

E2SSB 5536 - H AMD 664

By Representative Taylor

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 process of recovery, as described
28 by the national substance abuse and mental health administration, is
29 highly personal and occurs via many pathways. It may include clinical
30 treatment, medications, faith-based approaches, peer support, family
31 support, self-care, and other approaches. Recovery is characterized
32 by continual growth and improvement in one's health and wellness and

1 managing setbacks. Because setbacks are a natural part of life,
2 resilience becomes a key component of recovery.

3 The legislature finds that the recommendations of the substance
4 use recovery services advisory committee reflect diligent work by
5 individuals with a range of professional and personal experience, who
6 brought that experience to the committee, and whose expertise is
7 reflected in the recommendations.

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

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

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

14 (a) Create or deliver a counterfeit substance;

15 (b) Knowingly possess a counterfeit substance; or

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

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

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

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

29 (c) Any other counterfeit substance classified in Schedule I, II,
30 or III, is guilty of a class C felony punishable according to chapter
31 9A.20 RCW;

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

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

37 (3)(a) A violation of subsection (1)(b) or (c) of this section is
38 a misdemeanor. The prosecutor is encouraged to divert such cases for

1 assessment, treatment, or other services through the recovery
2 navigator program established under RCW 71.24.115 or a comparable
3 program including, but not limited to, arrest and jail alternative
4 programs established under RCW 36.28A.450 and law enforcement
5 assisted diversion programs established under RCW 71.24.589.

6 (b) In lieu of jail booking and referral to the prosecutor, law
7 enforcement is encouraged to offer a referral to assessment and
8 services available under RCW 10.31.110 or other program or entity
9 responsible for receiving referrals in lieu of legal system
10 involvement, which may include, but are not limited to, arrest and
11 jail alternative programs established under RCW 36.28A.450, law
12 enforcement assisted diversion programs established under RCW
13 71.24.589, and the recovery navigator program established under RCW
14 71.24.115.

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

19 (d) For the purposes of this section, "public place" has the same
20 meaning as defined in RCW 66.04.010, but the exclusions in RCW
21 66.04.011 do not apply.

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

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

26 (a) Knowingly possess a controlled substance unless the substance
27 was obtained directly from, or pursuant to, a valid prescription or
28 order of a practitioner while acting in the course of his or her
29 professional practice(~~(, or except as otherwise authorized by this~~
30 chapter)); or

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

36 (2) (a) Except as provided in RCW 69.50.4014 or 69.50.445, ((any
37 person who violates this section is guilty of a class C felony
38 punishable under chapter 9A.20 RCW)) a violation of subsection (1)(a)
39 or (b) of this section is a misdemeanor. The prosecutor is encouraged

1 to divert such cases for assessment, treatment, or other services
2 through the recovery navigator program established under RCW
3 71.24.115 or a comparable program including, but not limited to,
4 arrest and jail alternative programs established under RCW 36.28A.450
5 and law enforcement assisted diversion programs established under RCW
6 71.24.589.

7 (b) In lieu of jail booking and referral to the prosecutor, law
8 enforcement is encouraged to offer a referral to assessment and
9 services available under RCW 10.31.110 or other program or entity
10 responsible for receiving referrals in lieu of legal system
11 involvement, which may include, but are not limited to, arrest and
12 jail alternative programs established under RCW 36.28A.450, law
13 enforcement assisted diversion programs established under RCW
14 71.24.589, and the recovery navigator program established under RCW
15 71.24.115.

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

20 (3) (a) The possession, by a person (~~(twenty-one)~~) 21 years of age
21 or older, of useable cannabis, cannabis concentrates, or cannabis-
22 infused products in amounts that do not exceed those set forth in RCW
23 69.50.360(3) is not a violation of this section, this chapter, or any
24 other provision of Washington state law.

25 (b) The possession of cannabis, useable cannabis, cannabis
26 concentrates, and cannabis-infused products being physically
27 transported or delivered within the state, in amounts not exceeding
28 those that may be established under RCW 69.50.385(3), by a licensed
29 employee of a common carrier when performing the duties authorized in
30 accordance with RCW 69.50.382 and 69.50.385, is not a violation of
31 this section, this chapter, or any other provision of Washington
32 state law.

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

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

1 (ii) Eight ounces of cannabis-infused product in solid form;
2 (iii) (~~Thirty-six~~) 36 ounces of cannabis-infused product in
3 liquid form; or
4 (iv) Three and one-half grams of cannabis concentrates.

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

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

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

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

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

22 (7) For the purposes of this section, "public place" has the same
23 meaning as defined in RCW 66.04.010, but the exclusions in RCW
24 66.04.011 do not apply.

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

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

36 (2) In lieu of jail booking and referral to the prosecutor, law
37 enforcement is encouraged to offer a referral to assessment and
38 services available under RCW 10.31.110 or other program or entity
39 responsible for receiving referrals in lieu of legal system

1 involvement, which may include, but are not limited to, arrest and
2 jail alternative programs established under RCW 36.28A.450, law
3 enforcement assisted diversion programs established under RCW
4 71.24.589, and the recovery navigator program established under RCW
5 71.24.115.

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

10 **Sec. 5.** 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(~~(r)~~) or deliver
13 any legend drug, or knowingly possess any legend drug, or knowingly
14 possess and use any legend drug in a public place by injection,
15 inhalation, ingestion, or any other means, except upon the order or
16 prescription of a physician under chapter 18.71 RCW, an osteopathic
17 physician and surgeon under chapter 18.57 RCW, an optometrist
18 licensed under chapter 18.53 RCW who is certified by the optometry
19 board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a
20 podiatric physician and surgeon under chapter 18.22 RCW, a
21 veterinarian under chapter 18.92 RCW, a commissioned medical or
22 dental officer in the United States armed forces or public health
23 service in the discharge of his or her official duties, a duly
24 licensed physician or dentist employed by the veterans administration
25 in the discharge of his or her official duties, a registered nurse or
26 advanced registered nurse practitioner under chapter 18.79 RCW when
27 authorized by the nursing care quality assurance commission, a
28 pharmacist licensed under chapter 18.64 RCW to the extent permitted
29 by drug therapy guidelines or protocols established under RCW
30 18.64.011 and authorized by the commission and approved by a
31 practitioner authorized to prescribe drugs, a physician assistant
32 under chapter 18.71A RCW when authorized by the Washington medical
33 commission, or any of the following professionals in any province of
34 Canada that shares a common border with the state of Washington or in
35 any state of the United States: A physician licensed to practice
36 medicine and surgery or a physician licensed to practice osteopathic
37 medicine and surgery, a dentist licensed to practice dentistry, a
38 podiatric physician and surgeon licensed to practice podiatric
39 medicine and surgery, a licensed advanced registered nurse

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

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

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

23 (c) A violation of this section involving knowing possession and
24 use in a public place is a misdemeanor. The prosecutor is encouraged
25 to divert such cases for assessment, treatment, or other services
26 through the recovery navigator program established under RCW
27 71.24.115 or a comparable program including, but not limited to,
28 arrest and jail alternative programs established under RCW 36.28A.450
29 and law enforcement assisted diversion programs established under RCW
30 71.24.589.

