

**FORMATTING NOTE:**

In initiatives, legislative bills and other proposed measures, language that is to be deleted from current statutes is represented by a "strikethrough" character and language that is to be added is underlined. Because these special characters cannot be formatted in all Internet browsers, a different set of symbols is used for presenting these proposals on-line. The symbols are as follows:

- Text that is surrounded by (~~{- text here -}~~) is text that will be DELETED FROM the existing statute if the proposed measure is approved.
- Text that is surrounded by {+ text here +} is text that will be ADDED TO the existing statute if the proposed measure is approved.
- {+ NEW SECTION+} (found at the beginning of a section or paragraph) indicates that ALL of the text in that section will become law if the proposed measure is approved.

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**INITIATIVE 685**

AN ACT Relating to the drug medicalization and prevention act of 1997; amending RCW 9.95.116; adding new sections to chapter 69.50 RCW; adding new sections to chapter 9.95 RCW; adding a new chapter to Title 69 RCW; creating new sections; and prescribing penalties.

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

{+ NEW SECTION. +} Sec. 1. TITLE. This act may be known and cited as the "drug medicalization and prevention act of 1997."

{+ NEW SECTION. +} Sec. 2. FINDINGS AND DECLARATIONS. The people of the state of Washington find and declare the following:

(1) Washington's current approach to drug control needs to be strengthened. This is evidenced by the fact that drug use among youth has more than doubled over the past five years. In addition to actively enforcing our criminal laws against drugs, we need to medicalize Washington's drug control policy and recognize that drug abuse and addiction are public health problems that should be treated as diseases. Thus, drug treatment and prevention must be expanded;

(2) We must also toughen Washington's laws against violent criminals on drugs. Any person who commits a violent crime while under the influence of illegal drugs should serve one hundred percent of his or her sentence with absolutely no early release;

(3) Thousands of Washington citizens suffer from debilitating diseases such as glaucoma, multiple sclerosis, cancer, and AIDS, but cannot have access to the necessary drugs they need. Allowing doctors to recommend Schedule I controlled substances such as marijuana could save victims of these diseases from loss of sight, loss of physical capacity, and greatly reduce the pain and suffering of the seriously ill and terminally ill;

(4) The drug problems of nonviolent persons who are convicted of personal possession or use of drugs are best handled through court-supervised drug treatment and education programs. These programs are more effective than locking up nonviolent offenders in a costly prison. Over the next decade, hundreds of millions of dollars can be saved by using drug treatment and education programs as an alternative to prison;

(5) Violent offenders are not adequately punished due to the prison overcrowding crisis in Washington. Placing nonviolent persons who are convicted of personal possession or use of drugs in court-supervised drug treatment and education programs will free up space in our prisons so that there is room to incarcerate violent offenders and drug dealers; and

(6) The missing link in drug education and prevention is parental involvement. The tax dollars saved by eliminating prison time for nonviolent persons convicted of personal possession or use of drugs should be used for drug treatment and education, targeted at programs that increase parental involvement in their children's drug education.

{+ NEW SECTION. +} Sec. 3. PURPOSE AND INTENT. The people of the state of Washington declare their purposes to be as follows:

(1) To require that any person who commits a violent crime under the influence of drugs serve one hundred percent of his or her sentence and not be eligible for parole or any form of early release;

(2) To permit doctors to recommend Schedule I controlled substances to treat a disease or to relieve the pain and suffering of seriously ill and terminally ill patients;

(3) To require that nonviolent persons convicted of personal possession or use of drugs successfully undergo court-supervised drug treatment programs and probation;

(4) To require that nonviolent persons currently in prison for personal possession or use of illegal drugs, and not serving a concurrent sentence for another crime, or previously convicted or sentenced or subject to sentencing under any habitual criminal statute in any jurisdiction in the United States, be made eligible for immediate parole and drug treatment, education, and community service;

(5) To free up space in our prisons to provide room for violent offenders; and

(6) To expand the success of pilot drug intervention programs that divert drug offenders from prison to drug treatment, education, and counseling.

Sec. 4. RCW 9.95.116 and 1989 c 259 s 2 are each amended to read as follows:

PAROLE NONELIGIBILITY--VIOLENT OFFENSE--INFLUENCE OF CONTROLLED SUBSTANCE--DEFINITION. (1) The board shall fix the duration of confinement for persons committed to the custody of the department of corrections under a mandatory life sentence for a crime or crimes committed before July 1, 1984. However, no duration of confinement shall be fixed for those persons committed under a life sentence without the possibility of parole.

The duration of confinement for persons covered by this section shall be fixed no later than July 1, 1992, or within six months after the admission or readmission of the convicted person to the custody of the department of corrections, whichever is later.

