SUPREME COURT NO. 90274-7

NO. 69853-2-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALEX BUCKINGHAM,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Thomas J. Wynne, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Alex Buckingham, respondent below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

The Petitioner seeks review of the Court of Appeals' unpublished decision in State v. Buckingham, No. 69858-2-I, filed April 21, 2014 ("Opinion"), attached as Appendix A.

C. ISSUE PRESENTED FOR REVIEW

Under the statutory amendments that became effective in 2011, the Medical Use of Cannabis Act (MUCA)[1] provides that certain activities, if performed in a manner consistent with MUCA, are no longer considered crimes. Police officers' observations suggesting that marijuana was being grown at the residence in question were, therefore, ambiguous as to whether a crime was being committed. Did the trial court correctly conclude that the State failed to establish probable cause to issue a search warrant?[2]

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[1] Chapter 69.51A RCW.

[2] This case presents issues nearly identical to those in State v. Ellis, 178 Wn. App. 801, 315 P.3d 1170 (2013) (Division Three) and State v. Reis, ___ Wn. App. ___, 322 P.3d 1238 (2014) (Division One). The appellant in Ellis filed a petition under case no. 89928-2. According to ACORDS, Ellis is set for consideration at an en banc conference on June 5, 2014. A petition for review was filed in Reis (COA no. 69911-3-I) on April 31, 2014. As of writing, Reis has not been assigned a case number in this Court.

D. STATEMENT OF THE CASE

On November 22, 2011, police officers obtained a search warrant at a residence in Everett. The affidavit in support of the search warrant detailed a search at that residence that had occurred on March 12, 2009. CP 58-62. That search revealed a marijuana growing operation with 418 plants. The affidavit explained that as a result of that search, the owner of the residence, Daniel Dean, pleaded guilty to conspiracy to manufacture marijuana. In addition, Alex Buckingham and Ashley Byrne, who were living in the home, each pleaded guilty to misdemeanor marijuana charges. CP 60.

The affidavit also stated that as part of the seizure process related to the previous search, on October 27, 2011, a police officer went to the property to determine whether it was still occupied. CP 60. As the officer approached the front door, he smelled fresh or growing marijuana. Parked in the driveway was a Kia registered to Byrne at Dean's residential address in Edmonds. The next day, two other officers returned to the property. One officer smelled fresh or growing marijuana. On November 18, an officer saw a Toyota 4Runner under the carport of the residence. CP 60. The 4Runner was registered to Buckingham. On November 22, both the 4Runner and the Kia were parked at the property. CP 61.

The affidavit also included information from public utility district records regarding the property. The records listed Dean as the subscriber and indicated the bi-monthly power usage was "high," suggesting the presence of a marijuana grow. CP 61.

Based on this information, the district court issued the search warrant. The search revealed an operation with four grow rooms holding a total of 275 marijuana plants, 70 grams of processed marijuana, and more than two kilograms of "shake." CP 214.

The State charged Buckingham with manufacturing a controlled substance. CP 216-17. He moved to suppress the evidence found in the search, arguing that the 2011 amendments MUCA required probable cause to believe that a marijuana grow is inconsistent with MUCA. CP 17.

The superior court concluded:

> [W]ithin the four corners of the warrant, probable cause has not been established and therefore all the evidence in this case is suppressed. Under the medical marijuana law of 2011, an affirmative defense does not come into play until after probable cause is established, this is not the situation in this case. In this case there was nothing in the warrant in which the affiant addressed the issue of whether the provisions of the medical marijuana law were being broken and therefore there was no probable cause that a crime was being committed in the 4 corners of the warrant.

CP 6-7. Accordingly, the court granted Buckingham's motion, suppressed the evidence, and dismissed the case, although it reserved ruling on two other issues raised by the defense. CP 7.

