
A BILL FOR AN ACT

RELATING TO MARIJUANA OFFENSES.

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

1 SECTION 1. The legislature finds that Hawaii should be
2 protected from suffering the dangers and risks increasingly
3 occurring in states which have endorsed the possession and use
4 of marijuana through means of decriminalization and
5 legalization.

6 The legislature also finds the Substance Abuse and Mental
7 Health Services Administration (SAMHSA, a federal government
8 agency, has found that marijuana use at a young age results in a
9 permanent loss of up to eight IQ points.

10 The legislature further finds a National Highway Traffic
11 Safety Administration (NHTSA) report on the effects of
12 Marijuana-Impaired Driving stated there were strong indications
13 that marijuana causes slow reaction times, difficulties with
14 road tracking, and impaired decision-making functions - all
15 necessary skills to engage on our roads in a safe manner.

16 Evidence of these effects can be seen in states where marijuana



1 is legal, such as Colorado, which report a rise in marijuana-
2 related auto fatalities.

3 The legislature also finds the Insurance Institute for
4 Highway Safety (IIHS) issued a status report on the legalization
5 of marijuana showing a six per cent increase in vehicle
6 collisions in states that have legalized recreational marijuana.

7 The legislature further finds a recent poll of the National
8 Sherriff's Association showed seventy-four per cent of members
9 believe they need an increase in personnel, resources, and
10 training to handle the increase in marijuana use. Additionally,
11 sixty-five per cent believe crime has increased in states where
12 marijuana has been legalized.

13 The legislature also finds the state's youth is at risk by
14 decriminalizing marijuana. According to the Center for Disease
15 Control and Prevention, the dangers associated with marijuana
16 use include falling into addiction, permanent impact on brain
17 development, and decline in school performance. The current law
18 to decriminalize small amounts of marijuana is an encouragement
19 for the possession of marijuana and ignores the dangers to the
20 mental, physical and overall wellbeing of those impacted.



1 The legislature finds that due to the negative statistics
2 originating from states where marijuana has recently become
3 legal, that decriminalizing small amounts of marijuana
4 unnecessarily expedites a process that should only be undertaken
5 after careful research and consideration. In effect, the de
6 facto legalization of marijuana should be stopped until it is
7 certain that the state will not be impacted negatively. The
8 purpose of this Act is to safeguard the public and ward off the
9 dangers that come with decriminalizing marijuana.

10 SECTION 2. Section 706-622.5, Hawaii Revised Statutes is
11 amended to read as follows:

12 "**§706-622.5 Sentencing for drug offenders; expungement.**

13 (1) Notwithstanding section 706-620(3), a person convicted for
14 the first or second time for any offense under section 329-43.5,
15 except offenses under subsections (a) and (b) of that section
16 which constitute violations, involving the possession or use of
17 drug paraphernalia or any felony offense under part IV of
18 chapter 712 involving the possession or use of any dangerous
19 drug, detrimental drug, harmful drug, intoxicating compound,
20 marijuana, or marijuana concentrate, as defined in section
21 712-1240, but not including any offense under part IV of chapter



1 712 involving the distribution or manufacture of any such drugs
2 or substances and not including any methamphetamine offenses
3 under sections 712-1240.7, 712-1240.8 as that section was in
4 effect before July 1, 2016, 712-1241, and 712-1242, is eligible
5 to be sentenced to probation under subsection (2) if the person
6 meets the following criteria:

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

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

17 (c) Except for those persons directed to substance abuse
18 treatment under the supervision of the drug court, the
19 person presents a proposal to receive substance abuse
20 treatment in accordance with the treatment plan
21 prepared by a certified substance abuse counselor



1 through a substance abuse treatment program that
2 includes an identified source of payment for the
3 treatment program.

4 (2) A person eligible under subsection (1) may be
5 sentenced to probation to undergo and complete a substance abuse
6 treatment program if the court determines that the person can
7 benefit from substance abuse treatment and, notwithstanding that
8 the person would be subject to sentencing as a repeat offender
9 under section 706-606.5, the person should not be incarcerated
10 to protect the public. If the person fails to complete the
11 substance abuse treatment program and the court determines that
12 the person cannot benefit from any other suitable substance
13 abuse treatment program, the person shall be subject to
14 sentencing under the applicable section under this part. As a
15 condition of probation under this subsection, the court may
16 direct the person to undergo and complete substance abuse
17 treatment under the supervision of the drug court if the person
18 has a history of relapse in treatment programs. The court may
19 require other terms and conditions of probation, including
20 requiring that the person contribute to the cost of the
21 substance abuse treatment program, comply with deadlines for



1 entering into the substance abuse treatment program, and reside
2 in a secure drug treatment facility.

3 (3) For the purposes of this section, "substance abuse
4 treatment program" means drug or substance abuse treatment
5 services provided outside a correctional facility by a public,
6 private, or nonprofit entity that specializes in treating
7 persons who are diagnosed with having substance abuse or
8 dependency and preferably employs licensed professionals or
9 certified substance abuse counselors.

10 (4) Upon written application from a person sentenced under
11 this part or a probation officer, the court shall issue a court
12 order to expunge the record of conviction for that particular
13 offense; provided that a person has successfully completed the
14 substance abuse treatment program and complied with other terms
15 and conditions of probation. A person sentenced to probation
16 under this section who has not previously been sentenced under
17 this section shall be eligible for one time only for expungement
18 under this subsection.

19 ~~[(5)] Upon motion from a person convicted for the~~
20 ~~possession of marijuana under section 712-1249 arising from a~~
21 ~~set of facts and circumstances that resulted in no other~~



1 ~~eriminal charge, the court shall grant an expungement order~~
2 ~~pertaining to the conviction for the offense, provided that the~~
3 ~~amount of marijuana for which the person was convicted of~~
4 ~~possessing was three grams or less.]~~

5 ~~[-(6)]~~ (5) Nothing in this section shall be construed to give
6 rise to a cause of action against the State, a state employee,
7 or a treatment provider. "

8 SECTION 3. Section 712-1249, Hawaii Revised Statutes, is
9 amended by amending subsection (2) to read as follows:

10 "Promoting a detrimental drug in the third degree. (1) A
11 person commits the offense of promoting a detrimental drug in
12 the third degree if the person knowingly possesses any marijuana
13 or any Schedule V substance in any amount.

14 (2) Promoting a detrimental drug in the third degree is a
15 petty misdemeanor. ~~[-; provided that possession of three grams or~~
16 ~~less of marijuana is a violation, punishable by a fine of \$130.]~~

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

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

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H.B. NO. 2082

INTRODUCED BY:

[Handwritten Signature]

Calvin K. King

James S. King

Reverend

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JAN 17 2020



H.B. NO. 2082

Report Title:

Marijuana; Public Health; Public Safety; Youth; Protection

Description:

Reinstates the protection for the public by repealing the decriminalization of the possession of three grams or less of marijuana and re-establishes the classification of a petty misdemeanor to deter the harm marijuana causes.

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