Effective Drug Control – A New Legal Framework

State Regulation and Control of Psychoactive Substances as a Workable Alternative to the "War on Drugs"

Frequently Asked Questions

1. What is the mission of the King County Bar Association Drug Policy Project?

The King County Bar Association, through its Drug Policy Project, has been promoting a public health approach to the chronic societal problem of substance abuse, stressing the need to shift resources into research, education, prevention and treatment as an alternative to the continued use of criminal sanctions, which has proven to be a relatively expensive, ineffective and inhumane approach to reduce the harms of psychoactive drug use. The principal objectives of this drug policy reform effort are:

- reductions in crime and public disorder;
- improvement of the public health;
- better protection of children; and
- wiser use of scarce public resources.

By any measure, current drug control policies have failed to achieve those objectives.

2. What is the current drug policy position of the King County Bar Association?

In 2001 the King County Bar Association adopted a comprehensive statement on drug policy, asserting that the current "War on Drugs" is fundamentally flawed and is associated with numerous negative societal consequences, including:

- the failure to reduce problematic drug use, particularly among children;
- dramatic increases in crime related to prohibited drugs, including economic crimes related to addiction and the fostering of efficient and violent criminal enterprises that have occupied the unregulated and immensely profitable commercial market made possible by drug prohibition;
- skyrocketing public costs arising from both increased drug abuse and increased crime;
- erosion of public health from the spread of disease, from the concealment and inadequate treatment of addiction and from undue restrictions on proper medical treatment of pain;
- the abridgement of civil rights through summary forfeitures of property, invasions of privacy and violations of due process;
- disproportionately adverse effects of drug law enforcement on the poor and persons of color;
- the clogging of the courts and compromises in the effective administration of justice, as well as a loss of respect for the law.

Based on these findings, the King County Bar Association concluded that, rather than criminally punish persons for drug use *per se*, any state sanction or remedy should be aimed at reducing the harm directly caused to others by persons using drugs, and that unmitigated criminal sanctions should continue to be imposed upon persons who commit theft, burglary, fraud, forgery and all other criminal offenses, but such offenders should have the opportunity to receive drug treatment if their crimes are related to drug addiction.

Further, the King County Bar Association recognized the breadth of federal drug law as a major impediment to any fundamental and meaningful drug policy reform and asserted that federal law should permit the states to develop their own drug control strategies and structures, using the following principles to guide such state-level efforts:

a) Any public policy toward drug use should seek to result in no more harm than the use of the drugs themselves;

b) Any public policy toward drug use should address the underlying causes and the resulting harms of drug abuse instead of attempting to discourage drug use through the imposition of criminal sanctions;

c) The state should regulate the use of drugs in a manner that recognizes citizens' individual liberties while answering the need to preserve public health, public safety and public order, especially providing compassionate treatment to those in need; and

d) The state should regulate the use of drugs in a manner that uses scarce public resources as efficiently as possible.

3. What initiative is the KCBA Drug Policy Project currently engaged in?

The King County Bar Association has established a growing coalition of professional and civic groups supporting drug policy reform, including the King County Medical Society, the Church Council of Greater Seattle, the Loren Miller Bar Association, the Seattle League of Women Voters, the Washington Academy of Family Physicians, the Washington Osteopathic Medical Association, Washington Physicians for Social Responsibility, the Washington Society of Addiction Medicine, the Washington State Bar Association, the Washington State Medical Association, the Washington State Pharmacy Association, the Washington State Psychiatric Association, the Washington State Psychological Association and the Washington State Public Health Association.

For the last three years, the King County Bar Association and its coalition partners have been developing the parameters of an alternative legal framework for drug control, engaging over a dozen task forces and working groups comprised of hundreds of participants, including lawyers, judges, doctors, pharmacists, law enforcement officers, health care professionals, drug treatment specialists, scholars, educators and others who have spent thousands of hours investigating and analyzing the problems arising from the sale and use of prohibited psychoactive substances, especially the problems arising from the operation of the illegal markets in which such substances are exclusively produced and distributed. This effort has generated sufficient interest to allow for full-time professional staff support.

