

A Bill for an Act Relating to the Hawaii Penal Code.

Be It Enacted By The Legislature Of The State Of Hawaii:

SECTION 1. Section 702-215, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 702-215 Intentional or knowing causation; different result from that intended or contemplated. In the following instances, intentionally or knowingly causing a particular result shall be deemed to be established even though the actual result caused by the defendant may not have been within his intention or contemplation:

- (1) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused; or
- (2) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another’s volitional conduct to have a bearing on the defendant’s liability or on the gravity of his offense.”

SECTION 2. Section 702-216, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 702-216 Reckless or negligent causation; different result from that within the risk. In the following instances, recklessly or negligently causing a particular result shall be deemed to be established even though the actual result caused by the defendant may not have been within the risk of which he was or, in the case of negligence, should have been aware:

- (1) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or
- (2) The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence or too dependent on another’s volitional conduct to have a bearing on the defendant’s liability or on the gravity of his offense.”

SECTION 3. Section 703-304, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 703-304 Use of force in self-protection. (1) Subject to the provisions of this section and of section 308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

(2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

(3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

(4) The use of force is not justifiable under this section:

(a) To resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or

(b) To resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(i) The actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or

(ii) The actor believes that such force is necessary to protect himself against death or serious bodily injury.

(5) The use of deadly force is not justifiable under this section if:

(a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or

(b) The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:

(i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and

(ii) A public officer justified in using force in the performance of his duties, or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape, is not obliged to desist from efforts to perform his duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

(6) The justification afforded by this section extends to the use of con-

finement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

SECTION 4. Section 707-737, Hawaii Revised Statutes, is amended by amending subsection (1) (b) to read as follows:

“(1) (b) He intentionally has sexual contact with another person who is under 16 years old but at least 14 years old and at least 4 years younger than him or causes such a person to have sexual contact with him.”

SECTION 5, Section 707-739, Hawaii Revised Statutes, is repealed.

SECTION 6. Chapter 712 of the Hawaii Revised Statutes, is amended as follows:

(a) Section 712-1240, Hawaii Revised Statutes, is amended by deleting the definition of the term “unlawfully”.

(b) Section 712-1240, Hawaii Revised Statutes, is amended by amending the definition of “marijuana” to read:

(6) “Marijuana” means any part of the plant (genus) cannabis, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin, except that, as used herein, “marijuana” does not include hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol;

(c) Section 712-1241, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 712-1241 Promoting a dangerous drug in the first degree.** (1) A person commits the offense of promoting a dangerous drug in the first degree if he knowingly:

(a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(i) One ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(ii) Two ounces or more, containing one or more of any of the other dangerous drugs; or

(b) Distributes:

(i) 50 or more capsules, tablets, ampules, or syrettes containing one or more dangerous drugs; or

(ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(A) 1/8 ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(B) 1/2 ounce or more, containing any other dangerous drug; or

(c) Distributes any dangerous drug in any amount to a minor who is at least three years his junior.

(2) Promoting a dangerous drug in the first degree is a class A felony.”

(d) Section 712-1242, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 712-1242 Promoting a dangerous drug in the second degree.

(1) A person commits the offense of promoting a dangerous drug in the second degree if he knowingly:

- (a) Possesses 50 or more capsules, tablets, ampules, or syrettes, containing one or more dangerous drugs; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) 1/8 ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or
 - (ii) 1/2 ounce or more, containing any dangerous drug; or
- (c) Distributes any dangerous drug in any amount.

(2) Promoting a dangerous drug in the second degree is a class B felony.”

(e) Section 712-1243, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 712-1243 Promoting a dangerous drug in the third degree. (1) A person commits the offense of promoting a dangerous drug in the third degree if he knowingly possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.”

(f) Section 712-1244, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 712-1244 Promoting a harmful drug in the first degree.

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

- (a) Possesses 400 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more of the marijuana concentrates, or any combination thereof; or
- (c) Distributes 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
- (d) Distributes one or more preparations, compounds, mixtures, or substances, or an aggregate weight of 1/8 ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof, or
- (e) Distributes any harmful drug or any marijuana concentrate in any amount to a minor who is at least three years his junior.

