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**SENATE BILL 5976**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senator Salomon

AN ACT Relating to intervention for substance use disorders; amending RCW 10.31.115, 69.50.4011, 69.50.4013, 69.50.4014, 69.41.030, and 69.50.412; adding a new section to chapter 69.50 RCW; prescribing penalties; and providing expiration dates.

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

**Sec.**  RCW 10.31.115 and 2021 c 311 s 13 are each amended to read as follows:

(1) For all individuals who otherwise would be subject to arrest for possession of a counterfeit substance under RCW 69.50.4011, possession of a controlled substance under RCW 69.50.4013, possession of 40 grams or less of marijuana under RCW 69.50.4014, or possession of a legend drug under RCW 69.41.030(2)(b), in lieu of jail booking and referral to the prosecutor, law enforcement shall offer a referral to assessment and services available pursuant to RCW 10.31.110 or other program or entity responsible for receiving referrals in lieu of legal system involvement, which may include the recovery navigator program established under RCW 71.24.115.

(2) If law enforcement agency records reflect that an individual has been diverted to referral for assessment and services ((~~twice~~)) once or more previously, or if no statewide database of records for referral is available, officers ((~~may, but are not required to, make additional diversion efforts~~)) shall refer the individual to the prosecutor for the filing of a petition for substance use disorder intervention or prosecution of the offense.

((~~(3) Nothing in this section precludes prosecutors from diverting or declining to file any charges for possession offenses that are referred under RCW 69.50.4011, 69.50.4013, 69.50.4014, or 69.41.030(2)(b) in the exercise of their discretion.~~))

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

(1) Except as authorized by this chapter, it is unlawful for:

(a) Any person to create or deliver a counterfeit substance; or

(b) Any person to knowingly possess a counterfeit substance.

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

(a) A counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ((~~ten~~)) 10 years, fined not more than ((~~twenty-five thousand dollars~~)) $25,000, 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~~)) 10 years, fined not more than ((~~twenty-five thousand dollars~~)) $25,000, or both;

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

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

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

(3) ((~~A violation of~~)) When a person violates subsection (1)(b) of this section ((~~is a misdemeanor. The~~)), the prosecutor ((~~is encouraged to divert such cases for assessment, treatment, or other services~~)) shall file a petition for substance use disorder intervention as provided in section 7 of this act.

**Sec.**  RCW 69.50.4013 and 2021 c 311 s 9 are each amended to read as follows:

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

(2) Except as provided in RCW 69.50.4014, ((~~any person who violates this section is guilty of a misdemeanor~~)) when a person violates this section, the prosecutor shall file a petition for substance use disorder intervention as provided in section 7 of this act.

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

~~(4)~~))(a) The possession, by a person ((~~twenty-one~~)) 21 years of age or older, of useable marijuana, marijuana concentrates, or marijuana-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section, this chapter, or any other provision of Washington state law.

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

((~~(5)~~)) (4)(a) The delivery by a person ((~~twenty-one~~)) 21 years of age or older to one or more persons ((~~twenty-one~~)) 21 years of age or older, during a single ((~~twenty-four~~)) 24-hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the following marijuana products, is not a violation of this section, this chapter, or any other provisions of Washington state law:

(i) One-half ounce of useable marijuana;

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

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

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

(b) The act of delivering marijuana or a marijuana product as authorized under this subsection ((~~(5)~~)) (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.

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

((~~(7)~~)) (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 2021 c 311 s 10 are each amended to read as follows:

(1) Except as provided in RCW 69.50.401(2)(c) or as otherwise authorized by this chapter, ((~~any person found guilty of knowing possession of forty~~)) it is unlawful for a person to possess 40 grams or less of marijuana ((~~is guilty of a misdemeanor. The prosecutor is encouraged to divert cases under this section for assessment, treatment, or other services~~)).

(2) When a person violates this section, the prosecutor shall file a petition for substance use disorder intervention as provided in section 7 of this act.

**Sec.**  RCW 69.41.030 and 2021 c 311 s 11 are each amended to read as follows:

(1) It shall be unlawful for any person to sell, deliver, or knowingly possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, a pharmacist licensed under chapter 18.64 RCW to the extent permitted by drug therapy guidelines or protocols established under RCW 18.64.011 and authorized by the commission and approved by a practitioner authorized to prescribe drugs, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the Washington medical commission, or any of the following professionals in any province of Canada that shares a common border with the state of Washington or in any state of the United States: A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed advanced registered nurse practitioner, a licensed physician assistant, a licensed osteopathic physician assistant, or a veterinarian licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouse operator, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the health care authority from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners: PROVIDED FURTHER, That nothing in this chapter prohibits possession or delivery of legend drugs by an authorized collector or other person participating in the operation of a drug take-back program authorized in chapter 69.48 RCW.

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

(b) ((~~A violation of this section involving possession is a misdemeanor. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.~~)) When a person commits a violation of this section involving possession, the prosecutor shall file a petition for substance use disorder intervention as provided in section 7 of this act.

**Sec.**  RCW 69.50.412 and 2021 c 311 s 14 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, or prepare 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, or prepare a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under ((~~eighteen~~)) 18 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 unlawful for any person to use drug paraphernalia to test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance other than marijuana. When a person commits a violation of this subsection, the prosecutor may file a petition for substance use disorder intervention as provided in section 7 of this act. A person's third violation of this subsection may be filed as a misdemeanor.

(6) 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.

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

(1) On a person's first or second violation of RCW 69.50.4011, 69.50.4013, 69.50.4014, or 69.41.030, the prosecutor may file a petition in district or municipal court for substance use disorder intervention.

(2) A petition for substance use disorder intervention shall consist of a written notification to the court alleging that the individual has one or more violations for possession of a controlled substance; the person is believed to have a substance use disorder; actions taken so far have been unsuccessful in addressing the individual's substance use disorder; and court intervention and supervision are necessary to assist the entity in addressing the individual's substance use disorder. The petition shall set forth facts that support the allegations in this section, including prior referrals or violations, as well as the current violation.

(3) Petitions filed under this section may be served by certified mail, return receipt requested. If such service is unsuccessful, or the return receipt is not signed by the addressee, personal service is required. A warrant to secure an appearance may be issued for failure to appear after proper service is shown.

(4)(a) If the allegations in the petition constitute probable cause to believe the person has a substance use disorder, the court shall order the person to submit to a substance use disorder assessment.

(b) An assessment shall include a description of the intervention and prevention efforts to be employed to address the person's substance use disorder and a timeline for completion.

(c) If the person does not cooperate with the substance use disorder assessment, the court may issue a bench warrant to compel the person's appearance.

(5) The court shall set a hearing for a determination as to whether the person has a substance use disorder. If the allegations in the petition are established by a preponderance of the evidence, the court shall grant the petition and enter an order assuming jurisdiction and entering an individualized action plan for a period of one year.

(6) If the court assumes jurisdiction, the prosecutor shall periodically report to the court on the progress of the individual. The first report must be received no later than three months from the date the court assumes jurisdiction.

(7) Failure to comply with an individualized action plan may be considered contempt of court. In addition to other sanctions, the court may sanction the person with up to seven days in confinement per calendar month.

(8) The person shall pay the cost of any assessment and treatment ordered under this section unless the court finds that the person is indigent and no third-party insurance coverage is available, in which case the state shall pay the cost.

(9) Nothing in this section shall be construed to limit the court's inherent contempt power or curtail its exercise.

NEW SECTION. **Sec.**  Sections 2 through 4 of this act expire July 1, 2023.

NEW SECTION. **Sec.**  Section 5 of this act expires July 1, 2022.

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