
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 Hawaii and thirty-
2 two other states, the United States territories of Guam, Puerto
3 Rico, and the Northern Mariana Islands, and the District of
4 Columbia have legalized the use of marijuana for medicinal
5 purposes. Twenty-two states and the District of Columbia have
6 decriminalized offenses pertaining to certain amounts of
7 marijuana, and ten states and the District of Columbia have
8 legalized certain amounts of marijuana for non-medical use.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Decriminalize the possession of three grams or less of
11 marijuana and establish that possession of that amount
12 is an infraction punishable by a monetary fine of
13 \$200;
- 14 (2) Establish an adjudicatory process for the foregoing
15 infraction;
- 16 (3) Provide for the dismissal of criminal charges, and
17 expungement of criminal records, pertaining solely to



1 the possession of three grams or less of marijuana;
2 and

3 (4) Establish a marijuana evaluation task force to make
4 recommendations on changing marijuana use penalties
5 and outcomes in the State.

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

9 "CHAPTER

10 ADJUDICATORY PROCESS FOR MARIJUANA INFRACTIONS

11 § -1 Definitions. As used in this chapter, unless the
12 context requires otherwise:

13 "Court" means the district court.

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

16 § -2 Notice; form; determination final unless contested.

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



1 the notice and issue the notice to the person. An individual to
2 whom a notice of infraction is issued under this section shall
3 not be arraigned before the court, unless required by rule of
4 the supreme court.

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

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

- 9 (1) A statement of the specific infraction for which the
10 notice was issued;
- 11 (2) A brief statement of facts;
- 12 (3) A statement of the total fine amount for the
13 infraction established pursuant to section -10, to
14 be paid by the person;
- 15 (4) A statement of the options provided in section
16 -3(b) for answering the notice and the procedures
17 necessary to exercise the options;
- 18 (5) A statement that the person to whom the notice is
19 issued shall answer, choosing one of the options
20 specified in section -3(b), within twenty-one days
21 of the issuance of the notice;



- 1 (6) A statement that failure to answer the notice of
2 infraction within twenty-one days of the issuance
3 shall result in an entry of judgment by default for
4 the State and may result in the assessment of a late
5 penalty and that failure to pay the total amount
6 specified in the default judgment within an additional
7 thirty days or to otherwise take action to set aside
8 the default judgment shall subject the person to
9 section 706-647;
- 10 (7) A statement that, at a hearing conducted pursuant to
11 section -5 to contest the notice of infraction, no
12 officer shall be present unless the person timely
13 requests the court to have the officer present, and
14 that the standard of proof to be applied by the court
15 is whether a preponderance of the evidence proves that
16 the specified infraction was committed;
- 17 (8) A space in which the signature of the person to whom
18 the notice was issued may be affixed; and
- 19 (9) The date, time, and place at which the person to whom
20 the notice was issued shall appear in court, if the



1 person is required by the notice to appear in person
2 at the hearing.

3 § -3 **Answer required.** (a) A person who receives a
4 notice of infraction shall answer the notice within twenty-one
5 days of the date of issuance of the notice. There shall be
6 included with the notice of infraction a preaddressed envelope
7 directed to the clerk of the applicable district court.

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

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

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



1 and provided further that payment in person shall
2 be in the form of United States currency, check,
3 money order, or by an approved credit or debit
4 card; or

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

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



1 court as a statement given in court pursuant to
2 section -5(a).

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

8 **§ -4 Court action after answer or failure to answer.**

9 (a) When an admitting answer is received, the court shall enter
10 judgment in favor of the State in the total amount specified in
11 the notice of infraction. If payment of the total amount is not
12 submitted with the answer, the court may take action as provided
13 in section -6.

14 (b) When a denying answer is received, the court shall
15 notify the person in writing of the date, time, and place of
16 hearing to contest the notice of infraction. The notice of
17 hearing shall be mailed to the address stated in the denying
18 answer, or if none is given, to the address stated on the notice
19 of infraction. The notification also shall advise the person
20 that, if the person fails to appear at the hearing, the court
21 shall enter judgment by default in favor of the State as of the



1 date of the scheduled hearing, that the total amount specified
2 in the notice of infraction and default judgment shall be paid
3 within thirty days of entry of default judgment, and if it is
4 not paid, that the court shall take action as provided in
5 section -6.

