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**HOUSE BILL 1499**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Davis, Harris-Talley, Ramel, Macri, Simmons, Peterson, Bateman, Fitzgibbon, Duerr, Ortiz-Self, Hackney, Slatter, Ryu, Berry, Sells, Thai, Chopp, Valdez, Pollet, Eslick, Ormsby, Morgan, Stonier, and Frame

Read first time 02/05/21. Referred to Committee on Public Safety.

1 AN ACT Relating to promoting recovery and improving public safety  
2 by providing behavioral health system responses to individuals with  
3 substance use disorder in lieu of criminalizing possession of  
4 personal use amounts of controlled substances, counterfeit  
5 substances, and legend drugs; amending RCW 69.50.4011, 69.50.4013,  
6 69.50.4014, 69.50.412, 69.41.030, 9.94A.640, 9.96.060, and 69.50.608;  
7 reenacting and amending RCW 69.50.101 and 10.31.110; adding new  
8 sections to chapter 41.05 RCW; adding a new section to chapter 71.24  
9 RCW; adding a new section to chapter 43.101 RCW; adding a new section  
10 to chapter 9.94A RCW; adding a new section to chapter 9.96 RCW;  
11 creating a new section; providing an effective date; and providing an  
12 expiration date.

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

14 **PART 1**

15 **INTENT**

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

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

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

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

## 30 PART 2

### 31 EXPANSION OF SUBSTANCE USE DISORDER TREATMENT AND RECOVERY SUPPORT 32 SERVICES

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05  
34 RCW to read as follows:

35 (1) The authority shall establish a substance use recovery  
36 services plan to implement measures to assist persons with substance  
37 use disorder in accessing treatment and recovery support services  
38 that are low-barrier, person-centered, informed by people with lived

1 experience, and culturally and linguistically appropriate. The plan  
2 must articulate the manner in which continual, rapid, and widespread  
3 access to a comprehensive continuum of care must be provided to all  
4 persons with substance use disorder regardless of the point at which  
5 they present within the continuum of care.

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

15 (3) The plan must:

16 (a) Anticipate the decriminalization of personal use amounts of  
17 controlled substances, counterfeit substances, and legend drugs known  
18 to be used by people for recreational or nonmedical and nonprescribed  
19 purposes as provided in section 5 of this act;

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

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

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

36 (4) The plan and related rules adopted by the authority must  
37 include the following substance use treatment and recovery services,  
38 which must be available in or accessible by all jurisdictions: Field-  
39 based outreach and engagement; peer recovery support services;  
40 intensive case management; substance use disorder treatment,

1 including evidence-based treatment, promising practices, and  
2 innovative approaches; and recovery support services including  
3 housing, job training, and placement services. These services must be  
4 equitably distributed across urban and rural settings and, if  
5 possible, made available on demand through 24 hour, seven days a week  
6 peer recovery coach response, behavioral health triage centers, or  
7 other innovative rapid response models. These services must, at a  
8 minimum, incorporate the following principles: Low barrier to entry  
9 and reentry; improve the health and safety of the individual; reduce  
10 the harm of substance use and related activity for the public;  
11 integrated and coordinated services; incorporate structural  
12 competency and antiracism; noncoercive methods of retaining people in  
13 treatment and recovery services, including contingency management;  
14 consideration of the unique needs of rural communities; and services  
15 that increase social determinants of health.

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

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

32 (7) In consultation with the substance use recovery services  
33 advisory committee, the authority must submit a report on the  
34 implementation of the substance use recovery services plan to the  
35 appropriate committees of the legislature and governor by December  
36 1st of each year, beginning in 2022.

37 (8) For the purposes of this section, "recovery support services"  
38 means a collection of nontreatment resources that sustain long-term  
39 recovery from substance use disorder, including recovery housing,  
40 employment and education supports, peer recovery coaching, family

1 education, technological recovery supports, transportation and child  
2 care assistance to facilitate treatment participation and early  
3 recovery, and social connectedness.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.05  
5 RCW to read as follows:

6 (1) The authority shall establish the substance use recovery  
7 services advisory committee to advise the authority in the  
8 development and implementation of the substance use recovery services  
9 plan under section 2 of this act.

