
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 certain state
2 policies should be revised in response to our current economic
3 climate. One of these policies relates to criminal offenses
4 that prohibit the possession of one ounce or less of marijuana.
5 Maine, Massachusetts, Nebraska, and New York, and cities in
6 Michigan and Missouri have enacted laws or ordinances that make
7 the possession of small amounts of marijuana subject to a civil
8 violation. Other states, counties, and cities have
9 decriminalized marijuana possession in other ways or have made
10 the prosecution of marijuana possession the lowest police
11 priority. The legislature finds that in Hawaii, as in these
12 other areas, the benefits of establishing a civil violation for
13 the possession of small amounts of marijuana far outweigh the
14 benefits of the current criminal treatment of this offense.

15 The legislature finds that the costs to enforce criminal
16 marijuana possession statutes are substantial. According to a
17 report entitled *The Budgetary Implications of Marijuana*
18 *Decriminalization and Legalization for Hawai'i*, dated March 2007,



1 (decriminalization study) by Lawrence W. Boyd, Ph.D, an
2 economist from the University of Hawaii West Oahu, state and
3 county law enforcement agencies spend \$4,100,000 per year to
4 enforce marijuana possession laws, and an additional \$2,100,000
5 is spent by the courts each year to process marijuana possession
6 cases. The decriminalization study indicates that less than two
7 per cent of all arrests in Hawaii between the years of 1997 and
8 2004 were for marijuana possession. Furthermore, of the
9 misdemeanor marijuana drug cases brought in district court,
10 approximately sixty-five per cent are dismissed, stricken, or
11 not prosecuted. A relatively small proportion, approximately
12 twenty-five per cent, result in convictions. As the
13 decriminalization study concludes: "Few [of those arrested for
14 marijuana possession] are actually prosecuted under the law,
15 fewer convicted, and virtually none serve jail time. Of those
16 convicted, probation is the usual sentence for first time
17 offenders." Clearly, although the cost to enforce marijuana
18 possession laws is substantial, the resulting conviction rate is
19 low.

20 The legislature finds that the low conviction and arrest
21 rates do not act as a deterrent to marijuana users. The
22 decriminalization study compared the findings of a study



1 surveying the number of households engaged in the regular use of
2 marijuana with actual arrest rates. The results of this
3 comparison indicate that the risk of arrest is between 1.54 per
4 cent and 2.16 per cent in any given year for members of
5 households in which there is regular marijuana use. According
6 to the decriminalization study, the chance of a marijuana user
7 being arrested and convicted is approximately 0.4 per cent. It
8 is clear that the arrest and conviction risks associated with
9 marijuana use do not act as a deterrent to marijuana use, and
10 few of those who use marijuana on a regular basis experience the
11 consequences of these risks, notwithstanding the costs to
12 enforce the criminal statutes prohibiting such conduct.

13 Some form of marijuana possession decriminalization has
14 been passed in eighteen other states, whether statewide or in
15 cities or municipalities. Studies evaluating the effects on
16 states that have reduced the penalties imposed for marijuana
17 possession have shown that those states have not suffered
18 negative consequences. According to a report prepared by the
19 Connecticut Law Revision Commission for the Judiciary Committee
20 of the Connecticut General Assembly, studies of states that have
21 reduced penalties for possession of small amounts of marijuana
22 have found that:



- 1 (1) Expenses for arrests and prosecution of marijuana
2 possession offenses were significantly reduced;
- 3 (2) If marijuana use increased, it increased less in
4 states with reduced penalties when compared to states
5 that did not reduce their penalties, and "the largest
6 proportionate increase occurred in those states with
7 the most severe penalties"; and
- 8 (3) Reducing the penalties for marijuana possession has
9 virtually no effect on either the choice or frequency
10 of use of alcohol or illegal "harder" drugs such as
11 cocaine.