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

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

6 (3) For the purposes of this section, "public place" has the same
7 meaning as defined in RCW 66.04.010, but the exclusions in RCW
8 66.04.011 do not apply.

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

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

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

37 Subject to the availability of funds appropriated for this
38 specific purpose, the Washington state patrol bureau of forensic

1 laboratory services shall aim to complete the necessary analysis for
2 any evidence submitted for a suspected violation of RCW 69.50.4011(1)
3 (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) within
4 45 days of receipt of the request for analysis.

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

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

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

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

- 25 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
- 26 pipes with or without screens, permanent screens, hashish heads, or
- 27 punctured metal bowls;
- 28 (b) Water pipes;
- 29 (c) Carburetion tubes and devices;
- 30 (d) Smoking and carburetion masks;
- 31 (e) Miniature cocaine spoons and cocaine vials;
- 32 (f) Chamber pipes;
- 33 (g) Carburetor pipes;
- 34 (h) Electric pipes;
- 35 (i) Air-driven pipes; and
- 36 (j) Ice pipes or chillers.

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

4 (3) Nothing in subsection (1) of this section prohibits (~~legal~~)
5 distribution (~~of injection~~) or use of public health supplies
6 including, but not limited to, syringe equipment, smoking equipment,
7 or drug testing equipment, through public health ((and)) programs,
8 community-based HIV prevention programs, outreach, shelter, and
9 housing programs, and pharmacies. Public health and syringe service
10 program staff taking samples of substances and using drug testing
11 equipment for the purpose of analyzing the composition of the
12 substances or detecting the presence of certain substances are acting
13 legally and are exempt from arrest and prosecution under RCW
14 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b)
15 or (c).

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

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

31 **Part III - Providing Opportunities for Pretrial Diversion and**
32 **Vacating Convictions**

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

35 (1) Nothing in this section prevents the defendant, with the
36 consent of the prosecuting attorney as required by RCW 2.30.030, from
37 seeking to resolve charges under RCW 69.50.4011(1) (b) or (c),

1 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) through available
2 therapeutic courts or other alternatives to prosecution. Nothing in
3 this section prevents the defendant or the prosecuting attorney from
4 seeking or agreeing to, or the court from ordering, any other
5 resolution of charges or terms of supervision that suit the
6 circumstances of the defendant's situation and advance stabilization,
7 recovery, crime reduction, and justice.

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

13 (a) In any case where the defendant is only charged with a
14 violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or
15 69.41.030(2) (b) or (c), and the defendant has not been convicted of
16 any offenses committed after the effective date of this section, the
17 court shall grant the motion, continue the hearing, and refer the
18 defendant to an applicable program.

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

23 (c) In all cases, the court may not grant the motion unless the
24 prosecuting attorney consents to the defendant's participation in
25 pretrial diversion. The prosecuting attorney is strongly encouraged
26 to agree to diversion in any case where the defendant is only charged
27 with a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013,
28 69.50.4014, or 69.41.030(2) (b) or (c), and in any case where the
29 only additional charge or charges against the defendant are for other
30 nonfelony offenses that are not crimes against persons.

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

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

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

38 (c) A clear statement that the court may grant pretrial diversion
39 with respect to any offense under RCW 69.50.4011(1) (b) or (c),
40 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) that is charged,

1 provided that the defendant pleads not guilty to the charge or
2 charges and waives his or her right to a speedy trial, and that upon
3 the defendant's successful completion of pretrial diversion, as
4 specified in subsection (13) of this section, and motion of the
5 defendant, prosecuting attorney, court, or probation department, the
6 court must dismiss the charge or charges against the defendant;

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

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

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

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

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

39 (5) Subject to the availability of funds appropriated for this
40 specific purpose, the biopsychosocial assessment and recommended

1 services or treatment must be provided at no cost for defendants who
2 have been found to be indigent by the court.

3 (6) Once the biopsychosocial assessment has been filed with the
4 court, if the report indicates the defendant has a substance use
5 disorder, the court shall inform the defendant that under federal law
6 the defendant may not possess any firearm or ammunition. The court
7 shall thereafter sign an order of ineligibility to possess firearms
8 as required by RCW 9.41.800 and shall require the defendant to
9 surrender all firearms in accordance with RCW 9.41.804.

10 (7) If the report recommends any treatment or services, the
11 applicable program shall provide the court with regular written
12 status updates on the defendant's progress on a schedule acceptable
13 to the court. The updates must be provided at least monthly and filed
14 under seal with the court, with copies given to the prosecuting
15 attorney, defendant, and defendant's counsel. The updates and their
16 copies are confidential and exempt from disclosure under chapter
17 42.56 RCW. The court shall endeavor to avoid public discussion of the
18 circumstances, history, or diagnoses that could stigmatize the
19 defendant.

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

24 (9) No statement, or any information procured therefrom relating
25 to the charge for which the defendant is receiving services, made by
26 the defendant to any treatment or service provider, that is made
27 during the course of any biopsychosocial assessment or services
28 provided by the applicable program, and before the reporting of the
29 findings and recommendations to the court, may be admissible in any
30 action or proceeding brought subsequent to the investigation.

31 (10) A defendant's participation in pretrial diversion under this
32 section does not constitute a conviction, a stipulation to facts, or
33 an admission of guilt for any purpose.

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

37 (12)(a) If it appears to the prosecuting attorney that the
38 defendant is not substantially complying with the recommended
39 treatment or services as reflected by a written status update from
40 the applicable program, or, if applicable, the defendant is not

1 completing the community service, the prosecuting attorney may make a
2 motion for termination from pretrial diversion.

