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**SENATE BILL 5467**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

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

Read first time 01/19/23. Referred to Committee on Law & Justice.

1 AN ACT Relating to encouraging treatment for possession of  
2 certain counterfeit drugs or controlled substances; amending RCW  
3 69.50.4011, 69.50.4013, 69.50.4014, 69.41.030, 9.96.060, and  
4 10.31.110; amending 2021 c 311 s 29 (uncodified); adding a new  
5 section to chapter 69.50 RCW; adding a new section to chapter 43.43  
6 RCW; repealing RCW 10.31.115; prescribing penalties; providing an  
7 expiration date; and declaring an emergency.

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

9 **Sec. 1.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to  
10 read as follows:

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

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

14 (b) Knowingly possess a counterfeit substance.

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

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

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

5 (c) Any other counterfeit substance classified in Schedule I, II,  
6 or III, is guilty of a class C felony punishable according to chapter  
7 9A.20 RCW;

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

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

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

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

20 **Sec. 2.** RCW 69.50.4013 and 2022 c 16 s 86 are each amended to  
21 read as follows:

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

27 (2) Except as provided in RCW 69.50.4014, any person who violates  
28 this section is guilty of a (~~class C felony punishable under chapter~~  
29 ~~9A.20 RCW~~) gross misdemeanor punishable under section 5 of this act.

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

35 (4)(a) The possession, by a person twenty-one years of age or  
36 older, of useable cannabis, cannabis concentrates, or cannabis-  
37 infused products in amounts that do not exceed those set forth in RCW  
38 69.50.360(3) is not a violation of this section, this chapter, or any  
39 other provision of Washington state law.

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

9 ~~((4))~~ (5)(a) The delivery by a person twenty-one years of age  
10 or older to one or more persons twenty-one years of age or older,  
11 during a single twenty-four hour period, for noncommercial purposes  
12 and not conditioned upon or done in connection with the provision or  
13 receipt of financial consideration, of any of the following cannabis  
14 products, is not a violation of this section, this chapter, or any  
15 other provisions of Washington state law:

16 (i) One-half ounce of useable cannabis;

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

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

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

21 (b) The act of delivering cannabis or a cannabis product as  
22 authorized under this subsection ~~((4))~~ (5) must meet one of the  
23 following requirements:

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

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

28 ~~((5))~~ (6) No person under twenty-one years of age may knowingly  
29 possess, manufacture, sell, or distribute cannabis, cannabis-infused  
30 products, or cannabis concentrates, regardless of THC concentration.  
31 This does not include qualifying patients with a valid authorization.

32 ~~((6))~~ (7) The possession by a qualifying patient or designated  
33 provider of cannabis concentrates, useable cannabis, cannabis-infused  
34 products, or plants in accordance with chapter 69.51A RCW is not a  
35 violation of this section, this chapter, or any other provision of  
36 Washington state law.

37 **Sec. 3.** RCW 69.50.4014 and 2022 c 16 s 88 are each amended to  
38 read as follows:

1       (1) Except as provided in RCW 69.50.401(2)(c) or as otherwise  
2 authorized by this chapter, any person found guilty of knowing  
3 possession of forty grams or less of cannabis is guilty of a  
4 misdemeanor.

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

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

12       (1) It shall be unlawful for any person to sell, deliver, or  
13 knowingly possess any legend drug except upon the order or  
14 prescription of a physician under chapter 18.71 RCW, an osteopathic  
15 physician and surgeon under chapter 18.57 RCW, an optometrist  
16 licensed under chapter 18.53 RCW who is certified by the optometry  
17 board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a  
18 podiatric physician and surgeon under chapter 18.22 RCW, a  
19 veterinarian under chapter 18.92 RCW, a commissioned medical or  
20 dental officer in the United States armed forces or public health  
21 service in the discharge of his or her official duties, a duly  
22 licensed physician or dentist employed by the veterans administration  
23 in the discharge of his or her official duties, a registered nurse or  
24 advanced registered nurse practitioner under chapter 18.79 RCW when  
25 authorized by the nursing care quality assurance commission, a  
26 pharmacist licensed under chapter 18.64 RCW to the extent permitted  
27 by drug therapy guidelines or protocols established under RCW  
28 18.64.011 and authorized by the commission and approved by a  
29 practitioner authorized to prescribe drugs, a physician assistant  
30 under chapter 18.71A RCW when authorized by the Washington medical  
31 commission, or any of the following professionals in any province of  
32 Canada that shares a common border with the state of Washington or in  
33 any state of the United States: A physician licensed to practice  
34 medicine and surgery or a physician licensed to practice osteopathic  
35 medicine and surgery, a dentist licensed to practice dentistry, a  
36 podiatric physician and surgeon licensed to practice podiatric  
37 medicine and surgery, a licensed advanced registered nurse  
38 practitioner, a licensed physician assistant, or a veterinarian  
39 licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the