4. What is the King County Bar Association's new drug policy proposal?

As a result of its intensive study, the King County Bar Association is recommending the establishment of a state-level system of regulatory control over those psychoactive substances that are currently produced and distributed exclusively in illegal markets. The main purposes of such a state-level regulatory system would be:

- to render the illegal markets for psychoactive substances unprofitable, thereby eliminating the incentives for criminal enterprises to engage in the violent, illegal drug trade;
- to restrict access to psychoactive substances by young persons much more effectively than the current drug control scheme; and
- to open many new gateways to treatment so as to provide prompt health care and essential services to persons suffering from drug addiction.

These goals conform to the principal objectives established at the outset of the King County Bar Association's overall drug policy reform effort – reducing crime, improving health, protecting children and saving public resources.

The King County Bar Association and its coalition partners are not currently proposing specific legislation and do not presume to set forth every detail of a state-level regulatory system for controlling psychoactive substances. Rather, the coalition is calling on the Washington State Legislature to authorize a special consultative body, comprised of experts in pharmacology, medicine, public health, education, law and law enforcement, as well as public officials and civic leaders, to provide specific recommendations for legislative action to establish such a state-level system of regulatory control.

5. Is this a proposal to "legalize" dangerous drugs?

The politically-charged term "legalization" is insufficient to describe how the state would control those psychoactive substances that are now exclusively produced and distributed through illegal markets. The concept of ***strict regulation and control*** of psychoactive drugs is a more accurate and useful description of the King County Bar Association's proposal and this must be carefully distinguished from the idea of *commercialization* of such drugs.

To some, the notion of "legalization" suggests that addictive psychoactive substances might be available over the counter and more easily accessible by children; that today's drug dealers would continue to do business but simply be unencumbered by law enforcement; or that the criminal enterprises now controlling the drug trade would become legitimate or that pharmaceutical, alcohol and tobacco companies would "take over the business" and aggressively promote the sale of their psychoactive drugs in the commercial marketplace. That is not the King County Bar Association's vision for a system of effective drug control. The proposal for state-level regulation and control contemplates a more effective means to *reduce* access to and use of psychoactive drugs by young persons, the prohibition of the private sale of such drugs, the prohibition of advertising and the medical prescription of some or most drugs as a proven means to reduce harm and drug abuse in hard-to-reach populations of addicted persons.

6. Which drugs would be subject to state regulation and control?

The current proposal is limited to the control of psychoactive substances that are ***exclusively produced and distributed in illegal markets.*** The most troublesome examples of such illegal markets include those for cannabis and heroin, the use and sale of which are absolutely prohibited under federal law and are deemed to have no medical value, and for methamphetamine and cocaine, for which the law allows medical use only in extremely limited circumstances. Other prohibited substances, such as phencyclidine (PCP, or "angel dust"), are used by so few people that a black market could not be sustained for that substance alone. Where the objectives of the regulatory system are to undercut the black market, to restrict access by young persons and to open gateways to treatment, the most widely used substances, for which black markets continue to flourish, would be the principal targets of regulation.

The current proposal does ***not*** address the increasingly vexing problem of diversion of legally-regulated pharmaceuticals, such as methadone, Oxycontin, ketamine, Ritalin and benzodiazepines, into the illicit, GRAY market, a problem that law enforcement increasingly finds itself battling. Gray markets, however, are relatively easier to control than black markets, where all production and distribution is illegal (the subject of the King County Bar Association's proposal). Gray markets also do not spawn the kinds of violence, disorder, disease and death that arise from the operation of black markets; thus, it is important to distinguish between the two.

