

JAN 18 2019

A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 SECTION 1. The purpose of this Act is to remove criminal
2 penalties that relate to the growing, selling, distribution, or
3 possession of marijuana from state law. In doing so, the State
4 asserts that it has the primary legal jurisdiction over all
5 crimes committed by the civil population within its boundaries,
6 with the exception of crimes committed on property directly
7 owned by the federal government. Any activities related to the
8 growing, processing, distribution, sale, possession, or
9 consumption of marijuana on federal lands shall remain subject
10 to federal law. If no federal law prohibiting marijuana exists
11 at a time subsequent to the enactment of this Act, activities
12 related to marijuana may be subject to state law. This Act is
13 not intended to undermine the authority of the federal
14 government to regulate the export or import of marijuana to or
15 from another state or territory of the United States or to
16 regulate the use of marijuana on federal property or among
17 active duty members of the military.



1 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
2 amended by adding three new sections to part IV to be
3 appropriately designated and to read as follows:

4 "§712- Marijuana; minors. (1) It shall be unlawful to
5 sell or furnish to a minor under the age of eighteen any
6 marijuana or intoxicating compound derived from marijuana.

7 (2) It shall be unlawful for a minor under the age of
8 eighteen to purchase any marijuana or intoxicating compound
9 derived from marijuana; provided that this subsection shall not
10 apply to a minor who is participating in a controlled purchase
11 as part of a law enforcement activity or a study authorized by
12 the department of health under the supervision of a law
13 enforcement agency to determine the level of illegal marijuana
14 sales to minors.

15 (3) If any marijuana or intoxicating compound derived from
16 marijuana is lawfully sold, including from any vending machine,
17 a sign using the statement "The sale of marijuana or
18 intoxicating compounds derived from marijuana to persons under
19 the age of eighteen is prohibited" shall be posted, in letters
20 at least one-half inch high, at or near the point of sale, or on
21 or near the vending machine, as the case may be.



1 (4) This section shall not apply to a person who is
2 authorized to:

3 (a) Acquire, possess, cultivate, use, distribute, or
4 transport cannabis pursuant to the definition of
5 "medical use" under section 329-121, while the person
6 is facilitating the medical use of cannabis by a
7 qualifying patient; or

8 (b) Dispense, manufacture, or produce marijuana or
9 manufactured cannabis products pursuant to and in
10 compliance with chapter 329D, while the person is
11 facilitating the medical use of cannabis by a
12 qualifying patient pursuant to part IX of chapter 329.

13 (5) Any person who violates subsection (1) or (3) shall be
14 fined \$500 for a first offense. Any subsequent offense shall
15 subject the violator to a fine of not less than \$500 nor more
16 than \$2,000.

17 (6) Any minor under the age of eighteen who violates
18 subsection (2) shall be fined \$10 for a first offense. Any
19 subsequent offense shall subject the violator to a fine of \$50,
20 no part of which shall be suspended, or the violator shall be
21 required to perform not less than forty-eight hours nor more



1 than seventy-two hours of community service during hours when
2 the violator is not employed and is not attending school.

3 §712- Marijuana; cultivation. (1) It shall be
4 unlawful for any person to cultivate marijuana on property owned
5 by the State or a county.

6 (2) Any person who violates subsection (1) shall be fined
7 \$20,000.

8 (3) A person may grow no more than ten marijuana plants on
9 private property for personal use; provided that a person may
10 grow more than ten plants for commercial use on private property
11 that is classified for agriculture; provided further that a
12 county may regulate by ordinance the growing of marijuana on
13 private property.

14 (4) Any person who cultivates marijuana on private
15 property without permission of the property owner or person
16 having legal control of the private property shall be guilty of
17 a misdemeanor.

18 §712- Abuse of marijuana rights. Any person who:

19 (a) Distributes moneys gained from the sale of marijuana
20 to any criminal gang, cartel, or other organization
21 that engages in criminal activity for profit;



1 (b) Engages in violence or the use of a firearm in
2 relation to the cultivation of marijuana; or
3 (c) Uses a marijuana distribution business to hide illegal
4 activity,
5 shall be fined not more than \$20,000, in addition to any other
6 penalty provided by law."

