

JAN 17 2014

A BILL FOR AN ACT

RELATING TO MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

1
2 SECTION 1. The legislature finds that there is increasing
3 public support for the decriminalization of marijuana
4 possession. In November 2008, Hawaii county voters approved
5 ordinance 08-181, the "lowest law enforcement priority of
6 cannabis ordinance." The ordinance provides in pertinent part,
7 "The cultivation, possession and use for adult personal use of
8 Cannabis shall be the [l]owest [l]aw [e]nforcement [p]riority
9 for law enforcement agencies in the county of Hawaii."

10 A United States Department of Justice Memorandum for All
11 United States Attorneys, dated August 29, 2013, deemphasized
12 federal enforcement of federal drug laws concerning marijuana as
13 long as marijuana activity does not threaten the federal
14 government's enforcement priorities. The Memorandum states in
15 pertinent part, "consistent with the traditional allocation of
16 federal-state efforts in this area, enforcement of state law by
17 state and local law enforcement and regulatory bodies should



1 remain the primary means of addressing marijuana-related
2 activity."

3 Many critics of drug legalization are concerned that
4 lifting the prohibition on illegal drugs like marijuana will
5 increase crime and make streets less safe. However, a study
6 released in 2011 by the nonprofit RAND Corp. indicates that just
7 the opposite might be true: counterintuitively, stricter drug
8 policies might actually lead to an increase in crime.

9 The legislature further finds that the legalization of
10 marijuana for personal or recreational use is a natural,
11 logical, and reasonable outgrowth of the current science of
12 marijuana and attitudes toward marijuana.

13 The purpose of this Act is to decriminalize the intentional
14 or knowing possession of one ounce or less of marijuana.

15 **PART II**

16 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§329- Possession of marijuana. (a) Intentional or
20 knowing possession of one ounce or less of marijuana shall
21 constitute a civil violation. Chapter shall apply for the
22 adjudication of violations under this section.



1 "Notice of violation" means a notice of violation of
2 section 329- .

3 § -2 Notice; form; determination final unless contested.

4 (a) A notice of violation shall include the summons for the
5 purposes of this section. Whenever a notice of violation is
6 issued to a person, the person's signature and current address
7 shall be noted on the notice. If the person refuses to sign the
8 notice of violation, the officer shall record this refusal on
9 the notice and issue the notice to the person. Individuals to
10 whom a notice of violation is issued under this section need not
11 be arraigned before the court, unless required by rule of the
12 supreme court.

13 (b) The form for the notice of violation shall be
14 prescribed by rules of the district court which shall be uniform
15 throughout the State.

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

17 (1) A statement of the maximum amount for the civil fine
18 established pursuant to section 329- , to be paid by
19 the person;

20 (2) A statement of the options provided in section
21 -3(b) for answering the notice and the procedures
22 necessary to exercise the options;



- 1 (3) A statement that the person to whom the notice is
2 issued must answer, choosing one of the options
3 specified in section -3(b), within twenty-one days
4 of issuance of the notice;
- 5 (4) A statement that failure to answer the notice of
6 violation within twenty-one days of issuance shall
7 result in the entry of judgment by default for the
8 State and may result in the assessment of a late
9 penalty and that if the person to whom the notice was
10 issued fails to pay the total amount specified in the
11 default judgment within an additional thirty days or
12 to otherwise take action to set aside the default, the
13 person shall be subject to section 706-647;
- 14 (5) A statement that, at a hearing conducted pursuant to
15 section -5 to contest the notice of violation, no
16 officer shall be present unless the person timely
17 requests the court to have the officer present, and
18 that the standard of proof to be applied by the court
19 is whether a preponderance of the evidence proves that
20 the specified violation was committed;
- 21 (6) A space in which the signature of the person to whom
22 the notice was issued may be affixed; and



1 (7) The date, time, and place at which the person to whom
2 the notice was issued must appear in court, if the
3 person is required by the notice to appear in person
4 at the hearing.

5 § -3 **Answer required.** (a) A person who receives a
6 notice of violation shall answer the notice within twenty-one
7 days of the date of issuance of the notice. There shall be
8 included with the notice of violation a preaddressed envelope
9 directed to the clerk of the applicable district court.