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

5 (c) At the hearing, the court must consider the following
6 factors:

7 (i) The nature of the alleged noncompliance;

8 (ii) Whether the defendant received written notice of the
9 noncompliance;

10 (iii) Whether the noncompliance was willful in nature; and

11 (iv) Any other mitigating circumstances, including, but not
12 limited to, the defendant's efforts and due diligence, the
13 availability of services in the geographic area, and the treatment
14 and services offered to the defendant.

15 (d) The defendant shall have the right to present evidence at the
16 hearing, including the right to present a defense, present witnesses,
17 and cross-examine any witnesses.

18 (e) The prosecutor has the burden of establishing by clear and
19 convincing evidence that the noncompliance was willful, and that the
20 defendant should be terminated from pretrial diversion.

21 (f) If the court finds that the defendant is not substantially
22 complying with the recommended treatment or services or, if
23 applicable, the defendant is not completing the community service,
24 the court must schedule the matter for further proceedings.

25 (13) If the defendant successfully completes pretrial diversion,
26 including in one of the following ways, the charge or charges under
27 RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2)
28 (b) or (c) must be dismissed:

29 (a) If the written report prepared by the applicable program
30 included recommended treatment or services, the defendant
31 successfully completes pretrial diversion by having six months of
32 substantial compliance with assessment and recommended treatment or
33 services and progress toward recovery goals as reflected by a written
34 status update from the applicable program; or

35 (b) If the written report prepared by the applicable program did
36 not include recommended treatment or services, the defendant
37 successfully completes pretrial diversion by completing the community
38 service described under subsection (8) of this section and submitting
39 proof of completion to the court.

1 (14) Beginning January 1, 2024, the prosecuting attorney shall
2 input data and information in the statewide pretrial diversion
3 tracking and reporting system under section 14 of this act for each
4 case where the defendant participates in pretrial diversion under
5 this section, including but not limited to the following:

6 (a) Whether the pretrial diversion was terminated, was
7 successfully completed and resulted in a dismissal, or is still
8 ongoing;

9 (b) The race, ethnicity, gender, gender expression or identity,
10 disability status, and age of the defendant; and

11 (c) Any other appropriate data and information as determined by
12 the administrative office of the courts.

13 (15) The definitions in this subsection apply throughout this
14 section unless the context clearly requires otherwise.

15 (a) "Applicable program" means the recovery navigator program
16 established under RCW 71.24.115, arrest and jail alternative programs
17 established under RCW 36.28A.450, or law enforcement assisted
18 diversion programs established under RCW 71.24.589.

19 (b) "Substantial compliance" means a defendant actively engaging
20 with or making himself or herself available to treatment and
21 services. The defendant is not in substantial compliance if he or she
22 willfully abandons treatment and services.

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

25 (1) Prior to sentencing any person convicted of violating RCW
26 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b)
27 or (c), the court shall inform the person that under federal law it
28 is unlawful for any person who is an unlawful user of or addicted to
29 any controlled substance to ship or transport in interstate or
30 foreign commerce, or possess in or affecting commerce, any firearm or
31 ammunition, or to receive any firearm or ammunition which has been
32 shipped or transported in interstate or foreign commerce.

33 (2) In courts of limited jurisdiction, if an individual who is
34 convicted of a violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013,
35 69.50.4014, or 69.41.030(2) (b) or (c) agrees as a condition of
36 probation to obtain a biopsychosocial assessment by an applicable
37 program and participate in any recommended treatment or services, or,
38 if the applicable program recommends no treatment or services, to
39 complete court-ordered community service, the court shall sentence

1 the individual to a term of confinement of up to 90 days, all of
2 which shall be suspended for a period not to exceed two years.

3 (3) A biopsychosocial assessment shall be prepared by an
4 applicable program. A copy of the assessment shall be forwarded to
5 the court and filed under seal. Based on the assessment, the court
6 shall determine whether the person shall be required to complete a
7 course in an alcohol and drug information school licensed or
8 certified by the department of health or more sustained services
9 provided by a licensed behavioral health care provider, peer
10 counseling program, or other case management program.

11 (a) Once the assessment has been filed with the court, if the
12 report indicates the individual has a substance use disorder, the
13 court shall inform the individual that under federal law the
14 individual may not possess any firearm or ammunition. The court shall
15 thereafter sign an order of ineligibility to possess firearms as
16 required by RCW 9.41.800.

17 (b) Once the assessment has been filed with the court, if the
18 report does not recommend any treatment or services, the court shall
19 order the defendant to complete an amount of community service not to
20 exceed 120 hours as a term of probation.

21 (c) The assessment shall include the following:

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

24 (ii) Nature of barriers and challenges;

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

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

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

32 (4) A person subject to biopsychosocial assessment and treatment
33 or services shall be required by the court to substantially comply
34 with more sustained services provided by a licensed behavioral health
35 care provider, peer counseling program, or other case management
36 program, as determined by the court.

37 (5) If the court directs a service plan after receiving an
38 individual's assessment, the applicable program must provide the
39 court with regular written status updates on the individual's
40 progress on a schedule acceptable to the court. The updates must be

1 provided at least monthly and filed under seal with the court, with
2 copies given to the prosecuting attorney, the individual, and the
3 individual's counsel. The updates and their copies are confidential
4 and exempt from disclosure under chapter 42.56 RCW. The court shall
5 endeavor to avoid public discussion of the circumstances, history, or
6 diagnoses that could stigmatize the individual.

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

11 (7) As a condition of probation, the sentenced individual must
12 substantially comply with the treatment or services recommendations
13 of the biopsychosocial assessment.

14 (8)(a) If it appears to the prosecuting attorney that the
15 sentenced individual is not substantially complying with the
16 recommended treatment or services as reflected by a written status
17 update from the applicable program, or, if applicable, the individual
18 is not completing the court-ordered community service, the
19 prosecuting attorney shall make a motion for a hearing to consider
20 sanctions. After notice to the sentenced individual, the court shall
21 hold a hearing to determine if a sanction or revocation of the
22 individual's suspended sentence, or any part thereof, is warranted
23 under RCW 3.50.340 or 3.66.069.

24 (b) At the hearing, the court must consider the following
25 factors:

26 (i) The nature of the alleged noncompliance;

27 (ii) Whether the individual received written notice of the
28 noncompliance;

29 (iii) Whether the noncompliance was willful in nature; and

30 (iv) Any other mitigating circumstances, including, but not
31 limited to, the individual's efforts and due diligence, the
32 availability of services in the geographic area, and the treatment
33 and services offered to the individual.