7 SECTION 3. Section 706-625, Hawaii Revised Statutes, is
8 amended by amending subsection (7) to read as follows:

9 "(7) The court may require a defendant to undergo and
10 complete a substance abuse treatment program when the defendant
11 has committed a violation of the terms and conditions of
12 probation involving possession or use, not including to
13 distribute or manufacture as defined in section 712-1240, of any
14 dangerous drug, detrimental drug, harmful drug, or intoxicating
15 compound, [~~marijuana, or marijuana concentrate,~~] as defined in
16 section 712-1240, unlawful methamphetamine trafficking as
17 provided in section 712-1240.6, or involving possession or use
18 of drug paraphernalia under section 329-43.5. If the defendant
19 fails to complete the substance abuse treatment program or the
20 court determines that the defendant cannot benefit from any
21 other suitable substance abuse treatment program, the defendant



1 shall be subject to revocation of probation and incarceration.

2 The court may require the defendant to:

3 (a) Be assessed by a certified substance abuse counselor
4 for substance abuse dependency or abuse under the
5 applicable Diagnostic and Statistical Manual and
6 Addiction Severity Index;

7 (b) Present a proposal to receive substance abuse
8 treatment in accordance with the treatment plan
9 prepared by a certified substance abuse counselor
10 through a substance abuse treatment program that
11 includes an identified source of payment for the
12 treatment program;

13 (c) Contribute to the cost of the substance abuse
14 treatment program; and

15 (d) Comply with any other terms and conditions of
16 probation.

17 As used in this subsection, "substance abuse treatment
18 program" means drug or substance abuse treatment services
19 provided outside a correctional facility by a public, private,
20 or nonprofit entity that specializes in treating persons who are
21 diagnosed with substance abuse or dependency and preferably



1 employs licensed professionals or certified substance abuse
2 counselors.

3 Nothing in this subsection shall be construed to give rise
4 to a cause of action against the State, a state employee, or a
5 treatment provider."

6 SECTION 4. Section 706-660, Hawaii Revised Statutes, is
7 amended by amending subsection (2) to read as follows:

8 "(2) A person who has been convicted of a class B or class
9 C felony for any offense under part IV of chapter 712 may be
10 sentenced to an indeterminate term of imprisonment; provided
11 that this subsection shall not apply to sentences imposed under
12 sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8 as that
13 section was in effect prior to July 1, 2016, 712-1242, 712-1245,
14 [~~712-1249.5~~] 712-1249.6, 712-1249.7, and 712-1257.

15 When ordering a sentence under this subsection, the court
16 shall impose a term of imprisonment, which shall be as follows:

17 (a) For a class B felony--ten years or less, but not less
18 than five years; and

19 (b) For a class C felony--five years or less, but not less
20 than one year.



1 The minimum length of imprisonment shall be determined by the
2 Hawaii paroling authority in accordance with section 706-669."

3 SECTION 5. Section 712-1240, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending the definition of "detrimental drug" to
6 read:

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~~]."

10 2. By amending the definition of "harmful drug" to read:

11 "Harmful drug" means any substance or immediate precursor
12 defined or specified as a "Schedule III substance" or a
13 "Schedule IV substance" by chapter 329 [~~, or any marijuana
14 concentrate except marijuana and a substance specified in
15 section 329-18(e)(14)] ."~~

16 SECTION 6. Section 712-1244, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of promoting a harmful
19 drug in the first degree if the person knowingly:

20 (a) Possesses one hundred or more capsules or tablets or
21 dosage units containing one or more of the harmful



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- 1 drugs [~~or one or more of the marijuana concentrates~~],
2 or any combination thereof;
- 3 (b) Possesses one or more preparations, compounds,
4 mixtures, or substances, of an aggregate weight of one
5 ounce or more containing one or more of the harmful
6 drugs [~~or one or more of the marijuana concentrates~~],
7 or any combination thereof;
- 8 (c) Distributes twenty-five or more capsules or tablets or
9 dosage units containing one or more of the harmful
10 drugs [~~or one or more of the marijuana concentrates~~],
11 or any combination thereof;
- 12 (d) Distributes one or more preparations, compounds,
13 mixtures, or substances, of an aggregate weight of
14 one- eighth ounce or more, containing one or more of
15 the harmful drugs [~~or one or more of the marijuana
16 concentrates~~], or any combination thereof; or
- 17 (e) Distributes any harmful drug [~~or any marijuana
18 concentrate~~] in any amount to a minor."

