

JAN 26 2011

S.B. NO. 1460

A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 SECTION 1. The legislature finds that certain state
2 policies should be revised in response to our current economic
3 climate. One such policy that should be revised relates to
4 criminal offenses that prohibit the possession of one ounce or
5 less of marijuana. Maine, Massachusetts, Nebraska, and New
6 York, and cities in Michigan and Missouri have enacted laws and
7 ordinances that make the possession of small amounts of
8 marijuana subject to a civil violation. Other states, counties,
9 and cities have decriminalized marijuana possession in other
10 ways or have made the prosecution of marijuana possession the
11 lowest police priority. The legislature finds that in Hawaii,
12 as in these other areas, the benefits of establishing a civil
13 violation for the possession of small amounts of marijuana far
14 outweigh the benefits of the current criminal treatment of this
15 offense.

16 The legislature finds that the costs to enforce criminal
17 marijuana possession statutes are substantial. According to a
18 report entitled *The Budgetary Implications of Marijuana*



1 *Decriminalization and Legalization for Hawai'i*, dated March 2007,
2 (decriminalization study) by Lawrence W. Boyd, Ph.D, an
3 economist from the University of Hawaii West Oahu, state and
4 county law enforcement agencies spend \$4,100,000 per year to
5 enforce marijuana possession laws, and an additional \$2,100,000
6 is spent by the courts each year to process marijuana possession
7 cases. The decriminalization study indicates that less than two
8 per cent of all arrests in Hawaii between the years of 1997 and
9 2004 were for marijuana possession. Furthermore, of the
10 misdemeanor marijuana drug cases brought in district court,
11 approximately sixty-five per cent are dismissed, stricken, or
12 not prosecuted. A relatively small proportion, approximately
13 twenty-five per cent, result in convictions. As the
14 decriminalization study concludes: "Few [of those arrested for
15 marijuana possession] are actually prosecuted under the law,
16 fewer convicted, and virtually none serve jail time. Of those
17 convicted, probation is the usual sentence for first time
18 offenders." Clearly, although the cost to enforce marijuana
19 possession laws is substantial, the resulting conviction rate is
20 low.

21 The legislature finds that the low conviction and arrest
22 rates do not act as a deterrent to marijuana users. The



1 decriminalization study compared the findings of a study
2 surveying the number of households engaged in the regular use of
3 marijuana with actual arrest rates. The results of this
4 comparison indicate that the risk of arrest is between 1.54 per
5 cent and 2.16 per cent in any given year for members of
6 households in which there is regular marijuana use. According
7 to the decriminalization study, the chance of a marijuana user
8 being arrested and convicted is approximately 0.4 per cent. It
9 is clear that the arrest and conviction risks associated with
10 marijuana use do not act as a deterrent to marijuana use and few
11 of those who use marijuana on a regular basis experience the
12 consequences of these risks, notwithstanding the costs to
13 enforce the criminal statutes prohibiting such conduct.

14 Some form of marijuana possession decriminalization has
15 been passed in eighteen other states, whether statewide or in
16 cities or municipalities. Studies evaluating the effects on
17 states that have reduced the penalties imposed for marijuana
18 possession have shown that those states have not suffered
19 negative consequences. According to a report prepared by the
20 Connecticut law revision commission for the judiciary committee
21 of the Connecticut general assembly, studies of states that have



1 reduced penalties for possession of small amounts of marijuana
2 have found that:

3 (1) Expenses for arrests and prosecution of marijuana
4 possession offenses were significantly reduced;

5 (2) If marijuana use increased, it increased less in
6 states with reduced penalties when compared to states
7 that did not reduce their penalties, and "the largest
8 proportionate increase occurred in those states with
9 the most severe penalties"; and

10 (3) Reducing the penalties for marijuana possession has
11 virtually no effect on either the choice or frequency
12 of use of alcohol or illegal "harder" drugs such as
13 cocaine.

14 Additionally, studies discussed in a report prepared in
15 2003 by Jeffrey A. Miron, an economics professor at Boston
16 University, suggest that "decriminalization has little impact on
17 marijuana use[.]" As noted by Professor Miron, if enforcement
18 of marijuana laws already provides little disincentive to use,
19 there is no reason to expect a substantial increase in marijuana
20 use if decriminalization occurs. Further, minor non-violent
21 criminal offenses utilize scarce state and county resources and
22 clog our overburdened court system.



