WHEREAS, according to the results from the 2013 National Survey on Drug Use and Health, despite the United States' longstanding policy of enforcing illicit drug prohibition and imposing some of the world's harshest penalties for drug possession and sales, illicit drug use in the United States has increased; and

WHEREAS, a survey, conducted annually by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services, found that an estimated 24,600,000 people aged twelve or older nationally, which is 9.4 percent of the population, used an illicit drug within the past month, up from 8.3 percent in 2002; and

WHEREAS, acknowledging the need for a change in solutions to illicit drug use, the federal administration's 2014 National Drug Control Strategy presented a marked departure from previous approaches to national drug policy by focusing on the public health and public safety aspects of drug use and substance use disorders, recognizing addiction as a disease, emphasizing the importance of preventing drug use, and promoting treatment to those who need it, including those who are involved in the criminal justice system; and

WHEREAS, in Hawaii, drug court and related programs alleviate prison overcrowding and offer more effective rehabilitation options for qualified defendants by providing them with an opportunity to be granted community supervision to obtain substance abuse treatment in lieu of incarceration; and

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY ON THE POTENTIAL IMPACT ON THE ADMINISTRATIVE AND JUDICIAL SYSTEMS OF STATE GOVERNMENT AND ON LOCAL LAW ENFORCEMENT IF THE ILLEGAL POSSESSION OF MARIJUANA FOR PERSONAL USE IS DECRIMINALIZED IN HAWAII.
WHEREAS, in 2014, the Department of the Attorney General's Report "Crime in Hawaii 2014" found that seven hundred ninety-two adults and four hundred five juveniles were arrested for the possession of marijuana, resulting in enforcement costs as well as pre-trial detention costs; and

WHEREAS, the "Crime in Hawaii 2014" report corroborates the findings of the report "The Disparate Treatment of Native Hawaiians in the Criminal Justice System" by the Office of Hawaiian Affairs that despite similar rates of drug use to other groups, Native Hawaiians are disproportionately arrested for offenses such as possession of marijuana; and

WHEREAS, documented and undocumented immigrants are potentially subject to deportation for the possession of marijuana, and given the increasingly anti-immigrant rhetoric and action emanating from the Trump Administration, this double jeopardy treatment of immigrants convicted of non-violent marijuana possession offenses is severely disproportionate; and

WHEREAS, Human Rights Watch and the American Civil Liberties Union found in a 2016 report "Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States" that nearly half of over one million drug possession arrests nationwide were for marijuana and those arrest rates varied starkly from county to county despite similar rates of use; and

WHEREAS, while the distribution of marijuana remains a federal offense, the United States Department of Justice in 2013 and in the wake of recent state ballot initiatives that legalized the possession of marijuana for personal use, announced an update to its marijuana enforcement policy that deferred the federal government's right to challenge state marijuana legalization laws under the expectation that each affected state would implement an appropriate regulatory system; and

WHEREAS, United States Senator Brian Schatz and ten other United States senators sent a letter on March 2, 2017, to United States Attorney General Jeff Sessions, stating that all states with legal medical or recreational marijuana as well as those states that have decriminalized possession, are in full
compliance with the United States Department of Justice's 2013 Cole Memorandum regarding federal marijuana enforcement priorities; and

WHEREAS, Hawaii is among twenty-eight states that authorize and regulate medical uses of marijuana; and

WHEREAS, eight states and the District of Columbia have legalized the growing and possession of recreational marijuana for adult use; and

WHEREAS, twenty-one states and the District of Columbia have decriminalized the possession of small amounts of marijuana for personal use; and

WHEREAS, unlike state laws that legalize medical and recreational marijuana, a state law regarding the decriminalization of marijuana possession for personal use may not be in conflict with federal law; and

WHEREAS, according to nearly unanimous scientific research, marijuana is less addictive and less harmful than legal drugs, alcohol, and tobacco; and

WHEREAS, tens of thousands of Hawaii residents who have registered for the Department of Health's medical marijuana program since its inception in 2000 serve as proof that marijuana's listing as a dangerous Schedule I drug in the federal and state schedules is a relic of another era; and

