

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 2745 SD2 HD1
BILL FOR AN ACT RELATING TO
CONTROLLED SUBSTANCES**

by
Clayton A. Frank, Director
Department of Public Safety

Committee on Judiciary
Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair

Thursday, March 25, 2010, 2:45 PM
State Capitol, Room 325

Representative Karamatsu and Members of the Committee:

The Department of Public Safety supports Senate Bill 2745 SD2 HD1 that is the department's vehicle to update Hawaii's controlled substance laws to be consistent with amendments made in Federal law and to schedule Salvia divinorum and its constituent Salvinorin A permanently as a schedule I controlled substance as mandated by Section 329-11. The amendments being proposed by Senate Bill 2745 SD2 would add new drugs to schedules II (Tapentadol), IV (Fospropofol) and V (Lacosamide) of Hawaii's controlled substance laws sections, 329-16(c), 329-20(b) and 329-22(d) to be consistent with additions made by Federal law in 2009. The addition of these controlled substances is required by section 329-11(d) Hawaii Revised statutes.

Section 329-11(d) states that if a substance is added, deleted or rescheduled under federal law then the department shall recommend to the legislature that a corresponding change in Hawaii law be made. In 2009 the Federal Government scheduled the following controlled substances: Tapentadol to schedule II on 6-22-09, Fospropofol to schedule IV on 11-5-09 and Lacosamide ([[R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]) to schedule V on 6-22-09.

Senate Bill 2745 SD2 HD1 also places the controlled substance Salvia divinorum and its constituent Salvinorin A permanently in Section 329-14(d) as a Schedule I controlled Substance. On August 15, 2009, in accordance with Chapter 329-11(e) the Administrator of the Department of Public Safety's Narcotics Enforcement Division emergency scheduled Salvia divinorum and its constituent Salvinorin A and Divinorian A as schedule I controlled substances on a temporary basis, to avoid the possibility of an imminent hazard to the health and safety of the public. Hawaii has had reported cases of the abuse of Salvia divinorum and recently on the island of Maui two minors had to be treated in the hospital for adverse reactions to the use of the drug.

Section 329-11(e) states that the Administrator of the Department of Public Safety's Narcotics Enforcement Division may make an emergency scheduling by placing a substance into schedules I, II, III, IV or V on a temporary basis, if the administrator determines that such action is necessary to avoid an

imminent hazard or the possibility of an imminent hazard to the health and safety of the public.

The Drug Enforcement Administration unlike Hawaii has found a way to deal with the substance "Salvia divinorum or its constituent Salvinorin A" as a controlled substance analogue as defined in 21 USC Sec. 802 (32). The Federal Government has determined that this substance does not have an approved medical use in the United States and is presently listed as a "drug of concern" by the Federal Drug Enforcement Administration due its ability to evoke hallucinogenic effects, which in general, are similar to those of other scheduled hallucinogenic controlled substances. This definition allows the Federal government to treat Salvia Divinorum and/or Salvinorin A as a controlled substance analogue if it is used for human consumption as a psychoactive drug. This leaves a loophole in the law for individuals selling this drug labeled as not for human consumption. As of January 2010, fourteen states have enacted legislation placing regulatory controls on Salvia Divinorum and/or Salvinorin A due to its hallucinogenic properties. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota and Virginia have placed Salvia Divinorum and/or Salvinorin A into schedule I. Louisiana, and Tennessee enacted other forms of legislation restricting the distribution of the plant and making human consumption of Salvia illegal. California and Maine passed legislation making it illegal to sell Salvia to minors. During last legislative session Oregon, Alaska, New Jersey, Pennsylvania, Iowa,

Georgia, Texas, Massachusetts, Wisconsin, Alabama, Indiana, Maryland, Michigan, Hawaii, Kentucky, North Carolina proposed legislative bills to place regulatory controls on Salvia Divinorum and/or Salvinorin A. Salvia Divinorum and/or Salvinorin A have also been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden due to its potential for abuse.

Senate Bill 2745 SD2 HD1 proposes to amend section 329-35 to be consistent with federal language listed in Title 21, Chapter II, Part 1301.37 relating to the "Order to Show Cause" and to clarify the department's requirement to provide notice when revoking or suspending a registrant's controlled substance registration certificate. Senate Bill 2745 SD2 proposes to amend section 329-64 relating to exemptions to the requirements of precursor chemicals by requiring all individuals and entities that conduct retail sales of pseudoephedrine obtain a precursor chemical permit. Section 329-64 is also amended to delete the exemption for the retail sales of dietary supplements that contain ephedrine due to the fact that the chemical Ephedrine was designated as a drug to be dispensed by prescription only by Act 171 in 2006.

