

# HOUSE OF REPRESENTATIVES

AMENDMENT TO: H.B. No. 1383 H.D. 1OFFERED BY: DATE: MARCH 5, 2019

SECTION 1. House Bill No. 1383, H.D. 1, is amended by amending Section 1 (purpose section) by replacing the text on page 1, line 10 to page 2, line 5, with the following:

- "(1) Decriminalize the possession of three grams or less of marijuana and establish that possession of that amount is an infraction punishable by a monetary fine of \$200;
- (2) Establish an adjudicatory process for the foregoing infraction;
- (3) Provide for the dismissal of criminal charges, and expungement of criminal records, pertaining solely to the possession of three grams or less of marijuana; and
- (4) Establish a marijuana evaluation task force to make recommendations on changing marijuana use penalties and outcomes in the State."

SECTION 2. House Bill No. 1383, H.D. 1, is amended by amending Section 2 by deleting its contents and replacing it with the following:

"SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER**

**ADJUDICATORY PROCESS FOR MARIJUANA INFRACTIONS**

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

"Court" means the district court.

"Notice of infraction" means a notice of infraction committed under this chapter.

§ -2 **Notice; form; determination final unless contested.**

(a) A notice of infraction shall include the summons for the purposes of this section. Whenever a notice of infraction is issued to a person, the person's signature and current address shall be noted on the notice. If the person refuses to sign the

notice of infraction, the officer shall record the refusal on the notice and issue the notice to the person. An individual to whom a notice of infraction is issued under this section shall not be arraigned before the court, unless required by rule of the supreme court.

(b) The form for the notice of infraction shall be prescribed by rules of the district court and shall be uniform throughout the State.

(c) The notice of infraction shall include the following:

- (1) A statement of the specific infraction for which the notice was issued;
- (2) A brief statement of facts;
- (3) A statement of the total fine amount for the infraction established pursuant to section -10, to be paid by the person;
- (4) A statement of the options provided in section -3(b) for answering the notice and the procedures necessary to exercise the options;
- (5) A statement that the person to whom the notice is issued shall answer, choosing one of the options specified in section -3(b), within twenty-one days of the issuance of the notice;
- (6) A statement that failure to answer the notice of infraction within twenty-one days of the issuance shall result in an entry of judgment by default for the State and may result in the assessment of a late penalty and that failure to pay the total amount specified in the default judgment within an additional thirty days or to otherwise take action to set aside the default judgment shall subject the person to section 706-647;
- (7) A statement that, at a hearing conducted pursuant to section -5 to contest the notice of infraction, no officer shall be present unless the person timely requests the court to have the officer present, and that the standard of proof to be applied by the court is whether a preponderance of the evidence proves that the specified infraction was committed;
- (8) A space in which the signature of the person to whom the notice was issued may be affixed; and
- (9) The date, time, and place at which the person to whom the notice was issued shall appear in court, if the person is required by the notice to appear in person at the hearing.

§ -3 **Answer required.** (a) A person who receives a notice of infraction shall answer the notice within twenty-one days of the date of issuance of the notice. There shall be

included with the notice of infraction a preaddressed envelope directed to the clerk of the applicable district court.

(b) Unless the notice of infraction requires an appearance in person at a hearing as set forth in section -2(c)(9), in answering a notice of infraction, a person shall have the following options:

(1) Admit the commission of the infraction in one of the following ways:

(A) By mail or in person, by completing the appropriate portion of the notice of infraction or preaddressed envelope and submitting it to the district court specified on the notice together with payment of the total amount stated on the notice of infraction; provided that payment by mail shall be in the form of a check, money order, or by an approved credit or debit card; and provided further that payment in person shall be in the form of United States currency, check, money order, or by an approved credit or debit card; or

(B) Via the Internet or by telephone, by submitting payment of the total amount stated on the notice of infraction; provided that payment via the Internet or by telephone shall be by an approved credit or debit card; or

(2) Deny the commission of the infraction and request a hearing to contest the infraction by completing the appropriate portion of the notice of infraction or preaddressed envelope and submitting it, either by mail or in person, to the district court specified on the notice. A denial may include the assertion of affirmative defenses, including the affirmative defense accorded to the medical use of cannabis pursuant to section 329-125. In lieu of appearing in person at a hearing, the person may submit a written statement of grounds on which the person contests the notice of infraction, which shall be considered by the court as a statement given in court pursuant to section -5(a).

(c) When answering the notice of infraction, the person shall affix the person's signature to the answer and shall state the address at which the person will accept future mailings from the court. No other response shall constitute an answer for purposes of this chapter.

**§ -4 Court action after answer or failure to answer.**

(a) When an admitting answer is received, the court shall enter judgment in favor of the State in the total amount specified in

the notice of infraction. If payment of the total amount is not submitted with the answer, the court may take action as provided in section -6.