1 above provisions shall not apply to sale, delivery, or possession by  
2 drug wholesalers or drug manufacturers, or their agents or employees,  
3 or to any practitioner acting within the scope of his or her license,  
4 or to a common or contract carrier or warehouse operator, or any  
5 employee thereof, whose possession of any legend drug is in the usual  
6 course of business or employment: PROVIDED FURTHER, That nothing in  
7 this chapter or chapter 18.64 RCW shall prevent a family planning  
8 clinic that is under contract with the health care authority from  
9 selling, delivering, possessing, and dispensing commercially  
10 prepackaged oral contraceptives prescribed by authorized, licensed  
11 health care practitioners: PROVIDED FURTHER, That nothing in this  
12 chapter prohibits possession or delivery of legend drugs by an  
13 authorized collector or other person participating in the operation  
14 of a drug take-back program authorized in chapter 69.48 RCW.

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

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

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

25 NEW SECTION. Sec. 5. A new section is added to chapter 69.50  
26 RCW to read as follows:

27 (1) In courts of limited jurisdiction, an individual who is  
28 convicted of a violation of RCW 69.50.4011(1)(b), 69.50.4013, or  
29 69.41.030(2)(b) shall be sentenced as follows:

30 (a) For individuals convicted of a violation of RCW  
31 69.50.4011(1)(b) or 69.50.4013, if the sentenced individual agrees as  
32 a condition of probation to submit to a substance use disorder  
33 assessment and comply with recommended treatment, to a term of  
34 confinement of up to 364 days all of which shall be suspended for a  
35 period not to exceed two years. The court shall give the individual  
36 credit for all confinement time served before the sentence if the  
37 confinement was solely in regard to the offense for which the  
38 individual is being sentenced;

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

7 (c) For individuals convicted of a violation of RCW  
8 69.50.4011(1)(b), 69.50.4013, or 69.41.030(2)(b) where the legend  
9 drug is classified as schedule II substance under RCW 69.50.206, if  
10 the sentenced individual refuses to submit to a substance use  
11 disorder assessment and comply with the recommended treatment as a  
12 condition of probation, to imprisonment for a term of not less than  
13 45 days. The sentencing court shall give the individual credit for  
14 all confinement time served before the sentencing if the confinement  
15 was solely in regard to the offense for which the individual is being  
16 sentenced.

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

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

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

- 37 (i) Type of treatment;
- 38 (ii) Nature of treatment;
- 39 (iii) Length of treatment;
- 40 (iv) A treatment time schedule; and

1 (v) Approximate cost of the treatment.

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

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

12 (5) For the purpose of completing a diagnostic evaluation and  
13 treatment, any entity that provides assessment, diagnostic evaluation  
14 and treatment recommendation, or treatment under this section must  
15 assume that the alleged violation of RCW 69.50.4011(1)(b),  
16 69.50.4013, or 69.41.030 is founded and will be proven.

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

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

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

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

39 (10)(a) If it appears to the prosecuting attorney or the court,  
40 that the sentenced individual is performing unsatisfactorily in the

1 recommended treatment program, the prosecuting attorney, or the court  
2 on its own, shall make a motion for a hearing to consider sanctions.  
3 After notice to the sentenced individual, the court shall hold a  
4 hearing to determine if a sanction or revocation of the individual's  
5 suspended sentence, or any part thereof, is warranted under RCW  
6 3.50.340 or 3.66.069.

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

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

24 (d) An individual serving a sentence under this section may be  
25 granted an extraordinary medical placement by the jail administrator  
26 subject to the standards and limitations set forth in RCW  
27 9.94A.728(1)(c).

