

MAR 09 2018

SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
ON THE POTENTIAL IMPACT OF THE RECLASSIFICATION OF THE
OFFENSE OF PROMOTING A DANGEROUS DRUG IN THE THIRD DEGREE
ON STATE ADMINISTRATIVE AND JUDICIAL SYSTEMS AND LOCAL LAW
ENFORCEMENT.

1 WHEREAS, despite longstanding policies that enforce illicit
2 drug prohibition and impose some of the world's harshest
3 penalties for drug possession and sales, illicit drug use in the
4 United States has been steady, and increasing in the case of
5 heroin, according to results from the 2016 National Survey on
6 Drug Use and Health; and

7
8 WHEREAS, in 2017, the Department of Health's *State of*
9 *Hawai'i Epidemiological Profile: Selected Youth and Adult Drug*
10 *Indicators* reported similar trends in drug usage in the State,
11 including higher usage by adolescents, between the ages of
12 eighteen and twenty-five, than adults; and

13
14 WHEREAS, arrests, convictions, and incarceration for felony
15 drug possession incur significant costs to the Judiciary,
16 Department of Public Safety, and various county police
17 departments; and

18
19 WHEREAS, multi-year probation and parole supervision of
20 those convicted of felony drug possession incur significant
21 costs to the Judiciary and Department of Public Safety; and

22
23 WHEREAS, in 2016, the United States Surgeon General's
24 report, *Facing Addiction in America: The Surgeon General's*
25 *Report on Alcohol, Drugs, and Health*, highlights the need to
26 move from a "criminal justice-based model for addressing
27 substance use-related problems", to a "public health approach
28 [seeking] to improve the health and safety of the population by
29 addressing underlying social, environmental, and economic
30 determinants of substance abuse and its consequences"; and



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1
2 WHEREAS, the State, with the adoption of the Hawaii Opioid
3 Initiative and the passage of several laws related to medical
4 cannabis, opioid overdoses, and other drug related concerns, has
5 begun to reassess the efficacy and cost-benefit of a punitive
6 approach to this public health problem; and

7
8 WHEREAS, as part of this realignment, the Legislature
9 enacted Act 72, Session Laws of Hawaii 2017, to decriminalize
10 the prior felony offense of drug paraphernalia possession; and

11
12 WHEREAS, in 2017, the Hawaii Paroling Authority reported
13 that the number of individuals sentenced due to the offense of
14 drug paraphernalia, one hundred twenty-four, is second in volume
15 only to the number of individuals sentenced due to the offense
16 of promoting a dangerous drug in the third degree, one hundred
17 forty-seven individuals, sentenced to imprisonment of about two
18 and one-half years; and

19
20 WHEREAS, at any given moment, dozens of individuals are
21 detained in pretrial, mostly due to the inability to post bail,
22 for the offense of promoting a dangerous drug in the third
23 degree; and

24
25 WHEREAS, those convicted of a felony due to drug possession
26 face many collateral consequences even after successful
27 completion of probation or parole, including difficulties in
28 obtaining employment and housing, procuring loans for higher
29 education, and maintaining eligibility for public assistance;
30 and

31
32 WHEREAS, harm reduction services and community-based,
33 medically-supervised treatment should be more widely available
34 to those experiencing problems with substance abuse, including
35 those with a co-occurring mental health condition; and

36
37 WHEREAS, in recent years many states, including Alaska,
38 California, Delaware, Indiana, Maryland, Minnesota, Mississippi,
39 Oregon, Oklahoma, South Dakota, and Utah, have made drug
40 possession a misdemeanor offense; and

41



1 WHEREAS, according to the Substance Abuse and Mental Health
2 Services Administration, many states that treat possession of a
3 dangerous drug as a misdemeanor have slightly lower rates of
4 illicit drug use and higher rates of admission to drug treatment
5 than states that consider it a felony; and

6
7 WHEREAS, the various state drug courts, Community Outreach
8 Court, Law Enforcement Assisted Diversion (LEAD), and related
9 programs alleviate prison overcrowding by offering effective
10 rehabilitation options for qualified defendants, such as
11 community supervision to obtain substance abuse treatment in
12 lieu of incarceration; and

