

JAN 22 2016

A BILL FOR AN ACT

RELATING TO DRUG PARAPHERNALIA.

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

1 SECTION 1. The legislature finds that the benefits of
2 making the offenses of possession and delivery of drug
3 paraphernalia civil violations far outweigh the benefits of the
4 current felony criminal treatment of these offenses.

5 The costs of enforcing these drug paraphernalia offenses as
6 felonies are substantial. According to an article published on
7 the Civil Beat website on November 5, 2015, entitled "Hawaii is
8 Spending Tens of Millions of Dollars to Lock up Low-Level Drug
9 Offenders", one hundred sixty-seven individuals were being held
10 by the State for violations of paraphernalia offenses as of
11 September 30, 2015. At an estimated cost of \$140 per day, and
12 with average sentences of more than two and a half years, these
13 one hundred sixty-seven nonviolent offenders alone are costing
14 the State more than \$20,000,000.

15 The legislature further finds that state funds are better
16 spent on community programs and rehabilitation of nonviolent,
17 low-risk drug offenders, as envisioned by the diversion program



1 created by Act 149, Session Laws of Hawaii 2014, the
2 implementation of which is currently stalled.

3 The legislature also finds that immigrants convicted of
4 class C felonies are potentially deportable under current
5 immigration laws. Given the nation's gravely dysfunctional
6 immigration system, this double jeopardy treatment of immigrants
7 convicted of nonviolent drug paraphernalia offenses is severely
8 disproportionate.

9 Accordingly, the purpose of this Act is to decriminalize
10 the possession and delivery of drug paraphernalia, and to
11 instead make these offenses civil violations.

12 SECTION 2. Section 329-43.5, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) It is unlawful for any person to use, or to possess
15 with intent to use, drug paraphernalia to plant, propagate,
16 cultivate, grow, harvest, manufacture, compound, convert,
17 produce, process, prepare, test, analyze, pack, repack, store,
18 contain, conceal, inject, ingest, inhale, or otherwise introduce
19 into the human body a controlled substance in violation of this
20 chapter. ~~[Any person who violates]~~ A violation of this section
21 ~~[is guilty of]~~ shall constitute a ~~[class C felony and upon~~



1 ~~conviction may be imprisoned pursuant to section 706 660 and, if~~
2 ~~appropriate as provided in section 706 641, fined pursuant to~~
3 ~~section 706 640.] civil violation subject to a fine of \$100.~~

4 (b) It is unlawful for any person to deliver, possess with
5 intent to deliver, or manufacture with intent to deliver, drug
6 paraphernalia, knowing, or under circumstances where one
7 reasonably should know, that it will be used to plant,
8 propagate, cultivate, grow, harvest, manufacture, compound,
9 convert, produce, process, prepare, test, analyze, pack, repack,
10 store, contain, conceal, inject, ingest, inhale, or otherwise
11 introduce into the human body a controlled substance in
12 violation of this chapter. ~~[Any person who violates]~~ A
13 violation of this section [is guilty of] shall constitute a
14 ~~[class C felony and upon conviction may be imprisoned pursuant~~
15 ~~to section 706 660 and, if appropriate as provided in section~~
16 ~~706 641, fined pursuant to section 706 640.] civil violation~~
17 subject to a fine of \$100."

18 SECTION 3. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



S.B. NO. 2179

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.
4

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S.B. NO. 2179

Report Title:

Drug Paraphernalia; Possession and Delivery; Civil Violations

Description:

Changes drug paraphernalia possession and delivery offenses from felonies to civil violations.

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