12 Additionally, studies discussed in a report prepared in
13 2003 by Jeffrey A. Miron, an economics professor at Boston
14 University, suggest that "decriminalization has little impact on
15 marijuana use[.]" As noted by Professor Miron, if enforcement
16 of marijuana laws already provides little disincentive to use,
17 there is no reason to expect a substantial increase in marijuana
18 use if decriminalization occurs. Further, minor non-violent
19 criminal offenses utilize scarce state and county resources and
20 clog our overburdened court system.

21 Clearly, the cost of enforcing laws criminalizing the
22 possession of one ounce or less of marijuana greatly outweighs



1 the benefits of doing so. Recently, the federal Department of
2 Justice released new guidelines addressing the enforcement of
3 marijuana and medical marijuana laws. The guidelines reverse
4 federal policy by instructing federal officers not to go after
5 marijuana users or suppliers who comply with their states'
6 medical marijuana laws. In Hawaii county, a voter initiative
7 was passed in 2008 by a majority of 35,000 voters that directs
8 county law enforcement officials to treat the "adult personal
9 use" of marijuana as its lowest law enforcement priority and
10 prohibits the county from accepting or expending funds for the
11 marijuana eradication program and for enforcing potential
12 offenses for the adult personal use of marijuana. Eleven other
13 cities in the United States have passed similar voter
14 initiatives or ordinances instructing local law enforcement to
15 make enforcement of marijuana prohibitions their lowest police
16 priority.

17 By making possession of one ounce or less of marijuana a
18 civil violation, the legislature does not intend to imply that
19 such possession is acceptable. Possession of one ounce or less
20 of marijuana is still prohibited conduct under this Act; it will
21 simply be handled in a different, more appropriate manner.
22 Moreover, this Act does not amend laws regarding driving under



1 the influence of marijuana or other criminal infractions
2 committed under the influence or infractions pertaining to sales
3 or manufacturing. This Act also does not amend laws regarding
4 the use of marijuana for medical purposes.

5 SECTION 2. Hawaii Revised Statutes, is amended by adding
6 ten new sections to be appropriately designated and to read as
7 follows:

8 "§ -1 Definitions. As used in this part, unless the
9 context requires otherwise:

10 "Court" means the district court.

11 "Notice of violation" means a notice of violation of
12 section 329-A.

13 § -2 Notice; form; determination final unless contested.

14 (a) A notice of violation shall include the summons for the
15 purposes of this section. Whenever a notice of violation is
16 issued to a person, the person's signature and current address
17 shall be noted on the notice. If the person refuses to sign the
18 notice of violation, the officer shall record this refusal on
19 the notice and issue the notice to the person. Individuals to
20 whom a notice of violation is issued under this section need not
21 be arraigned before the court, unless required by rule of the
22 supreme court.



1 (b) The form for the notice of violation shall be
2 prescribed by rules of the district court which shall be uniform
3 throughout the State.

4 (c) The notice of violation shall include the following:

5 (1) A statement of the total amount for the violation
6 established pursuant to section 329-A, to be paid by
7 the person;

8 (2) A statement of the options provided in section
9 -3(b) for answering the notice and the procedures
10 necessary to exercise the options;

11 (3) A statement that the person to whom the notice is
12 issued must answer, choosing one of the options
13 specified in section -3(b), within twenty-one days
14 of issuance of the notice;

15 (4) A statement that failure to answer the notice of
16 violation within twenty-one days of issuance shall
17 result in the entry of judgment by default for the
18 State and may result in the assessment of a late
19 penalty and that if the person to whom the notice was
20 issued fails to pay the total amount specified in the
21 default judgment within an additional thirty days or
22 to otherwise take action to set aside the default, the



1 person shall be subject to the provisions of section
2 706-647;

3 (5) A statement that, at a hearing conducted pursuant to
4 section -5 to contest the notice of violation, no
5 officer shall be present unless the person timely
6 requests the court to have the officer present, and
7 that the standard of proof to be applied by the court
8 is whether a preponderance of the evidence proves that
9 the specified violation was committed;

10 (6) A space in which the signature of the person to whom
11 the notice was issued may be affixed; and

12 (7) The date, time, and place at which the person to whom
13 the notice was issued must appear in court, if the
14 person is required by the notice to appear in person
15 at the hearing.

