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# 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 a violation punishable by a monetary fine of \$30;
- 13           (2) Provide for the expungement of criminal records  
14 pertaining solely to the possession of three grams or  
15 less of marijuana; and



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

4 SECTION 2. Section 712-1249, Hawaii Revised Statutes, is  
5 amended by amending subsection (2) to read as follows:

6 "(2) Promoting a detrimental drug in the third degree is a  
7 petty misdemeanor[-]; provided that possession of three grams or  
8 less of marijuana is a violation, punishable by a fine of \$30."

9 SECTION 3. Section 706-622.5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§706-622.5 Sentencing for drug offenders; expungement.**

12 (1) Notwithstanding section 706-620(3), a person convicted for  
13 the first or second time for any offense under section 329-43.5,  
14 except offenses under subsections (a) and (b) of that section  
15 which constitute violations, involving the possession or use of  
16 drug paraphernalia or any felony offense under part IV of  
17 chapter 712 involving the possession or use of any dangerous  
18 drug, detrimental drug, harmful drug, intoxicating compound,  
19 marijuana, or marijuana concentrate, as defined in section  
20 712-1240, but not including any offense under part IV of chapter  
21 712 involving the distribution or manufacture of any such drugs



1 or substances and not including any methamphetamine offenses  
2 under sections 712-1240.7, 712-1240.8 as that section was in  
3 effect prior to July 1, 2016, 712-1241, and 712-1242, is  
4 eligible to be sentenced to probation under subsection (2) if  
5 the person meets the following criteria:

6 (a) The court has determined that the person is nonviolent  
7 after reviewing the person's criminal history, the  
8 factual circumstances of the offense for which the  
9 person is being sentenced, and any other relevant  
10 information;

11 (b) The person has been assessed by a certified substance  
12 abuse counselor to be in need of substance abuse  
13 treatment due to dependency or abuse under the  
14 applicable Diagnostic and Statistical Manual and  
15 Addiction Severity Index; and

16 (c) Except for those persons directed to substance abuse  
17 treatment under the supervision of the drug court, the  
18 person presents a proposal to receive substance abuse  
19 treatment in accordance with the treatment plan  
20 prepared by a certified substance abuse counselor  
21 through a substance abuse treatment program that



1 includes an identified source of payment for the  
2 treatment program.

3 (2) A person eligible under subsection (1) may be  
4 sentenced to probation to undergo and complete a substance abuse  
5 treatment program if the court determines that the person can  
6 benefit from substance abuse treatment and, notwithstanding that  
7 the person would be subject to sentencing as a repeat offender  
8 under section 706-606.5, the person should not be incarcerated  
9 to protect the public. If the person fails to complete the  
10 substance abuse treatment program and the court determines that  
11 the person cannot benefit from any other suitable substance  
12 abuse treatment program, the person shall be subject to  
13 sentencing under the applicable section under this part. As a  
14 condition of probation under this subsection, the court may  
15 direct the person to undergo and complete substance abuse  
16 treatment under the supervision of the drug court if the person  
17 has a history of relapse in treatment programs. The court may  
18 require other terms and conditions of probation, including  
19 requiring that the person contribute to the cost of the  
20 substance abuse treatment program, comply with deadlines for



1 entering into the substance abuse treatment program, and reside  
2 in a secure drug treatment facility.

3 (3) For the purposes of this section, "substance abuse  
4 treatment program" means drug or substance abuse treatment  
5 services provided outside a correctional facility by a public,  
6 private, or nonprofit entity that specializes in treating  
7 persons who are diagnosed with having substance abuse or  
8 dependency and preferably employs licensed professionals or  
9 certified substance abuse counselors.

10 (4) Upon written application from a person sentenced under  
11 this part or a probation officer, the court shall issue a court  
12 order to expunge the record of conviction for that particular  
13 offense; provided that a person has successfully completed the  
14 substance abuse treatment program and complied with other terms  
15 and conditions of probation. A person sentenced to probation  
16 under this section who has not previously been sentenced under  
17 this section shall be eligible for one time only for expungement  
18 under this subsection.

19 (5) Upon motion from a person convicted for the possession  
20 of marijuana under section 712-1249 arising from a set of facts  
21 and circumstances that resulted in no other criminal charge, the



1 court shall grant an expungement order pertaining to the  
2 conviction for the offense; provided that the amount of  
3 marijuana for which the person was convicted of possessing was  
4 three grams or less.

5 [~~5~~] (6) Nothing in this section shall be construed to  
6 give rise to a cause of action against the State, a state  
7 employee, or a treatment provider."

8 SECTION 4. (a) There shall be established a marijuana  
9 evaluation task force to be administratively attached to the  
10 department of the attorney general. The marijuana evaluation  
11 task force shall examine other states' laws, penalties, and  
12 outcomes pertaining to marijuana use, other than marijuana use  
13 for medical purposes, and make recommendations on amending  
14 marijuana use penalties and outcomes in the State.

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

17 (1) The chair of the senate standing committee on  
18 judiciary, who shall serve as a co-chair of the task  
19 force;



1 (2) The chair of the house standing committee on  
2 judiciary, who shall serve as a co-chair of the task  
3 force;

4 (3) The attorney general;

5 (4) The state public defender; and

6 (5) A prosecuting attorney to be selected by the co-chairs  
7 of the task force.

8 (c) The co-chairs of the task force may invite other  
9 interested parties to participate in the task force.

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

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

16 SECTION 5. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.



1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on February 1, 2020.





**Report Title:**

Marijuana; Decriminalization; Expungement

**Description:**

Decriminalizes the possession of 3 grams or less of marijuana and establish that the possession is a violation punishable by a monetary fine of \$30. Provides for the 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 2/1/2020. (SD1)

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

