

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO 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 a new section to be appropriately designated  
3 and to read as follows:

4 "§329- Possession of marijuana. (a) Intentional or  
5 knowing possession of one ounce or less of marijuana shall  
6 constitute a civil violation subject to a fine not to exceed  
7 \$100.

8 (b) Civil fines and penalties for violations under this  
9 section shall be deposited into the early intervention special  
10 fund and administered pursuant to section 321-355."

11 SECTION 2. Section 302A-1002, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"[+]§302A-1002[+] Reporting of crime-related incidents.**

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

15 (1) Require a report to appropriate authorities from a  
16 teacher, official, or other employee of the department  
17 who knows or has reason to believe that an act has  
18 been committed or will be committed, which:



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

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

13 (2) Establish procedures for disposing of any incident  
14 reported; and

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

21 SECTION 3. Section 321-355, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:



1           "(b) The fund shall consist of grants, finances and penalties  
2 for violations of section 329- , and income earned by the  
3 special fund. All program income consisting of federal  
4 reimbursement funds received by the State for early intervention  
5 funded by legislative appropriations under this part shall be  
6 deposited into the special fund; provided that no state  
7 appropriations shall be deposited into the special fund."

8           SECTION 4. Section 329-125, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10           "(a) A qualifying patient or the primary caregiver may  
11 assert the medical use of marijuana as an affirmative defense to  
12 any prosecution, criminal or civil, involving marijuana under  
13 this [+]part[+], section 329- , or chapter 712; provided that  
14 the qualifying patient or the primary caregiver strictly  
15 complied with the requirements of this part."

16           SECTION 5. Section 353-66, Hawaii Revised Statutes, is  
17 amended by amending subsection (f) to read as follows:

18           "(f) The Hawaii paroling authority may require a paroled  
19 prisoner to undergo and complete a substance abuse treatment  
20 program when the paroled prisoner has committed a violation of  
21 the terms and conditions of parole involving possession or use,  
22 not including to distribute or manufacture as defined in section



1 712-1240, of any dangerous drug, detrimental drug, harmful drug,  
2 intoxicating compound, more than one ounce of marijuana, or  
3 marijuana concentrate, as defined in section 712-1240, unlawful  
4 methamphetamine trafficking as provided in section 712-1240.6,  
5 or involving possession or use of drug paraphernalia under  
6 section 329-43.5. If the paroled prisoner fails to complete the  
7 substance abuse treatment program or the Hawaii paroling  
8 authority determines that the paroled prisoner cannot benefit  
9 from any substance abuse treatment program, the paroled prisoner  
10 shall be subject to revocation of parole and return to  
11 incarceration. As a condition of parole, the Hawaii paroling  
12 authority may require the paroled prisoner to:

- 13 (1) Be assessed by a certified substance abuse counselor  
14 for substance abuse dependency or abuse under the  
15 applicable Diagnostic and Statistical Manual and  
16 Addiction Severity Index;
- 17 (2) Present a proposal to receive substance abuse  
18 treatment in accordance with the treatment plan  
19 prepared by a certified substance abuse counselor  
20 through a substance abuse treatment program that  
21 includes an identified source of payment for the  
22 treatment program;



- 1           (3)   Contribute to the cost of the substance abuse
- 2                    treatment program; and
- 3           (4)   Comply with any other terms and conditions for parole.

4           As used in this subsection, "substance abuse treatment  
5 program" means drug or substance abuse treatment services  
6 provided outside a correctional facility by a public, private,  
7 or nonprofit entity that specializes in treating persons who are  
8 diagnosed with having substance abuse or dependency and  
9 preferably employs licensed professionals or certified substance  
10 abuse counselors.

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

14           SECTION 6.   Section 706-625, Hawaii Revised Statutes, is  
15 amended by amending subsection (7) to read as follows:

16           "(7)   The court may require a defendant to undergo and  
17 complete a substance abuse treatment program when the defendant  
18 has committed a violation of the terms and conditions of  
19 probation involving possession or use, not including to  
20 distribute or manufacture as defined in section 712-1240, of any  
21 dangerous drug, detrimental drug, harmful drug, intoxicating  
22 compound, more than one ounce of marijuana, or marijuana



