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**SENATE BILL 5467**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Salomon, Lovick, Cleveland, Mullet, Rolfes, Wellman, Keiser, Kauffman, Conway, Hunt, Holy, Braun, L. Wilson, Liias, Van De Wege, and Gildon

AN ACT Relating to encouraging treatment for possession of certain counterfeit drugs or controlled substances; amending RCW 69.50.4011, 69.50.4013, 69.50.4014, 69.41.030, 9.96.060, and 10.31.110; amending 2021 c 311 s 29 (uncodified); adding a new section to chapter 69.50 RCW; adding a new section to chapter 43.43 RCW; repealing RCW 10.31.115; prescribing penalties; providing an expiration date; and declaring an emergency.

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

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

(1) Except as authorized by this chapter, it is unlawful for any person to ((~~create,~~)):

(a) Create or deliver((~~, or possess~~)) a counterfeit substance; or

(b) 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) Any person who violates subsection (1)(b) of this section is guilty of a gross misdemeanor punishable under section 5 of this act.

(4) If a peace officer cites an individual for a violation of subsection (1)(b) of this section, no warrant may be issued for a failure to appear at arraignment if the individual was not personally served with the notice to appear which shall include the time and place the individual is to appear in court.

**Sec.**  RCW 69.50.4013 and 2022 c 16 s 86 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 ((~~class C felony punishable under chapter 9A.20 RCW~~)) gross misdemeanor punishable under section 5 of this act.

(3) If a peace officer cites an individual for a violation of this section, no warrant may be issued for a failure to appear at arraignment if the individual was not personally served with the notice to appear which shall include the time and place the individual is to appear in court.

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

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

(i) One-half ounce of useable cannabis;

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

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

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

(b) The act of delivering cannabis or a cannabis product as authorized under this subsection ((~~(4)~~)) (5) 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 cannabis or cannabis product must be in the original packaging as purchased from the cannabis retailer.

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

((~~(6)~~)) (7) The possession by a qualifying patient or designated provider of cannabis concentrates, useable cannabis, cannabis-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 2022 c 16 s 88 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 grams or less of cannabis is guilty of a misdemeanor.

(2) If a peace officer cites an individual for a violation of subsection (1) of this section, no warrant may be issued for a failure to appear at arraignment if the individual was not personally served with the notice to appear which shall include the time and place the individual is to appear in court.

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

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

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

(b) A violation of this section involving knowing possession is a misdemeanor punishable under section 5 of this act.

(3) If a peace officer cites an individual for a violation of this section involving knowing possession, no warrant may be issued for a failure to appear at arraignment if the individual was not personally served with the notice to appear which shall include the time and place the individual is to appear in court.

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

(1) In courts of limited jurisdiction, an individual who is convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) shall be sentenced as follows:

(a) For individuals convicted of a violation of RCW 69.50.4011(1)(b) or 69.50.4013, if the sentenced individual agrees as a condition of probation to submit to a substance use disorder assessment and comply with recommended treatment, to a term of confinement of up to 364 days all of which shall be suspended for a period not to exceed two years. The court shall give the individual credit for all confinement time served before the sentence if the confinement was solely in regard to the offense for which the individual is being sentenced;

(b) For individuals convicted of a violation of RCW 69.41.030(2)(b), if the sentenced individual agrees as a condition of probation to submit to a substance use disorder assessment and comply with recommended treatment, to a term of confinement of up to 90 days all of which shall be suspended for a period not to exceed one year; and

(c) For individuals convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) where the legend drug is classified as schedule II substance under RCW 69.50.206, if the sentenced individual refuses to submit to a substance use disorder assessment and comply with the recommended treatment as a condition of probation, to imprisonment for a term of not less than 45 days. The sentencing court shall give the individual credit for all confinement time served before the sentencing if the confinement was solely in regard to the offense for which the individual is being sentenced.

(2) For individuals sentenced under subsection (1)(a) or (b) of this section, the court shall order as a condition of probation the individual to submit to a substance use disorder assessment and comply with the recommended treatment. Subject to state funding, the court shall make available the opportunity for individuals sentenced under subsection (1)(a) or (b) of this section to receive the substance use disorder assessment at the courthouse at the time of sentencing.

