

---

---

# A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1

**PART I**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

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

A United States Department of Justice Memorandum for All United States Attorneys, dated August 29, 2013, deemphasized federal enforcement of federal drug laws concerning marijuana as long as marijuana activity does not threaten the federal government's enforcement priorities. The Memorandum states, in pertinent part, "consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by 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           **§ -1 Definitions.** As used in this chapter, unless the  
2 context requires otherwise:

3           "Court" means the district court.

4           "Notice of violation" means a notice of violation of  
5 section 329- .

6           **§ -2 Notice; form; determination final unless contested.**

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

16 (b) The form for the notice of violation shall be  
17 prescribed by rules of the district court which shall be uniform  
18 throughout the State.

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

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



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



1 is whether a preponderance of the evidence proves that  
2 the specified violation was committed;

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

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

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

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

16 -2(c)(7), in answering a notice of violation, a person shall  
17 have the following options:

18 (1) Admit the commission of the violation in one of the  
19 following ways:

20 (A) By mail or in person, by completing the  
21 appropriate portion of the notice of violation or  
22 preaddressed envelope and submitting it to the



1 authority specified on the notice together with  
2 payment of the total amount stated on the notice  
3 of violation; provided that payment by mail shall  
4 be in the form of a check, money order, or by an  
5 approved credit or debit card; provided further  
6 that payment in person shall be in the form of  
7 United States currency, check, money order, or by  
8 an approved credit or debit card; or

9 (B) Via the Internet or by telephone, by submitting  
10 payment of the total amount stated on the notice  
11 of violation; provided that payment via the  
12 Internet or by telephone shall be by an approved  
13 credit or debit card; or

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



1 affirmative defense pursuant to section 329-125. In  
2 lieu of appearing in person at a hearing, the person  
3 may submit a written statement of grounds on which the  
4 person contests the notice of violation, which shall  
5 be considered by the court as a statement given in  
6 court pursuant to section -5(a).

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

12 **§ -4 Court action after answer or failure to answer.**

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

18 (b) When a denying answer is received, the court shall  
19 notify the person in writing of the date, time, and place of  
20 hearing to contest the notice of violation. The notice of  
21 hearing shall be mailed to the address stated in the denying  
22 answer, or if none is given, to the address stated on the notice





1 of violation. The notification also shall advise the person  
2 that, if the person fails to appear at the hearing, the court  
3 shall enter judgment by default in favor of the State, as of the  
4 date of the scheduled hearing, that the total amount specified  
5 in the default judgment must be paid within thirty days of entry  
6 of default judgment, and if it is not paid, that the court shall  
7 take action as provided in section -6.

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

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



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

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



1           **§ -5 Hearings.** (a) In proceedings to contest a notice  
2 of violation where the person to whom the notice was issued has  
3 timely requested a hearing and appears at such hearing:

4           (1) In lieu of the personal appearance by the officer who  
5 issued the notice of violation, the court shall  
6 consider the notice of violation and any other written  
7 report made by the officer, if provided to the court  
8 by the officer, together with any oral or written  
9 statement by the person to whom the notice of  
10 violation was issued;

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

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

17           (4) After due consideration of the evidence and arguments,  
18 if any, the court shall determine whether commission  
19 of the violation has been established. Where the  
20 commission of the violation has not been established,  
21 judgment in favor of the defendant, dismissing the  
22 notice of violation or any count therein with



1           prejudice, shall be entered in the record. Where it  
2           has been established that the violation was committed,  
3           the court shall enter judgment in favor of the State  
4           and shall assess a civil fine pursuant to section  
5           329- . The court also shall inform the person of  
6           the right to request a trial pursuant to section  
7           -8. If the person requests a trial at the time of  
8           the hearing, the court shall provide the person with a  
9           trial date as soon as practicable.

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

18           **§ -6 Failure to pay fine.** When the person issued a  
19           notice of violation fails to pay the total amount of the fine,  
20           the fine may be collected in the same manner as a judgment in a  
21           civil action. The State may collect the fee or fine, including



1 costs, interest, and attorney's fees pursuant to section  
2 706-647.

3       **§ -7 Time computation.** In computing any period of time  
4 prescribed or allowed by this chapter, the day of the act,  
5 event, or default from which the period of time begins to run  
6 shall not be included. The last day of the period so computed  
7 shall be included, unless it is a Saturday, Sunday, or legal  
8 holiday in which event the period runs until the end of the next  
9 day that is not a Saturday, Sunday, or legal holiday.  
10 Intermediate Saturdays, Sundays, and legal holidays shall be  
11 included. Whenever an act required to be performed under this  
12 chapter may be accomplished by mail, the act shall be deemed to  
13 have been performed on the date of the postmark on the mailed  
14 article.

15       **§ -8 Trial and concurrent trial.** (a) There shall be no  
16 right to trial unless the defendant contests the notice of  
17 violation pursuant to section -5. If, after proceedings to  
18 contest the notice of violation, a determination is made that  
19 the defendant committed the violation, judgment shall enter in  
20 favor of the State. The defendant may request a trial pursuant  
21 to the Hawaii rules of evidence and the rules of the district  
22 court; provided that any request for trial shall be made within



1 thirty days of entry of judgment. If, after appearing in person  
2 at a hearing to contest the notice of violation, the person  
3 requests a trial at the conclusion of the hearing, the court  
4 shall provide the person with a trial date as soon as  
5 practicable.

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

12 (c) If trial on the violation is held prior to trial on  
13 any related criminal offense, the following shall be  
14 inadmissible in the subsequent prosecution or trial of the  
15 related criminal offense:

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

18 and

19 (2) Any testimony given by the defendant in the violation  
20 trial.



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

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

13 **§ -9 Rules.** (a) The supreme court may adopt rules of  
14 procedure for the conduct of all proceedings pursuant to this  
15 chapter.

16 (b) Chapter 626 shall not apply in proceedings conducted  
17 pursuant to this chapter, except for the rules governing  
18 privileged communications and proceedings conducted under  
19 section -8.

20 (c) Notwithstanding section 604-17 to the contrary, while  
21 the court is sitting in any matter pursuant to this chapter, the  
22 court shall not be required to preserve the testimony or



1 proceedings, except proceedings conducted pursuant to section  
2 -8 and proceedings in which the violation is heard on the  
3 same date and time as any related criminal offense.

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

9 (e) Chapter 91 shall not apply in proceedings before the  
10 court.

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

14 SECTION 5. Section 329-125, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) A qualifying patient or the primary caregiver may  
17 assert the medical use of marijuana as an affirmative defense to  
18 any prosecution, criminal or civil, involving marijuana under  
19 this [+]part[+], section 329- \_\_\_\_\_, or chapter 712; provided that  
20 the qualifying patient or the primary caregiver strictly  
21 complied with the requirements of this part."





1 SECTION 6. Section 712-1240, Hawaii Revised Statutes, is  
2 amended by amending the definition of "detrimental drug" to read  
3 as follows:

4 "Detrimental drug" means any substance or immediate  
5 precursor defined or specified as a "Schedule V substance" by  
6 chapter 329, or any marijuana[-]; provided that one ounce or  
7 less of marijuana shall not be deemed a detrimental drug for  
8 purposes of sections 712-1247, 712-1248, 712-1249, 712-1251, and  
9 712-1255."

10 **PART IV**

11 SECTION 7. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun, before its effective date.

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

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



**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 the following fines: \$100 for the first violation; \$250 for the second violation; and \$500 for the third or subsequent violation. (SD1)

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

