

JAN 18 2008

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:

1 PART I. INTRODUCTION

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

13 For example, Act 222, Session Laws of Hawaii 1978, and Act
14 214, Session Laws of Hawaii 1993, sought to delete criminal
15 penalties for nonserious traffic offenses. Many offenses were
16 changed from criminal offenses, which can result in a prison
17 term, to violations, which are punishable by a maximum \$1,000

1 fine. These included operating a motor carrier vehicle without
2 a safety inspection decal, leaving vehicles derelict or
3 abandoned, failure to use a triangular emblem on a vehicle
4 designed to move at slow speeds, and all offenses relating to
5 the operation of bicycles. Act 214 also enacted a new set of
6 procedural provisions, chapter 291D, Hawaii Revised Statutes,
7 designed to permit persons charged with minor offenses to pay
8 fines by mail and to reduce the amount of time police officers
9 and prosecutors spend in court.

10 The legislature also adopted Act 124, Session Laws of
11 Hawaii 2005, which called upon the legislative reference bureau
12 to "periodically identify . . . , review . . . , and analyz[e],
13 to the extent possible, . . . state statutes (other than the
14 Hawaii Penal Code) and rules that establish: (1) Criminal
15 offenses specifically denominated as misdemeanors or petty
16 misdemeanors; or (2) Criminal offenses that authorize
17 imprisonment or fines in excess of \$1,000, or both, but that
18 involve conduct for which, typically, only a fine is imposed."
19 Act 124, Session Laws of Hawaii 2005, calls upon the judiciary
20 to review the list of offenses developed by the bureau and to
21 then "identify any offenses that involve conduct for which,

1 typically, only a fine is imposed and those that most frequently
2 appear before the courts."

3 Thereafter, Act 124, Session Laws of Hawaii 2005, requires
4 the legislative reference bureau to "contact the state
5 departments or agencies that have jurisdiction over the offenses
6 identified by the judiciary and request their input as to
7 whether and the extent to which the offenses can be
8 decriminalized without undermining their ability to enforce laws
9 within their jurisdiction." Finally, Act 124, Session Laws of
10 Hawaii 2005, requires the legislative reference bureau to
11 "recommend changes to the penalties imposed by the state
12 statutes and rules identified . . . that would make the
13 penalties more consistent with the penalties imposed for
14 decriminalized traffic infractions."

15 This Act represents the effort of the judiciary, various
16 state departments, and the legislative reference bureau to
17 fulfill the mandate of Act 124, Session Laws of Hawaii 2005, to
18 identify minor criminal offenses for which typically only a fine
19 is imposed and which may be decriminalized without undermining
20 the ability of government to enforce laws within its
21 jurisdiction. The purpose of this Act is to make resolution of
22 minor criminal offenses, including traffic violations, as simple

1 as possible for the average citizen and to ensure that police,
2 prosecutor, and judicial resources are focused on the most
3 serious criminal offenses.

4 PART II. AGRICULTURE AND ANIMALS

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

7 "(a) Any person who violates any provision of this chapter
8 other than sections 150A-5[~~(2)(B)~~, ~~150A-5(2)(C)~~], 150A-6(3), and
9 150A-6(4) or who violates any rule adopted under this chapter
10 other than those rules involving an animal that is prohibited or
11 a plant, animal, or microorganism that is restricted, without a
12 permit, shall be guilty of a misdemeanor and fined not less than
13 \$100. The provisions of section 706-640 notwithstanding, the
14 maximum fine shall be \$10,000. For a second offense committed
15 within five years of a prior offense, the person or organization
16 shall be fined not less than \$500 and not more than \$25,000.

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

1 company may be fined not less than \$500 and not more than
2 \$25,000."

3 PART III. CONSERVATION AND RESOURCES

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

6 "**§184-5 Rules and enforcement; penalty.** (a) The
7 department [~~may~~], subject to chapter 91, may make, amend, and
8 repeal rules having the force and effect of law, governing the
9 use and protection of the state park system, including state
10 monuments as established under section 6E-31, and including any
11 private property over which there has been granted to the State
12 any right of free public access or use for recreational, park,
13 viewing of any historical, archaeological, natural, or
14 scientific feature, object, or site, or related purpose, or
15 property thereon, and also governing the use and protection of
16 any recreational, scenic, historical, archaeological, natural,
17 scientific, and related resources of state and private lands,
18 and enforce [~~such~~] those rules. Any person who violates any of
19 the rules so prescribed shall be held liable for restoration of
20 or restitution for any damages to public or private property and
21 shall also be subject to the confiscation of any tools and
22 equipment used in [~~such~~] the violation and of any plants,

1 objects, or artifacts removed illegally from such properties.
2 Except as otherwise provided by the department, the more
3 restrictive rules of the department shall apply in any unit of
4 the state park system or any public use area which is also
5 governed by the rules of any forest reserve, public hunting
6 ground, or other department district or area.

