

JAN 21 2010

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# A BILL FOR AN ACT

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RELATING TO THE MEDICAL USE OF MARIJUANA.

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

1           SECTION 1. Chapter 329, Hawaii Revised Statutes, is  
2 amended by adding two new sections to part IX to be  
3 appropriately designated and to read as follows:

4           "§329-A Probationers; eligibility as qualifying patients.

5           (a) Any criminal defendant with a debilitating medical  
6 condition who is eligible to use medical marijuana pursuant to  
7 section 329-122 may request that the court confirm that the  
8 defendant is allowed to use medical marijuana while on  
9 probation.

10           (b) The court's decision and the reasons for the decision  
11 shall be stated on the record and an entry stating those reasons  
12 shall be made in the minutes of the court.

13           (c) During the period of probation, if a treating  
14 physician certifies the probationer for the medical use of  
15 marijuana, the probationer may request a modification of the  
16 conditions of probation to authorize the medical use of  
17 marijuana.



1        (d) The court's consideration of the modification request  
2 authorized by subsection (c) shall comply with the requirements  
3 of this part.

4        **§329-B Parolees; eligibility as qualifying patients.** (a)

5 Any person who is to be released on parole from a state  
6 correctional facility and who is eligible to use medical  
7 marijuana pursuant to section 329-122 may request that the  
8 parolee be allowed to use medical marijuana during the period  
9 the parolee is released on parole. A parolee's written  
10 conditions of parole shall reflect whether or not a request for  
11 a modification of the conditions of parole to use medical  
12 marijuana was made, and whether the request was granted or  
13 denied.

14        (b) During the period of the parole, if a treating  
15 physician certifies the parolee for the medical use of  
16 marijuana, the parolee may request a modification of the  
17 conditions of the parole to authorize the medical use of  
18 marijuana.

19        (c) Any parolee whose request to use medical marijuana  
20 while on parole was denied may pursue an administrative appeal  
21 of the decision. Any decision on the appeal shall be in writing  
22 and shall reflect the reasons for the decision.



1        (d) The administrative consideration of the modification  
2 request authorized by subsection (b) shall comply with the  
3 requirements of this part."

4        SECTION 2. Section 353-66, Hawaii Revised Statutes, is  
5 amended by amending subsection (f) to read as follows:

6        "(f) ~~[The]~~ Except as provided in section 329-B, the Hawaii  
7 paroling authority may require a paroled prisoner to undergo and  
8 complete a substance abuse treatment program when the paroled  
9 prisoner has committed a violation of the terms and conditions  
10 of parole involving possession or use, not including to  
11 distribute or manufacture as defined in section 712-1240, of any  
12 dangerous drug, detrimental drug, harmful drug, intoxicating  
13 compound, marijuana, or marijuana concentrate, as defined in  
14 section 712-1240, unlawful methamphetamine trafficking as  
15 provided in section 712-1240.6, or involving possession or use  
16 of drug paraphernalia under section 329-43.5. If the paroled  
17 prisoner fails to complete the substance abuse treatment program  
18 or the Hawaii paroling authority determines that the paroled  
19 prisoner cannot benefit from any substance abuse treatment  
20 program, the paroled prisoner shall be subject to revocation of  
21 parole and return to incarceration. As a condition of parole,



1 the Hawaii paroling authority may require the paroled prisoner  
2 to:

- 3 (1) Be assessed by a certified substance abuse counselor  
4 for substance abuse dependency or abuse under the  
5 applicable Diagnostic and Statistical Manual and  
6 Addiction Severity Index;
- 7 (2) Present a proposal to receive substance abuse  
8 treatment in accordance with the treatment plan  
9 prepared by a certified substance abuse counselor  
10 through a substance abuse treatment program that  
11 includes an identified source of payment for the  
12 treatment program;
- 13 (3) Contribute to the cost of the substance abuse  
14 treatment program; and
- 15 (4) Comply with any other terms and conditions for parole.

16 As used in this subsection, "substance abuse treatment  
17 program" means drug or substance abuse treatment services  
18 provided outside a correctional facility by a public, private,  
19 or nonprofit entity that specializes in treating persons who are  
20 diagnosed with having substance abuse or dependency and  
21 preferably employs licensed professionals or certified substance  
22 abuse counselors.



1           Nothing in this subsection shall be construed to give rise  
2 to a cause of action against the State, a state employee, or a  
3 treatment provider."

4           SECTION 3. Section 706-624, Hawaii Revised Statutes, is  
5 amended by amending subsection (2) to read as follows:

6           "(2) Discretionary conditions. The court may provide, as  
7 further conditions of a sentence of probation, to the extent  
8 that the conditions are reasonably related to the factors set  
9 forth in section 706-606 and to the extent that the conditions  
10 involve only deprivations of liberty or property as are  
11 reasonably necessary for the purposes indicated in section 706-  
12 606(2), that the defendant:

13           (a) Serve a term of imprisonment not exceeding two years  
14 in class A felony cases under part IV of chapter 712,  
15 eighteen months in class B felony cases, one year in  
16 class C felony cases, six months in misdemeanor cases,  
17 and five days in petty misdemeanor cases; provided  
18 that notwithstanding any other provision of law, any  
19 order of imprisonment under this subsection that  
20 provides for prison work release shall require the  
21 defendant to pay thirty per cent of the defendant's  
22 gross pay earned during the prison work release period