Senate Bill 2745 SD2 HD1 also proposes to amend Hawaii's electronic prescription monitoring program by amending section 329-101(f) to clarify the language relating to the penalty for failure to transmit controlled substance prescription data to the Department due to non-compliance by pharmacies and physicians. Senate Bill 2745 SD2 HD1 amends section 329-104(e) by changing

the requirement for the designated state agency to purge the patient identification number data on all controlled substance prescriptions after three years to five years. Maintaining these identification numbers for longer than 3 years is necessary due to administrative, civil and regulatory investigations that last longer than three years.

The Department is requesting that on page 17, line 17 that the implementation date be changed from July1, 2050 to "upon approval".

In summary the Department of Public Safety strongly supports passage of Senate Bill 2745 SD2 HD1 and would like to thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honoluluupd.org



MUFI HANNEMANN
MAYOR

LOUIS M. KEALOHA
CHIEF

DELBERT T. TATSUYAMA
RANDAL K. MACADANGDANG
DEPUTY CHIEFS

OUR REFERENCE **LH-TA**

March 25, 2010

The Jon Riki Karamatsu, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: Senate Bill No. 2745, S.D. 2, H.D. 1, Relating to Controlled Substances

I am Lester Hite, Captain of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2745, S.D. 2, H.D. 1, Relating to Controlled Substances.

To ensure consistency in the regulation and enforcement of controlled substances, the Federal Controlled Substances Act serves as the basis for classification of all controlled substances on a national level. It is the model upon which the Uniform Controlled Substances Act, chapter 329, Hawaii Revised Statutes, is based. Passage of this bill will update chapter 329 to be consistent with the Federal Controlled Substances Act.

The Honolulu Police Department urges you to support Senate Bill No. 2745, S.D. 2, H.D. 1, Relating to Controlled Substances.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

DC R. M. Myg

for LOUIS M. KEALOHA
Chief of Police

Lester Hite
LESTER HITE, Captain
Narcotics/Vice Division

Serving and Protecting With Aloha



the
**Drug Policy
Forum**
of hawai'i

March 25, 2010

To: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Executive Director

Re: SB 2745 SD2 HD1 Relating to Controlled Substances
Hearing: Thursday, March 25, 2010, 2:45 p.m., Conference Room 325

Position: Opposed

The Drug Policy Forum of Hawai'i writes in opposition to SB 2745 SD2 HD1 Relating to Controlled Substances. Specifically, DPFH opposes the addition of salvia divinorum to Schedule I of the controlled substances list; the most restrictive of all schedules. Salvia divinorum has NOT been added to the federal controlled substance list. After ten years of research, the DEA has not added salvia to Schedule I. We ask that the committee delete lines 40, 41, and 42 from this measure.

In order to emergency schedule this drug, (HRS§329-11) the Department of Public Safety (DPS) shall assess the degree of danger or probable danger of the substance by considering:

- a) Its history and current pattern of abuse;
- b) The scope, duration, and significance of abuse; and
- c) A judgment of the degree of actual or probable detriment that may result from the abuse of the substance.

None of the above has been shown. Salvia does not meet the criteria for Schedule I drugs. There are no studies suggesting that salvia is addictive or its users prone to overdose or abuse, the criteria for adding drugs to the controlled substances schedule. In fact, potential for addiction is extremely low; physical toxicity is extremely low—lower than tobacco; and acute impairment is moderately high, but of a very short duration, ten minutes or so. (*See attachments*)

There have been no documented cases of fatal or near fatal incidences involving the drug. Reports of salvia-related emergency room admissions are virtually non-existent, likely because its effects typically vanish in a few minutes.

Board of Directors

Pamela Lichty, M.P.H.
President

Kat Brady
Vice President

Heather Lusk
Treasurer

Katherine Irwin, Ph.D.
Secretary

Michael Kelley, D.Phil.

Richard S. Miller, Prof. of
Law Emer.

Robert Perkinson, Ph.D.

Donald Topping, Ph.D.
Founder 1929-2003

P.O. Box 61233
Honolulu, HI 96839

Phone: (808)-988-4386
Fax: (808) 373-7064

Email: info@dpfhi.org
Website: www.dpfhi.org

Drug Policy Forum of Hawaii

At a time when financial resources are extremely strained, law enforcement has more serious matters and more dangerous drugs to deal with. Simply because a

drug is an intoxicant does not mean it should be illegal. It does not make sense to add a drug to a schedule without the necessary scientific information.

