In the UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SACRAMENTO NONPROFIT COLLECTIVE, DBA EL CAMINO WELLNESS CENTER, a mutual benefit nonprofit collective; RYAN LANDERS, an individual; ALTERNATIVE COMMUNITY HEALTH CARE COOPERATIVE, INC. et al; MARIN ALLIANCE FOR MEDICAL MARIJUANA et al,

Plaintiffs – Appellants,

v.

ERIC HOLDER, Attorney General et al,

Defendants –Appellees.
_____/

No. 12-15991
No. 12-55775
No. 12-16710

D.C. No. 2:11-cv-02939-GEB-EFB Eastern District of California, Sacramento

D.C. No. 3:11-cv-02585-DMS-BGS Southern District of California, San Diego

D.C. No. 4:11-cv-05349-SBA Northern District of California, Oakland

APPELLANTS' SUPPLEMENTAL EXCERPTS OF RECORD
(9th Cir. Rule 30-1.8(a))

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18 Legal Medical Marijuana States and DC
Laws, Fees, and Possession Limits

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I. Summary Chart: 18 states and DC have enacted laws to legalize medical marijuana

State	Year Passed	How Passed (Yes Vote)	Fee	Possession Limit	Accepts other states' registry ID cards?
1. Alaska	1998	Ballot Measure 8 (58%)	$25/$20	1 oz usable; 6 plants (3 mature, 3 immature)	unknown[1]
2. Arizona	2010	Proposition 203 (50.13%)	$150/$75	2.5 oz usable; 0-12 plants[2]	Yes[3]
3. California	1996	Proposition 215 (56%)	$66/$33	8 oz usable; 6 mature or 12 immature plants[4]	No
4. Colorado	2000	Ballot Amendment 20 (54%)	$35	2 oz usable; 6 plants (3 mature, 3 immature)	No
5. Connecticut	2012	House Bill 5389 (96-51 House, 21-13 Senate)	*	One-month supply (exact amount to be determined)	No
6. DC	2010	Amendment Act B18-622 (13-0 vote)	**	2 oz dried; limits on other forms to be determined	unknown
7. Delaware	2011	Senate Bill 17 (27-14 House, 17-4 Senate)	$125	6 oz usable	Yes[5]
8. Hawaii	2000	Senate Bill 862 (32-18 House; 13-12 Senate)	$25	3 oz usable; 7 plants (3 mature, 4 immature)	No
9. Maine	1999	Ballot Question 2 (61%)	No fee	2.5 oz usable; 6 plants	Yes[6]
10. Massachusetts	2012	Ballot Question 3 (63%)	TBD[7]	Sixty day supply for personal medical use	unknown
11. Michigan	2008	Proposal 1 (63%)	$100/$25	2.5 oz usable; 12 plants	Yes
12. Montana	2004	Initiative 148 (62%)	$25/$10	1 oz usable; 4 plants (mature); 12 seedlings	No
13. Nevada	2000	Ballot Question 9 (65%)	$200 +fees	1 oz usable; 7 plants (3 mature, 4 immature)	No
14. New Jersey	2010	Senate Bill 119 (48-14 House; 25-13 Senate)	$200/$20	2 oz usable	No
15. New Mexico	2007	Senate Bill 523 (36-31 House; 32-3 Senate)	$0	6 oz usable; 16 plants (4 mature, 12 immature)	No
16. Oregon	1998	Ballot Measure 67 (55%)	$200/$100[8]	24 oz usable; 24 plants (6 mature, 18 immature)	No
17. Rhode Island	2006	Senate Bill 0710 (52-10 House; 33-1 Senate)	$75/$10	2.5 oz usable; 12 plants	Yes
18. Vermont	2004	Senate Bill 76 (22-7) HB 645 (82-59)	$50	2 oz usable; 9 plants (2 mature, 7 immature)	No
19. Washington	1998	Initiative 692 (59%)	***	24 oz usable; 15 plants	No

Notes:

a. **Residency Requirement** - 16 of the 18 states require proof of residency to be considered a qualifying patient for medical marijuana use. Only Oregon has announced that it will accept out-of-state applications. It is unknown if Delaware will accept applications from non-state residents once the program is established.

b. **Home Cultivation** - Karen O'Keefe, JD, Director of State Policies for Marijuana Policy Project (MPP), told ProCon.org in a Nov. 7, 2012 email that "Some or all patients and/or their caregivers can cultivate in 14 of the 18 states. Home cultivation is not allowed in Connecticut, Delaware, New Jersey, or the District of Columbia and a special license is required in New Mexico. In Arizona, patients can only cultivate if they lived 25 miles or more from a dispensary when they applied for their card. In Massachusetts, patients can only cultivate until the department

c. **Patient Registration** - Karen O'Keefe stated the following in a Nov. 7, 2012 email to ProCon.org:

> "Affirmative defenses, which protect from conviction but not arrest, are or may be available in several states even if the patient doesn't have an ID card: Rhode Island, Michigan, Colorado, Nevada, Oregon, and, in some circumstances, Delaware. Hawaii also has a separate 'choice of evils' defense. Patient ID cards are voluntary in Maine and California, but in California they offer the strongest legal protection. In Delaware, the defense is only available between when a patient submits a valid application and receives their ID card.
>
> The states with no protection unless you're registered are: Alaska (except for that even non-medical use is protected in one's home due to the state constitutional right to privacy), Arizona, Connecticut, Montana, Vermont, New Mexico, and New Jersey. Washington, D.C. also requires registration."

d. **Maryland** - Maryland passed two laws that, although favorable to medical marijuana, do not legalize its use. **Senate Bill 502** (72 KB), the "Darrell Putman Bill" (Resolution #0756-2003) was approved in the state senate by a vote of 29-17, signed into law by Gov. Robert L. Ehrlich, Jr. on May 22, 2003, and took effect on Oct. 1, 2003. The law allows defendants being prosecuted for the use or possession of marijuana to introduce evidence of medical necessity and physician approval, to be considered by the court as a mitigating factor. If the court finds that the case involves medical necessity, the maximum penalty is a fine not exceeding $100. The law does not protect users of medical marijuana from arrest nor does it establish a registry program.

   On May 10, 2011, Maryland Governor Martin O'Malley signed **SB 308** (500 KB), into law. SB 308 removed criminal penalties for medical marijuana patients who meet the specified conditions, but patients are still subject to arrest. The bill provides an affirmative defense for defendants who have been diagnosed with a debilitating medical condition that is "severe and resistant to conventional medicine." The affirmative defense does not apply to defendants who used medical marijuana in public or who were in possession of more than one ounce of marijuana. The bill also created a Work Group to "develop a model program to facilitate patient access to marijuana for medical purposes."

e. Several states with legal medical marijuana have received **letters from their respective United States Attorney's offices** explaining that marijuana is a Schedule I substance and that the federal government considers growing, distribution, or possession of marijuana to be a federal crime regardless of the state laws. These letters have caused some states to delay or alter implementation of their medical marijuana programs.

II. Details by State: 18 states and DC that have enacted laws to legalize medical marijuana	
State and Relevant Medical Marijuana Laws	**Contact and Program Details**
1. **Alaska** **Ballot Measure 8** (100 KB) -- Approved Nov. 3, 1998 by 58% of voters **Effective:** Mar. 4, 1999 Removed state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess written documentation from their physician advising that they "might benefit from the medical use of marijuana." **Approved Conditions:** Cachexia, cancer, chronic pain, epilepsy and other disorders characterized by seizures, glaucoma, HIV or AIDS, multiple sclerosis and other disorders characterized by muscle spasticity, and nausea. Other conditions are subject to approval by the Alaska Department of Health and Social Services. **Possession/Cultivation:** Patients (or their primary caregivers) may legally possess no more than one ounce of usable marijuana, and may cultivate no more than six marijuana plants, of which no more than three may be mature. The law establishes a confidential state-run patient registry that issues identification cards to qualifying patients. **Amended**: **Senate Bill 94** **Effective:** June 2, 1999 Mandates all patients seeking legal protection under this act to enroll in the state patient registry and possess a valid identification card. Patients not enrolled in the registry will no longer be able to argue the "affirmative defense of medical necessity" if they are arrested on marijuana charges. **Update:** Alaska Statute Title 17 Chapter 37 (36 KB) Creates a confidential statewide registry of medical marijuana patients and caregivers and establishes identification card.	**Alaska Bureau of Vital Statistics** Marijuana Registry P.O. Box 110699 Juneau, AK 99811-0699 Phone: 907-465-5423 BVSSpecialServices@health.state.ak.us AK Marijuana Registry Online **Information provided by the state on sources for medical marijuana:** None found **Patient Registry Fee:** $25 new application/$20 renewal **Accepts other states' registry ID cards?** [1]: Unknown [**Editor's Note:** Four phone calls made Jan. 5-8, 2010 and an email sent on Jan. 6, 2010 by ProCon.org to the Alaska Marijuana Registry have not yet been returned and the information is not available on the state's website (as of Jan. 11, 2010).] **Registration:** Mandatory
2. **Arizona**	**Arizona Department of Health**

Ballot Proposition 203 (300 KB) "Arizona Medical Marijuana Act" -- Approved Nov. 2, 2010 by 50.13% of voters Allows registered qualifying patients (who must have a physician's written certification that they have been diagnosed with a debilitating condition and that they would likely receive benefit from marijuana) to obtain marijuana from a registered nonprofit dispensary, and to possess and use medical marijuana to treat the condition. Requires the Arizona Department of Health Services to establish a registration and renewal application system for patients and nonprofit dispensaries. Requires a web-based verification system for law enforcement and dispensaries to verify registry identification cards. Allows certification of a number of dispensaries not to exceed 10% of the number of pharmacies in the state (which would cap the number of dispensaries around 124). Specifies that a registered patient's use of medical marijuana is to be considered equivalent to the use of any other medication under the direction of a physician and does not disqualify a patient from medical care, including organ transplants. Specifies that employers may not discriminate against registered patients unless that employer would lose money or licensing under federal law. Employers also may not penalize registered patients solely for testing positive for marijuana in drug tests, although the law does not authorize patients to use, possess, or be impaired by marijuana on the employment premises or during the hours of employment. **Approved Conditions:** Cancer, glaucoma, HIV/AIDS, Hepatitis C, ALS, Crohn's disease, Alzheimer's disease, cachexia or wasting syndrome, severe and chronic pain, severe nausea, seizures (including epilepsy), severe or persistent muscle spasms (including multiple sclerosis). **Possession/Cultivation:** Qualified patients or their registered designated caregivers may obtain up to 2.5 ounces of marijuana in a 14-day period from a registered nonprofit medical marijuana dispensary. [2] If the patient lives more than 25 miles from the nearest dispensary, the patient or caregiver may cultivate up to 12 marijuana plants in an enclosed, locked facility. [**Editor's Note:** On Apr. 11, 2012, the Arizona Department of Health Services (ADHS) announced the revised rules (1.1 MB) for regulating medical marijuana and set the application dates for May 14 through May 25. On Nov. 15, 2012, the first dispensary was awarded "approval to operate." ADHS Director Will Humble stated on his blog that, "[W]e'll be declining new 'requests to cultivate' among new cardholders in most of the metro area… because self-grow (12 plants) is only allowed when the patient lives more than 25 miles from the nearest dispensary. The vast majority of the Valley is within 25 miles of this new dispensary." On Dec. 6, 2012, the state's first dispensary, Arizona Organix, opened in Glendale.]	Medical Marijuana Program 150 North 18th Avenue Phoenix, Arizona 85007 Phone: 602-542-1023 Prop 203 Information Hub **Information provided by the state on sources for medical marijuana:** "Qualifying patients can obtain medical marijuana from a dispensary, the qualifying patient's designated caregiver, another qualifying patient, or, if authorized to cultivate, from home cultivation. When a qualifying patient obtains or renews a registry identification card, the Department will provide a list of all operating dispensaries to the qualifying patient." ADHS, "Qualifying Patients FAQs," (150 KB) Mar. 25, 2010 **Patient Registry Fee:** $150 / $75 for Supplemental Nutrition Assistance Program participants **Accepts other states' registry ID cards?** [3] Yes, but does not permit visiting patients to obtain marijuana from an Arizona dispensary **Registration:** Mandatory
3. **California** **Ballot Proposition 215** (45 KB) -- Approved Nov. 5, 1996 by 56% of voters **Effective:** Nov. 6, 1996 Removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a "written or oral recommendation" from their physician that he or she "would benefit from medical marijuana." Patients diagnosed with any debilitating illness where the medical use of marijuana has been "deemed appropriate and has been recommended by a physician" are afforded legal protection under this act. **Approved Conditions:** AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, including spasms associated with multiple sclerosis, seizures, including seizures associated with epilepsy, severe nausea; Other chronic or persistent medical symptoms. **Amended:** Senate Bill 420 (70 KB) **Effective:** Jan. 1, 2004 Imposes statewide guidelines outlining how much medicinal marijuana patients may grow and possess.	**California Department of Public Health** Office of County Health Services Attention: Medical Marijuana Program Unit MS 5203 P.O. Box 997377 Sacramento, CA 95899-7377 Phone: 916-552-8600 Fax: 916-440-5591 mmpinfo@dhs.ca.gov CA Medical Marijuana Program Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use (55 KB) **Information provided by the state on sources for medical marijuana:** "Dispensaries, growing collectives, etc.,

SER 3

possess no more than eight ounces of dried marijuana and/or six mature (or 12 immature) marijuana plants. However, S.B. 420 allows patients to possess larger amounts of marijuana when recommended by a physician. The legislation also allows counties and municipalities to approve and/or maintain local ordinances permitting patients to possess larger quantities of medicinal pot than allowed under the new state guidelines.

S.B. 420 also grants implied legal protection to the state's medicinal marijuana dispensaries, stating, "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients ... who associate within the state of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions."

4: [**Editor's Note:** On Jan. 21, 2010, the California Supreme Court affirmed (S164830 (300 KB)) the May 22, 2008 Second District Court of Appeals ruling (50 KB) in the Kelly Case that the possession limits set by SB 420 violate the California constitution because the voter-approved Prop. 215 can only be amended by the voters.

ProCon.org contacted the California Medical Marijuana Program (MMP) on Dec. 6, 2010 to ask 1) how the ruling affected the implementation of the program, and 2) what instructions are given to patients regarding possession limits. A California Department of Public Health (CDPH) Office of Public Affairs representative wrote the following in a Dec. 7, 2010 email to ProCon.org: "The role of MMP under Senate Bill 420 is to implement the State Medical Marijuana ID Card Program in all California counties. CDPH does not oversee the amounts that a patient may possess or grow. When asked what a patient can possess, patients are referred to www.courtinfo.ca.gov, case S164830 which is the Kelly case, changing the amounts a patient can possess from 8 oz, 6 mature plants or 12 immature plants to 'the amount needed for a patient's personal use.' MMP can only cite what the law says."

According to a Jan. 21, 2010 article titled "California Supreme Court Further Clarifies Medical Marijuana Laws," by Aaron Smith, California Policy Director at the Marijuana Policy Project, the impact of the ruling is that people growing more than 6 mature or 12 immature plants are still subject to arrest and prosecution, but they will be allowed to use a medical necessity defense in court.]

Attorney General's Guidelines:
On Aug. 25, 2008, California Attorney General Jerry Brown issued guidelines for law enforcement and medical marijuana patients to clarify the state's laws. Read more about the guidelines here.

business ordinances and the regulatory authority lies with the State Attorney General's Office. Their number is 1-800-952-5225." (accessed Jan. 11, 2010)

Patient Registry Fee:
$66 non Medi-Cal / $33 Medi-Cal, plus additional county fees (varies by location)

Accepts other states' registry ID cards?
No

Registration:
Voluntary

4. Colorado

Ballot Amendment 20 -- Approved Nov. 7, 2000 by 54% of voters
Effective: June 1, 2001

Removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess written documentation from their physician affirming that he or she suffers from a debilitating condition and advising that they "might benefit from the medical use of marijuana." (Patients must possess this documentation prior to an arrest.)

Approved Conditions: Cancer, glaucoma, HIV/AIDS positive, cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis. Other conditions are subject to approval by the Colorado Board of Health.

Possession/Cultivation: A patient or a primary caregiver who has been issued a Medical Marijuana Registry identification card may possess no more than two ounces of a usable form of marijuana and not more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.

Patients who do not join the registry or possess greater amounts of marijuana than allowed by law may argue the "affirmative defense of medical necessity" if they are arrested on marijuana charges.