(2) Prior to fixing a duration of confinement under this section, the board shall request from the sentencing judge and the prosecuting attorney an updated statement in accordance with RCW 9.95.030. In addition to the report and recommendations of the prosecuting attorney and sentencing judge, the board shall also consider any victim impact statement submitted by a victim, survivor, or a representative, and any statement submitted by an investigative law enforcement officer. The board shall provide the convicted person with copies of any new statement and an opportunity to comment thereon prior to fixing the

duration of confinement.

{+ (3) Notwithstanding any law to the contrary, any person convicted of a violent offense as defined in RCW 9.94A.030(38) committed while under the influence of a controlled substance is not eligible for parole and must serve one hundred percent of his or her sentence in prison. +}

{+ NEW SECTION. +} Sec. 5. A new section is added to chapter 69.50 RCW to read as follows:

RECEIPT, POSSESSION, OR USE OF CONTROLLED SUBSTANCES INCLUDED IN SCHEDULE I OF RCW 69.50.204 BY SERIOUSLY ILL OR TERMINALLY ILL PATIENT. Notwithstanding any law to the contrary, the receipt, possession, or use of a controlled substance included in Schedule I of RCW 69.50.204 by any seriously ill or terminally ill patient under the recommendation of a physician in compliance with section 6 of this act is lawful.

{+ NEW SECTION. +} Sec. 6. A new section is added to chapter 69.50 RCW to read as follows:

RECOMMENDING CONTROLLED SUBSTANCES INCLUDED IN SCHEDULE I OF RCW 69.50.204 FOR SERIOUSLY ILL AND TERMINALLY ILL PATIENTS. (1) As used in this section and section 5 of this act, "physician" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW.

(2) Notwithstanding any law to the contrary, a physician may recommend a controlled substance included in Schedule I of RCW 69.50.204 to treat a disease, or to relieve the pain and suffering of a seriously ill patient or terminally ill patient. In recommending such a controlled substance, the physician shall comply with professional medical standards.

(3) Notwithstanding any law to the contrary, a physician shall document that scientific research exists that supports the use of a controlled substance listed in RCW 69.50.204 in Schedule I to treat a disease, or to relieve the pain and suffering of a seriously ill patient or terminally ill patient, before recommending the controlled substance. A physician recommending a Schedule I controlled substance to treat a disease, or to relieve the pain and suffering of a seriously ill patient or terminally ill patient, shall obtain the written opinion of a second physician that the recommending of the controlled substance is appropriate to treat a disease or to relieve the pain and suffering of a seriously ill patient or terminally ill patient. Before recommending the Schedule I controlled substance the physician must receive in writing the consent of the patient.

(4) Any failure to comply with this section may be the subject of investigation and appropriate disciplining action by the board of medical examiners.

{+ NEW SECTION. +} Sec. 7. A new section is added to chapter 9.95 RCW to read as follows:

PAROLE ELIGIBILITY FOR PERSONS PREVIOUSLY CONVICTED OF PERSONAL POSSESSION OR USE OF A CONTROLLED SUBSTANCE. (1) Notwithstanding any law to the contrary, if a person has been convicted of the personal possession or use of a controlled substance as defined in RCW 69.50.101, is incarcerated in a Washington state prison, and is not concurrently serving another sentence, the person is eligible for parole.

(2) Any person who has previously been convicted of a violent offense as defined in RCW 9.94A.030(38), or has previously been convicted, sentenced, or subject to sentencing under any habitual

criminal statute in any jurisdiction in the United States, is not eligible for parole under this section.

(3) Personal possession or use of a controlled substance under this section does not include possession for sale, production, manufacturing, or transportation for sale of the controlled substance.

(4) Within ninety days of the effective date of this act, the secretary of the department of corrections shall prepare a list that identifies each person who is eligible for parole under this section, and shall notify the sentencing judge or the judge's successor in the county of conviction of the eligibility.

{+ NEW SECTION. +} Sec. 8. A new section is added to chapter 9.95 RCW to read as follows:

PAROLE FOR PERSONS PREVIOUSLY CONVICTED OF PERSONAL POSSESSION OR USE OF A CONTROLLED SUBSTANCE--TREATMENT--PREVENTION--EDUCATION--TERMINATION OF PAROLE. (1) Notwithstanding any law to the contrary, every prisoner who is eligible for parole under section 7 of this act shall be released upon parole. However, if the sentencing judge or the judge's successor in the county of conviction determines that a person so eligible would be a danger to the general public, that person shall not be released upon parole.

(2) As to each person released upon parole under this section, the sentencing judge or the judge's successor in the county of conviction shall order that as a condition of parole the person be required to participate in an appropriate drug treatment or education program administered by a qualified agency or organization that provides the treatment to persons who abuse or are addicted to controlled substances. Each person enrolled in a drug treatment or education program shall be required to pay for his or her participation in the program to the extent of his or her financial ability.

