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**SENATE BILL 5536**

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

**By** Senators Robinson, Lovick, Rolfes, Mullet, Dhingra, Billig, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Nobles, Randall, Stanford, Wellman, and C. Wilson

AN ACT Relating to justice system and behavioral health responses for persons experiencing circumstances that involve controlled substances, counterfeit substances, legend drugs, and drug paraphernalia; amending RCW 69.50.4011, 69.50.4013, 69.50.4014, 69.41.030, 69.50.4121, 69.50.509, 9.96.060, 36.70A.200, and 71.24.590; adding new sections to chapter 69.50 RCW; adding a new section to chapter 71.24 RCW; adding a new section to chapter 43.330 RCW; repealing RCW 10.31.115; prescribing penalties; and providing an expiration date.

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, deliver, or possess a counterfeit substance~~)):

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

(b) In lieu of jail booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and services available under 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.

(c) Upon arraignment for a violation of subsection (1)(b) of this section, the court shall advise the defendant of the pretrial diversion program as indicated in section 8(1) of this act.

**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)(a) 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~~)) a violation of this section is a gross misdemeanor. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.

(b) In lieu of jail booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and services available under 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.

(c) Upon arraignment for a violation of this section, the court shall advise the defendant of the availability of the pretrial diversion program as indicated in section 8(1) of this act.

(3)(a) The possession, by a person ((~~twenty-one~~)) 21 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)(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 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~~)) 36 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) 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) No person under ((~~twenty-one~~)) 21 years of age may ((~~possess,~~)) manufacture, sell, ((~~or~~)) distribute, or knowingly possess cannabis, cannabis-infused products, or cannabis concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.

(6) The possession by a qualifying patient or designated provider of 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~~)) 40 grams or less of cannabis is guilty of a misdemeanor. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.

(2) In lieu of jail booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and services available under 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.

(3) Upon arraignment for violation of this section, the court shall advise the defendant of the availability of the pretrial diversion program as indicated in section 8(1) of this act.

**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((~~,~~)) or deliver any legend drug, 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. The prosecutor is encouraged to divert such cases for assessment, treatment, or other services.

(c) In lieu of jail booking and referral to the prosecutor for a violation of this section involving knowing possession, law enforcement is encouraged to offer a referral to assessment and services available under 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.

(d) Upon arraignment for a violation of this section involving knowing possession, the court shall advise the defendant of the availability of the pretrial diversion program as indicated in section 8(1) of this act.

**Sec.**  RCW 69.50.4121 and 2022 c 16 s 92 are each amended to read as follows:

(1) Every person who sells ((~~or gives,~~)) or permits to be sold ((~~or given~~)) to any person any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance other than cannabis. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cocaine into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Miniature cocaine spoons and cocaine vials;

(f) Chamber pipes;

(g) Carburetor pipes;

(h) Electric pipes;

(i) Air-driven pipes; and

(j) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment or smoking equipment through public health and community-based HIV prevention programs, and pharmacies.

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

The state of Washington hereby fully occupies and preempts the entire field of drug paraphernalia regulation within the boundaries of the state including regulation of the use, selling, giving, delivery, and possession of drug paraphernalia. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to drug paraphernalia that are specifically authorized by state law and are consistent with this chapter. Such local ordinances must have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law may not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

**Sec.**  RCW 69.50.509 and 1987 c 202 s 228 are each amended to read as follows:

If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, district court, or municipal court that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, knowingly possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him or her to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter.

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

(1) For any violation of RCW 69.50.4011(1)(b), 69.50.4013, 69.50.4014, or 69.41.030, the court shall advise the defendant and his or her attorney of the pretrial diversion program. This notification must include all of the following:

(a) A full description of the procedures for pretrial diversion;

(b) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process;

(c) A clear statement that the court may grant pretrial diversion with respect to any offense under RCW 69.50.4011(1)(b), 69.50.4013, 69.50.4014, or 69.41.030 that is charged, provided that the defendant pleads not guilty to the charge or charges, waives the right to a speedy trial and a trial by jury and that upon the defendant's successful completion of the program, as specified in subsection (9)(d) of this section, the positive recommendation of the program authority and motion of the defendant, prosecuting attorney, the court, or the probation department, but no sooner than 12 months and no later than 18 months from the date of the defendant's referral to the program, the court must dismiss the charge or charges against the defendant;

(d) A clear statement that upon any failure of treatment or condition under the program, the prosecuting attorney, the probation department, or the court may make a motion to terminate pretrial diversion and schedule further proceedings as otherwise provided in this section; and

(e) An explanation of criminal record retention and disposition resulting from participation in the pretrial diversion program and the defendant's rights relative to answering questions about his or her arrest and pretrial diversion following successful completion of the program.

