

DAVID Y. IGE
GOVERNOR



DEPT. COMM. NO. 76

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

December 6, 2018

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, HI 96813

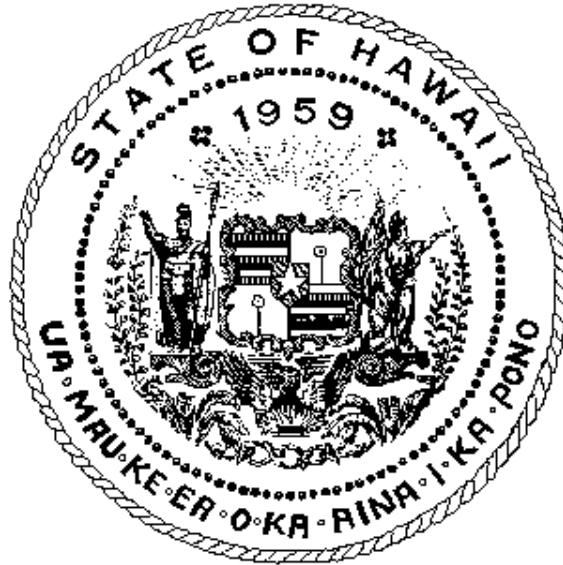
Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the **Department of Public Safety's Report to the Legislature "Evaluating the Appropriateness of Rescheduling Cannabis at the State Level from Schedule I to Schedule III"**, as requested in House Resolution No. 51 (HR 51) (2018). In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: [http://dps.hawaii.gov/publications/reports-to-legislature/2019/PSD-Response-to-HR-51-\(2018\)-Cannabis-Rescheduling-Evaluation.pdf](http://dps.hawaii.gov/publications/reports-to-legislature/2019/PSD-Response-to-HR-51-(2018)-Cannabis-Rescheduling-Evaluation.pdf).

Sincerely,

Nolan P. Espinda
Director

Enclosures



**DEPARTMENT OF PUBLIC SAFETY
NARCOTICS ENFORCEMENT DIVISION**

**REPORT TO THE 2019 LEGISLATURE
IN RESPONSE TO HOUSE RESOLUTION NO. 51 (2018)**

December 2018

House Resolution No. 51 (HR 51) (2018) requested that the State of Hawaii Departments of Health (DOH) and Public Safety (PSD) evaluate the appropriateness of rescheduling cannabis at the State Level from schedule I to schedule III. Based upon our evaluation, PSD recommends that it is not appropriate to reschedule cannabis from schedule I to schedule III at this time for three important reasons:

1. The Supremacy Clause of the United States Constitution would preempt any improvements to medical marijuana research or medical use resulting from any proposed state rescheduling, as contemplated by HR 51, without a corresponding change in federal law.
2. The State of Oregon has rescheduled marijuana from schedule I to schedule II, but Oregon's rescheduling action did not change any actual regulatory control over marijuana.
3. A rescheduling of cannabis from schedule I to schedule III would affect other existing controlled substances laws, both at the federal and state levels, thereby making medical cannabis a prescription-only controlled substance. If cannabis became a prescription-only controlled substance, then Hawaii's existing legitimate medical cannabis programs would be jeopardized.

PSD recognizes that the Legislature has acted to use the term "medical cannabis" in sections of the Hawaii Revised Statutes ("HRS") related to Hawaii's legitimate medical use of cannabis programs. It should be noted, however, that for purposes of this discussion, the term "cannabis" and the term "marijuana" are being used interchangeably in various parts of both federal and state law.

First, the Supremacy Clause of the United States Constitution would preempt any improvements to medical marijuana research or medical use resulting from any proposed state rescheduling, as HR 51 contemplates, without a corresponding change in federal law.

Under current federal law in 21 USC 812, "marihuana" is a schedule I controlled substance. Similarly, section 329-14, HRS, marijuana is a schedule I controlled substance.