Amended: House Bill 1284 (236 KB) and Senate Bill 109 (50 KB)
Effective: June 7, 2010

Medical Marijuana Registry
Colorado Department of Public Health and Environment
HSVR-ADM2-A1
4300 Cherry Creek Drive South
Denver, CO 80246-1530
Phone: 303-692-2184

medical.marijuana@state.co.us

CO Medical Marijuana Registry

Information provided by the state on sources for medical marijuana:
"The Colorado Medical Marijuana amendment, statutes and regulations are silent on the issue of dispensaries. While the Registry is aware that a number of such businesses have been established across the state, we do not have a formal relationship with them." (accessed Jan. 11, 2010)

Patient Registry Fee:
$35

Accepts other states' registry ID cards?
No

"House Bill 1284 provides a regulatory framework for dispensaries, including giving local communities the ability to ban or place sensible and much-needed controls on the operation, location and ownership of these establishments. Senate Bill 109 will help prevent fraud and abuse, ensuring that physicians who authorize medical marijuana for their patients actually perform a physical exam, do not have a DEA flag on their medical license and do not have a financial relationship with a dispensary."	Mandatory
5. **Connecticut** **HB 5389** (310 KB) -- Signed into law by Gov. Dannel P. Malloy (D) on May 31, 2012 **Approved:** By House 96-51, by Senate 21-13 **Effective:** Some sections from passage (May 4, 2012), other sections on Oct. 1, 2012 "A qualifying patient shall register with the Department of Consumer Protection... prior to engaging in the palliative use of marijuana. A qualifying patient who has a valid registration certificate... shall not be subject to arrest or prosecution, penalized in any manner,... or denied any right or privilege." Patients must be Connecticut residents at least 18 years of age. "Prison inmates, or others under the supervision of the Department of Corrections, would not qualify, regardless of their medical condition." **Approved Conditions:** "Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome [HIV/AIDS], Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, cachexia, wasting syndrome, Crohn's disease, posttraumatic stress disorder, or... any medical condition, medical treatment or disease approved by the Department of Consumer Protection..." **Possession/Cultivation:** Qualifying patients may possess "an amount of usable marijuana reasonably necessary to ensure uninterrupted availability for a period of one month, as determined by the Department of Consumer Protection." [**Editor's Note:** The Connecticut Medical Marijuana Program website posted an update on Sep. 23, 2012 with instructions on how to register for the program starting on Oct. 1, 2012. "Patients who are currently receiving medical treatment for a debilitating medical conditions set out in the law may qualify for a temporary registration certificate beginning October 1, 2012. To qualify, a patient must also be at least 18 years of age and a Connecticut resident."]	**Medical Marijuana Program** Department of Consumer Protection (DCP) 165 Capitol Avenue Hartford, CT 06106 Phone: 860-713-6006 Toll-Free: 800-842-2649 dcp.mmp@ct.gov The DCP will "issue temporary patient registration certificates starting on October 1, 2012." CT Medical Marijuana Program **Information provided by the state on sources for medical marijuana:** "The Commissioner of Consumer Protection shall determine the number of dispensaries appropriate to meet the needs of qualifying patients in this state." **Patient Registry Fee:** *The Commissioner of Consumer Protection will establish a "reasonable fee." **Accepts other states' registry ID cards?** No **Registration:** Mandatory
6. **District of Columbia (DC)** **Amendment Act B18-622** (80KB) "Legalization of Marijuana for Medical Treatment Amendment Act of 2010" -- Approved 13-0 by the Council of the District of Columbia on May 4, 2010; signed by the Mayor on May 21, 2010| **Effective:** July 27, 2010 [After being signed by the Mayor, the law underwent a 30-day Congressional review period. Neither the Senate nor the House acted to stop the law, so it became effective when the review period ended.] **Approved Conditions:** HIV, AIDS, glaucoma, multiple sclerosis, cancer, other conditions that are chronic, long-lasting, debilitating, or that interfere with the basic functions of life, serious medical conditions for which the use of medical marijuana is beneficial, patients undergoing treatments such as chemotherapy and radiotherapy. **Possession/Cultivation:** The maximum amount of medical marijuana that any qualifying patient or caregiver may possess at any moment is two ounces of dried medical marijuana. The Mayor may increase the quantity of dried medical marijuana that may be possessed up to four ounces; and shall decide limits on medical marijuana of a form other than dried. On Apr. 14, 2011, Mayor Vincent C. Gray announced the adoption of an emergency amendment (450 KB) to title 22 of the District of Columbia Municipal Regulations (DCMR), which added a new subtitle C entitled "Medical Marijuana." The emergency amendment "will set forth the process and procedure" for patients, caregivers, physicians, and dispensaries, and "implement the provisions of the Act that must be addressed at the onset to enable the Department to administer the program."	**Medical Marijuana Program** The law establishes a medical marijuana program to "regulate the manufacture, cultivation, distribution, dispensing, purchase, delivery, sale, possession, and administration of medical marijuana and the manufacture, possession, purchase, sale, and use of paraphernalia. The Program shall be administered by the Mayor." **Patient Registry Fee:** **[**Editor's Note**: Although the law took effect on July 27, 2010, the Mayor and the Department of Health have yet to determine how the medical marijuana program will be run. A DC Department of Health spokesperson told ProCon.org by phone on Jan. 19, 2011 that no announcement has been made regarding when the program will begin.] **Accepts other states' registry ID cards?** Unknown **Registration:**

Administration posted a revised timeline for the dispensary application process (180 KB), which listed June 8, 2012 as the date by which the Department intends to announce dispensary applicants available for registration.	22, 2012)
7. Delaware **Senate Bill 17** (100 KB) -- Signed into law by Gov. Jack Markell (D) on May 13, 2011 **Approved:** By House 27-14, by Senate 17-4 **Effective:** July 1, 2011 Under this law, a patient is only protected from arrest if his or her physician certifies, in writing, that the patient has a specified debilitating medical condition and that the patient would receive therapeutic benefit from medical marijuana. The patient must send a copy of the written certification to the state Department of Health and Social Services, and the Department will issue an ID card after verifying the information. As long as the patient is in compliance with the law, there will be no arrest. The law does not allow patients or caregivers to grow marijuana at home, but it does allow for the state-regulated, non-profit distribution of medical marijuana by compassion centers. **Approved Conditions:** Approved for treatment of debilitating medical conditions, defined as cancer, HIV/AIDS, decompensated cirrhosis, ALS, Alzheimer's disease, post-traumatic stress disorder; or a medical condition that produces wasting syndrome, severe debilitating pain that has not responded to other treatments for more than three months or for which other treatments produced serious side effects, severe nausea, seizures, or severe and persistent muscle spasms. **Possession/Cultivation:** Patients 18 and older with certain debilitating conditions may possess up to six ounces of marijuana with a doctor's written recommendation. A registered compassion center may not dispense more than 3 ounces of marijuana to a registered qualifying patient in any fourteen-day period, and a patient may register with only one compassion center. [**Editor's Note:** On Feb. 12, 2012, Gov. Markell released the following statement (presented in its entirety), available on delaware.gov, in response to a letter from US District Attorney Charles Oberly (2 MB): "I am very disappointed by the change in policy at the federal department of justice, as it requires us to stop implementation of the compassion centers. To do otherwise would put our state employees in legal jeopardy and I will not do that. Unfortunately, this shift in the federal position will stand in the way of people in pain receiving help. Our law sought to provide that in a manner that was both highly regulated and safe." Although the Governor suspended implementation of the compassion centers, Senate Bill 17 contains a provision that allows for an affirmative defense for individuals "in possession of no more than six ounces of usable marijuana."] The Apr. 2012 Delaware *Register of Regulations* included the proposed regulations for the Delaware medical marijuana program (250 KB).	**Delaware Department of Health and Social Services** Division of Public Health Phone: 302-744-4749 Fax: 302-739-3071 MedicalMarijuanaDPH@state.de.us DE Medical Marijuana Program **Information provided by the state on sources for medical marijuana:** The Delaware Medical Marijuana Program website states (as of Oct. 18, 2012), "The creation of the state-licensed, privately owned compassion centers has been suspended by the state. Based on guidance from the US Attorney, the compassion centers concept conflicts with federal law. As a result there is no plan to open compassion centers at this time." **Patient Registry Fee:** $125 (a sliding scale fee is available based on income) **Accepts other states' registry ID cards?** [5] Yes (a visiting qualifying patient is not subject to arrest if a visitor ID card is obtained) **Registration:** Mandatory
8. Hawaii **Senate Bill 862** (40 KB) -- Signed into law by Gov. Ben Cayetano on June 14, 2000 **Approved:** By House 32-18, by Senate 13-12 **Effective:** Dec. 28, 2000 Removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a signed statement from their physician affirming that he or she suffers from a debilitating condition and that the "potential benefits of medical use of marijuana would likely outweigh the health risks." The law establishes a mandatory, confidential state-run patient registry that issues identification cards to qualifying patients. **Approved conditions:** Cancer, glaucoma, positive status for HIV/AIDS; A chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome, severe pain, severe nausea, seizures, including those characteristic of epilepsy, or severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease. Other conditions are subject to approval by the Hawaii Department of Health. **Possession/Cultivation:** The amount of marijuana that may be possessed jointly	**Narcotics Enforcement Division** 3375 Koapaka Street, Suite D-100 Honolulu, HI 96819 Phone: 808-837-8470 Fax: 808-837-8474 HI Medical Marijuana Application info **Information provided by the state on sources for medical marijuana:** "Hawaii law does not authorize any person or entity to sell or dispense marijuana... Hawaii law authorizes the medical use of marijuana, it does not authorize the distribution of marijuana (Dispensaries) other than the transfer from a qualifying patient's primary caregiver to the qualifying patient." (accessed Jan. 11, 2010) **Patient Registry Fee:**

which shall not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant. **Not Amended**	**Accepts other states' registry ID cards?** No **Registration:** Mandatory
9. Maine **Ballot Question 2** -- Approved Nov. 2, 1999 by 61% of voters **Effective:** Dec. 22, 1999 Removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess an oral or written "professional opinion" from their physician that he or she "might benefit from the medical use of marijuana." The law does not establish a state-run patient registry. **Approved diagnosis:** epilepsy and other disorders characterized by seizures; glaucoma; multiple sclerosis and other disorders characterized by muscle spasticity; and nausea or vomiting as a result of AIDS or cancer chemotherapy. **Possession/Cultivation:** Patients (or their primary caregivers) may legally possess no more than one and one-quarter (1.25) ounces of usable marijuana, and may cultivate no more than six marijuana plants, of which no more than three may be mature. Those patients who possess greater amounts of marijuana than allowed by law are afforded a "simple defense" to a charge of marijuana possession. **Amended:** Senate Bill 611 **Effective:** Signed into law on Apr. 2, 2002 Increases the amount of useable marijuana a person may possess from one and one-quarter (1.25) ounces to two and one-half (2.5) ounces. **Amended:** Question 5 (135 KB) -- Approved Nov. 3, 2009 by 59% of voters List of approved conditions changed to include cancer, glaucoma, HIV, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's, nail-patella syndrome, chronic intractable pain, cachexia or wasting syndrome, severe nausea, seizures (epilepsy), severe and persistent muscle spasms, and multiple sclerosis. Instructs the Department of Health and Human Services (DHHS) to establish a registry identification program for patients and caregivers. Stipulates provisions for the operation of nonprofit dispensaries. [**Editor's Note:** An Aug. 19, 2010 email to ProCon.org from Catherine M. Cobb, Director of Maine's Division of Licensing and Regulatory Services, stated: "We have just set up our interface to do background checks on caregivers and those who are associated with dispensaries. They may not have a disqualifying drug offense."]	**Department of Health and Human Services** Division of Licensing and Regulatory Services John Thiele, Program Manager 11 State House Station Augusta, ME 04333 207-287-9300 Maine Medical Marijuana Program **Information provided by the state on sources for medical marijuana:** "The patient may either cultivate or designate a caregiver or dispensary to cultivate marijuana." ("Program Bulletin," Maine.gov, Sep. 28, 2011) **Patient Registry Fee:** $0 Caregivers pay $300/patient (limit of 5 patients; if not growing marijuana, there is no fee) **Accepts other states' registry ID cards?** Yes [6]: "Law enforcement will accept appropriate authorization from a participating state, but that patient cannot purchase marijuana in Maine without registering here. That requires a Maine physician and a Maine driver license or other picture ID issued by the state of Maine. The letter from a physician in another state is only good for 30 days." (Aug. 19, 2010 email from Maine's Division of Licensing and Regulatory Services) **Registration:** Voluntary "In addition to either a registry ID card or a physician certification form, all patients, including both non-registered and voluntarily registered patients, must also present their Maine driver license or other Maine-issued photo identification card to law enforcement, upon request." ("Program Bulletin," Maine.gov, Sep. 28, 2011)
10. Massachusetts **Ballot Question 3** -- Approved Nov. 6, 2012 by 63% of voters **Effective:** Jan. 1, 2013 "The citizens of Massachusetts intend that there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana... In the first year after the effective date, the Department shall issue registrations for up to thirty-five non-profit medical marijuana treatment centers, provided that at least one treatment center shall be located in each county, and not more than five shall be located in any one county." **Approved diagnosis:** "Cancer, glaucoma, positive status for human	**Department of Public Health of the Commonwealth of Massachusetts** One Ashburton Place 11th Floor Boston, MA 02108 617-573-1600 **Information provided by the state on sources for medical marijuana:** The state will issue registrations for up to 35 nonprofit medical marijuana treatment centers **Patient Registry Fee:** [7]To be determined by DPH within 120 days of the effective date of Jan. 1

amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis and other conditions as determined in writing by a qualifying patient's physician." **Possession/Cultivation:** Patients may possess "no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply... Within 120 days of the effective date of this law, the department shall issue regulations defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients, based on the best available evidence." "The Department shall issue a cultivation registration to a qualifying patient whose access to a medical treatment center is limited by verified financial hardship, a physical incapacity to access reasonable transportation, or the lack of a treatment center within a reasonable distance of the patient's residence. The Department may deny a registration based on the provision of false information by the applicant. Such registration shall allow the patient or the patient's personal caregiver to cultivate a limited number of plants, sufficient to maintain a 60-day supply of marijuana, and shall require cultivation and storage only in an enclosed, locked facility. The department shall issue regulations consistent with this section within 120 days of the effective date of this law. Until the department issues such final regulations, the written recommendation of a qualifying patient's physician shall constitute a limited cultivation registration."	**Accepts other states' registry ID cards?** Unknown **Registration:** Mandatory "Until the approval of final regulations, written certification by a physician shall constitute a registration card for a qualifying patient."
11. Michigan **Proposal 1** (60 KB) "Michigan Medical Marihuana Act" -- Approved by 63% of voters on Nov. 4, 2008 **Approved:** Nov. 4, 2008 **Effective:** Dec. 4, 2008 **Approved Conditions:** Approved for treatment of debilitating medical conditions, defined as cancer, glaucoma, HIV, AIDS, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, cachexia or wasting syndrome, severe and chronic pain, severe nausea, seizures, epilepsy, muscle spasms, and multiple sclerosis. **Possession/Cultivation:** Patients may possess up to two and one-half (2.5) ounces of usable marijuana and twelve marijuana plants kept in an enclosed, locked facility. The twelve plants may be kept by the patient only if he or she has not specified a primary caregiver to cultivate the marijuana for him or her. **Amended:** HB 4856 (40 KB) **Effective:** Dec. 31, 2012 Makes it illegal to "transport or posess" usable marijuana by car unless the marijuana is "enclosed in a case that is carried in the trunk of the vehicle." Violation of the law is a misdemeanor "punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both." **Amended:** HB 4834 (40 KB) **Effective:** Apr. 1, 2013 Requires proof of Michigan residency when applying for a registry ID card (driver license, official state ID, or valid voter registration) and makes cards valid for two years instead of one. **Amended:** HB 4851 (40 KB) **Effective:** Apr. 1, 2013 Requires a "bona fide physician-patient relationship," defined in part as one in which the physician "has created and maintained records of the patient's condition in accord with medically accepted standards" and "will provide follow-up care;" protects patient from arrest only with registry identification card and valid photo ID.	**Michigan Medical Marihuana Program** Bureau of Health Professions, Department of Licensing and Regulatory Affairs P.O. Box 30083 Lansing, MI 48909 Phone: 517-373-0395 BHP-MMMPINFO@michigan.gov MI Medical Marihuana Program **Information provided by the state on sources for medical marijuana:** "The MMMP is not a resource for the growing process and does not have information to give to patients." (accessed Jan. 7, 2013) **Patient Registry Fee:** $100 new or renewal application / $25 Medicaid patients **Accepts other states' registry ID cards?** Yes **Registration:** Mandatory
12. Montana **Initiative 148** (76 KB) -- Approved by 62% of voters on Nov. 2, 2004	**Medical Marijuana Program** Montana Department of Health and Human Services

Approved Conditions: Cancer, glaucoma, or positive status for HIV/AIDS, or the treatment of these conditions; a chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures, including seizures caused by epilepsy, or severe or persistent muscle spasms, including spasms caused by multiple sclerosis or Chrohn's disease; or any other medical condition or treatment for a medical condition adopted by the department by rule. **Possession/Cultivation:** A qualifying patient and a qualifying patient's caregiver may each possess six marijuana plants and one ounce of usable marijuana. "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana. **Amended:** SB 423 (100 KB) -- Passed on Apr. 28, 2011 and transmitted to the Governor on May 3, 2011 **Effective:** July 1, 2011 SB 423 changes the application process to require a Montana driver's license or state issued ID card. A second physician is required to confirm a chronic pain diagnosis. "A provider or marijuana-infused products provider may assist a maximum of three registered cardholders..." and "may not accept anything of value, including monetary remuneration, for any services or products provided to a registered cardholder." **Approved Conditions:** Cancer, glaucoma, or positive status for HIV/AIDS when the condition or disease results in symptoms that seriously and adversely affect the patient's health status; Cachexia or wasting syndrome; Severe, chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician; Intractable nausea or vomiting; Epilepsy or intractable seizure disorder; Multiple sclerosis; Chron's Disease; Painful peripheral neuropathy; A central nervous system disorder resulting in chronic, painful spasticity or muscle spasms; Admittance into hospice care. **Possession/Cultivation:** Amended to 12 seedlings (less than 12"), four mature flowering plants, and one ounce of usable marijuana. On Nov. 6, 2012, Montana voters approved initiative referendum No. 124 by a vote of 56.5% to 43.5%, upholding SB 423.	2401 Colonial Drive, 2nd Floor P.O. Box 202953 Helena, MT 59620-2953 Phone: 406-444-2676 jbuska@mt.gov MT Medical Marijuana Program Medical Marijuana Program FAQs (35 KB) **Information provided by the state on sources for medical marijuana:** "The Medical Marijuana Act... allows a patient or caregiver to grow up to six plants or possess up to one ounce of usable marijuana. The department cannot give advice or referrals on how to obtain a supply of marijuana... State law is silent on where grow sites can be located." (accessed Jan. 11, 2010) **Patient Registry Fee:** $25 new application/$10 renewal (reduced from $50 as of Oct. 1, 2009) **Accepts other states' registry ID cards?** No (reciprocity ended when SB 423 took effect) **Registration:** Mandatory
13. **Nevada** **Ballot Question 9** -- Approved Nov. 7, 2000 by 65% of voters **Effective:** Oct. 1, 2001 Removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who have "written documentation" from their physician that marijuana may alleviate his or her condition. **Approved Conditions:** AIDS; cancer; glaucoma; and any medical condition or treatment to a medical condition that produces cachexia, persistent muscle spasms or seizures, severe nausea or pain. Other conditions are subject to approval by the health division of the state Department of Human Resources. **Possession/Cultivation:** Patients (or their primary caregivers) may legally possess no more than one ounce of usable marijuana, three mature plants, and four immature plants. **Registry:** The law establishes a confidential state-run patient registry that issues identification cards to qualifying patients. Patients who do not join the registry or possess greater amounts of marijuana than allowed by law may argue the "affirmative defense of medical necessity" if they are arrested on marijuana charges. Legislators added a preamble to the legislation stating, "[T]he state of Nevada as a sovereign state has the duty to carry out the will of the people of this state and regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana." A separate provision requires the Nevada School of Medicine to "aggressively" seek federal permission to establish a state-run medical marijuana distribution program. **Amended:** Assembly Bill 453 (25 KB) **Effective:** Oct. 1, 2001	**Nevada State Health Division** 4150 Technology Way, Suite 104 Carson City, Nevada Phone: 775-687-7594 Fax: 775-684-4156 NV Medical Marijuana Program **Information provided by the state on sources for medical marijuana:** "The NMMP is not a resource for the growing process and does not have information to give to patients." **Patient Registry Fee:** $50 application fee, plus $150 for the card (new or renewal), plus $15-42 in additional related costs **Accepts other states' registry ID cards?** No **Registration:** Mandatory

