

JAN 18 2019

A BILL FOR AN ACT

RELATING TO MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 712, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§712- Promotion of marijuana or Schedule V substance
5 to a minor. (1) A person commits the offense of promotion of
6 marijuana or Schedule V substance to a minor if the person
7 sells, barter, or provides any marijuana or any Schedule V
8 substance in any amount to a minor.

9 (2) Promotion of marijuana or Schedule V substance to a
10 minor is a class B felony.

11 §712- Expungement of records of criminal violations
12 pertaining solely to marijuana. (1) Notwithstanding any other
13 law to the contrary, a person convicted prior to the effective
14 date of this Act of any marijuana offense arising from a set of
15 facts and circumstances that resulted in no criminal charges
16 other than the marijuana offense may apply to the court of
17 conviction for an expungement order.



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

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

6 (4) As used in this section, "marijuana offense" means any
7 criminal offense prohibiting the cultivation, possession, sales,
8 transportation, or use of marijuana."

9 SECTION 2. Section 712-1244, Hawaii Revised Statutes, is
10 amended by amending subsection (1) to read as follows:

11 "(1) A person commits the offense of promoting a harmful
12 drug in the first degree if the person knowingly:

13 (a) Possesses one hundred or more capsules or tablets or
14 dosage units containing one or more of the harmful
15 drugs or [~~one or more of the marijuana concentrates,~~
16 ~~e~~] any combination thereof;

17 (b) Possesses one or more preparations, compounds,
18 mixtures, or substances, of an aggregate weight of one
19 ounce or more containing one or more of the harmful
20 drugs or [~~one or more of the marijuana concentrates,~~
21 ~~e~~] any combination thereof;



1 (c) Distributes twenty-five or more capsules or tablets or
2 dosage units containing one or more of the harmful
3 drugs or [~~one or more of the marijuana concentrates,~~
4 ~~or~~] any combination thereof;

5 (d) Distributes one or more preparations, compounds,
6 mixtures, or substances, of an aggregate weight of
7 one-eighth ounce or more, containing one or more of
8 the harmful drugs or [~~one or more of the marijuana~~
9 ~~concentrates, or~~] any combination thereof; or

10 (e) Distributes any harmful drug or any marijuana
11 concentrate in any amount to a minor."

12 SECTION 3. Section 712-1245, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) A person commits the offense of promoting a harmful
15 drug in the second degree if the person knowingly:

16 (a) Possesses fifty or more capsules or tablets or dosage
17 units containing one or more of the harmful drugs or
18 [~~one or more of the marijuana concentrates, or~~] any
19 combination thereof;

20 (b) Possesses one or more preparations, compounds,
21 mixtures, or substances, of an aggregate weight of



1 one-eighth ounce or more, containing one or more of
2 the harmful drugs or [~~one or more of the marijuana~~
3 ~~concentrates,~~] or any combination thereof; or

4 (c) Distributes any harmful drug [~~or any marijuana~~
5 ~~concentrate]~~ in any amount."

6 SECTION 4. Section 712-1246, Hawaii Revised Statutes, is
7 amended by amending subsection (1) to read as follows:

8 "(1) A person commits the offense of promoting a harmful
9 drug in the third degree if the person knowingly possesses
10 twenty-five or more capsules or tablets or dosage units
11 containing one or more of the harmful drugs or [~~one or more of~~
12 ~~the marijuana concentrates, or]~~ any combination thereof."

13 SECTION 5. Section 712-1247, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§712-1247 Promoting a detrimental drug in the first**

16 **degree.** (1) A person commits the offense of promoting a
17 detrimental drug in the first degree if the person knowingly:

18 (a) Possesses four hundred or more capsules or tablets
19 containing one or more of the Schedule V substances;

20 (b) Possesses one or more preparations, compounds,
21 mixtures, or substances of an aggregate weight of one



1 ounce or more, containing one or more of the Schedule
2 V substances;

3 (c) Distributes fifty or more capsules or tablets
4 containing one or more of the Schedule V substances;

5 (d) Distributes one or more preparations, compounds,
6 mixtures, or substances of an aggregate weight of one-
7 eighth ounce or more, containing one or more of the
8 Schedule V substances;

9 ~~[(e) Possesses one or more preparations, compounds,
10 mixtures, or substances of an aggregate weight of one
11 pound or more, containing any marijuana;~~

12 ~~(f) Distributes one or more preparations, compounds,
13 mixtures, or substances of an aggregate weight of one
14 ounce or more, containing any marijuana;~~

15 ~~(g) Possesses, cultivates, or has under the person's
16 control twenty five or more marijuana plants; or~~

17 ~~(h)]~~ (e) Sells or barter[s] any [~~marijuana or any~~] Schedule V
18 substance in any amount.