13
14 WHEREAS, H.C.R. No. 85, H.D. 2, S.D. 1, Regular Session of
15 2016, requested the Chief Justice to convene a task force to
16 examine effective incarceration policies, and the task force
17 issued an interim report stating, "Hawaii must chart a new
18 course and transition from a punitive to a rehabilitative
19 correctional model"; and

20
21 WHEREAS, H.C.R. No. 134, H.D. 1, Regular Session of 2017,
22 also requested the Judiciary to convene a task force to examine
23 criminal pretrial practices; and

24
25 WHEREAS, in 2018, the American Civil Liberties Union of
26 Hawai'i released a report entitled, *As Much Justice As You Can*
27 *Afford - Hawaii's Accused Face an Unequal Bail System*, which
28 highlights the average bail amount for a class C felony, such as
29 promoting a dangerous drug in the third degree, is \$20,000,
30 which few can afford; and

31
32 WHEREAS, pretrial detainees charged with, and inmates
33 convicted of, promotion of a dangerous drug in the third degree
34 constitute a large share of the individuals who contribute to
35 the inhumane overcrowding of the State's correctional centers,
36 particularly the Oahu Community Correctional Center; and

37
38 WHEREAS, the Research and Statistics Branch of the Crime
39 Prevention and Justice Assistance Division of the Department of
40 the Attorney General noted in *Crime in Hawaii 2016: A Review of*
41 *Uniform Crime Reports* that there were almost as many arrests



1 statewide for felony drug possession as violent crime from 2007
2 to 2016; and

3
4 WHEREAS, the same report supports similar findings by a
5 report conducted by the Office of Hawaiian Affairs entitled, *The*
6 *Disparate Treatment of Native Hawaiians in the Criminal Justice*
7 *System*, which concluded that despite similar rates of drug use
8 to other groups, Native Hawaiians are disproportionately
9 arrested for offenses such as promoting a dangerous drug in the
10 third degree; and

11
12 WHEREAS, according to the National Resource Center on
13 Children and Families of the Incarcerated, the incarceration of
14 a parent is an adverse childhood experience distinguishable from
15 other adverse childhood experiences by "[t]he unique combination
16 of trauma, shame, and stigma"; and

17
18 WHEREAS, as the Sentencing Project states in a fact sheet,
19 *Incarcerated Women and Girls*, women, especially those of color,
20 are increasingly being criminalized by drug laws and are more
21 likely than men to be incarcerated for a drug offense; and

22
23 WHEREAS, the homeless population is particularly vulnerable
24 to being criminalized by drug laws, with a disproportionate
25 share of arrestees on Oahu being houseless and suffering from a
26 drug use or mental health issue; and

27
28 WHEREAS, documented and undocumented immigrants are
29 potentially deportable for drug possession offenses,
30 particularly state felonies such a promoting a dangerous drug in
31 the third degree, and given the State's stance against the
32 increasingly anti-immigrant rhetoric and action emanating from
33 the current federal administration, this treatment of immigrants
34 convicted of non-violent drug possession offenses is severely
35 disproportionate; and

36
37 WHEREAS, the Human Rights Watch and American Civil
38 Liberties Union concluded in a 2016 report, *Every 25 Seconds:*
39 *The Human Toll of Criminalizing Drug Use in the United States*,
40 that nearly half of over one million drug possession arrests
41 nationwide are for substances other than cannabis, and arrest



1 rates vary starkly from county to county despite similar rates
2 of use; and

3
4 WHEREAS, the Global Commission on Drug Policy urges
5 governments to "[s]top criminalizing people for drug use and
6 possession"; and

7
8 WHEREAS, the World Health Organization recommends,
9 "[c]ountries should work toward developing policies and laws
10 that decriminalize injection and other use of drugs and,
11 thereby, reduce incarceration"; and

12
13 WHEREAS, the American Public Health Association urges the
14 federal and state governments to "[e]liminate federal and state
15 criminal penalties and collateral sanctions for personal drug
16 use and possession offenses"; and

17
18 WHEREAS, the Organization of American States declares,
19 "Decriminalization of drug use needs to be considered as a core
20 element in any public health strategy"; and

21
22 WHEREAS, Human Rights Watch declares, "Drug control
23 policies that impose criminal penalties for personal drug use
24 undermine basic human rights...[s]ubjecting people to criminal
25 sanctions for the personal use of drugs, or for possession of
26 drugs for personal use, infringes on their autonomy and right to
27 privacy...[t]he criminalization of drug use has undermined the
28 right to health...[g]overnments should rely instead on non-penal
29 regulatory and public health policies"; and

