

JAN 23 2015

A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 SECTION 1. The legislature finds that certain state
2 policies should be revised in response to our current economic
3 climate. One of these policies relates to criminal offenses
4 that prohibit the possession of one ounce or less of marijuana.
5 The legislature finds that the benefits of establishing a civil
6 violation for the possession of small amounts of marijuana
7 outweigh the benefits of the current criminal treatment of this
8 offense.

9 The legislature further finds that the costs to enforce
10 criminal marijuana possession statutes are substantial.
11 According to a report entitled *The Budgetary Implications of*
12 *Marijuana Decriminalization and Legalization for Hawai'i*, which
13 was completed in December of 2012 by David C. Nixon, an
14 economist from the University of Hawaii, state and county law
15 enforcement agencies spent \$9,300,000 in 2011 to enforce
16 marijuana possession laws. Meanwhile, a recent scientific
17 survey of registered voters in the State conducted by Qmark
18 Research in 2014 found that 63 per cent of those surveyed



1 favored making possession and personal use of marijuana a civil
2 violation instead of a crime, and 60 per cent favored outright
3 legalization of marijuana. The decriminalization study
4 indicates that less than 2 per cent of all arrests in Hawaii
5 between the years of 1997 and 2004 were for marijuana
6 possession. Furthermore, of the misdemeanor marijuana drug
7 cases brought in district court, approximately 65 per cent are
8 dismissed, stricken, or not prosecuted. A relatively small
9 proportion, approximately 25 per cent, result in convictions.
10 As the decriminalization study concludes: "Few [of those
11 arrested for marijuana possession] are actually prosecuted under
12 the law, fewer convicted, and virtually none serve jail time.
13 Of those convicted, probation is the usual sentence for first
14 time offenders." Clearly, although the cost to enforce
15 marijuana possession laws is substantial, the resulting
16 conviction rate is low.

17 The legislature finds that the low conviction and arrest
18 rates do not act as a deterrent to marijuana users. The
19 decriminalization study compared the findings of a study
20 surveying the number of households engaged in the regular use of
21 marijuana with actual arrest rates. The results of this
22 comparison indicate that the risk of arrest is between 1.54 per



1 cent and 2.16 per cent in any given year for members of
2 households in which there is regular marijuana use. According
3 to the decriminalization study, the chance of a marijuana user
4 being arrested and convicted is approximately 0.4 per cent. It
5 is clear that the arrest and conviction risks associated with
6 marijuana use do not act as a deterrent to marijuana use, and
7 few of those who use marijuana on a regular basis experience the
8 consequences of these risks, notwithstanding the costs to
9 enforce the criminal statutes prohibiting such conduct.

10 Some states have passed laws decriminalizing marijuana.
11 Typically, decriminalization means no prison time or criminal
12 record for first-time possession of a small amount for personal
13 consumption. The conduct is treated like a minor traffic
14 violation. According to the National Organization for the
15 Reform of Marijuana Laws, the following states have
16 decriminalized possession of a small amount for personal
17 consumption: Alaska, California, Connecticut, District of
18 Columbia, Maine, Maryland, Massachusetts, Minnesota,
19 Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio,
20 Oregon, Rhode Island, and Vermont. Two states, Colorado and
21 Washington, have legalized the recreational use of cannabis
22 following the approval of state referenda in the 2012 elections.



1 According to a report prepared by the Connecticut Law
2 Revision Commission for the Judiciary Committee of the
3 Connecticut General Assembly, studies of states that have
4 reduced penalties for possession of small amounts of marijuana
5 have found that:

- 6 (1) Expenses for arrests and prosecution of marijuana
7 possession offenses were significantly reduced;
- 8 (2) If marijuana use increased, it increased less in
9 states with reduced penalties when compared to states
10 that did not reduce their penalties, and "the largest
11 proportionate increase occurred in those states with
12 the most severe penalties"; and
- 13 (3) Reducing the penalties for marijuana possession has
14 virtually no effect on either the choice or frequency
15 of use of alcohol or illegal "harder" drugs such as
16 cocaine.

17 In Hawaii county, a voter initiative was passed in 2008 by
18 a majority of 35,000 voters that directs county law enforcement
19 officials to treat the "adult personal use" of marijuana as its
20 lowest law enforcement priority and prohibits the county from
21 accepting or expending funds for the marijuana eradication



1 program and for enforcing potential offenses for the adult
2 personal use of marijuana.

