

# DRUG OFFENSES

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## Introduction

Whether governments admit it or not, there is still a war on drugs. With marijuana, many municipalities are inclined not to charge persons for possession of small amounts. However, medical marijuana outlets have been raided on an ambitious level. Drugs such as cocaine and methamphetamine invariably place an accused person in a much more difficult predicament. Specifically, prison time can be substantial and repeat offenders do not have favorable sentencing options available that first-time offenders do.

## RCW 69.50.101 Definitions

Definitions of drug terms include the following:

(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.

(1) (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, that the individual represents or intends to have 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; application;
- (ii) a substance for which there is an approved new drug
- (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.

(i) “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) “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substance 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.

(n) “Marijuana” or “marihuana” means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term

does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from) fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

(p) "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.

## **RCW 69.50.425 Misdemeanor Violations- Minimum Imprisonment**

A person who is convicted of a misdemeanor violation similar to the Uniform Controlled Substances Act shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason or granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred.

## **RCW 69.50.435 Violations Committed in or on Certain Public Places Of Facilities**

(a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

- (1) In a school;
- (2) On a school bus;
- (3) Within one thousand feet of a school bus route stop designated by the school district;
- (4) Within one thousand feet of the perimeter of the school grounds;
- (5) In a public park;
- (6) In a public housing project designated by a local governing authority as a drug-free zone;
- (7) On a public transit vehicle;
- (8) In a public transit stop shelter;
- (9) At a civic center designated as a drug-free zone by the local governing authority; or
- (10) Within one thousand feet of the perimeter of a facility designated under (9) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406 or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(b) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence.

(c) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school. school bus route stop. public park. public housing

project designed by a local governing authority as a drug-free zone. public transit vehicle stop shelter. or civic center designated as a drug-free zone by a local governing authority.

## **RCW 69.50.505. Seizure and Forfeiture**

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

- (1) 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 RCW964.44.010, used or intended to be used in the manufacture or controlled substances;
- (2) 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;
- (3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);
- (4) 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 paragraphs (1) or (2).

## **Drug-Related Enhancements**

Enhancements to the presumptive range for prison are required for certain drug offenses that occur in a protected zone (RCW 9.94A.510(6) or in correction facilities (RCW 9.94A.510(5)).

## **Protected Zone**

If an offender is sentenced for committing certain drug offenses in a protected zone, 24 months are added to the presumptive sentence, and the maximum imprisonment and fine are doubled (RCW 69/50.435).

Protected Zones include the following:

- Schools or school buses;
- 1,000 feet of a school bus route stop or a school ground perimeter;
- Public parks;
- Public transit vehicles or public transit stops;
- Civic centers or public housing projects designated as a drug-free zone by the local governing authority; or
- 10 to 1,000 feet of the perimeter of a facility designated as a civic center, if the local governing authority specifically designates the 1,000 foot perimeter.

When a convicted drug offender is subject to both RCW 69.50.435 (which doubles the maximum sentence that may be imposed for a drug offense committed in or near a public place or facility as specified by the statute) and RCW 9.94A.510(3) (which mandates enhanced sentences for offenses committed while armed with a firearm), the maximum sentence for the firearm enhancement should equal the statutory maximum for the offenses as doubled by RCW 69.50.435. *State v. Barajas*, 88 Wn. App. 387 (1997).

## Presence of a child

When an offender is convicted of the manufacture of a controlled substance under RCW 69.50.501, (a) relating to the manufacture of methamphetamine; or (b) possession of ephedrine or pseudoephedrine with the intent to manufacture methamphetamine, and there was a special allegation proven that the offender committed the crime when a person under the age of eighteen was present in or upon the premises of the manufacture, then 23 months are added to the presumptive sentence.

This information provided for informational purposes only, by:

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