7. Who would have access to state-controlled drugs?

Currently there are no limitations on who has access to prohibited psychoactive drugs. In fact, young persons today often have greater access to such drugs than adults do. A regulatory system would establish more effective limits on such access, although no system can be completely fool-proof. Under a regulatory system, there would be differing degrees of control for each substance, depending on the known potential for harm. It is likely, therefore, that only registered addicts would have access to the more addictive drugs such as heroin, cocaine and methamphetamine, and only through state-licensed or state-controlled medical treatment facilities. By contrast, cannabis might be regulated as strictly or more strictly than distilled spirits, perhaps with controlled availability to adults through state-owned facilities (see also #16 below, regarding home production and consumption).

8. Would there be any age restrictions? What about the threat of drugs to young persons?

Young persons would continue to be prohibited from possessing or using psychoactive substances because their relatively limited ability to make informed judgments renders them especially vulnerable to the adverse effects of drug use. Preventing or delaying such use would allow for the development of social competence and resilience to risk. The special consultative group of experts would make recommendations to the legislature about age restrictions, based on scientific evidence of the neurological effects of drugs and on the ability of young persons to make informed decisions at certain ages. Such age restrictions might be especially relevant to cannabis (which is now used at higher rates than tobacco by high school students – further evidence of the failure of current drug policy), where the addictive, "hard" drugs would likely only be available by prescription.

9. Where would state-controlled drugs be made available? Would the government and/or private businesses provide the drugs?

In order to maintain strict supervision over distribution, state-controlled psychoactive substances would only be available from state-owned or state-controlled facilities. Cannabis would be distributed either from state-licensed medical cooperatives meeting patients' needs for low cost or possibly from strictly-controlled, state-owned facilities, free of advertising and with rigorous verification of age limits. Such state facilities might not be needed, however, if a state-regulated system of home production and non-commercial exchanges (discussed in #16 below) was sufficient to meet demand. The "hard" drugs that pose serious risks of harm would be provided to medically-certified addicts as part of addiction treatment in state-licensed clinics and possibly from private doctors' offices.

10. Would there be any limits on the amount of drugs provided at one time?

The special consultative body of experts might advise the legislature to restrict the volume amount of substances distributed at one time. Such limits currently exist in those European countries that have normalized cannabis use. Regarding the addictive drugs, carefully controlled doses would be provided by medical professionals, presumably reduced over the course of time, to optimize the treatment objectives of harm reduction, quantity-of-use reduction and eventual abstinence.

11. Where would the state obtain the drugs? Wouldn't the state end up having to deal with international criminals?

The state would not need to smuggle or purchase heroin, cocaine or methamphetamine from Latin American criminal gangs, nor would in-state cultivation of opium, coca or ephedra be necessary (although each might be possible). Cocaine and methamphetamine are actually legal drugs under federal law, so the state could obtain a pharmaceutically pure supply for its special treatment facilities for registered addicts, and this would be permitted under the state's exclusive power to regulate medical practice. Rather than heroin (diacetylmorphine), comparable short-acting opiates, such as laudanum (hydromorphone) could be provided, as clinics in Canada are currently doing.

The state could obtain a controlled supply of cannabis from licensed producers or cooperatives of producers operating entirely within the state of Washington. This is already being done for research purposes in Europe and in England, where the British Home Office has licensed private producers of cannabis. Before entering into contracts with the state the producers would be thoroughly screened and their operations would be closely monitored and audited, subject to criminal sanctions for engaging in unauthorized distribution outside the state system, especially to young persons. Disincentives would remain very strong for producers not to violate these terms, as their livelihoods and their personal liberty would be at stake. Further, there would be few incentives for consumers to obtain cannabis outside the state system, as a reliable product would be available at a price at, or just below the black market price.

12. Would prescriptions still be required for currently-regulated medications?

It is not anticipated that there would be any changes to the current federal-state regulatory system for prescription medications. Instead, some of the currently-prohibited drugs, or effective substitutes that are not prohibited, would be made available by prescription for the purpose of addiction treatment.