16 § -3 Answer required. (a) A person who receives a
17 notice of violation shall answer the notice within twenty-one
18 days of the date of issuance of the notice. There shall be
19 included with the notice of violation a preaddressed envelope
20 directed to the clerk of the applicable district court.

21 (b) Provided that the notice of violation does not require
22 an appearance in person at a hearing as set forth in section



1 -2(c)(7), in answering a notice of violation, a person shall
2 have the following options:

3 (1) Admit the commission of the violation in one of the
4 following ways:

5 (A) By mail or in person, by completing the
6 appropriate portion of the notice of violation or
7 preaddressed envelope and submitting it to the
8 authority specified on the notice together with
9 payment of the total amount stated on the notice
10 of violation; provided that payment by mail shall
11 be in the form of a check, money order, or by an
12 approved credit or debit card; provided further
13 that payment in person shall be in the form of
14 United States currency, check, money order, or by
15 an approved credit or debit card; or

16 (B) Via the Internet or by telephone, by submitting
17 payment of the total amount stated on the notice
18 of violation; provided that payment via the
19 Internet or by telephone shall be by an approved
20 credit or debit card; or

21 (2) Deny the commission of the violation and request a
22 hearing to contest the violation by completing the



1 appropriate portion of the notice of violation or
2 preaddressed envelope and submitting it, either by
3 mail or in person, to the authority specified on the
4 notice. A denial may include assertion of affirmative
5 defenses, including that the person is duly registered
6 with the department of public safety pursuant to
7 section 329-123 and asserts the medical use of
8 marijuana as an affirmative defense pursuant to
9 section 329-125. In lieu of appearing in person at a
10 hearing, the person may submit a written statement of
11 grounds on which the person contests the notice of
12 violation, which shall be considered by the court as a
13 statement given in court pursuant to section -5(a).

14 (c) When answering the notice of violation, the person
15 shall affix the person's signature to the answer and shall state
16 the address at which the person will accept future mailings from
17 the court. No other response shall constitute an answer for
18 purposes of this chapter.

19 **§ -4 Court action after answer or failure to answer.**

20 (a) When an admitting answer is received, the court shall enter
21 judgment in favor of the State in the total amount specified in
22 the notice of violation. If the total amount is not submitted



1 with the answer, the court may take action as provided in
2 section -6.

3 (b) When a denying answer is received, the court shall
4 notify the person in writing of the date, time, and place of
5 hearing to contest the notice of violation. The notice of
6 hearing shall be mailed to the address stated in the denying
7 answer, or if none is given, to the address stated on the notice
8 of violation. The notification also shall advise the person
9 that, if the person fails to appear at the hearing, the court
10 shall enter judgment by default in favor of the State, as of the
11 date of the scheduled hearing, that the total amount specified
12 in the default judgment must be paid within thirty days of entry
13 of default judgment, and if it is not paid, that the court shall
14 take action as provided in section -6.

15 (c) If the person fails to answer within twenty-one days
16 of issuance of the notice of violation, the court shall take
17 action as provided in subsection (d).

18 (d) Whenever judgment by default in favor of the State is
19 entered, the court shall mail a notice of entry of default
20 judgment to the address provided by the person when the notice
21 of violation was issued. The notice of entry of default
22 judgment shall advise the person that the total amount specified



1 in the default judgment shall be paid within thirty days of
2 entry of default judgment and shall explain the procedure for
3 setting aside a default judgment. The notice of entry of
4 default judgment shall also inform the person that if the total
5 amount is not paid within thirty days, the court shall take
6 action as provided in section -6.

7 Judgment by default for the State entered pursuant to this
8 section may be set aside pending final disposition of the
9 violation upon written application of the person and posting of
10 an appearance bond equal to the amount of the total amount
11 specified in the default judgment. The application shall show
12 good cause or excusable neglect for the person's failure to take
13 action necessary to prevent entry of judgment by default.

