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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: I-2381.1/11

ATTY/TYPIST: AI:ean

BRIEF DESCRIPTION:

# Initiative Measure No. 1135

filed February 11, 2011

AN ACT Relating to the removal of civil and criminal penalties associated with adult marijuana use; amending RCW 9.94A.518, 69.50.101, 69.50.4014, 69.50.412, and 69.50.4121; adding a new section to chapter 69.50 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The people of the state of Washington are concerned about the millions of dollars spent each year to arrest, prosecute, and incarcerate people for marijuana offenses. It is widely accepted that marijuana is a benign therapeutic substance that, unlike other legal substances such as tobacco and alcohol, has never caused a single death.

(2) In 1998, the people recognized the medicinal benefits of marijuana by approving and enacting Initiative Measure No. 692, codified in chapter 69.51A RCW, which authorized the medical use of marijuana by qualified patients. Since chapter 69.51A RCW only

provides an affirmative defense, it has proven ineffective at protecting qualified patients from arrest and prosecution.

(3) Several bills have been introduced in the legislature seeking decriminalization of marijuana, but none have been permitted to reach the floor of the legislature for a vote.

(4) Under current law:

(a) Washington citizens face the prospect of arrest, prosecution, and incarceration, as well as the loss of employment and important parental and property rights, for marijuana offenses; and

(b) Washington farmers and landowners are prohibited from growing industrial hemp on their land, depriving them of the ability to grow a valuable, environmentally friendly crop.

(5) The people intend to remove all existing civil and criminal penalties for adults eighteen years of age or older who cultivate, possess, transport, sell, or use marijuana, without impacting existing laws proscribing dangerous activities while under the influence of marijuana or certain conduct that exposes younger persons to marijuana.

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

	TABLE 4
	DRUG OFFENSES
	INCLUDED WITHIN EACH
	SERIOUSNESS LEVEL
III	Any felony offense
	under chapter 69.50
	RCW with a deadly
	weapon special
	verdict under RCW
	(( <del>9.94A.602</del> ))
	<u>9.94A.825</u>
	Controlled Substance

Homicide (RCW

69.50.415)

Delivery of imitation  
controlled  
substance by person  
eighteen or over to  
person under  
eighteen (RCW  
69.52.030(2))

Involving a minor in  
drug dealing (RCW  
69.50.4015)

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

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

Over 18 and deliver  
narcotic from  
Schedule III, IV,  
or V or a  
nonnarcotic, except  
flunitrazepam or  
methamphetamine,  
from Schedule I-V  
to someone under 18  
and 3 years junior

(RCW 69.50.406)

Possession of  
Ephedrine,  
Pseudoephedrine, or  
Anhydrous Ammonia  
with intent to  
manufacture  
methamphetamine (RC  
W 69.50.440)

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

II Create, deliver, or  
possess a  
counterfeit  
controlled  
substance (RCW  
69.50.4011)

Deliver or possess  
with intent to  
deliver  
methamphetamine  
(RCW  
69.50.401(2)(b))

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

Maintaining a Dwelling  
or Place for  
Controlled

Substances (RCW  
69.50.402(1)(f))  
Manufacture, deliver,  
or possess with  
intent to deliver  
amphetamine (RCW  
69.50.401(2)(b))  
Manufacture, deliver,  
or possess with  
intent to deliver  
narcotics from  
Schedule I or II or  
flunitrazepam from  
Schedule IV (RCW  
69.50.401(2)(a))  
Manufacture, deliver,  
or possess with  
intent to deliver  
narcotics from  
Schedule III, IV,  
or V or  
nonnarcotics from  
Schedule I-V  
(except marijuana,  
amphetamine,  
methamphetamines,  
or flunitrazepam)  
(RCW 69.50.401(2)  
(c) through (e))  
Manufacture,  
distribute, or  
possess with intent  
to distribute an  
imitation  
controlled

substance (RCW

69.52.030(1))

I Forged Prescription

(RCW 69.41.020)

Forged Prescription

for a Controlled

Substance (RCW

69.50.403)

(~~Manufacture,~~

~~deliver, or possess~~

~~with intent to~~

~~deliver marijuana~~

~~(RCW~~

~~69.50.401(2)(c))~~)

Possess Controlled

Substance that is a

Narcotic from

Schedule III, IV,

or V or Nonnarcotic

from Schedule I-V

(RCW 69.50.4013)

Possession of

Controlled

Substance that is

either heroin or

narcotics from

Schedule I or II

(RCW 69.50.4013)

Unlawful Use of

Building for Drug

Purposes (RCW

69.53.010)

NEW SECTION. **Sec. 3.** A new section is added to chapter 69.50 RCW to read as follows:

Nothing in this act shall be construed to affect the provisions or penalties set forth in the juvenile justice act, chapter 13.40 RCW, or to legalize or authorize the possession, use, or manufacture of marijuana by persons under the age of eighteen.

**Sec. 4.** RCW 69.50.101 and 2010 c 177 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules. "Controlled substance" does not include marijuana.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially



similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of

individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a)(12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a)(8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an

incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to

distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the

transfer of prescription information for a controlled substance from one pharmacy to another pharmacy.

**Sec. 5.** RCW 69.50.4014 and 2003 c 53 s 335 are each amended to read as follows:

Except as provided in RCW 69.50.401(2)(c), any person under eighteen years of age found guilty of possession of forty grams or less of (~~marihuana~~) marijuana is guilty of a misdemeanor.

**Sec. 6.** RCW 69.50.412 and 2002 c 213 s 1 are each amended to read as follows:

(1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the

sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

(6) This section does not apply to marijuana-related offenses.

**Sec. 7.** RCW 69.50.4121 and 2002 c 213 s 2 are each amended to read as follows:

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

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

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: Meaning objects used to hold burning material (~~(~~such as a marihuana cigarette,~~)~~) that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bongs; and
- (m) Ice pipes or chillers.

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

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies.

(4) This section does not apply to marijuana-related offenses.

NEW SECTION. **Sec. 8.** If this act is validly submitted to and is approved and ratified by the voters at the next general election, the legislature must adopt rules and if appropriate, tax provisions, to carry out the provisions of this act by final adjournment of the 2012 legislative session.

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

NEW SECTION. **Sec. 10.** In the event that any sections of this act are in conflict with any other laws codified in the Revised Code of Washington, the provisions of this act shall control.

NEW SECTION. **Sec. 11.** This act may be known and cited as the marijuana reform and legislation act.