(2) Upon a motion of the defendant and agreement to waive his or her right to a speedy trial and trial by jury if granted pretrial diversion, the court may grant the motion and continue the hearing and refer the defendant for a diagnostic investigation and evaluation to an approved substance use disorder treatment program as designated in chapter 71.24 RCW.

(3) The treatment program must make a written report to the court stating its findings and recommendations after the examination.

(4) The report with the treatment or service plan must be filed with the court and a copy given to the prosecutor, the defendant, and the defendant's counsel.

(5) Subject to the availability of funds appropriated for this purpose, the diagnostic investigation and evaluation and recommended treatment must be provided at no cost for individuals who have been found to be indigent by the court.

(6) No statement, or any information procured therefrom, made by the defendant to any treatment or service provider, that is made during the course of any investigation conducted by the treatment program pursuant to subsections (2) through (4) of this section, and before the reporting of the findings and recommendations to the court, must be admissible in any action or proceeding brought subsequent to the investigation.

(7) A defendant's participation in pretrial diversion under this section does not constitute a conviction or an admission of guilt for any purpose.

(8)(a) The court must hold a hearing and, after consideration of any information relevant to its decision, determine if the defendant consents to further proceedings under this section and if the defendant should be granted pretrial diversion. If the defendant does not consent to participate in pretrial diversion, the proceedings must continue as in any other case.

(b) At the time that pretrial diversion is granted, any bail bond on file by or on behalf of the defendant must be exonerated, and the court must enter an order so directing.

(c) The period during which pretrial diversion is granted must be for no less than 12 months and no longer than 18 months. However, the defendant may request, and the court must grant for good cause shown, an extension of time to complete a specified program.

(9)(a) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, that the defendant is convicted of an offense that reflects the defendant's propensity for violence, or that the defendant is convicted of a felony, the prosecuting attorney, the court on its own, or the probation department may make a motion for termination from pretrial diversion.

(b) After notice to the defendant, the court must hold a hearing to determine whether pretrial diversion shall be terminated.

(c) If the court finds that the defendant is not performing satisfactorily in the assigned program, or the court finds that the defendant has been convicted of a crime as indicated in (a) of this subsection, the court must schedule the matter for further proceedings.

(d) If the defendant has successfully completed pretrial diversion, including all treatment requirements, at the end of that period, the criminal charge or charges must be dismissed.

**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), and (6) 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~~)) 21 years of age or older at the time of the offense, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. A misdemeanor 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) An individual who is convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, 69.50.4014, or 69.41.030 who subsequently completes an approved substance use disorder treatment program as designated in chapter 71.24 RCW and files proof of completion with the court may petition the court for vacation of the conviction or convictions. 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 71.24 RCW to read as follows:

(1) The department must adopt rules by December 31, 2023, allowing a substance use disorder treatment program to establish off-site medication units which are:

(a) Located as a free-standing facility;

(b) Colocated in a community setting such as but not limited to a hospital, medical primary care system, pharmacy, federally qualified health center, or correctional health setting; or

(c) A mobile medication unit.

(2) The department must include invited stakeholders in the rule-making process which must include, but not be limited to, individuals from geographic regions in Washington with lower population density, eastern Washington, rural areas, and tribal nations.

(3) This section expires June 30, 2024.

**Sec.**  RCW 36.70A.200 and 2021 c 265 s 2 are each amended to read as follows:

(1)(a) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, substance use disorder treatment programs including both mobile and fixed-site medication units, recovery residences, harm reduction programs, excluding safe injection sites, that emphasize working directly with people who use drugs to prevent overdose and infectious disease transmission, improve the physical, mental, and social well-being of those served, and offer low threshold options for accessing substance use disorder treatment and other health care services, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, community facilities as defined in RCW 72.05.020, and secure community transition facilities as defined in RCW 71.09.020.