19 SECTION 7. Section 712-1245, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:



1 "(1) A person commits the offense of promoting a harmful
2 drug in the second degree if the person knowingly:

3 (a) Possesses fifty or more capsules or tablets or dosage
4 units containing one or more of the harmful drugs [~~or~~
5 ~~one or more of the marijuana concentrates~~], or any
6 combination thereof;

7 (b) Possesses one or more preparations, compounds,
8 mixtures, or substances, of an aggregate weight of
9 one- eighth ounce or more, containing one or more of
10 the harmful drugs [~~or one or more of the marijuana~~
11 ~~concentrates~~], or any combination thereof; or

12 (c) Distributes any harmful drug [~~or any marijuana~~
13 ~~concentrate~~] in any amount."

14 SECTION 8. Section 712-1246, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) A person commits the offense of promoting a harmful
17 drug in the third degree if the person knowingly possesses
18 twenty-five or more capsules or tablets or dosage units
19 containing one or more of the harmful drugs [~~or one or more of~~
20 ~~the marijuana concentrates~~], or any combination thereof."



1 SECTION 9. Section 712-1247, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§712-1247 Promoting a detrimental drug in the first
4 degree. (1) A person commits the offense of promoting a
5 detrimental drug in the first degree if the person knowingly:

6 (a) Possesses four hundred or more capsules or tablets
7 containing one or more of the Schedule V substances;

8 (b) Possesses one or more preparations, compounds,
9 mixtures, or substances of an aggregate weight of one
10 ounce or more, containing one or more of the Schedule
11 V substances;

12 (c) Distributes fifty or more capsules or tablets
13 containing one or more of the Schedule V substances;
14 or

15 (d) Distributes one or more preparations, compounds,
16 mixtures, or substances of an aggregate weight of one-
17 eighth ounce or more, containing one or more of the
18 Schedule V substances [7

19 ~~(e) Possesses one or more preparations, compounds,
20 mixtures, or substances of an aggregate weight of one
21 pound or more, containing any marijuana;~~



- 1 ~~(f) Distributes one or more preparations, compounds,~~
- 2 ~~mixtures, or substances of an aggregate weight of one~~
- 3 ~~ounce or more, containing any marijuana,~~
- 4 ~~(g) Possesses, cultivates, or has under the person's~~
- 5 ~~control twenty five or more marijuana plants; or~~
- 6 ~~(h) Sells or barter any marijuana or any Schedule V~~
- 7 ~~substance in any amount].~~

8 (2) Promoting a detrimental drug in the first degree is a

9 class C felony.

10 ~~[(3) Any marijuana seized as evidence of a violation of~~

11 ~~this section in excess of one pound may be destroyed after it~~

12 ~~has been photographed and the weight thereof recorded. The~~

13 ~~remainder of the marijuana shall remain in the custody of the~~

14 ~~police department until the termination of any criminal action~~

15 ~~brought as a result of the seizure of the marijuana.~~

16 ~~Photographs duly identified as accurately representing the~~

17 ~~marijuana shall be deemed competent evidence of the marijuana~~

18 ~~involved and shall be admissible in any proceeding, hearing, or~~

19 ~~trial to the same extent as the marijuana itself; provided that~~

20 ~~nothing in this subsection shall be construed to limit or to~~



1 ~~restrict the application of rule 901 of the Hawaii rules of~~
2 ~~evidence.] "~~

3 SECTION 10. Section 712-1248, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

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

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

9 (b) Possesses one or more preparations, compounds,
10 mixtures, or substances, of an aggregate weight of
11 one-eighth ounce or more, containing one or more of
12 the Schedule V substances; or

13 [~~(c) Possesses one or more preparations, compounds,~~
14 ~~mixtures, or substances, of an aggregate weight of one~~
15 ~~ounce or more, containing any marijuana; or~~

16 ~~(d)]~~ (c) Distributes [~~any marijuana or~~] any Schedule V
17 substance in any amount."