(a) A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by a substance use disorder treatment program licensed or certified by the department of health or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the court. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol and drug information school licensed or certified by the department of health or more intensive treatment in an approved treatment program licensed or certified by the department of health.

(b) The diagnostic evaluation and treatment recommendation shall include the following:

(i) Type of treatment;

(ii) Nature of treatment;

(iii) Length of treatment;

(iv) A treatment time schedule; and

(v) Approximate cost of the treatment.

(3) A person subject to substance use disorder assessment and treatment shall be required by the court to complete a course in an alcohol and drug information school certified by the department of health or to complete more intensive treatment in a treatment program licensed or certified by the department of health, as determined by the court.

(4) All individuals providing treatment under this section shall implement the integrated and comprehensive screening and assessment process for co-occurring substance use and mental health disorders adopted under RCW 71.24.630.

(5) For the purpose of completing a diagnostic evaluation and treatment, any entity that provides assessment, diagnostic evaluation and treatment recommendation, or treatment under this section must assume that the alleged violation of RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030 is founded and will be proven.

(6) The department of health must adopt rules prescribing standards for approval for substance use disorder treatment programs. The department of health must periodically review the costs of alcohol and drug information schools and treatment programs.

(7) Any agency that provides treatment ordered under this section, must immediately report to the appropriate probation department where applicable, otherwise to the court, any noncompliance by a person with the conditions of the person's ordered treatment. The court shall notify the department of health of any failure by an agency to report noncompliance. Any agency with knowledge of noncompliance that fails to report shall be fined $250 by the department of health. Upon three such failures by an agency within one year, the department of health shall revoke the agency's license or certification under this section.

(8) Subject to the availability of funds appropriated for this purpose, the substance use disorder assessment and recommended treatment as ordered by the court shall be provided at no cost for sentenced individuals who have been found to be indigent by the court.

(9) As a condition of probation, the sentenced individual must comply with the treatment recommendations of the substance use disorder assessment.

(10)(a) If it appears to the prosecuting attorney or the court, that the sentenced individual is performing unsatisfactorily in the recommended treatment program, the prosecuting attorney, or the court on its own, shall make a motion for a hearing to consider sanctions. After notice to the sentenced individual, the court shall hold a hearing to determine if a sanction or revocation of the individual's suspended sentence, or any part thereof, is warranted under RCW 3.50.340 or 3.66.069.

(b) If the court finds the sentenced individual has made reasonable efforts to comply with the recommended treatment but cannot comply either due to a lack of available treatment or, for sentenced individuals found to be indigent by the court, due to a lack of funding for treatment, no sanction for a failure to comply with the recommended treatment may include jail.

(c) For individuals sentenced under subsection (1)(a) of this section, if at any point the court finds by a preponderance of the evidence that the sentenced individual has willfully abandoned or demonstrated a consistent failure to comply with the recommended treatment, the court shall reinstate a term of imprisonment of no less than 45 days of the individual's suspended sentence to be served in total confinement and terminate the individual's probation. For individuals sentenced under subsection (1)(a) of this section, the court may deem any subsequent charge filed against the individual for violation of RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030 a willful abandonment of treatment.

(d) An individual serving a sentence under this section may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(1)(c).

(11) In courts of limited jurisdiction, an individual charged with violating RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030, who subsequently enrolls in and completes a substance use disorder treatment program licensed or certified by the department of health and files proof of completion with the court prior to conviction on the charge, may make a motion to dismiss the charge. Upon verification that the individual successfully completed the substance use disorder treatment program, the court must grant the motion and dismiss the charge.

(12) If the individual has successfully completed the recommended treatment program, the individual must file proof of successful completion with the court at which time the court must terminate probation and enter an order vacating the individual's conviction under RCW 9.96.060(6).

**Sec.**  RCW 9.96.060 and 2022 c 16 s 7 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If the applicant is a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, or the prosecutor applies on behalf of the state, the sentencing court may vacate the record of conviction if the application satisfies the requirements of RCW 9.96.080. When preparing or filing the petition, the prosecutor is not deemed to be providing legal advice or legal assistance on behalf of the victim, but is fulfilling an administrative function on behalf of the state in order to further their responsibility to seek to reform and improve the administration of criminal justice. A record of conviction vacated using the process in RCW 9.96.080 is subject to subsections ((~~(6) and~~)) (7) and (8) of this section.

