SB 2745

Measure Title:
RELATING TO CONTROLLED SUBSTANCES.

Report Title:
Controlled Substances

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TESTIMONY ON SENATE BILL 2745
BILL FOR AN ACT RELATING TO
CONTROLLED SUBSTANCES
Clayton A. Frank, Director
Department of Public Safety

Committee on Public Safety and Military Affairs
Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

Tuesday, February 9, 2010; 1:25 pm
State Capitol, Room 229

Senator Espero, Senator Bunda and Members of the Committee:

The Department of Public Safety supports Senate Bill 2745 that is the department's vehicle to update Hawaii's controlled substance laws to be consistent with amendments made in Federal law that is mandated by Section 329-11. The amendments being proposed by Senate Bill 2745 would add new drugs to schedules I (Salvia Divinorum and/or Salvinorin A), II (Tapentadol), IV (Fospropofol) and V (Lacosamide) of Hawaii's controlled substance laws sections 329-14(d), 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) and (e) Hawaii Revised statues.

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.

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. 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 or its constituent Salvinorin A as a schedule I controlled substances on a temporary basis, to avoid the possibility of an imminent hazard to the health and safety of the public.

The Drug Enforcement Administration 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, twelve 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 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 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 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 amends section 329-104(e) by deleting the requirement for the designated state agency to purge the patient identification number data on all controlled substance prescriptions after three years. Maintaining these identification numbers are necessary due to administrative, civil and regulatory investigations that last longer than three years

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

POLICE DEPARTMENT

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OUR REFERENCE SD-TA

February 9, 2010

The Honorable Will Espero, Chair
and Members
Committee on Public Safety
and Military Affairs
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Espero:

Subject: Senate Bill No. 2745, Relating to Controlled Substances

I am Susan Dowsett, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2745, 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, Relating to Controlled Substances.

Thank you for the opportunity to testify.

APPROVED:

FOR LOUIS M. KEALOHA
Chief of Police

Sincerely,

SUSAN DOWSETT, Major
Narcotics/Vice Division

Serving and Protecting With Aloha

the Drug Policy Forum of hawai'i

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February 9, 2010

To: Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair and
Members of the Committee on Public Safety and Military Affairs

From: Jeanne Y. Ohta, Executive Director

Re: SB 2745 Relating to Controlled Substances
Hearing: Tuesday, February 9, 2010, 1: 25 p.m., Conference Room 229

Position: Opposed

The Drug Policy Forum of Hawai`i writes in opposition to SB 2745 Relating to Controlled Substances. DPFH objects to this measure for several reasons.

1. Adding Salvia Divinorum to Schedule I
Although this bill purports to making Hawaii's controlled substances laws consistent with that of federal law; it actually over reaches by adding salvia divinorum, salvinorin A, and divinorum A to Schedule I; the most restrictive of all schedules. These drugs have NOT been added to the federal controlled substance list.

According to HRS§329-11, the Department of Public Safety shall assess the degree of danger or probable danger of the substance by considering the following: 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.

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.

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.

It does not make sense to add a drug to the controlled substances schedule without 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.

Proponents of scheduling salvia divinorum cite teen usage. 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.

Scientists believe salvia has potential medical use. Pharmacologists believe salvia could open new frontiers for the treatment of addiction, depression, pain, eating disorders, Alzheimer's disease, and HIV. Criminalizing salvia will hamper research, much like the situation we are in with the scheduling of marijuana preventing research on its medical uses. California Pacific Medical Center Research Institute has federal funding to study salvia's impact on humans.

Public policy must not be made on myths, falsehoods and by sensationalized fear.

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.

2. Extends disclosure to "regulatory investigations" and adds U.S. Attorney
The language in this measure extends disclosure to "regulatory investigations" whereas it is currently limited to criminal investigations and prosecutions and it adds the U.S. Attorney to those authorized for disclosure. This could be a considerable expansion which is not discussed in the justification sheet.

We are concerned that since the Narcotics Enforcement Division has under its control all of the patient and physician information of the Medical Use of Marijuana Program, that this information will be available to federal authorities. Federal law is in direct conflict with state law with regard to medical marijuana. State agencies must preserve patient and physician confidentiality from federal authorities. It is unclear how this change could affect medical marijuana patient information.

Recall that a past U.S. Attorney for Hawai`i has threatened to arrest physicians and patients and to put an end to the medical marijuana program. Hawai`i state law should not facilitate that potential.

3. Repeals the cap on retention of patient prescription data
The identification number of patients is currently purged from the central repository system after 3 years. This measure would eliminate the 3 year cap on retaining identification numbers and allow the department to keep the information indefinitely. Again, there is little justification cited for this change. Current law already allows information to be kept beyond the 3 year limit if the information is part of an active investigation. It is dangerous to allow this information to be kept indefinitely, especially since no compelling reason is given for this change.

DPFH urges this committee to hold this bill since no convincing reasons have been given for the proposed changes. Thank you for this opportunity to provide testimony.