3 The legislature further finds that the costs associated
4 with criminal prosecution for possession of small amounts of
5 marijuana are extremely high in relation to the benefits of
6 prosecuting those offenses. The establishment of
7 a civil penalty not to exceed \$100 for possession of one ounce
8 or less of marijuana, and a corresponding adjudicatory process
9 for these violations, would greatly reduce the costs for
10 prosecution and enforcement of marijuana possession while
11 increasing fines collected for this violation.

12 By making possession of one ounce or less of marijuana a
13 civil violation, the legislature does not intend to imply that
14 such possession is acceptable. Possession of one ounce or less
15 of marijuana is still prohibited conduct under this Act; it will
16 simply be handled in a different, more appropriate manner.
17 Moreover, this Act does not amend laws regarding driving under
18 the influence of marijuana or other criminal infractions
19 committed under the influence or infractions pertaining to sales
20 or manufacturing. This Act also does not amend laws regarding
21 the use of marijuana for medical purposes.



1 The purpose of this Act is to make the possession of one
2 ounce or less of marijuana a civil violation subject to a fine
3 of not more than \$100.

4 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
5 amended by adding a new part to be appropriately designated and
6 to read as follows:

7 **"PART . CIVIL VIOLATIONS FOR LIMITED USE OF MARIJUANA**

8 **§329-A Definitions.** As used in this part, unless the
9 context requires otherwise:

10 "Court" means the district court.

11 "Notice of violation" means a notice of violation described
12 in section 329-C.

13 **§329-B Possession of marijuana.** (a) Notwithstanding any
14 law to the contrary, the intentional or knowing possession by a
15 person eighteen years of age or older of one ounce or less of
16 marijuana, any mixture or preparation of marijuana, or the
17 paraphernalia to prepare and consume marijuana or any mixture or
18 preparation of marijuana shall constitute a civil violation
19 subject to a fine not to exceed \$100.

20 (b) Civil fines and penalties for violations under this
21 section shall be deposited into the general fund.



1 §329-C Notice; form; determination final unless contested.

2 (a) A notice of violation of section 329-B shall include the
3 summons for the purposes of this section. Whenever a notice of
4 violation is issued to a person, the person's signature and
5 current address shall be noted on the notice. If the person
6 refuses to sign the notice of violation, the officer shall
7 record this refusal on the notice and issue the notice to the
8 person. Individuals to whom a notice of violation is issued
9 under this section need not be arraigned before the court,
10 unless required by rule of the supreme court.

11 (b) The form for the notice of violation shall be
12 prescribed by rules of the district court and shall be uniform
13 throughout the State.

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

- 15 (1) A statement of the total amount of the fine to be paid
16 by the person;
- 17 (2) A statement of the options provided in section 329-D
18 for answering the notice and the procedures necessary
19 to exercise the options;
- 20 (3) A statement that the person to whom the notice is
21 issued must answer, choosing one of the options



1 specified in section 329-D, within twenty-one days of
2 issuance of the notice;

3 (4) A statement that failure to answer the notice of
4 violation within twenty-one days of issuance shall
5 result in the entry of judgment by default for the
6 State and may result in the assessment of a late
7 penalty and that if the person to whom the notice was
8 issued fails to pay the total amount specified in the
9 default judgment within an additional thirty days or
10 to otherwise take action to set aside the default, the
11 person shall be subject to section 706-647;

12 (5) A statement that, at a hearing conducted pursuant to
13 section 329-F to contest the notice of violation, no
14 officer shall be present unless the person timely
15 requests the court to have the officer present, and
16 that the standard of proof to be applied by the court
17 is whether a preponderance of the evidence proves that
18 the specified violation was committed;

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

21 (7) The date, time, and place at which the person to whom
22 the notice was issued must appear in court, if the



1 person is required by the notice to appear in person
2 at the hearing.

3 §329-D Answer required. (a) A person who receives a
4 notice of violation shall answer the notice within twenty-one
5 days of the date of issuance of the notice. There shall be
6 included with the notice of violation a preaddressed envelope
7 directed to the clerk of the applicable district court.

8 (b) If the notice of violation does not require an
9 appearance in person at a hearing, a person shall have the
10 following options in answering a notice of violation:

11 (1) Admit the commission of the violation in one of the
12 following ways:

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



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

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



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

6 **§329-E Court action after answer or failure to answer.**

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

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



1 of default judgment, and if it is not paid, that the court shall
2 take action as provided in this part.