(3) Each person released upon parole under this section shall remain on parole unless the sentencing judge or the judge's successor revokes parole or grants an absolute discharge from parole or until the person has completed the person's sentence. When the person reaches his or her individual earned release credit date, his or her parole shall be terminated and he or she shall no longer be under the authority of the board.

{+ NEW SECTION. +} Sec. 9. A new section is added to chapter 9.95 RCW to read as follows:

PROBATION FOR PERSONS CONVICTED OF PERSONAL POSSESSION AND USE OF CONTROLLED SUBSTANCES--TREATMENT--PREVENTION--EDUCATION. (1) Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance as defined in RCW 69.50.101 is eligible for probation under this chapter. The sentencing judge or the judge's successor shall suspend the imposition or execution of sentence and place the person on probation that shall not include incarceration.

(2) Any person who has been convicted of or indicted for a violent offense as defined in RCW 9.94A.030 is not eligible for probation as provided for in this section, but instead shall be sentenced under the other provisions of this title.

(3) Personal possession or use of a controlled substance under this section shall not include possession for sale, production, manufacturing, or transportation for sale of any controlled substance.

(4) If a person is convicted of personal possession or use of a controlled substance as defined in RCW 69.50.101, as a condition of

probation, the sentencing judge or the judge's successor may require participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides the programs to persons who abuse or are addicted to controlled substances. Each person enrolled in a drug treatment or education program shall be required to pay for his or her participation in the program to the extent of his or her financial ability.

(5) A person who has been placed on probation under this section, who is determined by the sentencing judge or the judge's successor to be in violation of his or her probation shall have new conditions of probation established in the following manner: The sentencing judge or the judge's successor shall select the additional conditions it deems necessary, including intensified drug treatment, community service, home detention, or any other such sanctions short of incarceration.

(6) If a person is convicted a second time of personal possession or use of a controlled substance as defined in RCW 69.50.101, the sentencing judge or the judge's successor may include additional conditions of probation it deems necessary, including intensified drug treatment, community service, home detention, or any other action within the jurisdiction of the court.

(7) A person who has been convicted three times of personal possession or use of a controlled substance as defined in RCW 69.50.101 is not eligible for probation under this section, but instead shall be sentenced under the other provisions of this chapter.

{+ NEW SECTION. +} Sec. 10. WASHINGTON PARENTS COMMISSION ON DRUG EDUCATION AND PREVENTION. (1) The Washington parents commission on drug education and prevention is hereby created. The commission shall consist of nine members. The members of the commission shall be appointed by the governor within sixty days of the effective date of this act and shall serve a two-year term. Of the nine members, five shall be parents with children currently enrolled in a Washington school, one shall be a representative of a law enforcement agency, one shall be an educator in a local school district, one shall be a representative of a county probation department, and one shall be a representative of the drug education and treatment community.

(2) Each member shall be appointed for a term of two years. The members shall receive no pay, but may be reimbursed for actual expenses incurred on commission business.

(3) The commission shall fund programs that will increase and enhance parental involvement and will increase education about the serious risks and public health problems caused by the abuse of alcohol and controlled substances.

(4) The commission shall contract for administrative and professional services with a not-for-profit organization or government entity with expertise in substance abuse education and prevention.

{+ NEW SECTION. +} Sec. 11. DRUG TREATMENT AND EDUCATION FUND. (1) The drug treatment and education fund is created.

(2) Each year the state treasurer shall transfer six million dollars from the general fund to the drug treatment and education fund. The state expenditure limit shall not be lowered to reflect this transfer.

(3) The moneys deposited in the drug treatment and education fund shall be distributed as follows:

(a) The department of corrections shall receive payment for the administrative and treatment expenses incurred in implementing the

parole provisions of sections 7 and 8 of this act, up to a limit of twenty percent of the moneys deposited in the drug treatment and education fund.

(b) Fifty percent of the remaining moneys deposited in the drug treatment and education fund shall be distributed to county probation departments to cover the costs of placing persons in drug education and treatment programs administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances. The moneys shall be allocated to county probation departments according to a formula based on the numbers of persons placed on probation under chapter . . . , Laws of 1998 (this act).

(c) Fifty percent of the remaining moneys deposited in the drug treatment and education fund shall be transferred to the Washington parents commission on drug education and prevention established under section 10 of this act.

(4) The state auditor shall cause to be prepared at the end of each fiscal year after 1997 an accountability report card that details the cost savings realized from the diversion of persons from prisons to probation. A copy of the report shall be submitted to the governor and the legislature, and a copy of the report shall be sent to each public library in the state.

{+ NEW SECTION. +} Sec. 12. Captions used in this act are not any part of the law.

{+ NEW SECTION. +} Sec. 13. Sections 10 and 11 of this act constitute a new chapter in Title 69 RCW.

{+ NEW SECTION. +} Sec. 14. 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.

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