The State appealed, arguing that based on the Governor's veto of certain portions of the 2011 amendments providing for registration of qualifying patients and designated providers, only an affirmative defense was available. This Court's decision in State v. Fry, 168 Wn.2d 1, 5, 228 P.3d 1 (2010) therefore controlled. Brief of Appellant (BOA) at 5-11. The State also argued that even if the Governor had not vetoed portions of the amendments, the decriminalization language would not have been available as of November 2011 because the registry would not have been up and running. BOA at 11-12; Opinion at 5 n. 3.

Buckingham responded that, notwithstanding the veto – which rendered the effective date of the registry irrelevant – the remaining language of the amendments established that manufacture consistent with MUCA was no longer a crime. Brief of Respondent (BOR) at 7. Even if the veto rendered the remaining decriminalization language ambiguous, such language must be interpreted against the State. BOR at 12. While the November 2011 search warrant affidavit may have established the police officers suspected there was growing marijuana at the residence, they did not know how many plants were being grown or the status of the

residents. Officers therefore did not know whether the grow operation was permitted under MUCA. The State thus failed to establish probable cause to believe a crime was being committed. BOR at 2.

In the April 21, 2014 opinion, Division One of the Court of Appeals accepted the State's argument and reversed the trial court. The court adopted its own reasoning in State v. Reis, __ Wn. App. ___, 322 P.3d 1238, 1246 (2014), a case argued the same day but decided three weeks before the opinion in this case. Opinion at 3-7.

E. REASONS REVIEW SHOULD BE ACCEPTED

THIS COURT SHOULD ACCEPT REVIEW OF THIS CASE UNDER RAP 13.4 (b)(4).

This Court should accept review because the issue presented, establishment of probable cause following the 2011 amendments to MUCA, is one of substantial public interest. RAP 13.4 (b)(4).

In 2011, the Legislature made substantial changes to MUCA. The amended statute provided that "medical use of cannabis in accordance with the terms and conditions of this chapter *does not constitute a crime.*" RCW 69.51A.040 (emphasis added); Laws of 2011, ch. 181, § 401 (eff. July 22, 2011).[3] In addition, RCW 69.51A.025 provides that "[n]othing in this chapter . . . precludes a qualifying patient or designated provider from

[3] RCW 69.51A.040 is attached to this petition as Appendix B.

engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use . . . ." Laws of 2011, ch. 181, § 413.[4] The earlier versions of the statute contained no such language. Laws of 2007, ch. 371, § 5; Laws of 1999 ch. 2, § 5 (Initiative Measure No. 692, approved November 3, 1998). In enacting the amendments, the Legislature expressed its intent to decriminalize the medical use and provision of cannabis. RCW 69.51A.005(2) ("Purpose and Intent"); Laws of 2011, ch. 181, § 102.[5] See also State v. Kurtz, 178 Wn.2d 466, 476, 309 P.3d 472 (2013) (in case affirming the existence of a necessity defense to marijuana possession and manufacturing, observing that 2011 amendments made cannabis use under MUCA "legal" rather than merely providing an affirmative defense, citing RCW 69.51A.005(2) and .040).

As Buckingham argued below, read together, RCW 69.51A.025 and .040 plainly indicate the Legislature's intention to decriminalize the use, delivery, and production of marijuana for medical use under certain circumstances. This language is consistent with the Legislature's intent in adopting the amendments. RCW 69.51A.005(2). BOR at 7-12. Although

[4] RCW 69.51A.025 is attached to this petition as Appendix C.

[5] RCW 69.51A.005 is attached to this petition as Appendix D.

the Court of Appeals read this language out of MUCA, it is not affected by the Governor's veto of other portions of the statute.

The Court of Appeals' opinion discusses only the provisions of RCW 69.51A.040, noting that the decriminalization language is predicated on certain requirements that include registration, an impossibility following the veto. Opinion at 6. But in doing so, the court improperly disregards RCW 69.51A.025 and .005(2). See State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (statutes should be interpreted to give effect to all language in the statute and to render no portion meaningless or superfluous).