18 SECTION 11. Section 712-1249, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

20 "(1) A person commits the offense of promoting a
21 detrimental drug in the third degree if the person knowingly



1 possesses [~~any marijuana or~~] any Schedule V substance in any
2 amount."

3 SECTION 12. Section 712A-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§712A-4 Covered offenses.** Offenses for which property is
6 subject to forfeiture under this chapter are:

7 (a) All offenses that specifically authorize forfeiture;

8 (b) Murder, kidnapping, labor trafficking, gambling,
9 criminal property damage, robbery, bribery, extortion,
10 theft, unauthorized entry into motor vehicle,
11 burglary, money laundering, trademark counterfeiting,
12 insurance fraud, promoting a dangerous, harmful, or
13 detrimental drug, [~~commercial promotion of marijuana,~~]
14 methamphetamine trafficking, manufacturing of a
15 controlled substance with a child present, promoting
16 child abuse, promoting prostitution, sex trafficking,
17 solicitation of a minor for prostitution, habitual
18 solicitation of prostitution, or electronic enticement
19 of a child that is chargeable as a felony offense
20 under state law;



1 (c) The manufacture, sale, or distribution of a controlled
2 substance in violation of chapter 329, promoting
3 detrimental drugs or intoxicating compounds, promoting
4 pornography, promoting pornography for minors, or
5 solicitation of prostitution near schools or public
6 parks, which is chargeable as a felony or misdemeanor
7 offense, but not as a petty misdemeanor, under state
8 law; and

9 (d) The attempt, conspiracy, solicitation, coercion, or
10 intimidation of another to commit any offense for
11 which property is subject to forfeiture."

12 SECTION 13. Section 712-1249.4, Hawaii Revised Statutes,
13 is repealed.

14 ~~["~~§712-1249.4~~ Commercial promotion of marijuana in the~~
15 ~~first degree. (1) A person commits the offense of commercial~~
16 ~~promotion of marijuana in the first degree if the person~~
17 ~~knowingly:~~

18 ~~(a) Possesses marijuana having an aggregate weight of~~
19 ~~twenty five pounds or more;~~

20 ~~(b) Distributes marijuana having an aggregate weight of~~
21 ~~five pounds or more;~~



- 1 ~~(c) Possesses, cultivates, or has under the person's~~
- 2 ~~control one hundred or more marijuana plants;~~
- 3 ~~(d) Cultivates on land owned by another person, including~~
- 4 ~~land owned by the government or other legal entity,~~
- 5 ~~twenty five or more marijuana plants, unless the~~
- 6 ~~person has the express permission from the owner of~~
- 7 ~~the land to cultivate the marijuana or the person has~~
- 8 ~~a legal or an equitable ownership interest in the land~~
- 9 ~~or the person has a legal right to occupy the land; or~~
- 10 ~~(e) Uses, or causes to be used, any firearm or other~~
- 11 ~~weapon, device, instrument, material, or substance,~~
- 12 ~~whether animate or inanimate, which in the manner used~~
- 13 ~~is capable of causing death, serious bodily injury,~~
- 14 ~~substantial bodily injury, or other bodily injury, as~~
- 15 ~~defined in chapter 707 in order to prevent the theft,~~
- 16 ~~removal, search and seizure, or destruction of~~
- 17 ~~marijuana.~~
- 18 ~~(2) Commercial promotion of marijuana in the first degree~~
- 19 ~~is a class A felony.~~
- 20 ~~(3) Any marijuana seized as evidence in violation of this~~
- 21 ~~section in excess of an aggregate weight of twenty five pounds~~