10 (b) Provided that the notice of violation does not require
11 an appearance in person at a hearing as set forth in section
12 -2(c)(7), in answering a notice of violation, a person shall
13 have the following options:

14 (1) Admit the commission of the violation in one of the
15 following ways:

16 (A) By mail or in person, by completing the
17 appropriate portion of the notice of violation or
18 preaddressed envelope and submitting it to the
19 authority specified on the notice together with
20 payment of the total amount stated on the notice
21 of violation; provided that payment by mail shall
22 be in the form of a check, money order, or by an



1 approved credit or debit card; provided further
2 that payment in person shall be in the form of
3 United States currency, check, money order, or by
4 an approved credit or debit card; or

5 (B) Via the Internet or by telephone, by submitting
6 payment of the total amount stated on the notice
7 of violation; provided that payment via the
8 Internet or by telephone shall be by an approved
9 credit or debit card; or

10 (2) Deny the commission of the violation and request a
11 hearing to contest the violation by completing the
12 appropriate portion of the notice of violation or
13 preaddressed envelope and submitting it, either by
14 mail or in person, to the authority specified on the
15 notice. A denial may include assertion of affirmative
16 defenses, including that the person is duly registered
17 with the department of health pursuant to section
18 329-123 and asserts the medical use of marijuana as an
19 affirmative defense pursuant to section 329-125. In
20 lieu of appearing in person at a hearing, the person
21 may submit a written statement of grounds on which the
22 person contests the notice of violation, which shall



1 be considered by the court as a statement given in
2 court pursuant to section -5(a).

3 (c) When answering the notice of violation, the person
4 shall affix the person's signature to the answer and shall state
5 the address at which the person will accept future mailings from
6 the court. No other response shall constitute an answer for
7 purposes of this chapter.

8 § -4 Court action after answer or failure to answer.

9 (a) When an admitting answer is received, the court shall enter
10 judgment in favor of the State in the total amount specified in
11 the notice of violation. If the total amount is not submitted
12 with the answer, the court may take action as provided in
13 section -6.

14 (b) When a denying answer is received, the court shall
15 notify the person in writing of the date, time, and place of
16 hearing to contest the notice of violation. The notice of
17 hearing shall be mailed to the address stated in the denying
18 answer, or if none is given, to the address stated on the notice
19 of violation. The notification also shall advise the person
20 that, if the person fails to appear at the hearing, the court
21 shall enter judgment by default in favor of the State, as of the
22 date of the scheduled hearing, that the total amount specified



1 in the default judgment must be paid within thirty days of entry
2 of default judgment, and if it is not paid, that the court shall
3 take action as provided in section -6.

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

7 (d) Whenever judgment by default in favor of the State is
8 entered, the court shall mail a notice of entry of default
9 judgment to the address provided by the person when the notice
10 of violation was issued. The notice of entry of default
11 judgment shall advise the person that the total amount specified
12 in the default judgment shall be paid within thirty days of
13 entry of default judgment and shall explain the procedure for
14 setting aside a default judgment. The notice of entry of
15 default judgment shall also inform the person that if the total
16 amount is not paid within thirty days, the court shall take
17 action as provided in section -6.

18 Judgment by default for the State entered pursuant to this
19 section may be set aside pending final disposition of the
20 violation upon written application of the person and posting of
21 an appearance bond equal to the amount of the total amount
22 specified in the default judgment. The application shall show



1 good cause or excusable neglect for the person's failure to take
2 action necessary to prevent entry of judgment by default.

3 Upon receipt of the application and required appearance
4 bond, the court shall take action to pursuant to section -6.
5 Thereafter, the court shall determine whether good cause or
6 excusable neglect exists for the person's failure to take action
7 necessary to prevent entry of judgment by default. If so, the
8 application to set aside default judgment shall be granted, the
9 default judgment shall be set aside, and the notice of violation
10 shall be disposed of pursuant to this chapter. If not, the
11 application to set aside default judgment shall be denied, the
12 appearance bond shall be forfeited and applied to satisfy
13 amounts due under the default judgment, and the notice of
14 violation shall be finally disposed. In either case, the court
15 shall determine the existence of good cause or excusable neglect
16 and notify the person of its decision on the application in
17 writing.

18 § -5 **Hearings.** (a) In proceedings to contest a notice
19 of violation where the person to whom the notice was issued has
20 timely requested a hearing and appears at such hearing:

21 (1) In lieu of the personal appearance by the officer who
22 issued the notice of violation, the court shall



1 consider the notice of violation and any other written
2 report made by the officer, if provided to the court
3 by the officer, together with any oral or written
4 statement by the person to whom the notice of
5 violation was issued;

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

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

12 (4) After due consideration of the evidence and arguments,
13 if any, the court shall determine whether commission
14 of the violation has been established. Where the
15 commission of the violation has not been established,
16 judgment in favor of the defendant, dismissing the
17 notice of violation or any count therein with
18 prejudice, shall be entered in the record. Where it
19 has been established that the violation was committed,
20 the court shall enter judgment in favor of the State
21 and shall assess a civil fine pursuant to section
22 329- . The court also shall inform the person of



1 the right to request a trial pursuant to section -
2 8. If the person requests a trial at the time of the
3 hearing, the court shall provide the person with a
4 trial date as soon as practicable.