1 Clearly, the cost of enforcing laws criminalizing the
2 possession of one ounce or less of marijuana greatly outweigh
3 the benefits of doing so. Recently, the federal Department of
4 Justice released new guidelines addressing the enforcement of
5 marijuana laws and medical marijuana. The guidelines reverse
6 federal policy by instructing federal officers not to go after
7 marijuana users or suppliers who comply with their states'
8 medical marijuana laws. In Hawaii county, a voter initiative
9 was passed in 2008 by a majority of 35,000 voters that directs
10 county law enforcement officials to treat the "adult personal
11 use" of marijuana as its lowest law enforcement priority and
12 prohibits the county from accepting or expending funds for the
13 marijuana eradication program and for enforcing potential
14 offenses for the adult personal use of marijuana. Eleven other
15 cities in the United States have passed similar voter
16 initiatives or ordinances instructing local law enforcement to
17 make enforcement of marijuana prohibitions their lowest police
18 priority.

19 This Act does not amend laws regarding driving under the
20 influence of marijuana or other criminal infractions committed
21 under the influence or infractions pertaining to sales or



1 manufacturing. This Act also does not amend laws regarding
2 the use of marijuana for medical purposes.

3 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§329-A Possession of marijuana. (a) Intentional or
7 knowing possession of one ounce or less of marijuana shall
8 constitute a civil violation subject to a fine not to exceed
9 \$100.

10 (b) Civil fines and penalties for violations under this
11 section shall be deposited into the general fund."

12 SECTION 3. Section 302A-1002, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§302A-1002[+] Reporting of crime-related incidents.

15 The board shall adopt rules pursuant to chapter 91 to:

16 (1) Require a report to appropriate authorities from a
17 teacher, official, or other employee of the department
18 who knows or has reason to believe that an act has
19 been committed or will be committed, which:

20 (A) Occurred or will occur on school property during
21 school hours or during activities supervised by
22 the school; and



1 (B) Involves crimes relating to arson, assault,
2 burglary, disorderly conduct, dangerous weapons,
3 dangerous drugs, harmful drugs, extortion,
4 firearms, gambling, harassment, intoxicating
5 drugs, [~~marijuana or~~] marijuana concentrate[~~r~~] or
6 more than one ounce of marijuana, murder,
7 attempted murder, sexual offenses, rendering a
8 false alarm, criminal property damage, robbery,
9 terroristic threatening, theft, or trespass;

10 (2) Establish procedures for disposing of any incident
11 reported; and

12 (3) Impose, in addition to any other powers or authority
13 the department may have to discipline school
14 officials, appropriate disciplinary action for failure
15 to report these incidents, including probation,
16 suspension, demotion, and discharge of school
17 officials."

18 SECTION 4. Section 329-125, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) A qualifying patient or the primary caregiver may
21 assert the medical use of marijuana as an affirmative defense to
22 any prosecution, criminal or civil, involving marijuana under

1 this [f]part [f], section 329-A, or chapter 712; provided that
2 the qualifying patient or the primary caregiver strictly
3 complied with the requirements of this part."

4 SECTION 5. Section 353-66, Hawaii Revised Statutes, is
5 amended by amending subsection (f) to read as follows:

6 "(f) The Hawaii paroling authority may require a paroled
7 prisoner to undergo and complete a substance abuse treatment
8 program when the paroled prisoner has committed a violation of
9 the terms and conditions of parole involving possession or use,
10 not including to distribute or manufacture as defined in section
11 712-1240, of any dangerous drug, detrimental drug, harmful drug,
12 intoxicating compound, more than one ounce of marijuana, or
13 marijuana concentrate, as defined in section 712-1240, unlawful
14 methamphetamine trafficking as provided in section 712-1240.6,
15 or involving possession or use of drug paraphernalia under
16 section 329-43.5. If the paroled prisoner fails to complete the
17 substance abuse treatment program or the Hawaii paroling
18 authority determines that the paroled prisoner cannot benefit
19 from any substance abuse treatment program, the paroled prisoner
20 shall be subject to revocation of parole and return to
21 incarceration. As a condition of parole, the Hawaii paroling
22 authority may require the paroled prisoner to:



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

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

11 (3) Contribute to the cost of the substance abuse
12 treatment program; and

13 (4) Comply with any other terms and conditions for parole.