(2) Promoting a harmful drug in the first degree is a class B felony.”

(g) Section 712-1245, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 712-1245 Promoting a harmful drug in the second degree. (1) A person commits the offense of promoting a harmful drug in the second degree if he knowingly:

- (a) Possesses 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of $\frac{1}{8}$ ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
- (c) Distributes any harmful drug or any marijuana concentrate in any amount.
- (2) Promoting a harmful drug in the second degree is a class C felony.”
- (h) Section 712-1246, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 712-1246 Promoting a harmful drug in the third degree.** (1) A person commits the offense of promoting a harmful drug in the third degree if he knowingly possesses any harmful drug in any amount.

(2) Promoting a harmful drug in the third degree is a misdemeanor.”

(i) Section 712-1247, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 712-1247 Promoting a detrimental drug in the first degree.** (1) A person commits the offense of promoting a detrimental drug in the first degree if he knowingly:

- (a) Possesses 400 or more capsules or tablets containing one or more of the Schedule V substances; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the Schedule V substances; or
- (c) Distributes 50 or more capsules or tablets containing one or more of the Schedule V substances; or
- (d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of $\frac{1}{8}$ ounce or more, containing one or more of the Schedule V Substances; or
- (e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2.2 pounds or more, containing any marijuana; or
- (f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2 ounces or more, containing any marijuana; or
- (g) Distributes any marijuana or any Schedule V substance in any amount to a minor who is at least three years his junior.
- (2) Promoting a detrimental drug in the first degree is a class C felony.”
- (j) Section 712-1248, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 712-1248 Promoting a detrimental drug in the second degree.** (1) A person commits the offense of promoting a detrimental drug in the second degree if he knowingly:

- (a) Possesses 50 or more capsules or tablets containing one or more of the Schedule V substances; or

- (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of $\frac{1}{8}$ ounce or more, containing one or more of the Schedule V Substances; or
- (c) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of 1 ounce or more, containing any marijuana; or
- (d) Sells any marijuana or distributes any Schedule V substances in any amount.

(2) Promoting a detrimental drug in the second degree is a misdemeanor.”

(k) Section 712-1249, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 712-1249 Promoting a detrimental drug in the third degree.** (1) A person commits the offense of promoting a detrimental drug in the third degree if he knowingly possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.”

(1) Section 712-1250, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 712-1250 Promoting intoxicating compounds.** (1) A person commits the offense of promoting intoxicating compounds if he knowingly:

- (a) Breathes, inhales, or drinks any compound, liquid, or chemical containing toluole, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes.
- (b) Sells or offers for sale, delivers or gives to any person under 18 years of age, unless upon written order of such person’s parent or guardian, any compound liquid or chemical containing toluole, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which will induce an intoxicated condition, as defined herein, when the seller, offeror or deliverer knows or has reason to know that such compound is intended for use to induce such condition.

(2) Promoting intoxicating compounds is a misdemeanor.

(3) This section shall not apply to any person who commits any act described herein pursuant to the direction or prescription of a practitioner, as defined in the ‘Hawaii Food, Drug and Cosmetic Act’ (HRS, section 328-16).”

SECTION 7. Section 329-1, Hawaii Revised Statutes, is amended by amending the definition of “marijuana” to read:

“Marijuana” means all parts of the plant (genus) Cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

SECTION 8. Section 701-105, Hawaii Revised Statutes, is amended to read as follows:

“Sec. -105 Effect of commentary. The commentary accompanying the Judicial Council of Hawaii’s proposed draft of the Hawaii Penal Code (1970), as revised, shall be published and may be used as an aid in understanding the provisions of this Code, but not as evidence of legislative intent.

SECTION 9. If any provision or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.”

SECTION 10. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 11. This Act shall take effect upon its approval.

(Approved June 2, 1975.)

*Edited accordingly.