10 (2) The authority must, in consultation with the University of  
11 Washington department of psychiatry and behavioral sciences and an  
12 organization that represents the interests of people who have been  
13 directly impacted by substance use and the criminal legal system,  
14 appoint members to the advisory committee who have relevant  
15 background related to the needs of persons with substance use  
16 disorder. The membership of the advisory committee must include, but  
17 is not limited to, experts in the etiology and stabilization of  
18 substance use disorders, including expertise in medication-assisted  
19 treatment and other innovative medication therapies; experts in  
20 mental health and trauma and their comorbidity with substance use  
21 disorders; people who are currently using controlled substances  
22 outside the legal authority of prescription or valid practitioner  
23 order; experts in the relationship between social determinant of  
24 health, including housing and substance use disorder; experts in drug  
25 user health and harm reduction; representatives of city and county  
26 governments; a representative of urban police chiefs; a  
27 representative of rural county sheriffs; a representative of the  
28 interests of rural communities; a representative of fire chiefs;  
29 experts in peer support services; experts in substance use disorder  
30 recovery support services; experts in diversion from the criminal  
31 legal system to community-based care for people with complex  
32 behavioral health needs; experts in reducing racial disparity in  
33 exposure to the criminal legal system; an academic researcher with an  
34 expertise in drug policy and program evaluation; a substance use  
35 disorder professional; a representative of public defenders; a  
36 representative of prosecutors; a representative of the criminal  
37 justice training commission; a nongovernmental immigration attorney  
38 with expertise in the immigration consequences of drug possession and  
39 use crimes and findings of substance use disorder; recovery housing

1 providers; low-barrier housing providers; representatives of racial  
2 justice organizations, including organizations promoting antiracism  
3 and equity in health care; a representative of a local health  
4 jurisdiction with expertise in overdose prevention and harm  
5 reduction; representatives of the interests of tribes; at least three  
6 adults in recovery from substance use disorder, including individuals  
7 with previous contact with the criminal legal system due to substance  
8 use; at least three youth in recovery from substance use disorder,  
9 including youth with previous criminal legal system contact due to  
10 substance use; and at least three family members of persons with  
11 substance use disorder. The advisory committee shall be reflective of  
12 the community of individuals living with substance use disorder,  
13 including people who are Black, indigenous, and people of color, and  
14 individuals who can represent the unique needs of rural communities.

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

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

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

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

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

37 (e) Options for leveraging existing integrated managed care,  
38 medicaid waiver, American Indian or Alaska Native fee-for-service  
39 behavioral health benefits, and private insurance service capacity  
40 for substance use disorders, including but not limited to

1 coordination with managed care organizations, behavioral health  
2 administrative services organizations, the Washington health benefit  
3 exchange, accountable communities of health, and the office of the  
4 insurance commissioner;

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

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

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

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

30 (4) The advisory committee must convene as necessary for the  
31 development of the substance use recovery services plan and the  
32 development and adoption of rules for implementing the plan, and must  
33 convene to monitor implementation of the plan and advise the  
34 authority.

35 (5) This section expires December 31, 2026.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.05  
37 RCW to read as follows:

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

4 (1) Responsibility for payment of substance use disorder  
5 treatment services including outpatient treatment, withdrawal  
6 management, residential treatment, medications for opioid use  
7 disorder, and crisis stabilization services are as follows: (a)  
8 Payment for covered services for individuals enrolled in medicaid  
9 managed care plans is the responsibility of the managed care plan to  
10 whom the enrollee is assigned; (b) payment for individuals enrolled  
11 in the medicaid fee-for-service program is the responsibility of the  
12 health care authority; (c) payment for covered services for  
13 individuals enrolled in private health care plans is the  
14 responsibility of the private health care plan; and (d) payment for  
15 all other individuals as well as services not covered by medicaid or  
16 private plans is the responsibility of the behavioral health  
17 administrative services organization; and

18 (2) Outreach and engagement services and recovery support  
19 services that are not reimbursable through insurance will be funded  
20 through a combination of: Appropriations from the recovery pathways  
21 account under chapter . . . , Laws of 2021 (House Bill No. . . . );  
22 targeted investments from the federal substance abuse block grant, if  
23 permissible under the grant; funds recovered by the state through  
24 lawsuits against opioid manufacturers, if permissible; and  
25 appropriations from the state general fund based on a calculation of  
26 the savings captured from reduced expenses for the department of  
27 corrections resulting from this act.