(b) When a denying answer is received, the court shall notify the person in writing of the date, time, and place of hearing to contest the notice of infraction. The notice of hearing shall be mailed to the address stated in the denying answer, or if none is given, to the address stated on the notice of infraction. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State as of the date of the scheduled hearing, that the total amount specified in the notice of infraction and default judgment shall be paid within thirty days of entry of default judgment, and if it is not paid, that the court shall take action as provided in section -6.

(c) If the person fails to answer within twenty-one days of issuance of the notice of infraction or fails to appear at the hearing, the court shall take action as provided in subsection (d).

(d) Whenever judgment by default in favor of the State is entered, the court shall mail a notice of entry of default judgment to the address provided by the person when the notice of infraction was issued. The notice of entry of default judgment shall advise the person that the total amount specified in the notice of infraction and default judgment shall be paid within thirty days of entry of default judgment and shall explain the procedure for setting aside a default judgment. The notice of entry of default judgment shall also inform the person that if the total amount is not paid within thirty days, the court shall take action as provided in section -6.

Judgment by default for the State entered pursuant to this section may be set aside pending final disposition of the infraction upon written application of the person and posting of an appearance bond equal to the amount of the total amount specified in the default judgment. The application shall show good cause or excusable neglect for the person's failure to take action necessary to prevent entry of judgment by default.

Upon receipt of the application and required appearance bond, the court shall determine whether good cause or excusable neglect exists for the person's failure to take action necessary to prevent entry of judgment by default. If the court determines that good cause or excusable neglect exists, the application to set aside default judgment shall be granted, the default judgment shall be set aside, and the notice of infraction shall be disposed of pursuant to this chapter. If the court determines that good cause and excusable neglect do

not exist, the application to set aside default judgment shall be denied, the appearance bond shall be forfeited and applied to satisfy amounts due under the default judgment, and the notice of infraction shall be finally disposed. In either case, the court shall determine the existence of good cause or excusable neglect and notify the person of its decision on the application in writing.

§ -5 **Hearings.** (a) In proceedings to contest a notice of infraction where the person to whom the notice was issued has timely requested a hearing and appears at the hearing:

- (1) In lieu of the personal appearance by the officer who issued the notice of infraction, the court shall consider the notice of infraction and any other written report made by the officer, if provided to the court by the officer, together with any oral or written statement by the person to whom the notice of infraction was issued;
- (2) The court may compel by subpoena the attendance of the officer who issued the notice of infraction and other witnesses from whom it may wish to hear;
- (3) The standard of proof to be applied by the court shall be whether, by a preponderance of the evidence, the court finds that the infraction was committed; and
- (4) After due consideration of the evidence and arguments, if any, the court shall determine whether commission of the infraction has been established. Where the commission of the infraction has not been established, judgment in favor of the defendant, dismissing the notice of infraction or any count therein with prejudice, shall be entered in the record. Where it has been established that the infraction was committed, the court shall enter judgment in favor of the State and shall assess a monetary fine pursuant to section -10. The court also shall inform the person of the right to request a trial pursuant to section -8. If the person requests a trial at the time of the hearing, the court shall provide the person with a trial date as soon as practicable.

(b) If a person for whom a hearing has been scheduled to contest the notice of infraction or to assert affirmative defenses fails to appear at the hearing, the court shall enter judgment by default for the State and take action as provided in section -4(d). If the total amount of the monetary assessment, fees, interest, or costs is not paid within thirty days of entry of default judgment, the court shall take action as provided in section -6.

§ -6 **Failure to pay fine.** When the person issued a notice of infraction or notice of entry of default judgment fails to pay the total amount specified in the notice, the amount may be collected in the same manner as a judgment in a civil action. The State may collect the amount, including costs, interest, and attorney's fees, pursuant to section 706-647.

§ -7 **Time computation.** In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included. Whenever an act required to be performed under this chapter may be accomplished by mail, the act shall be deemed to have been performed on the date of the postmark on the mailed article.

§ -8 **Trial and concurrent trial.** (a) There shall be no right to trial unless the defendant contests the notice of infraction pursuant to section -5. If, after proceedings to contest the notice of infraction, a determination is made that the defendant committed the infraction, judgment shall enter in favor of the State. The defendant may request a trial in which the Hawaii rules of evidence, as specified under section

-9(b), and the rules of the district court shall apply; provided that any request for trial shall be made within thirty days of entry of judgment. If, after appearing in person at a hearing to contest the notice of infraction, the person requests a trial at the conclusion of the hearing, the court shall provide the person with a trial date as soon as practicable.

(b) At the time of trial, the State shall be represented by a prosecuting attorney of the county in which the infraction allegedly occurred. The prosecuting attorney shall orally recite the charged civil infraction in court prior to commencement of the trial. Proof of the defendant's commission of the infraction shall be by a preponderance of the evidence.

(c) If trial on the infraction is held prior to trial on any related criminal offense, the following shall be inadmissible in the subsequent prosecution or trial of the related criminal offense:

- (1) Any written or oral statement made by the defendant in proceedings conducted pursuant to section -5; and
- (2) Any testimony given by the defendant in the trial on the infraction.