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

- 12 (1) \$100 for a first offense;
13 (2) \$200 for a second offense; and
14 (3) \$500 for a third or subsequent offense.

15 (c) Any person violating this chapter, any rule adopted
16 pursuant thereto, or the terms and conditions of any permit
17 issued thereunder, regulating vehicular parking or traffic
18 movement shall have committed a traffic infraction as set forth
19 in chapter 291D, the adjudication of which shall be subject to
20 the provisions contained therein. A person found to have
21 committed such a traffic infraction shall be fined not more
22 than:

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

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

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

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

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

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

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

14 "**§200-14 Violation of rules; penalty.** (a) ~~[Any]~~ Except
15 as provided in subsection (b), any person who violates any rule
16 adopted by the department under this part or who violates this
17 part, shall be fined not more than \$1,000 or less than \$50 for
18 each violation, and any vessel, the agents, owner, or crew of
19 which violate the rules of the department or this part, shall be
20 fined not more than \$1,000 or less than \$50 for each violation;
21 provided that in addition to or as a condition to the suspension
22 of the fines and penalties, the court may deprive the offender

1 of the privilege of operating or mooring any vessel in state
2 waters for a period of not more than thirty days.

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

- 10 (1) \$100 for a first violation;
- 11 (2) \$200 for a second violation; and
- 12 (3) \$500 for a third or subsequent violation.

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

1 crew of which violate the rules of the department shall be fined
2 not more than \$10,000 for each day of violation."

3 SECTION 5. Section 200-25, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**\$200-25 Fines and penalties.** Any person violating this
6 part, or any rule adopted pursuant to this part, shall be fined
7 not less than \$50 and not more than \$1,000 [~~or sentenced to a~~
8 ~~term of imprisonment of not more than thirty days, or both,~~] for
9 each violation; provided that in addition to, or as a condition
10 to the suspension of, the fines and penalties, the court may
11 deprive the offender of the privilege of operating any vessel,
12 including but not limited to any thrill craft or vessel engaged
13 in parasailing or water sledding, in the waters of the State for
14 a period of not more than thirty days."

15 SECTION 6. Section 200-26, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending the title and subsection (a) to read:

18 "~~[§]200-26[§] Arrest or citation.~~ Citation. (a) [~~Except~~
19 ~~when required by state law to take immediately before a district~~
20 ~~judge a person arrested for a violation of any provision of this~~
21 ~~part, including any rule adopted pursuant to this part, any]~~ Any
22 person authorized to enforce this part, hereinafter referred to

1 as an enforcement officer, upon ~~[arresting a person for]~~
2 determining that a person has committed a violation of any
3 provision of this part, including any rule adopted pursuant to
4 this part, ~~[in the discretion of the enforcement officer,]~~ shall
5 ~~[either:~~

6 ~~(1) Issue]~~ issue to the purported violator a summons or
7 citation, printed in the form described, warning the
8 purported violator to appear and answer to the charge
9 against the purported violator at a certain place and
10 at a time within seven days after ~~[such]~~ the arrest~~[+~~
11 ~~or~~

12 ~~(2) Take the purported violator without unnecessary delay~~
13 ~~before a district judge]."~~

14 2. By amending subsection (c) to read:

15 "(c) Any person who fails to appear at the place and
16 within the time specified in the summons or citation issued to
17 the person by the enforcement officer, ~~[upon the person's arrest~~
18 ~~for violation of any provision of this part,]~~ including any rule
19 adopted pursuant to this part, shall be guilty of a misdemeanor.

20 In the event any person fails to comply with a summons or
21 citation issued to that person, or if any person fails or
22 refuses to deposit bail as required, the enforcement officer

1 shall cause a complaint to be entered against that person and
2 secure the issuance of a warrant for the person's arrest."