1 to satisfy any restitution order. The payment shall  
2 be handled by the adult probation division and shall  
3 be paid to the victim on a monthly basis;

4 (b) Perform a specified number of hours of services to the  
5 community as described in section 706-605(1)(d);

6 (c) Support the defendant's dependents and meet other  
7 family responsibilities;

8 (d) Pay a fine imposed pursuant to section 706-605(1)(b);

9 (e) Work conscientiously at suitable employment or pursue  
10 conscientiously a course of study or vocational  
11 training that will equip the defendant for suitable  
12 employment;

13 (f) Refrain from engaging in a specified occupation,  
14 business, or profession bearing a reasonably direct  
15 relationship to the conduct constituting the crime or  
16 engage in the specified occupation, business, or  
17 profession only to a stated degree or under stated  
18 circumstances;

19 (g) Refrain from frequenting specified kinds of places or  
20 from associating unnecessarily with specified persons,  
21 including but not limited to the victim of the crime,  
22 any witnesses, regardless of whether they actually



1 testified in the prosecution, law enforcement  
2 officers, co-defendants, or other individuals with  
3 whom contact may adversely affect the rehabilitation  
4 or reformation of the person convicted;

5 (h) [~~Refrain~~] Except as provided in section 329-A, refrain  
6 from use of alcohol or any use of narcotic drugs or  
7 controlled substances without a prescription;

8 (i) Refrain from possessing a firearm, ammunition,  
9 destructive device, or other dangerous weapon;

10 (j) Undergo available medical or mental health treatment,  
11 including treatment for substance abuse dependency,  
12 and remain in a specified facility if required for  
13 that purpose;

14 (k) Reside in a specified place or area or refrain from  
15 residing in a specified place or area;

16 (l) Submit to periodic urinalysis or other similar testing  
17 procedure;

18 (m) Refrain from entering specified geographical areas  
19 without the court's permission;

20 (n) Refrain from leaving the person's dwelling place  
21 except to go to and from the person's place of  
22 employment, the office of the person's physician or



1 dentist, the probation office, or any other location  
2 as may be approved by the person's probation officer  
3 pursuant to court order. As used in this paragraph,  
4 "dwelling place" includes the person's yard or, in the  
5 case of condominiums, the common elements;

6 (o) Comply with a specified curfew;

7 (p) Submit to monitoring by an electronic monitoring  
8 device; or

9 (q) Satisfy other reasonable conditions as the court may  
10 impose."

11 SECTION 4. Section 706-625, Hawaii Revised Statutes, is  
12 amended by amending subsection (7) to read as follows:

13 "(7) [~~The~~] Except as provided in section 329-A, the court  
14 may require a defendant to undergo and complete a substance  
15 abuse treatment program when the defendant has committed a  
16 violation of the terms and conditions of probation involving  
17 possession or use, not including to distribute or manufacture as  
18 defined in section 712-1240, of any dangerous drug, detrimental  
19 drug, harmful drug, intoxicating compound, marijuana, or  
20 marijuana concentrate, as defined in section 712-1240, unlawful  
21 methamphetamine trafficking as provided in section 712-1240.6,  
22 or involving possession or use of drug paraphernalia under





1 section 329-43.5. If the defendant fails to complete the  
2 substance abuse treatment program or the court determines that  
3 the defendant cannot benefit from any other suitable substance  
4 abuse treatment program, the defendant shall be subject to  
5 revocation of probation and incarceration. The court may  
6 require the defendant to:

- 7 (a) Be assessed by a certified substance abuse counselor  
8 for substance abuse dependency or abuse under the  
9 applicable Diagnostic and Statistical Manual and  
10 Addiction Severity Index;
- 11 (b) Present a proposal to receive substance abuse  
12 treatment in accordance with the treatment plan  
13 prepared by a certified substance abuse counselor  
14 through a substance abuse treatment program that  
15 includes an identified source of payment for the  
16 treatment program;
- 17 (c) Contribute to the cost of the substance abuse  
18 treatment program; and
- 19 (d) Comply with any other terms and conditions of  
20 probation.

21 As used in this subsection, "substance abuse treatment  
22 program" means drug or substance abuse treatment services



1 provided outside a correctional facility by a public, private,  
 2 or nonprofit entity that specializes in treating persons who are  
 3 diagnosed with substance abuse or dependency and preferably  
 4 employs licensed professionals or certified substance abuse  
 5 counselors.

6 Nothing in this subsection shall be construed to give rise  
 7 to a cause of action against the State, a state employee, or a  
 8 treatment provider."

9 SECTION 5. This Act does not affect rights and duties that  
 10 matured, penalties that were incurred, and proceedings that were  
 11 begun before its effective date.

12 SECTION 6. In codifying the new sections added by section  
 13 1 of this Act, the revisor of statutes shall substitute  
 14 appropriate section numbers for the letters used in designating  
 15 the new sections in this Act.

16 SECTION 7. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

*B*

*Will Engvo*  
*J. Glen Gish*  
*Russ Brown*  
*John...*



**Report Title:**

Medical Use of Marijuana; Probationers; Parolees

**Description:**

Allows probationers and parolees who meet the requirements of qualifying patients to request that the terms of their probation or parole be modified to be allowed the medical use of marijuana.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

