

E2SSB 5536 - H COMM AMD
By Committee on Appropriations

NOT ADOPTED 04/11/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that substance use
4 disorder is a treatable brain disease from which people can and do
5 recover. When individuals in active addiction are provided with
6 access to quality outreach, treatment, and recovery support services,
7 recovery is not only possible, but probable. Solutions to the
8 addiction crisis must not only address criminal legal responses, but
9 must be data-driven and evidence-based, and must represent public
10 health best practices, working directly with people who use drugs to
11 prevent overdose and infectious disease transmission, and improve the
12 physical, mental, and social well-being of those served. The state
13 must follow principles of harm reduction, comprising practical
14 strategies aimed at reducing negative consequences associated with
15 drug use, including safer use of supplies as well as care settings,
16 staffing, and interactions that are person-centered, supportive, and
17 welcoming.

18 The legislature recognizes that substance use disorder is
19 commonly treated in a variety of settings, including primary care,
20 addiction medicine, mental health agencies, and substance use
21 disorder treatment providers. Because medications such as
22 buprenorphine and methadone are the clinical best practice for the
23 treatment of opioid use disorder, individuals seeking treatment for
24 addiction to heroin, fentanyl, and other opioids frequently seek
25 recovery via primary care, addiction medicine, and opioid treatment
26 programs.

27 The legislature finds that the recommendations of the substance
28 use recovery services advisory committee reflect diligent work by
29 individuals with a range of professional and personal experience, who
30 brought that experience to the committee, and whose expertise is
31 reflected in the recommendations.

1 **Part I - Prohibiting Knowing Possession of a Controlled Substance,**
2 **Counterfeit Substance, or Legend Drug**

3 **Sec. 2.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to
4 read as follows:

5 (1) Except as authorized by this chapter, it is unlawful for any
6 person to ~~((create, deliver, or possess a counterfeit substance))~~:

7 (a) Create or deliver a counterfeit substance;

8 (b) Knowingly possess a counterfeit substance; or

9 (c) Knowingly possess and use a counterfeit substance in a public
10 place by injection, inhalation, ingestion, or any other means.

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

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

18 (b) A counterfeit substance which is methamphetamine, is guilty
19 of a class B felony and upon conviction may be imprisoned for not
20 more than ~~((ten))~~ 10 years, fined not more than ~~((twenty-five~~
21 ~~thousand dollars))~~ \$25,000, or both;

22 (c) Any other counterfeit substance classified in Schedule I, II,
23 or III, is guilty of a class C felony punishable according to chapter
24 9A.20 RCW;

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

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

30 (3)(a) A violation of subsection (1)(b) or (c) of this section is
31 a misdemeanor. The prosecutor is encouraged to divert such cases for
32 assessment, treatment, or other services through the recovery
33 navigator program established under RCW 71.24.115 or a comparable
34 program including, but not limited to, arrest and jail alternative
35 programs established under RCW 36.28A.450 and law enforcement
36 assisted diversion programs established under RCW 71.24.589.

37 (b) In lieu of jail booking and referral to the prosecutor, law
38 enforcement is encouraged to offer a referral to assessment and
39 services available under RCW 10.31.110 or other program or entity

1 responsible for receiving referrals in lieu of legal system
2 involvement, which may include, but are not limited to, arrest and
3 jail alternative programs established under RCW 36.28A.450, law
4 enforcement assisted diversion programs established under RCW
5 71.24.589, and the recovery navigator program established under RCW
6 71.24.115.

7 (c) Upon arraignment for a violation of subsection (1)(b) or (c)
8 of this section, the court shall determine whether the defendant has
9 been advised by the defendant's counsel about the pretrial diversion
10 opportunity described in section 10 of this act.

11 (d) For the purposes of this section, "public place" has the same
12 meaning as defined in RCW 66.04.010, but the exclusions in RCW
13 66.04.011 do not apply.

14 **Sec. 3.** RCW 69.50.4013 and 2022 c 16 s 86 are each amended to
15 read as follows:

16 (1) ~~((††))~~ Except as otherwise authorized by this chapter, it is
17 unlawful for any person to:

18 (a) Knowingly possess a controlled substance unless the substance
19 was obtained directly from, or pursuant to, a valid prescription or
20 order of a practitioner while acting in the course of his or her
21 professional practice(~~(, or except as otherwise authorized by this~~
22 chapter)); or

23 (b) Knowingly possess and use a controlled substance in a public
24 place by injection, inhalation, ingestion, or any other means, unless
25 the substance was obtained directly from, or pursuant to, a valid
26 prescription or order of a practitioner while acting in the course of
27 his or her professional practice.

28 (2) (a) Except as provided in RCW 69.50.4014 or 69.50.445, ((any
29 person who violates this section is guilty of a class C felony
30 punishable under chapter 9A.20 RCW)) a violation of subsection (1)(a)
31 or (b) of this section is a misdemeanor. The prosecutor is encouraged
32 to divert such cases for assessment, treatment, or other services
33 through the recovery navigator program established under RCW
34 71.24.115 or a comparable program including, but not limited to,
35 arrest and jail alternative programs established under RCW 36.28A.450
36 and law enforcement assisted diversion programs established under RCW
37 71.24.589.

38 (b) In lieu of jail booking and referral to the prosecutor, law
39 enforcement is encouraged to offer a referral to assessment and

1 services available under RCW 10.31.110 or other program or entity
2 responsible for receiving referrals in lieu of legal system
3 involvement, which may include, but are not limited to, arrest and
4 jail alternative programs established under RCW 36.28A.450, law
5 enforcement assisted diversion programs established under RCW
6 71.24.589, and the recovery navigator program established under RCW
7 71.24.115.

8 (c) Upon arraignment for a violation of subsection (1)(a) or (b)
9 of this section, the court shall determine whether the defendant has
10 been advised by the defendant's counsel about the pretrial diversion
11 opportunity described in section 10 of this act.

12 (3) (a) The possession, by a person (~~(twenty-one)~~) 21 years of age
13 or older, of useable cannabis, cannabis concentrates, or cannabis-
14 infused products in amounts that do not exceed those set forth in RCW
15 69.50.360(3) is not a violation of this section, this chapter, or any
16 other provision of Washington state law.

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

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

- 32 (i) One-half ounce of useable cannabis;
- 33 (ii) Eight ounces of cannabis-infused product in solid form;
- 34 (iii) (~~(Thirty-six)~~) 36 ounces of cannabis-infused product in
35 liquid form; or
- 36 (iv) Three and one-half grams of cannabis concentrates.

37 (b) The act of delivering cannabis or a cannabis product as
38 authorized under this subsection (4) must meet one of the following
39 requirements:

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

3 (ii) The cannabis or cannabis product must be in the original
4 packaging as purchased from the cannabis retailer.

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

10 (6) The possession by a qualifying patient or designated provider
11 of cannabis concentrates, useable cannabis, cannabis-infused
12 products, or plants in accordance with chapter 69.51A RCW is not a
13 violation of this section, this chapter, or any other provision of
14 Washington state law.

15 (7) For the purposes of this section, "public place" has the same
16 meaning as defined in RCW 66.04.010, but the exclusions in RCW
17 66.04.011 do not apply.

18 **Sec. 4.** RCW 69.50.4014 and 2022 c 16 s 88 are each amended to
19 read as follows:

20 (1) Except as provided in RCW 69.50.401(2)(c) or as otherwise
21 authorized by this chapter, any person found guilty of knowing
22 possession of (~~forty~~) 40 grams or less of cannabis is guilty of a
23 misdemeanor. The prosecutor is encouraged to divert such cases for
24 assessment, treatment, or other services through the recovery
25 navigator program established under RCW 71.24.115 or a comparable
26 program including, but not limited to, arrest and jail alternative
27 programs established under RCW 36.28A.450 and law enforcement
28 assisted diversion programs established under RCW 71.24.589.

29 (2) In lieu of jail booking and referral to the prosecutor, law
30 enforcement is encouraged to offer a referral to assessment and
31 services available under RCW 10.31.110 or other program or entity
32 responsible for receiving referrals in lieu of legal system
33 involvement, which may include, but are not limited to, arrest and
34 jail alternative programs established under RCW 36.28A.450, law
35 enforcement assisted diversion programs established under RCW
36 71.24.589, and the recovery navigator program established under RCW
37 71.24.115.

38 (3) Upon arraignment for violation of this section, the court
39 shall determine whether the defendant has been advised by the

1 defendant's counsel about the pretrial diversion opportunity
2 described in section 10 of this act.

3 **Sec. 5.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to
4 read as follows:

5 (1) It shall be unlawful for any person to sell(~~(r)~~) or deliver
6 any legend drug, or knowingly possess any legend drug, or knowingly
7 possess and use any legend drug in a public place by injection,
8 inhalation, ingestion, or any other means, except upon the order or
9 prescription of a physician under chapter 18.71 RCW, an osteopathic
10 physician and surgeon under chapter 18.57 RCW, an optometrist
11 licensed under chapter 18.53 RCW who is certified by the optometry
12 board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a
13 podiatric physician and surgeon under chapter 18.22 RCW, a
14 veterinarian under chapter 18.92 RCW, a commissioned medical or
15 dental officer in the United States armed forces or public health
16 service in the discharge of his or her official duties, a duly
17 licensed physician or dentist employed by the veterans administration
18 in the discharge of his or her official duties, a registered nurse or
19 advanced registered nurse practitioner under chapter 18.79 RCW when
20 authorized by the nursing care quality assurance commission, a
21 pharmacist licensed under chapter 18.64 RCW to the extent permitted
22 by drug therapy guidelines or protocols established under RCW
23 18.64.011 and authorized by the commission and approved by a
24 practitioner authorized to prescribe drugs, a physician assistant
25 under chapter 18.71A RCW when authorized by the Washington medical
26 commission, or any of the following professionals in any province of
27 Canada that shares a common border with the state of Washington or in
28 any state of the United States: A physician licensed to practice
29 medicine and surgery or a physician licensed to practice osteopathic
30 medicine and surgery, a dentist licensed to practice dentistry, a
31 podiatric physician and surgeon licensed to practice podiatric
32 medicine and surgery, a licensed advanced registered nurse
33 practitioner, a licensed physician assistant, or a veterinarian
34 licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the
35 above provisions shall not apply to sale, delivery, or possession by
36 drug wholesalers or drug manufacturers, or their agents or employees,
37 or to any practitioner acting within the scope of his or her license,
38 or to a common or contract carrier or warehouse operator, or any
39 employee thereof, whose possession of any legend drug is in the usual

1 course of business or employment: PROVIDED FURTHER, That nothing in
2 this chapter or chapter 18.64 RCW shall prevent a family planning
3 clinic that is under contract with the health care authority from
4 selling, delivering, possessing, and dispensing commercially
5 prepackaged oral contraceptives prescribed by authorized, licensed
6 health care practitioners: PROVIDED FURTHER, That nothing in this
7 chapter prohibits possession or delivery of legend drugs by an
8 authorized collector or other person participating in the operation
9 of a drug take-back program authorized in chapter 69.48 RCW.