14 Upon receipt of the application and required appearance
15 bond, the court shall take action to pursuant to section -6.
16 Thereafter, the court shall determine whether good cause or
17 excusable neglect exists for the person's failure to take action
18 necessary to prevent entry of judgment by default. If so, the
19 application to set aside default judgment shall be granted, the
20 default judgment shall be set aside, and the notice of violation
21 shall be disposed of pursuant to this chapter. If not, the
22 application to set aside default judgment shall be denied, the



1 appearance bond shall be forfeited and applied to satisfy
2 amounts due under the default judgment, and the notice of
3 violation shall be finally disposed. In either case, the court
4 shall determine the existence of good cause or excusable neglect
5 and notify the person of its decision on the application in
6 writing.

7 § -5 Hearings. (a) In proceedings to contest a notice
8 of violation where the person to whom the notice was issued has
9 timely requested a hearing and appears at such hearing:

10 (1) In lieu of the personal appearance by the officer who
11 issued the notice of violation, the court shall
12 consider the notice of violation and any other written
13 report made by the officer, if provided to the court
14 by the officer, together with any oral or written
15 statement by the person to whom the notice of
16 violation was issued;

17 (2) The court may compel by subpoena the attendance of the
18 officer who issued the notice of violation and other
19 witnesses from whom it may wish to hear;

20 (3) The standard of proof to be applied by the court shall
21 be whether, by a preponderance of the evidence, the
22 court finds that the violation was committed; and



1 (4) After due consideration of the evidence and arguments,
2 if any, the court shall determine whether commission
3 of the violation has been established. Where the
4 commission of the violation has not been established,
5 judgment in favor of the defendant, dismissing the
6 notice of violation or any count therein with
7 prejudice, shall be entered in the record. Where it
8 has been established that the violation was committed,
9 the court shall enter judgment in favor of the State
10 and shall assess a monetary assessment pursuant to
11 section 329-A. The court also shall inform the person
12 of the right to request a trial pursuant to section
13 -8. If the person requests a trial at the time of
14 the hearing, the court shall provide the person with a
15 trial date as soon as practicable.

16 (b) If a person for whom a hearing has been scheduled to
17 contest the notice of violation or to assert affirmative
18 defenses fails to appear at the hearing, the court shall enter
19 judgment by default for the State and take action as provided in
20 section -4(d). If the total amount of the monetary
21 assessment, fees, surcharges, or costs is not paid within thirty



1 days of entry of default judgment, the court shall take action
2 as provided in section -6.

3 **§ -6 Failure to pay fine.** When the person issued a
4 notice of violation fails to pay the total amount of the fine,
5 the fine may be collected in the same manner as a judgment in a
6 civil action. The State may collect the fee or fine, including
7 costs, interest, and attorney's fees pursuant to section
8 706-647.

9 **§ -7 Time computation.** In computing any period of time
10 prescribed or allowed by sections -1 through -9, the day
11 of the act, event, or default from which the period of time
12 begins to run shall not be included. The last day of the period
13 so computed shall be included, unless it is a Saturday, Sunday,
14 or legal holiday in which event the period runs until the end of
15 the next day that is not a Saturday, Sunday, or legal holiday.
16 Intermediate Saturdays, Sundays, and legal holidays shall be
17 included. Whenever an act required to be performed under this
18 chapter may be accomplished by mail, the act shall be deemed to
19 have been performed on the date of the postmark on the mailed
20 article.

21 **§ -8 Trial and concurrent trial.** (a) There shall be no
22 right to trial unless the defendant contests the notice of



1 violation pursuant to section -5. If, after proceedings to
2 contest the notice of violation, a determination is made that
3 the defendant committed the violation, judgment shall enter in
4 favor of the State. The defendant may request a trial pursuant
5 to the Hawaii rules of evidence and the rules of the district
6 court; provided that any request for trial shall be made within
7 thirty days of entry of judgment. If, after appearing in person
8 at a hearing to contest the notice of violation, the person
9 requests a trial at the conclusion of the hearing, the court
10 shall provide the person with a trial date as soon as
11 practicable.

