

STAND. COM. REP. NO.

1400

Honolulu, Hawaii

April 2, 2013

RE: S.B. No. 472  
S.D. 1  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 472, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MARIJUANA,"

begs leave to report as follows:

The purpose of this measure, as it was received by your Committee, is to add a section to the Uniform Controlled Substances Act, Chapter 329, Hawaii Revised Statutes, to make the intentional or knowing possession of one ounce or less of marijuana a civil violation, subject to a fine of \$1,000.

The Progressive Democrats of Hawaii; Americans for Democratic Action, Hawaii; Americans for Safe Access, Big Island Chapter; and one concerned individual testified in support of this measure as received by your Committee. The Department of the Attorney General, Department of the Prosecuting Attorney of the City and County of Honolulu, Honolulu Police Department, Maui Police Department, Weed and Seed Hawaii, Plumbers and Fitters Local 675, Coalition for a Drug-Free Hawaii, and several concerned individuals testified in opposition to the bill as received by your Committee. The Office of the Public Defender, Libertarian Party of Hawaii, Mothers Against Drunk Driving, and several concerned individuals submitted comments on the bill as received by your Committee.

SB472 HD1 HSCR JUD HMS 2013-2559-3



For the purposes of a public hearing on this bill, your Committee circulated a Proposed S.B. No. 472 S.D. 1, H.D. 1 (Proposed Draft), and notified the public that it would be accepting testimony on the Proposed Draft, which among other things:

- (1) Expands the state of mind element for the possession of marijuana to include reckless possession;
- (2) Decreases the amount in possession subject to a civil violation from one ounce or less to 20 grams or less;
- (3) Specifies that only persons 18 years and older will be subject to civil violations for the possession of 20 grams or less of marijuana;
- (4) Decreases the fine amount for a civil violation for the possession of marijuana from \$1,000 to \$100;
- (5) Creates a right of action and civil liability against a person 18 years of age or older who sells, furnishes, or provides marijuana to a minor, or owns, occupies, or controls the premises on which marijuana is used or consumed by a minor and knowingly allows minors to use or consume marijuana on the premises, for injuries caused by the minor while intoxicated by marijuana;
- (6) Amending sections of the Penal Code relating to promoting a detrimental drug to specify that:
  - (A) The possession of more than 426 grams or the distribution of more than 20 grams of marijuana constitutes promoting a detrimental drug in the first degree;
  - (B) The possession of more than 200 grams of marijuana constitutes promoting a detrimental substance in the second degree; and
  - (C) The possession of more than 20 grams of marijuana constitutes promoting a detrimental substance in the third degree;
- (7) For the purposes of the offense of promoting a controlled substance in, on, or near schools, school vehicles, and public parks and housing projects,



provides that possession of 20 grams or less of marijuana shall not constitute possession with intent to distribute;

- (8) Clarifies that the offense of promoting intoxicating compounds covers a person who knowingly sells or offers for sale, delivers, or gives marijuana to a minor; and
- (9) Makes various conforming amendments to statutes to reflect the establishment of the civil violation for possessing marijuana of 20 grams or less.

The Progressive Democrats of Hawaii; Americans for Democratic Action, Hawaii; Americans for Safe Access, Big Island Chapter; American Civil Liberties Union of Hawaii; Drug Policy Action Group; Community Alliance on Prisons; Hardknocks Incorporated; National Organization for the Reform of Marijuana Laws; and numerous individuals submitted testimony in support of the Proposed Draft.

The Department of the Attorney General; Department of Education; Hawaii Public Housing Authority; Department of Public Safety; Department of the Prosecuting Attorney of the City and County of Honolulu; Honolulu Police Department; Kauai Police Department; Hawaii Police Department; Department of the Prosecuting Attorney, County of Maui; Plumbers and Fitters Local 675; Na Keiki Mauloa; Delta Construction Corporation; and numerous concerned individuals submitted testimony in opposition to the Proposed Draft. The Office of the Public Defender, IMUAlliance, Libertarian Party of Hawaii, and several concerned individuals submitted comments on the Proposed Draft.

Your Committee considered the merits of both S.B. No. 472, S.D. 1, as received by your Committee, and the Proposed Draft, and after careful consideration, adopted the Proposed Draft with the following amendments:

- (1) Adding a purpose section to reflect that possession in any amount and use of marijuana by minors will remain prohibited activities with criminal sanctions, because the Legislature finds that there is evidence that young adolescent brains are more vulnerable to toxic insult and minors are more adversely affected by marijuana use;



- (2) Adding a provision that a minor adjudicated for possession of any amount of marijuana shall have the minor's driver's license suspended for one year;
- (3) Deleting conforming amendments made to the offense of promoting a controlled substance in, on, or near schools, school vehicles, public parks, or public housing projects or complexes;
- (4) Clarifying that possessing:
  - (A) An amount of more than 400 grams of marijuana constitutes promoting a detrimental drug in the first degree;
  - (B) An amount between 20 to 400 grams of marijuana constitutes promoting a detrimental drug in the second degree; and
  - (C) Any amount up to 20 grams by a minor constitutes promoting a detrimental drug in the third degree;
- (5) Changing the effective date to be effective upon its approval; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 472, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 472, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,



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KARL RHOADS, Chair



