

ACT 101

S.B. NO. 2400

A Bill for an Act Relating to Decriminalization of Minor Offenses Pursuant to Act 124, Session Laws of Hawaii 2005.

Be It Enacted by the Legislature of the State of Hawaii:

**PART I
INTRODUCTION**

SECTION 1. The legislature has been engaged in an ongoing effort to make resolution of minor criminal offenses, including traffic violations, as simple as possible for the average citizen and to ensure that police, prosecutor, and judicial resources are focused on the most serious criminal offenses. Since 1978, the legislature has undertaken comprehensive attempts to adjust the penalties for various minor criminal offenses, particularly those found outside the Hawaii penal code, such that they are consistent with the nature of the offense, the seriousness with which the offenses are viewed, and the need to deter and prevent commission of the offenses.

For example, Act 222, Session Laws of Hawaii (SLH) 1978, and Act 214, SLH 1993, sought to delete criminal penalties for nonserious traffic offenses. Many offenses were changed from criminal offenses, which can result in a prison term, to

violations, which are punishable by a maximum \$1,000 fine. These included operating a motor carrier vehicle without a safety inspection decal, leaving vehicles derelict or abandoned, failure to use a triangular emblem on a vehicle designed to move at slow speeds, and all offenses relating to the operation of bicycles. Act 214, SLH 1993, also enacted a new set of procedural provisions, chapter 291D, Hawaii Revised Statutes, designed to permit persons charged with minor offenses to pay fines by mail and to reduce the amount of time police officers and prosecutors spend in court.

The legislature also enacted Act 124, SLH 2005, which called upon the legislative reference bureau to periodically identify, review, and analyze, to the extent possible, state statutes (other than the Hawaii Penal Code) and rules that establish:

- (1) Criminal offenses specifically denominated as misdemeanors or petty misdemeanors; or
- (2) Criminal offenses that authorize imprisonment or fines in excess of \$1,000, or both,

but that involve conduct for which, typically, only a fine is imposed.

Act 124, SLH 2005, calls upon the judiciary to review the list of offenses developed by the bureau and to then “identify any offenses that involve conduct for which, typically, only a fine is imposed and those that most frequently appear before the courts.”

Act 124, SLH 2005, further requires the legislative reference bureau to “contact the state departments or agencies that have jurisdiction over the offenses identified by the judiciary and request their input as to whether and the extent to which the offenses can be decriminalized without undermining their ability to enforce laws within their jurisdiction.” Finally, Act 124, SLH 2005, requires the legislative reference bureau to “recommend changes to the penalties imposed by the state statutes and rules identified ... that would make the penalties more consistent with the penalties imposed for decriminalized traffic infractions.”

This Act is the first effort by the judiciary, various state departments, and the legislative reference bureau to fulfill the mandate of Act 124, SLH 2005, to identify minor criminal offenses for which typically only a fine is imposed and which may be decriminalized without undermining the ability of government to enforce laws within its jurisdiction. In the course of following the mandates of Act 124, SLH 2005, including legislative hearings, it became apparent that decriminalization has procedural implications that may not have been contemplated by Act 124, SLH 2005. Specifically, while decriminalization may pave the way for reduction of court appearances by citizens, law enforcement officers, and prosecutors, it separately raises at least two procedural issues. The first issue is whether a case alleging the violation of a decriminalized statute or rule will be initiated by issuance of a citation, service of a complaint, or other type of procedure. The second issue is, once the case is initiated, whether it will be adjudicated administratively by the executive department with jurisdiction or judicially, with the involvement of prosecutors or other state or county legal representatives.

The purpose of this Act is to make resolution of minor criminal offenses, including traffic violations, as simple as possible for the average citizen and to ensure that police, prosecutor, and judicial resources are focused on the most serious criminal offenses. This Act also modifies the procedure under Act 124, SLH 2005, by which minor offenses are recommended for decriminalization to require that the judiciary, the legislative reference bureau, executive branch agencies, police, and prosecutors address the procedural implications of decriminalizing minor offenses.

PART II AGRICULTURE AND ANIMALS

SECTION 2. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any person who violates any provision of this chapter other than sections 150A-5[(2)(B), 150A-5(2)(C)], 150A-6(3), and 150A-6(4) or who violates any rule adopted under this chapter other than those rules involving an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and fined not less than \$100. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$10,000. For a second offense committed within five years of a prior offense, the person or organization shall be fined not less than \$500 and not more than \$25,000.

(b) Any ~~[transportation company that]~~ person who violates section 150A-5[(2)(B) or section 150A-5(2)(C)] shall be ~~[guilty of a misdemeanor and]~~ fined not less than \$100~~[-. The provisions of section 706-640 notwithstanding, the maximum fine shall be~~¹ and not more than \$10,000. For a second ~~[offense]~~ violation committed within five years of a prior ~~[offense,]~~ violation, the ~~[company]~~ person may be fined not less than \$500 and not more than \$25,000.”

PART III CONSERVATION AND RESOURCES

SECTION 3. Section 184-5, Hawaii Revised Statutes, is amended to read as follows:

“**§184-5 Rules and enforcement; penalty.** (a) The department may, subject to chapter 91, make, amend, and repeal rules having the force and effect of law, governing the use and protection of the state park system, including state monuments as established under section 6E-31, and including any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose, or property thereon, and also governing the use and protection of any recreational, scenic, historical, archaeological, natural, scientific, and related resources of state and private lands, and enforce ~~[such]~~ those rules. Any person who violates any of the rules so prescribed shall be held liable for restoration or restitution for any damages to public or private property and shall also be subject to the confiscation of any tools and equipment used in ~~[such]~~ the violation and of any plants, objects, or artifacts removed illegally from such properties. Except as otherwise provided by the department, the more restrictive rules of the department shall apply in any unit of the state park system or any public use area which is also governed by the rules of any forest reserve, public hunting ground, or other department district or area.