Moreover, the Governor's veto was based on concerns that registration- and licensing-related activities could place state employees at risk of federal prosecution. The Governor took care to veto other provisions she believed were "associated with or dependent upon these licensing sections." See Laws of 2011, ch. 181, § 101 (legislative declaration and intent section, mentioning registry); § 201 (definitions section including registry-related definitions); § 410 (provision limiting refusal of and eviction from housing based on cannabis use, vetoed based on potential conflict with federal law); §§ 601-11 (provisions relating to licensing of producers and processors); §§ 701-05 (provisions relating to licensing of dispensers); §§ 801-08 (miscellaneous provisions applying to producers, processors and dispensers, including prohibition on advertising and establishment of civil

penalties); § 901 (requiring state departments of health and agriculture to create registration system); § 1104 (provision requiring legislative review of statutes if medical marijuana authorized by federal statute vetoed based on connection to licensing provision); § 1201 (licensing of and affirmative defense for preexisting dispensaries); see also Engrossed Second Substitute Senate Bill 5073, "Governor's explanation of partial veto," at 42-44, (accessed at http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Laws/Senate/5073-S2.SL.pdf, and attached to this petition as Appendix E).[6]

But as the above summaries indicate, the Governor did not veto the language decriminalizing the medical use of marijuana. As such, provisions relating to such decriminalization were passed into law. Indeed, the Governor's "explanation of partial veto" reiterates her support of the original initiative and 2007 amendments expanding the availability of medical marijuana. The Governor's statement goes on to reassure that "[q]ualifying patients or their designated providers may grow cannabis for the patient's use or participated in a collective garden *without fear of state criminal*

[6] The Governor also vetoed § 407, creating an affirmative defense for non-residents authorized under another state's scheme, because that section "would not require these other state or territorial laws to meet the same standards for health care professional authorization as required by Washington law." Appendix E at 43.

prosecutions." (Emphasis added.) Appendix E at 42. The Governor's veto of the registration requirements thus does not vitiate the decriminalization language. See also Laws of 2011, ch. 181, § 102 (section not vetoed, amending RCW 69.51A.005, which formerly read qualifying patients "shall not be found guilty of a crime under state law for their possession and limited use of marijuana," to state patients "shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis").

Buckingham argued below that, in any event, the language of MUCA taken as a whole was ambiguous and must be interpreted against the State. BOR at 12 (citing State v. Slattum, 173 Wn. App. 640, 657-58, 295 P.3d 788 (2013) (because the word "imprisonment" in statute providing for state-funded post-conviction DNA testing is ambiguous, the rule of lenity required this Court to construe this statute strictly against the State).

While the court did not explicitly address this argument in Buckingham's case, it did so in Reis, finding that

> RCW 69.51A.040 is not ambiguous; it plainly sets forth certain requirements that cannot be met by anyone until and unless the Act is amended to provide for a registry. The rule of lenity does not apply.

322 P.3d at 1246. But this ignores the other provisions unaffected by the Governor's veto. See, e.g., RCW 69.51A.005(2) (unvetoed statement of legislative intent in adopting the 2011 amendments). It also ignores the rationale behind the rule of lenity: Fair notice to the public. Even this Court has read the 2011 amendments as decriminalizing the behavior consistent with MUCA. Kurtz, 178 Wn.2d at 476.[7]

In summary, this Court should accept review because the issue is one of substantial public interest. The issue is recurring, as indicated by the multiple cases now being considered by this Court. The issue is an important one, as it involves the parameters of police enforcement of drug laws. This case is appropriate for review under RAP 13.4(b)(4).

[7] The Opinion also notes the affirmative defense under MUCA, RCW 69.51A.043, remains viable, apparently reinforcing that Fry controls the analysis. Opinion at 6. But unlike the Reis petitioner, Buckingham did not argue the affirmative defense was no longer valid. Rather, he argued RCW 69.51A.043 does not conflict with the decriminalization aspects the 2011 amendments. "Construed consistently with those provisions, it may be viewed as a second means of protection for authorized patients and providers." BOR at 12 (citing J.P., 149 Wn.2d at 450).