marijuana and tasked the Department of Motor Vehicles with issuing identification cards. No state money will be used for the program, which will be funded entirely by donations.	
14. New Jersey **Senate Bill 119** (175 KB) **Approved:** Jan. 11, 2010 by House, 48-14; by Senate, 25-13 Signed into law by Gov. Jon Corzine on Jan. 18, 2010 **Effective:** Six months from enactment Protects "patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes" from "arrest, prosecution, property forfeiture, and criminal and other penalties." Also provides for the creation of alternative treatment centers, "at least two each in the northern, central, and southern regions of the state. The first two centers issued a permit in each region shall be nonprofit entities, and centers subsequently issued permits may be nonprofit or for-profit entities." **Approved Conditions:** Seizure disorder, including epilepsy, intractable skeletal muscular spasticity, glaucoma; severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome resulting from HIV/AIDS or cancer; amyotrophic lateral sclerosis (Lou Gehrig's Disease), multiple sclerosis, terminal cancer, muscular dystrophy, or inflammatory bowel disease, including Crohn's disease; terminal illness, if the physician has determined a prognosis of less than 12 months of life or any other medical condition or its treatment that is approved by the Department of Health and Senior Services. **Possession/Cultivation:** Physicians determine how much marijuana a patient needs and give written instructions to be presented to an alternative treatment center. The maximum amount for a 30-day period is two ounces. The New Jersey Department of Health and Senior Services released draft rules (385 KB) outlining the registration and application process on Oct. 6, 2010. A public hearing to discuss the proposed rules was held on Dec. 6, 2010 at at the New Jersey Department of Health and Senior Services, according to the *New Jersey Register*. On Dec. 20, 2011, Senator Nicholas Scutari (D), lead sponsor of the medical marijuana bill, submitted Senate Concurrent Resolution (SCR) 140 (25 KB) declaring that the "Board of Medical Examiners proposed medicinal marijuana program rules are inconsistent with legislative intent." The New Jersey Senate Health, Human Services and Senior Citizens committee held a public hearing to discuss SCR 140 and a similar bill, SCR 130, on Jan. 20, 2010. On Feb. 3, 2011, DHSS proposed new rules (200 KB) that streamlined the permit process for cultivating and dispensing, prohibited home delivery by alternative treatment centers, and required that "conditions originally named in the Act be resistant to conventional medical therapy in order to qualify as debilitating medical conditions." On Aug. 9, 2012, the New Jersey Medical Marijuana Program opened the patient registration system on its website. Patients must have a physician's recommendation, a government-issued ID, and proof of New Jersey residency to register. The first dispensary is expected to be licensed to open in September. On Oct. 16, 2012, the Department of Health issued the first dispensary permit (24 KB) to Greenleaf Compassion Center, allowing it to operate as an Alternative Treatment Center and dispense marijuana. The center opened on Dec. 6, 2012, becoming New Jersey's first dispensary. Five other treatment centers are "in various stages of finalizing locations or background examinations of the principals of their organizations."	S119 was supposed to become effective six months after it was enacted on Jan. 18, 2010, but the legislature, DHHS, and New Jersey Governor Chris Christie did not agree on the details of how the program would be run. The **Department of Health and Senior Services (DHSS)**, the state agency in charge of the program, issued its first dispensary permit on Oct. 16, 2012. Medicinal Marijuana Program **Information provided by the state on sources for medical marijuana:** Patients are not allowed to grow their own marijuana. On Mar. 21, 2011, the New Jersey DHHS announced the locations of six nonprofit alternative treatment centers (ATCs) (100 KB) from which medical marijuana may be obtained. Medical marijuana is not covered by Medicaid. **Patient Registry Fee:** $200 (valid for two years). Reduced fee of $20 for patients qualifying for state or federal assistance programs **Accepts other states' registry ID cards?** No ("[T]o be eligible for the New Jersey Medicinal Marijuana program you must... hold a valid patient identification card issued by the New Jersey Medicinal Marijuana Program.") **Registration:** Mandatory
15. New Mexico **Senate Bill 523** (71 KB) "The Lynn and Erin Compassionate Use Act" **Approved:** Mar. 13, 2007 by House, 36-31; by Senate, 32-3 **Effective:** July 1, 2007	**New Mexico Department of Health** 1190 St. Francis Drive P.O. Box 26110 Santa Fe, NM 87502-6110 Phone: 505-827-2321

Removes state-level criminal penalties on the use and possession of marijuana by patients "in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments." The New Mexico Department of Health designated to administer the program and register patients, caregivers, and providers. **Approved Conditions:** The 15 current qualifying conditions for medical cannabis are: severe chronic pain, painful peripheral neuropathy, intractable nausea/vomiting, severe anorexia/cachexia, hepatitis C infection, Crohn's disease, Post-Traumatic Stress Disorder, ALS (Lou Gehrig's disease), cancer, glaucoma, multiple sclerosis, damage to the nervous tissue of the spinal cord with intractable spasticity, epilepsy, HIV/AIDS, and hospice patients. **Possession/Cultivation:** Patients have the right to possess up to six ounces of usable cannabis, four mature plants and 12 seedlings. Usable cannabis is defined as dried leaves and flowers; it does not include seeds, stalks or roots. A primary caregiver may provide services to a maximum of four qualified patients under the Medical Cannabis Program.	medical.cannabis@state.nm.us NM Medical Cannabis Program **Information provided by the state on sources for medical marijuana:** "Patients can apply for a license to produce their own medical cannabis... Once a patient is approved we provide them with information about how to contact the licensed producers to receive medical cannabis." (accessed Jan. 11, 2010) **Patient Registry Fee:** $0 **Accepts other states' registry ID cards?** No **Registration:** Mandatory
16. Oregon **Ballot Measure 67** (75 KB) -- Approved by 55% of voters on Nov. 3, 1998 **Effective:** Dec. 3, 1998 Removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a signed recommendation from their physician stating that marijuana "may mitigate" his or her debilitating symptoms. **Approved Conditions:** Cancer, glaucoma, positive status for HIV/AIDS, or treatment for these conditions; A medical condition or treatment for a medical condition that produces cachexia, severe pain, severe nausea, seizures, including seizures caused by epilepsy, or persistent muscle spasms, including spasms caused by multiple sclerosis. Other conditions are subject to approval by the Health Division of the Oregon Department of Human Resources. **Possession/Cultivation:** A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana. A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings. (per Oregon Revised Statutes ORS 475.300 -- ORS 475.346) (52 KB) **Amended:** Senate Bill 1085 (52 KB) **Effective:** Jan. 1, 2006 State-qualified patients who possess cannabis in amounts exceeding the new state guidelines will no longer retain the ability to argue an "affirmative defense" of medical necessity at trial. Patients who fail to register with the state, but who possess medical cannabis in amounts compliant with state law, still retain the ability to raise an "affirmative defense" at trial. The law also redefines "mature plants" to include only those cannabis plants that are more than 12 inches in height and diameter, and establish a state-registry for those authorized to produce medical cannabis to qualified patients. **Amended:** House Bill 3052 **Effective:** July 21, 1999 Mandates that patients (or their caregivers) may only cultivate marijuana in one location, and requires that patients must be diagnosed by their physicians at least 12 months prior to an arrest in order to present an "affirmative defense." This bill also states that law enforcement officials who seize marijuana from a patient pending trial do not have to keep those plants alive. Last year the Oregon Board of Health approved agitation due to Alzheimer's disease to the list of debilitating conditions qualifying for legal protection. In August 2001, program administrators filed established temporary procedures further defining the relationship between physicians and patients. The new rule defines attending physician as "a physician who has established a physician/patient	**Oregon Department of Human Services** Medical Marijuana Program PO Box 14450 Portland, OR 97293-0450 Phone: 971-673-1234 Fax: 971-673-1278 OR Medical Marijuana Program (OMMP) **Information provided by the state on sources for medical marijuana:** "The OMMP is not a resource for the growing process and does not have information to give to patients." (accessed Jan. 11, 2010) **Patient Registry Fee:** [7]:$200 for new applications and renewals; $100 for application and annual renewal fee for persons receiving SNAP (food stamp) and for Oregon Health Plan cardholders; $20 for persons receiving SSI benefits An additional $50 grow site registration fee is charged if the patient is not his or her own grower. **Accepts other states' registry ID cards?** No **Registration:** Mandatory

the patients;... has reviewed a patient's medical records at the patient's request, has conducted a thorough physical examination of the patient, has provided a treatment plan and/or follow-up care, and has documented these activities in a patient file." [**Editor's Note:** On Nov. 2, 2010, 55.79% of Oregon Voters rejected Measure 74 (100 KB), which would have allowed for the creation of state-regulated dispensaries.]	
17. **Rhode Island** **Senate Bill 0710** -- Approved by state House and Senate, vetoed by the Governor. Veto was over-ridden by House and Senate. **Timeline:** 1. June 24, 2005: passed the House 52 to 10 2. June 28, 2005: passed the State Senate 33 to 1 3. June 29, 2005: Gov. Carcieri vetoed the bill 4. June 30, 2005: Senate overrode the veto 28-6 5. Jan. 3, 2006: House overrode the veto 59-13 to pass the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (48 KB) (Public Laws 05-442 and 05-443) 6. June 21, 2007: Amended by Senate Bill 791 (30 KB) **Effective:** Jan. 3, 2006 **Approved Conditions:** Cancer, glaucoma, positive status for HIV/AIDS, Hepatitis C, or the treatment of these conditions; A chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome; severe, debilitating, chronic pain; severe nausea; seizures, including but not limited to, those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to, those characteristic of multiple sclerosis or Crohn's disease; or agitation of Alzheimer's Disease; or any other medical condition or its treatment approved by the state Department of Health. If you have a medical marijuana registry identification card from any other state, U.S. territory, or the District of Columbia you may use it in Rhode Island. It has the same force and effect as a card issued by the Rhode Island Department of Health. **Possession/Cultivation:** Limits the amount of marijuana that can be possessed and grown to up to 12 marijuana plants or 2.5 ounces of cultivated marijuana. Primary caregivers may not possess an amount of marijuana in excess of 24 marijuana plants and five ounces of usable marijuana for qualifying patients to whom he or she is connected through the Department's registration process. **Amended:** **H5359** (70 KB) - The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (substituted for the original bill) **Timeline:** 1. **May 20, 2009:** passed the House 63-5 2. **June 6, 2009:** passed the State Senate 31-2 3. **June 12, 2009:** Gov. Carcieri vetoed the bill (60 KB) 4. **June 16, 2009:** Senate overrode the veto 35-3 5. **June 16, 2009:** House overrode the veto 67-0 **Effective June 16, 2009:** Allows the creation of compassion centers, which may acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, or dispense marijuana, or related supplies and educational materials, to registered qualifying patients and their registered primary caregivers.	**Rhode Island Department of Health** Office of Health Professions Regulation, Room 104 3 Capitol Hill Providence, RI 02908-5097 Phone: 401-222-2828 RI Medical Marijuana Program (MMP) **Information provided by the state on sources for medical marijuana:** "The MMP is not a resource for marijuana and does not have information to give to patients related to the supply of marijuana." (accessed Jan. 11, 2010) **Patient Registry Fee:** $75/$10 for applicants on Medicaid or Supplemental Security Income (SSI) **Accepts other states' registry ID cards?** Yes, but only for the conditions approved in Rhode Island **Registration:** Mandatory
18. **Vermont** **Senate Bill 76** (45 KB) -- Approved 22-7; House Bill 645 (41 KB) -- Approved 82-59 **"Act Relating to Marijuana Use by Persons with Severe Illness"** (Sec. 1. 18 V.S.A. chapter 86 (41 KB) passed by the General Assembly) *Gov. James Douglas (R), allowed the act to pass into law unsigned on May 26, 2004* **Effective:** July 1, 2004 **Amended:** Senate Bill 00007 (65 KB) **Effective:** May 30, 2007 **Approved Conditions:** Cancer, AIDS, positive status for HIV, multiple sclerosis, or the treatment of these conditions if the disease or the treatment results in severe,	**Marijuana Registry** Department of Public Safety 103 South Main Street Waterbury, Vermont 05671 Phone: 802-241-5115 VT Marijuana Registry Program **Information provided by the state on sources for medical marijuana:** "The Marijuana Registry is neither a source for marijuana nor can the Registry provide information to patients on how to obtain marijuana." (accessed

treatment that is chronic, debilitating and produces severe, persistent, and one or more of the following intractable symptoms: cachexia or wasting syndrome, severe pain or nausea or seizures. **Possession/Cultivation:** No more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana may be collectively possessed between the registered patient and the patient's registered caregiver. A marijuana plant shall be considered mature when male or female flower buds are readily observed on the plant by unaided visual examination. Until this sexual differentiation has taken place, a marijuana plant will be considered immature. **Amended:** Senate Bill 17 (100 KB) "An Act Relating To Registering Four Nonprofit Organizations To Dispense Marijuana For Symptom Relief" Signed by Gov. Peter Shumlin on June 2, 2011 The bill "establishes a framework for registering up to four nonprofit marijuana dispensaries in the state... A dispensary will be permitted to cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana." On Sep. 12, 2012, the State of Vermont Department of Public Safety announced conditional approval (65 KB) of two medical marijuana dispensaries.	**Patient Registry Fee:** $50 **Accepts other states' registry ID cards?** No **Registration:** Mandatory
19. **Washington** **Chapter 69.51A RCW** (4KB) **Ballot Initiative I-692** -- Approved by 59% of voters on Nov. 3, 1998 **Effective:** Nov. 3, 1998 Removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess "valid documentation" from their physician affirming that he or she suffers from a debilitating condition and that the "potential benefits of the medical use of marijuana would likely outweigh the health risks." **Approved Conditions:** Cachexia; cancer; HIV or AIDS; epilepsy; glaucoma; intractable pain (defined as pain unrelieved by standard treatment or medications); and multiple sclerosis. Other conditions are subject to approval by the Washington Board of Health. **Possession/Cultivation:** Patients (or their primary caregivers) may legally possess or cultivate no more than a 60-day supply of marijuana. The law does not establish a state-run patient registry. **Amended:** **Senate Bill 6032** (29 KB) **Effective:** 2007 (rules being defined by Legislature with a July 1, 2008 due date) **Amended:** Final Rule (123 KB) based on Significant Analysis (370 KB) **Effective:** Nov. 2, 2008 **Approved Conditions:** Added Crohn's disease, Hepatitis C with debilitating nausea or intractable pain, diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when those conditions are unrelieved by standard treatments or medications. **Possession/Cultivation:** A qualifying patient and designated provider may possess a total of no more than twenty-four ounces of usable marijuana, and no more than fifteen plants. This quantity became the state's official "60-day supply" on Nov. 2, 2008. [**Editor's Note:** On Jan. 21, 2010, the Supreme Court of the State of Washington ruled that Ballot Initiative "I-692 did not legalize marijuana, but rather provided an authorized user with an affirmative defense if the user shows compliance with the requirements for medical marijuana possession." *State v. Fry* (125 KB) ProCon.org contacted the Washington Department of Health to ask whether it had received any instructions in light of this ruling. Kristi Weeks, Director of Policy and Legislation, stated the following in a Jan. 25, 2010 email response to ProCon.org: "The Department of Health has a limited role related to medical marijuana in the state of Washington. Specifically, we were directed by the Legislature to determine the amount of a 60 day supply and conduct a study of issues related to access to medical marijuana. Both of these tasks have been completed. We have maintained the medical marijuana webpage for the convenience of the public	**Department of Health** PO Box 47866 Olympia, WA 98504-7866 Phone: 360-236-4700 Fax: 360-236-4768 MedicalMarijuana@doh.wa.gov WA Medical Marijuana website **Information provided by the state on sources for medical marijuana:** "The law allows a qualifying patient or designated provider to grow medical marijuana. It is not legal to buy or sell it. The law does not allow dispensaries." (accessed Jan. 11, 2010) **Patient Registry Fee:** ***No state registration program has been established **Accepts other states' registry ID cards?** No **Registration:** None

The department has not received 'any instructions' in light of State v. Fry. That case does not change the law or affect the 60 day supply. Chapter 69.51A RCW, as confirmed in Fry, provides an affirmative defense to prosecution for possession of marijuana for qualifying patients and caregivers."] **Amended:** SB 5073 (375 KB) **Effective:** July 22, 2011 Gov. Christine Gregoire signed sections of the bill and partially vetoed others, as explained in the Apr. 29, 2011 veto notice. (50 KB) Gov. Gregoire struck down sections related to creating state-licensed medical marijuana dispensaries and a voluntary patient registry. [**Editor's Note:** On Nov. 6, 2012, Washington voters passed Initiative 502, which allows the state to "license and regulate marijuana production, distribution, and possession for persons over 21 and tax marijuana sales." The website for Washington's medical marijuana program states that the intiative "does not amend or repeal the medical marijuana laws (chapter 69.51A RCW) in any way. The laws relating to authorization of medical marijuana by healthcare providers are still valid and enforceable."]	

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7 States with Pending Legislation to Legalize Medical Marijuana
(as of Jan. 24, 2013)

1. Alabama 2. Illinois 3. Iowa 4. Kansas
5. Kentucky 6. New York 7. Oklahoma

1. Alabama

House Bill: HB 2 (75 KB)

Summary

The Alabama Medical Marijuana Patients Rights Act: "This bill would authorize the medical use of marijuana only for certain qualifying patients who have been diagnosed by a physician as having a serious medical condition."

History (last action date)

Pre-filed by Rep. Patricia Todd (D) **(Dec. 8, 2012)**; Scheduled to be read for the first time and referred to the committee on Health on Feb. 5, 2013.

2. Illinois

House Bill: HB 1 (40 KB)

Summary

Compassionate Use of Medical Cannabis Pilot Program Act: "AN ACT concerning alternative treatment for serious diseases causing chronic pain and debilitating conditions."

History (last action date)

Pre-filed by Rep. Lou Lang (D) on Jan. 6, 2013; First reading and referred to Rules Committee **(Jan. 9, 2013)**

2. Iowa

House File: HF 22 (100 KB)

Summary

"An Act providing for the creation of a medical marijuana act including the creation of nonprofit dispensaries, and providing for civil and criminal penalties and fees... A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest... provided the marijuana possessed by the qualifying patient: (a) is not more than two and one-half ounces of usable 12 marijuana. (b) If the qualifying patient has not designated a primary caregiver to cultivate marijuana for the qualifying patient, does not exceed six marijuana plants..."

History (last action date)

Introduced by Rep. Bruce Hunter (D) and referred to the Public Safety Committee **(Jan. 16, 2013)**

3. Kansas

Senate Bill: SB 9 (150 KB)

Summary

"AN ACT enacting the cannabis compassion and care act; providing for the legal use of cannabis for certain debilitating medical conditions; providing for the registration and functions of compassion centers; authorizing the issuance of identification cards; establishing the compassion board; providing for administration of the act by the department of health and environment."