The Supremacy Clause of the United States Constitution states:

"This Constitution and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United states, shall be the supreme Law of the

Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding.”

Presently, both federal law in 21 USC 812 and section 329-14, HRS, perfectly coincide. Both federal and state laws have designated marijuana as a schedule I controlled substance. Both federal and state laws define schedule I controlled substances as having no accepted medical use and the highest degree of danger. As a result, there are currently no Supremacy Clause implications, because state law mirrors federal law. PSD believes, however, that if marijuana were rescheduled to schedule III under Hawaii law, without a corresponding change under federal law, there would be a direct conflict with the Supremacy Clause of the United States Constitution. Under the concept of federal preemption, the Supremacy Clause would preempt any improvements to access or wider availability for marijuana in Hawaii, unless there was first a corresponding change in federal law.

PSD recognizes that pursuant to section 329-11, HRS, the Legislature has the authority to reschedule controlled substances. However, none of the negative conditions and circumstances cited in HR 51, such as a lack of research and increased availability for research and medical use, would be improved by Hawaii’s proposed rescheduling of marijuana, because federal law, under which marijuana is still a schedule I controlled substance, is the supreme law of the land.

Second, the State of Oregon rescheduled marijuana from schedule I to schedule II, but Oregon’s rescheduling action did not change any actual regulatory control over marijuana.

On June 17, 2010, the Oregon Board of Pharmacy (“Board”) moved marijuana from schedule I to schedule II in the State of Oregon. The Board, however, quickly clarified that its scheduling action was intended to correct a technical conflict in Oregon law that recognized the “medical use” of marijuana, but still defined marijuana under other Oregon law as a schedule I controlled substance with “no accepted medical use.” The Board quickly pointed out that its placement in schedule II did not make marijuana available by prescription, and further, that prescribers could not prescribe marijuana, and pharmacies could not dispense marijuana. The Board also clarified that its action to reschedule marijuana on the state list did not supersede federal law or create a direct conflict with federal law. It simply did not address federal law. PSD submits that Oregon’s rescheduling action was symbolic and did not place of marijuana under any different level of regulation outside of already existing laws and regulations.

Finally, a rescheduling of cannabis from schedule I to schedule III would affect other existing controlled substances laws, both at the federal and state levels, thereby making medical cannabis a prescription-only controlled substance. If cannabis became prescription-only, then Hawaii's medical marijuana programs would be jeopardized.

Federal law in 21 CFR 829 (b) states that, "...no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], may be dispensed without a written or oral prescription..." Additionally, section 329-38(e), HRS, provides:

"No controlled substance in schedule III, IV, or V may be dispensed without a written, facsimile of a written, oral prescription of a practitioner, or receipt of an electronic prescription, except when a controlled substance is dispensed by a practitioner, other than a pharmacist, to an ultimate user."

If the Legislature were to reschedule cannabis from schedule I to schedule III, then under both federal and state laws, cannabis would become a prescription-only drug. As a result of becoming a prescription-only drug, other federal laws would apply. Under federal law, a prescriber may only prescribe drugs that are approved for public marketing by the United States Food and Drug Administration (FDA). Cannabis is not an FDA approved drug and cannot be prescribed in the United States. Furthermore, because schedule III drugs are generally dispensed from a pharmacy, cannabis would effectively become unavailable because pharmacies are not allowed to stock or dispense cannabis by prescription. Moreover, even homegrown marijuana could be affected, since the manufacturing of prescription drugs is subject to a strict FDA testing and evaluation process. The very fact that marijuana is still presently a schedule I drug under federal law, with no accepted medical use in the United States, means it cannot presently be prescribed, manufactured, or dispensed legally. As a result, unless the many different corresponding laws at the federal and state levels were also not amended in a meaningful and coordinated way, Hawaii's current medical use of cannabis programs would become instantly useless.

In conclusion, for the reasons above, PSD submits that it is not appropriate to reschedule cannabis from schedule I to schedule III in Hawaii at this time.

