

JAN 23 2009

A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 SECTION 1. The legislature finds that scarce resources are
2 currently being expended inefficiently by county and state law
3 enforcement entities, including judicial and detention
4 facilities, for enforcing marijuana possession laws. A recent
5 study of the economics of enforcement of marijuana laws in
6 Hawaii reveals that "State and county law enforcement agencies
7 spend \$4,100,000 per year to enforce marijuana possession laws;
8 and an additional \$2,100,000 is spent by the courts."
9 Notwithstanding this expenditure, "between 1994 and 2003, the
10 price of one ounce of high quality marijuana dropped by twelve
11 per cent." As the author of the study, a Hawaii-based
12 economist, concluded, "the price decline reveals that law
13 enforcement efforts to restrict 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 of marijuana a
16 civil violation in Hawaii could save state and county
17 governments up to \$5,000,000 per year. This would permit law
18 enforcement to focus their resources on more serious drug issues



1 such as combating the ongoing crystal methamphetamine epidemic
2 or the recently reported sharp increase in cocaine use. At the
3 same time, because of current low prosecution levels and small
4 penalties, the study's author concluded that decriminalizing the
5 possession of less than one ounce of marijuana by reducing the
6 violation to a civil penalty would not have much effect on
7 marijuana use. This finding is consistent with the experience
8 of other jurisdictions. This reduction, however, would not be a
9 significant change from the legislature's previous
10 classification of simple possession of small amounts of
11 marijuana as a petty misdemeanor due to the relatively harmless
12 nature of this substance, compared to other commonly used
13 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 would require expending much less
18 time and effort on the part of law enforcement officers and
19 court officials.

20 The legislature further finds that existing Hawaii law
21 provides for a sentence of not more than thirty days for first
22 time possession of less than an ounce of marijuana. Even a



1 petty misdemeanor, however, is a crime. A violator's criminal
2 record would seriously affect the violator's future by affecting
3 eligibility for federal college loans, certain types of
4 employment, and military service.

5 On the other hand, twelve other states have recognized the
6 advantages of downgrading the possession of small amounts of
7 marijuana to a civil violation instead of a crime. These
8 states -- California, Colorado, Maine, Massachusetts, Minnesota,
9 Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio,
10 and Oregon, comprising some thirty per cent of the nation's
11 population -- have not experienced disproportionate spikes in
12 marijuana use since those states have enacted laws reducing the
13 severity of the violation. According to a 1999 report by the
14 National Academy of Sciences, Institute of Medicine, entitled
15 *Marijuana and Medicine: Assessing the Science Base*: "In sum,
16 there is little evidence that decriminalization of marijuana use
17 necessarily leads to a substantial increase in marijuana use."

18 Because the vast majority of possession charges under the
19 criminal code are dealt with by fines, treating possession of
20 less than an ounce of marijuana as a violation, punishable by a
21 civil fine, will continue to deter marijuana use and demonstrate
22 the State's disapproval of the use of the drug. The legislature



1 finds that a civil penalty will be perceived as more
2 commensurate to the offense. The State will reduce the cynicism
3 and disrespect for the law felt by those who see criminalization
4 with possible imprisonment for possession of small amounts of
5 marijuana as inconsistent with the more lenient laws governing
6 possession of more dangerous substances such as cigarettes and
7 alcohol.

8 There is increasing public support for the
9 decriminalization of marijuana possession. In November 2008,
10 fifty-eight per cent of voters of Hawaii county voted on a
11 ballot initiative to make marijuana possession the "lowest law
12 enforcement priority." The new county ordinance directs law
13 enforcement officials of the county of Hawaii to treat the
14 "adult personal use" of cannabis as its lowest law enforcement
15 priority and prohibits the county from accepting or expending
16 funds for the marijuana eradication program and for enforcing
17 potential offenses for the adult personal use of cannabis. The
18 ordinance also directs the Hawaii county clerk to send a letter
19 to state legislators requesting that state laws pertaining to
20 private and personal use of cannabis be repealed.

21 In November 2008, sixty-five per cent of voters in
22 Massachusetts approved a decriminalization initiative, effective



1 in January 2009, that makes possession of up to an ounce of
2 marijuana a civil violation punishable by a \$100 fine.
3 Massachusetts became the twelfth state to decriminalize
4 marijuana possession.

5 The legislature also finds that on December 1, 2008, the
6 U.S. Supreme Court declined to review the November 28, 2007
7 decision of the California appellate court, which ruled
8 that -- with regard to California's medical marijuana law -- it
9 is not the job of local police to enforce federal drug laws. In
10 vetoing House Bill No. 2675, H.D. 2, which proposed the
11 establishment of a medical marijuana task force, the governor
12 objected to the bill as an exercise by the State to circumvent
13 federal law. The U.S. Supreme Court's decision not to review
14 California's medical marijuana law appears to support the view
15 that local law enforcement may not stipulate federal law to
16 avoid implementing a conflicting state law, at least as far as
17 medical marijuana is concerned.

18 This Act does not amend laws regarding driving under the
19 influence of marijuana or other criminal infractions committed
20 under the influence, or infractions pertaining to sales or
21 manufacturing. This Act also does not amend laws regarding the
22 use of marijuana for medical purposes. The purpose of this Act



1 is to provide a civil penalty for possession of less than one
2 ounce of marijuana.

3 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§329- Possession of marijuana. Intentional or knowing
7 possession of less than one ounce of marijuana shall constitute
8 a violation subject to a fine not to exceed \$100."

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

11 "(a) A qualifying patient or the primary caregiver may
12 assert the medical use of marijuana as an affirmative defense to
13 any prosecution, criminal or civil, involving marijuana under
14 this [+]part[+] or chapter 712; provided that the qualifying
15 patient or the primary caregiver strictly complied with the
16 requirements of this part."

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

20 "'Detrimental drug" means any substance or immediate
21 precursor defined or specified as a "Schedule V substance" by
22 chapter 329, or any marijuana[-] except that, for purposes of



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1 section 329- , less than one ounce of marijuana shall not
2 be deemed a detrimental drug."

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

5 "(1) [A] Except for possession of less than one ounce of
6 marijuana deemed a violation under section 329- , a person
7 commits the offense of promoting a detrimental drug in the third
8 degree if the person knowingly possesses any marijuana or any
9 Schedule V substance in any amount."

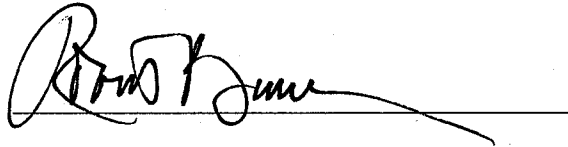
10 SECTION 6. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

16

INTRODUCED BY:



Report Title:

Marijuana; Decriminalize Possession of Less than One Ounce

Description:

Decriminalizes possession of less than 1 ounce of marijuana and makes the possession a civil violation subject to a fine of not more than \$100.