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

37 (12) If the individual has successfully completed the recommended  
38 treatment program, the individual must file proof of successful  
39 completion with the court at which time the court must terminate



1 probation and enter an order vacating the individual's conviction  
2 under RCW 9.96.060(6).

3 **Sec. 6.** RCW 9.96.060 and 2022 c 16 s 7 are each amended to read  
4 as follows:

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

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

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

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

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

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

37 (e) The offense was any misdemeanor or gross misdemeanor  
38 violation, including attempt, of chapter 9.68 RCW (obscenity and  
39 pornography), chapter 9.68A RCW (sexual exploitation of children), or

1 chapter 9A.44 RCW (sex offenses), except for failure to register as a  
2 sex offender under RCW 9A.44.132;

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

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

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

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

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

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

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

39 (i) The applicant is currently restrained by a domestic violence  
40 protection order, a no-contact order, an antiharassment order, or a

1 civil restraining order which restrains one party from contacting the  
2 other party or was previously restrained by such an order and was  
3 found to have committed one or more violations of the order in the  
4 five years prior to the vacation application.

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

17 (4) Every person convicted prior to January 1, 1975, of violating  
18 any statute or rule regarding the regulation of fishing activities,  
19 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,  
20 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
21 who claimed to be exercising a treaty Indian fishing right, may apply  
22 to the sentencing court for vacation of the applicant's record of the  
23 misdemeanor, gross misdemeanor, or felony conviction for the offense.  
24 If the person is deceased, a member of the person's family or an  
25 official representative of the tribe of which the person was a member  
26 may apply to the court on behalf of the deceased person.  
27 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
28 vacate the record of conviction if:

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

31 (b) The state has been enjoined from taking enforcement action of  
32 the statute or rule to the extent that it interferes with a treaty  
33 Indian fishing right as determined under *United States v. Washington*,  
34 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
35 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
36 any other state supreme court or federal court decision.

37 (5) Every person convicted of a misdemeanor cannabis offense, who  
38 was twenty-one years of age or older at the time of the offense, may  
39 apply to the sentencing court for a vacation of the applicant's  
40 record of conviction for the offense. A misdemeanor cannabis offense

1 includes, but is not limited to: Any offense under RCW 69.50.4014,  
2 from July 1, 2004, onward, and its predecessor statutes, including  
3 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW  
4 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense  
5 under an equivalent municipal ordinance. If an applicant qualifies  
6 under this subsection, the court shall vacate the record of  
7 conviction.

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

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

19 ~~((+7))~~ (8)(a) Except as provided in (c) of this subsection, once  
20 the court vacates a record of conviction under this section, the  
21 person shall be released from all penalties and disabilities  
22 resulting from the offense and the fact that the person has been  
23 convicted of the offense shall not be included in the person's  
24 criminal history for purposes of determining a sentence in any  
25 subsequent conviction. For all purposes, including responding to  
26 questions on employment or housing applications, a person whose  
27 conviction has been vacated under this section may state that he or  
28 she has never been convicted of that crime. However, nothing in this  
29 section affects the requirements for restoring a right to possess a  
30 firearm under RCW 9.41.040. Except as provided in (b) of this  
31 subsection, nothing in this section affects or prevents the use of an  
32 offender's prior conviction in a later criminal prosecution.

33 (b) When a court vacates a record of domestic violence as defined  
34 in RCW 10.99.020 under this section, the state may not use the  
35 vacated conviction in a later criminal prosecution unless the  
36 conviction was for: (i) Violating the provisions of a restraining  
37 order, no-contact order, or protection order restraining or enjoining  
38 the person or restraining the person from going on to the grounds of  
39 or entering a residence, workplace, school, or day care, or  
40 prohibiting the person from knowingly coming within, or knowingly

1 remaining within, a specified distance of a location, a protected  
2 party's person, or a protected party's vehicle (RCW 10.99.040,  
3 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,  
4 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and  
5 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic  
6 violence protection order or vulnerable adult protection order  
7 entered under chapter 7.105 RCW. A vacated conviction under this  
8 section is not considered a conviction of such an offense for the  
9 purposes of 27 C.F.R. 478.11.