28 **PART 3**

29 **ELIMINATION OF CRIMINAL PENALTIES FOR POSSESSION OF PERSONAL USE**  
30 **AMOUNTS**

31 **OF CONTROLLED SUBSTANCES, COUNTERFEIT SUBSTANCES, AND LEGEND DRUGS**

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

34 (1) By September 1, 2022, the director, in consultation with the  
35 department and the pharmacy quality assurance commission, shall adopt  
36 rules establishing maximum personal use amounts of controlled  
37 substances, counterfeit substances, and legend drugs known to be used  
38 by people for recreational or nonmedical and nonprescribed purposes.



1 (2) When the committee learns of a recreational or nonmedical and  
2 nonprescribed use of a controlled substance, counterfeit substance,  
3 or legend drug for which a maximum personal use amount has not been  
4 established, the director must adopt a maximum personal use amount  
5 for that substance within one year of learning of its recreational or  
6 nonmedical and nonprescribed use.

7 (3) In adopting the rules under this section, the director must  
8 convene and consult with a work group, which must include, at a  
9 minimum: Persons who currently use controlled substances outside the  
10 legal authority of a prescription or valid practitioner order;  
11 persons in recovery from substance use disorder who previously used  
12 substances outside the legal authority of a prescription or valid  
13 practitioner order; representatives from law enforcement; a  
14 representative of public defenders; a representative of prosecutors;  
15 and experts relevant to setting threshold amounts of controlled  
16 substances.

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

19 **Sec. 6.** RCW 69.50.101 and 2020 c 133 s 2 and 2020 c 80 s 43 are  
20 each reenacted and amended to read as follows:

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

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

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

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

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

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

35 (d) "CBD concentration" has the meaning provided in RCW  
36 69.51A.010.

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

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

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

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

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

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

18 (2) The term does not include:

19 (i) a controlled substance;

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

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

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

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

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

34 (k) "Designated provider" has the meaning provided in RCW  
35 69.51A.010.

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

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

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

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

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

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

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

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

27 (t) "Immediate precursor" means a substance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (2) Synthetic opiate and any derivative of synthetic opiate,  
39 including their isomers, esters, ethers, salts, and salts of isomers,  
40 esters, and ethers, whenever the existence of the isomers, esters,

1 ethers, and salts is possible within the specific chemical  
2 designation.

3 (3) Poppy straw and concentrate of poppy straw.

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

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

8 (6) Cocaine base.

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

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

13 (hh) "Opiate" means any substance having an addiction-forming or  
14 addiction-sustaining liability similar to morphine or being capable  
15 of conversion into a drug having addiction-forming or addiction-  
16 sustaining liability. The term includes opium, substances derived  
17 from opium (opium derivatives), and synthetic opiates. The term does  
18 not include, unless specifically designated as controlled under RCW  
19 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan  
20 and its salts (dextromethorphan). The term includes the racemic and  
21 levorotatory forms of dextromethorphan.

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

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

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

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

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

36 (~~(mm)~~) (nn) "Practitioner" means:

37 (1) A physician under chapter 18.71 RCW; a physician assistant  
38 under chapter 18.71A RCW; an osteopathic physician and surgeon under  
39 chapter 18.57 RCW; an optometrist licensed under chapter 18.53 RCW  
40 who is certified by the optometry board under RCW 18.53.010 subject

1 to any limitations in RCW 18.53.010; a dentist under chapter 18.32  
2 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a  
3 veterinarian under chapter 18.92 RCW; a registered nurse, advanced  
4 registered nurse practitioner, or licensed practical nurse under  
5 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW  
6 who is licensed under RCW 18.36A.030 subject to any limitations in  
7 RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific  
8 investigator under this chapter, licensed, registered or otherwise  
9 permitted insofar as is consistent with those licensing laws to  
10 distribute, dispense, conduct research with respect to or administer  
11 a controlled substance in the course of their professional practice  
12 or research in this state.

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

17 (3) A physician licensed to practice medicine and surgery, a  
18 physician licensed to practice osteopathic medicine and surgery, a  
19 dentist licensed to practice dentistry, a podiatric physician and  
20 surgeon licensed to practice podiatric medicine and surgery, a  
21 licensed physician assistant or a licensed osteopathic physician  
22 assistant specifically approved to prescribe controlled substances by  
23 his or her state's medical commission or equivalent and his or her  
24 supervising physician, an advanced registered nurse practitioner  
25 licensed to prescribe controlled substances, or a veterinarian  
26 licensed to practice veterinary medicine in any state of the United  
27 States.