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

13 (b) A violation of this section involving knowing possession is a
14 misdemeanor. The prosecutor is encouraged to divert such cases for
15 assessment, treatment, or other services.

16 (c) A violation of this section involving knowing possession and
17 use in a public place is a misdemeanor. The prosecutor is encouraged
18 to divert such cases for assessment, treatment, or other services
19 through the recovery navigator program established under RCW
20 71.24.115 or a comparable program including, but not limited to,
21 arrest and jail alternative programs established under RCW 36.28A.450
22 and law enforcement assisted diversion programs established under RCW
23 71.24.589.

24 (d) In lieu of jail booking and referral to the prosecutor for a
25 violation of this section involving knowing possession, or knowing
26 possession and use in a public place, law enforcement is encouraged
27 to offer a referral to assessment and services available under RCW
28 10.31.110 or other program or entity responsible for receiving
29 referrals in lieu of legal system involvement, which may include, but
30 are not limited to, arrest and jail alternative programs established
31 under RCW 36.28A.450, law enforcement assisted diversion programs
32 established under RCW 71.24.589, and the recovery navigator program
33 established under RCW 71.24.115.

34 (e) Upon arraignment for a violation of this section involving
35 knowing possession, or knowing possession and use in a public place,
36 the court shall determine whether the defendant has been advised by
37 the defendant's counsel about the pretrial diversion opportunity
38 described in section 10 of this act.

1 (3) For the purposes of this section, "public place" has the same
2 meaning as defined in RCW 66.04.010, but the exclusions in RCW
3 66.04.011 do not apply.

4 **Sec. 6.** RCW 69.50.509 and 1987 c 202 s 228 are each amended to
5 read as follows:

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

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.43
31 RCW to read as follows:

32 Subject to the availability of funds appropriated for this
33 specific purpose, the Washington state patrol bureau of forensic
34 laboratory services shall aim to complete the necessary analysis for
35 any evidence submitted for a suspected violation of RCW 69.50.4011(1)
36 (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) within
37 45 days of receipt of the request for analysis.

1 The Washington state patrol bureau of forensic laboratory
2 services' failure to comply with this section shall not constitute
3 grounds for dismissal of a criminal charge.

4 **Part II - Relating to Drug Paraphernalia**

5 **Sec. 8.** RCW 69.50.4121 and 2022 c 16 s 92 are each amended to
6 read as follows:

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

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

24 (b) Water pipes;

25 (c) Carburetion tubes and devices;

26 (d) Smoking and carburetion masks;

27 (e) Miniature cocaine spoons and cocaine vials;

28 (f) Chamber pipes;

29 (g) Carburetor pipes;

30 (h) Electric pipes;

31 (i) Air-driven pipes; and

32 (j) Ice pipes or chillers.

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

36 (3) Nothing in subsection (1) of this section prohibits (~~legal~~)
37 distribution (~~of injection~~) or use of public health supplies
38 including, but not limited to, syringe equipment, smoking equipment,

1 or drug testing equipment, through public health ((and)) programs,
2 community-based HIV prevention programs, outreach, shelter, and
3 housing programs, and pharmacies. Public health and syringe service
4 program staff taking samples of substances and using drug testing
5 equipment for the purpose of analyzing the composition of the
6 substances or detecting the presence of certain substances are acting
7 legally and are exempt from arrest and prosecution under RCW
8 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b)
9 or (c).

10 NEW SECTION. Sec. 9. A new section is added to chapter 69.50
11 RCW to read as follows:

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

25 **Part III - Providing Opportunities for Pretrial Diversion and**
26 **Vacating Convictions**

27 NEW SECTION. Sec. 10. A new section is added to chapter 69.50
28 RCW to read as follows:

29 (1) Nothing in this section prevents the defendant, with the
30 consent of the prosecuting attorney as required by RCW 2.30.030, from
31 seeking to resolve charges under RCW 69.50.4011(1) (b) or (c),
32 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) through available
33 therapeutic courts or other alternatives to prosecution. Nothing in
34 this section prevents the defendant or the prosecuting attorney from
35 seeking or agreeing to, or the court from ordering, any other
36 resolution of charges or terms of supervision that suit the

1 circumstances of the defendant's situation and advance stabilization,
2 recovery, crime reduction, and justice.

3 (2) Any defendant charged with a violation of RCW 69.50.4011(1)
4 (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) may
5 make a motion to participate in pretrial diversion and agree to waive
6 his or her right to a speedy trial if the motion is granted, subject
7 to the following:

8 (a) In all cases, the court may not grant the motion unless the
9 prosecuting attorney consents to the defendant's participation in
10 pretrial diversion. The prosecuting attorney is strongly encouraged
11 to agree to diversion in any case where the defendant is only charged
12 with a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013,
13 69.50.4014, or 69.41.030(2) (b) or (c), and in any case where the
14 only additional charge or charges against the defendant are for other
15 nonfelony offenses that are not crimes against persons.

16 (b) In any case where the defendant is only charged with a
17 violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or
18 69.41.030(2) (b) or (c), and the defendant has not been convicted of
19 any offenses committed after the effective date of this section, the
20 court shall grant the motion, continue the hearing, and refer the
21 defendant to an applicable program.

22 (c) In any case where the defendant does not meet the criteria
23 described in (b) of this subsection, the court may grant the motion,
24 continue the hearing, and refer the defendant to an applicable
25 program.

26 (3) Prior to granting the defendant's motion to participate in
27 pretrial diversion under this section, the court shall provide the
28 defendant and the defendant's counsel with the following information:

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

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

33 (c) A clear statement that the court may grant pretrial diversion
34 with respect to any offense under RCW 69.50.4011(1) (b) or (c),
35 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) that is charged,
36 provided that the defendant pleads not guilty to the charge or
37 charges and waives his or her right to a speedy trial, and that upon
38 the defendant's successful completion of pretrial diversion, as
39 specified in subsection (11)(d) of this section, and motion of the

1 defendant, prosecuting attorney, court, or probation department, the
2 court must dismiss the charge or charges against the defendant;

3 (d) A clear statement that if the defendant has not made
4 substantial progress with treatment or services provided that are
5 appropriate to the defendant's circumstances or, if applicable,
6 community restitution, the prosecuting attorney may make a motion to
7 terminate pretrial diversion and schedule further proceedings as
8 otherwise provided in this section;

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

13 (f) A clear statement that under federal law it is unlawful for
14 any person who is an unlawful user of or addicted to any controlled
15 substance to ship or transport in interstate or foreign commerce, or
16 possess in or affecting commerce, any firearm or ammunition, or to
17 receive any firearm or ammunition which has been shipped or
18 transported in interstate or foreign commerce; and

19 (g) A clear statement that if the defendant's biopsychosocial
20 assessment results in a written report recommending no treatment or
21 services, completion of pretrial diversion will instead be based on
22 the defendant's completion of an amount of community restitution to
23 be determined by the court, but not to exceed 120 hours of community
24 restitution.

25 (4) The applicable program must make a written report to the
26 court stating its findings and recommendations after the
27 biopsychosocial assessment if the defendant decides to continue
28 pursuing pretrial diversion. The report shall be filed under seal
29 with the court, and a copy of the report shall be given to the
30 prosecuting attorney, defendant, and defendant's counsel. The report
31 and its copies are confidential and exempt from disclosure under
32 chapter 42.56 RCW. The court shall endeavor to avoid public
33 discussion of the circumstances, history, or diagnoses that could
34 stigmatize the defendant.

35 (5) Subject to the availability of funds appropriated for this
36 specific purpose, the biopsychosocial assessment and recommended
37 services or treatment must be provided at no cost for individuals who
38 have been found to be indigent by the court.

39 (6) Once the biopsychosocial assessment has been filed with the
40 court, if the report indicates the individual has a substance use

1 disorder, the court shall inform the individual that under federal
2 law the individual may not possess any firearm or ammunition. The
3 court shall thereafter sign an order of ineligibility to possess
4 firearms as required by RCW 9.41.800 and shall require the individual
5 to surrender all firearms in accordance with RCW 9.41.804.

6 (7) If the report does not recommend any treatment or services,
7 the defendant must instead complete an amount of community
8 restitution as determined by the court, but not to exceed 120 hours
9 of community restitution, in order to complete pretrial diversion.

10 (8) No statement, or any information procured therefrom relating
11 to the charge for which the defendant is receiving services, made by
12 the defendant to any treatment or service provider, that is made
13 during the course of any biopsychosocial assessment or services
14 provided by the applicable program, and before the reporting of the
15 findings and recommendations to the court, may be admissible in any
16 action or proceeding brought subsequent to the investigation.