12 (b) At the time of trial, the State shall be represented
13 by a prosecuting attorney of the county in which the violation
14 occurred. The prosecuting attorney shall orally recite the
15 charged civil violation in court prior to commencement of the
16 trial. Proof of the defendant's commission of the violation
17 shall be by a preponderance of the evidence.

18 (c) If trial on the violation is held prior to trial on
19 any related criminal offense, the following shall be
20 inadmissible in the subsequent prosecution or trial of the
21 related criminal offense:



1 (1) Any written or oral statement made by the defendant in
2 proceedings conducted pursuant to section -4(b);
3 and

4 (2) Any testimony given by the defendant in the violation
5 trial.

6 The statement or testimony, or both, shall not be deemed a
7 waiver of the defendant's privilege against self-incrimination
8 in connection with any related criminal offense.

9 (d) In any concurrent trial, the State shall be
10 represented by a prosecuting attorney of the county in which the
11 violation and related crime occurred. Proof of the defendant's
12 commission of the violation shall be by a preponderance of the
13 evidence, and proof of the related criminal offense shall be by
14 proof beyond a reasonable doubt. The concurrent trial shall be
15 conducted pursuant to the rules of the appropriate court, the
16 Hawaii rules of evidence, and the Hawaii rules of penal
17 procedure.

18 § -9 Rules. (a) The supreme court may adopt rules of
19 procedure for the conduct of all proceedings pursuant to this
20 chapter.

21 (b) Chapter 626 shall not apply in proceedings conducted
22 pursuant to this chapter, except for the rules governing



1 privileged communications, and proceedings conducted under
2 section -8.

3 (c) Notwithstanding section 604-17, while the court is
4 sitting in any matter pursuant to this chapter, the court shall
5 not be required to preserve the testimony or proceedings, except
6 proceedings conducted pursuant to section -8 and proceedings
7 in which the violation is heard on the same date and time as any
8 related criminal offense.

9 (d) The prosecuting attorney shall not participate in
10 violation proceedings conducted pursuant to this chapter, except
11 proceedings pursuant to section -8 and proceedings in which a
12 related criminal offense is scheduled for arraignment, hearing,
13 or concurrent trial.

14 (e) Chapter 91 shall not apply in proceedings before the
15 court.

16 (f) Chapter 571 and the Hawaii family court rules shall
17 not apply in any proceedings conducted pursuant to this
18 chapter."

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



1 "§329-A Possession of marijuana. (a) Intentional or
2 knowing possession of one ounce or less of marijuana shall
3 constitute a civil violation subject to a fine not to exceed
4 \$100.

5 (b) Civil fines and penalties for violations under this
6 section shall be deposited into the general fund."

7 SECTION 4. Chapter 604, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§604- Enforcement of civil violations for marijuana
11 possession. Jurisdiction is conferred upon the district courts
12 to try all cases arising from the violation of section 329-A and
13 to impose the penalties prescribed for a violation under 329-A.
14 Jurisdiction is in the district court of the circuit where the
15 alleged violation occurred."

16 SECTION 5. Section 302A-1002, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~§~~302A-1002~~§~~ Reporting of crime-related incidents.

19 The board shall adopt rules pursuant to chapter 91 to:

20 (1) Require a report to appropriate authorities from a
21 teacher, official, or other employee of the department



1 who knows or has reason to believe that an act has
2 been committed or will be committed, which:

3 (A) Occurred or will occur on school property during
4 school hours or during activities supervised by
5 the school; and

6 (B) Involves crimes relating to arson, assault,
7 burglary, disorderly conduct, dangerous weapons,
8 dangerous drugs, harmful drugs, extortion,
9 firearms, gambling, harassment, intoxicating
10 drugs, [~~marijuana or~~] marijuana concentrate[~~7~~] or
11 more than one ounce of marijuana, murder,
12 attempted murder, sexual offenses, rendering a
13 false alarm, criminal property damage, robbery,
14 terroristic threatening, theft, or trespass;

15 (2) Establish procedures for disposing of any incident
16 reported; and

17 (3) Impose, in addition to any other powers or authority
18 the department may have to discipline school
19 officials, appropriate disciplinary action for failure
20 to report these incidents, including probation,
21 suspension, demotion, and discharge of school
22 officials."