13. Would state-controlled drugs require prescriptions?

Substances with a high potential for abuse and addiction might likely only be available by prescription to registered addicts as part of addiction treatment regimes aimed at reducing the quantity of use and eventually the elimination of use. This is an approach now proven effective in Europe – and that was also employed in the United States prior to 1914, when addiction was first criminalized. Some substances might also be approved for other purposes, including pain relief and treatment for post-traumatic stress disorder, where preliminary studies on drugs such as MDMA (or "Ecstasy) have shown some promise.

14. How will purity and quality control be guaranteed and what about labeling and health warnings?

A significant advantage of a regulatory system for psychoactive substances would be better guarantees of purity and safety of those substances under state control. Just as with other prescription medications, accurate labeling and comprehensive information about dosages and contraindications would be required to be provided for all state-controlled psychoactive substances, perhaps more comprehensive than the information provided to consumers at a pharmacy.

15. Would there be limits on advertising?

Yes, absolutely. This is one of the most important elements of the King County Bar Association proposal. Any advertising and promotion would be limited as strictly as the law allows, within the speech protections of the United States and Washington state constitutions. The likelihood of the advertising of "hard" drugs would be negligible, as those substances would likely only be provided through the state medical system and federal law already prohibits the advertising of such substances. All cannabis producers, as a condition of their license with the state, would agree not to advertise and, to the extent that any branding would take place, it would be curtailed by current Washington trademark law, which limits the use of marks for "notorious" purposes (and no federal trademark issues arise because all commerce would be intrastate). If such license conditions were offensive to the speech protections under Washington's constitution, the state could still limit the time, place and manner of any advertising in order to protect the public interest.

Just as important as state restrictions on advertising would be aggressive, state-sponsored **counter-advertising.** As an essential part of a public health strategy, state-funded education, public service messages and other forms of communication would foster the normative changes needed to reduce problematic substance use. The very best example of such normative change through public service counter-advertisement is the recent success in drastically reducing tobacco consumption over the course of the last three decades in the United States, accomplished without incarcerating anyone.

16. Would it be legal to "grow your own" and what limitations would there be?

As an easy-to-grow weed, cannabis will inevitably be produced to some extent by private citizens on private property. As an alternative to retail distribution through state outlets, a state-supervised system of home production (not dissimilar to home brewing) and non-commercial exchanges ("gifting") might actually satisfy the demand for cannabis, thereby reducing the potential harm from excessive availability. The special consultative body of experts advising the legislature would consider the nature and scope of state regulation of such home production and non-commercial exchanges and, depending on the degree to which that approach would satisfy demand and eliminate the illegal market, would determine whether establishing state-controlled outlets would even be necessary.

17. Won't black markets still thrive if access to most drugs is still restricted to medically certified addicts? And with prices apparently so low already, how could the state undercut the black market? What about the black market for young persons?

The vast bulk of "hard" drugs are consumed by a relatively small number of addicted users. Certifying and registering as many of those users as possible and bringing them into state-controlled medical treatment facilities would, therefore, dry up the black market to a great extent in each local area. Other potential users who might want to experiment with such substances would have to obtain them from the "gray" market, which currently exists for other pharmaceuticals and is easier to control (although a growing problem in the U.S.)

The street prices for prohibited drugs are at historic lows (another indication of the failure of current drug policy) yet such prices are still artificially and astronomically above their actual value in terms of their chemical composition and production cost. Pricing structures for state-controlled substances could easily undercut black market prices and in many cases the substances would be provided free of charge or at very low cost (along a sliding scale) to registered addicts at the state-controlled medical treatment facilities. Any revenue to the state would support the administration of the regulatory framework and would maximize funding for prevention, treatment, research and education, while maintaining price levels low enough to render any illegal markets for such substances unprofitable but high enough to deter consumption, especially by young persons.