3 (c) If the person fails to answer within twenty-one days
4 of issuance of the notice of violation, the court shall enter a
5 judgment by default in favor of the State as provided in
6 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 this part.

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 329-F
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 **§329-F 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 monetary assessment pursuant to
22 section 329-B. The court also shall inform the person



1 of the right to request a trial pursuant to section
2 329-I.

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

11 **§329-G Failure to pay fine.** When the person issued a
12 notice of violation fails to pay the total amount of the fine,
13 the fine may be collected in the same manner as a judgment in a
14 civil action. The State may collect the fee or fine, including
15 costs, interest, and attorney's fees pursuant to section
16 706-647.

17 **§329-H Time computation.** In computing any period of time
18 prescribed or allowed by sections 329-A to 329-I, the day of the
19 act, event, or default from which the period of time begins to
20 run shall not be included. The last day of the period so
21 computed shall be included, unless it is a Saturday, Sunday, or
22 state holiday in which event the period runs until the end of



1 the next day that is not a Saturday, Sunday, or state holiday.
2 Intermediate Saturdays, Sundays, and state holidays shall be
3 included. Whenever an act required to be performed under this
4 chapter may be accomplished by mail, the act shall be deemed to
5 have been performed on the date of the postmark on the mailed
6 article.

7 **§329-I Trial and concurrent trial.** (a) There shall be no
8 right to trial unless the defendant contests the notice of
9 violation. If, after proceedings to contest the notice of
10 violation, a determination is made that the defendant committed
11 the violation, judgment shall enter in favor of the State. The
12 defendant may request a trial pursuant to the Hawaii rules of
13 evidence and the rules of the district court; provided that any
14 request for trial shall be made within thirty days of entry of
15 judgment. If, after appearing in person at a hearing to contest
16 the notice of violation, the person requests a trial at the
17 conclusion of the hearing, the court shall provide the person
18 with a trial date as soon as practicable.

19 (b) At the time of trial, the State shall be represented
20 by a prosecuting attorney of the county in which the violation
21 allegedly occurred. The prosecuting attorney shall orally
22 recite the charged civil violation in court prior to



1 commencement of the trial. Proof of the defendant's commission
2 of the violation shall be by a preponderance of the evidence.

3 (c) If a trial on the violation is held prior to a trial
4 on any related criminal offense, the following shall be
5 inadmissible in the subsequent prosecution or trial of the
6 related criminal offense:

7 (1) Any written or oral statement made by the defendant in
8 proceedings conducted pursuant to this part; and

9 (2) Any testimony given by the defendant in the trial on
10 the violation.

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

14 (d) In any concurrent trial, the State shall be
15 represented by a prosecuting attorney of the county in which the
16 violation and related crime allegedly occurred. Proof of the
17 defendant's commission of the violation shall be by a
18 preponderance of the evidence, and proof of the related criminal
19 offense shall be by proof beyond a reasonable doubt. The
20 concurrent trial shall be conducted pursuant to the rules of the
21 appropriate court, the Hawaii rules of evidence, and the Hawaii
22 rules of penal procedure.



1 §329-J (a) The supreme court may adopt rules of procedure
2 for the conduct of all proceedings pursuant to this chapter.

3 (b) Chapter 626 shall not apply in proceedings conducted
4 pursuant to this chapter, except for the rules governing
5 privileged communications, and in proceedings conducted under
6 this part.

7 (c) Notwithstanding section 604-17, while the court is
8 sitting in any matter pursuant to this chapter, the court shall
9 not be required to preserve the testimony or proceedings, except
10 proceedings conducted under this part and proceedings in which
11 the violation is heard on the same date and time as any related
12 criminal offense.

13 (d) The prosecuting attorney shall not participate in
14 violation proceedings conducted pursuant to this chapter, except
15 proceedings conducted under this part and proceedings in which a
16 related criminal offense is scheduled for arraignment, hearing,
17 or concurrent trial.

18 (e) Chapter 91 shall not apply in proceedings before the
19 court.

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



1 SECTION 3. Chapter 604, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§604- Enforcement of civil violations for marijuana
5 possession. Jurisdiction is conferred upon the district courts
6 to try all cases arising from the violation of section 329-B and
7 to impose the penalties prescribed for a violation under 329-B.
8 Jurisdiction is in the district court of the circuit where the
9 alleged violation occurred."