19 (2) Promoting a detrimental drug in the first degree is a
20 class C felony.



1 ~~[(3) Any marijuana seized as evidence of a violation of~~
2 ~~this section in excess of one pound may be destroyed after it~~
3 ~~has been photographed and the weight thereof recorded. The~~
4 ~~remainder of the marijuana shall remain in the custody of the~~
5 ~~police department until the termination of any criminal action~~
6 ~~brought as a result of the seizure of the marijuana.~~
7 ~~Photographs duly identified as accurately representing the~~
8 ~~marijuana shall be deemed competent evidence of the marijuana~~
9 ~~involved and shall be admissible in any proceeding, hearing, or~~
10 ~~trial to the same extent as the marijuana itself; provided that~~
11 ~~nothing in this subsection shall be construed to limit or to~~
12 ~~restrict the application of rule 901 of the Hawaii rules of~~
13 ~~evidence.] "~~

14 SECTION 6. Section 712-1248, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) A person commits the offense of promoting a
17 detrimental drug in the second degree if the person knowingly:

18 (a) Possesses fifty or more capsules or tablets containing
19 one or more of the Schedule V substances;

20 (b) Possesses one or more preparations, compounds,
21 mixtures, or substances, of an aggregate weight of



S.B. NO. 606

1 one- eighth ounce or more, containing one or more of
2 the Schedule V substances;

3 ~~[(c) Possesses one or more preparations, compounds,~~
4 ~~mixtures, or substances, of an aggregate weight of one~~
5 ~~ounce or more, containing any marijuana; or~~

6 ~~(d)]~~ (c) Distributes any ~~[marijuana or any]~~ Schedule V
7 substance in any amount."

8 SECTION 7. Section 712-1249, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

10 "(1) A person commits the offense of promoting a
11 detrimental drug in the third degree if the person knowingly
12 possesses any ~~[marijuana or any]~~ Schedule V substance in any
13 amount."

14 SECTION 8. Section 712-1249.4, Hawaii Revised Statutes, is
15 repealed.

16 ~~["§712-1249.4] Commercial promotion of marijuana in the~~
17 ~~first degree. (1) A person commits the offense of commercial~~
18 ~~promotion of marijuana in the first degree if the person~~
19 ~~knowingly:~~

20 ~~(a) Possesses marijuana having an aggregate weight of~~
21 ~~twenty five pounds or more;~~



S.B. NO. 606

- 1 ~~(b) Distributes marijuana having an aggregate weight of~~
- 2 ~~five pounds or more;~~
- 3 ~~(c) Possesses, cultivates, or has under the person's~~
- 4 ~~control one hundred or more marijuana plants;~~
- 5 ~~(d) Cultivates on land owned by another person, including~~
- 6 ~~land owned by the government or other legal entity,~~
- 7 ~~twenty five or more marijuana plants, unless the~~
- 8 ~~person has the express permission from the owner of~~
- 9 ~~the land to cultivate the marijuana or the person has~~
- 10 ~~a legal or an equitable ownership interest in the land~~
- 11 ~~or the person has a legal right to occupy the land; or~~
- 12 ~~(e) Uses, or causes to be used, any firearm or other~~
- 13 ~~weapon, device, instrument, material, or substance,~~
- 14 ~~whether animate or inanimate, which in the manner used~~
- 15 ~~is capable of causing death, serious bodily injury,~~
- 16 ~~substantial bodily injury, or other bodily injury, as~~
- 17 ~~defined in chapter 707 in order to prevent the theft,~~
- 18 ~~removal, search and seizure, or destruction of~~
- 19 ~~marijuana.~~
- 20 ~~(2) Commercial promotion of marijuana in the first degree~~
- 21 ~~is a class A felony.~~