The greatest concern of the King County Bar Association is to protect young people from the potential harms of psychoactive drug use. Regarding cannabis, most students report that cannabis is widely available and easier to obtain than beer. If cannabis were regulated like distilled spirits, therefore, it would be much less accessible to young people than beer is today. On occasion, an unscrupulous state-licensed outlet might sell to young people, but looking at the Washington Liquor Control Board model, its age restriction compliance rate is about 95% at its outlets.

Furthermore, the economic laws of prohibition illustrate how a black market could not thrive on the relatively limited demand of minors alone – another lesson learned from the repeal of alcohol prohibition in the 1930s. A gray market would likely arise, however, where adults would illegally divert drugs to young people, which would be criminally punished. In the civil courts, as well, adults would be held accountable, as they are today, for negligent or reckless parental/custodial supervision of minors.

18. Would it still be illegal to drive a car or fly an airplane while using drugs? Would it be legal for your doctor, your lawyer or the police to use drugs?

The King County Bar Association stated in 2001 that sanctions related to drugs should be aimed at reducing the harm directly caused to others by persons using drugs rather than for the mere use of drugs *per se* (see # 2 above). Accordingly, driving while intoxicated and doing harm to persons or property while intoxicated should continue to be punished, with treatment options available. As for the professions and drug use, effective assistance programs are already in place for lawyers, doctors, pharmacists and others, and those programs already embrace the medical model rather than the criminal model. As self-regulating entities, professional associations take disciplinary actions against their members for many causes, including conduct related to drug use or drug addiction.

19. Wouldn't Washington State become some kind of drug haven for riff-raff from other states and countries?

No. Only Washington state residents would be eligible to receive psychoactive substances through the state regulated system, and most likely only as registered addicts served at state-licensed medical prescription facilities. Adults receiving cannabis at state-owned facilities would have to show valid proof of Washington state residency.

20. Wouldn't this proposal lead to the state substituting itself for the "drug pushers" who currently prey on our children and other vulnerable elements of our society? Wouldn't this undermine the moral authority of the state?

The state might face an ethical dilemma if it were to become the purveyor of mind-altering drugs for profit – although the Washington Liquor Control Board, which does do an effective job of limiting access by minors to distilled spirits, still brings in about $100 million each year to help balance the state's budget!

It is important to consider once again the main objectives of the King County Bar Association proposal:

- to undercut the violent illegal markets that spawn disease, crime, corruption, mayhem and death, not to mention wasteful public expenditures to continually chase these problems but never effectively address them;
- to reduce access by young persons to psychoactive drugs and to provide them better education and prevention services; and
- to open new gateways to treatment, finding the hard-to-reach population of addicted persons who consume the bulk volume of drugs, drying up black market demand for those drugs and thereby reducing public disorder, economic crimes related to addiction, transmission of disease, accidental death, quantities of drugs consumed, initiation of use by young persons and drug addiction itself, as well as criminal justice, public health and social welfare costs.

A policy to achieve these objectives should enhance the moral authority of the state.

21. Doesn't this proposal send the wrong message to our children?

We often hear about "the message we send to children." Unfortunately, young people today receive many mixed messages, including, "Take a pill to feel better," "Drink beer and get drunk" and "just say no, except when you're 21 you can drink." The most troublesome mixed message we now send to young people is that drugs are bad and dangerous, but we still leave control of drugs up to criminal gangs rather than take control over them ourselves, as with all other hazardous substances.

The message the King County Bar Association proposal sends to children is: "Bad people are trying to sell you dangerous drugs and we're going to put them out of business;" "We're going to give you honest and complete information about drugs so you understand better why they're not right for you now and may never be right for you;" and "Drugs are for sick people and we care about them, so we'll give them the help they need."

22. Alcohol has caused significant health, social and crime problems. Wouldn't adding other psychoactive drugs to the mix only make the situation worse?

Alcohol is indeed associated with more societal problems than any other substance and is linked with many hospital admissions, violent crimes and accidental deaths. A closer look at the research reveals that **beer**, which is readily available on every street corner, is responsible for about 80 percent of all alcohol-related disease, mayhem and death. This suggests that further limits on the time and place of availability of beer would be a prudent public policy.