(b) ~~[Any]~~ Except as provided in subsection (c), any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued thereunder, in addition to any other penalties, shall be guilty of a petty misdemeanor and shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(c) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued thereunder, regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained

therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

~~[(e)]~~ (d) The fines specified in this section shall not be suspended or waived. Each day of each violation shall constitute a separate offense.

~~[(d)]~~ (e) Any civil penalty for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

~~[(e)]~~ (f) The department may confer on the director of state parks and upon other employees of the division the powers of police officers, including the power to serve and execute warrants and arrest, or issue summons or citations to, offenders in all matters relating to the enforcement, in any state park, parkway, or state monument, or in any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose of:

- (1) The laws applicable to the state parks and parkways and to historical objects and sites and the rules adopted under the provisions of this section; and
- (2) Traffic laws and ordinances.

~~[Such]~~ Those police powers shall also extend to the enforcement of laws of the State and the rules of the department relative to the protection and proper ~~[utilization]~~ use of the recreational, scenic, historical, natural, and archaeological, scientific, and related resources of state and private lands. ~~[Such]~~ The conferring of powers shall include the designation of ~~[such]~~ those employees as state parks enforcement officers.”

SECTION 4. Section 200-14, Hawaii Revised Statutes, is amended to read as follows:

“§200-14 Violation of rules; penalty. (a) ~~[Any]~~ Except as provided in subsection (b), any person who violates any rule adopted by the department under this part or who violates this part, shall be fined not more than \$1,000 or less than \$50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$1,000 or less than \$50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court may deprive the offender of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days.

(b) Any person who violates any rule adopted by the department under this part regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

~~[(b)]~~ (c) Notwithstanding the provisions of subsection (a) establishing a fine of not more than \$1,000 or less than \$50 for each violation, any person who violates any rule adopted by the department relating to unauthorized discharge, dumping, or abandoning, in any state boating facility or state waters, of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, shall be fined not more than \$10,000 for each day of violation, and any vessel, the agents, owner, or crew of which violate the rules of the department shall be fined not more than \$10,000 for each day of violation.”

**PART IV
TRANSPORTATION AND UTILITIES**

SECTION 5. Section 261-21, Hawaii Revised Statutes, is amended to read as follows:

“§261-21 Penalties. (a) ~~Any~~ Except as provided in subsection (c), any person violating this chapter, or any of the rules or orders issued pursuant thereto and relating to:

- (1) Safety measures, practices, or requirements;
- (2) Airport security measures or requirements; or
- (3) The licensing and regulation of persons engaged in commercial activities at public airports,

duly adopted or served, shall be guilty of a misdemeanor.

(b) Except as provided in subsection (c), any person violating any rule relating to motor vehicles and traffic control or the operation of any equipment or motor vehicle in or on the operational area of the airport shall be guilty of an offense as defined under the Penal Code and be fined not more than \$500.

(c) Any person violating any rule relating to parking of motor vehicles or equipment at a public airport, including baggage carts, dollies, and other similar devices, shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein.”

**PART V
MISCELLANEOUS**

SECTION 6. Act 124, Session Laws of Hawaii 2005, is amended by amending section 1 to read as follows:

“SECTION 1. (a) The legislative reference bureau shall continue the review process commenced under House Concurrent Resolution No. 261, H.D. 1, S.D. 1, 2004, by periodically identifying, reviewing, and analyzing, to the extent possible, all state statutes (other than the Hawaii Penal Code) and rules that establish:

- (1) Criminal offenses specifically denominated as misdemeanors or petty misdemeanors; or
- (2) Criminal offenses that authorize imprisonment or fines in excess of \$1,000, or both,

but that involve conduct for which, typically, only a fine is imposed.

(b) The legislative reference bureau shall provide the judiciary with a list of the offenses identified pursuant to subsection (a)(1) and (2). The judiciary shall then identify any offenses that involve conduct for which, typically, only a fine is imposed and those that most frequently appear before the courts. The legislative reference bureau shall contact the state departments or agencies that have jurisdiction over the offenses identified by the judiciary and request their input as to whether and the extent to which the offenses can be decriminalized without undermining their ability to enforce laws within their jurisdiction.

(c) If the departments or agencies do not oppose decriminalization, the departments or agencies shall indicate whether a case alleging violation of the statute or rule, if decriminalized, would thereafter be initiated by issuance of a citation, service of a complaint, or other type of process and what department or agency would initiate the case. The departments or agencies shall also indicate whether cases alleging vio-

lation of the statute or rule, if decriminalized, would be adjudicated through administrative proceedings conducted by the executive department with jurisdiction or by judicial proceedings, with the State represented by the attorney general, the prosecuting attorney, or other legal counsel. If the responses of the departments or agencies indicate that initiation and disposition of the cases would require participation by the judiciary, the attorney general, the county prosecuting attorneys, or the county police departments, the legislative reference bureau shall contact these agencies and request their input as to whether decriminalization will affect the agency's jurisdiction over the case or otherwise affect the agency's ability to participate.

[(e)] (d) The legislative reference bureau shall recommend changes to the penalties imposed by the state statutes and rules identified pursuant to subsection (a) that would make the penalties and the process by which they are imposed more consistent with the penalties [imposed] for decriminalized traffic infractions[-] and the process by which they are imposed. The legislative reference bureau shall submit a report of its findings and recommendations, including suggested legislation, no later than twenty days prior to the convening of the next regular session of the legislature.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2009.

(Approved May 23, 2008.)

Note

1. No end bracket.