34 (c) The individual shall have the right to present evidence at
35 the hearing, including the right to present a defense, present
36 witnesses, and cross-examine any witnesses.

37 (d) The prosecutor has the burden of establishing by clear and
38 convincing evidence that the noncompliance was willful, and that the
39 individual should be sanctioned.

1 (e) The court may not sanction an individual for failing to
2 comply with the recommended treatment or services if the court finds
3 the sentenced individual has made reasonable efforts to comply with
4 the recommended treatment but cannot comply either due to a lack of
5 available treatment or services or, for sentenced individuals found
6 to be indigent by the court, due to a lack of funding for treatment
7 or services.

8 (f) At the hearing, if the court finds by a preponderance of the
9 evidence that the sentenced individual has willfully abandoned or
10 demonstrated a consistent failure to substantially comply with the
11 recommended treatment or services, or, if applicable, is failing to
12 complete the court-ordered community service, the court shall use its
13 discretion in determining an appropriate sanction.

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

18 (a) If the individual has six months of substantial compliance
19 with assessment and recommended treatment or services and progress
20 toward recovery goals as reflected by a written status update from
21 the applicable program, or, if applicable, the individual completes
22 the court-ordered community service and files proof of completion
23 with the court, the prosecutor shall make a motion to vacate the
24 person's conviction or convictions and, upon verification of the
25 written status update or the proof of completion of community
26 service, the court shall terminate probation and enter an order
27 vacating the individual's conviction; or

28 (b) If the individual has had no additional arrests, charges, or
29 criminal convictions in the two years after the individual's
30 conviction for a violation of RCW 69.50.4011(1) (b) or (c),
31 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c), the prosecutor
32 shall make a motion to the court to vacate the individual's
33 conviction, and the court shall terminate probation and enter an
34 order vacating the individual's conviction.

35 (10) The definitions in this subsection apply throughout this
36 section unless the context clearly requires otherwise.

37 (a) "Applicable program" means the recovery navigator program
38 established under RCW 71.24.115, arrest and jail alternative programs
39 established under RCW 36.28A.450, or law enforcement assisted
40 diversion programs established under RCW 71.24.589.

1 (b) "Substantial compliance" means an individual actively
2 engaging with or making himself or herself available to treatment and
3 services. The individual is not in substantial compliance if he or
4 she willfully abandons treatment and services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (b) The state has been enjoined from taking enforcement action of
37 the statute or rule to the extent that it interferes with a treaty
38 Indian fishing right as determined under *United States v. Washington*,
39 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.

1 899 (D. Oregon 1969), and any posttrial orders of those courts, or
2 any other state supreme court or federal court decision.

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

14 (6) If a person convicted of violating RCW 69.50.4011(1) (b) or
15 (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) has had no
16 additional criminal arrests, charges, or convictions in the two years
17 after the person's conviction or convictions for 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 prosecutor shall make a motion to vacate the individual's
20 conviction or convictions, and the court shall grant the motion and
21 enter an order vacating the individual's conviction or convictions.

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

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

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

18 (c) A conviction vacated on or after July 28, 2019, qualifies as
19 a prior conviction for the purpose of charging a present recidivist
20 offense as defined in RCW 9.94A.030 occurring on or after July 28,
21 2019.

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

34 ~~((+9))~~ (10) For the purposes of this section, "cannabis" has the
35 meaning provided in RCW 69.50.101.

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

38 (1) The administrative office of the courts shall collect data
39 and information related to the utilization and outcomes of pretrial

1 diversions pursuant to section 10 of this act, convictions pursuant
2 to section 11 of this act, and motions for vacating convictions
3 pursuant to RCW 9.96.060(6), including but not limited to the
4 following:

5 (a) The recidivism rate for persons who either participated in a
6 pretrial diversion pursuant to section 10 of this act, or who were
7 sentenced pursuant to section 11 of this act and agreed as a
8 condition of probation to obtain a biopsychosocial assessment and
9 participate in recommended treatment or services;

10 (b) The number of pretrial diversions granted pursuant to section
11 10 of this act and whether such diversions were terminated, were
12 successfully completed and resulted in a dismissal, or are still
13 ongoing;

14 (c) The number of people convicted of a violation of RCW
15 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b)
16 or (c);

17 (d) Statistical data comparing the sentences imposed pursuant to
18 section 11 of this act, and the convictions vacated pursuant to RCW
19 9.96.060(6), in specific courts and in different regions of
20 Washington;

21 (e) The number of charged violations of RCW 69.50.4011(1) (b) or
22 (c), 69.50.4013, 69.50.4014, and 69.41.030(2) (b) or (c) involving
23 repeat offenders; and

24 (f) The number of charged violations of RCW 69.50.4011(1) (b) or
25 (c), 69.50.4013, 69.50.4014, and 69.41.030(2) (b) or (c) involving
26 persons who previously participated in pretrial diversion pursuant to
27 section 10 of this act, or who were previously sentenced pursuant to
28 section 11 of this act and agreed as a condition of probation to
29 obtain a biopsychosocial assessment and participate in recommended
30 treatment or services.

31 (2) Beginning January 1, 2024, the administrative office of the
32 courts shall collect the following additional data and information
33 from the statewide pretrial diversion tracking and reporting system
34 created under section 14 of this act:

35 (a) Aggregated and disaggregated demographic data for pretrial
36 diversions under section 10 of this act, that identifies trends or
37 disparities in utilization or outcomes based on race, ethnicity,
38 gender, gender expression or identity, disability status, age, and
39 any other appropriate characteristics as determined by the
40 administrative office of the courts; and

1 (b) Statistical data comparing the relative utilization and
2 outcomes of pretrial diversions pursuant to section 10 of this act in
3 specific courts and in different regions of Washington.

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

8 (4) For the purposes of this section, "recidivism" means a
9 person's subsequent conviction for any criminal offense within three
10 years of the person successfully completing a pretrial diversion
11 under section 10 of this act, or completing the terms of a sentence
12 under section 11 of this act where the person agreed as a condition
13 of probation to obtain a biopsychosocial assessment and participate
14 in recommended treatment or services.

15 NEW SECTION. **Sec. 14.** A new section is added to chapter 2.56
16 RCW to read as follows:

17 (1) By January 1, 2024, subject to the availability of funds
18 appropriated for this specific purpose, the administrative office of
19 the courts shall establish and maintain a statewide pretrial
20 diversion tracking and reporting system for pretrial diversions under
21 section 10 of this act.