30
31 WHEREAS, the National Latino Congress urges federal and
32 state governments "to follow the successful example of countries
33 like Portugal that have decriminalized personal adult possession
34 and use of all drugs, which has improved the health of drug
35 users, reduced incarceration and death, and saved taxpayer money
36 with no negative consequences to society"; and

37
38 WHEREAS, the International Federation of the Red Cross and
39 Red Crescent Societies declared to the United Nations Commission
40 on Narcotic Drugs that "drug use is a health issue. It is an
41 issue of human rights. It cannot be condoned, but neither
42 should it be criminalized"; and



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 2 WHEREAS, the Legislative Reference Bureau in its recent
 3 report, *Panacea or Pipe Dream: Does Portugal's Policy Translate*
 4 *for Hawaii?*, pursuant to H.C.R. No. 127, H.D. 1, S.D. 1, Regular
 5 Session of 2016, did not specifically look at the potential
 6 impact of amending existing laws related to dangerous drugs, as
 7 defined in section 712-1240, Hawaii Revised Statutes; and

8
 9 WHEREAS, the benefits of reducing possession of certain
 10 drugs from a felony to a misdemeanor include reductions in the
 11 number of persons arrested and incarcerated; redirecting law
 12 enforcement resources to prevent serious and violent crime;
 13 diminishing unjust racial disparities in drug law enforcement
 14 and sentencing, incarceration, and related health
 15 characteristics and outcomes; minimizing the social exclusion of
 16 individuals who use drugs and creating a climate in which they
 17 are less fearful of seeking and accessing treatment, and
 18 protecting people from the wide-ranging and debilitating
 19 consequences of a criminal conviction; now, therefore,

20
 21 BE IT RESOLVED by the Senate of the Twenty-ninth
 22 Legislature of the State of Hawaii, Regular Session of 2018, the
 23 House of Representatives concurring, that the Legislative
 24 Reference Bureau is requested to conduct a study on the
 25 potential impact of reclassifying the penalty for promoting a
 26 dangerous drug in the third degree from a class C felony to a
 27 misdemeanor on state administration and judicial systems and
 28 local law enforcement; and

29
 30 BE IT FURTHER RESOLVED that the study include:

- 31
 32 (1) The potential impact on state administrative and
 33 judicial systems and local law enforcement by amending
 34 the existing statute of promoting a dangerous drug in
 35 the third degree;
 36
 37 (2) An evaluation of the ability of an individual charged
 38 with a misdemeanor instead of a class C felony to post
 39 bail;
 40



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1 (3) An assessment of other states' decisions to reduce the
 2 penalty for drug possession offenses from a felony to
 3 a misdemeanor; and
 4

5 (4) An analysis on how existing laws impact the State's
 6 population, particularly youth and a particular
 7 gender, as well as disparate arrest and incarceration
 8 rates across racial and ethnic groups and various
 9 counties; and
 10

11 BE IT FURTHER RESOLVED that the Judiciary, Department of
 12 Public Safety, Office of the Public Defender, various county
 13 police departments, and various offices of the county
 14 prosecuting attorneys are requested to provide statistics and
 15 other information as may be requested by the Legislative
 16 Reference Bureau; and
 17

18 BE IT FURTHER RESOLVED that the Bureau may request input
 19 from independent organizations, both inside and outside the
 20 State; and
 21

22 BE IT FURTHER RESOLVED that the Legislative Reference
 23 Bureau is requested to submit a report of its findings and
 24 recommendations, including any proposed legislation, to the
 25 Legislature no later than twenty days prior to the convening of
 26 the Regular Session of 2019; and
 27

28 BE IT FURTHER RESOLVED that certified copies of this
 29 Concurrent Resolution be transmitted to the Director of the
 30 Legislative Reference Bureau, Chief Justice of the Supreme Court
 31 of Hawaii, Administrative Director of the Courts, Director of
 32 Public Safety, Office of the Public Defender, Chief of Police of
 33 each county in the State, and Prosecuting Attorney of each
 34 county in the State.
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 36
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OFFERED BY: Will Lyne

