

ACT 273

H.B. NO. 1383

A Bill for an Act Relating to Marijuana.

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

SECTION 1. The legislature finds that Hawaii and thirty-two other states, the United States territories of Guam, Puerto Rico, and the Northern Mariana Islands, and the District of Columbia have legalized the use of marijuana for medicinal purposes. Twenty-two states and the District of Columbia have decriminalized offenses pertaining to certain amounts of marijuana, and ten states and the District of Columbia have legalized certain amounts of marijuana for non-medical use.

Accordingly, the purpose of this Act is to:

- (1) Provide for the expungement of criminal records pertaining solely to the possession of three grams or less of marijuana;
- (2) Decriminalize the possession of three grams or less of marijuana and establish that possession of that amount is a violation punishable by a monetary fine of \$130; and
- (3) Establish a marijuana evaluation task force to make recommendations on changing marijuana use penalties and outcomes in the State.

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

“§706-622.5 Sentencing for drug offenders; expungement. (1) Notwithstanding section 706-620(3), a person convicted for the first or second time for any offense under section 329-43.5, except offenses under subsections (a) and (b) of that section which constitute violations, involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the possession or use of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, but not including any offense under part IV of chapter 712 involving the distribution or manufacture of any such drugs or substances and not including any methamphetamine offenses under sections 712-1240.7, 712-1240.8 as that section was in effect ~~prior to~~ before July 1, 2016, 712-1241,

and 712-1242, is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor or to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and
- (c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

(2) A person eligible under subsection (1) may be sentenced to probation to undergo and complete a substance abuse treatment program if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be subject to sentencing under the applicable section under this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history of relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program, comply with deadlines for entering into the substance abuse treatment program, and reside in a secure drug treatment facility.

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

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

(5) Upon motion from a person convicted for the possession of marijuana under section 712-1249 arising from a set of facts and circumstances that resulted in no other criminal charge, the court shall grant an expungement order pertaining to the conviction for the offense; provided that the amount of marijuana for which the person was convicted of possessing was three grams or less.

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

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

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

SECTION 4. (a) There shall be established a marijuana evaluation task force to be administratively attached to the department of the attorney general. The marijuana evaluation task force shall examine other states’ laws, penalties, and outcomes pertaining to marijuana use, other than marijuana use for medical purposes, and make recommendations on amending marijuana use penalties and outcomes in the State.

(b) The marijuana evaluation task force shall comprise the following members or their designees:

- (1) The chair of the senate standing committee on judiciary, who shall serve as a co-chair of the task force;
- (2) The chair of the house standing committee on judiciary, who shall serve as a co-chair of the task force;
- (3) The attorney general;
- (4) The state public defender; and
- (5) A prosecuting attorney to be selected by the co-chairs of the task force.

(c) The co-chairs of the task force may invite other interested parties to participate in the task force.

(d) The marijuana evaluation task force shall submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days before the convening of the 2021 regular session.

(e) The marijuana evaluation task force shall be dissolved on June 30, 2021.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 11, 2020.

(Became law on July 9, 2019, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)