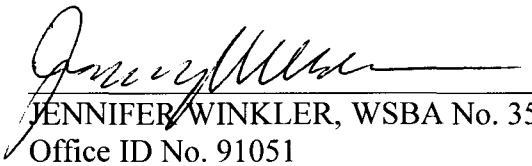
F. CONCLUSION

For the reasons stated, this Court should accept review of Mr. Buckingham's case.

DATED this 20TH day of May, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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APPENDIX A

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. ALEX ROBERT BUCKINGHAM, Respondent.	)	No. 69853-2-I DIVISION ONE UNPUBLISHED OPINION FILED: April 21, 2014

SPEARMAN, C.J. — The State appeals from the trial court's order granting Alex Buckingham's motion to suppress evidence and dismiss the charge against him for manufacture of a controlled substance. The issue before us is whether the 2011 amendments to the Medical Use of Cannabis Act (MUCA), chapter 69.51A RCW, require a search warrant to be based on probable cause of a violation of the Act specifically, rather than merely probable cause of a violation of our state's marijuana laws.[1] Having recently decided this issue in State v. Reis, No. 69911-3-I, 2014 WL 1284863 (Mar. 31, 2014), we reverse and remand.

[1] Initiative 502, passed in November 2012, legalized possession of small amounts of marijuana for individuals over 21 years of age. See RCW 69.50.401(3). Initiative 502 has no bearing on this case.

FACTS

On November 22, 2011, law enforcement executed, pursuant to a search warrant, a search at a residence in Everett. The affidavit in support of the search warrant detailed a search at that residence that had occurred on March 12, 2009. CP 58-62. That search revealed a marijuana growing operation with 418 plants. The affidavit explained that as a result of that search, the owner of the residence, Daniel Dean, pleaded guilty to conspiracy to manufacture marijuana. Alex Buckingham and Ashley Byrne, who were living in the home and apparently tending the grow operation, both pleaded guilty to misdemeanor marijuana charges.

The affidavit further stated that on October 27, 2011, a police officer had gone to the property to determine whether it was still occupied. As he approached the front door, he smelled fresh or growing marijuana. Parked in the driveway was a Kia registered to Byrne at Dean's residential address in Edmonds. The next day, two other officers returned to the property. One officer smelled fresh or growing marijuana. On November 18, an officer observed a Toyota 4Runner under the carport of the residence. The 4Runner was registered to Buckingham. On November 22, both the 4Runner and the Kia were parked at the property.

The affidavit also included information from public utility district records regarding the property, which listed Dean as the subscriber and showed that the bi-monthly power usage averaged 10,903 kilowatts. This was a high amount that indicated the presence of an indoor marijuana growing operation.

Based on this information, the district court issued the search warrant. The search revealed a grow operation with four grow rooms holding a total of 275 marijuana plants, 70 grams of processed marijuana, and over 2,000 grams of shake.

Buckingham was charged with manufacture of a controlled substance. He moved to suppress the evidence found in the search, arguing that the 2011 amendments to the Act required probable cause that a grow operation is illegal under MUCA. CP 17. The trial court concluded:

> [W]ithin the four corners of the warrant, probable cause has not been established and therefore all the evidence in this case is suppressed. Under the medical marijuana law of 2011, an affirmative defense does not come into play until after probable cause is established, this is not the situation in this case. In this case there was nothing in the warrant in which the affiant addressed the issue of whether the provisions of the medical marijuana law were being broken and therefore there was no probable cause that a crime was being committed in the 4 corners of the warrant.

Clerk's Papers (CP) at 3-4.

Accordingly, the trial court granted Buckingham's motion, suppressed the evidence, and dismissed the case. The State appeals.

DISCUSSION

"We review conclusions of law from an order pertaining to the suppression of evidence de novo." State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009) (citing State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002)).

"A search warrant must be based upon probable cause." State v. Merkt, 124 Wn. App. 607, 612, 102 P.3d 828 (2004) (citing State v. Cole, 128 Wn.2d

262, 286, 906 P.2d 925 (1995). "Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (citing Cole, 128 Wn.2d at 286).