Under the King County Bar Association's proposal, most psychoactive substances currently produced and distributed exclusively in illegal markets would become ***less*** available than they are today and certainly less available than alcohol, especially to young persons. With regard to cannabis availability to adults, compelling research from many countries indicates that cannabis availability brings about a "substitution effect," which dampens the use of alcohol and tobacco, as well as of other, more dangerous drugs. Provided that young persons are adequately protected, cannabis availability to adults may actually reduce the health, social and crime problems associated with alcohol. It is also important to remember that this proposal, by seeking to undercut the black market, would help to reduce the health, social and crime problems associated with drug prohibition.

23. Wouldn't this proposal lead to a massive increase in drug addiction?

A system of unfettered availability of all drugs to all adults at local drug stores would certainly lead to increased use and addiction. That is not the system that the King County Bar Association contemplates. Under the Bar's proposal, where pure and safe forms of "hard" drugs would be available to addicts through prescribed maintenance regimes aimed at reducing harm, drug use and drug addiction, the medical nature of this approach would not likely encourage many new users to try such drugs for the first time when the drugs are perceived more as medicine for sick people than as a way to have fun. That is what is now happening in Europe. Even if cannabis use was completely de-penalized, many studies suggest that there would be only marginal increases in the prevalence of cannabis use.

24. Wouldn't we see increases in crime and violence along with increased drug use?

Compared with the pharmacological effects of alcohol giving rise to violent behavior, illegal drugs and violence are linked primarily to illegal drug marketing: disputes among rival distributors, arguments and robberies involving buyers and sellers and crimes committed to finance expensive drug habits. The King County Bar Association proposal aims to undercut illegal drug markets; thus, levels of violence associated with such markets would dramatically decline or even disappear, which was the result of the repeal of alcohol prohibition in the 1930s.

Some drugs, especially stimulants such as cocaine and methamphetamine, are associated with unpredictable and sometimes violent behavior, but cannabis and tobacco have little association with violence and opiates have an anesthetizing effect, making violence less likely – although withdrawal from opiate addiction can lead to aggressive behavior. Where the King County Bar Association proposes to reduce the harm from and addiction to dangerous drugs such as cocaine and methamphetamine, levels of violence would decrease to the extent that the new system is successful in meeting it objectives.

25. Wouldn't this proposal be contrary to our foreign policy and undermine our national effort to deal with the drug kings of Afghanistan, Colombia, and elsewhere?

Despite our best efforts, we have been powerless to control the international drug cartels, as the lure of immense profits remains a strong incentive for criminal enterprises to stay in the business, which generates over $400 **billion** each year. For each drug "kingpin" we apprehend, a vacuum is created for other, more efficient and ruthless drug lords to take over the territory. After spending over $4 billion of U.S. taxpayers' money in the effort to eradicate coca production in Colombia, we have succeeded in reducing such production by only 25 percent, and the remaining production has more than satisfied U.S. demand (indicated by historically low street prices for cocaine in the U.S.). Meanwhile, the criminal enterprises have begun to breed a new crop of "super coca" and their brethren in neighboring countries such as Peru, Ecuador, Bolivia and Venezuela have maintained their own coca production and exports; in addition, the Colombian cartels are now producing heroin and exporting it in a form than can be smoked or snorted, making it easier for young persons to consume it. In Afghanistan, which currently accounts for 89% of the world's illegal heroin, the trafficking problem is destabilizing the fragile new government, but because of the artificially high prices made possible by drug prohibition, opium production is securing the livelihood for more farmers than those growing vegetables or cotton. At the U.S. border, even if 85 percent of all illegal drug shipments were to be discovered and seized, the remaining 15 percent would satisfy U.S. demand. Optimistic estimates claim that only 40 percent of illegal drug shipments are seized, even with all the resources devoted by U.S. Customs, the Drug Enforcement Administration and the Department of Homeland Security. From an economic perspective, there is no more wasteful drug policy than the attempt to eradicate illegal drugs in source countries and the attempt to interdict illegal drug shipments across our borders.