History (last action date)

Pre-filed by Sen. David Haley (D) on Jan. 10, 2013; Introduced and referred to the Committee on Public Health and Welfare **(Jan. 15, 2013)**

4. Kentucky

Senate Bill: SB 11 (40 KB)

Summary

Gatewood Galbraith Medical Marijuana Memorial Act: "AN ACT relating to medical marijuana... to establish a comprehensive system for medical marijuana in Kentucky, including provisions for medical verification of need, persons allowed to cultivate, use, and possess the drug, organizations allowed to assist in providing the drug, regulation by the state Department for Public Health..."

History (last action date)

Introduced by Sen. Perry Clark (D) on Jan. 8, 2013 and referred to the Judiciary Committee (Jan. 10, 2013)

6. New York

Senate Bill:

Summary

"Legalizes the possession, manufacture, sale

History (last action date)

Introduced by Sen. Velmanette Montgomery (D)

	connection with medical use thereof for certified patients... permits registered organizations to sell, administer, deliver, etc. marijuana to certified patients or the caregiver of a certified patient for certified medical use..."	
7. **Oklahoma**	**Summary**	**History (last action date)**
Senate Bill: SB 902 (50 KB) [**Editor's Note:** SB 902 is considered largely symbolic and would not legalize medical marijuana because the bill uses the word "prescribe;" federal law prohibits marijuana from being prescribed.]	"Legalizes the possession, manufacture, sale, administration, delivery, dispensing and distribution of [up to 8 oz of] marijuana in connection with medical use thereof for certified patients... permits registered organizations to sell, administer, deliver, etc. marijuana to certified patients or the caregiver of a certified patient for certified medical use..."	Authored by Sen. Constance Johnson (D) and scheduled to receive first reading on Feb. 4, 2013 **(Jan. 17, 2013)**
Senate Bill: SB 710 (115 KB)	Compassionate Use Act of 2013: Allows qualified patients or designated caregivers to possess up to eight ounces of dried cannabis and 12 cannabis plants (unless a doctor recommends a different quantity). Exempts "physicians [from] punishments related to recommending the medical use of cannabis."	Authored by Sen. Constance Johnson (D) and scheduled to receive first reading on Feb. 4, 2013 **(Jan. 17, 2013)**

Additional Resources:

1. Legal Medical Marijuana States and DC
2. 2012 States with Legislation or Ballot Measures to Legalize Medical Marijuana
3. 2011 States with Legislation or Ballot Measures to Legalize Medical Marijuana
4. 2010 States with Legislation or Ballot Measures to Legalize Medical Marijuana

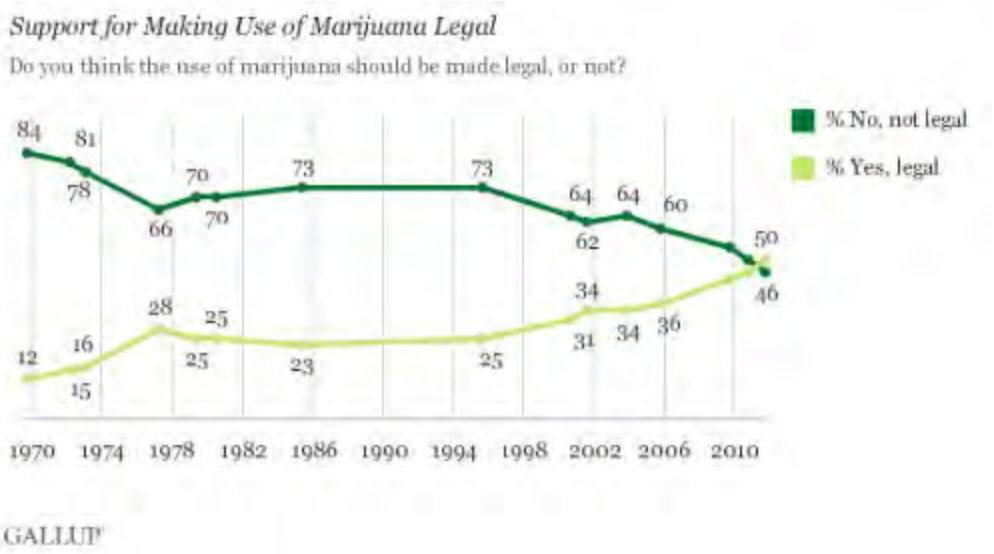
Information about pending legislation comes directly from the state legislature website for each state. ProCon.org gives special thanks to Karen O'Keefe, JD, Director of State Policies for Marijuana Policy Project (MPP), for her updates on pending legislation.

Note: Ballot initiatives will only be added once a measure has been officially added to a state ballot. For example, although the Ohio Ballot Board has approved the language in a proposed constitutional amendment, the proposal needs to obtain the required number of signatures and be certified by the Secretary of State before it will be added to this page.

73 Percent of Voters Think Medical Marijuana Should be Legal, Half think Recreational Pot Should Be Too

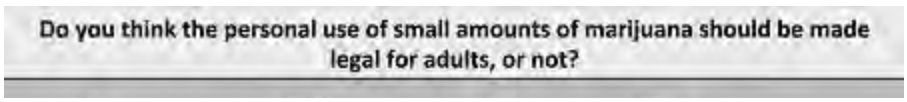
Emily Ekins | Nov. 14, 2012 5:58 pm

In October 1969, 84 percent of Americans opposed legalizing the use of marijuana, 12 percent thought it should be legal. Thirty-two years later in October 2011, Gallup found for the first time Americans broke the 50 percent threshold favoring legalizing the drug. Today, the November elections mark the first time voters popularly legalized the drug for recreational use. In Colorado, State Constitutional Amendment 64 passed 55 to 45 percent, and in Washington Initiative 502 also passed 55 to 45 percent, legalizing marijuana for recreational use.

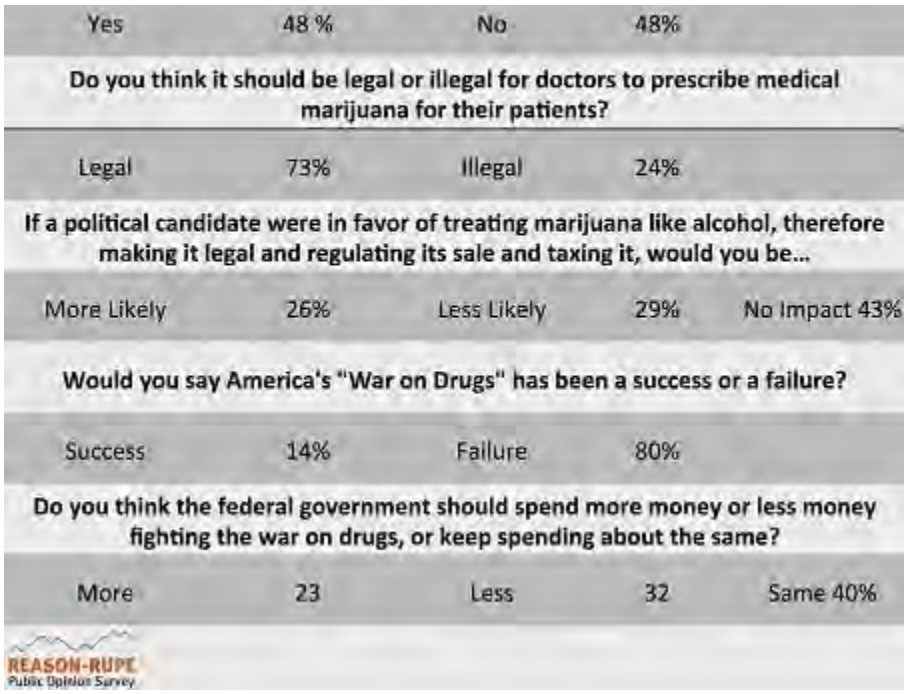


Source: Gallup

The Reason-Rupe poll conducted this past September also found the nation ripe for drug policy change. The nation is evenly divided over whether to legalize small amount of marijuana for adults, 48 to 48 percent. However, nearly three-fourths believe medical marijuana should be legal with a doctor's prescription.



Young Americans are



much more open to reform, about 59 percent of Americans under 34 favor legalization, as do 56 percent among those 35-44. Middle-aged Americans are evenly split, while seniors are most opposed 64 percent to 29 percent in favor. However, even a majority of seniors (58 percent) favor medical marijuana prescribed by a doctor.

Religiosity highly correlates with position on drug legalization. Sixty-seven percent of those who attend church weekly oppose legalizing recreational pot, but 58 percent support medical marijuana. In contrast 75 percent of those who never attend church favor marijuana legalization, as do 61 percent of those who only attend church a few times a year.

The gender gap emerges for recreational but not medical marijuana. Fifty-two percent of men favor legalizing recreational pot, and 52 percent of women oppose.

Interestingly, significantly more tea party supporters than Republicans favor legalizing marijuana (38 percent to 27 percent). Upwards of 55 percent fo both Democrats and Independents also support legalizing the drug.

It is surprising that only 18 of the 50 states allow medical marijuana given that nearly all political and demographic groups favor medical marijuana with a physician's prescription.

With 41 years of experience since President Richard Nixon first called for a War on Drugs in 1971, fully 80 percent of Americans think this war has been a failure. Among these Americans a plurality (37 percent) think we should ease up spending on this failed war,

but 35 percent think we should keep spending the same, and a quarter think the solution is spending more money.

Despite the fact that majorities of Democrats and Independents want to legalize pot, while nearly two thirds of Republicans want it banned, all political groups are equally likely to want to spend more money fighting the war on drugs (about 25 percent). About a third of all political groups also would spend less money, and roughly 40 percent would spend what we're doing now.

If a political candidate were to take a stand in favor of treating marijuana like alcohol, thereby legalizing it, 43 percent say it would make no difference in how they voted, 29 percent would be less likely and 26 percent more likely to vote for that candidate. Republicans would be more likely to oppose such a candidate (47 percent) than Democrats (18 percent) or Independents (29 percent). But nationally it only helps a candidate among 31 percent of Democrats, 32 percent of Independents and 13 percent of Republicans.

Colorado and Washington states legalizing recreational marijuana is likely a harbinger of liberalizing drug policy nationwide. Interestingly, state polls before the election underestimated actual support for both measures. In Colorado average support for Amendment 64 was 52 percent, it passed with 55 percent; In Washington average support for Initiative 502 was 51 percent and it also passed with 55 percent of the vote. With national support hovering at about 50 percent, federal bureaucrats may soon find they lack the political support needed to continue the national War on Drugs.

Colorado Amendment 64

Date		Yes	No	
November 6	Actual Vote	54.83%	45.17%	
Date	**Pollster**	**In Favor**	**Opposed**	**Undecided**
Aug 4-7 2011	Public Policy Polling	51	38	11
Dec 1-4 2011	Public Policy Polling	49	40	11
Jun 6 2012	Rasmussen	61	27	12
Aug 8 2012	Public Policy Polling	47	38	15

Washington Initiative 502

Date		Yes	No	
November 6	Actual Vote	55.44%	44.56%	
Date	**Pollster**	**In Favor**	**Opposed**	**Undecided**
July 2011	Elway Research	54	43	3
January 2012	Elway Research	48	45	7

January 26, 2013

HUFF POST POLITICS

Obama's Drug War: After Medical Marijuana Mess, Feds Face Big Decision On Pot

Posted: 01/26/2013 11:18 am EST | Updated: 01/26/2013 11:52 am EST

OAKLAND, Calif. -- In the summer of 2007, the owners of Harborside Health Center, then and now the most prominent medical marijuana dispensary in the U.S., were reflecting on their rapid rise. Steve DeAngelo had opened the center with his business partner in October 2006, on a day when federal agents raided three other clubs in the San Francisco Bay Area. "We had to decide in that moment whether or not we were really serious about this and whether we were willing to risk arrest for it," DeAngelo said. "And we decided we were going to open our doors. And we did, and we haven't looked back since. The only way I'll stop doing what I'm doing is if they drag me away in chains. And as soon as they let me out, I'll be back doing it again."

DeAngelo, looking at his desktop computer during an interview that summer, threw his hands up and shouted, "Yes!" Hillary Clinton, campaigning for president in New Hampshire, had just told a video-camera-wielding marijuana-policy activist that, if elected, she would end federal raids on pot clubs in California. That meant that all three leading Democratic candidates -- including the ultimate winner -- had vowed as president to leave DeAngelo and his business alone. Within a year of opening, the shop was bringing in $1 million a month in sales.

President Barack Obama made good on his campaign promise shortly after taking office. "What the president said during the campaign, you'll be surprised to know, will be consistent with what we'll be doing in law enforcement," Attorney General Eric Holder said in March 2009. "What he said during the campaign is now American policy."

In October, the Department of Justice followed up with what became known as the "Ogden memo" -- a missive from Deputy Attorney General David Ogden telling federal law enforcers that they should not focus federal resources "on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."

Steph Sherer, the head of Americans for Safe Access, a California-based medical marijuana group, was thrilled when she saw the Ogden memo. The group quickly put out a press release touting it.

"We were so beside ourselves in so many ways that we were finally recognized by a government agency, that our press release was victorious," Sherer said. "What our nuance was, we said, 'Great, we have an administration that will have a dialogue with us, this is a major step forward.'"

Some members of the medical marijuana industry, however, took a less nuanced view. "Instead, the reaction [from cannabis industry people] was, 'OK, we're all in the clear, it's time to expand our businesses and bring in outside investors,'" Sherer said.

Encouraged by the Ogden memo and DeAngelo's public assertions of his million-dollar monthly revenue, medical pot shops flooded Montana, Washington, and other states. Legislatures in 18 states, plus the District of Columbia, have now approved marijuana for medical purposes. Twelve, including DC, have laws allowing dispensaries. Local officials in California's Mendocino County and in towns like Chico moved forward with plans to regulate medical marijuana as well. Before 2009, there were roughly 1,000 pot shops across the country. Today, there are 2,000 to 2,500, according to Kris Hermes, a spokesman for Americans for Safe Access.

"Nobody can argue that the number of medical marijuana shops in California and Colorado didn't grow at an exponential rate directly because of this" Ogden memo, said a former senior White House official who worked on drug policy and, like other former and current members of the Obama administration, requested anonymity in order to speak about internal debates.

The Ogden memo, however, was not the beginning of the end of the war on pot. Instead, it kicked off a new battle that still rages. Since the memo, the Department of Justice has cracked down hard on medical marijuana, raiding hundreds of dispensaries, while the IRS and other federal law enforcement officials have gone after banks and landlords who do business with them. Fours years after promising not to make medical marijuana a priority, the government continues to target it aggressively.

The war has played out not just between federal authorities and the pot industry, but between competing factions within the federal government, as well as between local and state officials and the more aggressive federal prosecutors and drug warriors. As officials in Washington fought over whether and how to continue the war on pot, U.S. attorneys in the states helped beat back local efforts to regulate the medical marijuana industry, going so far as to threaten elected officials with jail. The willingness of elements within the Department of Justice, including its top prosecutors, to use their power in brazenly political ways is, in many ways, the untold story of Obama's first-term approach to drug policy.

'THE LANDSCAPE HAS CHANGED'

As president, Obama did his best to laugh off questions about marijuana. His own experience with weed had been positive, having

spent his high school years hanging out with the "Choom Gang," a bunch of his stoner buddies in Hawaii. A young Obama coined the term "roof hits" to describe the act of sucking in pot smoke floating near a car roof, and was known to hog extra hits from a joint by jumping around a circle of smokers, snatching the weed and saying, "Intercepted!"

The Drug Enforcement Administration and federal prosecutors, however, found nothing funny about it. "I believe there's this notion out there that the marijuana industry is just full of organic farmers who are peacefully growing an organic natural plant and that there's no harm associated with that," U.S. Attorney Melinda Haag told San Francisco public radio station KQED last March. "And what I hear from people in the community is that there is harm." Marijuana, Haag said, could stunt brain development in children and act as a gateway drug to other substances. It may also, she warned, lead to armed robberies at dispensaries and grow operations, putting innocent bystanders at risk.

Federal authorities were determined to keep up the fight against pot legalization in any form, medical or recreational. Fighting that political battle often meant carrying out high-profile raids in the midst of legislative debates. In March 2011, agents swept through Montana, seizing property and arresting owners as part of a nationwide crackdown on medical marijuana. They timed the Montana raids to coincide with a legislative debate and votes in the state legislature over the future of medical marijuana, using law enforcement to shift the debate in their favor.

The raids led to images on the evening news of guns, drugs, and men in handcuffs. It imbued medical marijuana with a sense of criminality -- even though it was legal under state law -- and soured the political climate against it. Before the raids, state lawmakers had been debating two approaches: Repeal the voter-passed medical marijuana law altogether, or create a system of state-regulated and controlled dispensaries. The raids disabused Montanans of the notion that the federal government would allow states to regulate marijuana policy as they saw fit. The bill to sanction dispensaries was a casualty of the crackdown.

Instead, the Montana legislature voted to repeal the law, but the governor refused to sign it. Lawmakers sent him a new bill leaving the law in place, but strictly curtailing it, and disallowing dispensaries. He signed it.

People who felt they'd been baited into the business by the federal government cried foul and began fighting to stay out of prison. The team defending Chris Williams, a Montana medical marijuana provider who was arrested and charged with drug trafficking, reached out to a Huffington Post reporter, who had broken the news of Holder's announcement that he would lay off medical marijuana, asking him to testify. "Case law in our circuit indicates we may be able to introduce evidence concerning entrapment, such as quotes by govt. officials in news articles, if the writer of the article can testify to the authenticity of the statements," said an investigator.

The judge in the case, however, ruled that defense attorneys could in no way mention the federal policy -- either Holder's statement or the Ogden memo. Williams was convicted and faces a mandatory minimum of more than eight decades in prison, though the judge has ordered mediation on the sentence overseen by a different judge, an unusual step.

In a separate case now in court, former University of Montana quarterback Jason Washington, a hometown hero, was fingerprinted by the FBI while in the process of setting up a dispensary, apparently as part of an effort to rationalize the growing industry. Washington's lawyers hoped the FBI's documented cooperation with the establishment of the business would undermine the effort to imprison its owner. Last week, however, Washington was convicted, and faces two mandatory minimum sentences of five years each.

Federal officials in Washington state ran the same play that had worked to such effect in Montana. As state lawmakers debated legislation to license dispensaries, federal prosecutors said they felt excluded. "There didn't seem to be a recognition that the use and sale of marijuana is against federal law," Michael Ormsby, U.S. attorney for the Eastern District of Washington, complained to The New York Times. "No one [in the legislature] consulted with me about what I thought of what they were going to do and did I think it ran afoul of federal law."

