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**HOUSE BILL 1561**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Graham, Robertson, Eslick, Abbarno, Gilday, Caldier, Corry, Barkis, Jacobsen, Chambers, Walsh, and Hoff

Read first time 03/23/21. Referred to Committee on Public Safety.

1 AN ACT Relating to expanding offenses and penalties for  
2 manufacture, sale, distribution, and other conduct involving  
3 controlled substances and counterfeit substances; amending RCW  
4 9A.42.100, 9.94A.518, 69.50.406, 69.50.4011, 69.50.410, and  
5 69.50.4015; and prescribing penalties.

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

7 **Sec. 1.** RCW 9A.42.100 and 2005 c 218 s 4 are each amended to  
8 read as follows:

9 A person is guilty of the crime of endangerment with a controlled  
10 substance if the person knowingly or intentionally permits a  
11 dependent child or dependent adult to be exposed to, ingest, inhale,  
12 or have contact with (~~methamphetamine~~) any controlled substance as  
13 defined in RCW 69.50.101 or ephedrine, pseudoephedrine, or anhydrous  
14 ammonia, including their salts, isomers, and salts of isomers, that  
15 are being used in the manufacture of methamphetamine, including its  
16 salts, isomers, and salts of isomers. Endangerment with a controlled  
17 substance is a class B felony.

18 **Sec. 2.** RCW 9.94A.518 and 2003 c 53 s 57 are each amended to  
19 read as follows:

TABLE 4

DRUG OFFENSES  
INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- III Any felony offense under chapter  
69.50 RCW with a deadly weapon  
special verdict under RCW  
~~((9.94A.602))~~ 9.94A.825
- Controlled Substance Homicide (RCW  
69.50.415)
- Create or deliver a counterfeit  
controlled substance (RCW  
69.50.4011(1)(a))
- Deliver or possess with intent to  
deliver methamphetamine (RCW  
69.50.401(2)(b))
- Delivery of imitation controlled  
substance by person eighteen or  
over to person under eighteen  
(RCW 69.52.030(2))
- Involving a minor in drug dealing  
(RCW 69.50.4015)
- Manufacture, deliver, or possess with  
intent to deliver amphetamine  
(RCW 69.50.401(2)(b))
- Manufacture, deliver, or possess with  
intent to deliver narcotics from  
Schedule I or II or flunitrazepam  
from Schedule IV (RCW  
69.50.401(2)(a))

1 Manufacture, deliver, or possess with  
2 intent to deliver narcotics from  
3 Schedule III, IV, or V or  
4 nonnarcotics from Schedule I-V  
5 (except marijuana, amphetamine,  
6 methamphetamines, or  
7 flunitrazepam) (RCW  
8 69.50.401(2) (c) through (e))

9 Manufacture of methamphetamine  
10 (RCW 69.50.401(2)(b))

11 Over 18 and deliver heroin,  
12 methamphetamine, a narcotic from  
13 Schedule I or II, or flunitrazepam  
14 from Schedule IV to someone  
15 under 18 (RCW 69.50.406)

16 Over 18 and deliver narcotic from  
17 Schedule III, IV, or V or a  
18 nonnarcotic, except flunitrazepam  
19 or methamphetamine, from  
20 Schedule I-V to someone under 18  
21 ~~((and 3 years junior))~~ (RCW  
22 69.50.406)

23 Possession of Ephedrine,  
24 Pseudoephedrine, or Anhydrous  
25 Ammonia with intent to  
26 manufacture  
27 methamphetamine (RCW  
28 69.50.440)

29 Selling for profit (controlled or  
30 counterfeit) any controlled  
31 substance (RCW 69.50.410)

32 II ~~((Create, deliver, or possess a~~  
33 ~~counterfeit controlled substance~~  
34 ~~(RCW 69.50.4011)~~

35 ~~Deliver or possess with intent to~~  
36 ~~deliver methamphetamine (RCW~~  
37 ~~69.50.401(2)(b))~~

1 Delivery of a material in lieu of a  
2 controlled substance (RCW  
3 69.50.4012)

4 Maintaining a Dwelling or Place for  
5 Controlled Substances (RCW  
6 69.50.402(1)(f))

7 ~~((Manufacture, deliver, or possess with  
8 intent to deliver amphetamine  
9 (RCW 69.50.401(2)(b))~~

10 ~~Manufacture, deliver, or possess with  
11 intent to deliver narcotics from  
12 Schedule I or II or flunitrazepam  
13 from Schedule IV (RCW  
14 69.50.401(2)(a)))~~

15 ~~Manufacture, deliver, or possess with  
16 intent to deliver narcotics from  
17 Schedule III, IV, or V or  
18 nonnarcotics from Schedule I-V  
19 (except marijuana, amphetamine,  
20 methamphetamines, or  
21 flunitrazepam) (RCW  
22 69.50.401(2)(c) through (e)))~~

23 Manufacture, distribute, or possess  
24 with intent to distribute an  
25 imitation controlled substance  
26 (RCW 69.52.030(1))

27 Possess a counterfeit controlled  
28 substance (RCW 69.50.4011  
29 (1)(b))

30 I Forged Prescription (RCW 69.41.020)

31 Forged Prescription for a Controlled  
32 Substance (RCW 69.50.403)

33 Manufacture, deliver, or possess with  
34 intent to deliver marijuana (RCW  
35 69.50.401(2)(c))

Possess Controlled Substance that is a  
Narcotic from Schedule III, IV, or  
V or Nonnarcotic from Schedule I-  
V (RCW 69.50.4013)

Possession of Controlled Substance  
that is either heroin or narcotics  
from Schedule I or II (RCW  
69.50.4013)

Unlawful Use of Building for Drug  
Purposes (RCW 69.53.010)

**Sec. 3.** RCW 69.50.406 and 2019 c 379 s 3 are each amended to read as follows:

(1) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, including its salts, isomers, and salts of isomers, or flunitrazepam, including its salts, isomers, and salts of isomers, listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401(2) (a) or (b), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(2) (a) or (b), or by both.