26. Wouldn't such a regulatory scheme end up costing the taxpayers a fortune?

No. The King County Bar Association proposal would not only pay for itself, but would provide the state with additional funds for effective education about the dangers of psychoactive drugs and for medical treatment for those harmed by drug use. Recent research in Washington State has shown how generous investments in prevention and treatment yield significant savings from avoided costs in medical care, social welfare and criminal justice. The current proposal would allow for enhanced prevention and treatment to be financed from massive savings that would arise from reduced use of the criminal justice system.

The current approach of drug prohibition and criminalization is costing the taxpayers a fortune, draining state and local coffers as ever-rising criminal justice costs are driving many counties close to bankruptcy. Meanwhile, the addicted cannot get the treatment they need, families are torn apart because of incarceration and non-violent drug law violators cannot rebuild their lives due to the prejudicial effects of criminal convictions, among many other negative effects of the current policy.

27. Doesn't federal law tie the hands of the state in this area? How can the State of Washington regulate what the federal government has criminalized?

Under case law from the New Deal in the 1930s and from the civil rights struggle in the 1960s, federal commerce power is now so expansive that the individual states seem to have little discretion remaining to exercise their traditional police powers to protect the "health, welfare, safety and morals" of their citizens. Current federal drug laws, grounded in federal commerce power, practically preempt state laws that conflict with federal law.

However, critical exceptions to federal commerce power would allow Washington State, in its attempt to control psychoactive substances more effectively, to promulgate a state-level regulatory system that might still conflict with federal drug laws:

a) There is a strong argument that states' exercise of police powers should be respected at the federal level, especially regarding a public health issue such as drug abuse. Drug problems vary significantly from state to state and between regions, which should allow state and local jurisdictions wider discretion to develop more creative policy responses. The power of states to control drugs exists independent of federal legislation; case law from Washington, in fact, affords the state the maximum permissible authority to fight the drug abuse problem, in view of the dangerous nature and injurious effect of unregulated drug use. Assuming that the U.S. Supreme Court would not second-guess a state-level legislative policy decision made in Washington, the state could confidently establish its own regulatory system to control those psychoactive substances currently produced and distributed exclusively in illegal markets.

b) The federal Controlled Substances Act, the cornerstone of federal drug policy, has been held by federal courts not to allow the federal government to usurp **states' exclusive rights** (pursuant to their inherent police powers) **to regulate the practice of medicine**. Therefore, to the extent that Washington State's new regulatory system were to permit the medical prescription of psychoactive substances for use in state-controlled addiction treatment programs, federal government intervention would encroach on the state's exclusive police powers to regulate such medical practices.

c) When a state functions like a commercial enterprise it may "discriminate" in favor of its own residents and, as a business proprietor (or "market participant"), it is beyond the reach of federal commerce power. Accordingly, if the state of Washington or any other state sought to undercut the illicit market in psychoactive substances by becoming the exclusive purveyor of such substances to qualified state residents, it might be allowed to set restrictive rules that "discriminate" against out-of-state residents and that impose burdens on interstate commerce that would otherwise not be permitted.

28. Haven't we made significant progress in reducing drug use in this country? Why should we abandon our efforts now?

The federal Anti-Drug Abuse Act of 1988 declared that "the policy of the United States is to create a Drug-Free America by 1995" and that there is "no substitute for total victory." Nearly ten years after that target year of 1995, over eight percent of the U.S. population regularly uses illegal drugs. Just in the last three years the number of illegal drug users in the United States has increased by almost four million, and by over eight million in the last decade. That is not "progress in reducing drug use" and we are not "about to turn the corner" on reducing drug use, as we have often been promised.