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

33 (~~(pp)~~) (pp) "Production" includes the manufacturing, planting,  
34 cultivating, growing, or harvesting of a controlled substance.

35 (~~(qq)~~) (qq) "Qualifying patient" has the meaning provided in  
36 RCW 69.51A.010.

37 (~~(rr)~~) (rr) "Recognition card" has the meaning provided in RCW  
38 69.51A.010.

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

4       (~~(ss)~~) (tt) "Secretary" means the secretary of health or the  
5 secretary's designee.

6       (~~(ttt)~~) (uu) "State," unless the context otherwise requires,  
7 means a state of the United States, the District of Columbia, the  
8 Commonwealth of Puerto Rico, or a territory or insular possession  
9 subject to the jurisdiction of the United States.

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

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

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

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

29       **Sec. 7.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to  
30 read as follows:

31       (1) Except as authorized by this chapter, it is unlawful for any  
32 person to create(~~(r)~~) or deliver a counterfeit substance, or possess  
33 a counterfeit substance in excess of the applicable personal use  
34 amount.

35       (2) Any person who violates this section with respect to:

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



1 not more than ten years, fined not more than twenty-five thousand  
2 dollars, or both;

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

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

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

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

15 **Sec. 8.** RCW 69.50.4013 and 2017 c 317 s 15 are each amended to  
16 read as follows:

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

23 (2) Except as provided in RCW 69.50.4014, any person who violates  
24 this section is guilty of a class C felony punishable under chapter  
25 9A.20 RCW.

26 (3)(a) The possession, by a person twenty-one years of age or  
27 older, of useable marijuana, marijuana concentrates, or marijuana-  
28 infused products in amounts that do not exceed those set forth in RCW  
29 69.50.360(3) is not a violation of this section, this chapter, or any  
30 other provision of Washington state law.

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

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

8 (i) One-half ounce of useable marijuana;

9 (ii) Eight ounces of marijuana-infused product in solid form;

10 (iii) Thirty-six ounces of marijuana-infused product in liquid  
11 form; or

12 (iv) Three and one-half grams of marijuana concentrates.

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

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

18 (ii) The marijuana or marijuana product must be in the original  
19 packaging as purchased from the marijuana retailer.

20 (5) No person under twenty-one years of age may possess,  
21 manufacture, sell, or distribute marijuana, marijuana-infused  
22 products, or marijuana concentrates, regardless of THC concentration.  
23 This does not include qualifying patients with a valid authorization.

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

29 **Sec. 9.** RCW 69.50.4014 and 2015 2nd sp.s. c 4 s 505 are each  
30 amended to read as follows:

31 Except as provided in RCW 69.50.401(2)(c) (~~or as otherwise~~  
32 ~~authorized by this chapter~~)), any person found guilty of possession  
33 of forty grams or less of marijuana is guilty of a misdemeanor,  
34 unless the amount of marijuana does not exceed the applicable  
35 personal use amount or is otherwise authorized by this chapter.

36 **Sec. 10.** RCW 69.50.412 and 2019 c 64 s 22 are each amended to  
37 read as follows:

1 (1) It is unlawful for any person to use drug paraphernalia to  
2 plant, propagate, cultivate, grow, harvest, manufacture, compound,  
3 convert, produce, process, prepare, test, analyze, pack, repack,  
4 store, contain, conceal, inject, ingest, inhale, or otherwise  
5 introduce into the human body a controlled substance other than  
6 marijuana, unless the drug paraphernalia is used to prepare, test,  
7 analyze, pack, repack, store, contain, conceal, inject, ingest,  
8 inhale, or otherwise introduce into the human body a personal use  
9 amount of a controlled substance other than marijuana. Any person who  
10 violates this subsection is guilty of a misdemeanor.

11 (2) It is unlawful for any person to deliver, possess with intent  
12 to deliver, or manufacture with intent to deliver drug paraphernalia,  
13 knowing, or under circumstances where one reasonably should know,  
14 that it will be used to plant, propagate, cultivate, grow, harvest,  
15 manufacture, compound, convert, produce, process, prepare, test,  
16 analyze, pack, repack, store, contain, conceal, inject, ingest,  
17 inhale, or otherwise introduce into the human body a controlled  
18 substance other than marijuana. This subsection does not apply to a  
19 social service agency or health care agency possessing or  
20 distributing drug paraphernalia for the purposes of distributing the  
21 paraphernalia to others for personal use. Any person who violates  
22 this subsection is guilty of a misdemeanor.