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

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

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

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

(6) If an individual who successfully completes a substance use disorder treatment program as required under section 5 of this act files proof of completion with the court, upon verification that the individual successfully completed the substance use disorder treatment program, the court must vacate the conviction or convictions.

(7) A person who is a family member of a homicide victim may apply to the sentencing court on the behalf of the victim for vacation of the victim's record of conviction for prostitution under RCW 9A.88.030. If an applicant qualifies under this subsection, the court shall vacate the victim's record of conviction.

((~~(7)~~)) (8)(a) Except as provided in (c) of this subsection, once the court vacates a record of conviction under this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime. However, nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040. Except as provided in (b) of this subsection, nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(b) When a court vacates a record of domestic violence as defined in RCW 10.99.020 under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle (RCW 10.99.040, 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070, or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic violence protection order or vulnerable adult protection order entered under chapter 7.105 RCW. A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

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

((~~(8)~~)) (9) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

((~~(9)~~)) (10) For the purposes of this section, "cannabis" has the meaning provided in RCW 69.50.101.

NEW SECTION. **Sec.**  A new section is added to chapter 43.43 RCW to read as follows:

The Washington state patrol bureau of forensic laboratory services must complete the necessary analysis for any evidence submitted for a suspected violation of RCW 69.50.4011(1)(b), 69.50.4013, or 69.41.030 within 30 days of receipt of the request for analysis.

**Sec.**  RCW 10.31.110 and 2021 c 311 s 6 are each amended to read as follows:

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

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

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

(c) Refer the individual to a designated crisis responder for evaluation for initial detention and proceeding under chapter 71.05 RCW;

(d) Release the individual upon agreement to voluntary participation in outpatient treatment;

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

(f) Refer the individual to the regional entity responsible to receive referrals in lieu of legal system involvement, including the recovery navigator program described in RCW 71.24.115.

(2) If the individual is released to the community from the facilities in subsection (1)(a) through (c) of this section, the mental health provider or substance use disorder professional shall make reasonable efforts to inform the arresting officer of the planned release prior to release if the arresting officer has specifically requested notification and provided contact information to the provider.

(3) In deciding whether to refer the individual to treatment under this section, the police officer must be guided by local law enforcement diversion guidelines for behavioral health developed and mutually agreed upon with the prosecuting authority with an opportunity for consultation and comment by the defense bar and disability community. These guidelines must address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, if available, the substance use disorder history of the individual, if available, the opinions of a mental health professional, if available, the opinions of a substance use disorder professional, if available, and the circumstances surrounding the commission of the alleged offense. The guidelines must include a process for clearing outstanding warrants or referring the individual for assistance in clearing outstanding warrants, if any, and issuing a new court date, if appropriate, without booking or incarcerating the individual or disqualifying the individual from referral to treatment under this section, and define the circumstances under which such action is permissible. Referrals to services, care, and treatment for substance use disorder must be made in accordance with protocols developed for the recovery navigator program described in RCW 71.24.115.

(4) Any agreement to participate in treatment or services in lieu of jail booking or referring a case for prosecution shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in the alternative response described in this section. Any agreement is inadmissible in any criminal or civil proceeding. Such agreements do not create immunity from prosecution for the alleged criminal activity.

(5) If there are required terms of participation in the services or treatment to which an individual was referred under this section, and if the individual violates such terms and is therefore no longer participating in services:

(a) The behavioral health or service provider shall inform the referring law enforcement agency of the violation, if consistent with ((~~the terms of the program and~~)) applicable law; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly((~~, unless filing or referring the charges is inconsistent with the terms of a local diversion program or a recovery navigator program described in RCW 71.24.115~~)).

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

**Sec.**  2021 c 311 s 29 (uncodified) is amended to read as follows:

Sections 8 through 10, 12, 15, and 16 of this act expire ((~~July 1, 2023~~)) on the effective date of this section.

NEW SECTION. **Sec.**  RCW 10.31.115 (Drug possession—Referral to assessment and services) and 2021 c 311 s 13 are each repealed.

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

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**