17 (9) A defendant's participation in pretrial diversion under this
18 section does not constitute a conviction, a stipulation to facts, or
19 an admission of guilt for any purpose.

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

23 (11)(a) If it appears to the prosecuting attorney that the
24 defendant is not meaningfully engaging in the recommended treatment
25 or services or, if applicable, the community restitution, the
26 prosecuting attorney may make a motion for termination from pretrial
27 diversion.

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

30 (c) If the court finds that the defendant is not meaningfully
31 engaging in the recommended treatment or services or, if applicable,
32 the community restitution, the court must schedule the matter for
33 further proceedings.

34 (d) If the defendant successfully completes pretrial diversion,
35 including in one of the following ways, the charge or charges under
36 RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2)
37 (b) or (c) must be dismissed:

38 (i) If the written report prepared by the applicable program
39 included recommended treatment or services, the defendant
40 successfully completes pretrial diversion by having six months of

1 meaningful engagement with assessment and recommended treatment or
2 services and progress toward recovery goals, as reflected by a
3 written status update from the applicable program; or

4 (ii) If the written report prepared by the applicable program did
5 not include recommended treatment or services, the defendant
6 successfully completes pretrial diversion by completing the community
7 restitution described under subsection (7) of this section and
8 submitting proof of completion to the court.

9 (12) For the purposes of this section, "applicable program" means
10 the recovery navigator program established under RCW 71.24.115 or a
11 comparable program including, but not limited to, arrest and jail
12 alternative programs established under RCW 36.28A.450 and law
13 enforcement assisted diversion programs established under RCW
14 71.24.589.

15 NEW SECTION. **Sec. 11.** A new section is added to chapter 69.50
16 RCW to read as follows:

17 (1) Prior to sentencing any person convicted of violating RCW
18 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b)
19 or (c), the court shall inform the person that under federal law it
20 is unlawful for any person who is an unlawful user of or addicted to
21 any controlled substance to ship or transport in interstate or
22 foreign commerce, or possess in or affecting commerce, any firearm or
23 ammunition, or to receive any firearm or ammunition which has been
24 shipped or transported in interstate or foreign commerce.

25 (2) In courts of limited jurisdiction, if an individual who is
26 convicted of a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013,
27 69.50.4014, or 69.41.030(2) (b) or (c) agrees as a condition of
28 probation to obtain a biopsychosocial assessment by an applicable
29 program and participate in any recommended treatment or services, or,
30 if the applicable program recommends no treatment or services, to
31 complete court-ordered community restitution, the court shall
32 sentence the individual to a term of confinement of up to 90 days,
33 all of which shall be suspended for a period not to exceed one year.

34 (3) A biopsychosocial assessment shall be prepared by an
35 applicable program. A copy of the assessment shall be forwarded to
36 the court and filed under seal. Based on the assessment, the court
37 shall determine whether the person shall be required to complete a
38 course in an alcohol and drug information school licensed or
39 certified by the department of health or more sustained services

1 provided by a licensed behavioral health care provider, peer
2 counseling program, or other case management program.

3 (a) Once the assessment has been filed with the court, if the
4 report indicates the individual has a substance use disorder, the
5 court shall inform the individual that under federal law the
6 individual may not possess any firearm or ammunition. The court shall
7 thereafter sign an order of ineligibility to possess firearms as
8 required by RCW 9.41.800.

9 (b) Once the assessment has been filed with the court, if the
10 report does not recommend any treatment or services, the court shall
11 order the defendant to complete an amount of community restitution
12 not to exceed 120 hours as a term of probation.

13 (c) The assessment shall include the following:

14 (i) Available background on the defendant's circumstances,
15 barriers, and past service history, if any;

16 (ii) Nature of barriers and challenges;

17 (iii) Recommendations for services available in the individual's
18 community that are likely to work with the individual and provide
19 relevant support;

20 (iv) A statement of unavailability if there are no known suitable
21 services presently available in the individual's community that would
22 meaningfully assist the individual; and

23 (v) Approximate cost of the services if not publicly provided.

24 (4) A person subject to biopsychosocial assessment and treatment
25 or services shall be required by the court to meaningfully engage in
26 more sustained services provided by a licensed behavioral health care
27 provider, peer counseling program, or other case management program,
28 as determined by the court.

29 (5) If the court directs a service plan after receiving an
30 individual's assessment, the court shall confirm with the
31 individual's indicated service provider that the service provider
32 consents to providing the court with occasional updates on the
33 individual's progress on a schedule acceptable to the court. The
34 updates must be provided at least monthly.

35 (6) Subject to the availability of funds appropriated for this
36 purpose, the recommended treatment or services as ordered by the
37 court shall be provided at no cost for sentenced individuals who have
38 been found to be indigent by the court.

1 (7) As a condition of probation, the sentenced individual must
2 meaningfully engage with the treatment or services recommendations of
3 the biopsychosocial assessment.

4 (8)(a) If it appears to the prosecuting attorney that the
5 sentenced individual is not meaningfully engaging in the recommended
6 treatment or services, or, if applicable, not completing the court-
7 ordered community restitution, the prosecuting attorney shall make a
8 motion for a hearing to consider sanctions. After notice to the
9 sentenced individual, the court shall hold a hearing to determine if
10 a sanction or revocation of the individual's suspended sentence, or
11 any part thereof, is warranted under RCW 3.50.340 or 3.66.069.

12 (b) The court may not sanction an individual for failing to
13 comply with the recommended treatment or services if the court finds
14 the sentenced individual has made reasonable efforts to comply with
15 the recommended treatment but cannot comply either due to a lack of
16 available treatment or services or, for sentenced individuals found
17 to be indigent by the court, due to a lack of funding for treatment
18 or services.

19 (c) At the hearing, if the court finds by a preponderance of the
20 evidence that the sentenced individual has willfully abandoned or
21 demonstrated a consistent failure to meaningfully engage in the
22 recommended treatment or services, or, if applicable, is failing to
23 complete the court-ordered community restitution, the court shall use
24 its discretion in determining an appropriate sanction.

25 (9) An individual sentenced under subsection (2) of this section
26 may vacate their conviction for a violation of RCW 69.50.4011(1) (b)
27 or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) as
28 follows:

29 (a) If the individual has successfully completed the recommended
30 treatment or services, or, if applicable, the court-ordered community
31 restitution, the individual must file proof of successful completion
32 with the court. Upon verification of such proof, the court must
33 terminate probation and enter an order vacating the individual's
34 conviction.

35 (b) Regardless of whether the individual has completed
36 recommended treatment or services, or the court-ordered community
37 restitution, if the individual has had no additional arrests,
38 charges, or criminal convictions in the one year after the
39 individual's conviction for a violation of RCW 69.50.4011(1) (b) or
40 (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c), the

1 prosecutor shall make a motion to the court for an order vacating the
2 individual's conviction, and the court shall terminate probation and
3 enter an order vacating the individual's conviction.

4 (10) For the purposes of this section, "applicable program" means
5 the recovery navigator program established under RCW 71.24.115 or a
6 comparable program including, but not limited to, arrest and jail
7 alternative programs established under RCW 36.28A.450 and law
8 enforcement assisted diversion programs established under RCW
9 71.24.589.

10 **Sec. 12.** RCW 9.96.060 and 2022 c 16 s 7 are each amended to read
11 as follows:

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

20 (2) Every person convicted of a misdemeanor or gross misdemeanor
21 offense may apply to the sentencing court for a vacation of the
22 applicant's record of conviction for the offense. If the court finds
23 the applicant meets the requirements of this subsection, the court
24 may in its discretion vacate the record of conviction. Except as
25 provided in subsections (3), (4), ~~((and))~~ (5), and (6) of this
26 section and section 11 of this act, an applicant may not have the
27 record of conviction for a misdemeanor or gross misdemeanor offense
28 vacated if any one of the following is present:

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

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

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

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

1 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
2 violation within ten years of the date of arrest for the prior
3 offense or less than ten years has elapsed since the date of the
4 arrest for the prior offense;

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

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

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

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

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

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

39 (g) For any offense other than those described in (f) of this
40 subsection, less than three years have passed since the person

1 completed the terms of the sentence, including any financial
2 obligations;

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

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

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

24 (4) Every person convicted prior to January 1, 1975, of violating
25 any statute or rule regarding the regulation of fishing activities,
26 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
27 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
28 who claimed to be exercising a treaty Indian fishing right, may apply
29 to the sentencing court for vacation of the applicant's record of the
30 misdemeanor, gross misdemeanor, or felony conviction for the offense.
31 If the person is deceased, a member of the person's family or an
32 official representative of the tribe of which the person was a member
33 may apply to the court on behalf of the deceased person.
34 Notwithstanding the requirements of RCW 9.94A.640, the court shall
35 vacate the record of conviction if:

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

38 (b) The state has been enjoined from taking enforcement action of
39 the statute or rule to the extent that it interferes with a treaty
40 Indian fishing right as determined under *United States v. Washington*,

1 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
2 899 (D. Oregon 1969), and any posttrial orders of those courts, or
3 any other state supreme court or federal court decision.

4 (5) Every person convicted of a misdemeanor cannabis offense, who
5 was (~~twenty-one~~) 21 years of age or older at the time of the
6 offense, may apply to the sentencing court for a vacation of the
7 applicant's record of conviction for the offense. A misdemeanor
8 cannabis offense includes, but is not limited to: Any offense under
9 RCW 69.50.4014, from July 1, 2004, onward, and its predecessor
10 statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1,
11 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and
12 any offense under an equivalent municipal ordinance. If an applicant
13 qualifies under this subsection, the court shall vacate the record of
14 conviction.