1 SECTION 6. Section 329-125, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) A qualifying patient or the primary caregiver may
4 assert the medical use of marijuana as an affirmative defense to
5 any prosecution, criminal or civil, involving marijuana under
6 this [H]part [H], section 329-A, or chapter 712; provided that
7 the qualifying patient or the primary caregiver strictly
8 complied with the requirements of this part."

9 SECTION 7. Section 353-66, Hawaii Revised Statutes, is
10 amended by amending subsection (f) to read as follows:

11 "(f) The Hawaii paroling authority may require a paroled
12 prisoner to undergo and complete a substance abuse treatment
13 program when the paroled prisoner has committed a violation of
14 the terms and conditions of parole involving possession or use,
15 not including to distribute or manufacture as defined in section
16 712-1240, of any dangerous drug, detrimental drug, harmful drug,
17 intoxicating compound, more than one ounce of marijuana, or
18 marijuana concentrate, as defined in section 712-1240, unlawful
19 methamphetamine trafficking in the first degree as provided in
20 section [~~712-1240.6,~~] 712-1240.7 or in the second degree as
21 provided in section 712-1240.8, or involving possession or use
22 of drug paraphernalia under section 329-43.5. If the paroled



1 prisoner fails to complete the substance abuse treatment program
2 or the Hawaii paroling authority determines that the paroled
3 prisoner cannot benefit from any substance abuse treatment
4 program, the paroled prisoner shall be subject to revocation of
5 parole and return to incarceration. As a condition of parole,
6 the Hawaii paroling authority may require the paroled prisoner
7 to:

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

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 having substance abuse or dependency and
4 preferably employs licensed professionals or certified substance
5 abuse 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 8. Section 706-625, Hawaii Revised Statutes, is
10 amended by amending subsection (7) to read as follows:

11 "(7) The court may require a defendant to undergo and
12 complete a substance abuse treatment program when the defendant
13 has committed a violation of the terms and conditions of
14 probation involving possession or use, not including to
15 distribute or manufacture as defined in section 712-1240, of any
16 dangerous drug, detrimental drug, harmful drug, intoxicating
17 compound, more than one ounce of marijuana, or marijuana
18 concentrate, as defined in section 712-1240, unlawful
19 methamphetamine trafficking in the first degree as provided in
20 section [~~712-1240.6,~~] 712-1240.7 or in the second degree as
21 provided in section 712-1240.8, or involving possession or use
22 of drug paraphernalia under section 329-43.5. If the defendant



1 fails to complete the substance abuse treatment program or the
2 court determines that the defendant cannot benefit from any
3 other suitable substance abuse treatment program, the defendant
4 shall be subject to revocation of probation and incarceration.

5 The court may require the defendant to:

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

20 As used in this subsection, "substance abuse treatment
21 program" means drug or substance abuse treatment services
22 provided outside a correctional facility by a public, private,



1 or nonprofit entity that specializes in treating persons who are
2 diagnosed with substance abuse or dependency and preferably
3 employs licensed professionals or certified substance abuse
4 counselors.

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

8 SECTION 9. Section 712-1240, Hawaii Revised Statutes, is
9 amended by amending the definition of "detrimental drug" to read
10 as follows:

11 "Detrimental drug" means any substance or immediate
12 precursor defined or specified as a "Schedule V substance" by
13 chapter 329, or any marijuana[-]; provided that one ounce or
14 less of marijuana shall not be deemed a detrimental drug under
15 sections 712-1251 or 712-1255."