The criminal processing and incarceration of non-violent drug offenders has been clearly shown by research to be counterproductive to the goal of reducing drug use. Meanwhile, the percentage of non-violent drug offenders in local jails has risen almost 40 percent since the mid-1990s and drug offenders account for almost 60 percent of the growth in federal prisons in the last half-decade. Treating drug use as a criminal matter rather than a social and medical issue has not been successful in reducing drug use nor the harms arising from drug use. For over three decades law enforcement has been seeking new tools to fight the drug problem, but the persistent *crime* problem, which has arisen because of drug prohibition, has distracted us from effectively addressing the drug problem.

29. What about Drug Courts? They seem to be effective in reducing crime and drug use.

Drug courts are the most promising short-term option, generating cost savings and reducing recidivism and prohibited drug use among their participants. If insightfully and compassionately administered, drug courts can help rehabilitate addicts and reduce crime and help avoid some of the economic and societal costs of unnecessary imprisonment.

However, drug courts are fully consistent with the legal framework of drug prohibition, so they embody a difficult conflict between compassion and coercion; there is always the potential for more harm, despite the therapeutic intent. Drug courts may reduce public costs and recidivism and substance abuse among their participants, but they are powerless to abate illegal markets for psychoactive drugs, as incentives remain strong for violent, criminal enterprises to engage in the drug trade. Drug courts are also unable to reduce the easy access by young persons to psychoactive substances, a problem inherent in drug prohibition. Finally, drug courts are not serving the hard-to-reach population of addicted persons who refuse treatment, a population that has responded well in Europe to the type of medical prescription programs that are currently prohibited under U.S. law.

30. Hasn't legalization and decriminalization of drugs been a dismal failure in other nations?

Strict drug prohibition has been a dismal failure in the United States, with literally millions of people having been imprisoned, with violent, illegal markets continuing to flourish and with problematic drug use continuing unabated, among other devastating societal impacts.

In sharp contrast to the punitive American approach, the Netherlands effectively decriminalized cannabis in 1976 and a study co-funded by the U.S. National Institute on Drug Abuse (NIDA) and the Dutch Ministry of Health found no evidence that the decriminalization of cannabis leads to increased drug use. The rate of cannabis use today in the Netherlands is less than half that of the United States. Further, by separating the "soft" and "hard" drug markets through the normalization of cannabis, the Dutch reduced consumers' exposure to hard drug dealers; as a result, there are no more heroin addicts in the Netherlands today than there were 25 years ago.

The prescription drug maintenance programs in Europe and Canada, whereby hard-core drug addicts are brought indoors into medically-supervised facilities and stabilized with controlled doses that are free of charge, have brought about meaningful reductions in overdose deaths, reductions in the transmission of disease, reductions in economic crimes related to addiction and reductions in levels of public disorder. Moreover, participants in the prescription maintenance programs reduce their quantity of use, stabilize their health, become employed (in many cases) and, for 20% of the patients, quit drugs altogether. In the United States, this hard-to-reach addict population continues to stimulate the illegal market, contribute to public disorder, spread disease, die from overdoses without reducing their use and certainly not become abstinent. In the more innovative countries, the medical approach has changed the culture so that addictive drugs like heroin lose their cachet and are considered more like medication for sick people; as a result, rates of first-time initiation of the use of such drugs have declined. Such "win-win" results have helped to reduce the burden on law enforcement, which strongly supports these programs, as well.

31. Will there be any safety valve in the new law? What if the new system really is a disaster?

Any statutory and regulatory changes will take place incrementally, first through clinical trials and then integrated into the public health system. Separate consideration would be given to each substance, probably beginning with cannabis and the opiates (heroin). Meaningful outcome measurements would be established for improvements in public order, public health and public costs and rigorous evaluation would determine the new system's effectiveness, leading to amendment or repeal. Sunset provisions in any legislation could ensure a return to the criminal enforcement model if the regulation-and-control model was demonstrably less effective.