The State argues that the broad protections in RCW 69.51A.040 against arrest, prosecution, criminal sanctions, and civil consequences are limited to designated patients and qualifying providers who are listed in a state registry. Because the governor vetoed those sections that would have created the registry, it is not possible to qualify for these protections. In State v. Fry, 168 Wn.2d 1, 5, 228 P.3d 1 (2010), a plurality of the Washington Supreme Court, analyzing a prior version of MUCA, held that the possible existence of an affirmative defense under Washington's medical marijuana laws does not defeat probable cause when a trained officer detects the odor of marijuana. And the current version of MUCA expressly provides that an unregistered patient or provider may raise an affirmative defense at trial. RCW 69.51A.043. Therefore, according to the State, defendants are left with an affirmative defense that can be raised at trial, and a showing of probable cause need not negate that defense.

Buckingham argues that the use and cultivation of medical marijuana is presumptively legal under the plain language of RCW 69.51A.040 as amended in

2011.[2] He contends that Fry is no longer applicable as a result of the 2011 amendments to MUCA, because the amended statute now provides an exception to the general prohibition on possession of controlled substances. Thus, law enforcement officials must demonstrate probable cause of a violation of MUCA to obtain a search warrant, and show that the exception does not apply.[3]

We recently addressed these arguments in Reis, 2014 WL 1284863. In Reis, a detective sought a search warrant for the defendant's residence based on observations indicating that marijuana was being grown indoors. The district court concluded that there was probable cause to believe a violation of the Uniform Controlled Substances Act, chapter 69.50 RCW, had been committed, and it issued a search warrant. After officers seized evidence of a marijuana grow operation, Reis was charged with manufacture of marijuana in violation of the Uniform Controlled Substances Act. Reis moved to suppress the evidence, arguing that the search warrant was not supported by probable cause. The trial court denied his motion, and this court granted discretionary review.

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[2] RCW 69.51A.040 as amended provides that "[t]he medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences . . ." if certain specified requirements are met.

[3] The State in Buckingham's case makes an additional argument not made in Reis's. It argues that because the search in his case took place in November 2011, the benefits of registration were unavailable to him in any event because he could not possibly have qualified for them. It points out that the department of health was to have been given until January 1, 2013 to adopt rules governing the registry, ch. 181, § 901(1) (vetoed), and that no registry would have existed in November 2011. Thus, it contends, he was entitled only to a possible affirmative defense, which need not be negated to establish probable cause. Because we conclude RCW 69.51A.040 does not make medical marijuana use presumptively legal, the argument is unnecessary and we need not address it.

Reis argued that the plain language of RCW 69.51A.040 as amended in 2011 made the use and cultivation of medical marijuana presumptively legal in certain circumstances. He asserted that Fry no longer applies and that police must demonstrate probable cause of a violation of MUCA to obtain a search warrant. We disagreed with Reis and held that the trial court did not err in denying Reis's motion to suppress.

First, we noted that the plain language of RCW 69.51A.040 as amended provides heightened protections against arrest, prosecution, criminal sanctions or civil consequences only if certain specified requirements are met, including registration with the department of health. Because the governor vetoed the section of the law establishing a registry, it is impossible to register. We rejected Reis's argument that the governor's veto eliminated the affirmative defense, as "[s]uch an interpretation is at odds with the plain language of the statute as amended by the legislation." Reis, 2014 WL 1284863 at 15. Accordingly, we held:

> RCW 69.51A.040 cannot currently be enforced to the extent an individual asserts medical marijuana use "in accordance with the terms and conditions of this chapter." The protections against arrest, prosecution, criminal sanctions, and civil consequences would apply only to qualifying patients and designated providers who are registered. Currently no one can register. Thus, qualifying patients and designated providers may assert an affirmative defense. Under Fry, the possible existence of an affirmative defense does not negate probable cause. The trial court did not err in denying Reis's motion to suppress.[4]

Id. at 16-17.