16 SECTION 10. Section 712-1248, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of promoting a
19 detrimental drug in the second degree if the person knowingly:

20 (a) Possesses fifty or more capsules or tablets containing
21 one or more of the Schedule V substances; or



- 1 (b) Possesses one or more preparations, compounds,
2 mixtures, or substances, of an aggregate weight of
3 one-eighth ounce or more, containing one or more of
4 the Schedule V substances; or
- 5 (c) Possesses one or more preparations, compounds,
6 mixtures, or substances, of an aggregate weight of one
7 ounce or more, containing [~~any~~] more than one ounce of
8 marijuana; or
- 9 (d) Distributes any marijuana or any Schedule V substance
10 in any amount."

11 SECTION 11. Section 712-1249, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) A person commits the offense of promoting a
14 detrimental drug in the third degree if the person knowingly
15 possesses [~~any~~] more than one ounce of marijuana or any
16 Schedule V substance in any amount."

17 SECTION 12. Section 712-1255, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§712-1255 Conditional discharge.** (1) Whenever any
20 person who has not previously been convicted of any offense
21 under this chapter or chapter 329, except for a civil violation
22 under section 329-A, or under any statute of the United States



1 or of any state relating to a dangerous drug, harmful drug,
2 detrimental drug, or an intoxicating compound, pleads guilty to
3 or is found guilty of promoting a dangerous drug, harmful drug,
4 detrimental drug, or an intoxicating compound under section
5 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250,
6 the court, without entering a judgment of guilt and with the
7 consent of the accused, may defer further proceedings and place
8 the accused on probation upon terms and conditions. Upon
9 violation of a term or condition, the court may enter an
10 adjudication of guilt and proceed as otherwise provided.

11 (2) Upon fulfillment of the terms and conditions, the
12 court shall discharge the person and dismiss the proceedings
13 against the person.

14 (3) Discharge and dismissal under this section shall be
15 without adjudication of guilt and is not a conviction for
16 purposes of this section or for purposes of disqualifications or
17 disabilities imposed by law upon conviction of a crime.

18 (4) There may be only one discharge and dismissal under
19 this section with respect to any person.

20 (5) After conviction[7] for any offense under this chapter
21 or chapter 329, except for a conviction of a civil violation
22 under section 329-A, but prior to sentencing, the court shall be



1 advised by the prosecutor whether the conviction is the
2 defendant's first or a subsequent offense. If it is not a first
3 offense, the prosecutor shall file an information setting forth
4 the prior convictions. The defendant shall have the opportunity
5 in open court to affirm or deny that the defendant is identical
6 with the person previously convicted. If the defendant denies
7 the identity, sentence shall be postponed for such time as to
8 permit the trial, before a jury if the defendant has a right to
9 trial by jury and demands a jury, on the sole issue of the
10 defendant's identity with the person previously convicted.

11 (6) For purposes of this section, a conviction for one or
12 more civil violations under section 329-A shall not constitute a
13 prior offense that would make a conditional discharge described
14 in this section unavailable to the defendant."

15 SECTION 13. This Act does not affect rights and duties
16 that matured, penalties that were incurred, and proceedings that
17 were begun, before its effective date.

18 SECTION 14. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 15. This Act shall take effect on July 1, 2050.

21



Report Title:

Marijuana; Civil Penalties for Possession of One Ounce or Less

Description:

Establishes a civil violation for possession of one ounce or less of marijuana that is subject to a fine of not more than \$100, and establishes an adjudicatory structure for its enforcement. Deletes reporting requirements of board of education for students possessing one ounce or less of marijuana. Clarifies that medical marijuana patients and primary caregiver may assert affirmative defense to prosecution, criminal or civil, involving possession of one ounce or less of marijuana. Excludes possession of one ounce or less of marijuana from authority of Hawaii paroling authority to require paroled prisoner to undergo and complete substance abuse treatment. Excludes possession of more than one ounce of marijuana from authority of courts to require a defendant to undergo and complete substance abuse treatment for probation violation. Clarifies definition of detrimental drug to exclude one ounce or less of marijuana. Excludes possession of one ounce or less of marijuana from offenses of promoting a detrimental drug in the second degree and third degree. Clarifies a civil violation for possession of marijuana does not constitute a prior offense for purposes of the conditional discharge law. Effective 7/1/2050. (SD1)

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