15 (6)(a) If an individual convicted of a violation or violations of
16 RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2)
17 (b) or (c) successfully completes the recommended treatment or
18 services and files proof of completion with the court, the prosecutor
19 shall make a motion to vacate the individual's conviction or
20 convictions. Upon verification that the individual successfully
21 completed the treatment program or services, the court shall grant
22 the motion and vacate the conviction or convictions.

23 (b) Regardless of whether the individual has completed the
24 recommended treatment or services, if the individual has had no
25 additional criminal arrests, charges, or convictions in the one year
26 after the individual's conviction for a violation of RCW
27 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b)
28 or (c), the prosecutor shall make a motion to the court for an order
29 vacating the individual's conviction, and the court shall grant the
30 motion and enter an order vacating the individual's conviction.

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

36 (~~(7)~~) (8)(a) Except as provided in (c) of this subsection, once
37 the court vacates a record of conviction under this section, the
38 person shall be released from all penalties and disabilities
39 resulting from the offense and the fact that the person has been
40 convicted of the offense shall not be included in the person's

1 criminal history for purposes of determining a sentence in any
2 subsequent conviction. For all purposes, including responding to
3 questions on employment or housing applications, a person whose
4 conviction has been vacated under this section may state that he or
5 she has never been convicted of that crime. However, nothing in this
6 section affects the requirements for restoring a right to possess a
7 firearm under RCW 9.41.040. Except as provided in (b) of this
8 subsection, nothing in this section affects or prevents the use of an
9 offender's prior conviction in a later criminal prosecution.

10 (b) When a court vacates a record of domestic violence as defined
11 in RCW 10.99.020 under this section, the state may not use the
12 vacated conviction in a later criminal prosecution unless the
13 conviction was for: (i) Violating the provisions of a restraining
14 order, no-contact order, or protection order restraining or enjoining
15 the person or restraining the person from going on to the grounds of
16 or entering a residence, workplace, school, or day care, or
17 prohibiting the person from knowingly coming within, or knowingly
18 remaining within, a specified distance of a location, a protected
19 party's person, or a protected party's vehicle (RCW 10.99.040,
20 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
21 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
22 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
23 violence protection order or vulnerable adult protection order
24 entered under chapter 7.105 RCW. A vacated conviction under this
25 section is not considered a conviction of such an offense for the
26 purposes of 27 C.F.R. 478.11.

27 (c) A conviction vacated on or after July 28, 2019, qualifies as
28 a prior conviction for the purpose of charging a present recidivist
29 offense as defined in RCW 9.94A.030 occurring on or after July 28,
30 2019.

31 ~~((+8))~~ (9) The clerk of the court in which the vacation order is
32 entered shall immediately transmit the order vacating the conviction
33 to the Washington state patrol identification section and to the
34 local police agency, if any, which holds criminal history information
35 for the person who is the subject of the conviction. The Washington
36 state patrol and any such local police agency shall immediately
37 update their records to reflect the vacation of the conviction, and
38 shall transmit the order vacating the conviction to the federal
39 bureau of investigation. A conviction that has been vacated under
40 this section may not be disseminated or disclosed by the state patrol

1 or local law enforcement agency to any person, except other criminal
2 justice enforcement agencies.

3 ((+9)) (10) For the purposes of this section, "cannabis" has the
4 meaning provided in RCW 69.50.101.

5 NEW SECTION. **Sec. 13.** A new section is added to chapter 2.56
6 RCW to read as follows:

7 (1) The administrative office of the courts shall collect data
8 and information related to the utilization and outcomes of pretrial
9 diversions pursuant to section 10 of this act, convictions pursuant
10 to section 11 of this act, and motions for vacating convictions
11 pursuant to RCW 9.96.060(6), including but not limited to the
12 following:

13 (a) The recidivism rate for persons who either participated in a
14 pretrial diversion pursuant to section 10 of this act, or who were
15 sentenced pursuant to section 11 of this act and agreed as a
16 condition of probation to obtain a biopsychosocial assessment and
17 participate in recommended treatment or services;

18 (b) The number of pretrial diversions offered pursuant to section
19 10 of this act and whether such diversions were terminated, were
20 successfully completed and resulted in a dismissal, or are still
21 ongoing;

22 (c) Aggregated and disaggregated demographic data for pretrial
23 diversions pursuant to section 10 of this act, that identifies trends
24 or disparities in utilization or outcomes based on race, ethnicity,
25 gender, gender expression or identity, disability status, age, and
26 any other appropriate characteristics as determined by the
27 administrative office of the courts;

28 (d) Statistical data comparing the relative utilization and
29 outcomes of pretrial diversions pursuant to section 10 of this act in
30 specific courts and in different regions of Washington;

31 (e) The number of people convicted of a violation of RCW
32 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b)
33 or (c);

34 (f) The number of people sentenced pursuant to section 11 of this
35 act who agreed as a condition of probation to obtain a
36 biopsychosocial assessment and participate in recommended treatment
37 or services;

38 (g) Aggregated and disaggregated demographic data for people
39 convicted of a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013,

1 69.50.4014, or 69.41.030(2) (b) or (c), that identifies trends or
2 disparities in sentencing for and vacating of such convictions based
3 on race, ethnicity, gender, gender expression or identity, disability
4 status, age, and any other appropriate characteristics as determined
5 by the administrative office of the courts; and

6 (h) Statistical data comparing the sentences imposed pursuant to
7 section 11 of this act, and the convictions vacated pursuant to RCW
8 9.96.060(6), in specific courts and in different regions of
9 Washington.

10 (2) The administrative office of the courts shall, in cooperation
11 with the Washington state patrol and the Washington association of
12 sheriffs and police chiefs, collect data and information related to
13 reported violations of RCW 69.50.4011(1) (b) or (c), 69.50.4013,
14 69.50.4014, and 69.41.030(2) (b) or (c) responded to by law
15 enforcement, including but not limited to the following:

16 (a) Whether such violations were deferred to treatment in lieu of
17 further legal system involvement, or referred to the prosecuting
18 attorney for potential charges;

19 (b) The number of such violations involving repeat offenders; and

20 (c) The number of such violations involving persons who
21 previously participated in pretrial diversion pursuant to section 10
22 of this act, or who were previously sentenced pursuant to section 11
23 of this act and agreed as a condition of probation to obtain a
24 biopsychosocial assessment and participate in recommended treatment
25 or services.

26 (3) Beginning August 1, 2024, and on August 1st of every year
27 thereafter, the administrative office of the courts shall submit an
28 annual report to the legislature containing the data and information
29 described in subsections (1) and (2) of this section.

30 **Part IV - Opioid Treatment Rural Access and Expansion**

31 **Sec. 14.** RCW 36.70A.200 and 2021 c 265 s 2 are each amended to
32 read as follows:

33 (1)(a) The comprehensive plan of each county and city that is
34 planning under RCW 36.70A.040 shall include a process for identifying
35 and siting essential public facilities. Essential public facilities
36 include those facilities that are typically difficult to site, such
37 as airports, state education facilities and state or regional
38 transportation facilities as defined in RCW 47.06.140, regional

1 transit authority facilities as defined in RCW 81.112.020, state and
2 local correctional facilities, solid waste handling facilities,
3 opioid treatment programs including both mobile and fixed-site
4 medication units, recovery residences, harm reduction programs
5 excluding safe injection sites, and inpatient facilities including
6 substance ((abuse)) use disorder treatment facilities, mental health
7 facilities, group homes, community facilities as defined in RCW
8 72.05.020, and secure community transition facilities as defined in
9 RCW 71.09.020.

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

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

25 (d) For the purpose of this section, "harm reduction programs"
26 means programs that emphasize working directly with people who use
27 drugs to prevent overdose and infectious disease transmission,
28 improve the physical, mental, and social well-being of those served,
29 and offer low threshold options for accessing substance use disorder
30 treatment and other services.

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

38 (3) Any city or county not planning under RCW 36.70A.040 shall,
39 not later than September 1, 2002, establish a process for siting
40 secure community transition facilities and adopt or amend its

1 development regulations as necessary to provide for the siting of
2 such facilities consistent with statutory requirements applicable to
3 these facilities.

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

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

10 (6) No person may bring a cause of action for civil damages based
11 on the good faith actions of any county or city to provide for the
12 siting of secure community transition facilities in accordance with
13 this section and with the requirements of chapter 12, Laws of 2001
14 2nd sp. sess. For purposes of this subsection, "person" includes, but
15 is not limited to, any individual, agency as defined in RCW
16 42.17A.005, corporation, partnership, association, and limited
17 liability entity.

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

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

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

24 (b) A consideration for grants or loans provided under RCW
25 43.17.250(3); or

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

28 **Sec. 15.** RCW 71.24.589 and 2019 c 314 s 29 are each amended to
29 read as follows:

30 (1) Subject to funds appropriated by the legislature, the
31 authority shall (~~implement a pilot project~~) administer a grant
32 program for law enforcement assisted diversion which shall adhere to
33 law enforcement assisted diversion core principles recognized by the
34 law enforcement assisted diversion national support bureau, the
35 efficacy of which have been demonstrated in peer-reviewed research
36 studies.

37 (2) (~~Under the pilot project, the~~) The authority must partner
38 with the law enforcement assisted diversion national support bureau
39 to award (~~a contract~~) contracts, subject to appropriation, for

1 (~~two or more geographic areas~~) jurisdictions in the state of
2 Washington for law enforcement assisted diversion. Cities, counties,
3 and tribes (~~may compete for participation in a pilot project~~),
4 subdivisions thereof, public development authorities, and community-
5 based organizations demonstrating support from necessary public
6 partners, may serve as the lead agency applying for funding. Funds
7 may be used to scale existing projects, and to invite additional
8 jurisdictions to launch law enforcement assisted diversion programs.