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[4] Footnotes omitted.

Applying this reasoning to Buckingham's case, we conclude that the trial court erred in granting his motion to suppress. The search warrant affidavit established that the police officers suspected an indoor marijuana growing operation, in violation of the Uniform Controlled Substances Act. The affidavit was not required to show that the operation violated MUCA. We therefore reverse the suppression order. Because the order of dismissal was predicated solely on the suppression order, we reverse the dismissal as well and remand for further proceedings.

We reverse and remand.

Spearman, C.J.

WE CONCUR:

Dwyer, J.

Schindler, J.

APPENDIX B

Westlaw

West's RCWA 69.51A.040 Page 1

Effective: July 22, 2011

West's Revised Code of Washington Annotated Currentness
Title 69. Food, Drugs, Cosmetics, and Poisons (Refs & Annos)
Chapter 69.51A. Medical Marijuana (Refs & Annos)

→→ 69.51A.040. Compliance with chapter--Qualifying patients and designated providers not subject to penalties--Law enforcement not subject to liability

The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:

(1)(a) The qualifying patient or designated provider possesses no more than fifteen cannabis plants and:

(i) No more than twenty-four ounces of useable cannabis;

(ii) No more cannabis product than what could reasonably be produced with no more than twenty-four ounces of useable cannabis; or

(iii) A combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis.

(b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in (a) of this subsection, whether the plants, useable cannabis, and cannabis product are possessed individually or in combination between the qualifying patient and his or her designated provider;

(2) The qualifying patient or designated provider presents his or her proof of registration with the department of health, to any peace officer who questions the patient or provider regarding his or her medical use of can- nabis;

(3) The qualifying patient or designated provider keeps a copy of his or her proof of registration with the re-

gistry established in *section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence;

(4) The investigating peace officer does not possess evidence that:

(a) The designated provider has converted cannabis produced or obtained for the qualifying patient for his or her own personal use or benefit; or

(b) The qualifying patient has converted cannabis produced or obtained for his or her own medical use to the qualifying patient's personal, nonmedical use or benefit;

(5) The investigating peace officer does not possess evidence that the designated provider has served as a designated provider to more than one qualifying patient within a fifteen-day period; and

(6) The investigating peace officer has not observed evidence of any of the circumstances identified in *section 901(4) of this act.

CREDIT(S)

[2011 c 181 § 401, eff. July 22, 2011; 2007 c 371 § 5, eff. July 22, 2007; 1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

West's RCWA 69.51A.040, WA ST 69.51A.040

END OF DOCUMENT

APPENDIX C

Westlaw.

West's RCWA 69.51A.025

Effective: July 22, 2011

West's Revised Code of Washington Annotated Currentness
Title 69. Food, Drugs, Cosmetics, and Poisons (Refs & Annos)
Chapter 69.51A. Medical Marijuana (Refs & Annos)
69.51A.025. Construction of chapter--Compliance with RCW 69.51A.040

Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

CREDIT(S)

[2011 c 181 § 413, eff. July 22, 2011.]

West's RCWA 69.51A.025, WA ST 69.51A.025

Current with 2013 Legislation effective through August 1, 2013

END OF DOCUMENT

APPENDIX D

C

Effective: July 22, 2011

West's Revised Code of Washington Annotated Currentness
Title 69. Food, Drugs, Cosmetics, and Poisons (Refs & Annos)
Chapter 69.51A. Medical Marijuana (Refs & Annos)
→→ 69.51A.005. Purpose and intent

(1) The legislature finds that:

(a) There is medical evidence that some patients with terminal or debilitating medical conditions may, under their health care professional's care, benefit from the medical use of cannabis. Some of the conditions for which cannabis appears to be beneficial include, but are not limited to:

(i) Nausea, vomiting, and cachexia associated with cancer, HIV-positive status, AIDS, hepatitis C, anorexia, and their treatments;

(ii) Severe muscle spasms associated with multiple sclerosis, epilepsy, and other seizure and spasticity dis- orders;

(iii) Acute or chronic glaucoma;

(iv) Crohn's disease; and

(v) Some forms of intractable pain.