In early April, Democratic Gov. Christine Gregoire, anticipating the bill's passage, wrote a letter to the Justice Department asking what the federal response to the law would be. Ormsby and the other U.S. attorney with jurisdiction in Washington sent back a fire-breathing letter threatening to prosecute anyone involved with the dispensaries, asserting -- falsely -- that the Ogden memo was strictly limited to "seriously ill individuals," when in fact it referenced any individual who followed state law.

A week after the legislature passed the bill and sent it to Gregoire to sign, the DEA carried out coordinated raids on dispensaries in eastern Washington.

The next day, on April 29, Gregoire vetoed the licensing bill. "The landscape has changed," she explained. "I cannot disregard federal law on the chance that state employees will not be prosecuted."

In Rhode Island, a U.S. attorney fired off a similar letter to Independent Gov. Lincoln Chafee that same month, as the governor considered whether to create state-run medical marijuana dispensaries, which the state legislature had authorized in 2009, before

Chafee took office. the governor scrapped the planned "compassion centers."

"Federal injunctions, seizures, forfeitures, arrests and prosecutions will only hurt the patients and caregivers that our law was designed to protect," Chafee said.

Similar scenarios played out in Arizona and Hawaii, with raids and federal intervention followed by state officials backing off attempts to regulate dispensaries. The New York Times, rarely quick to ascribe motives to law enforcement on the news side, noted federal authorities' timing.

"As some states seek to increase regulation but also further protect and institutionalize medical marijuana, federal prosecutors are suddenly asserting themselves," the newspaper wrote that May.

For federal officials, the crackdown was necessary because things had accidentally gotten out of their control, said a former White House official. "If you read the memo, with the exception of a few words you maybe could've worded better, it's really not that different from current law," he said. "It took us by surprise, I will tell you, the way it was received in the beginning, and then the media ran with that narrative, that this was a change in policy and Obama's gonna allow medical marijuana shops. The smart legalizers ran with that too, even though the really smart ones knew, when you read that memo, there really wasn't much of a change from the Bush administration. All of a sudden, it took on a life of its own."

Another official contended pro-marijuana legalization groups “distorted” the Ogden memo, a characterization the groups dispute.

“The distortion certainly wasn't on our side,” Steve Fox, director of government relations for the Marijuana Policy Project, told HuffPost. “The Ogden memo said it wasn't going to be a priority of the Department of Justice to prosecute individuals who were acting in compliance with state law. It was pretty straightforward, and a lot of people invested a lot of money based on that guidance and put their necks on the line, and some of those people are now being sent to prison by the Department of Justice after that memo had been issued in 2009.”

Still, the consequences of the Ogden memo were unequivocal. Sherer traveled to Montana just before the crackdown to train owners on "raid preparedness." She asked rooms full of pot shop owners how many had opened their doors because of the Ogden memo. Nearly all raised their hands, she recalled.

Pushing the memo, she thought, as she stared out at the crowd now in dire legal jeopardy, had been a mistake.

A FIGHT FOR CLARIFICATION

The Ogden memo, despite the press coverage -- including here at HuffPost -- held loopholes an aggressive prosecutor could drive a battering ram through. "Nor does this guidance preclude investigation or prosecution," it reads at one point, "even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests."

One of those federal interests was the continuation of current pot laws.

Pushed by political appointees, the Ogden memo, even with its loopholes, faced stiff internal resistance from career Justice Department prosecutors. "That's just not what they do,” said a former Justice official. “They prosecute people."

“One of the challenges is that condoning lawlessness is not okay,” another former DOJ official involved the medical marijuana discussions told HuffPost. “On the other hand, you’ve got the reality of resources and priorities. You just don’t go off and make cases just to make a point.”

With the 2011 crackdown underway, federal prosecutors needed some legal justification, some clarification to the Ogden memo. “Their argument was, look, anytime we go to anyone and try to say we’re going to crack down on you, they say, ‘Well, look at the Ogden memo. You can’t.’ They’d get that thrown back in their face,” one former Justice official told HuffPost.

Even supporters of the Ogden memo acknowledged it wasn’t a permanent fix, given the contradiction between state and local laws. But federal officials were surprised by how quickly states moved, writing laws around the Ogden memo.

U.S. attorneys led the rebellion with support from the DEA. Benjamin B. Wagner, a U.S. attorney in Sacramento, Calif., who is currently prosecuting medical marijuana distributor Matthew R. Davies, was particularly pushy, according to officials involved in the discussions. Ogden’s memo, the federal prosecutors argued, created uncertainty. They wanted a memo they could use to push state officials to crack down on their own.

The Ogden memo, or at least the public perception of it, stood in the way.

"There was a fight to get a clarification," said one White House official.

Despite its name, the key players behind the Ogden memo were then-Associate Deputy Attorney General Ed Siskel and then-Principal Associate Deputy Attorney General Kathy Ruemmler, according to two people involved in the discussions. As two of Ogden’s top associates, they took the lead in drafting the memo.

By the time the push for second memo started, both had already been promoted to the White House. Working in the White House Counsel’s office, they had no say as their replacements at DOJ drafted a memo many contend undermined the Ogden memo. "There was nowhere to hide. They had to get on the bandwagon," said the White House official involved in the process.

The politics around drug policy do not move in a linear, upward direction like, say, civil rights issues. As civil rights are expanded, the politics become reinforcing, as people become normalized to the new equality and reject the old intolerance as immoral. It's by no means a smooth transition, but, for instance, the more gay weddings that are held, the more people come to accept the concept of gay marriage as uncontroversial.

But drug politics move in both directions. Drugs of all kinds -- cocaine, heroin, speed -- were fully legal at the turn of the 20th century,

then banned over the next several decades. The pendulum swung back in the 1970s, with more than a dozen states decriminalizing marijuana. Then back again toward criminalization. Drugs are not like gay or interracial couples, where familiarity breeds acceptance. More drugs can lead, instead, to a public backlash.

Nearly everywhere that medical marijuana shops have proliferated, beginning in San Francisco in the early 1990s, there has been some negative public reaction. In the early communities, the public outcry was followed by a moratorium on new dispensaries and tight regulations on how they could operate. Well regulated shops have by and large been accepted where they have been allowed. It's that pregnant moment in between that the shops are most vulnerable.

After 2009, the shops expanded faster than cannabis movement and industry organizers could keep up with. "People were telling themselves what they wanted to hear," namely that the Ogden memo provided immunity from raids, said Sherer. "The proliferation got really out ahead of advocates."

She watched the tragedy unfold. In the 1990s and 2000s, her group organized patients and others sympathetic to marijuana, and as soon as a shop was raided, the owner would immediately notify Americans for Safe Access, which would then send text messages to all its nearby activists. Before the evening news trucks could get to the scene, a throng of protesters would be outside the shop, often joined by local officials, denouncing the DEA. The resulting images in the media were a major blow to the feds. The DEA, Sherer said, signed up for Americans for Safe Access text alerts and would begin leaving the scene of a raid as soon as one went out. But that momentum was broken when the industry exploded.

The way to guard against a raid, said Sherer, had been to talk with neighbors, attend city council meetings, respond to complaints, and generally become a part of the community. "Make sure your community wanted you," Sherer said she advised businesses. "I've been training people for 10 years that the number one reason people get raided is community complaints. The telltale sign of federal activity is the local community rejecting the dispensary."

Medical marijuana shops' protection had never been the law, it had been public opinion. With the perception in some local communities that the pot industry had gotten out of control, the DEA and U.S. attorneys were left with an opening.

THE EMPIRE STRIKES BACK

The drug warriors who had dug in at the DEA and Justice Department won their rear-guard action. The result was a new memo, issued by Deputy Attorney General James M. Cole, in June 2011.

"The second [memo] was kind of like The Empire Strikes Back," a former DOJ official told HuffPost. "All the people who had been beaten the first time worked for several years to win one, and they won a round in the second one."

Officially, DOJ took the position they were only further clarifying the Odgen memo, rather than throwing the guidance overboard. Its subject line promised it was merely "Guidance Regarding the Ogden Memo."

Practically, however, the Cole memo gave U.S. attorneys more cover to go after medical marijuana distributors. The U.S. attorneys, "in unison, were saying, 'We're going to shut these down, this is the law.' Holder could've said stop, but he didn't," said the White House official.

In August 2011, Justice officials told their local government leaders in the town of Chico, Calif., that they could personally be jailed if they went forward with legislation to regulate medical cannabis. Under criminal conspiracy laws, “all parties involved would be considered, including city officials,” city manager David Burkland wrote in a report on their meeting with U.S. Attorney Benjamin Wagner.

“Staff and Council's involvement in implementing the marijuana ordinance could be interpreted as facilitating illegal activity associated with marijuana,” Burkland wrote. “U.S Attorney Wagner also stated that although the DOJ may lack the resources to prosecute every case, it intends to prosecute more significant cases to deter the activity of marijuana cultivation and unlawful distribution. In those cases, staff or elected officials will not be immune from prosecution under conspiracy or money laundering laws.”

In October 2011, four California-based U.S. attorneys held a remarkable joint press conference effectively declaring war on medical marijuana. "We were all experiencing the same thing, which is that everyone was saying … the U.S. attorneys are not going to take any actions with respect to marijuana in California because of the 2009 Ogden memo," U.S. Attorney Haag told KQED. "So it's fair game. We can have grow operations, we can have dispensaries, we can do anything we want with respect to marijuana. … That was incorrect."

Haag said she launched her crackdown because she heard Oakland officials were preparing to license and regulate the industry, and allow large-scale growing operations in warehouses, which she opposed.

"What was described to me was that they were going to be quote 'Walmart-sized.' And I was hearing that everyone believed that would be okay, and that my office would not take any action. And I knew it isn't okay. It is a violation of federal law," Haag said. "If you actually read the so-called Ogden memo from 2009 from the Department of Justice, what it says is that U.S. attorneys will not ordinarily use their limited resources to bring actions against seriously ill individuals or their caregivers. That's the direction we were given."

Whatever the authors of the Ogden memo had in mind, the actual words they used said that resources should not be used to target "individuals whose actions are in clear and unambiguous compliance with existing state laws."

"I didn't think it was fair to stand by, be silent, let people pull licenses in Oakland, put millions of dollars into setting up a grow operation in a warehouse and then come in and take an enforcement action," Haag said.

The prosecutor's pursuit of fairness also took her to Mendocino County, where local officials had established an effective "zip tie program" to regulate its medical marijuana trade. Growers, after paying a licensing fee and submitting to police inspection, were given zip ties by the sheriff. Police officers who found bags of pot cinched by those ties then had reason to believe the product had been grown legally.

Just before the county board of supervisors planned to vote on making the program official and permanent, Haag traveled to the county

and, in a meeting with county counsel Jeanine Nadel, threatened the supervisors with legal action if they moved forward, according to a report by California Watch.

The board decided to squash the program, but Haag's pursuit continued. She empaneled a grand jury and subpoenaed information from the county about its program, looking for the names of people who had registered as growers, as well as all financial information related to it. Mendocino has so far refused to provide the information and is fighting the subpoena in court.

Dan Hamburg, a former member of Congress who's now a Mendocino supervisor, said that his fellow board members were well aware that if they created an ordinance, they'd be putting themselves at legal risk. "The Board of Supervisors knew the possibility that we could be charged by the U.S. attorney with aiding and abetting criminal behavior, or even a criminal conspiracy," he said. "However, my worry was, and remains, the possibility of forfeiture." Under forfeiture laws, the federal government can seize money and valuables connected with criminal activity.

The feds have demanded to know how much money the county has made registering cannabis growers, which Hamburg and others suspect means they have their eye on it. Hamburg said it was just short of a million dollars, far more of a hit than the county budget, with "deteriorating finances," could withstand.

"Our county doesn't have a million dollars to turn over to the feds," Hamburg said.

Hamburg had opposed the initiative, and opposed publicizing it, arguing that it would put a target on Mendocino and draw the ire of the federal government. Now that he's been proven right, he's backing his colleagues in defending it.

Just as pot policy split the Justice Department into factions, it pitted local cops against each other as well. The sheriff strongly supported the zip tie program, but some below him had a hard time countenancing what they saw as sanctioning criminal enterprise. Hamburg said that Haag saw there were local law enforcement concerns with the program and exploited those divisions.

The tensions are evident in a 2011 county audit report.

The zip tie program "is by far the program that causes the greatest chasm of disagreement within the department," reads the audit. Critics "believe the program is illegal, runs counter to overall crime prevention in Mendocino County, is potentially criminal friendly, reduces morale, and is poised to bring more crime to the County and potential corruption to the department."

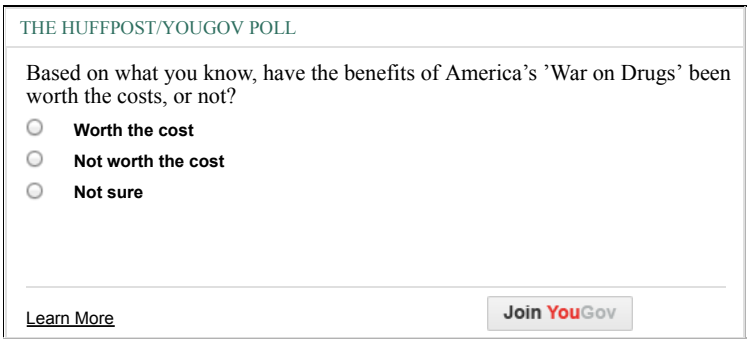
The U.S. and Mendocino are scheduled to go to court on Jan. 29. Hamburg said he's optimistic, but the fight is draining county resources.

"The president said he has bigger fish to fry than Washington and Colorado legalizing marijuana," Hamburg said. "But apparently his government doesn't have bigger fish to fry than stopping Mendocino from attempting to regulate its marijuana situation."

A MUMBO-JUMBO MESS

While the Justice Department escalates its fight against medical marijuana, the country is moving beyond it. In November, voters in Washington and Colorado approved initiatives legalizing the recreational use of marijuana. Recent polls show majority support for legalization of pot for any adult, sick or not.

At a recent congressional hearing, DEA head Michele Leonhart was nearly laughed out of the room for refusing to say that marijuana was less dangerous than heroin. A new HuffPost/YouGov poll found just one in five people thought the drug war has been worth it.



Having lost the public, where does the Justice Department go from here? Where will Obama let it go?

"We have two states that legalized it for even recreational use. So you tell me what Obama's policy is," John Pinches, of Mendocino's Board of Supervisors, told HuffPost. "It's a mumbo-jumbo mess. It's time for the federal government to come up with a reasonable policy."

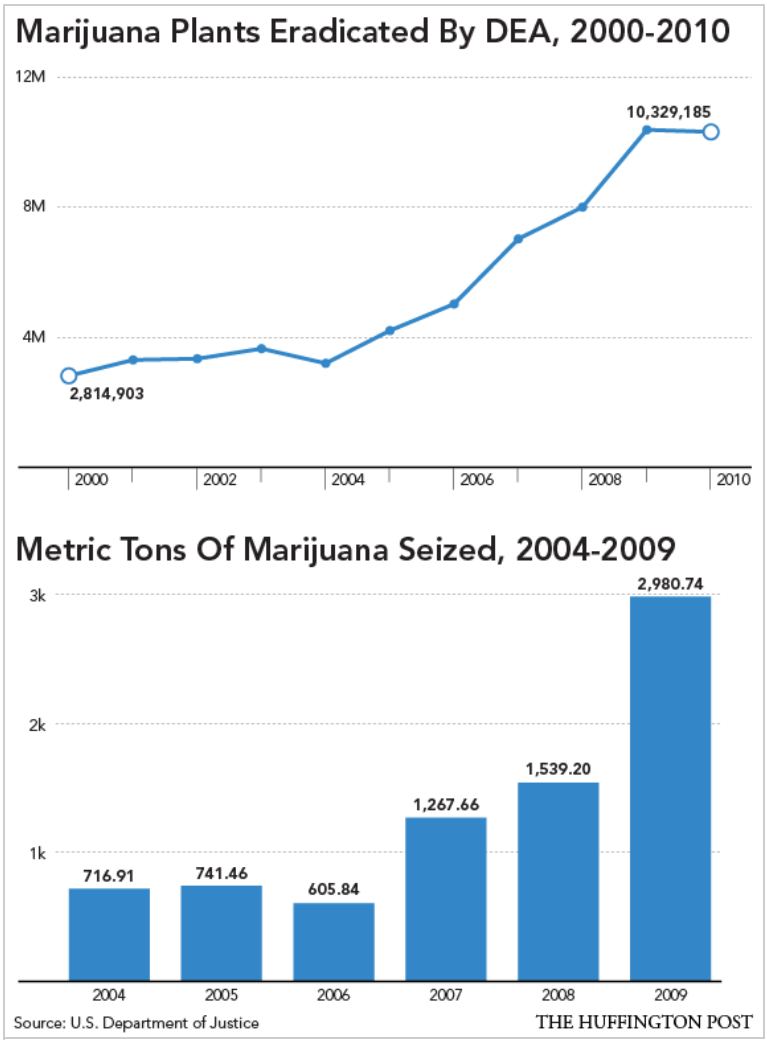
Complicating things further has been the Obama administration's mixed signals on recreational pot. In theory, it shouldn't matter whether states want to legalize marijuana for medical purposes or recreational ones. But DOJ officials considered proposed recreational marijuana laws as fundamentally different from those regulating medical marijuana.

States that passed medical marijuana laws were making a narrow judgement on medical use. DOJ officials believed, however, that states that legalized marijuana were declaring full-on war with federal law.

Holder highlighted the contrast in 2010 as California voters prepared to vote on a ballot measure, Proposition 19, legalizing marijuana for recreational use. Just weeks before the election, Holder wrote a letter stating that the feds would "vigorously enforce" federal law "against those individuals and organizations that possess, manufacture or distribute marijuana for recreational use, even if such

activities are permitted under state law."

Prosecuting medical marijuana wasn't supposed to be a federal priority. Prosecuting recreational marijuana cases was.



The public had supported Prop 19 for much of the race, but the measure ended up failing, 53 percent to 47 percent. Holder's intervention may very well have tipped the balance against it.

It was a different story in 2012, when Holder kept quiet about legalization initiatives in Washington, Oregon and Colorado, a move one former Justice official said showed how quickly the politics were moving on marijuana legalization. An adviser at the White House at the time said that drug policy officials worried about tipping the electoral balance against Obama in Colorado, a swing state in 2012, and so declined to intervene in either Washington or the Mountain State's pot legalization initiatives, both of which passed by stronger margins than Obama won.

"He was not as active as in 2010," the official said of Holder. "People were genuinely worried about Colorado. And you couldn't talk about Washington without talking about Colorado."

Walsh, the U.S. attorney in Colorado, was less concerned about the electoral stakes. His crackdown on medical marijuana shops that were fully compliant with state laws came in the heat of election season. Obama campaign officials feared a backlash would send likely Obama supporters into the camp of Libertarian candidate Gary Johnson.