(b) Unless a facility is expressly listed in (a) of this subsection, essential public facilities do not include facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings but are not used for punishment, correction, counseling, or rehabilitation following the conviction of a criminal offense. Facilities included under this subsection (1)(b) shall not include facilities detaining persons under RCW 71.09.020 ((~~(6) or (15)~~)) (7) or (16) or chapter 10.77 or 71.05 RCW.

(c) The department of children, youth, and families may not attempt to site new community facilities as defined in RCW 72.05.020 east of the crest of the Cascade mountain range unless there is an equal or greater number of sited community facilities as defined in RCW 72.05.020 on the western side of the crest of the Cascade mountain range.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17A.005, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70A.135.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(3); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action.

**Sec.**  RCW 71.24.590 and 2019 c 314 s 30 are each amended to read as follows:

(1) When making a decision on an application for licensing or certification of ((~~a~~)) an opioid treatment program, the department shall:

(a) Consult with the county legislative authorities in the area in which an applicant proposes to locate a program and the city legislative authority in any city in which an applicant proposes to locate a program;

(b) License or certify only programs that will be sited in accordance with the appropriate county or city land use ordinances. Counties and cities may require conditional use permits with reasonable conditions for the siting of programs only to the extent that such reasonable conditional use requirements applied to opioid treatment programs are similarly applied to other essential public facilities and health care settings. Pursuant to RCW 36.70A.200, no local comprehensive plan or development regulation may preclude the siting of essential public facilities;

(c) Not discriminate in its licensing or certification decision on the basis of the corporate structure of the applicant;

(d) Consider the size of the population in need of treatment in the area in which the program would be located and license or certify only applicants whose programs meet the necessary treatment needs of that population;

(e) Consider the availability of other certified opioid treatment programs near the area in which the applicant proposes to locate the program;

(f) Consider the transportation systems that would provide service to the program and whether the systems will provide reasonable opportunities to access the program for persons in need of treatment;

(g) Consider whether the applicant has, or has demonstrated in the past, the capability to provide the appropriate services to assist the persons who utilize the program in meeting goals established by the legislature in RCW 71.24.585. The department shall prioritize licensing or certification to applicants who have demonstrated such capability and are able to measure their success in meeting such outcomes((~~;~~

~~(h) Hold one public hearing in the community in which the facility is proposed to be located. The hearing shall be held at a time and location that are most likely to permit the largest number of interested persons to attend and present testimony. The department shall notify all appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing~~)).

(2) ((~~A~~)) No city or county legislative authority may impose a maximum capacity for ((~~a~~)) an opioid treatment program ((~~of not less than three hundred fifty participants if necessary to address specific local conditions cited by the county~~)).

(3) A program applying for licensing or certification from the department and a program applying for a contract from a state agency that has been denied the licensing or certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(4) Opioid treatment programs may order, possess, dispense, and administer medications approved by the United States food and drug administration for the treatment of opioid use disorder, alcohol use disorder, tobacco use disorder, and reversal of opioid overdose. For an opioid treatment program to order, possess, and dispense any other legend drug, including controlled substances, the opioid treatment program must obtain additional licensure as required by the department, except for patient-owned medications.

(5) Opioid treatment programs may accept, possess, and administer patient-owned medications.

(6) Registered nurses and licensed practical nurses may dispense up to a ((~~thirty-one~~)) 31 day supply of medications approved by the United States food and drug administration for the treatment of opioid use disorder to patients of the opioid treatment program, under an order or prescription and in compliance with 42 C.F.R. Sec. 8.12.

(7) For the purpose of this chapter, "opioid treatment program" means a program that:

(a) Engages in the treatment of opioid use disorder with medications approved by the United States food and drug administration for the treatment of opioid use disorder and reversal of opioid overdose; ((~~and~~))

(b) Is either a mobile or fixed-site medication unit; and

(c) Provides a comprehensive range of medical and rehabilitative services.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) Subject to funds appropriated for this specific purpose, a program is established in the department to fund the construction costs necessary to start up substance use disorder treatment programs in regions of the state that currently lack access to such programs.

(2) This funding must be used to increase the number of substance use disorder treatment programs in underserved areas such as central and eastern Washington and rural areas.

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

**--- END ---**