9 (3) The (~~pilot projects~~) program must provide for securing
10 comprehensive technical assistance from law enforcement assisted
11 diversion implementation experts to develop and implement a law
12 enforcement assisted diversion program (~~in the pilot project's~~
13 ~~geographic areas~~) in a way that ensures fidelity to the research-
14 based law enforcement assisted diversion model. Sufficient funds must
15 be allocated from grant program funds to secure technical assistance
16 for the authority and for the implementing jurisdictions.

17 (4) The key elements of a law enforcement assisted diversion
18 (~~pilot project~~) program must include:

19 (a) Long-term case management for individuals with substance use
20 disorders;

21 (b) Facilitation and coordination with community resources
22 focusing on overdose prevention;

23 (c) Facilitation and coordination with community resources
24 focused on the prevention of infectious disease transmission;

25 (d) Facilitation and coordination with community resources
26 providing physical and behavioral health services;

27 (e) Facilitation and coordination with community resources
28 providing medications for the treatment of substance use disorders;

29 (f) Facilitation and coordination with community resources
30 focusing on housing, employment, and public assistance;

31 (g) (~~Twenty-four~~) 24 hours per day and seven days per week
32 response to law enforcement for arrest diversions; and

33 (h) Prosecutorial support for diversion services.

34 (5) No civil liability may be imposed by any court on the state
35 or its officers or employees, an appointed or elected official,
36 public employee, public agency as defined in RCW 4.24.470,
37 combination of units of government and its employees as provided in
38 RCW 36.28A.010, nonprofit community-based organization, tribal
39 government entity, tribal organization, or urban Indian organization,
40 based on the administration of a law enforcement assisted diversion

1 program or activities carried out within the purview of a grant
2 received under this program except upon proof of bad faith or gross
3 negligence.

4 **Sec. 16.** RCW 71.24.590 and 2019 c 314 s 30 are each amended to
5 read as follows:

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

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

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

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

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

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

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

35 (g) Consider whether the applicant has, or has demonstrated in
36 the past, the capability to provide the appropriate services to
37 assist the persons who utilize the program in meeting goals
38 established by the legislature in RCW 71.24.585. The department shall
39 prioritize licensing or certification to applicants who have

1 demonstrated such capability and are able to measure their success in
2 meeting such outcomes (~~(~~

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

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

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

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

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

29 (6) Registered nurses and licensed practical nurses may dispense
30 up to a ((~~thirty-one~~)) 31 day supply of medications approved by the
31 United States food and drug administration for the treatment of
32 opioid use disorder to patients of the opioid treatment program,
33 under an order or prescription and in compliance with 42 C.F.R. Sec.
34 8.12.

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

37 (a) Engages in the treatment of opioid use disorder with
38 medications approved by the United States food and drug
39 administration for the treatment of opioid use disorder and reversal
40 of opioid overdose, including methadone; and

1 (b) Provides a comprehensive range of medical and rehabilitative
2 services.

3 (8) A mobile or fixed-site medication unit may be established as
4 part of a licensed opioid treatment program.

5 NEW SECTION. Sec. 17. A new section is added to chapter 43.330
6 RCW to read as follows:

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

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

16 NEW SECTION. Sec. 18. RCW 10.31.115 (Drug possession—Referral
17 to assessment and services) and 2021 c 311 s 13 are each repealed.

18 **Part V - Funding, Promotion, and Training for Recovery Residences**

19 NEW SECTION. Sec. 19. A new section is added to chapter 71.24
20 RCW to read as follows:

21 Subject to the availability of funds appropriated for this
22 specific purpose, the authority shall:

23 (1) Make sufficient funding available to support establishment of
24 an adequate and equitable stock of recovery residences in each region
25 of the state;

26 (2) Establish a voucher program to allow accredited recovery
27 housing operators to hold bed space for individuals who are waiting
28 for treatment or who have returned to use and need a place to stay
29 while negotiating a return to stable housing;

30 (3) Conduct outreach to underserved and rural areas to support
31 the development of recovery housing, including adequate resources for
32 women, LGBTQIA+ communities, and youth; and

33 (4) Develop a training for housing providers by January 1, 2024,
34 to assist them with providing appropriate service to LGBTQIA+
35 communities, including consideration of topics like harassment,
36 communication, antiracism, diversity, and gender affirming behavior,

1 and ensure applicants for grants or loans related to recovery
2 residences receive access to the training.

3 **Sec. 20.** RCW 84.36.043 and 1998 c 174 s 1 are each amended to
4 read as follows:

5 (1) The real and personal property used by a nonprofit
6 organization in providing emergency or transitional housing for low-
7 income homeless persons as defined in RCW 35.21.685 or 36.32.415 or
8 victims of domestic violence who are homeless for personal safety
9 reasons is exempt from taxation if:

10 (a) The charge, if any, for the housing does not exceed the
11 actual cost of operating and maintaining the housing; and

12 (b) (i) The property is owned by the nonprofit organization; or

13 (ii) The property is rented or leased by the nonprofit
14 organization and the benefit of the exemption inures to the nonprofit
15 organization.

16 (2) The real and personal property used by a nonprofit
17 organization in maintaining an approved recovery residence registered
18 under RCW 41.05.760 is exempt from taxation if:

19 (a) The charge for the housing does not exceed the actual cost of
20 operating and maintaining the housing; and

21 (b) (i) The property is owned by the nonprofit organization; or

22 (ii) The property is rented or leased by the nonprofit
23 organization and the benefit of the exemption inures to the nonprofit
24 organization.

25 (3) As used in this section:

26 (a) "Homeless" means persons, including families, who, on one
27 particular day or night, do not have decent and safe shelter nor
28 sufficient funds to purchase or rent a place to stay.

29 (b) "Emergency housing" means a project that provides housing and
30 supportive services to homeless persons or families for up to sixty
31 days.

32 (c) "Transitional housing" means a project that provides housing
33 and supportive services to homeless persons or families for up to two
34 years and that has as its purpose facilitating the movement of
35 homeless persons and families into independent living.

36 ~~((3))~~ (d) "Recovery residence" has the same meaning as under
37 RCW 41.05.760.

38 (4) The exemption in subsection (2) of this section applies to
39 taxes levied for collection in calendar years 2024 through 2033.

1 (5) This exemption is subject to the administrative provisions
2 contained in RCW 84.36.800 through 84.36.865.

3 NEW SECTION. **Sec. 21.** (1) This section is the tax preference
4 performance statement for the tax preference contained in section 20,
5 chapter . . ., Laws of 2023 (section 20 of this act). This
6 performance statement is only intended to be used for subsequent
7 evaluation of the tax preference. It is not intended to create a
8 private right of action by any party or to be used to determine
9 eligibility for preferential tax treatment.

10 (2) The legislature categorizes this tax preference as one
11 intended to provide tax relief for certain businesses or individuals,
12 as indicated in RCW 82.32.808(2)(e).

13 (3) By exempting property used by nonprofit organizations
14 maintaining approved recovery residences, it is the legislature's
15 specific public policy objective to maximize funding for recovery
16 residences to the extent possible, thereby increasing availability of
17 such residences.

18 (4) To measure the effectiveness of the tax exemption provided in
19 section 20 of this act in achieving the specific public policy
20 objectives described in subsection (3) of this section, the joint
21 legislative audit and review committee must evaluate:

22 (a) Annual changes in the total number of parcels qualifying for
23 the exemption under section 20 of this act;

24 (b) The amount of annual property tax relief resulting from the
25 tax exemption under section 20 of this act;

26 (c) The average annual number of people housed at recovery
27 residences located on property qualifying for the exemption under
28 section 20 of this act;

29 (d) The annualized amount charged for housing at recovery
30 residences located on property qualifying for the exemption under
31 section 20 of this act and the annualized estimated increase in the
32 charge for housing if the properties had not been eligible for the
33 exemption; and

34 (e) The annual amount of expenditures by nonprofits to maintain
35 recovery residences located on property qualifying for the exemption
36 under section 20 of this act.

37 (5) The legislature intends to extend the expiration date of the
38 property tax exemption under section 20 of this act if the review by
39 the joint legislative audit and review committee finds that:

1 (a) The number of properties qualifying for the exemption under
2 section 20 of this act has increased;

3 (b) The number of individuals using recovery housing located on
4 property qualifying for the exemption under section 20 of this act
5 has increased; and

6 (c) The amount charged for recovery housing is reasonably
7 consistent with the actual cost of operating and maintaining the
8 housing.

9 (6) In order to obtain the data necessary to perform the review
10 in subsection (4) of this section, the joint legislative audit and
11 review committee may refer to:

12 (a) Initial applications for the tax exemption under section 20
13 of this act as approved by the department of revenue under RCW
14 84.36.815;

15 (b) Annual financial statements prepared by nonprofit entities
16 claiming the tax exemption under section 20 of this act;

17 (c) Filings with the federal government to maintain federal tax
18 exempt status by nonprofit organizations claiming the tax exemption
19 under section 20 of this act; and

20 (d) Any other data necessary for the evaluation under subsection
21 (4) of this section.

22 **Part VI – Training for Parents of Children with Substance Use Disorder**
23 **and Caseworkers Within the Department of Children, Youth, and**
24 **Families**

25 NEW SECTION. **Sec. 22.** A new section is added to chapter 71.24
26 RCW to read as follows:

27 (1) The authority, in consultation with the department of
28 children, youth, and families, shall develop a training for parents
29 of adolescents and transition age youth with substance use disorders
30 by June 30, 2024, which training must build on and be consistent and
31 compatible with existing training developed by the authority for
32 families impacted by substance use disorder, and addressing the
33 following:

34 (a) Science and education related to substance use disorders and
35 recovery;

36 (b) Adaptive and functional communication strategies for
37 communication with a loved one about their substance use disorder,

1 including positive communication skills and strategies to influence
2 motivation and behavioral change;

3 (c) Self-care and means of obtaining support;

4 (d) Means to obtain opioid overdose reversal medication when
5 appropriate and instruction on proper use; and

6 (e) Suicide prevention.