The Obama administration never publicly backed Walsh's effort, nor did it intervene in the election. Obama won Colorado handily -- though 50,000 more people voted to legalize pot than voted to reelect the president. The implications of that margin were lost on nobody.

The feds elsewhere didn't keep completely quiet. They just waited until after the election. Jenny Durkan, the U.S. attorney for the District of Washington, warned residents the day before her state's law went into effect in early December that marijuana remains illegal under federal law.

"Regardless of any changes in state law, including the change that will go into effect on December 6 in Washington State, growing, selling or possessing any amount of marijuana remains illegal under federal law," she warned.

California stands as an example of what may happen in other states if they continue with plans to legalize pot. In the spring of 2012, Richard Lee, Prop 19's primary funder, came under attack. The feds raided Oaksterdam University, a school he founded in Oakland, Calif., to teach industry skills, as well as his home.

"This is one battle of a big war, and there's thousands of battles going on all over," Lee told HuffPost after the raid. "Before he was elected, [Obama] promised to support medical marijuana and not waste federal resources on this. … About a year and a half ago, the policy seemed to change. They've been attacking many states, threatening governors of states to prevent them from signing legislation to allow medical marijuana. They've been attacking on many fronts."

In July 2012, the hammer came down on Harborside. The Justice Department served Harborside's landlords with commercial property forfeiture proceedings on the grounds that it violates federal law. The city of Oakland backed Harborside, and the dispensary fought back in the court of public opinion, bringing forward sympathetic patients who would be harmed by the federal government's actions.

One of them was Jayden David, now 6, who lives with a rare form of epilepsy. In his short life, he's taken two dozen different medicines and has been rushed to the hospital in an ambulance 45 times. The boy's condition, however, slowly began to improve when he started using medical cannabis to ease his chronic pain and seizures.

"He sings and smiles like a normal child now," DeAngelo told HuffPost, claiming the child has seen an 80 percent reduction in his symptoms and can now spend twice as much time at school. Harborside helped develop a specialized cannabis tincture for Jayden that doesn't have the same "high" side effects marijuana is commonly known for, he said.

Because DeAngelo is an activist first and a shop owner second, his willingness to go to prison has enabled a firmer stand against the feds. And he's winning. In December, a state Superior Court judge delivered a sharp rebuke to the federal government: It could not enlist landlords in its drug war.

In January, in a second victory, a judge ruled that Harborside's landlords could not order it to stop selling pot. The city of Oakland, on the happy end of more than $1 million in tax revenue from Harborside last year, filed suit against the federal government, demanding that it cease its prosecution of Harborside.

The Justice Department may respond to the legalization of recreational marijuana in Washington and Colorado in several ways. One option would be to go after low-level marijuana users as scapegoats and seek a court ruling that would declare federal law trumps state law. One of the more extreme options, which officials acknowledge is currently being weighed by the department's Civil Division, would be to preempt the laws by suing the states in the same way the feds sued Arizona over its harsh immigration law. Federal authorities could sue Washington and Colorado on the basis that any effort to regulate marijuana would violate the federal Controlled Substances Act.

“The question is whether you want to pick that fight,” a former Justice official said.

Washington Gov. Jay Inslee and Attorney General Bob Ferguson met with Holder on Tuesday, but the U.S. attorney general declined to say whether the Justice Department would fight Washington's new marijuana law. Inslee said the state will move forward implementing the law.

States have traditionally taken the lead when it comes to prosecuting low-level drug cases. Just 1,414 defendants across the country faced a lead charge of misdemeanor drug possession on the federal level in 2009, compared with 28,798 individuals who faced federal drug trafficking charges. Absent a massive influx of resources, the DEA, prosecutors and federal courts don’t have the capacity to handle small-time possession cases. The feds have to rely on their state-level counterparts.

But beyond the practical considerations about enforcement, several former Justice Department officials contended the feds will have little choice but to preempt legalization laws because they represent a massive encroachment on an issue of federal importance. The officials said they didn’t see how the government could allow a law that so directly contradicts the will of Congress to stand, regardless of political implications.

Whatever the Justice Department ends up deciding might matter less than whether the prosecutors choose to follow instructions. Regardless of memos emanating from Washington, it appears that the prosecutors are the ones truly calling the shots.

Colorado Election Results
Secretary of State Scott Gessler

GoVoteColorado.com

Statewide Results | Results by County

2012 General Election

Last updated 1/24/2013 10:46:52 AM MST

All Registered Voters: 3,647,082

Counties Partially Reported: 0 of 64
Counties Completely Reported: 64 of 64
Counties Percent Completely Reported: 100.00 %

OFFICIAL RESULTS

Statewide Write-in Results

Total Active Voters: 2,763,243
Total Inactive Voters: 883,839

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PRESIDENT AND VICE PRESIDENT

64 of 64 Counties Reporting

	Percent	Votes
Virgil H. Goode Jr. / Jim Clymer (ACN)	0.24%	6,234
Barack Obama / Joe Biden (DEM)	51.49%	1,323,101
Mitt Romney / Paul Ryan (REP)	46.13%	1,185,243
Gary Johnson / James P. Gray (LIB)	1.38%	35,545
Jill Stein / Cheri Honkala (GRN)	0.29%	7,508
Stewart Alexander / Alex Mendoza (SPU)	0.01%	308
Ross C. 'Rocky' Anderson / Luis J. Rodriguez (JUS)	0.05%	1,262
Roseanne Barr / Cindy Lee Sheehan (PAF)	0.20%	5,057
James Harris / Alyson Kennedy (SWP)	0.01%	192
Tom Hoefling / Jonathan D. Ellis (AMP)	0.03%	679
Gloria La Riva / Filberto Ramirez Jr. (SLB)	0.01%	317
Merlin Miller / Harry V. Bertram (ATP)	0.01%	267
Jill Reed / Tom Cary (UNA)	0.10%	2,588
Thomas Robert Stevens / Alden Link (OBJ)	0.01%	235
Sheila 'Samm' Tittle / Matthew A. Turner (WTP)	0.03%	791
Jerry White / Phyllis Scherrer (SEP)	0.01%	189
		2,569,516

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 1

3 of 3 Counties Reporting

SER 28

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 1

	Percent	Votes
Diana DeGette (DEM)	68.23%	237,579
Danny Stroud (REP)	26.77%	93,217
Frank Atwood (LIB)	3.61%	12,585
Gary Swing (GRN)	1.39%	4,829
		348,210

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 2

10 of 10 Counties Reporting

	Percent	Votes
Kevin Lundberg (REP)	38.58%	162,639
Jared Polis (DEM)	55.69%	234,758
Randy Luallin (LIB)	3.27%	13,770
Susan P. Hall (GRN)	2.47%	10,413
		421,580

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 3

29 of 29 Counties Reporting

	Percent	Votes
Sal Pace (DEM)	41.07%	142,619
Scott R. Tipton (REP)	53.36%	185,291
Gregory Gilman (LIB)	2.36%	8,212
Tisha T. Casida (UNA)	3.20%	11,125
		347,247

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 4

22 of 22 Counties Reporting

	Percent	Votes
Doug Aden (ACN)	1.71%	5,848
Cory Gardner (REP)	58.42%	200,006
Brandon Shaffer (DEM)	36.75%	125,800
Josh Gilliland (LIB)	3.12%	10,682
		342,336

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Secretary of State Scott Gessler

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Last updated 1/24/2013 10:46:52 AM MST

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AMENDMENT S

64 of 64 Counties Reporting

	Percent	Votes
Yes	56.35%	1,276,405
No	43.65%	988,541
		2,264,946

AMENDMENT 64

64 of 64 Counties Reporting

	Percent	Votes
Yes	55.32%	1,383,139
No	44.68%	1,116,894
		2,500,033

AMENDMENT 65

64 of 64 Counties Reporting

	Percent	Votes
Yes	74.01%	1,762,515
No	25.99%	619,073
		2,381,588

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BOSTON, MASSACHUSETTS 02108

(617) 727-2200

www.mass.gov/ago

Initiative Petition Information Sheet

Title of Petition An Initiative Petition for a Law for the Humanitarian Medical Use of Marijuana

Petition Number 11-11
(to be filled in by Attorney General's Office staff)

Proponents' Contact

Name **updated on 12/12/11 to:** Whitney A. Taylor

Residential Address 110 Thacher Street

City Boston, MA 02113 State MA Zip 02133

Phone (617) 482-3170 x344 Fax

Email WTaylor@aclum.org

Business Address

City State Zip

Phone Fax

Proponents' Attorney

Name John J. Corrigan

City Brookline State MA Zip 02446

Phone 617-264-9800 Fax n/a

Email jackcorrig@aol.com

Optional:

Will the proponents propose a summary by the Monday, 5 days after the petition-filing deadline?
Yes X No

Will the proponents submit a memo of law by the Friday 9 days after the petition-filing deadline?
Yes **No X**

Please note that the above information will be made available to the public and particularly to possible opponents of certification. The Proponent and Proponents' Attorney (if any) will receive copies of any materials submitted by the public regarding certification.

AGO Staff Person Receiving Petition PS
(to be filled in by Attorney General's Office staff)

Date **8/2/2011**
(to be filled in by Attorney General's Office staff)

An Initiative Petition for a Law for the Humanitarian Medical Use of Marijuana

We, the undersigned registered voters of the Commonwealth of Massachusetts, submit this initiative petition pursuant to Amendment Article 48 of the Massachusetts Constitution:

Be it enacted by the people and by their authority,

Section 1. Purpose and Intent.

The citizens of Massachusetts intend that there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana, as defined herein.

Section 2. As used in this Law, the following words shall, unless the context clearly requires otherwise, have the following meanings:

(A) "Card holder" shall mean a qualifying patient, a personal caregiver, or a dispensary agent of a medical marijuana treatment center who has been issued and possesses a valid registration card.

(B) "Cultivation registration" shall mean a registration issued to a medical marijuana treatment center for growing marijuana for medical use under the terms of this Act, or to a qualified patient or personal caregiver under the terms of Section 11.

(C) "Debilitating medical condition" shall mean:

Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis and other conditions as determined in writing by a qualifying patient's physician.

(D) "Department" shall mean the Department of Public Health of the Commonwealth of Massachusetts.

(E) "Dispensary agent" shall mean an employee, staff volunteer, officer, or board member of a non-profit medical marijuana treatment center, who shall be at least twenty-one (21) years of age.

(F) "Enclosed, locked facility" shall mean a closet, room, greenhouse, or other area equipped with locks or other security devices, accessible only to dispensary agents, patients, or personal caregivers.

(G) "Marijuana," has the meaning given "marihuana" in Chapter 94C of the General Laws.

(H) "Medical marijuana treatment center" shall mean a not-for-profit entity, as defined by Massachusetts law only, registered under this law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.

(I) "Medical use of marijuana" shall mean the acquisition, cultivation, possession, processing, (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transportation, sale, distribution, dispensing, or administration of marijuana, for the benefit of qualifying patients in the treatment of debilitating medical conditions, or the symptoms thereof.

(J) "Personal caregiver" shall mean a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use of the qualifying patient.
An employee of a hospice provider, nursing, or medical facility providing care to a qualifying patient may also serve as a personal caregiver.

(K) "Qualifying patient" shall mean a person who has been diagnosed by a licensed physician as having a debilitating medical condition.

(L) "Registration card" shall mean a personal identification card issued by the Department to a qualifying patient, personal caregiver, or dispensary agent. The registration card shall verify that a physician has provided a written certification to the qualifying patient, that the patient has designated the individual as a personal caregiver, or that a medical treatment center has met the terms of Section 9 and Section 10 of this law. The registration card shall identify for the Department and law enforcement those individuals who are exempt from Massachusetts criminal and civil penalties for conduct pursuant to the medical use of marijuana.

(M) "Sixty-day supply" means that amount of marijuana that a qualifying patient would reasonably be expected to need over a period of sixty days for their personal medical use.

(N) "Written certification" means a document signed by a licensed physician, stating that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. Such certification shall be made only in the course of a bona fide physician-patient relationship and shall specify the qualifying patient's debilitating medical condition(s).

Section 3. Protection from State Prosecution and Penalties for Health Care Professionals

A physician, and other health care professionals under a physician's supervision, shall not be penalized under Massachusetts law, in any manner, or denied any right or privilege, for:

(a) Advising a qualifying patient about the risks and benefits of medical use of marijuana; or

(b) Providing a qualifying patient with written certification, based upon a full assessment of the qualifying patient's medical history and condition, that the medical use of marijuana may benefit a particular qualifying patient.

Section 4. Protection From State Prosecution and Penalties for Qualifying Patients and Personal Caregivers

Any person meeting the requirements under this law shall not be penalized under Massachusetts law in any manner, or denied any right or privilege, for such actions. A qualifying patient or a personal caregiver shall not be subject to arrest or prosecution, or civil penalty, for the medical use of marijuana provided he or she:

(a) Possesses no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and
(b) Presents his or her registration card to any law enforcement official who questions the patient or caregiver regarding use of marijuana.

Section 5. Protection From State Prosecution and Penalties for Dispensary Agents.

A dispensary agent shall not be subject to arrest, prosecution, or civil penalty, under Massachusetts law, for actions taken under the authority of a medical marijuana treatment center, provided he or she:

(a) Presents his or her registration card to any law enforcement official who questions the agent concerning their marijuana related activities; and
(b) Is acting in accordance with all the requirements of this law.

Section 6. Protection Against Forfeiture and Arrest

(A) The lawful possession, cultivation, transfer, transport, distribution, or manufacture of medical marijuana as authorized by this law shall not result in the forfeiture or seizure of any property.

(B) No person shall be arrested or prosecuted for any criminal offense solely for being in the presence of medical marijuana or its use as authorized by this law.

Section 7. Limitations of Law

(A) Nothing in this law allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.

(B) Nothing in this law requires any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana.

(C) Nothing in this law requires any health care professional to authorize the use of medical marijuana for a patient.

(D) Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place.

(E) Nothing in this law supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes.

(F) Nothing in this law requires the violation of federal law or purports to give immunity under federal law.

(G) Nothing in this law poses an obstacle to federal enforcement of federal law.

Section 8. Department to define presumptive 60-day supply for qualifying patients.

Within 120 days of the effective date of this law, the department shall issue regulations defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

Section 9. Registration of nonprofit medical marijuana treatment centers.

(A) Medical marijuana treatment centers shall register with the department.

(B) Not later than ninety days after receiving an application for a nonprofit medical marijuana treatment center, the department shall register the nonprofit medical marijuana treatment center to acquire, process, possess, transfer, transport, sell, distribute, dispense, and administer marijuana for medical use, and shall also issue a cultivation registration if:

1. The prospective nonprofit medical marijuana treatment center has submitted:

(a) An application fee in an amount to be determined by the department consistent with Section 13 of this law.

(b) An application, including:

(i) The legal name and physical address of the treatment center and the physical address of one additional location, if any, where marijuana will be cultivated.
(ii) The name, address and date of birth of each principal officer and board member.

(c) Operating procedures consistent with department rules for oversight, including cultivation and storage of marijuana only in enclosed, locked facilities.

2. None of the principal officers or board members has served as a principal officer or board member for a medical marijuana treatment center that has had its registration certificate revoked.

(C) In the first year after the effective date, the Department shall issue registrations for up to thirty-five non-profit medical marijuana treatment centers, provided that at least one treatment center shall be located in each county, and not more than five shall be located in any one county. In the event the Department determines in a future year that the number of treatment centers is insufficient to meet patient needs, the Department shall have the power to increase or modify the number of registered treatment centers.

(D) A medical treatment center registered under this section, and its dispensary agents registered under Section 10, shall not be penalized or arrested under Massachusetts law for acquiring, possessing, cultivating, processing, transferring, transporting, selling, distributing, and dispensing marijuana, products containing marijuana, and related supplies and educational materials, to qualifying patients or their personal caregivers.

Section 10. Registration of medical treatment center dispensary agents.

(A) A dispensary agent shall be registered with the Department before volunteering or working at a medical marijuana treatment center.

(B) A treatment center must apply to the Department for a registration card for each affiliated dispensary agent by submitting the name, address and date of birth of the agent.

(C) A registered nonprofit medical marijuana treatment center shall notify the department within one business day if a dispensary agent ceases to be associated with the center, and the agent's registration card shall be immediately revoked.

(D) No one shall be a dispensary agent who has been convicted of a felony drug offense. The Department is authorized to conduct criminal record checks with the Department of Criminal Justice Information to enforce this provision.

Section 11. Hardship Cultivation Registrations.

The Department shall issue a cultivation registration to a qualifying patient whose access to a medical treatment center is limited by verified financial hardship, a physical incapacity to access reasonable transportation, or the lack of a treatment center within a reasonable distance of the patient's residence. The Department may deny a registration based on the provision of false information by the applicant. Such registration shall allow the patient or the patient's personal caregiver to cultivate a limited number of plants, sufficient to maintain a 60-day supply of marijuana, and shall require cultivation and storage only in an enclosed, locked facility.
The department shall issue regulations consistent with this section within 120 days of the effective date of this law. Until the department issues such final regulations, the written recommendation of a qualifying patient's physician shall constitute a limited cultivation registration.

Section 12. Medical marijuana registration cards for qualifying patients and designated caregivers.

(A) A qualifying patient may apply to the department for a medical marijuana registration card by submitting:

1. Written certification from a physician.
2. An application, including:
(a) Name, address unless homeless, and date of birth.
(b) Name, address and date of birth of the qualifying patient's personal caregiver, if any.

Section 13. Department implementation of Regulations and Fees.

Within 120 days of the effective date of this law, the department shall issue regulations for the implementation of Sections 9 through 12 of this Law. The department shall set application fees for non-profit medical marijuana treatment centers so as to defray the administrative costs of the medical marijuana program and thereby make this law revenue neutral.

Until the approval of final regulations, written certification by a physician shall constitute a registration card for a qualifying patient. Until the approval of final regulations, a certified mail return receipt showing compliance with Section 12 (A) (2) (b) above by a qualifying patient, and a photocopy of the application, shall constitute a registration card for that patient's personal caregiver.

Section 14. Penalties for Fraudulent Acts.

(A) The department, after a hearing, may revoke any registration card issued under this law for a willful violation of this law. The standard of proof for revocation shall be a preponderance of the evidence. A revocation decision shall be reviewable in the Superior Court.

(B) The fraudulent use of a medical marijuana registration card or cultivation registration shall be a misdemeanor punishable by up to 6 months in the house of correction, or a fine up to $500, but if such fraudulent use is for the distribution, sale, or trafficking of marijuana for non-medical use for profit it shall be a felony punishable by up to 5 years in state prison or up to two and one half years in the house of correction.