1 concentrate, as defined in section 712-1240, unlawful  
2 methamphetamine trafficking as provided in section 712-1240.6,  
3 or involving possession or use of drug paraphernalia under  
4 section 329-43.5. If the defendant fails to complete the  
5 substance abuse treatment program or the court determines that  
6 the defendant cannot benefit from any other suitable substance  
7 abuse treatment program, the defendant shall be subject to  
8 revocation of probation and incarceration. The court may  
9 require the defendant to:

- 10 (a) Be assessed by a certified substance abuse counselor  
11 for substance abuse dependency or abuse under the  
12 applicable Diagnostic and Statistical Manual and  
13 Addiction Severity Index;
- 14 (b) Present a proposal to receive substance abuse  
15 treatment in accordance with the treatment plan  
16 prepared by a certified substance abuse counselor  
17 through a substance abuse treatment program that  
18 includes an identified source of payment for the  
19 treatment program;
- 20 (c) Contribute to the cost of the substance abuse  
21 treatment program; and



1 (d) Comply with any other terms and conditions of  
2 probation.

3 As used in this subsection, "substance abuse treatment  
4 program" means drug or substance abuse treatment services  
5 provided outside a correctional facility by a public, private,  
6 or nonprofit entity that specializes in treating persons who are  
7 diagnosed with substance abuse or dependency and preferably  
8 employs licensed professionals or certified substance abuse  
9 counselors.

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

13 SECTION 7. Section 712-1240, Hawaii Revised Statutes, is  
14 amended by amending the definition of "detrimental drug" to read  
15 as follows:

16 "Detrimental drug" means any substance or immediate  
17 precursor defined or specified as a "Schedule V substance" by  
18 chapter 329, or any marijuana[-]; provided that one ounce or  
19 less of marijuana shall not be deemed a detrimental drug for  
20 purposes of section 712-1251 or 712-1255."

21 SECTION 8. Section 712-1247, Hawaii Revised Statutes, is  
22 amended by amending subsection (1) to read as follows:



1           "(1) A person commits the offense of promoting a  
2 detrimental drug in the first degree if the person knowingly:  
3           (a) Possesses four hundred or more capsules or tablets  
4                 containing one or more of the Schedule V substances;  
5                 or  
6           (b) Possesses one or more preparations, compounds,  
7                 mixtures, or substances of an aggregate weight of one  
8                 ounce or more, containing one or more of the Schedule  
9                 V substances; or  
10           (c) Distributes fifty or more capsules or tablets  
11                 containing one or more of the Schedule V substances;  
12                 or  
13           (d) Distributes one or more preparations, compounds,  
14                 mixtures, or substances of an aggregate weight of one-  
15                 eighth ounce or more, containing one or more of the  
16                 Schedule V substances; or  
17           (e) Possesses one or more preparations, compounds,  
18                 mixtures, or substances [~~of an aggregate weight of one~~  
19                 ~~pound or more,~~] containing [~~any~~] more than one ounce  
20                 of marijuana; or





- 1 (f) Distributes one or more preparations, compounds,
- 2 mixtures, or substances of an aggregate weight of one
- 3 ounce or more, containing any marijuana; or
- 4 (g) Possesses, cultivates, or has under the person's
- 5 control twenty-five or more marijuana plants; or
- 6 (h) Sells or barteres any marijuana or any Schedule V
- 7 substance in any amount."

8 SECTION 9. Section 712-1248, Hawaii Revised Statutes, is  
9 amended by amending subsection (1) to read as follows:

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

- 12 (a) Possesses fifty or more capsules or tablets containing
- 13 one or more of the Schedule V substances; or
- 14 (b) Possesses one or more preparations, compounds,
- 15 mixtures, or substances, of an aggregate weight of
- 16 one- eighth ounce or more, containing one or more of
- 17 the Schedule V substances; or
- 18 (c) Possesses one or more preparations, compounds,
- 19 mixtures, or substances [~~of an aggregate weight of~~
- 20 ~~one ounce or more,~~] containing [~~any~~] more than one
- 21 ounce of marijuana; or



1 (d) Distributes any marijuana or any Schedule V substance  
2 in any amount."