7 (2) The authority and the department of children, youth, and
8 families shall make this training publicly available, and the
9 department of children, youth, and families must promote the training
10 to licensed foster parents and caregivers, including any tribally
11 licensed foster parents and tribal caregivers.

12 NEW SECTION. **Sec. 23.** A new section is added to chapter 43.216
13 RCW to read as follows:

14 The department shall provide opioid overdose reversal medication
15 and training in the use of such medication to all department staff
16 whose job duties require in-person service or case management for
17 child welfare or juvenile rehabilitation clients.

18 **Part VII – Recovery Navigator Programs**

19 NEW SECTION. **Sec. 24.** To support recovery navigator programs,
20 the health care authority must develop and implement a data
21 integration platform by June 30, 2024, to serve as a common database
22 available for diversion efforts across the state, to serve as a data
23 collection and management tool for practitioners, and to assist in
24 standardizing definitions and practices. If possible, the health care
25 authority must leverage and interact with existing platforms already
26 in use in efforts funded by the authority. The health care authority
27 must establish a quality assurance process for behavioral health
28 administrative services organizations, and employ data validation for
29 fields in the data collection workbook. The health care authority
30 must engage and consult with the law enforcement assisted diversion
31 national support bureau on data integration approaches, platforms,
32 quality assurance protocols, and validation practices.

33 NEW SECTION. **Sec. 25.** A new section is added to chapter 71.24
34 RCW to read as follows:

35 (1) The authority shall contract with the Washington state
36 institute for public policy to conduct a study of the long-term

1 effectiveness of the recovery navigator program under RCW 71.24.115
2 with reports due by June 30th in the years 2028, 2033, and 2038. The
3 Washington state institute for public policy shall collaborate with
4 the authority, the law enforcement assisted diversion national
5 support bureau, and the substance use recovery services advisory
6 committee under RCW 71.24.546 on the topic of data collection and to
7 determine the parameters of the report, which shall include
8 recommendations, if any, for modification and improvement of the
9 recovery navigator program. The law enforcement assisted diversion
10 national support bureau may supplement the report with additional
11 recommendations to improve the recovery navigator program by
12 enhancing its ability to provide a viable, accepted, community-based
13 care alternative to jail and prosecution. The authority shall
14 cooperate with the Washington state institute for public policy to
15 provide data for this report.

16 (2) The authority shall establish an expedited preapproval
17 process by August 1, 2023, which allows requests for the use of data
18 to be forwarded to the Washington state institutional review board
19 without delay when the request is made by the Washington state
20 institute for public policy for the purpose of completing a study
21 that has been directed by the legislature.

22 **Sec. 26.** RCW 71.24.115 and 2021 c 311 s 2 are each amended to
23 read as follows:

24 (1) Each behavioral health administrative services organization
25 shall ~~((establish—a))~~ provide funds and certain administrative
26 support for recovery navigator ((program)) programs. The programs,
27 while supported with funding from the behavioral health
28 administrative services organizations, must be overseen and directed
29 by policy coordinating groups comprised, in alignment with the core
30 principles, of local executive and legislative officials, public
31 safety agencies, including police and prosecutors, and civil rights,
32 public defense, and human services organizations. Project management
33 for recovery navigator programs shall be provided by an entity
34 independent of the behavioral health administrative services
35 organization, which, by its mission and position, is able to
36 implement the collective direction of the governing policy
37 coordinating group. Where there are existing law enforcement assisted
38 diversion programs or programs operating with high fidelity in
39 alignment with the core principles, recovery navigator program

1 funding should support these programs to achieve greater scale,
2 rather than supporting parallel programs in the same jurisdictions.

3 (2) The recovery navigator programs shall be organized on a scale
4 that permits meaningful direction from and coordination with local
5 law enforcement and municipal agencies. Multiple jurisdictions may be
6 served together in a single program if the governing structure
7 includes the public officials necessary under the law enforcement
8 assisted diversion model and they agree to participate in a single
9 program. The ((program)) programs shall provide community-based
10 outreach, intake, assessment, and connection to services and, as
11 appropriate, long-term intensive case management and recovery
12 coaching services, to youth and adults with substance use disorder,
13 including for persons with co-occurring substance use disorders and
14 mental health conditions, who are referred to the program from
15 diverse sources and shall facilitate and coordinate connections to a
16 broad range of community resources for youth and adults with
17 substance use disorder, including treatment and recovery support
18 services. Recovery navigator programs must serve and prioritize
19 individuals who are actually or potentially exposed to the criminal
20 legal system related to unlawful behavior connected to drug activity
21 or other behavioral health issues.

22 ((+2)) (3) The authority shall ((establish)) revise its uniform
23 program standards for behavioral health administrative services
24 organizations to follow in the design of their recovery navigator
25 programs, following consultation with an organization with both
26 significant experience with the implementation in Washington and
27 nationally of, and technical assistance regarding, the law
28 enforcement assisted diversion programs as described in RCW
29 71.24.589, including fidelity assessment, and recognized as the
30 entity responsibility for protecting the registered trademark of law
31 enforcement assisted diversion, such as the law enforcement assisted
32 diversion national support bureau, to enhance fidelity with the core
33 principles. The uniform program standards must be modeled with
34 fidelity upon the components of the law enforcement assisted
35 diversion program and address project management, field engagement,
36 biopsychosocial assessment, intensive case management and care
37 coordination, stabilization housing when available and appropriate,
38 and, as necessary, legal system coordination for participants'
39 nondiverted legal cases that may precede or follow referral to the
40 program. The uniform program standards must be revised to incorporate

1 the law enforcement assisted diversion framework for police diversion
2 prior to arrest, without arrest, and postarrest but prior to jail
3 booking and referral for prosecution, and for ongoing case
4 conferencing with law enforcement, prosecutors, community
5 stakeholders, and program case managers. The authority must adopt the
6 uniform program standards with fidelity from the components of the
7 law enforcement assisted diversion program (~~to accommodate an~~
8 ~~expanded population of~~) following guidance from the consulting
9 organization identified in this subsection (3). The uniform standards
10 must provide for a range of program referral channels to serve
11 persons with substance use disorders, including persons with co-
12 occurring substance use disorders and mental health conditions, and
13 (allow for referrals from a broad range of sources) must require
14 prioritization of those who are or likely will be exposed to the
15 criminal legal system related to their behavioral health issues. In
16 addition to accepting referrals from law enforcement, the uniform
17 program standards must provide guidance for accepting referrals (~~on~~
18 ~~behalf of persons with substance use disorders, including persons~~
19 ~~with co-occurring substance use disorders and mental health~~
20 ~~conditions~~) of individuals who otherwise could be exposed to the
21 criminal legal system, from various sources including, but not
22 limited to, self-referral, family members of the individual,
23 emergency department personnel, persons engaged with serving homeless
24 persons, including those living unsheltered or in encampments, fire
25 department personnel, emergency medical service personnel, community-
26 based organizations, members of the business community, harm
27 reduction program personnel, faith-based organization staff, and
28 other sources within the criminal legal system, (as outlined) so
29 that individuals are engaged as early as possible within the
30 sequential intercept model. In developing response time requirements
31 within the statewide program standards, the authority shall require,
32 subject to the availability of amounts appropriated for this specific
33 purpose, that responses to referrals from law enforcement occur
34 immediately for in-custody referrals and shall strive for rapid
35 response times to other appropriate settings such as emergency
36 departments.

37 ~~((3))~~ (4) Subject to the availability of amounts appropriated
38 for this specific purpose, the authority shall provide funding to
39 each behavioral health administrative services organization for the
40 ~~(development of its)~~ continuation of and, as required by this

1 section, the revisions to and reorganization of the recovery
2 navigator ((program)) programs they fund. ((Before receiving funding
3 for implementation and ongoing administration, each)) No behavioral
4 health administrative services organization ((must submit)) may
5 receive funds after January 1, 2024, unless it has submitted a
6 program plan that demonstrates the ability to fully comply with the
7 revised statewide program standards and is approved by the authority.
8 If contracts for project managers and service providers must be
9 reprocured in order to comply with the revised standards, that
10 process must be completed by July 1, 2024, to receive continued
11 funding. The authority shall determine whether to approve each plan
12 or request for revisions. The authority shall establish a schedule
13 for the regular review of recovery navigator programs funded by
14 behavioral health administrative services ((organizations' programs))
15 organizations. The authority must confer with the consulting
16 organization identified in subsection (3) of this section when making
17 determinations regarding plan approval and any need for revisions and
18 must include the organization in any regular reviews of recovery
19 navigator programs. The authority shall arrange for technical
20 assistance to be provided to the authority, behavioral health
21 administrative services organizations, contracted providers, and
22 independent stakeholders and partners, such as prosecuting attorneys
23 and law enforcement, by the ((LEAD national support bureau to all
24 behavioral health administrative services organizations)) consulting
25 organization identified in subsection (3) of this section, which may
26 provide technical assistance directly to recovery navigator program
27 contractors, stakeholders, and partners.

28 ~~((4))~~ (5) Each behavioral health administrative services
29 organization must have a substance use disorder regional
30 administrator for its recovery navigator program. The regional
31 administrator shall be responsible for assuring compliance with
32 program standards, including staffing standards, and shall consult
33 with the consulting organization identified in subsection (3) of this
34 section to assist in assessing compliance with the standards. Each
35 recovery navigator program must maintain a sufficient number of
36 appropriately trained personnel for providing intake and referral
37 services, conducting comprehensive biopsychosocial assessments,
38 providing intensive case management services, and making warm
39 handoffs to treatment and recovery support services along the
40 continuum of care. Program staff must include people both with lived

1 experience with substance use disorder and people with clinical
2 expertise necessary to the provision of skilled care and a supervisor
3 of a care team, to the extent possible. The substance use disorder
4 regional administrator must assure that staff who are conducting
5 intake and referral services and field assessments are paid a livable
6 and competitive wage and have appropriate initial training and
7 receive continuing education.