10 SECTION 4. Section 302A-1002, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[+]§302A-1002[+] Reporting of crime-related incidents.

13 The board shall adopt rules pursuant to chapter 91 to:

14 (1) Require a report to appropriate authorities from a
15 teacher, official, or other employee of the department
16 who knows or has reason to believe that an act has
17 been committed or will be committed, which:

18 (A) Occurred or will occur on school property during
19 school hours or during activities supervised by
20 the school; and

21 (B) Involves crimes relating to arson, assault,
22 burglary, disorderly conduct, dangerous weapons,



1 dangerous drugs, harmful drugs, extortion,
 2 firearms, gambling, harassment, intoxicating
 3 drugs, [~~marijuana or~~] marijuana concentrate[~~7~~] or
 4 more than one ounce of marijuana, murder,
 5 attempted murder, sexual offenses, rendering a
 6 false alarm, criminal property damage, robbery,
 7 terroristic threatening, theft, or trespass;

8 (2) Establish procedures for disposing of any incident
 9 reported; and

10 (3) Impose, in addition to any other powers or authority
 11 the department may have to discipline school
 12 officials, appropriate disciplinary action for failure
 13 to report these incidents, including probation,
 14 suspension, demotion, and discharge of school
 15 officials."

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

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



1 the qualifying patient or the primary caregiver strictly
2 complied with the requirements of this part."

3 SECTION 6. Section 353-66, Hawaii Revised Statutes, is
4 amended by amending subsection (f) to read as follows:

5 "(f) The Hawaii paroling authority may require a paroled
6 prisoner to undergo and complete a substance abuse treatment
7 program when the paroled prisoner has committed a violation of
8 the terms and conditions of parole involving possession or use,
9 not including to distribute or manufacture as defined in section
10 712-1240, of any dangerous drug, detrimental drug, harmful drug,
11 intoxicating compound, more than one ounce of marijuana, or
12 marijuana concentrate, as defined in section 712-1240, unlawful
13 methamphetamine trafficking in the first degree as provided in
14 section 712-1240.7 or in the second degree as provided in
15 section 712-1240.8, or involving possession or use of drug
16 paraphernalia under section 329-43.5. If the paroled prisoner
17 fails to complete the substance abuse treatment program or the
18 Hawaii paroling authority determines that the paroled prisoner
19 cannot benefit from any substance abuse treatment program, the
20 paroled prisoner shall be subject to revocation of parole and
21 return to incarceration. As a condition of parole, the Hawaii
22 paroling authority may require the paroled prisoner to:



- 1 (1) Be assessed by a certified substance abuse counselor
2 for substance abuse dependency or abuse under the
3 applicable Diagnostic and Statistical Manual of Mental
4 Disorders and Addiction Severity Index;
- 5 (2) 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 (3) Contribute to the cost of the substance abuse
12 treatment program; and
- 13 (4) Comply with any other terms and conditions for parole.

14 As used in this subsection, "substance abuse treatment
15 program" means drug or substance abuse treatment services
16 provided outside a correctional facility by a public, private,
17 or nonprofit entity that specializes in treating persons who are
18 diagnosed with having substance abuse or dependency and
19 preferably employs licensed professionals or certified substance
20 abuse 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 706-625, Hawaii Revised Statutes, is
5 amended by amending subsection (7) to read as follows:

6 "(7) The court may require a defendant to undergo and
7 complete a substance abuse treatment program when the defendant
8 has committed a violation of the terms and conditions of
9 probation involving possession or use, not including to
10 distribute or manufacture as defined in section 712-1240, of any
11 dangerous drug, detrimental drug, harmful drug, intoxicating
12 compound, more than one ounce of marijuana, or marijuana
13 concentrate, as defined in section 712-1240, unlawful
14 methamphetamine trafficking in the first degree as provided in
15 section [~~712-1240.6,~~] 712-1240.7 or in the second degree as
16 provided in section 712-1240.8, or involving possession or use
17 of drug paraphernalia under section 329-43.5. If the defendant
18 fails to complete the substance abuse treatment program or the
19 court determines that the defendant cannot benefit from any
20 other suitable substance abuse treatment program, the defendant
21 shall be subject to revocation of probation and incarceration.
22 The court may 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 of Mental
- 4 Disorders and 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 8. Section 712-1240, Hawaii Revised Statutes, is
5 amended by amending the definition of "detrimental drug" to read
6 as follows:

7 "Detrimental drug" means any substance or immediate
8 precursor defined or specified as a "Schedule V substance" by
9 chapter 329, or any marijuana [-]; provided that one ounce or
10 less of marijuana shall not be deemed a detrimental drug under
11 section 712-1251 or 712-1255."