Section 15. Confidentiality

The department shall maintain a confidential list of the persons issued medical marijuana registration cards. Individual names and other identifying information on the list shall be exempt from the provisions of Massachusetts Public Records Law, M.G.L. Chapter 66, section 10, and not subject to disclosure, except to employees of the department in the course of their official duties and to Massachusetts law enforcement officials when verifying a card holder's registration.

Section 16. Effective Date.

This law shall be effective January 1, 2013.

Section 17. Severability.

The provisions of this law are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or application adjudged invalid.

We, the Undersigned registered voters of the Commonwealth of Massachusetts, having read the full text of the foregoing proposed law, do fully subscribe to its content and agree to be among the original signers of the Petition.

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Return of Votes

For Massachusetts State Election

November 6, 2012

Compiled by
William Francis Galvin
Secretary of the Commonwealth
Elections Division

Certified by the
Governor and Council

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT, COUNCIL CHAMBERS

November 28, 2012

His Excellency the Governor and Council, having examined the returns of votes for Electors of the President and Vice President, Senator in Congress, Representatives in Congress, State Officers and ballot questions given in the several cities and towns in the manner prescribed by the Constitution and Laws of the Commonwealth on the sixth day of November last past, find that the following named persons have received the number of votes set against their names.

ELECTORS OF PRESIDENT AND VICE PRESIDENT

Johnson and Gray (Libertarian) have	30,920
Obama and Biden (Democratic) have	1,921,290
and appear to be elected.	
Romney and Ryan (Republican) have	1,188,314
Stein and Honkala (Green-Rainbow) have	20,691
All others	6,552
Blanks	16,429
Total votes cast	**3,184,196**

His Excellency the Governor and Council therefore proclaim the following named Electors of President and Vice President to have received at least one-fifth the entire number of votes cast for electors, have received the number of votes set against their names.

Democratic Party Presidential Electors		Republican Party Presidential Electors	
Sandi E. Bagley	1,921,290	Sandra Matejic Edgerley	1,188,314
Janet M. Beyer	1,921,290	Jane C. Edmonds	1,188,314
James Eliseo DiTullio	1,921,290	Eric P. Fehrnstrom	1,188,314
Louis A. Elisa, II	1,921,290	Peter G. Flaherty, II	1,188,314
Paul J. Giorgio	1,921,290	Kerry Healey	1,188,314
Candy Glazer	1,921,290	Ronald C. Kaufman	1,188,314
Susan M. Kennedy	1,921,290	Beth E. Meyers	1,188,314
Mike Lake	1,921,290	Ann D. Romney	1,188,314
James McGowan	1,921,290	Taggart M. Romney	1,188,314
Karen L. Payne	1,921,290	Robert Francis White	1,188,314
Diane M. Saxe	1,921,290	Spencer Zwick	1,188,314

QUESTION 3

LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, *on which no vote was taken by the Senate or the House of Representatives before May 1, 2012?*

SUMMARY

This proposed law would eliminate state criminal and civil penalties for the medical use of marijuana by qualifying patients. To qualify, a patient must have been diagnosed with a debilitating medical condition, such as cancer, glaucoma, HIV-positive status or AIDS, hepatitis C, Crohn's disease, Parkinson's disease, ALS, or multiple sclerosis. The patient would also have to obtain a written certification, from a physician with whom the patient has a bona fide physician-patient relationship, that the patient has a specific debilitating medical condition and would likely obtain a net benefit from medical use of marijuana.

The proposed law would allow patients to possess up to a 60-day supply of marijuana for their personal medical use. The state Department of Public Health (DPH) would decide what amount would be a 60-day supply. A patient could designate a personal caregiver, at least 21 years old, who could assist with the patient's medical use of marijuana but would be prohibited from consuming that marijuana. Patients and caregivers would have to register with DPH by submitting the physician's certification.

The proposed law would allow for non-profit medical marijuana treatment centers to grow, process and provide marijuana to patients or their caregivers. A treatment center would have to apply for a DPH registration by (1) paying a fee to offset DPH's administrative costs; (2) identifying its location and one additional location, if any, where marijuana would be grown; and (3) submitting operating procedures, consistent with rules to be issued by DPH, including cultivation and storage of marijuana only in enclosed, locked facilities.

A treatment center's personnel would have to register with DPH before working or volunteering at the center, be at least 21 years old, and have no felony drug convictions. In 2013, there could be no more than 35 treatment centers, with at least one but not more than five centers in each county. In later years, DPH could modify the number of centers.

The proposed law would require DPH to issue a cultivation registration to a qualifying patient whose access to a treatment center is limited by financial hardship, physical inability to access reasonable transportation, or distance. This would allow the patient or caregiver to grow only enough plants, in a closed, locked facility, for a 60-day supply of marijuana for the patient's own use.

DPH could revoke any registration for a willful violation of the proposed law. Fraudulent use of a DPH registration could be punished by up to six months in a house of correction or a fine of up to $500, and fraudulent use of a registration for the sale, distribution, or trafficking of marijuana for non-medical use for profit could be punished by up to five years in state prison or by two and one-half years in a house of correction.

The proposed law would (1) not give immunity under federal law or obstruct federal enforcement of federal law; (2) not supersede Massachusetts laws prohibiting possession, cultivation, or sale of marijuana for nonmedical purposes; (3) not allow the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana; (4) not require any health insurer or government entity to reimburse for the costs of the medical use of marijuana; (5) not require any health care professional to authorize the medical use of marijuana; (6) not require

any accommodation of the medical use of marijuana in any workplace, school bus or grounds, youth center, or correctional facility; and (7) not require any accommodation of smoking marijuana in any public place.

The proposed law would take effect January 1, 2013, and states that if any of its parts were declared invalid, the other parts would stay in effect.

	YES	NO	BLANK	TOTAL
County of Barnstable	76,762	50,856	6,037	133,655
County of Berkshire	40,695	20,332	3,805	64,832
County of Bristol	142,432	84,391	16,567	243,390
County of Dukes	7,784	2,725	520	11,029
County of Essex	216,049	134,969	17,084	368,102
County of Franklin	26,062	10,443	1,521	38,026
County of Hampden	115,818	77,123	8,942	201,883
County of Hampshire	57,182	21,273	3,760	82,215
County of Middlesex	464,186	253,532	39,662	757,380
County of Nantucket	4,356	1,439	350	6,145
County of Norfolk	208,599	132,532	17,132	358,263
County of Plymouth	150,695	96,330	10,709	257,734
County of Suffolk	184,331	85,701	20,642	290,674
County of Worcester	219,796	137,258	13,814	370,868
TOTAL	1,914,747	1,108,904	160,545	3,184,196

In Council, Boston, November 28, 2012

Timothy P. Murray
Lieutenant Governor

Valerie McCarthy
Executive Secretary of the Commonwealth

Deval L. Patrick
Governor

The foregoing findings are this day adopted.

Office of the Secretary of the Commonwealth
November 28, 2012
WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

A True Copy.

November 06, 2012 General Election Results

Initiative Measure No. 502 Concerns marijuana

Last updated on 11/27/2012 4:55 PM

Initiative Measure No. 502 Concerns marijuana

County Results & Map

Measure	Vote	Vote %
Yes	1,724,209	55.7%
No	1,371,235	44.3%
Total Votes	**3,095,444**	**100%**

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-2465.1/11

ATTY/TYPIST: AI:crs

BRIEF DESCRIPTION:

Initiative Measure No. 502

filed July 8, 2011

AN ACT Relating to marijuana; amending RCW 69.50.101, 69.50.401, 69.50.4013, 69.50.412, 69.50.4121, 69.50.500, 46.20.308, 46.61.502, 46.61.504, 46.61.50571, and 46.61.506; reenacting and amending RCW 69.50.505, 46.20.3101, and 46.61.503; adding a new section to chapter 46.04 RCW; adding new sections to chapter 69.50 RCW; creating new sections; and prescribing penalties.

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

PART I

INTENT

NEW SECTION. **Sec. 1.** The people intend to stop treating adult marijuana use as a crime and try a new approach that:

(1) Allows law enforcement resources to be focused on violent and property crimes;

(2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and

(3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana.

PART II

DEFINITIONS

Sec. 2. 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.

(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)~~)) (x)(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) "Lot" means a definite quantity of marijuana, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(q) "Lot number" shall identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, useable marijuana, or marijuana-infused product.

(r) "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)~~)) (s) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; 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)~~)) (t) "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(u) "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(v) "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

(w) "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

(x) "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)~~)) (y) "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)~~)) (z) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

((~~(u)~~)) (aa) "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)~~)) (bb) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

((~~(w)~~)) (cc) "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)~~)) (dd) "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)~~)) (ee) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

((~~(z)~~)) (ff) "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

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

((~~(aa)~~)) (hh) "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)~~)) (ii) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(jj) "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)~~)) (kk) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

(ll) "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.

NEW SECTION. **Sec. 3.** A new section is added to chapter 46.04 RCW to read as follows:

"THC concentration" means nanograms of delta-9 tetrahydrocannabinol per milliliter of a person's whole blood. THC concentration does not include measurement of the metabolite THC-COOH, also known as carboxy-THC.

PART III

LICENSING AND REGULATION OF MARIJUANA

PRODUCERS, PROCESSORS, AND RETAILERS

NEW SECTION. **Sec. 4.** (1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this act and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, and marijuana-infused products in accordance with the provisions of this act and the rules adopted to implement and enforce it, by a validly licensed marijuana processor, shall not be a

criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. The possession, delivery, distribution, and sale of useable marijuana and marijuana-infused products in accordance with the provisions of this act and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell useable marijuana and marijuana-infused products.

NEW SECTION. **Sec. 5.** Neither a licensed marijuana producer nor a licensed marijuana processor shall have a direct or indirect financial interest in a licensed marijuana retailer.

NEW SECTION. **Sec. 6.** (1) For the purpose of considering any application for a license to produce, process, or sell marijuana, or

for the renewal of a license to produce, process, or sell marijuana, the state liquor control board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the state liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the state liquor control board and a criminal history record information check. The state liquor control board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to these cases. Subject to the provisions of this section, the state liquor control board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (7)(c) and (9) of this section. Authority to approve an uncontested or unopposed license may be granted by the state liquor control board to any staff member the board designates in writing. Conditions for granting this authority shall be adopted by rule. No license of any kind may be issued to:

(a) A person under the age of twenty-one years;

(b) A person doing business as a sole proprietor who has not lawfully resided in the state for at least three months prior to applying to receive a license;

(c) A partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under the laws of this

state, and unless all of the members thereof are qualified to obtain a license as provided in this section; or

(d) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee.

(2)(a) The state liquor control board may, in its discretion, subject to the provisions of section 7 of this act, suspend or cancel any license; and all protections of the licensee from criminal or civil sanctions under state law for producing, processing, or selling marijuana, useable marijuana, or marijuana-infused products thereunder shall be suspended or terminated, as the case may be.

(b) The state liquor control board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the state liquor control board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The state liquor control board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under rules and regulations the state liquor control board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the state liquor control board or a subpoena issued by the state liquor control board, or any of its members, or administrative law

judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(3) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the state liquor control board. Where the license has been suspended only, the state liquor control board shall return the license to the licensee at the expiration or termination of the period of suspension. The state liquor control board shall notify all other licensees in the county where the subject licensee has its premises of the suspension or cancellation of the license; and no other licensee or employee of another licensee may allow or cause any marijuana, useable marijuana, or marijuana-infused products to be delivered to or for any person at the premises of the subject licensee.

(4) Every license issued under this act shall be subject to all conditions and restrictions imposed by this act or by rules adopted by the state liquor control board to implement and enforce this act. All conditions and restrictions imposed by the state liquor control board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(5) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(6) No licensee shall employ any person under the age of twenty-one years.

(7)(a) Before the state liquor control board issues a new or renewed license to an applicant it shall give notice of the application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the state liquor control board within twenty days after the date of transmittal of the notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewed license is asked. The state liquor control board may extend the time period for submitting written objections.

(c) The written objections shall include a statement of all facts upon which the objections are based, and in case written objections are filed, the city or town or county legislative authority may request, and the state liquor control board may in its discretion hold, a hearing subject to the applicable provisions of Title 34 RCW. If the state liquor control board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If a hearing is held at the request of the applicant, state liquor control board representatives shall present and defend the state liquor control board's initial decision to deny a license or renewal.

(d) Upon the granting of a license under this title the state liquor control board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(8) The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

(9) In determining whether to grant or deny a license or renewal of any license, the state liquor control board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

NEW SECTION. **Sec. 7.** The action, order, or decision of the state liquor control board as to any denial of an application for the reissuance of a license to produce, process, or sell marijuana, or as to any revocation, suspension, or modification of any license to produce, process, or sell marijuana, shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided to an applicant for the reissuance of a license prior to the disposition of the application, and if no opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided to a licensee prior to a revocation or modification of any license and, except as

provided in subsection (4) of this section, prior to the suspension of any license.

(3) No hearing shall be required until demanded by the applicant or licensee.

(4) The state liquor control board may summarily suspend a license for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and it incorporates a finding to that effect in its order. Proceedings for revocation or other action must be promptly instituted and determined. An administrative law judge may extend the summary suspension period for up to one calendar year from the first day of the initial summary suspension in the event the proceedings for revocation or other action cannot be completed during the initial one hundred eighty-day period due to actions by the licensee. The state liquor control board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension by the state liquor control board.

NEW SECTION. **Sec. 8.** (1) If the state liquor control board approves, a license to produce, process, or sell marijuana may be transferred, without charge, to the surviving spouse or domestic partner of a deceased licensee if the license was issued in the names of one or both of the parties. For the purpose of considering the qualifications of the surviving party to receive a marijuana producer's, marijuana processor's, or marijuana retailer's license, the state liquor control board may require a criminal history record information check. The state liquor control board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation.

(2) The proposed sale of more than ten percent of the outstanding or issued stock of a corporation licensed under this act, or any proposed change in the officers of such a corporation, must be reported to the state liquor control board, and state liquor control board approval must be obtained before the changes are made. A fee of seventy-five dollars will be charged for the processing of the change of stock ownership or corporate officers.

NEW SECTION. **Sec. 9.** For the purpose of carrying into effect the provisions of this act according to their true intent or of supplying any deficiency therein, the state liquor control board may adopt rules not inconsistent with the spirit of this act as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the state liquor control board is empowered to adopt rules regarding the following:

(1) The equipment and management of retail outlets and premises where marijuana is produced or processed, and inspection of the retail outlets and premises;

(2) The books and records to be created and maintained by licensees, the reports to be made thereon to the state liquor control board, and inspection of the books and records;

(3) Methods of producing, processing, and packaging marijuana, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(4) Security requirements for retail outlets and premises where marijuana is produced or processed, and safety protocols for licensees and their employees;

(5) Screening, hiring, training, and supervising employees of licensees;

(6) Retail outlet locations and hours of operation;

(7) Labeling requirements and restrictions on advertisement of marijuana, useable marijuana, and marijuana-infused products;

(8) Forms to be used for purposes of this act or the rules adopted to implement and enforce it, the terms and conditions to be contained in licenses issued under this act, and the qualifications for receiving a license issued under this act, including a criminal history record information check. The state liquor control board may submit any criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(9) Application, reinstatement, and renewal fees for licenses issued under this act, and fees for anything done or permitted to be done under the rules adopted to implement and enforce this act;

(10) The manner of giving and serving notices required by this act or rules adopted to implement or enforce it;

(11) Times and periods when, and the manner, methods, and means by which, licensees shall transport and deliver marijuana, useable marijuana, and marijuana-infused products within the state;

(12) Identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all marijuana, useable marijuana, and marijuana-infused products produced, processed, sold, or offered for sale within this state which do not conform in all respects to the standards prescribed by this act or the rules adopted to implement and enforce it: PROVIDED, That nothing in this act shall be construed as authorizing the state liquor control board to seize, confiscate, destroy, or donate to law enforcement marijuana, useable marijuana, or marijuana-infused products produced, processed, sold, offered for sale, or possessed in compliance with the Washington state medical use of cannabis act, chapter 69.51A RCW.

NEW SECTION. **Sec. 10.** The state liquor control board, subject to the provisions of this act, must adopt rules by December 1, 2013, that

establish the procedures and criteria necessary to implement the following:

(1) Licensing of marijuana producers, marijuana processors, and marijuana retailers, including prescribing forms and establishing application, reinstatement, and renewal fees;

(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:

(a) Population distribution;

(b) Security and safety issues; and

(c) The provision of adequate access to licensed sources of useable marijuana and marijuana-infused products to discourage purchases from the illegal market;

(3) Determining the maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law;

(4) Determining the maximum quantities of marijuana, useable marijuana, and marijuana-infused products a marijuana processor may have on the premises of a licensed location at any time without violating Washington state law;

(5) Determining the maximum quantities of useable marijuana and marijuana-infused products a marijuana retailer may have on the premises of a retail outlet at any time without violating Washington state law;

(6) In making the determinations required by subsections (3) through (5) of this section, the state liquor control board shall take into consideration:

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of marijuana, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and

(c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

(7) Determining the nature, form, and capacity of all containers to be used by licensees to contain marijuana, useable marijuana, and marijuana-infused products, and their labeling requirements, to include but not be limited to:

(a) The business or trade name and Washington state unified business identifier number of the licensees that grew, processed, and sold the marijuana, useable marijuana, or marijuana-infused product;

(b) Lot numbers of the marijuana, useable marijuana, or marijuana-infused product;

(c) THC concentration of the marijuana, useable marijuana, or marijuana-infused product;

(d) Medically and scientifically accurate information about the health and safety risks posed by marijuana use; and

(e) Language required by RCW 69.04.480;

(8) In consultation with the department of agriculture, establishing classes of marijuana, useable marijuana, and marijuana-infused products according to grade, condition, cannabinoid profile, THC concentration, or other qualitative measurements deemed appropriate by the state liquor control board;

(9) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of marijuana, useable marijuana, and marijuana-infused products that are not inconsistent with the provisions of this act, taking into consideration:

(a) Federal laws relating to marijuana that are applicable within Washington state;

(b) Minimizing exposure of people under twenty-one years of age to the advertising; and

(c) The inclusion of medically and scientifically accurate information about the health and safety risks posed by marijuana use in the advertising;

(10) Specifying and regulating the time and periods when, and the manner, methods, and means by which, licensees shall transport and deliver marijuana, useable marijuana, and marijuana-infused products within the state;

(11) In consultation with the department and the department of agriculture, establishing accreditation requirements for testing laboratories used by licensees to demonstrate compliance with standards adopted by the state liquor control board, and prescribing methods of producing, processing, and packaging marijuana, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(12) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this act or the rules of the state liquor control board.

