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SENATE BILL 5615

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Kohl-Welles, Kline, McDermott, and Murray

Read first time 01/27/09. Referred to Committee on Judiciary.

1            AN ACT Relating to reclassifying possession of forty grams or less  
2 of marijuana from a misdemeanor to a class 2 civil infraction; amending  
3 RCW 69.50.4014, 69.50.408, 69.50.412, and 10.31.100; adding a new  
4 section to chapter 69.50 RCW; repealing RCW 69.50.425; and prescribing  
5 penalties.

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

7            **Sec. 1.** RCW 69.50.4014 and 2003 c 53 s 335 are each amended to  
8 read as follows:

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

12            (2) Except as provided in RCW 69.50.401(2)(c) and subsection (1) of  
13 this section, any person found guilty of possession of forty grams or  
14 less of marihuana commits a class 2 civil infraction under chapter 7.80  
15 RCW with a monetary penalty of one hundred dollars.

16            **Sec. 2.** RCW 69.50.408 and 2003 c 53 s 341 are each amended to read  
17 as follows:

18            (1) Any person convicted of a second or subsequent offense under

1 this chapter may be imprisoned for a term up to twice the term  
2 otherwise authorized, fined an amount up to twice that otherwise  
3 authorized, or both.

4 (2) For purposes of this section, an offense is considered a second  
5 or subsequent offense, if, prior to his or her conviction of the  
6 offense, the offender has at any time been convicted under this chapter  
7 or under any statute of the United States or of any state relating to  
8 narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic  
9 drugs.

10 (3) This section does not apply to offenses under RCW 69.50.4013 or  
11 69.50.4014.

12 **Sec. 3.** RCW 69.50.412 and 2002 c 213 s 1 are each amended to read  
13 as follows:

14 (1) It is unlawful for any person to use drug paraphernalia to  
15 plant, propagate, cultivate, grow, harvest, manufacture, compound,  
16 convert, produce, process, prepare, test, analyze, pack, repack, store,  
17 contain, conceal, inject, ingest, inhale, or otherwise introduce into  
18 the human body a controlled substance. Any person who violates this  
19 subsection is guilty of a misdemeanor, except that any person eighteen  
20 years of age or older who violates this subsection in relation to an  
21 offense involving only marihuana and no other controlled substance  
22 commits a class 2 civil infraction under chapter 7.80 RCW with a  
23 monetary penalty of one hundred dollars.

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

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

36 (4) It is unlawful for any person to place in any newspaper,  
37 magazine, handbill, or other publication any advertisement, knowing, or

1 under circumstances where one reasonably should know, that the purpose  
2 of the advertisement, in whole or in part, is to promote the sale of  
3 objects designed or intended for use as drug paraphernalia. Any person  
4 who violates this subsection is guilty of a misdemeanor.

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

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 69.50 RCW  
9 to read as follows:

10 All monetary penalties collected for class 2 civil infractions  
11 committed under RCW 69.50.4014(2) or 69.50.412(1) shall be deposited in  
12 the criminal justice treatment account established under RCW  
13 70.96A.350.

14 **Sec. 5.** RCW 10.31.100 and 2006 c 138 s 23 are each amended to read  
15 as follows:

16 A police officer having probable cause to believe that a person has  
17 committed or is committing a felony shall have the authority to arrest  
18 the person without a warrant. A police officer may arrest a person  
19 without a warrant for committing a misdemeanor or gross misdemeanor  
20 only when the offense is committed in the presence of the officer,  
21 except as provided in subsections (1) through (10) of this section.

22 (1) Any police officer having probable cause to believe that a  
23 person has committed or is committing a misdemeanor or gross  
24 misdemeanor, involving physical harm or threats of harm to any person  
25 or property or the unlawful taking of property (~~or involving the use~~  
26 ~~or possession of cannabis~~), or involving the acquisition, possession,  
27 or consumption of alcohol by a person under the age of twenty-one years  
28 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
29 or 9A.52.080, shall have the authority to arrest the person.