22 (2) The system must allow prosecuting attorneys to input data and
23 information related to the utilization and outcomes of pretrial
24 diversions under section 10 of this act, including but not limited to
25 the following:

26 (a) Whether such diversions were terminated, were successfully
27 completed and resulted in a dismissal, or are still ongoing;

28 (b) The race, ethnicity, gender, gender expression or identity,
29 disability status, and age of defendants who participate in pretrial
30 diversion; and

31 (c) Any other appropriate data and information as determined by
32 the administrative office of the courts.

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

34 **Sec. 15.** RCW 36.70A.200 and 2021 c 265 s 2 are each amended to
35 read as follows:

36 (1)(a) The comprehensive plan of each county and city that is
37 planning under RCW 36.70A.040 shall include a process for identifying

1 and siting essential public facilities. Essential public facilities
2 include those facilities that are typically difficult to site, such
3 as airports, state education facilities and state or regional
4 transportation facilities as defined in RCW 47.06.140, regional
5 transit authority facilities as defined in RCW 81.112.020, state and
6 local correctional facilities, solid waste handling facilities,
7 opioid treatment programs including both mobile and fixed-site
8 medication units, recovery residences, harm reduction programs
9 excluding safe injection sites, and inpatient facilities including
10 substance ((abuse)) use disorder treatment facilities, mental health
11 facilities, group homes, community facilities as defined in RCW
12 72.05.020, and secure community transition facilities as defined in
13 RCW 71.09.020.

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

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

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

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

1 facilities consistent with statutory requirements applicable to these
2 facilities.

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

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

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

15 (6) No person may bring a cause of action for civil damages based
16 on the good faith actions of any county or city to provide for the
17 siting of secure community transition facilities in accordance with
18 this section and with the requirements of chapter 12, Laws of 2001
19 2nd sp. sess. For purposes of this subsection, "person" includes, but
20 is not limited to, any individual, agency as defined in RCW
21 42.17A.005, corporation, partnership, association, and limited
22 liability entity.

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

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

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

29 (b) A consideration for grants or loans provided under RCW
30 43.17.250(3); or

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

33 **Sec. 16.** RCW 71.24.589 and 2019 c 314 s 29 are each amended to
34 read as follows:

35 (1) Subject to funds appropriated by the legislature, the
36 authority shall (~~implement a pilot project~~) administer a grant
37 program for law enforcement assisted diversion which shall adhere to
38 law enforcement assisted diversion core principles recognized by the
39 law enforcement assisted diversion national support bureau, the

1 efficacy of which have been demonstrated in peer-reviewed research
2 studies.

3 (2) (~~Under the pilot project, the~~) The authority must partner
4 with the law enforcement assisted diversion national support bureau
5 to award (~~a contract~~) contracts, subject to appropriation, for
6 (~~two or more geographic areas~~) jurisdictions in the state of
7 Washington for law enforcement assisted diversion. Cities, counties,
8 and tribes (~~may compete for participation in a pilot project~~),
9 subdivisions thereof, public development authorities, and community-
10 based organizations demonstrating support from necessary public
11 partners, may serve as the lead agency applying for funding. Funds
12 may be used to scale existing projects, and to invite additional
13 jurisdictions to launch law enforcement assisted diversion programs.

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

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

24 (a) Long-term case management for individuals with substance use
25 disorders;

26 (b) Facilitation and coordination with community resources
27 focusing on overdose prevention;

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

30 (d) Facilitation and coordination with community resources
31 providing physical and behavioral health services;

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

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

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

38 (h) Prosecutorial support for diversion services.

39 (5) No civil liability may be imposed by any court on the state
40 or its officers or employees, an appointed or elected official,

1 public employee, public agency as defined in RCW 4.24.470,
2 combination of units of government and its employees as provided in
3 RCW 36.28A.010, nonprofit community-based organization, tribal
4 government entity, tribal organization, or urban Indian organization,
5 based on the administration of a law enforcement assisted diversion
6 program or activities carried out within the purview of a grant
7 received under this program except upon proof of bad faith or gross
8 negligence.

9 **Sec. 17.** RCW 71.24.590 and 2019 c 314 s 30 are each amended to
10 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (6) Registered nurses and licensed practical nurses may dispense
35 up to a ((~~thirty-one~~)) 31 day supply of medications approved by the
36 United States food and drug administration for the treatment of
37 opioid use disorder to patients of the opioid treatment program,
38 under an order or prescription and in compliance with 42 C.F.R. Sec.
39 8.12.

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

3 (a) Engages in the treatment of opioid use disorder with
4 medications approved by the United States food and drug
5 administration for the treatment of opioid use disorder and reversal
6 of opioid overdose, including methadone; and

7 (b) Provides a comprehensive range of medical and rehabilitative
8 services.

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

11 NEW SECTION. Sec. 18. A new section is added to chapter 43.330
12 RCW to read as follows:

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

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

22 NEW SECTION. Sec. 19. RCW 10.31.115 (Drug possession—Referral
23 to assessment and services) and 2021 c 311 s 13 are each repealed.

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

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

27 Subject to the availability of funds appropriated for this
28 specific purpose, the authority shall:

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

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

1 (3) Conduct outreach to underserved and rural areas to support
2 the development of recovery housing, including adequate resources for
3 women, LGBTQIA+ communities, Black, indigenous, and other people of
4 color communities, immigrant communities, and youth; and

5 (4) Develop a training for housing providers by January 1, 2024,
6 to assist them with providing appropriate service to LGBTQIA+
7 communities, Black, indigenous, and other people of color
8 communities, and immigrant communities, including consideration of
9 topics like harassment, communication, antiracism, diversity, and
10 gender affirming behavior, and ensure applicants for grants or loans
11 related to recovery residences receive access to the training.

12 **Sec. 21.** RCW 84.36.043 and 1998 c 174 s 1 are each amended to
13 read as follows:

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

19 (a) The charge, if any, for the housing does not exceed the
20 actual cost of 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 (2) The real and personal property used by a nonprofit
26 organization in maintaining an approved recovery residence registered
27 under RCW 41.05.760 is exempt from taxation if:

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

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

31 (ii) The property is rented or leased by the nonprofit
32 organization and the benefit of the exemption inures to the nonprofit
33 organization.

34 (3) As used in this section:

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

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

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

8 ~~((+3))~~ (d) "Recovery residence" has the same meaning as under
9 RCW 41.05.760.