NEW SECTION. **Sec. 11.** (1) On a schedule determined by the state liquor control board, every licensed marijuana producer and processor must submit representative samples of marijuana, useable marijuana, or marijuana-infused products produced or processed by the licensee to an independent, third-party testing laboratory meeting the accreditation requirements established by the state liquor control board, for inspection and testing to certify compliance with standards adopted by the state liquor control board. Any sample remaining after testing shall be destroyed by the laboratory or returned to the licensee.

(2) Licensees must submit the results of this inspection and testing to the state liquor control board on a form developed by the state liquor control board.

(3) If a representative sample inspected and tested under this section does not meet the applicable standards adopted by the state liquor control board, the entire lot from which the sample was taken must be destroyed.

NEW SECTION. **Sec. 12.** Except as provided by chapter 42.52 RCW, no member of the state liquor control board and no employee of the

state liquor control board shall have any interest, directly or indirectly, in the producing, processing, or sale of marijuana, useable marijuana, or marijuana-infused products, or derive any profit or remuneration from the sale of marijuana, useable marijuana, or marijuana-infused products other than the salary or wages payable to him or her in respect of his or her office or position, and shall receive no gratuity from any person in connection with the business.

NEW SECTION. **Sec. 13.** There may be licensed, in no greater number in each of the counties of the state than as the state liquor control board shall deem advisable, retail outlets established for the purpose of making useable marijuana and marijuana-infused products available for sale to adults aged twenty-one and over. Retail sale of useable marijuana and marijuana-infused products in accordance with the provisions of this act and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer or retail outlet employee, shall not be a criminal or civil offense under Washington state law.

NEW SECTION. **Sec. 14.** (1) Retail outlets shall sell no products or services other than useable marijuana, marijuana-infused products, or paraphernalia intended for the storage or use of useable marijuana or marijuana-infused products.

(2) Licensed marijuana retailers shall not employ persons under twenty-one years of age or allow persons under twenty-one years of age to enter or remain on the premises of a retail outlet.

(3) Licensed marijuana retailers shall not display any signage in a window, on a door, or on the outside of the premises of a retail outlet that is visible to the general public from a public right-of-way, other than a single sign no larger than one thousand six hundred square inches identifying the retail outlet by the licensee's business or trade name.

(4) Licensed marijuana retailers shall not display useable marijuana or marijuana-infused products in a manner that is visible to the general public from a public right-of-way.

(5) No licensed marijuana retailer or employee of a retail outlet shall open or consume, or allow to be opened or consumed, any useable marijuana or marijuana-infused product on the outlet premises.

(6) The state liquor control board shall fine a licensee one thousand dollars for each violation of any subsection of this section. Fines collected under this section must be deposited into the dedicated marijuana fund created under section 26 of this act.

NEW SECTION. **Sec. 15.** The following acts, when performed by a validly licensed marijuana retailer or employee of a validly licensed retail outlet in compliance with rules adopted by the state liquor control board to implement and enforce this act, shall not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of useable marijuana or marijuana-infused products that have been properly packaged and labeled from a marijuana processor validly licensed under this act;

(2) Possession of quantities of useable marijuana or marijuana-infused products that do not exceed the maximum amounts established by the state liquor control board under section 10(5) of this act; and

(3) Delivery, distribution, and sale, on the premises of the retail outlet, of any combination of the following amounts of useable marijuana or marijuana-infused product to any person twenty-one years of age or older:

(a) One ounce of useable marijuana;

(b) Sixteen ounces of marijuana-infused product in solid form; or

(c) Seventy-two ounces of marijuana-infused product in liquid form.

NEW SECTION. **Sec. 16.** The following acts, when performed by a validly licensed marijuana processor or employee of a validly licensed marijuana processor in compliance with rules adopted by the state liquor control board to implement and enforce this act, shall not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of marijuana that has been properly packaged and labeled from a marijuana producer validly licensed under this act;

(2) Possession, processing, packaging, and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products that do not exceed the maximum amounts established by the state liquor control board under section 10(4) of this act; and

(3) Delivery, distribution, and sale of useable marijuana or marijuana-infused products to a marijuana retailer validly licensed under this act.

NEW SECTION. **Sec. 17.** The following acts, when performed by a validly licensed marijuana producer or employee of a validly licensed marijuana producer in compliance with rules adopted by the state liquor control board to implement and enforce this act, shall not constitute criminal or civil offenses under Washington state law:

(1) Production or possession of quantities of marijuana that do not exceed the maximum amounts established by the state liquor control board under section 10(3) of this act; and

(2) Delivery, distribution, and sale of marijuana to a marijuana processor or another marijuana producer validly licensed under this act.

NEW SECTION. **Sec. 18.** (1) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, useable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older;

(b) On or in a public transit vehicle or public transit shelter; or

(c) On or in a publicly owned or operated property.

(2) Merchandising within a retail outlet is not advertising for the purposes of this section.

(3) This section does not apply to a noncommercial message.

(4) The state liquor control board shall fine a licensee one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the dedicated marijuana fund created under section 26 of this act.

Sec. 19. RCW 69.50.401 and 2005 c 218 s 1 are each amended to read as follows:

(1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the

fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

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

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

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

(3) The production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana in compliance with the terms set forth in section 15, 16, or 17 of this act shall not constitute a violation of this section, this chapter, or any other provision of Washington state law.

Sec. 20. RCW 69.50.4013 and 2003 c 53 s 334 are each amended to read as follows:

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

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

(3) The possession, by a person twenty-one years of age or older, of useable marijuana or marijuana-infused products in amounts that do not exceed those set forth in section 15(3) of this act is not a violation of this section, this chapter, or any other provision of Washington state law.

NEW SECTION. **Sec. 21.** It is unlawful to open a package containing marijuana, useable marijuana, or a marijuana-infused product, or consume marijuana, useable marijuana, or a marijuana-infused product, in view of the general public. A person who violates this section is guilty of a class 3 civil infraction under chapter 7.80 RCW.

Sec. 22. 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 other than marijuana. 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 other than marijuana. 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.

Sec. 23. 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 other than marijuana. 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)~~)) (f) Chamber pipes;

((~~(h)~~)) (g) Carburetor pipes;

((~~(i)~~)) (h) Electric pipes;

((~~(j)~~)) (i) Air-driven pipes;

((~~(k) Chillums;~~

~~(l) Bongs;~~)) and

((~~(m)~~)) (j) 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.

Sec. 24. RCW 69.50.500 and 1989 1st ex.s. c 9 s 437 are each amended to read as follows:

(a) It is hereby made the duty of the state board of pharmacy, the department, the state liquor control board, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the department of health, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter.

Sec. 25. RCW 69.50.505 and 2009 c 479 s 46 and 2009 c 364 s 1 are each reenacted and amended to read as follows:

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia21 other than paraphernalia possessed, sold, or used solely to facilitate marijuana-related activities that are not violations of this chapter;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, whether the offender was licensed to produce, process, or sell marijuana, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to

any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of

seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of

competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the

department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the

county auditor's records in the county in which the real property is located.

(15)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

((~~(a)~~)) (i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

((~~(b)~~)) (ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

((~~(i)~~)) (A) Only if the funds applied under ((~~(b)~~)) (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

((~~(ii)~~)) (B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

((~~(c)~~)) (b) For any claim filed under ((~~(b)~~)) (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

PART IV

DEDICATED MARIJUANA FUND

NEW SECTION. **Sec. 26.** (1) There shall be a fund, known as the dedicated marijuana fund, which shall consist of all marijuana excise taxes, license fees, penalties, forfeitures, and all other moneys, income, or revenue received by the state liquor control board from marijuana-related activities. The state treasurer shall be custodian of the fund.

(2) All moneys received by the state liquor control board or any employee thereof from marijuana-related activities shall be deposited each day in a depository approved by the state treasurer and

transferred to the state treasurer to be credited to the dedicated marijuana fund.

(3) Disbursements from the dedicated marijuana fund shall be on authorization of the state liquor control board or a duly authorized representative thereof.

NEW SECTION. **Sec. 27.** (1) There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each wholesale sale in this state of marijuana by a licensed marijuana producer to a licensed marijuana processor or another licensed marijuana producer. This tax is the obligation of the licensed marijuana producer.

(2) There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each wholesale sale in this state of useable marijuana or marijuana-infused product by a licensed marijuana processor to a licensed marijuana retailer. This tax is the obligation of the licensed marijuana processor.

(3) There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each retail sale in this state of useable marijuana and marijuana-infused products. This tax is the obligation of the licensed marijuana retailer, is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is part of the total retail price to which general state and local sales and use taxes apply.

(4) All revenues collected from the marijuana excise taxes imposed under subsections (1) through (3) of this section shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the dedicated marijuana fund.

(5) The state liquor control board shall regularly review the tax levels established under this section and make recommendations to the legislature as appropriate regarding adjustments that would further the goal of discouraging use while undercutting illegal market prices.

NEW SECTION. **Sec. 28.** All marijuana excise taxes collected from sales of marijuana, useable marijuana, and marijuana-infused products under section 27 of this act, and the license fees, penalties, and forfeitures derived under this act from marijuana producer, marijuana processor, and marijuana retailer licenses shall every three months be disbursed by the state liquor control board as follows:

(1) One hundred twenty-five thousand dollars to the department of social and health services to design and administer the Washington state healthy youth survey, analyze the collected data, and produce reports, in collaboration with the office of the superintendent of public instruction, department of health, department of commerce, family policy council, and state liquor control board. The survey shall be conducted at least every two years and include questions regarding, but not necessarily limited to, academic achievement, age at time of substance use initiation, antisocial behavior of friends, attitudes toward antisocial behavior, attitudes toward substance use, laws and community norms regarding antisocial behavior, family conflict, family management, parental attitudes toward substance use, peer rewarding of antisocial behavior, perceived risk of substance use, and rebelliousness. Funds disbursed under this subsection may be used to expand administration of the healthy youth survey to student populations attending institutions of higher education in Washington;

(2) Fifty thousand dollars to the department of social and health services for the purpose of contracting with the Washington state institute for public policy to conduct the cost-benefit evaluation and produce the reports described in section 30 of this act. This appropriation shall end after production of the final report required by section 30 of this act;

(3) Five thousand dollars to the University of Washington alcohol and drug abuse institute for the creation, maintenance, and timely updating of web-based public education materials providing medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(4) An amount not exceeding one million two hundred fifty thousand dollars to the state liquor control board as is necessary for administration of this act;

(5) Of the funds remaining after the disbursements identified in subsections (1) through (4) of this section:

(a) Fifteen percent to the department of social and health services division of behavioral health and recovery for implementation and maintenance of programs and practices aimed at the prevention or reduction of maladaptive substance use, substance-use disorder, substance abuse or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, among middle school and high school age students, whether as an explicit goal of a given program or practice or as a consistently corresponding effect of its implementation; PROVIDED, That:

(i) Of the funds disbursed under (a) of this subsection, at least eighty-five percent must be directed to evidence-based and cost-beneficial programs and practices that produce objectively measurable results; and

(ii) Up to fifteen percent of the funds disbursed under (a) of this subsection may be directed to research-based and emerging best practices or promising practices.

In deciding which programs and practices to fund, the secretary of the department of social and health services shall consult, at least annually, with the University of Washington's social development research group and the University of Washington's alcohol and drug abuse institute;

(b) Ten percent to the department of health for the creation, implementation, operation, and management of a marijuana education and public health program that contains the following:

(i) A marijuana use public health hotline that provides referrals to substance abuse treatment providers, utilizes evidence-based or research-based public health approaches to minimizing the harms associated with marijuana use, and does not solely advocate an abstinence-only approach;

(ii) A grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth; and

(iii) Media-based education campaigns across television, internet, radio, print, and out-of-home advertising, separately targeting youth and adults, that provide medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(c) Six-tenths of one percent to the University of Washington and four-tenths of one percent to Washington State University for research on the short and long-term effects of marijuana use, to include but not be limited to formal and informal methods for estimating and measuring intoxication and impairment, and for the dissemination of such research;

(d) Fifty percent to the state basic health plan trust account to be administered by the Washington basic health plan administrator and used as provided under chapter 70.47 RCW;

(e) Five percent to the Washington state health care authority to be expended exclusively through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services as provided under RCW 41.05.220;

(f) Three-tenths of one percent to the office of the superintendent of public instruction to fund grants to building bridges programs under chapter 28A.175 RCW; and

(g) The remainder to the general fund.

NEW SECTION. **Sec. 29.** The department of social and health services and the department of health shall, by December 1, 2013, adopt rules not inconsistent with the spirit of this act as are deemed necessary or advisable to carry into effect the provisions of section 28 of this act.

NEW SECTION. **Sec. 30.** (1) The Washington state institute for public policy shall conduct cost-benefit evaluations of the

implementation of this act. A preliminary report, and recommendations to appropriate committees of the legislature, shall be made by September 1, 2015, and the first final report with recommendations by September 1, 2017. Subsequent reports shall be due September 1, 2022, and September 1, 2032.

(2) The evaluation of the implementation of this act shall include, but not necessarily be limited to, consideration of the following factors:

(a) Public health, to include but not be limited to:

(i) Health costs associated with marijuana use;

(ii) Health costs associated with criminal prohibition of marijuana, including lack of product safety or quality control regulations and the relegation of marijuana to the same illegal market as potentially more dangerous substances; and

(iii) The impact of increased investment in the research, evaluation, education, prevention and intervention programs, practices, and campaigns identified in section 16 of this act on rates of marijuana-related maladaptive substance use and diagnosis of marijuana-related substance-use disorder, substance abuse, or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders;

(b) Public safety, to include but not be limited to:

(i) Public safety issues relating to marijuana use; and

(ii) Public safety issues relating to criminal prohibition of marijuana;

(c) Youth and adult rates of the following:

(i) Marijuana use;

(ii) Maladaptive use of marijuana; and

(iii) Diagnosis of marijuana-related substance-use disorder, substance abuse, or substance dependence, including primary, secondary, and tertiary choices of substance;

(d) Economic impacts in the private and public sectors, including but not limited to:

(i) Jobs creation;

(ii) Workplace safety;

(iii) Revenues; and

(iv) Taxes generated for state and local budgets;

(e) Criminal justice impacts, to include but not be limited to:

(i) Use of public resources like law enforcement officers and equipment, prosecuting attorneys and public defenders, judges and court staff, the Washington state patrol crime lab and identification and criminal history section, jails and prisons, and misdemeanant and felon supervision officers to enforce state criminal laws regarding marijuana; and

(ii) Short and long-term consequences of involvement in the criminal justice system for persons accused of crimes relating to marijuana, their families, and their communities; and

(f) State and local agency administrative costs and revenues.

PART V

DRIVING UNDER THE INFLUENCE OF MARIJUANA

Sec. 31. RCW 46.20.308 and 2008 c 282 s 2 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of

intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol or THC in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if:

(i) The driver is age twenty-one or over and the test indicates either that the alcohol concentration of the driver's breath or blood is 0.08 or more((~~,~~)) or that the THC concentration of the driver's blood is 5.00 or more; or ((~~if~~))

(ii) The driver is under age twenty-one and the test indicates either that the alcohol concentration of the driver's breath or blood is 0.02 or more((~~,~~)) or that the THC concentration of the driver's blood is above 0.00; or ((~~if~~))

(iii) The driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more, or the THC concentration of the person's blood is 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood is 0.02 or more, or the THC concentration of the person's blood is above 0.00, if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where

applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section and that the person waives the right to a hearing if he or she receives an ignition interlock driver's license;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol <u>or THC</u> concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her

blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of two hundred dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required two hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required two hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice

is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person was age twenty-one or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor

vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the

department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the

period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Sec. 32. RCW 46.20.3101 and 2004 c 95 s 4 and 2004 c 68 s 3 are each reenacted and amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within seven years, or for a first refusal where there has been one or more previous incidents within seven years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age twenty-one, whichever is longer.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.08 or more, or that the THC concentration of the person's blood was 5.00 or more:

(a) For a first incident within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, suspension for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.02 or more, or that the THC concentration of the person's blood was above 0.00:

(a) For a first incident within seven years, suspension or denial for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

(4) The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this section for a suspension, revocation, or denial imposed under RCW 46.61.5055 arising out of the same incident.

Sec. 33. RCW 46.61.502 and 2011 c 293 s 2 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

((~~(c)~~)) (d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant

notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)((~~(b) or~~)) (c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.504(6).

Sec. 34. RCW 46.61.503 and 1998 c 213 s 4, 1998 c 207 s 5, and 1998 c 41 s 8 are each reenacted and amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or marijuana if the person operates or is in physical control of a motor vehicle within this state and the person:

(a) Is under the age of twenty-one; and

(b) Has, within two hours after operating or being in physical control of the motor vehicle, either:

(i) An alcohol concentration of at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(ii) A THC concentration above 0.00 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's blood made under RCW 46.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving or being in physical control and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol or THC concentration to be in violation of subsection (1) of this section within two hours after driving or being in physical control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) Analyses of blood or breath samples obtained more than two hours after the alleged driving or being in physical control may be used as evidence that within two hours of the alleged driving or being in physical control, a person had an alcohol or THC concentration in violation of subsection (1) of this section.

(4) A violation of this section is a misdemeanor.

Sec. 35. RCW 46.61.504 and 2011 c 293 s 3 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

((~~(c)~~)) (d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of

the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)((~~(b) or~~)) (c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6).

Sec. 36. RCW 46.61.50571 and 2000 c 52 s 1 are each amended to read as follows:

(1) A defendant who is charged with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol or marijuana as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be required to appear in person before a judicial officer within one judicial day after the arrest if the defendant is served with a citation or complaint at the time of the arrest. A court may by local court rule waive the requirement for appearance within one judicial day if it provides for the appearance at the earliest practicable day following arrest and establishes the method for identifying that day in the rule.

(2) A defendant who is charged with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol or marijuana as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, and who is not served with a citation or complaint at the time of the incident, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived.

Sec. 37. RCW 46.61.506 and 2010 c 53 s 1 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per two hundred ten liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its

alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

PART VI

CONSTRUCTION

NEW SECTION. **Sec. 38.** Sections 4 through 18 of this act are each added to chapter 69.50 RCW under the subchapter heading "article III -- regulation of manufacture, distribution, and dispensing of controlled substances."

NEW SECTION. **Sec. 39.** Section 21 of this act is added to chapter 69.50 RCW under the subchapter heading "article IV -- offenses and penalties."

NEW SECTION. **Sec. 40.** Sections 26 through 30 of this act are each added to chapter 69.50 RCW under the subchapter heading "article V -- enforcement and administrative provisions."

NEW SECTION. **Sec. 41.** The code reviser shall prepare a bill for introduction at the next legislative session that corrects references to the sections affected by this act.

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that, on 1 February 2013, I caused to be electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Edward M. Burch
EDWARD M. BURCH