30 (2) A police officer shall arrest and take into custody, pending  
31 release on bail, personal recognizance, or court order, a person  
32 without a warrant when the officer has probable cause to believe that:

33 (a) An order has been issued of which the person has knowledge  
34 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,  
35 26.50, or 74.34 RCW restraining the person and the person has violated  
36 the terms of the order restraining the person from acts or threats of

1 violence, or restraining the person from going onto the grounds of or  
2 entering a residence, workplace, school, or day care, or prohibiting  
3 the person from knowingly coming within, or knowingly remaining within,  
4 a specified distance of a location or, in the case of an order issued  
5 under RCW 26.44.063, imposing any other restrictions or conditions upon  
6 the person; or

7 (b) A foreign protection order, as defined in RCW 26.52.010, has  
8 been issued of which the person under restraint has knowledge and the  
9 person under restraint has violated a provision of the foreign  
10 protection order prohibiting the person under restraint from contacting  
11 or communicating with another person, or excluding the person under  
12 restraint from a residence, workplace, school, or day care, or  
13 prohibiting the person from knowingly coming within, or knowingly  
14 remaining within, a specified distance of a location, or a violation of  
15 any provision for which the foreign protection order specifically  
16 indicates that a violation will be a crime; or

17 (c) The person is sixteen years or older and within the preceding  
18 four hours has assaulted a family or household member as defined in RCW  
19 10.99.020 and the officer believes: (i) A felonious assault has  
20 occurred; (ii) an assault has occurred which has resulted in bodily  
21 injury to the victim, whether the injury is observable by the  
22 responding officer or not; or (iii) that any physical action has  
23 occurred which was intended to cause another person reasonably to fear  
24 imminent serious bodily injury or death. Bodily injury means physical  
25 pain, illness, or an impairment of physical condition. When the  
26 officer has probable cause to believe that family or household members  
27 have assaulted each other, the officer is not required to arrest both  
28 persons. The officer shall arrest the person whom the officer believes  
29 to be the primary physical aggressor. In making this determination,  
30 the officer shall make every reasonable effort to consider: (i) The  
31 intent to protect victims of domestic violence under RCW 10.99.010;  
32 (ii) the comparative extent of injuries inflicted or serious threats  
33 creating fear of physical injury; and (iii) the history of domestic  
34 violence between the persons involved.

35 (3) Any police officer having probable cause to believe that a  
36 person has committed or is committing a violation of any of the  
37 following traffic laws shall have the authority to arrest the person:

1 (a) RCW 46.52.010, relating to duty on striking an unattended car  
2 or other property;

3 (b) RCW 46.52.020, relating to duty in case of injury to or death  
4 of a person or damage to an attended vehicle;

5 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
6 racing of vehicles;

7 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
8 influence of intoxicating liquor or drugs;

9 (e) RCW 46.20.342, relating to driving a motor vehicle while  
10 operator's license is suspended or revoked;

11 (f) RCW 46.61.5249, relating to operating a motor vehicle in a  
12 negligent manner.

13 (4) A law enforcement officer investigating at the scene of a motor  
14 vehicle accident may arrest the driver of a motor vehicle involved in  
15 the accident if the officer has probable cause to believe that the  
16 driver has committed in connection with the accident a violation of any  
17 traffic law or regulation.

18 (5) Any police officer having probable cause to believe that a  
19 person has committed or is committing a violation of RCW 79A.60.040  
20 shall have the authority to arrest the person.

21 (6) An officer may act upon the request of a law enforcement  
22 officer in whose presence a traffic infraction was committed, to stop,  
23 detain, arrest, or issue a notice of traffic infraction to the driver  
24 who is believed to have committed the infraction. The request by the  
25 witnessing officer shall give an officer the authority to take  
26 appropriate action under the laws of the state of Washington.

27 (7) Any police officer having probable cause to believe that a  
28 person has committed or is committing any act of indecent exposure, as  
29 defined in RCW 9A.88.010, may arrest the person.

30 (8) A police officer may arrest and take into custody, pending  
31 release on bail, personal recognizance, or court order, a person  
32 without a warrant when the officer has probable cause to believe that  
33 an order has been issued of which the person has knowledge under  
34 chapter 10.14 RCW and the person has violated the terms of that order.

35 (9) Any police officer having probable cause to believe that a  
36 person has, within twenty-four hours of the alleged violation,  
37 committed a violation of RCW 9A.50.020 may arrest such person.

1 (10) A police officer having probable cause to believe that a  
2 person illegally possesses or illegally has possessed a firearm or  
3 other dangerous weapon on private or public elementary or secondary  
4 school premises shall have the authority to arrest the person.

5 For purposes of this subsection, the term "firearm" has the meaning  
6 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
7 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

8 (11) Except as specifically provided in subsections (2), (3), (4),  
9 and (6) of this section, nothing in this section extends or otherwise  
10 affects the powers of arrest prescribed in Title 46 RCW.

11 (12) No police officer may be held criminally or civilly liable for  
12 making an arrest pursuant to (~~RCW 10.31.100~~) subsection (2) or (8) of  
13 this section if the police officer acts in good faith and without  
14 malice.

15 NEW SECTION. **Sec. 6.** RCW 69.50.425 (Misdemeanor violations--  
16 Minimum penalties) and 2002 c 175 s 44 & 1989 c 271 s 105 are each  
17 repealed.

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