

JAN 22 2016

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 or
6 marijuana concentrate as defined under 712-1240 shall constitute
7 a civil violation subject to a fine not to exceed \$100.

8 (b) Civil fines and penalties for violations under this
9 section shall be deposited by the director of finance to the
10 credit of the state general fund."

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



1 who knows or has reason to believe that an act has
2 been committed or will be committed, which:

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

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

15 (2) Establish procedures for disposing of any incident
16 reported; and

17 (3) Impose, in addition to any other powers or authority
18 the department may have to discipline school
19 officials, appropriate disciplinary action for failure
20 to report these incidents, including probation,



1 suspension, demotion, and discharge of school
2 officials."

3 SECTION 3. Section 329-125, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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

11 SECTION 4. Section 353-66, Hawaii Revised Statutes, is
12 amended by amending subsection (f) to read as follows:

13 "(f) The Hawaii paroling authority may require a paroled
14 prisoner to undergo and complete a substance abuse treatment
15 program when the paroled prisoner has committed a violation of
16 the terms and conditions of parole involving possession or use,
17 not including to distribute or manufacture as defined in section
18 712-1240, of any dangerous drug, detrimental drug, harmful drug,
19 intoxicating compound, or more than one ounce of marijuana~~[7]~~ or
20 marijuana concentrate, as defined in section 712-1240, unlawful
21 methamphetamine trafficking as provided in section 712-1240.6,



1 or involving possession or use of drug paraphernalia under
2 section 329-43.5. If the paroled prisoner fails to complete the
3 substance abuse treatment program or the Hawaii paroling
4 authority determines that the paroled prisoner cannot benefit
5 from any substance abuse treatment program, the paroled prisoner
6 shall be subject to revocation of parole and return to
7 incarceration. As a condition of parole, the Hawaii paroling
8 authority may require the paroled prisoner to:

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



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

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

11 SECTION 5. Section 706-622.5, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) Notwithstanding section 706-620(3), a person
14 convicted for the first or second time for any offense under
15 section 329-43.5 involving the possession or use of drug
16 paraphernalia or any felony offense under part IV of chapter 712
17 involving the possession or use of any dangerous drug,
18 detrimental drug, harmful drug, intoxicating compound, or more
19 than one ounce of marijuana[7] or marijuana concentrate, as
20 defined in section 712-1240, but not including any offense under
21 part IV of chapter 712 involving the distribution or manufacture



1 of any such drugs or substances and not including any
2 methamphetamine trafficking offenses under sections 712-1240.7
3 and 712-1240.8, is eligible to be sentenced to probation under
4 subsection (2) if the person meets the following criteria:

5 (a) The court has determined that the person is nonviolent
6 after reviewing the person's criminal history, the
7 factual circumstances of the offense for which the
8 person is being sentenced, and any other relevant
9 information;

10 (b) The person has been assessed by a certified substance
11 abuse counselor to be in need of substance abuse
12 treatment due to dependency or abuse under the
13 applicable Diagnostic and Statistical Manual and
14 Addiction Severity Index; and

15 (c) Except for those persons directed to substance abuse
16 treatment under the supervision of the drug court, the
17 person presents 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



1 includes an identified source of payment for the
2 treatment program."

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

5 "(7) The court may require a defendant to undergo and
6 complete a substance abuse treatment program when the defendant
7 has committed a violation of the terms and conditions of
8 probation involving possession or use, not including to
9 distribute or manufacture as defined in section 712-1240, of any
10 dangerous drug, detrimental drug, harmful drug, intoxicating
11 compound, or more than one ounce of marijuana[7] or marijuana
12 concentrate, as defined in section 712-1240, unlawful
13 methamphetamine trafficking as provided in section 712-1240.6,
14 or involving possession or use of drug paraphernalia under
15 section 329-43.5. If the defendant fails to complete the
16 substance abuse treatment program or the court determines that
17 the defendant cannot benefit from any other suitable substance
18 abuse treatment program, the defendant shall be subject to
19 revocation of probation and incarceration. The court may
20 require the defendant to:



- 1 (a) Be assessed by a certified substance abuse counselor
- 2 for substance abuse dependency or abuse under the
- 3 applicable Diagnostic and Statistical Manual and
- 4 Addiction Severity Index;
- 5 (b) Present a proposal to receive substance abuse
- 6 treatment in accordance with the treatment plan
- 7 prepared by a certified substance abuse counselor
- 8 through a substance abuse treatment program that
- 9 includes an identified source of payment for the
- 10 treatment program;
- 11 (c) Contribute to the cost of the substance abuse
- 12 treatment program; and
- 13 (d) Comply with any other terms and conditions of
- 14 probation.

15 As used in this subsection, "substance abuse treatment
16 program" means drug or substance abuse treatment services
17 provided outside a correctional facility by a public, private,
18 or nonprofit entity that specializes in treating persons who are
19 diagnosed with substance abuse or dependency and preferably
20 employs licensed professionals or certified substance abuse
21 counselors.



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

4 SECTION 7. Section 710-1022, Hawaii Revised Statutes, is
5 amended by amending subsection (2) to read as follows:

6 "(2) A "dangerous instrument" shall have the same meaning
7 as defined in section 707-700; a dangerous instrument may only
8 be possessed by or conveyed to a confined person with the
9 facility administrator's express prior approval. A "drug" shall
10 include dangerous drugs, detrimental drugs, harmful drugs,
11 intoxicating compounds, and more than one ounce of marijuana[
12 ~~and~~] or marijuana concentrates as listed in section 712-1240; a
13 drug may only be possessed by or conveyed to a confined person
14 with the facility administrator's express prior approval and
15 under medical supervision."

16 SECTION 8. Section 712-1244, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of promoting a harmful
19 drug in the first degree if the person knowingly:

20 (a) Possesses one hundred or more capsules or tablets or
21 dosage units containing one or more of the harmful



- 1 drugs [☒], one or more of the marijuana
2 concentrates [7] having an aggregate weight of more
3 than one ounce, or any combination thereof;
- 4 (b) Possesses one or more preparations, compounds,
5 mixtures, or substances [7] of an aggregate weight of
6 one ounce or more containing one or more of the
7 harmful drugs [☒], one or more of the marijuana
8 concentrates [7] having an aggregate weight of more
9 than one ounce, or any combination thereof;
- 10 (c) Distributes twenty-five or more capsules or tablets or
11 dosage units containing one or more of the harmful
12 drugs or one or more of the marijuana concentrates, or
13 any combination thereof;
- 14 (d) Distributes 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 harmful drugs or one or more of the marijuana
18 concentrates, or any combination thereof; or
- 19 (e) Distributes any harmful drug or any marijuana
20 concentrate in any amount to a minor."



1 SECTION 9. Section 712-1245, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of promoting a harmful
4 drug in the second degree if the person knowingly:

5 (a) Possesses fifty or more capsules or tablets or dosage
6 units containing one or more of the harmful drugs
7 ~~[or]~~, one or more of the marijuana concentrates ~~[or]~~
8 having an aggregate weight of more than one ounce, or
9 any combination thereof;

10 (b) Possesses one or more preparations, compounds,
11 mixtures, or substances ~~[or]~~ of an aggregate weight of
12 one-eighth ounce or more ~~[or]~~ containing one or more of
13 the harmful drugs ~~[or]~~, one or more of the marijuana
14 concentrates ~~[or]~~ having an aggregate weight of more
15 than one ounce, or any combination thereof; or

16 (c) Distributes any harmful drug or any marijuana
17 concentrate in any amount."

18 SECTION 10. Section 712-1246, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

20 "(1) A person commits the offense of promoting a harmful
21 drug in the third degree if the person knowingly possesses



1 twenty-five or more capsules or tablets or dosage units
2 containing one or more of the harmful drugs [~~or~~], one or more of
3 the marijuana concentrates [~~or~~] having an aggregate weight of more
4 than one ounce, or any combination thereof."