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

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

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

36 **Sec. 11.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to  
37 read as follows:

38 (1) It shall be unlawful for any person to sell(~~(r)~~) or deliver  
39 any legend drug, or possess any legend drug in excess of an

1 applicable personal use amount, except upon the order or prescription  
2 of a physician under chapter 18.71 RCW, an osteopathic physician and  
3 surgeon under chapter 18.57 RCW, an optometrist licensed under  
4 chapter 18.53 RCW who is certified by the optometry board under RCW  
5 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician  
6 and surgeon under chapter 18.22 RCW, a veterinarian under chapter  
7 18.92 RCW, a commissioned medical or dental officer in the United  
8 States armed forces or public health service in the discharge of his  
9 or her official duties, a duly licensed physician or dentist employed  
10 by the veterans administration in the discharge of his or her  
11 official duties, a registered nurse or advanced registered nurse  
12 practitioner under chapter 18.79 RCW when authorized by the nursing  
13 care quality assurance commission, a pharmacist licensed under  
14 chapter 18.64 RCW to the extent permitted by drug therapy guidelines  
15 or protocols established under RCW 18.64.011 and authorized by the  
16 commission and approved by a practitioner authorized to prescribe  
17 drugs, a physician assistant under chapter 18.71A RCW when authorized  
18 by the Washington medical commission, or any of the following  
19 professionals in any province of Canada that shares a common border  
20 with the state of Washington or in any state of the United States: A  
21 physician licensed to practice medicine and surgery or a physician  
22 licensed to practice osteopathic medicine and surgery, a dentist  
23 licensed to practice dentistry, a podiatric physician and surgeon  
24 licensed to practice podiatric medicine and surgery, a licensed  
25 advanced registered nurse practitioner, a licensed physician  
26 assistant, or a veterinarian licensed to practice veterinary  
27 medicine: PROVIDED, HOWEVER, That the above provisions shall not  
28 apply to sale, delivery, or possession by drug wholesalers or drug  
29 manufacturers, or their agents or employees, or to any practitioner  
30 acting within the scope of his or her license, or to a common or  
31 contract carrier or warehouse operator, or any employee thereof,  
32 whose possession of any legend drug is in the usual course of  
33 business or employment: PROVIDED FURTHER, That nothing in this  
34 chapter or chapter 18.64 RCW shall prevent a family planning clinic  
35 that is under contract with the health care authority from selling,  
36 delivering, possessing, and dispensing commercially prepackaged oral  
37 contraceptives prescribed by authorized, licensed health care  
38 practitioners: PROVIDED FURTHER, That nothing in this chapter  
39 prohibits possession or delivery of legend drugs by an authorized

1 collector or other person participating in the operation of a drug  
2 take-back program authorized in chapter 69.48 RCW.

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

6 (b) A violation of this section involving possession is a  
7 misdemeanor.

8 (3) For the purpose of this section, "personal use amount" has  
9 the meaning provided in RCW 69.50.101.

10 **Sec. 12.** RCW 10.31.110 and 2019 c 326 s 3 and 2019 c 325 s 5004  
11 are each reenacted and amended to read as follows:

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

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

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

32 (c) Refer the individual to a ~~((mental health professional))~~  
33 designated crisis responder for evaluation for initial detention and  
34 proceeding under chapter 71.05 RCW; ~~((or))~~

35 (d) Refer the individual to youth, adult, or geriatric mobile  
36 crisis response services as appropriate;

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

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

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

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

26       (4) Any agreement to participate in treatment and supportive  
27 services shall not require individuals to stipulate to any of the  
28 alleged facts regarding the criminal activity as a prerequisite to  
29 participation in a (~~mental~~) behavioral health treatment  
30 alternative. The agreement is inadmissible in any criminal or civil  
31 proceeding. The agreement does not create immunity from prosecution  
32 for the alleged criminal activity.

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

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

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

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

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.101

2 RCW to read as follows:

3 (1) Beginning July 1, 2022, all law enforcement personnel  
4 required to complete basic law enforcement training under RCW  
5 43.101.200 must receive training on law enforcement interaction with  
6 persons with substance use disorders, including referral to treatment  
7 and recovery services, as part of the basic law enforcement training.  
8 The training must be developed by the commission in consultation with  
9 appropriate substance use disorder recovery advocacy organizations  
10 and with appropriate community, local, and state organizations and  
11 agencies that have expertise in the area of working with persons with  
12 substance use disorders, including law enforcement diversion of such  
13 individuals to community-based care. In developing the training, the  
14 commission must also examine existing courses certified by the  
15 commission that relate to persons with a substance use disorder, and  
16 should draw on existing training partnerships with the Washington  
17 association of sheriffs and police chiefs.