(2) Except as provided in RCW 69.50.475, any person eighteen years of age or over who violates RCW 69.50.401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age (~~who is at least three years his or her junior~~) is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d), or (e), or both.

(3) Any person convicted under this section shall receive a mandatory term of confinement of not less than seven years.

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

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

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

(b) Possess a counterfeit substance.

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

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

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

11 (c) Any other counterfeit substance classified in Schedule I, II,  
12 or III, is guilty of a class C felony punishable according to chapter  
13 9A.20 RCW;

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

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

19 **Sec. 5.** RCW 69.50.410 and 2003 c 53 s 342 are each amended to  
20 read as follows:

21 (1) Except as authorized by this chapter it is a class ((C)) B  
22 felony for any person to sell for profit any controlled substance or  
23 counterfeit substance classified in Schedule I, RCW 69.50.204, except  
24 leaves and flowering tops of marihuana.

25 For the purposes of this section only, the following words and  
26 phrases shall have the following meanings:

27 (a) "To sell" means the passing of title and possession of a  
28 controlled substance from the seller to the buyer for a price whether  
29 or not the price is paid immediately or at a future date.

30 (b) "For profit" means the obtaining of anything of value in  
31 exchange for a controlled substance.

32 (c) "Price" means anything of value.

33 (2)(a) Any person convicted of a violation of subsection (1) of  
34 this section shall receive a sentence of not more than five years in  
35 a correctional facility of the department of social and health  
36 services for the first offense.

37 (b) Any person convicted on a second or subsequent cause, the  
38 sale having transpired after prosecution and conviction on the first  
39 cause, of subsection (1) of this section shall receive a mandatory

1 sentence of five years in a correctional facility of the department  
2 of social and health services and no judge of any court shall suspend  
3 or defer the sentence imposed for the second or subsequent violation  
4 of subsection (1) of this section.

5 (3) (a) Any person convicted of a violation of subsection (1) of  
6 this section by selling heroin shall receive a mandatory sentence of  
7 two years in a correctional facility of the department of social and  
8 health services and no judge of any court shall suspend or defer the  
9 sentence imposed for such violation.

10 (b) Any person convicted on a second or subsequent sale of  
11 heroin, the sale having transpired after prosecution and conviction  
12 on the first cause of the sale of heroin shall receive a mandatory  
13 sentence of ten years in a correctional facility of the department of  
14 social and health services and no judge of any court shall suspend or  
15 defer the sentence imposed for this second or subsequent violation:  
16 PROVIDED, That the indeterminate sentence review board under RCW  
17 9.95.040 shall not reduce the minimum term imposed for a violation  
18 under this subsection.

19 (4) Whether or not a mandatory minimum term has expired, an  
20 offender serving a sentence under this section may be granted an  
21 extraordinary medical placement when authorized under RCW  
22 9.94A.728(~~((4))~~) (1)(c).

23 (5) In addition to the sentences provided in subsection (2) of  
24 this section, any person convicted of a violation of subsection (1)  
25 of this section shall be fined in an amount calculated to at least  
26 eliminate any and all proceeds or profits directly or indirectly  
27 gained by such person as a result of sales of controlled substances  
28 in violation of the laws of this or other states, or the United  
29 States, up to the amount of five hundred thousand dollars on each  
30 count.

31 (6) Any person, addicted to the use of controlled substances, who  
32 voluntarily applies to the department of social and health services  
33 for the purpose of participating in a rehabilitation program approved  
34 by the department for addicts of controlled substances shall be  
35 immune from prosecution for subsection (1) offenses unless a filing  
36 of an information or indictment against such person for a violation  
37 of subsection (1) of this section is made prior to his or her  
38 voluntary participation in the program of the department of social  
39 and health services. All applications for immunity under this section  
40 shall be sent to the department of social and health services in

1 Olympia. It shall be the duty of the department to stamp each  
2 application received pursuant to this section with the date and time  
3 of receipt.

4 (7) This section shall not apply to offenses defined and  
5 punishable under the provisions of RCW 69.50.401 through 69.50.4015.

6 **Sec. 6.** RCW 69.50.4015 and 2003 c 53 s 336 are each amended to  
7 read as follows:

8 (1) It is unlawful to compensate, threaten, solicit, or in any  
9 other manner involve a person under the age of eighteen years in a  
10 transaction unlawfully to manufacture, sell, or deliver a controlled  
11 substance.

12 (2) A violation of this section is a class ((C)) B felony  
13 punishable according to chapter 9A.20 RCW.

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