14 As used in this subsection, "substance abuse treatment
15 program" means drug or substance abuse treatment services
16 provided outside a correctional facility by a public, private,
17 or nonprofit entity that specializes in treating persons who are
18 diagnosed with having substance abuse or dependency and
19 preferably employs licensed professionals or certified substance
20 abuse counselors.



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

4 SECTION 6. Section 706-625, Hawaii Revised Statutes, is
5 amended by amending subsection (7) to read as follows:

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



- 1 (a) Be assessed by a certified substance abuse counselor
- 2 for substance abuse dependency or abuse under the
- 3 applicable Diagnostic and Statistical Manual and
- 4 Addiction Severity Index;
- 5 (b) Present a proposal to receive substance abuse
- 6 treatment in accordance with the treatment plan
- 7 prepared by a certified substance abuse counselor
- 8 through a substance abuse treatment program that
- 9 includes an identified source of payment for the
- 10 treatment program;
- 11 (c) Contribute to the cost of the substance abuse
- 12 treatment program; and
- 13 (d) Comply with any other terms and conditions of
- 14 probation.

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



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

4 SECTION 7. Section 712-1240, Hawaii Revised Statutes, is
5 amended by amending the definition of "detrimental drug" to read
6 as follows:

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[-]; provided that one ounce or
10 less of marijuana shall not be deemed a detrimental drug under
11 sections 712-1251 or 712-1255."

12 SECTION 8. Section 712-1248, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

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

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

18 (b) Possesses one or more preparations, compounds,
19 mixtures, or substances, of an aggregate weight of
20 one-eighth ounce or more, containing one or more of
21 the Schedule V substances; or



1 (c) Possesses one or more preparations, compounds,
 2 mixtures, or substances, of an aggregate weight of one
 3 ounce or more, containing [~~any~~] more than one ounce of
 4 marijuana; or

5 (d) Distributes any marijuana or any Schedule V substance
 6 in any amount."

7 SECTION 9. Section 712-1249, Hawaii Revised Statutes, is
 8 amended by amending subsection (1) to read as follows:

9 "(1) A person commits the offense of promoting a
 10 detrimental drug in the third degree if the person knowingly
 11 possesses [~~any~~] more than one ounce of marijuana or any
 12 Schedule V substance in any amount."

13 SECTION 10. Section 712-1249.6, Hawaii Revised Statutes,
 14 is amended to read as follows:

15 "§712-1249.6 Promoting a controlled substance in, on, or
 16 near schools, school vehicles, or public parks. (1) A person
 17 commits the offense of promoting a controlled substance in, on,
 18 or near schools, school vehicles, or public parks if the person
 19 knowingly:

20 (a) Distributes or possesses with intent to distribute a
 21 controlled substance in any amount in or on the real
 22 property comprising a school or public park;



1 (b) Distributes or possesses with intent to distribute a
2 controlled substance in any amount within seven
3 hundred and fifty feet of the real property comprising
4 a school or public park;

5 (c) Distributes or possesses with intent to distribute a
6 controlled substance in any amount while on any school
7 vehicle, or within ten feet of a parked school vehicle
8 during the time that the vehicle is in service for or
9 waiting to transport school children; or

10 (d) Manufactures methamphetamine or any of its salts,
11 isomers, and salts of isomers, within seven hundred
12 and fifty feet of the real property comprising a
13 school or public park.

14 (2) A person who violates subsection (1)(a), (b), or (c)
15 is guilty of a class C felony. A person who violates subsection
16 (1)(d) is guilty of a class A felony.

17 (3) Any person with prior conviction or convictions under
18 subsection (1)(a), (b), or (c) is punishable by a term of
19 imprisonment of not less than two years and not more than ten
20 years.



1 (4) Any individual convicted under subsection (3) of this
2 section shall not be eligible for parole until the individual
3 has served the minimum sentence required by such subsection.