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

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



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

8 Upon receipt of the application and required appearance
9 bond, the court shall determine whether good cause or excusable
10 neglect exists for the person's failure to take action necessary
11 to prevent entry of judgment by default. If the court
12 determines that good cause or excusable neglect exists, the
13 application to set aside default judgment shall be granted, the
14 default judgment shall be set aside, and the notice of
15 infraction shall be disposed of pursuant to this chapter. If
16 the court determines that good cause and excusable neglect do
17 not exist, the application to set aside default judgment shall
18 be denied, the appearance bond shall be forfeited and applied to
19 satisfy amounts due under the default judgment, and the notice
20 of infraction shall be finally disposed. In either case, the
21 court shall determine the existence of good cause or excusable



1 neglect and notify the person of its decision on the application
2 in writing.

3 § -5 **Hearings.** (a) In proceedings to contest a notice
4 of infraction where the person to whom the notice was issued has
5 timely requested a hearing and appears at the hearing:

6 (1) In lieu of the personal appearance by the officer who
7 issued the notice of infraction, the court shall
8 consider the notice of infraction and any other
9 written report made by the officer, if provided to the
10 court by the officer, together with any oral or
11 written statement by the person to whom the notice of
12 infraction was issued;

13 (2) The court may compel by subpoena the attendance of the
14 officer who issued the notice of infraction and other
15 witnesses from whom it may wish to hear;

16 (3) The standard of proof to be applied by the court shall
17 be whether, by a preponderance of the evidence, the
18 court finds that the infraction was committed; and

19 (4) After due consideration of the evidence and arguments,
20 if any, the court shall determine whether commission
21 of the infraction has been established. Where the



1 commission of the infraction has not been established,
2 judgment in favor of the defendant, dismissing the
3 notice of infraction or any count therein with
4 prejudice, shall be entered in the record. Where it
5 has been established that the infraction was
6 committed, the court shall enter judgment in favor of
7 the State and shall assess a monetary fine pursuant to
8 section -10. The court also shall inform the
9 person of the right to request a trial pursuant to
10 section -8. If the person requests a trial at the
11 time of the hearing, the court shall provide the
12 person with a trial date as soon as practicable.

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



1 § **-6 Failure to pay fine.** When the person issued a
2 notice of infraction or notice of entry of default judgment
3 fails to pay the total amount specified in the notice, the
4 amount may be collected in the same manner as a judgment in a
5 civil action. The State may collect the amount, including
6 costs, interest, and attorney's fees, pursuant to section
7 706-647.

8 § **-7 Time computation.** In computing any period of time
9 prescribed or allowed by this chapter, the day of the act,
10 event, or default from which the period of time begins to run
11 shall not be included. The last day of the period so computed
12 shall be included, unless it is a Saturday, Sunday, or legal
13 holiday, in which event the period shall run until the end of
14 the next day that is not a Saturday, Sunday, or legal holiday.
15 Intermediate Saturdays, Sundays, and legal holidays shall be
16 included. Whenever an act required to be performed under this
17 chapter may be accomplished by mail, the act shall be deemed to
18 have been performed on the date of the postmark on the mailed
19 article.

20 § **-8 Trial and concurrent trial.** (a) There shall be no
21 right to trial unless the defendant contests the notice of



1 infraction pursuant to section -5. If, after proceedings to
2 contest the notice of infraction, a determination is made that
3 the defendant committed the infraction, judgment shall enter in
4 favor of the State. The defendant may request a trial in which
5 the Hawaii rules of evidence, as specified under section
6 -9(b), and the rules of the district court shall apply;
7 provided that any request for trial shall be made within thirty
8 days of entry of judgment. If, after appearing in person at a
9 hearing to contest the notice of infraction, the person requests
10 a trial at the conclusion of the hearing, the court shall
11 provide the person with a trial date as soon as practicable.