3 SECTION 10. Section 712-1249, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

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

9 SECTION 11. Section 712-1249.6, Hawaii Revised Statutes,  
10 is amended to read as follows:

11 "**§712-1249.6 Promoting a controlled substance in, on, or**  
12 **near schools, school vehicles, public parks, or public housing**  
13 **projects or complexes.** (1) A person commits the offense of  
14 promoting a controlled substance in, on, or near schools, school  
15 vehicles, public parks, or public housing projects or complexes  
16 if the person knowingly:

17 (a) Distributes or possesses with intent to distribute a  
18 controlled substance in any amount in or on the real  
19 property comprising a school, public park, or public  
20 housing project or complex;

21 (b) Distributes or possesses with intent to distribute a  
22 controlled substance in any amount within seven



1 hundred and fifty feet of the real property comprising  
2 a school, public park, or public housing project or  
3 complex;

4 (c) Distributes or possesses with intent to distribute a  
5 controlled substance in any amount while on any school  
6 vehicle, or within ten feet of a parked school vehicle  
7 during the time that the vehicle is in service for or  
8 waiting to transport school children; or

9 (d) Manufactures methamphetamine or any of its salts,  
10 isomers, and salts of isomers, within seven hundred  
11 and fifty feet of the real property comprising a  
12 school, public park, or public housing project or  
13 complex.

14 (2) A person who violates subsection (1)(a), (b), or (c)  
15 is guilty of a class C felony. A person who violates subsection  
16 (1)(d) is guilty of a class A felony.

17 (3) Any person with prior conviction or convictions under  
18 subsection (1)(a), (b), or (c) is punishable by a term of  
19 imprisonment of not less than two years and not more than ten  
20 years.



1           (4) Any individual convicted under subsection (3) of this  
2 section shall not be eligible for parole until the individual  
3 has served the minimum sentence required by such subsection.

4           (5) For purposes of this section, mere possession of  
5 marijuana in an amount of one ounce or less shall not constitute  
6 a possession with intent to distribute without other conduct  
7 indicating intent to distribute.

8           ~~[(5)]~~ (6) For the purposes of this section, "school  
9 vehicle" means every school vehicle as defined in section 286-  
10 181 and any regulations adopted pursuant to that section.

11           ~~[(6)]~~ (7) For purposes of this section, "school" means any  
12 public or private preschool, kindergarten, elementary,  
13 intermediate, middle secondary, or high school."

14           ~~[(7)]~~ (8) For purposes of this section, "public housing  
15 project or complex" means a housing project directly controlled,  
16 owned, developed, or managed by the Hawaii public housing  
17 authority pursuant to the federal or state low-rent public  
18 housing program."

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

21           "**§712-1255 Conditional discharge.** (1) Whenever any  
22 person who has not previously been convicted of any offense



1 under this chapter or chapter 329, except for a civil violation  
2 under section 329-\_\_\_\_, or under any statute of the United States  
3 or of any state relating to a dangerous drug, harmful drug,  
4 detrimental drug, or an intoxicating compound, pleads guilty to  
5 or is found guilty of promoting a dangerous drug, harmful drug,  
6 detrimental drug, or an intoxicating compound under section  
7 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250,  
8 the court, without entering a judgment of guilt and with the  
9 consent of the accused, may defer further proceedings and place  
10 the accused on probation upon terms and conditions. Upon  
11 violation of a term or condition, the court may enter an  
12 adjudication of guilt and proceed as otherwise provided.

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

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

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



1           (5) After conviction, for any offense under this chapter  
2 or chapter 329, except for a conviction of a civil violation  
3 under section 329- , but prior to sentencing, the court shall  
4 be advised by the prosecutor whether the conviction is  
5 defendant's first or a subsequent offense. If it is not a first  
6 offense, the prosecutor shall file an information setting forth  
7 the prior convictions. The defendant shall have the opportunity  
8 in open court to affirm or deny that the defendant is identical  
9 with the person previously convicted. If the defendant denies  
10 the identity, sentence shall be postponed for such time as to  
11 permit the trial, before a jury if the defendant has a right to  
12 trial by jury and demands a jury, on the sole issue of the  
13 defendant's identity with the person previously convicted.

14           (6) For purposes of this section, a conviction for one or  
15 more civil violations under section 329- shall not constitute  
16 a prior offense making a conditional discharge described in this  
17 section unavailable to the defendant."

18           SECTION 13. This Act does not affect rights and duties  
19 that matured, penalties that were incurred, and proceedings that  
20 were begun, before its effective date.

21           SECTION 14. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: J. Kiani Gil

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# S.B. NO. 472

**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.

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