3 SECTION 7. Section 200-74, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[+]§200-74[+]~~ **Penalty.** Any person who violates this part
6 ~~[shall be guilty of a misdemeanor.]~~ shall be fined not less than
7 \$50 and not more than \$1,000."

8 PART IV. TRANSPORTATION AND UTILITIES

9 SECTION 8. Section 261-21, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§261-21 Penalties.** (a) ~~[Any]~~ Except as provided in
12 subsection (c), any person violating this chapter, or any of the
13 rules or orders issued pursuant thereto and relating to:

- 14 (1) Safety measures, practices, or requirements;
15 (2) Airport security measures or requirements; or
16 (3) The licensing and regulation of persons engaged in
17 commercial activities at public airports,
18 duly adopted or served, shall be guilty of a misdemeanor.

19 (b) Except as provided in subsection (c), any person
20 violating any rule relating to motor vehicles and traffic
21 control or the operation of any equipment or motor vehicle in or
22 on the operational area of the airport shall be guilty of an

1 offense as defined under the Penal Code and be fined not more
2 than \$500.

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

9 SECTION 9. Section 264-12, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§264-12 Penalty for violations.** Any person, including
12 any public officer or employee, who violates section 264-6[7]
13 shall be fined not more than \$250 [~~or imprisoned not more than~~
14 ~~three months, or both~~]."

15 SECTION 10. Section 264-102, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§264-102 Penalty.** Any person who violates section 264-
18 101 [~~is guilty of a petty misdemeanor and~~] shall be fined not
19 more than \$1,000 [~~or imprisoned not more than thirty days, or~~
20 ~~both~~]."

1 PART V. MOTOR AND OTHER VEHICLES

2 SECTION 11. Section 286-8, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "**§286-8 Rules [and regulations]**. In order to decrease the
5 deaths, injuries, damage, and losses resulting from highway
6 traffic accidents, the state director of transportation [~~shall~~],
7 subject to the requirements of chapter 91, shall adopt rules
8 [~~and regulations~~] dealing with: identification and surveillance
9 of accident locations; highway design, construction, and
10 maintenance; traffic control devices; pedestrian safety; police
11 traffic services; and debris hazard control and clean up.

12 Any person conducting construction, maintenance, surveying,
13 or other work on or adjacent to any public street or highway or
14 any street where traffic regulations are imposed by state or
15 county authority who violates the rules [~~and regulations~~]
16 governing the use of traffic control devices at [~~such~~] those
17 work sites [~~shall~~], in addition to any other penalty imposed by
18 law, shall be fined not more than \$1,000 [~~or imprisoned not more~~
19 ~~than one year, or both~~]."

20 SECTION 12. Section 286-29, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "**§286-29 Improper representation as official inspection**
2 **station.** Any person who [~~shall~~] in any manner [~~represent~~]
3 represents that the business operated at any location is an
4 official inspection station without a permit issued by the
5 department under section 286-27, or any person other than a
6 person operating an inspection station under a permit granted by
7 the department who issues a certificate of inspection, shall be
8 fined not more than \$1,000 [~~or imprisoned not more than one~~
9 ~~year, or both~~]."

10 SECTION 13. Section 286-136, Hawaii Revised Statutes, is
11 amended by amending subsections (a) and (b) to read as follows:

12 "(a) Except as provided in subsection (b), any person who
13 violates section 286-102, [~~286-122,~~] 286-130, 286-131, 286-132,
14 or 286-133[~~, or 286-134~~] shall be fined not more than \$1,000 or
15 imprisoned not more than thirty days, or both. Any person who
16 violates any other section in this part shall be fined not more
17 than \$1,000.

18 (b) Any person who is convicted of violating section 286-
19 102, [~~286-122,~~] 286-130, 286-131, 286-132, or 286-133[~~, or 286-~~
20 ~~134~~] shall be subject to a minimum fine of \$500 and a maximum
21 fine of \$1,000, or imprisoned not more than one year, or both,

1 if the person has two or more prior convictions for the same
2 offense in the preceding five-year period."

