



GOV. MSG. NO. 743

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 23, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 23, 2008, the following bill was signed into law:

SB2400 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO
DECriminalIZATION OF MINOR OFFENSES
PURSUANT TO ACT 124, SESSION LAWS OF
HAWAII 2005.
(ACT 101)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO DECRIMINALIZATION OF MINOR OFFENSES PURSUANT TO ACT
124, SESSION LAWS OF HAWAII 2005.

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

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PART I

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INTRODUCTION

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SECTION 1. The legislature has been engaged in an ongoing effort to make resolution of minor criminal offenses, including traffic violations, as simple as possible for the average citizen and to ensure that police, prosecutor, and judicial resources are focused on the most serious criminal offenses. Since 1978, the legislature has undertaken comprehensive attempts to adjust the penalties for various minor criminal offenses, particularly those found outside the Hawaii penal code, such that they are consistent with the nature of the offense, the seriousness with which the offenses are viewed, and the need to deter and prevent commission of the offenses.

For example, Act 222, Session Laws of Hawaii (SLH) 1978, and Act 214, SLH 1993, sought to delete criminal penalties for nonserious traffic offenses. Many offenses were changed from criminal offenses, which can result in a prison term, to



1 violations, which are punishable by a maximum \$1,000 fine.
2 These included operating a motor carrier vehicle without a
3 safety inspection decal, leaving vehicles derelict or abandoned,
4 failure to use a triangular emblem on a vehicle designed to move
5 at slow speeds, and all offenses relating to the operation of
6 bicycles. Act 214, SLH 1993, also enacted a new set of
7 procedural provisions, chapter 291D, Hawaii Revised Statutes,
8 designed to permit persons charged with minor offenses to pay
9 fines by mail and to reduce the amount of time police officers
10 and prosecutors spend in court.

11 The legislature also enacted Act 124, SLH 2005, which
12 called upon the legislative reference bureau to periodically
13 identify, review, and analyze, to the extent possible, state
14 statutes (other than the Hawaii Penal Code) and rules that
15 establish:

- 16 (1) Criminal offenses specifically denominated as
17 misdemeanors or petty misdemeanors; or
18 (2) Criminal offenses that authorize imprisonment or fines
19 in excess of \$1,000, or both,
20 but that involve conduct for which, typically, only a fine is
21 imposed.



1 Act 124, SLH 2005, calls upon the judiciary to review the
2 list of offenses developed by the bureau and to then "identify
3 any offenses that involve conduct for which, typically, only a
4 fine is imposed and those that most frequently appear before the
5 courts."

6 Act 124, SLH 2005, further requires the legislative
7 reference bureau to "contact the state departments or agencies
8 that have jurisdiction over the offenses identified by the
9 judiciary and request their input as to whether and the extent
10 to which the offenses can be decriminalized without undermining
11 their ability to enforce laws within their jurisdiction."
12 Finally, Act 124, SLH 2005, requires the legislative reference
13 bureau to "recommend changes to the penalties imposed by the
14 state statutes and rules identified ... that would make the
15 penalties more consistent with the penalties imposed for
16 decriminalized traffic infractions."

17 This Act is the first effort by the judiciary, various
18 state departments, and the legislative reference bureau to
19 fulfill the mandate of Act 124, SLH 2005, to identify minor
20 criminal offenses for which typically only a fine is imposed and
21 which may be decriminalized without undermining the ability of
22 government to enforce laws within its jurisdiction. In the



1 course of following the mandates of Act 124, SLH 2005, including
2 legislative hearings, it became apparent that decriminalization
3 has procedural implications that may not have been contemplated
4 by Act 124, SLH 2005. Specifically, while decriminalization
5 may pave the way for reduction of court appearances by citizens,
6 law enforcement officers, and prosecutors, it separately raises
7 at least two procedural issues. The first issue is whether a
8 case alleging the violation of a decriminalized statute or rule
9 will be initiated by issuance of a citation, service of a
10 complaint, or other type of procedure. The second issue is,
11 once the case is initiated, whether it will be adjudicated
12 administratively by the executive department with jurisdiction
13 or judicially, with the involvement of prosecutors or other
14 state or county legal representatives.