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

22 (a) Proper procedures for referring persons to treatment and  
23 supportive services in accordance with section 2 of this act;

24 (b) The cause and nature of substance use disorders, including  
25 the role of trauma;

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

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

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

33 (f) Appropriate language usage when interacting with persons with  
34 a substance use disorder;

35 (g) Alternatives to lethal force when interacting with  
36 potentially dangerous persons with a substance use disorder;

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

39 (i) Community and state resources available to serve persons with  
40 substance use disorders and how these resources can be best used by

1 law enforcement to support persons with a substance use disorder in  
2 their communities.

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

8 NEW SECTION. **Sec. 14.** A new section is added to chapter 9.94A  
9 RCW to read as follows:

10 (1) Notwithstanding RCW 9.94A.640 or any other provision of this  
11 chapter, any person convicted of possession of a controlled substance  
12 or counterfeit substance before December 1, 2022, may apply to the  
13 sentencing court for a vacation of the applicant's record of  
14 conviction for the offense, regardless of whether the person  
15 completed any applicable sentencing conditions or received a  
16 certificate of discharge under RCW 9.94A.637. This subsection applies  
17 to offenses under RCW 69.50.401, 69.50.4011, 69.50.4013, and their  
18 predecessor statutes. Upon receipt of an application under this  
19 section, the court shall clear the record of conviction by: (a)  
20 Permitting the person to withdraw the plea of guilty and to enter a  
21 plea of not guilty; (b) if the person has been convicted after a plea  
22 of not guilty, setting aside the verdict of guilty; or (c) dismissing  
23 the information or indictment against the person.

24 (2) A conviction vacated under this section may not be included  
25 in the person's criminal history for purposes of determining a  
26 sentence in any subsequent conviction, and the person must be  
27 released from all penalties and disabilities resulting from the  
28 offense. For all purposes, including responding to questions on  
29 employment applications, a person whose conviction has been vacated  
30 may state that the person has never been convicted of that crime. A  
31 conviction that has been vacated under this section may not be  
32 disseminated or disclosed by the state patrol or local law  
33 enforcement agency to any person, except other criminal justice  
34 enforcement agencies. Nothing in this section affects the  
35 requirements for restoring a right to possess a firearm under RCW  
36 9.41.040.

37 **Sec. 15.** RCW 9.94A.640 and 2019 c 331 s 3 are each amended to  
38 read as follows:



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

10 (2) (~~(A)~~) Except as provided under section 14 of this act, an  
11 offender may not have the record of conviction cleared if:

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

14 (b) The offense was a violent offense as defined in RCW 9.94A.030  
15 or crime against children or other persons as defined in RCW  
16 43.43.830, except the following offenses may be vacated if the  
17 conviction did not include a firearm, deadly weapon, or sexual  
18 motivation enhancement: (i) Assault in the second degree under RCW  
19 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when  
20 not committed against a law enforcement officer or peace officer; and  
21 (iii) robbery in the second degree under RCW 9A.56.210;

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

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

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

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

37 (g) The offense was a felony described in RCW 46.61.502 or  
38 46.61.504.

39 (3)(a) Except as otherwise provided, once the court vacates a  
40 record of conviction under subsection (1) of this section, the fact

1 that the offender has been convicted of the offense shall not be  
2 included in the offender's criminal history for purposes of  
3 determining a sentence in any subsequent conviction, and the offender  
4 shall be released from all penalties and disabilities resulting from  
5 the offense. For all purposes, including responding to questions on  
6 employment applications, an offender whose conviction has been  
7 vacated may state that the offender has never been convicted of that  
8 crime. A conviction that has been vacated under this section may not  
9 be disseminated or disclosed by the state patrol or local law  
10 enforcement agency to any person, except other criminal justice  
11 enforcement agencies. Nothing in this section affects or prevents the  
12 use of an offender's prior conviction in a later criminal  
13 prosecution, and nothing in this section affects the requirements for  
14 restoring a right to possess a firearm under RCW 9.41.040.