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

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



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

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

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

17 § -9 Rules. (a) The supreme court may adopt rules of
 18 procedure for the conduct of all proceedings pursuant to this
 19 chapter.

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



1 (1) The rules governing privileged communications; and

2 (2) Proceedings conducted under section -8.

3 (c) Notwithstanding section 604-17 to the contrary, while
4 the court is sitting in any matter pursuant to this chapter, the
5 court shall not be required to preserve the testimony or
6 proceedings, except proceedings conducted pursuant to section
7 -8 and proceedings in which the infraction is heard on the
8 same date and time as any related criminal offense.

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

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

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

18 § -10 **Marijuana infraction.** (a) A person commits a
19 marijuana infraction if the person possesses three grams or less
20 of marijuana.



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

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

5 § -11 **Applicability.** Notwithstanding any other
6 provision of law to the contrary, all marijuana infractions,
7 including marijuana infractions committed by minors, shall be
8 adjudicated pursuant to this chapter. No marijuana infraction
9 under this chapter shall be classified as a criminal offense."

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

13 "§712- Dismissal of pending charge of promoting a
14 detrimental drug in the third degree. (1) Notwithstanding any
15 other law to the contrary, a person charged prior to the
16 effective date of this Act for the possession of marijuana under
17 section 712-1249 arising from a set of facts and circumstances
18 that resulted in no other criminal charge may apply to the court
19 where the charge is pending for an order dismissing the charge;
20 provided that the amount of marijuana alleged to have been in
21 the person's possession was three grams or less.



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

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

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

10 §712- Expungement of record of promoting a detrimental
11 drug in the third degree. (1) Notwithstanding any other law to
12 the contrary, a person convicted prior to the effective date of
13 this Act for the possession of marijuana under section 712-1249
14 arising from a set of facts and circumstances that resulted in
15 no other criminal charge may apply to the court of conviction
16 for an expungement order pertaining to the conviction for the
17 offense; provided that the amount of marijuana for which the
18 person was convicted of possessing was three grams or less.

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



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

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

5 "**§712-1249 Promoting a detrimental drug in the third**
6 **degree.** (1) A person commits the offense of promoting a
7 detrimental drug in the third degree if the person knowingly
8 possesses:

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

10 (b) Any Schedule V substance in any amount.

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

13 SECTION 5. (a) There shall be established a marijuana
14 evaluation task force to be administratively attached to the
15 department of the attorney general. The marijuana evaluation
16 task force shall examine other states' laws, penalties, and
17 outcomes pertaining to marijuana use, other than marijuana use
18 for medical purposes, and make recommendations on amending
19 marijuana use penalties and outcomes in the State.

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



- 1 (1) The chair of the senate standing committee on
2 judiciary, who shall serve as a co-chair of the task
3 force;
- 4 (2) The chair of the house standing committee on
5 judiciary, who shall serve as a co-chair of the task
6 force;
- 7 (3) The attorney general;
- 8 (4) The state public defender; and
- 9 (5) A prosecuting attorney to be selected by the co-chairs
10 of the task force.
- 11 (c) The co-chairs of the task force may invite other
12 interested parties to participate in the task force.
- 13 (d) The marijuana evaluation task force shall submit a
14 report of its findings and recommendations, including any
15 proposed legislation, no later than twenty days prior to the
16 convening of the 2021 regular session.
- 17 (e) The marijuana evaluation task force shall be dissolved
18 on June 30, 2021.

19 SECTION 6. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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



Report Title:

Marijuana; Decriminalization; Dismissal of Charges; Expungement

Description:

Decriminalizes the possession of 3 grams or less of marijuana and establish that the possession is an infraction punishable by a monetary fine of \$200. Provides for the dismissal of criminal charges, and expungement of criminal records, pertaining solely to the possession of 3 grams or less of marijuana. Establishes a marijuana evaluation task force to make recommendations on changing marijuana use penalties and outcomes in the State. Effective 1/11/2084. (HB1383 HD2)

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