WHEREAS, the American Academy of Pediatrics finds that decriminalization of marijuana has not resulted in higher use among minors in any state, but that arrests for this offense disproportionately occur among youth from minority groups and that these youths incur lifelong collateral sanctions that limit their ability to secure student loans, housing, financial aid, and certain jobs; and

WHEREAS, the Legislative Reference Bureau in its recent report "Panacea or Pipe Dream: Does Portugal's Policy Translate for Hawaii?" on decriminalization of certain drugs, conducted pursuant to H.C.R. No. 127, H.D. 1, S.D. 1 (Regular Session of
2016), referenced numerous uncertainties regarding the intent of
the Legislature, which negatively affected the Legislative
Reference Bureau’s ability to more fully estimate the potential
impacts; and

WHEREAS, the Department of the Prosecuting Attorney of the
City and County of Honolulu did not acknowledge initial or
follow-up requests by the Legislative Reference Bureau, while
the other county prosecutors did not provide informative
responses due to a lack of data, a lack of personnel resources,
or other reasons; and

WHEREAS, the positive results from other states' long-
standing marijuana decriminalization policies highlight that
Hawaii needs to seriously consider this approach; an approach
that is supported by seventy percent of the State's population
according to a December 2016 poll conducted for the Drug Policy
Action Group by the Anthology Marketing Group; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-ninth
Legislature of the State of Hawaii, Regular Session of 2017, the
House of Representatives concurring, that the Legislative
Reference Bureau is requested to conduct a study on the
potential impact on the administrative and judicial systems of
state government and on local law enforcement if the illegal
possession of marijuana for personal use is decriminalized in
Hawaii; and

BE IT FURTHER RESOLVED that the study is requested to
include the following:

(1) The potential impact on the administrative and
judicial systems of state government and on local law
enforcement if committing a marijuana possession
offense is an administrative or civil violation rather
than a crime;

(2) An overview of the strengths and weaknesses of
creating a new administrative process to adjudicate
decriminalized marijuana possession cases as well as
retaining the adjudication process for these cases
within the judicial system;
(3) The feasibility of eliminating the arrest and
detention of individuals who are suspected of
marijuana possession;

(4) An assessment of the impact of decriminalizing the
possession of one ounce or less of marijuana and the
separate impact of decriminalizing possession of more
than one ounce of marijuana;

(5) An analysis determining the impact of existing
marijuana possession criminal laws on Hawaii's
population, specifically on the youth, disparate
arrest rates among racial and ethnic groups, and
counties, and the types of consequences, also known as
collateral sanctions, a criminal conviction for
marijuana can have on individuals; and

(6) Findings that are based on the assumption that the
penalty imposed for a violation would be $100 for the
first offense and $200 for each subsequent offense, if
marijuana possession for personal use were
decriminalized; and

BE IT FURTHER RESOLVED that the Judiciary, Department of
Public Safety, each county police department, each county
prosecutor, and Office of the Public Defender are requested to
provide statistics and other pertinent data and information, as
may be requested by the Legislative Reference Bureau, to assist
the Legislative Reference Bureau in the timely completion of the
study; and

BE IT FURTHER RESOLVED that the Legislative Reference
Bureau is requested to submit a written report of its findings
and recommendations, including any proposed legislation, to the
Legislature no later than twenty days prior to the convening of
the Regular Session of 2018; and

BE IT FURTHER RESOLVED that certified copies of this
Concurrent Resolution be transmitted to the Director of the
Legislative Reference Bureau, Chief Justice of the Supreme Court
of the State of Hawaii, Administrative Director of the Courts,
Director of Public Safety, State Public Defender, Chief of
Police of each county police department, and Prosecutor of each
county.

OFFERED BY:  

Will Z"r  

Kal Harb  

Julie Gotch  

Paul E. Bell  

Anna Thiel  

El Rinne  

Dwane Waldo  

Anne Hernandez