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

19 NEW SECTION. **Sec. 16.** A new section is added to chapter 9.96  
20 RCW to read as follows:

21 (1) Notwithstanding RCW 9.96.060 or any other provision of this  
22 chapter, any person convicted of possession of a controlled  
23 substance, counterfeit substance, or legend drug, or use of  
24 paraphernalia, before December 1, 2022, may apply to the sentencing  
25 court for a vacation of the applicant's record of conviction for the  
26 offense, regardless of whether the person completed any applicable  
27 sentencing conditions. This subsection applies to offenses under RCW  
28 69.50.4011, 69.50.4013, 69.50.4014, 69.50.412(1), 69.41.030, and  
29 their predecessor statutes, including but not limited to RCW  
30 69.50.401, and any offense under an equivalent municipal ordinance.  
31 Upon receipt of an application under this section, the court shall  
32 clear the record of conviction by: (a) Permitting the person to  
33 withdraw the plea of guilty and to enter a plea of not guilty; (b) if  
34 the person has been convicted after a plea of not guilty, setting  
35 aside the verdict of guilty; or (c) dismissing the information or  
36 indictment against the person.

37 (2) A conviction vacated under this section may not be included  
38 in the person's criminal history for purposes of determining a  
39 sentence in any subsequent conviction, and the person shall be

1 released from all penalties and disabilities resulting from the  
2 offense. For all purposes, including responding to questions on  
3 employment or housing applications, a person whose conviction has  
4 been vacated under this section may state that he or she has never  
5 been convicted of that crime. A conviction that has been vacated  
6 under this section may not be disseminated or disclosed by the state  
7 patrol or local law enforcement agency to any person, except other  
8 criminal justice enforcement agencies. Nothing in this section  
9 affects the requirements for restoring a right to possess a firearm  
10 under RCW 9.41.040.

11 **Sec. 17.** RCW 9.96.060 and 2020 c 29 s 18 are each amended to  
12 read as follows:

13 (1) When vacating a conviction under this section or section 16  
14 of this act, the court effectuates the vacation by: (a) (i) Permitting  
15 the applicant to withdraw the applicant's plea of guilty and to enter  
16 a plea of not guilty; or (ii) if the applicant has been convicted  
17 after a plea of not guilty, the court setting aside the verdict of  
18 guilty; and (b) the court dismissing the information, indictment,  
19 complaint, or citation against the applicant and vacating the  
20 judgment and sentence.

21 (2) Every person convicted of a misdemeanor or gross misdemeanor  
22 offense may apply to the sentencing court for a vacation of the  
23 applicant's record of conviction for the offense. If the court finds  
24 the applicant meets the requirements of this subsection, the court  
25 may in its discretion vacate the record of conviction. Except as  
26 provided in subsections (3), (4), and (5) of this section and section  
27 13 of this act, an applicant may not have the record of conviction  
28 for a misdemeanor or gross misdemeanor offense vacated if any one of  
29 the following is present:

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

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

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

37 (d) The offense was a violation of RCW 46.61.502 (driving while  
38 under the influence), 46.61.504 (actual physical control while under  
39 the influence), 9.91.020 (operating a railroad, etc. while

1 intoxicated), or the offense is considered a "prior offense" under  
2 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
3 violation within (~~ten~~) 10 years of the date of arrest for the prior  
4 offense or less than (~~ten~~) 10 years has elapsed since the date of  
5 the arrest for the prior offense;

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

11 (f) The applicant was convicted of a misdemeanor or gross  
12 misdemeanor offense as defined in RCW 10.99.020, or the court  
13 determines after a review of the court file that the offense was  
14 committed by one family or household member against another or by one  
15 intimate partner against another, or the court, after considering the  
16 damage to person or property that resulted in the conviction, any  
17 prior convictions for crimes defined in RCW 10.99.020, or for  
18 comparable offenses in another state or in federal court, and the  
19 totality of the records under review by the court regarding the  
20 conviction being considered for vacation, determines that the offense  
21 involved domestic violence, and any one of the following factors  
22 exist:

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

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

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

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

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

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

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

14 (3) Subject to RCW 9.96.070, every person convicted of  
15 prostitution under RCW 9A.88.030 who committed the offense as a  
16 result of being a victim of trafficking, RCW 9A.40.100, promoting  
17 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
18 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
19 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
20 7101 et seq. may apply to the sentencing court for vacation of the  
21 applicant's record of conviction for the prostitution offense. An  
22 applicant may not have the record of conviction for prostitution  
23 vacated if any one of the following is present:

