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**SENATE BILL 5523**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senator Padden

Prefiled 12/09/21.

1 AN ACT Relating to possession of controlled substances; amending  
2 RCW 69.50.4011, 69.50.4013, and 10.31.115; repealing 2021 c 311 ss 15  
3 and 16; repealing 2021 c 311 s 29 (uncodified); and prescribing  
4 penalties.

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

6 **Sec. 1.** RCW 69.50.4011 and 2021 c 311 s 8 are each amended to  
7 read as follows:

8 (1) Except as authorized by this chapter, it is unlawful for:

9 (a) Any person to create or deliver a counterfeit substance; or

10 (b) Any person to knowingly possess a counterfeit substance.

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

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

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

1 (c) Any other counterfeit substance classified in Schedule I, II,  
2 or III, is guilty of a class C felony punishable according to chapter  
3 9A.20 RCW;

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

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

9 (3) A violation of subsection (1)(b) of this section is a  
10 (~~misdemeanor~~) class C felony. The prosecutor is encouraged to  
11 divert such cases for assessment, treatment, or other services for a  
12 person's first two violations under this subsection.

13 **Sec. 2.** RCW 69.50.4013 and 2021 c 311 s 9 are each amended to  
14 read as follows:

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

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

23 (3) The prosecutor is encouraged to divert cases under this  
24 section for assessment, treatment, or other services for a person's  
25 first two violations.

26 (4)(a) The possession, by a person twenty-one years of age or  
27 older, of useable marijuana, marijuana concentrates, or marijuana-  
28 infused products in amounts that do not exceed those set forth in RCW  
29 69.50.360(3) is not a violation of this section, this chapter, or any  
30 other provision of Washington state law.

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

1 (5) (a) The delivery by a person twenty-one years of age or older  
2 to one or more persons twenty-one years of age or older, during a  
3 single twenty-four hour period, for noncommercial purposes and not  
4 conditioned upon or done in connection with the provision or receipt  
5 of financial consideration, of any of the following marijuana  
6 products, is not a violation of this section, this chapter, or any  
7 other provisions of Washington state law:

8 (i) One-half ounce of useable marijuana;

9 (ii) Eight ounces of marijuana-infused product in solid form;

10 (iii) Thirty-six ounces of marijuana-infused product in liquid  
11 form; or

12 (iv) Three and one-half grams of marijuana concentrates.

13 (b) The act of delivering marijuana or a marijuana product as  
14 authorized under this subsection (5) must meet one of the following  
15 requirements:

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

18 (ii) The marijuana or marijuana product must be in the original  
19 packaging as purchased from the marijuana retailer.

20 (6) No person under twenty-one years of age may possess,  
21 manufacture, sell, or distribute marijuana, marijuana-infused  
22 products, or marijuana concentrates, regardless of THC concentration.  
23 This does not include qualifying patients with a valid authorization.

24 (7) The possession by a qualifying patient or designated provider  
25 of marijuana concentrates, useable marijuana, marijuana-infused  
26 products, or plants in accordance with chapter 69.51A RCW is not a  
27 violation of this section, this chapter, or any other provision of  
28 Washington state law.

29 **Sec. 3.** RCW 10.31.115 and 2021 c 311 s 13 are each amended to  
30 read as follows:

31 (1) For all individuals who otherwise would be subject to arrest  
32 for possession of a counterfeit substance under RCW 69.50.4011,  
33 possession of a controlled substance under RCW 69.50.4013, possession  
34 of 40 grams or less of marijuana under RCW 69.50.4014, or possession  
35 of a legend drug under RCW 69.41.030(2)(b), in lieu of jail booking  
36 and referral to the prosecutor, law enforcement (~~shall~~) may offer a  
37 referral to assessment and services available pursuant to RCW  
38 10.31.110 or other program or entity responsible for receiving

1 referrals in lieu of legal system involvement, which may include the  
2 recovery navigator program established under RCW 71.24.115.

3 (2) If law enforcement agency records reflect that an individual  
4 has been diverted to referral for assessment and services twice or  
5 more previously, officers may, but are not required to, make  
6 additional diversion efforts.

7 (3) Nothing in this section precludes prosecutors from diverting  
8 or declining to file any charges for possession offenses that are  
9 referred under RCW 69.50.4011, 69.50.4013, 69.50.4014, or  
10 69.41.030(2)(b) in the exercise of their discretion.

11 NEW SECTION. **Sec. 4.** The following acts or parts of acts are  
12 each repealed:

- 13 (1) 2021 c 311 s 15;  
14 (2) 2021 c 311 s 16; and  
15 (3) 2021 c 311 s 29 (uncodified).

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