15 The purpose of this Act is to make resolution of minor
16 criminal offenses, including traffic violations, as simple as
17 possible for the average citizen and to ensure that police,
18 prosecutor, and judicial resources are focused on the most
19 serious criminal offenses. This Act also modifies the procedure
20 under Act 124, SLH 2005, by which minor offenses are recommended
21 for decriminalization to require that the judiciary, the
22 legislative reference bureau, executive branch agencies, police,



1 and prosecutors address the procedural implications of
2 decriminalizing minor offenses.

3 PART II

4 AGRICULTURE AND ANIMALS

5 SECTION 2. Section 150A-14, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) Any person who violates any provision of this chapter
8 other than sections 150A-5[~~(2)(B)~~, ~~150A-5(2)(C)~~], 150A-6(3), and
9 150A-6(4) or who violates any rule adopted under this chapter
10 other than those rules involving an animal that is prohibited or
11 a plant, animal, or microorganism that is restricted, without a
12 permit, shall be guilty of a misdemeanor and fined not less than
13 \$100. The provisions of section 706-640 notwithstanding, the
14 maximum fine shall be \$10,000. For a second offense committed
15 within five years of a prior offense, the person or organization
16 shall be fined not less than \$500 and not more than \$25,000.

17 (b) Any [~~transportation company that~~] person who violates
18 section 150A-5[~~(2)(B)~~ or ~~section 150A-5(2)(C)~~] shall be [~~guilty~~
19 ~~of a misdemeanor and~~] fined not less than \$100[~~. The provisions~~
20 ~~of section 706-640 notwithstanding, the maximum fine shall be~~
21 and not more than \$10,000. For a second [~~offense~~] violation
22 committed within five years of a prior [~~offense~~] violation, the



1 [~~company~~] person may be fined not less than \$500 and not more
2 than \$25,000."

3 PART III

4 CONSERVATION AND RESOURCES

5 SECTION 3. Section 184-5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§184-5 Rules and enforcement; penalty.** (a) The
8 department may, subject to chapter 91, make, amend, and repeal
9 rules having the force and effect of law, governing the use and
10 protection of the state park system, including state monuments
11 as established under section 6E-31, and including any private
12 property over which there has been granted to the State any
13 right of free public access or use for recreational, park,
14 viewing of any historical, archaeological, natural, or
15 scientific feature, object, or site, or related purpose, or
16 property thereon, and also governing the use and protection of
17 any recreational, scenic, historical, archaeological, natural,
18 scientific, and related resources of state and private lands,
19 and enforce [~~such~~] those rules. Any person who violates any of
20 the rules so prescribed shall be held liable for restoration of
21 or restitution for any damages to public or private property and
22 shall also be subject to the confiscation of any tools and



1 equipment used in [~~such~~] the violation and of any plants,
2 objects, or artifacts removed illegally from such properties.
3 Except as otherwise provided by the department, the more
4 restrictive rules of the department shall apply in any unit of
5 the state park system or any public use area which is also
6 governed by the rules of any forest reserve, public hunting
7 ground, or other department district or area.

8 (b) [~~Any~~] Except as provided in subsection (c), any person
9 violating this chapter, any rule adopted pursuant thereto, or
10 the terms and conditions of any permit issued thereunder, in
11 addition to any other penalties, shall be guilty of a petty
12 misdemeanor and shall be fined not less than:

- 13 (1) \$100 for a first offense;
14 (2) \$200 for a second offense; and
15 (3) \$500 for a third or subsequent offense.