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

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

38 (4) Every person convicted prior to January 1, 1975, of violating  
39 any statute or rule regarding the regulation of fishing activities,  
40 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,

1 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
2 who claimed to be exercising a treaty Indian fishing right, may apply  
3 to the sentencing court for vacation of the applicant's record of the  
4 misdemeanor, gross misdemeanor, or felony conviction for the offense.  
5 If the person is deceased, a member of the person's family or an  
6 official representative of the tribe of which the person was a member  
7 may apply to the court on behalf of the deceased person.  
8 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
9 vacate the record of conviction if:

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

12 (b) The state has been enjoined from taking enforcement action of  
13 the statute or rule to the extent that it interferes with a treaty  
14 Indian fishing right as determined under *United States v. Washington*,  
15 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
16 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
17 any other state supreme court or federal court decision.

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

29 (6)(a) Except as provided in (c) of this subsection, once the  
30 court vacates a record of conviction under this section, the person  
31 shall be released from all penalties and disabilities resulting from  
32 the offense and the fact that the person has been convicted of the  
33 offense shall not be included in the person's criminal history for  
34 purposes of determining a sentence in any subsequent conviction. For  
35 all purposes, including responding to questions on employment or  
36 housing applications, a person whose conviction has been vacated  
37 under this section may state that he or she has never been convicted  
38 of that crime. However, nothing in this section affects the  
39 requirements for restoring a right to possess a firearm under RCW  
40 9.41.040. Except as provided in (b) of this subsection, nothing in

1 this section affects or prevents the use of an offender's prior  
2 conviction in a later criminal prosecution.

3 (b) When a court vacates a record of domestic violence as defined  
4 in RCW 10.99.020 under this section, the state may not use the  
5 vacated conviction in a later criminal prosecution unless the  
6 conviction was for: (i) Violating the provisions of a restraining  
7 order, no-contact order, or protection order restraining or enjoining  
8 the person or restraining the person from going on to the grounds of  
9 or entering a residence, workplace, school, or day care, or  
10 prohibiting the person from knowingly coming within, or knowingly  
11 remaining within, a specified distance of a location (RCW 10.99.040,  
12 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.44.063, 26.44.150,  
13 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)  
14 stalking (RCW 9A.46.110). A vacated conviction under this section is  
15 not considered a conviction of such an offense for the purposes of 27  
16 C.F.R. 478.11.

17 (c) A conviction vacated on or after July 28, 2019, qualifies as  
18 a prior conviction for the purpose of charging a present recidivist  
19 offense as defined in RCW 9.94A.030 occurring on or after July 28,  
20 2019.

21 (7) The clerk of the court in which the vacation order is entered  
22 shall immediately transmit the order vacating the conviction to the  
23 Washington state patrol identification section and to the local  
24 police agency, if any, which holds criminal history information for  
25 the person who is the subject of the conviction. The Washington state  
26 patrol and any such local police agency shall immediately update  
27 their records to reflect the vacation of the conviction, and shall  
28 transmit the order vacating the conviction to the federal bureau of  
29 investigation. A conviction that has been vacated under this section  
30 may not be disseminated or disclosed by the state patrol or local law  
31 enforcement agency to any person, except other criminal justice  
32 enforcement agencies.

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

35 The state of Washington fully occupies and preempts the entire  
36 field of setting penalties for violations of the controlled  
37 substances act and of establishing policies pertaining to personal  
38 use amounts as provided under section 5 of this act. Cities, towns,  
39 and counties or other municipalities may enact only those laws and

1 ordinances relating to controlled substances that are consistent with  
2 this chapter. Such local ordinances shall have the same penalties as  
3 provided for by state law. Local laws and ordinances that are  
4 inconsistent with the requirements of state law shall not be enacted  
5 and are preempted and repealed, regardless of the nature of the code,  
6 charter, or home rule status of the city, town, county, or  
7 municipality. Nothing in this section shall be construed to inhibit  
8 local jurisdictions from creating additional channels for diversion  
9 to community-based care of individuals who commit law violations  
10 related to complex behavioral health needs, above those required by  
11 state law including in RCW 10.31.110.

12  
13

**PART 4**  
**CONSTRUCTION**

14 NEW SECTION. **Sec. 19.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 20.** Sections 6 through 12 and 14 through 18  
19 of this act take effect December 1, 2022.

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