The statement or testimony, or both, shall not be deemed a waiver of the defendant's privilege against self-incrimination in connection with any related criminal offense.

(d) In any concurrent trial, the State shall be represented by a prosecuting attorney of the county in which the infraction and related crime allegedly occurred. Proof of the defendant's commission of the infraction shall be by a preponderance of the evidence, and proof of the related criminal offense shall be by proof beyond a reasonable doubt. The concurrent trial shall be conducted pursuant to the rules of the appropriate court, the Hawaii rules of evidence, and the Hawaii rules of penal procedure.

**§ -9 Rules.** (a) The supreme court may adopt rules of procedure for the conduct of all proceedings pursuant to this chapter.

(b) Chapter 626 shall not apply in proceedings conducted pursuant to this chapter, except for:

(1) The rules governing privileged communications; and

(2) Proceedings conducted under section -8.

(c) Notwithstanding section 604-17 to the contrary, while the court is sitting in any matter pursuant to this chapter, the court shall not be required to preserve the testimony or proceedings, except proceedings conducted pursuant to section -8 and proceedings in which the infraction is heard on the same date and time as any related criminal offense.

(d) The prosecuting attorney shall not participate in infraction proceedings conducted pursuant to this chapter, except proceedings pursuant to section -8 and proceedings in which a related criminal offense is scheduled for arraignment, hearing, or concurrent trial.

(e) Chapter 91 shall not apply in proceedings before the court pursuant to this chapter.

(f) Chapter 571 and the Hawaii family court rules shall not apply in any proceedings conducted pursuant to this chapter.

**§ -10 Marijuana infraction.** (a) A person commits a marijuana infraction if the person possesses three grams or less of marijuana.

(b) A person who commits a marijuana infraction shall pay a civil fine of \$200.

(c) As used in this section, "marijuana" shall have the same meaning as in section 712-1240.

**§ -11 Applicability.** Notwithstanding any other provision of law to the contrary, all marijuana infractions, including marijuana infractions committed by minors, shall be adjudicated pursuant to this chapter. No marijuana infraction under this chapter shall be classified as a criminal offense."

SECTION 3. House Bill No. 1383, H.D. 1, is amended by amending Section 3 to read as follows:

"SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§712- Dismissal of pending charge of promoting a detrimental drug in the third degree. (1) Notwithstanding any other law to the contrary, a person charged prior to the effective date of this Act for the possession of marijuana under section 712-1249 arising from a set of facts and circumstances that resulted in no other criminal charge may apply to the court where the charge is pending for an order dismissing the charge; provided that the amount of marijuana alleged to have been in the person's possession was three grams or less.

(2) A person shall not be eligible for an order dismissing a charge pursuant to this section unless the person pays a fine of \$200.

(3) The court shall grant an order dismissing the charge under subsection (1) upon a finding that the applicant is eligible for the order.

(4) In addition to the fine established under subsection (2), the court may establish a reasonable fee for an application under this section.

§712- Expungement of record of promoting a detrimental drug in the third degree. (1) Notwithstanding any other law to the contrary, a person convicted prior to the effective date of this Act for the possession of marijuana under section 712-1249 arising from a set of facts and circumstances that resulted in no other criminal charge may apply to the court of conviction for 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.

(2) The court shall grant an expungement order under subsection (1) upon a finding that the applicant is eligible for the expungement.

(3) The court may establish a reasonable fee for an application under this section."

SECTION 4. House Bill No. 1383, H.D. 1, is amended by deleting sections 4 through 16.

SECTION 5. House Bill No. 1383, H.D. 1, is amended by renumbering section 17 as section 4 and amending it to read as follows:

"SECTION 4. Section 712-1249, Hawaii Revised Statutes, is amended to read as follows:



**"§712-1249 Promoting a detrimental drug in the third degree.** (1) A person commits the offense of promoting a detrimental drug in the third degree if the person knowingly possesses:

(a) More than three grams of any marijuana; or [any]

(b) Any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.""

SECTION 6. House Bill No. 1383, H.D. 1, is amended by deleting sections 18 through 25.

SECTION 7. House Bill No. 1383, H.D. 1, is amended inserting a new Section 5 to read as follows:

"SECTION 5. (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.

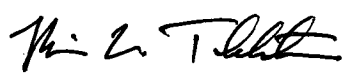
(d) The marijuana evaluation task force shall submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the 2021 regular session.

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

SECTION 8. House Bill No. 1383, H.D. 1, is amended by renumbering Sections 26 and 27 as Sections 6 and 7, respectively.

SECTION 9. House Bill No. 1383, H.D. 1, is amended by renumbering section 28 as section 8 and amending it to read as follows:

"SECTION 8. This Act shall take effect on January 11, 2084."

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CHIEF CLERK, HOUSE OF REPRESENTATIVES		