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

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

14 NEW SECTION. Sec. 22. (1) This section is the tax preference
15 performance statement for the tax preference contained in section 21,
16 chapter . . ., Laws of 2023 (section 21 of this act). This
17 performance statement is only intended to be used for subsequent
18 evaluation of the tax preference. It is not intended to create a
19 private right of action by any party or to be used to determine
20 eligibility for preferential tax treatment.

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

24 (3) By exempting property used by nonprofit organizations
25 maintaining approved recovery residences, it is the legislature's
26 specific public policy objective to maximize funding for recovery
27 residences to the extent possible, thereby increasing availability of
28 such residences.

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

33 (a) Annual changes in the total number of parcels qualifying for
34 the exemption under section 21 of this act;

35 (b) The amount of annual property tax relief resulting from the
36 tax exemption under section 21 of this act;

37 (c) The average annual number of people housed at recovery
38 residences located on property qualifying for the exemption under
39 section 21 of this act;

1 (d) The annualized amount charged for housing at recovery
2 residences located on property qualifying for the exemption under
3 section 21 of this act and the annualized estimated increase in the
4 charge for housing if the properties had not been eligible for the
5 exemption; and

6 (e) The annual amount of expenditures by nonprofits to maintain
7 recovery residences located on property qualifying for the exemption
8 under section 21 of this act.

9 (5) The legislature intends to extend the expiration date of the
10 property tax exemption under section 21 of this act if the review by
11 the joint legislative audit and review committee finds that:

12 (a) The number of properties qualifying for the exemption under
13 section 21 of this act has increased;

14 (b) The number of individuals using recovery housing located on
15 property qualifying for the exemption under section 21 of this act
16 has increased; and

17 (c) The amount charged for recovery housing is reasonably
18 consistent with the actual cost of operating and maintaining the
19 housing.

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

23 (a) Initial applications for the tax exemption under section 21
24 of this act as approved by the department of revenue under RCW
25 84.36.815;

26 (b) Annual financial statements prepared by nonprofit entities
27 claiming the tax exemption under section 21 of this act;

28 (c) Filings with the federal government to maintain federal tax
29 exempt status by nonprofit organizations claiming the tax exemption
30 under section 21 of this act; and

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

33 **Part VI – Training for Parents of Children with Substance Use Disorder**
34 **and Caseworkers Within the Department of Children, Youth, and**
35 **Families**

36 NEW SECTION. **Sec. 23.** A new section is added to chapter 71.24
37 RCW to read as follows:

1 (1) The authority, in consultation with the department of
2 children, youth, and families, shall develop a training for parents
3 of adolescents and transition age youth with substance use disorders
4 by June 30, 2024, which training must build on and be consistent and
5 compatible with existing training developed by the authority for
6 families impacted by substance use disorder, and addressing the
7 following:

8 (a) Science and education related to substance use disorders and
9 recovery;

10 (b) Adaptive and functional communication strategies for
11 communication with a loved one about their substance use disorder,
12 including positive communication skills and strategies to influence
13 motivation and behavioral change;

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

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

17 (e) Suicide prevention.

18 (2) The authority and the department of children, youth, and
19 families shall make this training publicly available, and the
20 department of children, youth, and families must promote the training
21 to licensed foster parents and caregivers, including any tribally
22 licensed foster parents and tribal caregivers.

23 NEW SECTION. **Sec. 24.** A new section is added to chapter 43.216
24 RCW to read as follows:

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

29 **Part VII – Recovery Navigator Programs**

30 NEW SECTION. **Sec. 25.** To support recovery navigator programs,
31 the health care authority must develop and implement a data
32 integration platform by June 30, 2024, to serve as a common database
33 available for diversion efforts across the state, to serve as a data
34 collection and management tool for practitioners, and to assist in
35 standardizing definitions and practices. If possible, the health care
36 authority must leverage and interact with existing platforms already
37 in use in efforts funded by the authority. The health care authority

1 must establish a quality assurance process for behavioral health
2 administrative services organizations, and employ data validation for
3 fields in the data collection workbook. The health care authority
4 must engage and consult with the law enforcement assisted diversion
5 national support bureau on data integration approaches, platforms,
6 quality assurance protocols, and validation practices.

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

9 (1) The authority shall contract with the Washington state
10 institute for public policy to conduct a study of the long-term
11 effectiveness of the recovery navigator program under RCW 71.24.115
12 with reports due by June 30th in the years 2028, 2033, and 2038. The
13 Washington state institute for public policy shall collaborate with
14 the authority, the law enforcement assisted diversion national
15 support bureau, and the substance use recovery services advisory
16 committee under RCW 71.24.546 on the topic of data collection and to
17 determine the parameters of the report, which shall include
18 recommendations, if any, for modification and improvement of the
19 recovery navigator program. The law enforcement assisted diversion
20 national support bureau may supplement the report with additional
21 recommendations to improve the recovery navigator program by
22 enhancing its ability to provide a viable, accepted, community-based
23 care alternative to jail and prosecution. The authority shall
24 cooperate with the Washington state institute for public policy to
25 provide data for this report.

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

32 **Sec. 27.** RCW 71.24.115 and 2021 c 311 s 2 are each amended to
33 read as follows:

34 (1) Each behavioral health administrative services organization
35 shall establish ((a)) recovery navigator ((program)) programs with
36 the goal of providing law enforcement and other criminal legal system
37 personnel with a credible alternative to further legal system
38 involvement for criminal activity that stems from unmet behavioral

1 health needs or poverty. The programs shall work to improve community
2 health and safety by reducing individuals' involvement with the
3 criminal legal system through the use of specific human services
4 tools and in coordination with community input. Each program must
5 include a dedicated project manager and be governed by a policy
6 coordinating group comprised, in alignment with the core principles,
7 of local executive and legislative officials, public safety agencies,
8 including police and prosecutors, and civil rights, public defense,
9 and human services organizations.

10 (2) The recovery navigator programs shall be organized on a scale
11 that permits meaningful engagement, collaboration, and coordination
12 with local law enforcement and municipal agencies through the policy
13 coordinating groups. The ((program)) programs shall provide
14 community-based outreach, intake, assessment, and connection to
15 services and, as appropriate, long-term intensive case management and
16 recovery coaching services, to youth and adults with substance use
17 disorder, including for persons with co-occurring substance use
18 disorders and mental health conditions, who are referred to the
19 program from diverse sources and shall facilitate and coordinate
20 connections to a broad range of community resources for youth and
21 adults with substance use disorder, including treatment and recovery
22 support services. Recovery navigator programs must serve and
23 prioritize individuals who are actually or potentially exposed to the
24 criminal legal system with respect to unlawful behavior connected to
25 substance use or other behavioral health issues.