3 SECTION 14. Section 286-214, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~+~~]**§286-214**[~~+~~] **False certificates.** Any person who makes,
6 issues, or knowingly uses any imitation or counterfeit of an
7 official certificate of inspection, or any person who displays
8 or causes or permits to be displayed upon any vehicle any
9 certificate of inspection knowing the same to be issued for
10 another vehicle or issued without an inspection having been made
11 or issued without authority as provided herein shall be fined
12 not more than \$1,000 [~~or imprisoned not more than one year, or~~
13 ~~both~~]."

14 SECTION 15. Section 286-249, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§286-249 Penalty.** (a) Any person who drives a
17 commercial motor vehicle in the State without a valid commercial
18 driver's license or permit [~~, or while the person's driving~~
19 ~~privileges are suspended, revoked, or canceled, or while~~
20 ~~disqualified from driving a commercial motor vehicle,~~] shall be:

1 (1) Disqualified from driving a commercial motor vehicle
2 for a period of not less than one year and up to life;

3 and

4 (2) Fined not less than \$500 but not more than \$1,000[+]

5 and

6 ~~(3) Imprisoned not more than one year;~~

7 ~~provided that the court shall have discretion to impose either a~~
8 ~~fine or imprisonment, or both].~~

9 (b) Any person who drives a commercial motor vehicle in
10 the State while the person's driving privileges are suspended,
11 revoked, or canceled, or while disqualified from driving a
12 commercial motor vehicle shall be:

13 (1) Disqualified from driving a commercial motor vehicle
14 for a period of not less than one year and up to life;

15 and

16 (2) Fined not less than \$500 but not more than \$1,000; and

17 (3) Imprisoned not more than one year;

18 provided that the court shall have discretion to impose either a
19 fine or imprisonment, or both.

20 ~~(b)~~ (c) A driver who is convicted of violating an out-
21 of-service order shall be fined not less than \$1,100 nor more

1 than \$2,750 in addition to the driving disqualification of
2 subsection (a)(1) and section 286-240(g) and (h)."

3 SECTION 16. Section 291-52.7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§291-52.7 Fraudulent manufacture or alteration of**
6 **placards and identification cards.** Any person who fraudulently
7 manufactures or alters a removable windshield placard, temporary
8 removable windshield placard, or identification card for
9 personal use, sale, or issuance to another person to circumvent
10 the issuance requirements of this part, or any person who uses a
11 fraudulently manufactured or altered placard or identification
12 card to circumvent the issuance requirements of this part, shall
13 be [~~guilty of a misdemeanor.~~] fined not more than \$1,000. The
14 fraudulent manufacture or alteration of each placard and of each
15 identification card for personal use, sale, or issuance or is
16 otherwise used in violation of this section shall constitute a
17 separate offense."

18 SECTION 17. Section 291C-205, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§291C-205 Unlawful to possess certain mopeds and moped**
21 **parts.** It shall be unlawful for any person to possess a moped,
22 a moped motor, or any moped part knowing that the serial or

1 identification number placed thereon by the manufacturer has
2 been changed, altered, erased, or mutilated.

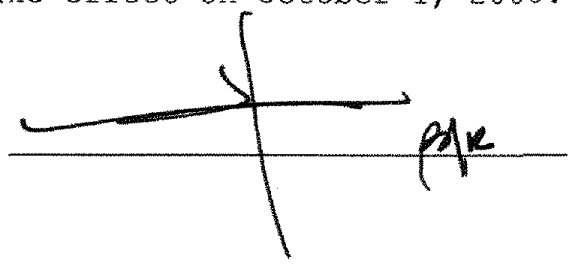
3 This section shall not prohibit the possession of a moped,
4 a moped motor, or any moped part whose original mark or number
5 has been restored when the restoration is authorized in writing
6 by the director of finance, nor prohibit any manufacturer from
7 placing in the ordinary course of business numbers or marks upon
8 new mopeds or new parts thereof. [~~Violation of~~] Any person who
9 violates this section shall be [~~a misdemeanor and shall result~~
10 ~~in a fine of not more than \$500.~~] fined not more than \$1,000."

11 SECTION 18. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 19. This Act shall take effect on October 1, 2008.

14

INTRODUCED BY:

A horizontal line is drawn across the page. A large, bold, handwritten 'X' is drawn over the line, extending above and below it. To the right of the line, the initials 'PJR' are handwritten.

Report Title:

Minor Offenses; Decriminalization

Description:

Decriminalizes minor offenses outside the Penal Code pursuant to Act 124, SLH 2005.