5 SECTION 11. Section 712-1246.5, Hawaii Revised Statutes,
6 is amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of promoting a harmful
8 drug in the fourth degree if the person knowingly possesses any
9 harmful drug in any amount [~~or~~] or more than one ounce of
10 marijuana concentrate."

11 SECTION 12. Section 712-1247, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) A person commits the offense of promoting a
14 detrimental drug in the first degree if the person knowingly:

15 (a) Possesses four hundred or more capsules or tablets
16 containing one or more of the Schedule V substances;

17 (b) Possesses one or more preparations, compounds,
18 mixtures, or substances of an aggregate weight of one
19 ounce or more, containing one or more of the Schedule
20 V substances;



- 1 (c) Distributes fifty or more capsules or tablets
- 2 containing one or more of the Schedule V substances;
- 3 (d) Distributes one or more preparations, compounds,
- 4 mixtures, or substances of an aggregate weight of
- 5 one-eighth ounce or more, containing one or more of
- 6 the Schedule V substances;
- 7 (e) Possesses one or more preparations, compounds,
- 8 mixtures, or substances of an aggregate weight of one
- 9 pound or more, containing any marijuana[+] having an
- 10 aggregate weight of more than one ounce;
- 11 (f) Distributes one or more preparations, compounds,
- 12 mixtures, or substances of an aggregate weight of one
- 13 ounce or more, containing any marijuana;
- 14 (g) Possesses, cultivates, or has under the person's
- 15 control twenty-five or more marijuana plants; or
- 16 (h) Sells or barter any marijuana or any Schedule V
- 17 substance in any amount."

18 SECTION 13. Section 712-1248, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

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



- 1 (a) Possesses fifty or more capsules or tablets containing
- 2 one or more of the Schedule V substances;
- 3 (b) Possesses one or more preparations, compounds,
- 4 mixtures, or substances, of an aggregate weight of
- 5 one-eighth ounce or more, containing one or more of
- 6 the Schedule V substances;
- 7 (c) Possesses one or more preparations, compounds,
- 8 mixtures, or substances, of an aggregate weight of one
- 9 ounce or more, containing any marijuana[+] having an
- 10 aggregate weight of more than one ounce; or
- 11 (d) Distributes any marijuana or any Schedule V substance
- 12 in any amount."

13 SECTION 14. Section 712-1249, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

15 "(1) A person commits the offense of promoting a
16 detrimental drug in the third degree if the person knowingly
17 possesses more than one ounce of any marijuana or any Schedule V
18 substance in any amount."

19 SECTION 15. Section 712-1255, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§712-1255 Conditional discharge. (1) Whenever any
2 person who has not previously been convicted of any offense
3 under this chapter [~~æ~~], chapter 329 except for section 329- ,
4 or under any statute of the United States or of any state
5 relating to a dangerous drug, harmful drug, detrimental drug, or
6 an intoxicating compound, pleads guilty to or is found guilty of
7 promoting a dangerous drug, harmful drug, detrimental drug, or
8 an intoxicating compound under section 712-1243, 712-1245,
9 712-1246, 712-1248, 712-1249, or 712-1250, the court, without
10 entering a judgment of guilt and with the consent of the
11 accused, may defer further proceedings and place the accused on
12 probation upon terms and conditions. Upon violation of a term
13 or condition, the court may enter an adjudication of guilt and
14 proceed as otherwise provided.

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

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



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

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

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



1 SECTION 16. This Act does not affect rights and duties
 2 that matured, penalties that were incurred, and proceedings that
 3 were begun before its effective date.

4 SECTION 17. Statutory material to be repealed is bracketed
 5 and stricken. New statutory material is underscored.

6 SECTION 18. This Act shall take effect upon its approval.

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S.B. NO. 2656

Report Title:

Marijuana; Marijuana Concentrate; Possession of One Ounce or Less; Civil Penalties

Description:

Establishes a civil penalty for possession of one ounce of less of marijuana or marijuana concentrate that is subject to a fine of not more than \$100. Makes various conforming amendments to statutes to reflect the establishment of the civil violation for possession of marijuana or marijuana concentrate of one ounce or less.

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