26 ((~~(2) The~~)) (3) By December 31, 2023, the authority shall
27 ((~~establish~~)) revise its uniform program standards for behavioral
28 health administrative services organizations to follow in the design
29 of their recovery navigator programs to achieve fidelity with the
30 core principles. The uniform program standards must be modeled upon
31 the components of the law enforcement assisted diversion program and
32 address project management, field engagement, biopsychosocial
33 assessment, intensive case management and care coordination,
34 stabilization housing when available and appropriate, and, as
35 necessary, legal system coordination for participants' legal cases
36 that may precede or follow referral to the program. The uniform
37 program standards must incorporate the law enforcement assisted
38 diversion framework for diversion at multiple points of engagement
39 with the criminal legal system, including prearrest, prebooking,
40 prefiling, and for ongoing case conferencing with law enforcement,

1 prosecutors, community stakeholders, and program case managers. The
2 authority must adopt the uniform program standards from the
3 components of the law enforcement assisted diversion program to
4 accommodate an expanded population of persons with substance use
5 disorders, including persons with co-occurring substance use
6 disorders and mental health conditions, ~~((and allow))~~ provide for
7 referrals from a broad range of sources, and require prioritization
8 of those who are or likely will be exposed to the criminal legal
9 system related to their behavioral health challenges. In addition to
10 accepting referrals from law enforcement and courts of limited
11 jurisdiction, the uniform program standards must provide guidance for
12 accepting referrals on behalf of persons with substance use
13 disorders, including persons with co-occurring substance use
14 disorders and mental health conditions, from various sources
15 including, but not limited to, self-referral, family members of the
16 individual, emergency department personnel, persons engaged with
17 serving homeless persons, including those living unsheltered or in
18 encampments, fire department personnel, emergency medical service
19 personnel, community-based organizations, members of the business
20 community, harm reduction program personnel, faith-based organization
21 staff, and other sources within the criminal legal system, ~~((as~~
22 ~~outlined))~~ so that individuals are engaged as early as possible
23 within the sequential intercept model. In developing response time
24 requirements within the statewide program standards, the authority
25 shall require, subject to the availability of amounts appropriated
26 for this specific purpose, that responses to referrals from law
27 enforcement occur immediately for in-custody referrals and shall
28 strive for rapid response times to other appropriate settings such as
29 emergency departments and courts of limited jurisdiction.

30 ~~((+3))~~ (4) Subject to the availability of amounts appropriated
31 for this specific purpose, the authority shall provide funding to
32 each behavioral health administrative services organization for the
33 ~~((development of its))~~ continuation of and, as required by this
34 section, the revisions to and reorganization of the recovery
35 navigator ((program)) programs they fund. Before receiving funding
36 for implementation and ongoing administration, each behavioral health
37 administrative services organization must submit a program plan that
38 demonstrates the ability to fully comply with statewide program
39 standards. The authority shall establish a schedule for the regular
40 review of recovery navigator programs funded by behavioral health

1 administrative services (~~organizations' programs~~) organizations.
2 The authority shall arrange for technical assistance to be provided
3 by the LEAD national support bureau to all behavioral health
4 administrative services organizations, the authority, contracted
5 providers, and independent stakeholders and partners, such as
6 prosecuting attorneys and law enforcement.

7 ~~((4))~~ (5) Each behavioral health administrative services
8 organization must have a substance use disorder regional
9 administrator for its recovery navigator program. The regional
10 administrator shall be responsible for assuring compliance with
11 program standards, including staffing standards. Each recovery
12 navigator program must maintain a sufficient number of appropriately
13 trained personnel for providing intake and referral services,
14 conducting comprehensive biopsychosocial assessments, providing
15 intensive case management services, and making warm handoffs to
16 treatment and recovery support services along the continuum of care.
17 Program staff must include people with lived experience with
18 substance use disorder to the extent possible. The substance use
19 disorder regional administrator must assure that staff who are
20 conducting intake and referral services and field assessments are
21 paid a livable and competitive wage and have appropriate initial
22 training and receive continuing education.

23 ~~((5))~~ (6) Each recovery navigator program must submit quarterly
24 reports to the authority with information identified by the authority
25 and the substance use recovery services advisory committee. The
26 reports must be provided to the substance use recovery services
27 advisory committee for discussion at meetings following the
28 submission of the reports.

29 (7) (a) The criminal justice training commission, in consultation
30 with the authority and other key stakeholders, shall conduct an
31 assessment of the current status toward achieving the statewide
32 implementation of recovery navigator programs in fidelity with core
33 principles. The assessment shall consider:

34 (i) The results of the law enforcement assisted diversion
35 standards fidelity index analysis, conducted by an independent
36 research scientist with expertise in law enforcement assisted
37 diversion evaluation, including findings with respect to each
38 standard assessed, for each recovery navigator program, in each
39 behavioral health administrative services organization region;

1 (ii) Reports on utilization of technical support from the law
2 enforcement assisted diversion national support bureau by recovery
3 navigator program contractors, the authority, and behavioral health
4 administrative services organizations; and

5 (iii) Barriers to achieving fidelity to core principles.

6 (b) By December 1, 2023, the criminal justice training commission
7 shall submit to the governor and both chambers of the legislature a
8 report of its findings and recommendations on administrative and
9 legislative steps that will facilitate the achievement of the
10 statewide adoption of recovery navigator programs operating in
11 fidelity with core principles.

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

20 (9) For the purposes of this section, the term "core principles"
21 means the core principles of a law enforcement assisted diversion
22 program, as established by the law enforcement assisted diversion
23 national support bureau in its toolkit, as it existed on May 1, 2023.

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

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

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

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

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

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

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

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

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

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

17 (e) Provide harm reduction services and supplies;

18 (f) Provide linkage to housing, transportation, and other support
19 services; and

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

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

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

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

32 **Part X - Providing a Statewide Directory of Recovery Services**

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

35 Subject to funding provided for this specific purpose, the
36 authority must collaborate with the department and the department of

1 social and health services to expand the Washington recovery helpline
2 and the recovery readiness asset tool to provide a dynamically
3 updated statewide behavioral health treatment and recovery support
4 services mapping tool that includes a robust resource database for
5 those seeking services and a referral system to be incorporated
6 within the locator tool to help facilitate the connection between an
7 individual and a facility that is currently accepting new referrals.
8 The tool must include dual interface capability, one for public
9 access and one for internal use and management.