(b) Humanitarian compassion necessitates that the decision to use cannabis by patients with terminal or debilitating medical conditions is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.

(2) Therefore, the legislature intends that:

(a) Qualifying patients with terminal or debilitating medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of cannabis, shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;

(b) Persons who act as designated providers to such patients shall also not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of cannabis; and

(c) Health care professionals shall also not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law for the proper authorization of medical use of cannabis by qualifying patients for whom, in the health care professional's professional judgment, the medical use of cannabis may prove beneficial.

(3) Nothing in this chapter establishes the medical necessity or medical appropriateness of cannabis for treating terminal or debilitating medical conditions as defined in RCW 69.51A.010.

(4) Nothing in this chapter diminishes the authority of correctional agencies and departments, including local governments or jails, to establish a procedure for determining when the use of cannabis would impact community safety or the effective supervision of those on active supervision for a criminal conviction, nor does it create the right to any accommodation of any medical use of cannabis in any correctional facility or jail.

CREDIT(S)

[2011 c 181 § 102, eff. July 22, 2011; 2010 c 284 § 1, eff. June 10, 2010; 2007 c 371 § 2, eff. July 22, 2007; 1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

West's RCWA 69.51A.005, WA ST 69.51A.005

END OF DOCUMENT

APPENDIX E

*__NEW SECTION.__ *Sec. 1203. (1)(a) On July 1, 2015, the department of health shall report the following information to the state treasurer:*

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW between the effective date of this section and June 30, 2015; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act between the effective date of this section and June 30, 2015.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

(2)(a) Annually, beginning July 1, 2016, the department of health shall report the following information to the state treasurer:

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW for the preceding fiscal year; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act during the preceding fiscal year.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

**Sec. 1203 was vetoed. See message at end of chapter.*

__NEW SECTION.__ **Sec. 1204.** RCW 69.51A.080 (Adoption of rules by the department of health--Sixty-day supply for qualifying patients) and 2007 c 371 s 8 are each repealed.

__NEW SECTION.__ **Sec. 1205.** Sections 402 through 411, 413, 601 through 611, 701 through 705, 801 through 807, 901, 1001, 1101 through 1105, and 1201 of this act are each added to chapter 69.51A RCW.

*__NEW SECTION.__ *Sec. 1206. Section 1002 of this act takes effect January 1, 2013.*

**Sec. 1206 was vetoed. See message at end of chapter.*

Passed by the Senate April 21, 2011.
Passed by the House April 11, 2011.
Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State April 29, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 101, 201, 407, 410, 411, 412, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806, 807, 901, 902, 1104, 1201, 1202, 1203 and 1206, Engrossed Second Substitute Senate Bill 5073 entitled:

"AN ACT Relating to medical use of cannabis."

In 1998, Washington voters made the compassionate choice to remove the fear of state criminal prosecution for patients who use medical marijuana for debilitating or terminal conditions. The voters also provided patients' physicians and caregivers with defenses to state law prosecutions.

I fully support the purpose of Initiative 692, and in 2007, I signed legislation that expanded the ability of a patient to receive assistance from a designated provider in the medical use of marijuana, and added conditions and diseases for which medical marijuana could be used.

Today, I have signed sections of Engrossed Second Substitute Senate Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. Qualifying patients or their designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences.

Our state legislature may remove state criminal and civil penalties for activities that assist persons suffering from debilitating or terminal conditions. While such activities may violate the federal Controlled Substances Act, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. However, absent congressional action, state laws will not protect an individual from legal action by the federal government.

Qualifying patients and designated providers can evaluate the risk of federal prosecution and make choices for themselves on whether to use or assist another in using medical marijuana. The United States Department of Justice has made the wise decision not to use federal resources to prosecute seriously ill patients who use medical marijuana.