1 ~~as stated in subsection (1) (a), or in excess of an aggregate~~
2 ~~weight of five pounds as stated in subsection (1) (b), or in~~
3 ~~excess of one hundred marijuana plants as stated in subsection~~
4 ~~(1) (c), or in excess of twenty five marijuana plants as stated~~
5 ~~in subsection (1) (d) may be destroyed after the excess amount~~
6 ~~has been photographed and the number of plants and the weight~~
7 ~~thereof has been recorded. The required minimum amount of the~~
8 ~~marijuana needed to constitute the elements of this offense~~
9 ~~shall remain in the custody of the police until the termination~~
10 ~~of any criminal action brought as a result of the seizure of the~~
11 ~~marijuana. Photographs duly identified as accurately~~
12 ~~representing the marijuana shall be deemed competent evidence of~~
13 ~~the marijuana involved and shall be admissible in any~~
14 ~~proceeding, hearing, or trial to the same extent as the~~
15 ~~marijuana itself; provided that nothing in this subsection shall~~
16 ~~be construed to limit or restrict the application of rule 901 of~~
17 ~~the Hawaii rules of evidence."]~~

18 SECTION 14. Section 712-1249.5, Hawaii Revised Statutes,
19 is repealed.

20 [~~§712-1249.5 Commercial promotion of marijuana in the~~
21 ~~second degree. (1) A person commits the offense of commercial~~



1 ~~promotion of marijuana in the second degree if the person~~
2 ~~knowingly:~~

3 ~~(a) Possesses marijuana having an aggregate weight of two~~
4 ~~pounds or more;~~

5 ~~(b) Distributes marijuana having an aggregate weight of~~
6 ~~one pound or more;~~

7 ~~(c) Possesses, cultivates, or has under the person's~~
8 ~~control fifty or more marijuana plants;~~

9 ~~(d) Cultivates on land owned by another person, including~~
10 ~~land owned by the government or other legal entity,~~
11 ~~any marijuana plant, unless the person has the express~~
12 ~~permission from the owner of the land to cultivate the~~
13 ~~marijuana or the person has a legal or an equitable~~
14 ~~ownership interest in the land or the person has a~~
15 ~~legal right to occupy the land; or~~

16 ~~(e) Sells or barter any marijuana or any Schedule V~~
17 ~~substance in any amount to a minor.~~

18 ~~(2) Commercial promotion of marijuana in the second degree~~
19 ~~is a class B felony.~~

20 ~~(3) Any marijuana seized as evidence in violation of this~~
21 ~~section in excess of an aggregate weight of two pounds as stated~~



1 ~~in subsection (1) (a), or in excess of an aggregate weight of one~~
2 ~~pound as stated in subsection (1) (b), or in excess of twenty-~~
3 ~~five marijuana plants as stated in subsection (1) (c) may be~~
4 ~~destroyed after the excess amount has been photographed and the~~
5 ~~number of plants and the weight thereof has been recorded. The~~
6 ~~required minimum amount of the marijuana needed to constitute~~
7 ~~the elements of this offense shall remain in the custody of the~~
8 ~~police until the termination of any criminal action brought as a~~
9 ~~result of the seizure of the marijuana. Photographs duly~~
10 ~~identified as accurately representing the marijuana shall be~~
11 ~~deemed competent evidence of the marijuana involved and shall be~~
12 ~~admissible in any proceeding, hearing, or trial to the same~~
13 ~~extent as the marijuana itself; provided that nothing in this~~
14 ~~subsection shall be construed to limit or to restrict the~~
15 ~~application of rule 901 of the Hawaii rules of evidence."]~~

16 SECTION 15. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.

19 SECTION 16. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21



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1 SECTION 17. This Act shall take effect upon its approval.

2

INTRODUCED BY:

V. D. D. J.
by request



S.B. NO. 779

Report Title:

Marijuana; Related Compounds; Minors; Provision to or Possession by Minors Prohibited; Cultivation; Prohibited on Public Property; Authorized on Private Property; Proceeds; Sharing with Criminal Groups Prohibited; Fines; Established; Other Criminal Penalties; Repealed

Description:

Prohibits the provision of marijuana and related compounds to minors under eighteen. Prohibits minors under eighteen from purchasing marijuana or related compounds. Prohibits cultivation of marijuana on state or county property. Authorizes cultivation of marijuana on private property under certain conditions. Prohibits sharing proceeds from marijuana cultivation with criminal groups. Establishes fines for violations. Repeals other criminal penalties related to possession, cultivation, distribution, and use of marijuana and related compounds.

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

