

JAN 22 2007

A BILL FOR AN ACT

RELATING TO POSSESSION OF MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that scarce resources are
2 currently expended inefficiently by county and state police
3 entities, including judicial and detention facilities, for
4 enforcing marijuana possession laws. A recent study of the
5 economics of enforcement of marijuana laws in Hawaii reveals
6 that "State and county law enforcement agencies spend \$4,100,000
7 per year to enforce marijuana possession laws; and an additional
8 \$2,100,000 is spent by the courts." Notwithstanding this
9 expenditure, "[b]etween 1994 and 2003, the price of one ounce of
10 high quality marijuana dropped by twelve per cent." As the
11 author of the study, a Hawaii-based economist, concluded, "[t]he
12 price decline reveals that law enforcement efforts to restrict
13 supply have not been effective."

14 The study also revealed that amending the State's marijuana
15 laws to make possession of less than one ounce a civil violation
16 in Hawaii could save state and county governments up to
17 \$5,000,000 per year. This would permit law enforcement to focus



1 their resources on more serious drug issues such as combating
2 the ongoing ice epidemic or the recently reported sharp increase
3 in cocaine use. At the same time, because of current low
4 prosecution levels and small penalties, the study's author
5 concluded that reducing possession of less than one ounce of
6 marijuana to a civil penalty, in effect "decriminalizing" it,
7 would not have much effect on marijuana use. This finding is
8 consistent with the experience of other jurisdictions. This
9 reduction, however, would not be a significant change from the
10 legislature's previous classification of simple possession of
11 small amounts of marijuana as a petty misdemeanor due to the
12 relatively harmless nature of this substance, compared to other
13 commonly used illegal substances.

14 A civil fine could serve as a more certain penalty and
15 therefore a more effective deterrent, especially for young
16 people. In addition, imposing the fine would be as easy as
17 writing a traffic ticket and much less officer time and court
18 time would be expended.

19 The legislature further finds that existing Hawaii law
20 provides for a sentence of not more than thirty days for first
21 time possession of less than an ounce of marijuana. Even a
22 petty misdemeanor, however, is a crime. The criminal record



1 thus obtained may seriously affect arrestees' futures by
2 rendering them ineligible for federal college loans, for certain
3 types of employment, and for military service. In consequence,
4 twelve other states have recognized the advantages of
5 downgrading possession of small amounts of marijuana to a civil
6 violation instead of a crime. These states - Alaska,
7 California, Colorado, Maine, Minnesota, Mississippi, Nebraska,
8 Nevada, New York, North Carolina, Ohio, and Oregon - comprising
9 some thirty per cent of the nation's population - have not
10 experienced disproportionate spikes in marijuana use since the
11 enactment of these laws. According to a 1999 report by the
12 National Academy of Sciences, Institute of Medicine, "Marijuana
13 and Medicine: Assessing the Science Base": "In sum, there is
14 little evidence that decriminalization of marijuana use
15 necessarily leads to a substantial increase in marijuana use."

16 Because the vast majority of possession charges under the
17 criminal code are dealt with by fines, treating possession of
18 less than an ounce of marijuana as a violation, punishable by a
19 civil fine, will continue to deter marijuana use and demonstrate
20 our State's disapproval of the use of the drug. The legislature
21 finds that a civil penalty will be perceived as more
22 proportional to the offense. The State will thereby reduce the



1 cynicism and disrespect for the law felt by those who see
2 criminalization with possible imprisonment for possession of
3 small amounts of marijuana as inconsistent with the more lenient
4 laws governing possession of more dangerous substances, such as
5 cigarettes and alcohol.

6 The measures proposed in this Act would not amend laws
7 regarding driving under the influence of marijuana or other
8 criminal infractions committed under the influence, or
9 infractions pertaining to sales or manufacturing. Nor does it
10 amend laws regarding the use of marijuana for medical purposes.

11 The purpose of this Act is to provide civil penalties for
12 possession of less than one ounce of marijuana for personal use.

13 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§712- Possession of marijuana. Intentional or knowing
17 possession of less than one ounce of marijuana shall constitute
18 a violation subject to a fine not to exceed \$ _____."

19 SECTION 3. Section 329-125, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) A qualifying patient or the primary caregiver may
22 assert the medical use of marijuana as an affirmative defense to



1 any prosecution, criminal or civil, involving marijuana under
2 this [+]part[+] or chapter 712; provided that the qualifying
3 patient or the primary caregiver strictly complied with the
4 requirements of this part."

5 SECTION 4. Section 712-1240, Hawaii Revised Statutes, is
6 amended by amending the definition of "detrimental drug" to read
7 as follows:

8 "Detrimental drug" means any substance or immediate
9 precursor defined or specified as a "Schedule V substance" by
10 chapter 329, or any marijuana[-], except that, for purposes of
11 section 712- , less than one ounce of marijuana shall not be
12 deemed a detrimental drug."

13 SECTION 5. Section 712-1249, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

15 "(1) [A] Except for possession of less than one ounce of
16 marijuana, a person commits the offense of promoting a
17 detrimental drug in the third degree if the person knowingly
18 possesses any marijuana or any Schedule V substance in any
19 amount."

20 SECTION 6. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

Ray L. Hoan
Guell...



Report Title:

Marijuana

Description:

Makes possession of less than one ounce of marijuana a civil violation; imposes an unspecified fine.