However, the sections in Part VI, Part VII, and Part VIII of Engrossed Second Substitute Senate Bill 5073 would direct employees of the state departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis. These sections would open public employees to federal prosecution, and the United States Attorneys have made it clear that state law would not provide these individuals safe harbor from federal prosecution. No state employee should be required to violate federal criminal law in order to fulfill duties under state law. For these reasons, I have vetoed Sections 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806 and 807 of Engrossed Second Substitute Senate Bill 5073.

In addition, there are a number of sections of Engrossed Second Substitute Senate Bill 5073 that are associated with or dependent upon these licensing sections. Section 201 sets forth definitions of terms. Section 412 adds protections for licensed producers, processors and dispensers. Section 901 requires the Department of Health to develop a secure registration system for licensed producers,

processors and dispensers. Section 1104 would require a review of the necessity of the cannabis production and dispensing system if the federal government were to authorize the use of cannabis for medical purposes. Section 1201 applies to dispensaries in current operation in the interim before licensure, and Section 1202 exempts documents filed under Section 1201 from disclosure. Section 1203 requires the department of health to report certain information related to implementation of the vetoed sections. Because I have vetoed the licensing provisions, I have also vetoed Sections 201, 412, 901, 1104, 1201, 1202 and 1203 of Engrossed Second Substitute Senate Bill 5073.

Section 410 would require owners of housing to allow the use of medical cannabis on their property, putting them in potential conflict with federal law. For this reason, I have vetoed Section 410 of Engrossed Second Substitute Senate Bill 5073.

Section 407 would permit a nonresident to engage in the medical use of cannabis using documentation or authorization issued under other state or territorial laws. This section would not require these other state or territorial laws to meet the same standards for health care professional authorization as required by Washington law. For this reason, I have vetoed Section 407 of Engrossed Second Substitute Senate Bill 5073.

Section 411 would provide that a court may permit the medical use of cannabis by an offender, and exclude it as a ground for finding that the offender has violated the conditions or requirements of the sentence, deferred prosecution, stipulated order of continuance, deferred disposition or dispositional order. The correction agency or department responsible for the person's supervision is in the best position to evaluate an individual's circumstances and medical use of cannabis. For this reason, I have vetoed Section 411 of Engrossed Second Substitute Senate Bill 5073.

I am approving Section 1002, which authorizes studies and medical guidelines on the appropriate administration and use of cannabis. Section 1206 would make Section 1002 effective January 1, 2013. I have vetoed Section 1206 to provide the discretion to begin efforts at an earlier date.

Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve Section 1102.

I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. Such exemption from state criminal penalties should be conditioned on compliance with local government location and health and safety specifications.

I am also open to legislation that establishes a secure and confidential registration system to provide arrest and seizure protections under state law to qualifying patients and those who assist them. Unfortunately, the provisions of Section 901 that would provide a registry for qualifying patients and designated providers beginning in January 2013 are intertwined with requirements for

registration of licensed commercial producers, processors and dispensers of cannabis. Consequently, I have vetoed section 901 as noted above. Section 101 sets forth the purpose of the registry, and Section 902 is contingent on the registry. Without a registry, these sections are not meaningful. For this reason, I have vetoed Sections 101 and 902 of Engrossed Second Substitute Senate Bill 5073. I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

With the exception of Sections 101, 201, 407, 410, 411, 412, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806, 807, 901, 902, 1104, 1201, 1202, 1203 and 1206, Engrossed Second Substitute Senate Bill 5073 is approved."

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, vs. ALEX BUCKINGHAM, Appellant.	)))))))))	SUPREME COURT NO. _____ COA NO. 69853-2-I

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20TH DAY OF MAY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE
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EVERETT, WA 98201
Diane.Kremenich@co.snohomish.wa.us

[X] ALEX BUCKINGHAM
5978 DEER STREET
WEST RICHLAND, WA 99353

SIGNED IN SEATTLE WASHINGTON, THIS 20TH DAY OF MAY, 2014.

x Patrick Mayovsky