8 ~~((5))~~ (6) Each recovery navigator program must submit quarterly
9 reports to the authority with information identified by the authority
10 and the substance use recovery services advisory committee. The
11 reports must be provided to the substance use recovery services
12 advisory committee for discussion at meetings following the
13 submission of the reports. The committee is strongly encouraged to
14 invite the consulting organization identified in subsection (3) of
15 this section to participate in presenting these reports to the
16 committee.

17 (7) No civil liability may be imposed by any court on the state
18 or its officers or employees, an appointed or elected official,
19 public employee, public agency as defined in RCW 4.24.470,
20 combination of units of government and its employees as provided in
21 RCW 36.28A.010, nonprofit community-based organization, tribal
22 government entity, tribal organization, or urban Indian organization,
23 based on the administration of a recovery navigator program except
24 upon proof of bad faith or gross negligence.

25 (8) For the purposes of this section, the term "core principles"
26 means the core principles of a law enforcement assisted diversion
27 program, as established by the law enforcement assisted diversion
28 national support bureau in its toolkit, as it existed on May 1, 2023.

29 **Part VIII - Establishing a Pilot Program for Health Engagement Hubs**

30 NEW SECTION. Sec. 27. A new section is added to chapter 71.24
31 RCW to read as follows:

32 (1)(a) The authority shall implement a pilot program for health
33 engagement hubs by August 1, 2024. The pilot program will test the
34 functionality and operability of health engagement hubs, including
35 whether and how to incorporate and build on existing medical, harm
36 reduction, treatment, and social services in order to create an all-
37 in-one location where people who use drugs can access such services.

1 (b) Subject to amounts appropriated, the authority shall
2 establish pilot programs on at least two sites, with one site located
3 in an urban area and one located in a rural area.

4 (c) The authority shall report on the pilot program results,
5 including recommendations for expansion, and rules and payment
6 structures, to the legislature no later than August 1, 2026.

7 (2) A health engagement hub is intended to:

8 (a) Serve as an all-in-one location where people who use drugs
9 can access a range of medical, harm reduction, treatment, and social
10 services;

11 (b) Be affiliated with existing syringe service programs,
12 federally qualified health centers, community health centers,
13 overdose prevention sites, safe consumption sites, patient-centered
14 medical homes, tribal behavioral health programs, peer run
15 organizations such as clubhouses, services for unhoused people,
16 supportive housing, and opioid treatment programs including mobile
17 and fixed-site medication units established under an opioid treatment
18 program, or other appropriate entity;

19 (c) Provide referrals or access to methadone and other
20 medications for opioid use disorder;

21 (d) Function as a patient-centered medical home by offering high-
22 quality, cost-effective patient-centered care, including wound care;

23 (e) Provide harm reduction services and supplies;

24 (f) Provide linkage to housing, transportation, and other support
25 services; and

26 (g) Be open to youth as well as adults.

27 **Part IX - Education and Employment Pathways**

28 NEW SECTION. **Sec. 28.** A new section is added to chapter 71.24
29 RCW to read as follows:

30 Subject to funding provided for this specific purpose, the
31 authority shall establish a grant program for providers of
32 employment, education, training, certification, and other supportive
33 programs designed to provide persons recovering from a substance use
34 disorder with employment and education opportunities. The grant
35 program shall employ a low-barrier application and give priority to
36 programs that engage with black, indigenous, persons of color, and
37 other historically underserved communities.

1 **Part X – Providing a Statewide Directory of Recovery Services**

2 NEW SECTION. **Sec. 29.** A new section is added to chapter 71.24
3 RCW to read as follows:

4 Subject to funding provided for this specific purpose, the
5 authority must collaborate with the department and the department of
6 social and health services to expand the Washington recovery helpline
7 and the recovery readiness asset tool to provide a dynamically
8 updated statewide behavioral health treatment and recovery support
9 services mapping tool that includes a robust resource database for
10 those seeking services and a referral system to be incorporated
11 within the locator tool to help facilitate the connection between an
12 individual and a facility that is currently accepting new referrals.
13 The tool must include dual interface capability, one for public
14 access and one for internal use and management.

15 **Part XI – Investing Adequately in Statewide Diversion Services**

16 NEW SECTION. **Sec. 30.** A new section is added to chapter 71.24
17 RCW to read as follows:

18 Subject to the availability of funds appropriated for this
19 specific purpose, the authority shall:

20 (1) Continue and expand efforts to provide opioid use disorder
21 medication in city, county, regional, and tribal jails;

22 (2) Provide support funds to new and established recovery support
23 services including department of health certified clubhouses
24 throughout the state;

25 (3) Award grants to an equivalent number of crisis services
26 providers to the west and the east of the Cascade mountains, to
27 establish and expand 23-hour crisis relief center capacity;

28 (4) Maintain a memorandum of understanding with the criminal
29 justice training commission to provide ongoing funding for community
30 grants pursuant to RCW 36.28A.450; and

31 (5) Provide ongoing grants to law enforcement assistant diversion
32 programs under RCW 71.24.589.

33 **Part XII – Streamlining Substance Use Disorder Treatment Intakes**

34 NEW SECTION. **Sec. 31.** A new section is added to chapter 71.24
35 RCW to read as follows:

1 (1) The authority shall convene a work group to recommend changes
2 to systems, policies, and processes related to intake, screening, and
3 assessment for substance use disorder services, with the goal to
4 broaden the workforce capable of administering substance use disorder
5 assessments and to make the assessment process as brief as possible,
6 including only what is necessary to manage utilization and initiate
7 care. The intake shall be low barrier, person-centered, and amenable
8 to administration in diverse health care settings and by a range of
9 health care professionals. The intake assessment shall consider the
10 person's self-identified needs and preferences when evaluating
11 direction of treatment and may include different components based on
12 the setting, context, and past experience with the client.

13 (2) The work group must include care providers, payors, people
14 who use drugs, individuals in recovery from substance use disorder,
15 and other individuals recommended by the authority. The work group
16 shall present its recommendations to the governor and appropriate
17 committees of the legislature by December 1, 2024.

18 **Sec. 32.** RCW 18.64.600 and 2020 c 244 s 2 are each amended to
19 read as follows:

20 (1) The license of location for a pharmacy licensed under this
21 chapter may be extended to a remote dispensing site where technology
22 is used to dispense medications (~~(approved by the United States food~~
23 ~~and drug administration)~~) used for the treatment of opioid use
24 disorder or its symptoms.

25 (2) In order for a pharmacy to use remote dispensing sites, a
26 pharmacy must register each separate remote dispensing site with the
27 commission.

28 (3) The commission shall adopt rules that establish minimum
29 standards for remote dispensing sites registered under this section.
30 The minimum standards shall address who may retrieve medications for
31 opioid use disorder stored in or at a remote dispensing site pursuant
32 to a valid prescription or chart order. The minimum standards must
33 require the pharmacy be responsible for stocking and maintaining a
34 perpetual inventory of the medications for opioid use disorder stored
35 in or at the registered remote dispensing site. The dispensing
36 technology may be owned by either the pharmacy or the registered
37 remote dispensing site.

38 (4) The secretary may adopt rules to establish a reasonable fee
39 for obtaining and renewing a registration issued under this section.

1 (5) The registration issued under this section will be considered
2 as part of the pharmacy license issued under RCW 18.64.043. If the
3 underlying pharmacy license is not active, then the registration
4 shall be considered inoperable by operation of law.

5 **Part XIII - Miscellaneous Provisions**

6 NEW SECTION. **Sec. 33.** Section 7 of this act takes effect
7 January 1, 2025.

8 **Sec. 34.** 2021 c 311 s 29 (uncodified) is amended to read as
9 follows:

10 Sections 8 through 10(~~7~~) and 12(~~7-15, and 16~~) of this act
11 expire July 1, 2023.

12 NEW SECTION. **Sec. 35.** Sections 2 through 6, 8 through 12, and
13 34 of this act are necessary for the immediate preservation of the
14 public peace, health, or safety, or support of the state government
15 and its existing public institutions, and take effect July 1, 2023.

16 NEW SECTION. **Sec. 36.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 37.** If specific funding for the purposes of
21 this act, referencing this act by bill or chapter number, is not
22 provided by June 30, 2023, in the omnibus appropriations act, this
23 act is null and void."

24 Correct the title.

EFFECT: Makes the following changes to the underlying bill:

(1) Reclassifies the offenses of possession of a controlled substance and possession of a counterfeit substance as misdemeanors, rather than gross misdemeanors.

(2) Establishes the offenses of knowing possession and use of a controlled substance, counterfeit substance, or legend drug in a public place as misdemeanors, subject to certain exceptions.

(3) Encourages prosecutors to divert applicable drug offenses for assessment, treatment, or other services, through a recovery navigator program (RNP) or a comparable program.

(4) Provides that, upon arraignment for applicable drug offenses, the court is required to determine whether the defendant has been

advised by the defendant's attorney about pretrial diversion, rather than give such advisement directly to the defendant.

(5) Eliminates the specific appropriation made for the Washington state patrol related to testing evidence submitted for suspected drug offenses within 45 days, and instead makes such testing requirements subject to the availability of funds.

(6) Provides that the prohibition on selling or permitting the sale of drug paraphernalia does not apply to distribution of certain supplies by outreach, shelter, and housing programs.

(7) Provides that the state occupies and preempts the field of drug paraphernalia regulation.