5 (b) If a person for whom a hearing has been scheduled to
6 contest the notice of violation or to assert affirmative
7 defenses fails to appear at the hearing, the court shall enter
8 judgment by default for the State and take action as provided in
9 section -4(d). If the total amount of the monetary
10 assessment, fees, surcharges, or costs is not paid within thirty
11 days of entry of default judgment, the court shall take action
12 as provided in section -6.

13 § -6 **Failure to pay fine.** When the person issued a
14 notice of violation fails to pay the total amount of the fine,
15 the fine may be collected in the same manner as a judgment in a
16 civil action. The State may collect the fee or fine, including
17 costs, interest, and attorney's fees pursuant to section
18 706-647.

19 § -7 **Time computation.** In computing any period of time
20 prescribed or allowed by this chapter, the day of the act,
21 event, or default from which the period of time begins to run
22 shall not be included. The last day of the period so computed



1 shall be included, unless it is a Saturday, Sunday, or legal
2 holiday in which event the period runs until the end of the next
3 day that is not a Saturday, Sunday, or legal holiday.

4 Intermediate Saturdays, Sundays, and legal holidays shall be
5 included. Whenever an act required to be performed under this
6 chapter may be accomplished by mail, the act shall be deemed to
7 have been performed on the date of the postmark on the mailed
8 article.

9 § -8 **Trial and concurrent trial.** (a) There shall be no
10 right to trial unless the defendant contests the notice of
11 violation pursuant to section -5. If, after proceedings to
12 contest the notice of violation, a determination is made that
13 the defendant committed the violation, judgment shall enter in
14 favor of the State. The defendant may request a trial pursuant
15 to the Hawaii rules of evidence and the rules of the district
16 court; provided that any request for trial shall be made within
17 thirty days of entry of judgment. If, after appearing in person
18 at a hearing to contest the notice of violation, the person
19 requests a trial at the conclusion of the hearing, the court
20 shall provide the person with a trial date as soon as
21 practicable.



1 (b) At the time of trial, the State shall be represented
2 by a prosecuting attorney of the county in which the violation
3 occurred. The prosecuting attorney shall orally recite the
4 charged civil violation in court prior to commencement of the
5 trial. Proof of the defendant's commission of the violation
6 shall be by a preponderance of the evidence.

7 (c) If trial on the violation is held prior to trial on
8 any related criminal offense, the following shall be
9 inadmissible in the subsequent prosecution or trial of the
10 related criminal offense:

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

14 (2) Any testimony given by the defendant in the violation
15 trial.

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

19 (d) In any concurrent trial, the State shall be
20 represented by a prosecuting attorney of the county in which the
21 violation and related crime occurred. Proof of the defendant's
22 commission of the violation shall be by a preponderance of the



1 evidence, and proof of the related criminal offense shall be by
2 proof beyond a reasonable doubt. The concurrent trial shall be
3 conducted pursuant to the rules of the appropriate court, the
4 Hawaii rules of evidence, and the Hawaii rules of penal
5 procedure.

6 § -9 Rules. (a) The supreme court may adopt rules of
7 procedure for the conduct of all proceedings pursuant to this
8 chapter.

9 (b) Chapter 626 shall not apply in proceedings conducted
10 pursuant to this chapter, except for the rules governing
11 privileged communications and proceedings conducted under
12 section -8.

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

19 (d) The prosecuting attorney shall not participate in
20 violation proceedings conducted pursuant to this chapter, except
21 proceedings pursuant to section -8 and proceedings in which a



1 related criminal offense is scheduled for arraignment, hearing,
2 or concurrent trial.

3 (e) Chapter 91 shall not apply in proceedings before the
4 court.

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

8 SECTION 5. 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 6. Section 712-1240, Hawaii Revised Statutes, is
17 amended by amending the definition of "detrimental drug" to read
18 as follows:

19 ""Detrimental drug" means any substance or immediate
20 precursor defined or specified as a "Schedule V substance" by
21 chapter 329, or any marijuana[-]; provided that one ounce or
22 less of marijuana shall not be deemed a detrimental drug for



1 purposes of sections 712-1247, 712-1248, 712-1249, 712-1251, and
2 712-1255."

3 **PART IV**

4 SECTION 7. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun, before its effective date.

7 SECTION 8. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 9. This Act shall take effect upon its approval.

10

INTRODUCED BY: Rosa R

John Bell

Walter Jones

Will Leno

John Leno



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.