HOUSE RESOLUTION

REQUESTING THE DEPARTMENTS OF HEALTH AND PUBLIC SAFETY TO
EVALUATE THE APPROPRIATENESS OF RESCHEDULING CANNABIS AT
THE STATE LEVEL FROM SCHEDULE I TO SCHEDULE III.

1 WHEREAS, the structure of our United States government
2 allows for the distribution of power between the states and the
3 federal government; and

4
5 WHEREAS, a power that remains with the states is the
6 authority to accept the medical use of controlled substances;
7 and

8
9 WHEREAS, Congress enacted the United States Controlled
10 Substances Act with the clear intent of allowing for changes in
11 state medical use of certain substances; and

12
13 WHEREAS, cannabis is currently classified as a schedule I
14 drug by the federal government and the State of Hawaii, which
15 impedes medical and scientific research; and

16
17 WHEREAS, Hawaii, now joined by at least twenty-eight other
18 states, Guam, Puerto Rico, and the District of Columbia,
19 lawfully exercised its authority and authorized the medical use
20 of cannabis; and

21
22 WHEREAS, under the federal Controlled Substances Act,
23 inclusion of a drug in Schedule I requires three findings, one
24 of which is that the drug has no currently accepted medical use
25 in treatment in the United States; and

26
27 WHEREAS, cannabis does not satisfy the criteria of a
28 schedule I controlled substance because the drug is currently
29 accepted for medical use by Hawaii and other jurisdictions
30 within the United States; and

31
32 WHEREAS, under the Obama Administration, in August 2013,
33 the Department of Justice issued a statement, referred to as the
34 Cole Memorandum, indicating that while marijuana remains
35 federally illegal, the Department expects states to create



1 strong, state-based enforcement efforts and reserves the right
2 to challenge states' legalization laws; the Cole Memorandum also
3 indicated that the Department of Justice will focus its
4 enforcement efforts on eight specified priorities relating to
5 marijuana; and

6
7 WHEREAS, however, under the Trump Administration, in
8 January 2018, the Attorney General issued a Marijuana
9 Enforcement Memorandum that rescinded the Cole Memorandum and
10 allows federal prosecutors to decide how to prioritize
11 enforcement of federal marijuana laws; and

12
13 WHEREAS, there is a significant lack of research on
14 cannabis by industries, universities, and research institutions,
15 in part because of cannabis's classification as a schedule I
16 drug; and

17
18 WHEREAS, Hawaii's classification of cannabis as a schedule
19 I drug is inconsistent with state policy and may have unintended
20 negative consequences; and

21
22 WHEREAS, changing the State's classification of cannabis
23 from schedule I to schedule III may make the drug more available
24 for research and medical use, while still keeping the drug
25 safely regulated; now, therefore,

26
27 BE IT RESOLVED by the House of Representatives of the
28 Twenty-ninth Legislature of the State of Hawaii, Regular Session
29 of 2018, that the Departments of Health and Public Safety are
30 requested to evaluate the appropriateness and likely effects of
31 reclassifying cannabis at the state level as a schedule III
32 drug; and

33
34 BE IT FURTHER RESOLVED that the Departments of Health and
35 Public Safety are requested to report their findings to the
36 Legislature no later than December 31, 2018; and

37
38



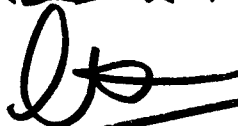
H.R. NO. 51

1 BE IT FURTHER RESOLVED that certified copies of this
2 Resolution be transmitted to the Director of Health and Director
3 of Public Safety.
4
5
6

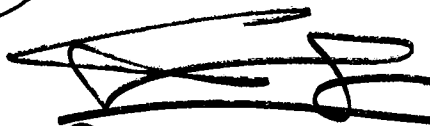
OFFERED BY:



Brend Kolzycki



John M. Moran



Roch Co



MAR 06 2018