12 SECTION 9. Section 712-1248, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

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

16 (a) Possesses fifty or more capsules or tablets containing
17 one or more of the Schedule V substances;

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



1 (c) Possesses one or more preparations, compounds,
 2 mixtures, or substances, of an aggregate weight of one
 3 ounce or more, containing [~~any~~] more than one ounce of
 4 marijuana; or

5 (d) Distributes any marijuana or any Schedule V substance
 6 in any amount."

7 SECTION 10. Section 712-1249, Hawaii Revised Statutes, is
 8 amended by amending subsection (1) to read as follows:

9 "(1) A person commits the offense of promoting a
 10 detrimental drug in the third degree if the person knowingly
 11 possesses [~~any~~] more than one ounce of marijuana or any Schedule
 12 V substance in any amount."

13 SECTION 11. Section 712-1255, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "§712-1255 Conditional discharge. (1) Whenever any
 16 person who has not previously been convicted of any offense
 17 under this chapter or chapter 329, except for a civil violation
 18 under section 329-B, or under any statute of the United States
 19 or of any state relating to a dangerous drug, harmful drug,
 20 detrimental drug, or an intoxicating compound, pleads guilty to
 21 or is found guilty of promoting a dangerous drug, harmful drug,
 22 detrimental drug, or an intoxicating compound under section



1 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250,
2 the court, without entering a judgment of guilt and with the
3 consent of the accused, may defer further proceedings and place
4 the accused on probation upon terms and conditions. Upon
5 violation of a term or condition, the court may enter an
6 adjudication of guilt and proceed as otherwise provided.

7 (2) Upon fulfillment of the terms and conditions, the
8 court shall discharge the person and dismiss the proceedings
9 against the person.

10 (3) Discharge and dismissal under this section shall be
11 without adjudication of guilt and is not a conviction for
12 purposes of this section or for purposes of disqualifications or
13 disabilities imposed by law upon conviction of a crime.

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

16 (5) After conviction, for any offense under this chapter
17 or chapter 329, except for a conviction of a civil violation
18 under section 329-B, but prior to sentencing, the court shall be
19 advised by the prosecutor whether the conviction is defendant's
20 first or a subsequent offense. If it is not a first offense,
21 the prosecutor shall file an information setting forth the prior
22 convictions. The defendant shall have the opportunity in open



1 court to affirm or deny that the defendant is identical with the
2 person previously convicted. If the defendant denies the
3 identity, sentence shall be postponed for such time as to permit
4 the trial, before a jury if the defendant has a right to trial
5 by jury and demands a jury, on the sole issue of the defendant's
6 identity with the person previously convicted.

7 (6) For purposes of this section, a conviction for one or
8 more civil violations under section 329-B shall not constitute a
9 prior offense that would make a conditional discharge described
10 in this section unavailable to the defendant."

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

14 SECTION 13. In codifying the new sections added by section
15 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 14. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20



1 SECTION 15. This Act shall take effect on July 1, 2015.

INTRODUCED BY:

John Goh Paul E. Bl
Mike Hubbard
Mitch
Will Egan



S.B. NO. 596

Report Title:

Marijuana; Civil Penalties for Possession of One Ounce or Less

Description:

Establishes a civil violation for possession by a person 18 years of age or older of one ounce or less of marijuana that is subject to a fine of not more than \$100, and establishes an adjudicatory structure for its enforcement. Deletes reporting requirements of board of education for students possessing one ounce or less of marijuana. Clarifies that medical marijuana patients and primary caregiver may assert affirmative defense to prosecution, criminal or civil, involving possession of one ounce or less of marijuana. Excludes possession of one ounce or less of marijuana from authority of Hawaii paroling authority to require paroled prisoner to undergo and complete substance abuse treatment. Excludes possession of more than one ounce of marijuana from authority of courts to require a defendant to undergo and complete substance abuse treatment for probation violation. Clarifies definition of detrimental drug to exclude one ounce or less of marijuana. Excludes possession of one ounce or less of marijuana from offenses of promoting a detrimental drug in the second degree and third degree. Clarifies a civil violation for possession of marijuana does not constitute a prior offense for purposes of the conditional discharge law.

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