16 (c) Any person violating this chapter, any rule adopted
17 pursuant thereto, or the terms and conditions of any permit
18 issued thereunder, regulating vehicular parking or traffic
19 movement shall have committed a traffic infraction as set forth
20 in chapter 291D, the adjudication of which shall be subject to
21 the provisions contained therein. A person found to have



1 committed such a traffic infraction shall be fined not more
2 than:

3 (1) \$100 for a first violation;

4 (2) \$200 for a second violation; and

5 (3) \$500 for a third or subsequent violation.

6 [~~e~~] (d) The fines specified in this section shall not be
7 suspended or waived. Each day of each violation shall
8 constitute a separate offense.

9 [~~d~~] (e) Any civil penalty for any violation of this
10 chapter or any rule adopted thereunder shall not be deemed to
11 preclude the State from pursuing any criminal action against
12 that person.

13 [~~e~~] (f) The department may confer on the director of
14 state parks and upon other employees of the division the powers
15 of police officers, including the power to serve and execute
16 warrants and arrest, or issue summons or citations to, offenders
17 in all matters relating to the enforcement, in any state park,
18 parkway, or state monument, or in any private property over
19 which there has been granted to the State any right of free
20 public access or use for recreational, park, viewing of any
21 historical, archaeological, natural, or scientific feature,
22 object, or site, or related purpose of:



- 1 (1) The laws applicable to the state parks and parkways
- 2 and to historical objects and sites and the rules
- 3 adopted under the provisions of this section; and
- 4 (2) Traffic laws and ordinances.

5 [~~Such~~] Those police powers shall also extend to the enforcement
 6 of laws of the State and the rules of the department relative to
 7 the protection and proper [~~utilization~~] use of the recreational,
 8 scenic, historical, natural, and archaeological, scientific, and
 9 related resources of state and private lands. [~~Such~~] The
 10 conferring of powers shall include the designation of [~~such~~]
 11 those employees as state parks enforcement officers."

12 SECTION 4. Section 200-14, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 **"§200-14 Violation of rules; penalty.** (a) [~~Any~~] Except
 15 as provided in subsection (b), any person who violates any rule
 16 adopted by the department under this part or who violates this
 17 part, shall be fined not more than \$1,000 or less than \$50 for
 18 each violation, and any vessel, the agents, owner, or crew of
 19 which violate the rules of the department or this part, shall be
 20 fined not more than \$1,000 or less than \$50 for each violation;
 21 provided that in addition to or as a condition to the suspension
 22 of the fines and penalties, the court may deprive the offender



1 of the privilege of operating or mooring any vessel in state
2 waters for a period of not more than thirty days.

3 (b) Any person who violates any rule adopted by the
4 department under this part regulating vehicular parking or
5 traffic movement shall have committed a traffic infraction as
6 set forth in chapter 291D, the adjudication of which shall be
7 subject to the provisions contained therein. A person found to
8 have committed such a traffic infraction shall be fined not more
9 than:

- 10 (1) \$100 for a first violation;
11 (2) \$200 for a second violation; and
12 (3) \$500 for a third or subsequent violation.

13 [~~b~~] (c) Notwithstanding the provisions of subsection (a)
14 establishing a fine of not more than \$1,000 or less than \$50 for
15 each violation, any person who violates any rule adopted by the
16 department relating to unauthorized discharge, dumping, or
17 abandoning, in any state boating facility or state waters, of
18 any petroleum product, hazardous material, or sewage in
19 violation of the state water quality standards established by
20 the department of health, shall be fined not more than \$10,000
21 for each day of violation, and any vessel, the agents, owner, or



1 crew of which violate the rules of the department shall be fined
2 not more than \$10,000 for each day of violation."

3 PART IV

4 TRANSPORTATION AND UTILITIES

5 SECTION 5. Section 261-21, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§261-21 Penalties. (a) [Any] Except as provided in
8 subsection (c), any person violating this chapter, or any of the
9 rules or orders issued pursuant thereto and relating to:

- 10 (1) Safety measures, practices, or requirements;
- 11 (2) Airport security measures or requirements; or
- 12 (3) The licensing and regulation of persons engaged in
13 commercial activities at public airports,
14 duly adopted or served, shall be guilty of a misdemeanor.