The Drug Enforcement Administration (DEA) has spent more than a decade studying whether to add salvia to its list of controlled substances and has not done so. Bertha Madras, a deputy director of the Office of National Drug Control Policy (ONDCP) said that “there is an absence of good hard cold information” to schedule salvia.

Salvia divinorum is an internet fad. Adding it to the controlled substances list will mainly criminalize teens and young adults. Criminal records create harms that far outweigh the dangers of the drug. Although teen use of any drug is concerning, by outlawing and prohibiting it, legislators will make the problem worse. Teen access to the drug can be curbed by enacting age controls and placing restrictions similar to those on tobacco and alcohol. Criminalizing drugs makes their access easier for young people because the criminal market does not check ID’s for age. As a compromise, we suggest HB 1335 which restricts sales to minors.

Although the Department of Public Safety claims that there is no medical use for salvia, doctors at Johns Hopkins University School of Medicine are currently conducting research on Salvinorum A. Claiming that there is no medical use is premature, scheduling drugs in Schedule I prohibits almost all medical research on the drug.

I have attached two documents from testimony to the Maryland Legislature by Matthew W. Johnson, Ph.D. of Johns Hopkins University School of Medicine who is conducting research on salvia:

1. “Domains of Concern for Drugs of Abuse, 3 Major Categories of Potential Harm to Self and Society.
2. A table with the variety of options available to regulate dangerous drugs and the placement of other drugs on the schedules.

We urge the committee to remove the proposed scheduling of salvia from this measure. Scheduling of drugs should be made on scientific information. Public policy must not be made on myths, falsehoods and by sensationalized fear.

Domains of Concern for Drugs of Abuse

3 Major Categories of Potential Harm to Self and Society

1. Potential for addiction (physical or psychological dependence):

Salvia divinorum appears to be **Extremely low**

For comparison, cocaine, heroin and nicotine are extremely high, marijuana and alcohol are moderate, and LSD is extremely low

- Unlike drugs such as cocaine, heroin, and (to a lesser degree) marijuana, there is no convincing evidence that Salvia divinorum leads to addiction
- In animal experiments that are indicators of addiction potential, Salvia divinorum appears to be the opposite of an addictive drug. In other words, animals avoid it when given a choice
- A hallmark feature of addictive drugs is that they increase dopamine in a special area of the brain, call the shell of the nucleus accumbens, which is often referred as the rewards center in the brain. Addictive drugs such as cocaine, heroine, morphine, and even marijuana increase dopamine in this area. Salvia divinorum, in contrast, lowers dopamine in this area, consistent with its aversive effects in animals and many people.
- Survey research and interviews with human users also suggest that most people who try Salvia divinorum do not try it again. Such users typically state that the effects are too intense and bizarre, and that the drug does not provide an enjoyable or euphoric "high," as with addicted drugs.
- Not a single case report of addiction has appeared in the medical literature or has been reported by addictions treatment centers to our knowledge. Note that because programs typically ask patients to report all drugs they have used recreationally, some have reported use of Salvia divinorum, However, dependence on Salvia divinorum per se has not been reported to our knowledge.

2. Physical toxicity (organ damage, nerve damage, brain damage):

Salvia divinorum appears to be **Extremely low**

For comparison, abused solvents, heroin, and tobacco are extremely high, alcohol is moderate, and LSD is extremely low

- Animal studies show no evidence of organ toxicity or brain damage even at dose many times higher than those that are abused
- Overdose fatally therefore is extremely improbable, and has never been reported

3. Acute impairment (intoxication; relevant to accidents, errors in judgment, ability to drive):

Salvia divinorum appears to be **Moderately High**

For comparison, LSD and alcohol (at high doses) are extremely high, cocaine and marijuana are moderate, and nicotine is extremely low

- High doses can cause extreme short-term motor impairment and confusion
- However, no Emergency Department mentions have been made about accidents while impaired, perhaps because the effects are so short lasting (major effects lasting about 10 minutes or less). Therefore, impairment potential for Salvia divinorum may be lower than high doses of alcohol or long-acting hallucinogens such as LSD, for which impairment can last many hours

A wide variety of options are currently used for regulating dangerous drugs of abuse in the United States. Note that some extremely dangerous substances are in the most restrictive class (heroin), while other extremely dangerous drugs are in the least restrictive class (abused solvents), with many other extremely dangerous drugs in between. Therefore, classification is based not only on potential dangers, but also on potential medical, industrial, and practical considerations.