1 ~~(3) Any marijuana seized as evidence in violation of this~~
2 ~~section in excess of an aggregate weight of twenty five pounds~~
3 ~~as stated in subsection (1) (a), or in excess of an aggregate~~
4 ~~weight of five pounds as stated in subsection (1) (b), or in~~
5 ~~excess of one hundred marijuana plants as stated in subsection~~
6 ~~(1) (c), or in excess of twenty five marijuana plants as stated~~
7 ~~in subsection (1) (d) may be destroyed after the excess amount~~
8 ~~has been photographed and the number of plants and the weight~~
9 ~~thereof has been recorded. The required minimum amount of the~~
10 ~~marijuana needed to constitute the elements of this offense~~
11 ~~shall remain in the custody of the police until the termination~~
12 ~~of any criminal action brought as a result of the seizure of the~~
13 ~~marijuana. Photographs duly identified as accurately~~
14 ~~representing the marijuana shall be deemed competent evidence of~~
15 ~~the marijuana involved and shall be admissible in any~~
16 ~~proceeding, hearing, or trial to the same extent as the~~
17 ~~marijuana itself, provided that nothing in this subsection shall~~
18 ~~be construed to limit or restrict the application of rule 901 of~~
19 ~~the Hawaii rules of evidence."]~~

20 SECTION 9. Section 712-1249.5, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§712-1249.5 Commercial promotion of marijuana in the~~
2 ~~second degree. (1) A person commits the offense of commercial~~
3 ~~promotion of marijuana in the second degree if the person~~
4 ~~knowingly:~~

5 ~~(a) Possesses marijuana having an aggregate weight of two~~
6 ~~pounds or more;~~

7 ~~(b) Distributes marijuana having an aggregate weight of~~
8 ~~one pound or more;~~

9 ~~(c) Possesses, cultivates, or has under the person's~~
10 ~~control fifty or more marijuana plants;~~

11 ~~(d) Cultivates on land owned by another person, including~~
12 ~~land owned by the government or other legal entity,~~
13 ~~any marijuana plant, unless the person has the express~~
14 ~~permission from the owner of the land to cultivate the~~
15 ~~marijuana or the person has a legal or an equitable~~
16 ~~ownership interest in the land or the person has a~~
17 ~~legal right to occupy the land; or~~

18 ~~(e) Sells or barterers any marijuana or any Schedule V~~
19 ~~substance in any amount to a minor.~~

20 ~~(2) Commercial promotion of marijuana in the second degree~~
21 ~~is a class B felony.~~



1 ~~(3) Any marijuana seized as evidence in violation of this~~
2 ~~section in excess of an aggregate weight of two pounds as stated~~
3 ~~in subsection (1) (a), or in excess of an aggregate weight of one~~
4 ~~pound as stated in subsection (1) (b), or in excess of twenty-~~
5 ~~five marijuana plants as stated in subsection (1) (c) may be~~
6 ~~destroyed after the excess amount has been photographed and the~~
7 ~~number of plants and the weight thereof has been recorded. The~~
8 ~~required minimum amount of the marijuana needed to constitute~~
9 ~~the elements of this offense shall remain in the custody of the~~
10 ~~police until the termination of any criminal action brought as a~~
11 ~~result of the seizure of the marijuana. Photographs duly~~
12 ~~identified as accurately representing the marijuana shall be~~
13 ~~deemed competent evidence of the marijuana involved and shall be~~
14 ~~admissible in any proceeding, hearing, or trial to the same~~
15 ~~extent as the marijuana itself; provided that nothing in this~~
16 ~~subsection shall be construed to limit or to restrict the~~
17 ~~application of rule 901 of the Hawaii rules of evidence."]~~

18 SECTION 10. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



S.B. NO. 606

1 SECTION 11. This Act shall take effect upon its approval.

2

INTRODUCED BY: Clarence K. Nashihara

Michelle Tidoni

BTG

Randy H. Bell



S.B. NO. 606

Report Title:

Marijuana; Legalization; Expungement of Criminal Records

Description:

Repeals all criminal penalties regarding marijuana except with regard to furnishing marijuana to a minor. Requires courts to expunge a person's criminal record for a marijuana conviction if that charge was the only charge emanating from a single set of facts and circumstances.

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

