
A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. The legislature finds that criminal justice
2 policies that impose harsh prison sentences increase
3 incarceration rates and costs, but frequently do not result in a
4 commensurate reduction in crime rates. A growing body of
5 national research explains that incarceration only has a
6 marginal effect on crime. In fact, the Vera Institute of
7 Justice, in a 2017 report, found that increasing incarceration
8 in states and communities that already have high incarceration
9 rates results in even higher crime rates. Meanwhile, the report
10 also identified nineteen states that reduced their incarceration
11 rate and crime rate. This data suggests that excessive
12 incarceration does not necessarily improve public safety.

13 Moreover, the legislature further finds that incarceration
14 is a particularly expensive and ineffective response to the
15 public health problem of personal drug use. Enforcement of the
16 offense of promotion of a dangerous drug in the third degree
17 costs state taxpayers over \$13,000,000 each year. This



1 substantial sum is expended to incarcerate low-level, non-
2 violent offenders. These drug possession offenses are
3 classified as felonies and, therefore, result in lengthy prison
4 sentences and exacerbate the severe overcrowding conditions in
5 Hawaii's prisons. Despite decades of policies focused on
6 criminalization and incarceration of drug users, a 2018 study of
7 drug use in Hawaii showed that from 2011 to 2016, there were no
8 significant changes in adult or youth substance use. The
9 State's experience corroborates mounting national data
10 demonstrating that incarceration has no effect on rates of drug
11 use or overdose deaths, but actually increases recidivism among
12 those at low risk to reoffend. Despite its substantial expense,
13 incarceration has not adequately deterred substance abuse or
14 otherwise made our communities safer. Thus, applying the harsh
15 treatment of felony level classification and punishment to all
16 drug possession offenses, especially those at the lowest level,
17 has proven to be excessively costly and woefully ineffective.
18 Reducing Hawaii's overreliance on lengthy incarceration as a
19 response to non-violent drug possession can save substantial
20 human and financial resources, which can be reinvested in other
21 proven treatment methods to improve public health and safety.



1 Other jurisdictions across the nation have experienced the same
2 cost-benefit imbalance with regard to incarceration for drug
3 crimes and, as a result, at least five states have reclassified
4 all felony personal drug possession offenses as misdemeanors.
5 These states are beginning to see significant reductions in
6 their incarcerated populations and corrections spending and are
7 reinvesting their savings into proven treatment solutions as
8 well as enforcement against more serious crimes. Moreover, with
9 these policy changes, these states have taken aggressive steps
10 toward reducing the harmful collateral consequences of felony
11 convictions that ripple through the lives of those convicted,
12 their families, and their communities, while improving the
13 health and safety of their communities.

14 The legislature also finds that the imposition of
15 incarceration to punish simple, low-level drug possession
16 offenses should be redirected to the reduced and alternative
17 sentencing options available under the misdemeanor
18 classification. This will help reduce prison overcrowding, save
19 taxpayer dollars, and free up resources to be reinvested into
20 more effective treatment programs. The potential benefits of
21 reducing the penalties for first-time and low-level drug



1 offenders far outweigh the high costs of treating these non-
2 violent offenses as felonies. Accordingly, the purpose of this
3 Act is to:

4 (1) Create a new misdemeanor offense of promoting a
5 dangerous drug in the fourth degree for the possession
6 of any dangerous drug in any amount;

7 (2) Limit the class C felony offense of promoting a
8 dangerous drug in the third degree for the possession
9 of certain dangerous drugs in an amount or weight
10 equal to one-sixteenth of an ounce or more; and

11 (3) Retroactively make convictions for promoting a
12 dangerous drug in the third degree a misdemeanor.

13 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
14 amended by adding a new section to part IV to be appropriately
15 designated and to read as follows:

16 "§712- Promoting a dangerous drug in the fourth degree.

17 (1) A person commits the offense of promoting a dangerous drug
18 in the fourth degree if the person knowingly possesses any
19 dangerous drug in any amount.

20 (2) Promoting a dangerous drug in the fourth degree is a
21 misdemeanor."



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1 SECTION 3. Section 712-1243, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:



3 "(1) A person commits the offense of promoting a dangerous
4 drug in the third degree if the person knowingly possesses [~~any~~
5 ~~dangerous drug in any amount.~~] one or more preparations,
6 compounds, mixtures, or substances of an aggregate weight of
7 one-sixteenth ounce or more, containing methamphetamine, heroin,
8 morphine, or cocaine or any of their respective salts, isomers,
9 and salts of isomers."

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval
13 and shall be applied retroactively to June 1, 1972, in any case,
14 action, proceeding, or claim under section 712-1243, Hawaii
15 Revised Statutes; provided that any person convicted under
16 section 712-1243, Hawaii Revised Statutes, prior to the
17 effective date of this Act shall be deemed to be convicted of a
18 misdemeanor and not wrongfully convicted within the meaning of
19 chapter 661B, Hawaii Revised Statutes.

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Report Title:

Promoting a Dangerous Drug; Third Degree; Fourth Degree;
Misdemeanor; Retroactive Application

Description:

Creates a new offense, promoting a dangerous drug in the fourth degree, for possession of any amount of any dangerous drug, as a misdemeanor. Amends promoting a dangerous drug in the third degree to possessing 1/16 ounce of specified dangerous drugs. Makes prior convictions of promoting a dangerous drug in the third degree a misdemeanor.

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