Type of regulation	Federal Schedule guidelines (paraphrased)	Examples	Relevant Comments
Schedule I	High potential for abuse and no medical use	<ul style="list-style-type: none"> • Heroin • Marijuana (note that the active ingredient THC is scheduled lower, in Schedule III) • PCP, LSD 	Some of these drugs are associated with clear and dramatic effects on public health, and lead to addiction, such that they are placed in the very most restricted category by society. For example, the clear damage heroin abuse has caused in Baltimore (societal and personal degradation, overdose fatalities, HIV/AIDS)
Schedule II	High potential for abuse, accepted medical use; use may lead to high levels of dependence High level of regulation and control of prescription use by DEA	<ul style="list-style-type: none"> • Cocaine • Opioids such as morphine and Oxycontin® • Methamphetamine and amphetamine 	<ul style="list-style-type: none"> • Cocaine is used medically in nose/throat surgery as a local anesthetic • Opioids are invaluable pain relievers in medicine • Methamphetamine, amphetamine are used in treatment of childhood and adult ADHD <p>Many of these drugs can be extremely addictive, even more so than some drugs in schedule I, but are nonetheless valuable and widely used in medicine and medical research</p>
Schedules III – V	Some potential for abuse and dependence, but less than higher schedules (abuse potential of Schedule 3 is less than Schedule 2; abuse potential of Schedule 4 less than Schedule 3, etc.) Different Schedules (III – V) have different regulations about medical use, such as frequency of allowable prescription refills	<ul style="list-style-type: none"> • Anabolic steroids (III) • Some opioids, eg., Vicodin® (III) • Marinol® (III) (FDA-approved THC, active constituent of marijuana) • Sedatives (IV) such as Xanax® and Valium® 	<ul style="list-style-type: none"> • Steroids used medically in many circumstances • Opioids are invaluable pain relievers in medicine • FDA-approved THC used medically to treat nausea in chemotherapy • Sedative used medically to treat insomnia <p>Some of these drugs, such as sedatives, are involved in many deaths per year when abused, but are nonetheless valuable in medicine and medical research</p>
Regulation of sales with age restriction (must be 21); restrictions on public use; strict prohibition of public impairment and impaired driving	N/A	• Alcohol	Alcohol is responsible for 100,000 deaths/year in U.S., second only to tobacco in fatalities. Enforcement of drunk driving laws has saved thousands of lives
Regulation of sales with enforcement of age restriction (must be 18); public health/education focus	N/A	<ul style="list-style-type: none"> • Tobacco • Over-the-counter medications such as Robatusin® and Sudafed® (very powerful drugs of abuse at high doses) 	Tobacco is responsible for 400,000 deaths/year in U.S.; 2-3 million deaths/year world-wide. More than any other drug. Tobacco is a good example in which this form of regulation has been effective. Smoking rates in the US have been cut roughly in half since peak rates in the 1950s and 1960s, primarily through education, public health warnings, and age restriction
Limited or no regulation; public health/education focus	N/A	• Solvents like gasoline, and chemicals in paint thinner and model airplane glue	Among the most toxic and dangerous of all drugs of abuse - many teens and children die from "huffing" and "sniffing glue" every year; permanent brain damage Value to society in other respects is substantial, such that the best approach has been judged to be primarily education and public health warnings

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
ANNE T. HORIUCHI
MIHOKO E. ITO
CHRISTINA ZAHARA NOH

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com
cnoh@goodsill.com

MEMORANDUM

TO: Representative Jon Riki Karamatsu
Chair, Committee on Judiciary
Via Email: JUDtestimony@Capitol.hawaii.gov

FROM: Mihoko E. Ito

DATE: March 24, 2010

RE: **S.B. 2745, SD2, HD1 - Relating to Controlled Substances**
Hearing: Thursday, March 25, 2010 at 2:45 pm

Dear Chair Karamatsu and Members of the Committee:

Walgreens operates and offers immunization services in all 50 states, the District of Columbia and Puerto Rico. In Hawai‘i, Walgreens now has 9 stores on the islands of Maui and Oahu.

Walgreens **submits comments** regarding S.B. 2745, SD2, HD1 which amends Hawai‘i’s controlled substances law.

Walgreens supports the amendment made in S.B. 2745, SD1, which on page 15, lines 7-13, restores the standard for failure to transmit required information from any failure to transmit such information to an “intentional or knowing” failure. The “intentional or knowing” is fair because it would prevent a misdemeanor violation and immediate suspension of a pharmacy’s ability to dispense medications for inadvertent reporting errors (for example, due to interruptions in reporting, or time spent contacting patients to make error corrections).

Thank you very much for the opportunity to testify.