10 (c) A conviction vacated on or after July 28, 2019, qualifies as  
11 a prior conviction for the purpose of charging a present recidivist  
12 offense as defined in RCW 9.94A.030 occurring on or after July 28,  
13 2019.

14 ~~((8))~~ (9) The clerk of the court in which the vacation order is  
15 entered shall immediately transmit the order vacating the conviction  
16 to the Washington state patrol identification section and to the  
17 local police agency, if any, which holds criminal history information  
18 for the person who is the subject of the conviction. The Washington  
19 state patrol and any such local police agency shall immediately  
20 update their records to reflect the vacation of the conviction, and  
21 shall transmit the order vacating the conviction to the federal  
22 bureau of investigation. A conviction that has been vacated under  
23 this section may not be disseminated or disclosed by the state patrol  
24 or local law enforcement agency to any person, except other criminal  
25 justice enforcement agencies.

26 ~~((9))~~ (10) For the purposes of this section, "cannabis" has the  
27 meaning provided in RCW 69.50.101.

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

30 The Washington state patrol bureau of forensic laboratory  
31 services must complete the necessary analysis for any evidence  
32 submitted for a suspected violation of RCW 69.50.4011(1)(b),  
33 69.50.4013, or 69.41.030 within 30 days of receipt of the request for  
34 analysis.

35 **Sec. 8.** RCW 10.31.110 and 2021 c 311 s 6 are each amended to  
36 read as follows:

37 (1) When a police officer has reasonable cause to believe that  
38 the individual has committed acts constituting a crime, and the

1 individual is known by history or consultation with the behavioral  
2 health administrative services organization, managed care  
3 organization, crisis hotline, local crisis services providers, or  
4 community health providers to have a mental disorder or substance use  
5 disorder, in addition to existing authority under state law or local  
6 policy, as an alternative to arrest, the arresting officer is  
7 authorized and encouraged to:

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

14 (b) Take the individual to a triage facility as defined in RCW  
15 71.05.020. An individual delivered to a triage facility which has  
16 elected to operate as an involuntary facility may be held up to a  
17 period of twelve hours. The individual must be examined by a mental  
18 health professional or substance use disorder professional within  
19 three hours of arrival;

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

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

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

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

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

37 (3) In deciding whether to refer the individual to treatment  
38 under this section, the police officer must be guided by local law  
39 enforcement diversion guidelines for behavioral health developed and  
40 mutually agreed upon with the prosecuting authority with an

1 opportunity for consultation and comment by the defense bar and  
2 disability community. These guidelines must address, at a minimum,  
3 the length, seriousness, and recency of the known criminal history of  
4 the individual, the mental health history of the individual, if  
5 available, the substance use disorder history of the individual, if  
6 available, the opinions of a mental health professional, if  
7 available, the opinions of a substance use disorder professional, if  
8 available, and the circumstances surrounding the commission of the  
9 alleged offense. The guidelines must include a process for clearing  
10 outstanding warrants or referring the individual for assistance in  
11 clearing outstanding warrants, if any, and issuing a new court date,  
12 if appropriate, without booking or incarcerating the individual or  
13 disqualifying the individual from referral to treatment under this  
14 section, and define the circumstances under which such action is  
15 permissible. Referrals to services, care, and treatment for substance  
16 use disorder must be made in accordance with protocols developed for  
17 the recovery navigator program described in RCW 71.24.115.

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

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

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

33 (b) The original charges may be filed or referred to the  
34 prosecutor, as appropriate, and the matter may proceed accordingly~~((7~~  
35 ~~unless filing or referring the charges is inconsistent with the terms~~  
36 ~~of a local diversion program or a recovery navigator program~~  
37 ~~described in RCW 71.24.115))~~).

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

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

3       Sections 8 through 10, 12, 15, and 16 of this act expire ((July  
4 1, 2023)) on the effective date of this section.

5       NEW SECTION.   **Sec. 10.**    RCW 10.31.115 (Drug possession—Referral  
6 to assessment and services) and 2021 c 311 s 13 are each repealed.

7       NEW SECTION.   **Sec. 11.**    If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11       NEW SECTION.   **Sec. 12.**    This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of  
13 the state government and its existing public institutions, and takes  
14 effect immediately.

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