntary participation in outpatient treatment.

(2) If the individual is released to the community, the ~~((mental))~~ behavioral health or community health provider shall make reasonable efforts to inform the arresting officer of the planned release prior to release if the arresting officer has specifically requested notification and provided contact information to the provider.

(3) In deciding whether to refer the individual to treatment and supportive services under this section, the police officer must be guided by local law enforcement diversion guidelines for behavioral health developed and mutually agreed upon with the prosecuting authority with an opportunity for consultation and comment by the defense bar and disability community. These guidelines must address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the ~~((mental))~~ behavioral health history of the individual, if available, the opinions of a mental health or substance use disorder professional, if available, and the circumstances surrounding the commission of the alleged offense. The guidelines must include a process for clearing outstanding warrants or referring the individual for assistance in clearing outstanding warrants, if any, and issuing a new court date, if appropriate, without booking or incarcerating the individual or disqualifying him or her from referral to treatment under this section, and define the circumstances under which such action is permissible.

(4) Any agreement to participate in treatment and supportive services shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a ~~((mental))~~ behavioral health treatment alternative. The agreement is inadmissible in any criminal or civil

proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(5) If (~~an individual violates such agreement and~~) the (~~mental~~) behavioral health treatment alternative is no longer appropriate:

(a) The (~~mental~~) behavioral health provider shall inform the referring law enforcement agency (~~of the violation~~); and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

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

(7) For the purposes of this section, "mental disorder" also includes substance use disorder.

NEW SECTION. **Sec.** 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 must 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 substance use disorder recovery advocacy organizations and with appropriate community, local, and state organizations 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 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 treatment and supportive services in accordance with section 2 of this act;

(b) The cause and nature 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;

(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;

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

(h) Community and state resources available to serve persons with substance use disorders and how these resources can be best used by law enforcement to support 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, training must 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.

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

(1) Notwithstanding RCW 9.94A.640 or any other provision of this chapter, any person convicted of possession of a controlled substance or counterfeit substance prior to December 1, 2022, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense, regardless of whether the person completed any applicable sentencing conditions or received a certificate of discharge under RCW 9.94A.637. 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. Upon receipt of an application under this section, 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; or (c) the court dismissing the information or indictment against the person.

(2) A conviction vacated under this section may not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction, and the person must 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, except other criminal justice

enforcement agencies. Nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

Sec. RCW 9.94A.640 and 2019 c 331 s 3 are each amended to read as follows:

(1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) ~~((An))~~ Except as provided under section 15 of this act, an offender may not have the record of conviction cleared if:

(a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court;

(b) The offense was a violent offense as defined in RCW 9.94A.030 or crime against children or other persons as defined in RCW 43.43.830, except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: (i) Assault in the second degree under RCW 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when not committed against a law enforcement officer or peace officer; and (iii) robbery in the second degree under RCW 9A.56.210;

(c) The offense is a class B felony and the offender has been convicted of a new crime in this state, another state, or federal court in the ((ten)) 10 years prior to the application for vacation;

(d) The offense is a class C felony and the offender has been convicted of a new crime in this state, another state, or federal court in the five years prior to the application for vacation;

(e) The offense is a class B felony and less than ((ten)) 10 years have passed since the later of: (i) The applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date;

(f) The offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five years have passed since the later of: (i) The applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date; or

(g) The offense was a felony described in RCW 46.61.502 or 46.61.504.

(3) (a) Except as otherwise provided, once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender 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, except other criminal justice enforcement agencies. Nothing in this section

affects or prevents the use of an offender's prior conviction in a later criminal prosecution, and nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

(b) A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense occurring on or after July 28, 2019, and may be used to establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

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

(1) Notwithstanding RCW 9.96.060 or any other provision of this chapter, any person convicted of possession of a controlled substance, counterfeit substance, or legend drug, or use of paraphernalia, prior to December 1, 2022, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense, regardless of whether the person completed any applicable sentencing conditions. 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. Upon receipt of an application under this section, 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; or (c) the court dismissing the information or indictment against the person.

(2) A conviction vacated under this section may 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 or housing applications, a person whose conviction has been vacated under this section may state that he or she 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, except other criminal justice enforcement agencies. Nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

Sec. RCW 9.96.060 and 2020 c 29 s 18 are each amended to read as follows:

(1) When vacating a conviction under this section or section 17 of this act, the court effectuates the vacation by: (a) (i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) Every person convicted of a misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the requirements of this subsection, the court may in its discretion vacate the record of conviction. Except as provided in subsections (3), (4), and (5) of this section and section 14 of this act, an applicant may not have the record of

conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

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

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

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

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

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

(f) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020, or the court determines after a review of the court file that the offense was committed by one family or household member against another or by one intimate partner against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW 10.99.020, or for comparable offenses in another state or in federal

court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:

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

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

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

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

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

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

(i) The applicant is currently restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a

civil restraining order which restrains one party from contacting the other party or was previously restrained by such an order and was found to have committed one or more violations of the order in the five years prior to the vacation application.

(3) Subject to RCW 9.96.070, every person convicted of prostitution under RCW 9A.88.030 who committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any crime other than prostitution; or

(b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction. The limitation in this subsection (3) (b) does not apply to convictions where the offender proves by a preponderance of the evidence that he or she committed the crime as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., according to the requirements provided in RCW 9.96.070 for each respective conviction.

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

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

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

(5) Every person convicted of a misdemeanor marijuana offense, who was (~~twenty one~~) 21 years of age or older at the time of the offense, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. A misdemeanor marijuana offense includes, but is not limited to: Any offense under RCW 69.50.4014, from July 1, 2004, onward, and its predecessor statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense under an equivalent municipal ordinance. If an

applicant qualifies under this subsection, the court shall vacate the record of conviction.

(6) (a) Except as provided in (c) of this subsection, once the court vacates a record of conviction under this section, the person shall be released from all penalties and disabilities resulting from the offense and 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. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime. However, nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040. Except as provided in (b) of this subsection, nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(b) When a court vacates a record of domestic violence as defined in RCW 10.99.020 under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii) stalking (RCW 9A.46.110). A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

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

(7) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. 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, except other criminal justice enforcement agencies.

Sec. 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 and of establishing policies pertaining to personal use amounts as provided under section 5 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. Nothing in this section shall be construed to inhibit local jurisdictions from creating additional channels for diversion to community-based care of individuals who commit law violations related to complex behavioral health needs, above those required by state law including in RCW 10.31.110.

PART 4
CONSTRUCTION

NEW SECTION. **Sec.** 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.** Sections 6 through 19 of this act take effect December 1, 2022.

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