(8) Modifies provisions related to pretrial diversions for applicable drug offenses, including by:

- Expanding the circumstances when pretrial diversion is available to include when a person is charged with knowing possession and use of a controlled substance, counterfeit substance, or legend drug in a public place;

- Providing that a court may not grant a motion for pretrial diversion without the prosecuting attorney's consent;

- Encouraging prosecuting attorneys to divert cases meeting certain criteria;

- Providing that, if the prosecuting attorney consents, the court must grant a motion for pretrial diversion in circumstances when the defendant is only charged with an applicable drug offense, and the defendant has not been convicted of any offenses committed after July 1, 2023;

- Requiring the court to provide the defendant and the defendant's counsel with specific information prior to granting a motion for pretrial diversion;

- Eliminating the provisions related to making resources available to assist an applicable defendant with obtaining a substance use disorder (SUD) evaluation, assisting the defendant with transportation to the evaluation, allowing the court to contract with a third party to provide SUD assessments and services, and requiring state reimbursement of associated costs;

- Providing that a RNP or other comparable program (applicable program), rather than a treatment program, must make a written report to the court stating its findings and recommendations based on a biopsychosocial assessment, and that such report must be filed under seal with the court, with a copy given to certain parties;

- Exempting the written report and its copies from disclosure under the public records act;

- Providing that if the applicable program's written report does not recommend any treatment or services, the defendant must instead complete an amount of community restitution as determined by the court, but not to exceed 120 hours;

- Requiring the court to endeavor to avoid public discussion of certain stigmatizing topics;

- Limiting when the prosecuting attorney may make a motion for termination from pretrial diversion to when it appears that the defendant is not meaningfully engaging in the recommended treatment or services, or, if applicable, the community restitution; and

- Providing that the defendant successfully completes pretrial diversion by having six months of meaningful engagement with assessment and recommended treatment or services and progress toward recovery goals as reflected by a written status update from the applicable program, or, if no treatment or services were recommended by the applicable program, by completing the community restitution and submitting proof of completion to the court.

(9) Modifies provisions related to sentencing requirements for applicable drug offenses, including by:

- Expanding the circumstances when a court is required to impose certain sentences and conditions for applicable drug offense convictions to include when a person convicted agrees to obtain a biopsychosocial assessment by an applicable program and recommended treatment or services, or, if applicable, to complete court-ordered community restitution, as a condition of probation;

- Eliminating the provisions related to making resources available to assist an applicable defendant with obtaining an SUD evaluation, assisting the defendant with transportation to the evaluation, allowing the court to contract with a third party to provide SUD assessments and services, and requiring state reimbursement of associated costs;

- Eliminating the provisions requiring the court to grant a person credit for all confinement time served presentencing for applicable drug offenses when such confinement was solely in regard to the offense for which the person is being sentenced;

- Eliminating the 21-day mandatory minimum sentences for persons convicted of applicable drug offenses who refuse to obtain an SUD assessment and recommended treatment or services as a condition of probation;

- Eliminating the provision related to assisting an applicable person with transportation to an SUD evaluation;

- Providing that an applicable program, rather than an SUD treatment program, must prepare a biopsychosocial assessment, and that such assessment must be filed under seal with the court;

- Eliminating the provision requiring all individuals providing assessments to implement a specific integrated and comprehensive screening and assessment process for co-occurring SUDs and mental health disorders;

- Requiring the court to determine whether an applicable person, based on the person's biopsychosocial assessment, must be required to complete sustained services from a licensed behavioral health care provider, peer counseling program, or other case management program, rather than complete intensive treatment in an approved treatment program;

- Requiring the court to order an applicable person to complete an amount of community restitution not to exceed 120 hours, as a term of probation, if the report based on the person's biopsychosocial assessment does not recommend any treatment or services;

- Requiring the court to confirm that an applicable person's service provider consents to providing, at a minimum, monthly updates on the person's progress on a schedule acceptable to the court;

- Requiring meaningful engagement, rather than compliance, with treatment or services recommended by the biopsychosocial assessment as a condition of probation for applicable persons;

- Providing that only the prosecuting attorney, rather than the prosecuting attorney or the court, must make a motion for a hearing to consider sanctions when it appears that an applicable person is not meaningfully engaging in treatment or services, or, if applicable, not completing court-ordered community restitution;

- Eliminating the mandatory minimum sanctions that the court must impose if it finds that an applicable person has willfully abandoned or demonstrated a consistent failure to meaningfully participate in treatment or services;

- Requiring the court to terminate probation and enter an order vacating an applicable person's conviction upon verification that the person successfully completed treatment and services, or, if applicable, court-ordered community restitution; and

- Requiring the court to terminate probation and enter an order vacating an applicable person's conviction if the individual has not been arrested, charged, or convicted in the one year following the person's conviction.

(10) Provides that if a person convicted of an applicable drug offense successfully completes recommended treatment or services and files proof of completion, or has not been arrested, charged, or convicted in the one year following the person's conviction, the prosecuting attorney must make a motion to vacate the person's conviction or convictions, and the court must grant the motion.

(11) Requires the administrative office of the courts (AOC) to collect data and information, and submit an annual report, related to the following:

- The recidivism rate for persons who participate in pretrial diversion or agree to obtain a biopsychosocial assessment and participate in recommended treatment or services as a condition of probation for applicable drug offenses; and

- The utilization and outcomes of specific forms of pretrial diversion, sentencing, and postconviction relief for applicable drug offenses.

(12) Requires the AOC, in cooperation with the Washington state patrol and the Washington association of sheriffs and police chiefs, to collect data and submit an annual report on information related to reported violations of applicable drug offenses responded to by law enforcement.

(13) Provides that harm reduction programs include programs that offer low threshold options for accessing SUD treatment and other services, rather than other health care services.

(14) Requires the department of commerce, subject to the availability of funds, to fund the construction costs of SUD treatment and services programs and recovery housing, rather than just SUD treatment and services programs, in certain regions of the state.

(15) Eliminates the provision requiring the health care authority (HCA), subject to the availability of funds, to make sufficient funding available to support establishment of an adequate and equitable stock of recovery residences in each region of the state.

(16) Eliminates the requirement for the department of health (DOH) to hold a public hearing before making a decision on an application for licensing or certifying an opioid treatment program.

(17) Eliminates the amendatory provisions related to the reporting obligations of behavioral health or service providers, and the authority of the prosecuting attorney to file charges, when an applicable person diverted to a provider violates the terms of the diversion.

(18) Eliminates the provision creating a right to court-appointed counsel for certain parenting plan or child custody proceedings.

(19) Modifies the provisions related to the HCA and the department of children, youth, and families' (DCYF) training for parents, including by:

- Codifying the provisions in chapter 71.24 RCW, rather than in chapter 43.21 RCW;

- Specifying that the training is for parents of transition age youth and adolescents, rather than children, with SUDs;

- Providing that the training must build on and be consistent and compatible with existing training developed by the HCA for families impacted by SUDs; and

- Including suicide prevention in the training.

(20) Requires the DCYF to provide opioid overdose reversal medication and training to DCYF staff whose job duties require in

person service or case management for child welfare or juvenile rehabilitation clients, rather than to persons who may contact individuals experiencing overdose.

(21) Modifies provisions related to RNPs, including by:

- Requiring that RNPs be overseen and directed by policy coordinating groups comprised of local officials, public safety agencies, and human services organizations;
- Requiring project management for RNPs to be provided by entities that are independent of the behavioral health administrative services organization;
- Allowing funding for RNPs to support law enforcement assisted diversion (LEAD) programs that are operating with high fidelity to the core principles;
- Defining "core principles" to be the core principles of a LEAD program, as established by the LEAD National Support Bureau as of May 1, 2023;
- Requiring RNPs to be organized on a scale to allow meaningful direction from and coordination with law enforcement and municipal agencies;
- Directing RNPs to prioritize individuals who are actually or potentially exposed to the criminal legal system;
- Directing the HCA to revise its RNP standards following consultation with an organization with significant experience with implementing LEAD programs (consulting entity);
- Requiring, as a condition for receiving funds, RNPs to submit a program plan for approval by the HCA by January 1, 2024, or to reprocure to meet the revised standards by July 1, 2024;
- Requiring the HCA to confer with the consulting entity when approving plans or requiring revisions and to arrange for the consulting entity to provide technical assistance to RNPs;
- Requiring the HCA to revise the RNP standards to incorporate the LEAD framework for police diversion prior to arrest, without arrest, and postarrest and prior to jail booking and referral to prosecution;
- Providing immunity from civil liability for several identified entities for their administration of an RNP;
- Requiring the HCA to engage and consult with the LEAD National Support Bureau on data integration approaches, platforms, quality assurance protocols, and validation practices for the HCA's development and implementation of a data integration platform to support RNPs; and
- Modifying the Washington state institute for public policy's contracted study on the long-term effectiveness of RNPs to also include collaboration with and supplementation from the LEAD National Support Bureau.

(22) Requires the HCA to implement a pilot program, rather than develop payment structures, for health engagement hubs by August 1, 2024, rather than January 1, 2025.

(23) Eliminates the specific appropriations made for the HCA related to funding for opioid use disorder medication, DOH certified clubhouses, 23-hour crisis relief centers, certain community grants, and LEAD programs, and instead makes those provisions subject to the availability of appropriated funds.

(24) Modifies provisions related to remote dispensing sites, including by:

- Allowing remote dispensing sites to dispense medications used for the treatment of the symptoms of opioid use disorder and removing the express requirement that such medications be approved by the United States food and drug administration; and

- Allowing the dispensing technology to be owned by either the pharmacy or the remote dispensing site.

(25) Provides that the amendatory provisions related to establishing the offenses of knowing possession and use of a controlled substance, counterfeit substance, or legend drug in a public place, and modifying other specific drug possession offenses, are effective July 1, 2023.

(26) Adds a severability clause.

(27) Adds a null and void clause which provides that the act is null and void if specific funding for the purposes of the act, referencing the act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act.

(28) Modifies language in the intent section.

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