4 (5) For purposes of this section, mere possession of
5 marijuana in an amount of one ounce or less shall not constitute
6 a possession with intent to distribute without other conduct
7 indicating intent to distribute.

8 ~~[(5)]~~ (6) For the purposes of this section, "school
9 vehicle" means every school vehicle as defined in section
10 286-181 and any regulations adopted pursuant to that section.

11 ~~[(6)]~~ (7) For purposes of this section, "school" means any
12 public or private preschool, kindergarten, elementary,
13 intermediate, middle secondary, or high school."

14 SECTION 11. Section 712-1255, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§712-1255 Conditional discharge.** (1) Whenever any
17 person who has not previously been convicted of any offense
18 under this chapter or chapter 329, except for a civil violation
19 under section 329-A, or under any statute of the United States
20 or of any state relating to a dangerous drug, harmful drug,
21 detrimental drug, or an intoxicating compound, pleads guilty to
22 or is found guilty of promoting a dangerous drug, harmful drug,



1 detrimental drug, or an intoxicating compound under section
2 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250,
3 the court, without entering a judgment of guilt and with the
4 consent of the accused, may defer further proceedings and place
5 the accused on probation upon terms and conditions. Upon
6 violation of a term or condition, the court may enter an
7 adjudication of guilt and proceed as otherwise provided.

8 (2) Upon fulfillment of the terms and conditions, the
9 court shall discharge the person and dismiss the proceedings
10 against the person.

11 (3) Discharge and dismissal under this section shall be
12 without adjudication of guilt and is not a conviction for
13 purposes of this section or for purposes of disqualifications or
14 disabilities imposed by law upon conviction of a crime.

15 (4) There may be only one discharge and dismissal under
16 this section with respect to any person.

17 (5) After conviction[7] for any offense under this chapter
18 or chapter 329, except for a conviction of a civil violation
19 under section 329-A, but prior to sentencing, the court shall be
20 advised by the prosecutor whether the conviction is the
21 defendant's first or a subsequent offense. If it is not a first
22 offense, the prosecutor shall file an information setting forth



1 the prior convictions. The defendant shall have the opportunity
 2 in open court to affirm or deny that the defendant is identical
 3 with the person previously convicted. If the defendant denies
 4 the identity, sentence shall be postponed for such time as to
 5 permit the trial, before a jury if the defendant has a right to
 6 trial by jury and demands a jury, on the sole issue of the
 7 defendant's identity with the person previously convicted.

8 (6) For purposes of this section, a conviction for one or
 9 more civil violations under section 329-A shall not constitute a
 10 prior offense that would make a conditional discharge described
 11 in this section unavailable to the defendant."

12 SECTION 12. This Act does not affect rights and duties
 13 that matured, penalties that were incurred, and proceedings that
 14 were begun, before its effective date.

15 SECTION 13. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 14.. This Act shall take effect upon its approval.

18

INTRODUCED BY:

Malena S. [Signature]
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Report Title:

Marijuana; Civil Penalties for Possession of One Ounce or Less

Description:

Establishes a civil violation for possession of one ounce or less of marijuana that is subject to a fine of not more than \$100. Deletes reporting requirements of board of education for students possessing one ounce or less of marijuana. Clarifies that medical marijuana patients and primary caregiver may assert affirmative defense to prosecution, criminal or civil, involving possession of one ounce or less of marijuana. Excludes possession of more than one ounce of marijuana from authority of Hawaii paroling authority to require paroled prisoner to undergo and complete substance abuse treatment. Excludes possession of more than one ounce of marijuana from authority of courts to require a defendant to undergo and complete substance abuse treatment for probation violation. Clarifies definition of detrimental drug to exclude one ounce or less of marijuana. Excludes possession of one ounce or less of marijuana from offenses of promoting a detrimental drug in the second degree and third degree. Clarifies that possession of one ounce or less of marijuana does not constitute a possession with intent to distribute without other conduct indicating an intent to distribute for purposes of promoting controlled substance in or near schools, school vehicles, or public parks. Clarifies a civil violation for possession of marijuana does not constitute a prior offense for purposes of the conditional discharge law.

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