10 **Part XI - Investing Adequately in Statewide Diversion Services**

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

13 Subject to the availability of funds appropriated for this
14 specific purpose, the authority shall:

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

17 (2) Provide support funds to new and established recovery support
18 services including clubhouses throughout the state;

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

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

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

27 **Part XII - Streamlining Substance Use Disorder Treatment Assessments**

28 NEW SECTION. **Sec. 32.** A new section is added to chapter 71.24
29 RCW to read as follows:

30 (1) The authority shall convene a work group to recommend changes
31 to systems, policies, and processes related to intake, screening, and
32 assessment for substance use disorder services, with the goal to
33 broaden the workforce capable of administering substance use disorder
34 assessments and to make the assessment process as brief as possible,
35 including only what is necessary to manage utilization and initiate
36 care. The assessment shall be low barrier, person-centered, and

1 amenable to administration in diverse health care settings and by a
2 range of health care professionals. The assessment shall consider the
3 person's self-identified needs and preferences when evaluating
4 direction of treatment and may include different components based on
5 the setting, context, and past experience with the client.

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

11 **Sec. 33.** RCW 18.64.600 and 2020 c 244 s 2 are each amended to
12 read as follows:

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

18 (2) In order for a pharmacy to use remote dispensing sites, a
19 pharmacy must register each separate remote dispensing site with the
20 commission.

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

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

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

37 **Part XIII - Miscellaneous Provisions**

1 NEW SECTION. **Sec. 34.** Section 7 of this act takes effect
2 January 1, 2025.

3 **Sec. 35.** 2021 c 311 s 29 (uncodified) is amended to read as
4 follows:

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

7 NEW SECTION. **Sec. 36.** Sections 2 through 6, 8 through 12, and
8 35 of this act are necessary for the immediate preservation of the
9 public peace, health, or safety, or support of the state government
10 and its existing public institutions, and take effect July 1, 2023.

11 NEW SECTION. **Sec. 37.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 38.** If specific funding for the purposes of
16 this act, referencing this act by bill or chapter number, is not
17 provided by June 30, 2023, in the omnibus appropriations act, this
18 act is null and void."

19 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;

- Encouraging prosecuting attorneys to divert cases meeting certain criteria;

- Requiring the court to 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 an "applicable program" for pretrial diversion means a RNP, law enforcement assisted diversion (LEAD) program, or arrest and jail alternative program;

- Providing that "substantial compliance" means a defendant actively engaging with or making himself or herself available to treatment and services, and that the defendant is not in substantial compliance if he or she willfully abandons treatment and services;

- Providing that an 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 provide written status updates at least monthly, and that such report and updates must be filed under seal with the court, with copies given to certain parties;

- Exempting the written report and updates and their 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 service 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 substantially complying with the recommended treatment or services, or, if applicable, the community service;

- Requiring the court to consider certain factors at a hearing on a motion to terminate pretrial diversion;

- Providing the defendant the right to present evidence at a hearing on a motion to terminate pretrial diversion, including the right to present a defense, present witnesses, and cross-examine any witnesses;

- Providing that, at a hearing on a motion to terminate pretrial diversion, the prosecutor must establish by clear and convincing evidence that the noncompliance was willful, and that the defendant should be terminated from pretrial diversion;

- Requiring the prosecuting attorney, beginning January 1, 2024, to input certain data and information about applicable cases in the statewide pretrial diversion tracking and reporting system; and

- Providing that the defendant successfully completes pretrial diversion by having six months of substantial compliance 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 service 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 service, as a condition of probation;

- Eliminating the provisions related to making resources available to assist an applicable person with obtaining an SUD evaluation, assisting the person 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" for completing the agreed terms of probation means a RNP, LEAD program, or arrest and jail alternative program;

- Providing that "substantial compliance" means a person actively engaging with or making himself or herself available to treatment and services, and that the person is not in substantial compliance if he or she willfully abandons treatment and services;

- 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 service 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 applicable program to provide written status updates at least monthly, filed under seal with the court, with copies given to certain parties;
- Exempting the status updates and their copies from disclosure under the public records act;
- Requiring the court to endeavor to avoid public discussion of certain stigmatizing topics;
- Requiring substantial 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 substantially complying with treatment or services, or, if applicable, not completing court-ordered community service;
- Requiring the court to consider certain factors at a hearing on a motion for sanctions;
- Providing an applicable person the right to present evidence at a hearing on a motion for sanctions, including the right to present a defense, present witnesses, and cross-examine any witnesses;
- Providing that, at a hearing on a motion for sanctions, the prosecutor must establish by clear and convincing evidence that a person's noncompliance was willful, and that the person should be sanctioned;
- 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 had six months of substantial compliance 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, that the person completed the court-ordered community service; 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 two years following the person's conviction.

(10) Provides that if a person convicted of an applicable drug offense has not been arrested, charged, or convicted in the two years 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, subject to the availability of funds, to establish and maintain a statewide pretrial diversion tracking and reporting system by January 1, 2024.

(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 expand a revolving fund program to make loans or grants available for recovery residence operators to use for necessary capital expenses.

(16) Requires the HCA to include Black, indigenous, and people of color communities and immigrant communities in its outreach to underserved and rural areas to develop recovery housing, and in its training for housing providers.

(17) 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.

(18) 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.

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

(20) 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.

(21) 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.

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

- Stating that the goal of the RNPs is to provide law enforcement and other criminal legal system personnel with alternatives to legal system involvement for criminal activity stemming from behavioral health needs or poverty;

- Requiring that each RNP have a dedicated project manager and be governed by policy coordinating groups comprised of local officials, public safety agencies, and human services organizations;

- 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 engagement, collaboration, and coordination with law enforcement and municipal agencies through the policy coordinating groups;

- Directing the HCA to revise its RNP standards by December 31, 2023, to achieve fidelity with the core principles and incorporate the LEAD framework for diversion at multiple points of engagement

with the criminal legal system, including prearrest, prebooking, prefiling, and for ongoing case conferencing;

- Directing RNPs to prioritize individuals who are actually or potentially exposed to the criminal legal system;

- Directing the criminal justice training commission to conduct an assessment of the status of statewide implementation of the RNPs in fidelity with core principles and report to the governor and the legislature by December 1, 2023;

- 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.

(23) 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.

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

(25) 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.

(26) 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.

(27) Adds a severability clause.

(28) 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.

(29) Modifies language in the intent section.

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