
A BILL FOR AN ACT

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.

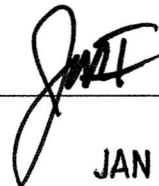
12 SECTION 6. In codifying the new sections added by section
13 1 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

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.

19

INTRODUCED BY: _____



JAN 14 2010



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.