15 (b) Except as provided in subsection (c), any person
16 violating any rule relating to motor vehicles and traffic
17 control or the operation of any equipment or motor vehicle in or
18 on the operational area of the airport shall be guilty of an
19 offense as defined under the Penal Code and be fined not more
20 than \$500.

21 (c) Any person violating any rule relating to parking of
22 motor vehicles or equipment at a public airport, including



1 baggage carts, dollies, and other similar devices, shall have
2 committed a traffic infraction as set forth in chapter 291D, the
3 adjudication of which shall be subject to the provisions
4 contained therein."

5 **PART V**

6 **MISCELLANEOUS**

7 SECTION 6. Act 124, Session Laws of Hawaii 2005, is
8 amended by amending section 1 to read as follows:

9 "SECTION 1. (a) The legislative reference bureau shall
10 continue the review process commenced under House Concurrent
11 Resolution No. 261, H.D. 1, S.D. 1, 2004, by periodically
12 identifying, reviewing, and analyzing, to the extent possible,
13 all state statutes (other than the Hawaii Penal Code) and rules
14 that establish:

- 15 (1) Criminal offenses specifically denominated as
- 16 misdemeanors or petty misdemeanors; or
- 17 (2) Criminal offenses that authorize imprisonment or fines
- 18 in excess of \$1,000, or both,
- 19 but that involve conduct for which, typically, only a fine is
- 20 imposed.

21 (b) The legislative reference bureau shall provide the
22 judiciary with a list of the offenses identified pursuant to



1 subsection (a)(1) and (2). The judiciary shall then identify
2 any offenses that involve conduct for which, typically, only a
3 fine is imposed and those that most frequently appear before the
4 courts. The legislative reference bureau shall contact the
5 state departments or agencies that have jurisdiction over the
6 offenses identified by the judiciary and request their input as
7 to whether and the extent to which the offenses can be
8 decriminalized without undermining their ability to enforce laws
9 within their jurisdiction.

10 (c) If the departments or agencies do not oppose
11 decriminalization, the departments or agencies shall indicate
12 whether a case alleging violation of the statute or rule, if
13 decriminalized, would thereafter be initiated by issuance of a
14 citation, service of a complaint, or other type of process and
15 what department or agency would initiate the case. The
16 departments or agencies shall also indicate whether cases
17 alleging violation of the statute or rule, if decriminalized,
18 would be adjudicated through administrative proceedings
19 conducted by the executive department with jurisdiction or by
20 judicial proceedings, with the State represented by the attorney
21 general, the prosecuting attorney, or other legal counsel. If
22 the responses of the departments or agencies indicate that



1 initiation and disposition of the cases would require
2 participation by the judiciary, the attorney general, the county
3 prosecuting attorneys, or the county police departments, the
4 legislative reference bureau shall contact these agencies and
5 request their input as to whether decriminalization will affect
6 the agency's jurisdiction over the case or otherwise affect the
7 agency's ability to participate.

8 ~~[(e)]~~ (d) The legislative reference bureau shall recommend
9 changes to the penalties imposed by the state statutes and rules
10 identified pursuant to subsection (a) that would make the
11 penalties and the process by which they are imposed more
12 consistent with the penalties ~~[imposed]~~ for decriminalized
13 traffic infractions~~[-]~~ and the process by which they are
14 imposed. The legislative reference bureau shall submit a report
15 of its findings and recommendations, including suggested
16 legislation, no later than twenty days prior to the convening of
17 the next regular session of the legislature."

18 SECTION 7. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 8. This Act shall take effect upon its approval;
21 provided that section 2 shall take effect on July 1, 2009.



S.B. NO. 2400
S.D. 1
H.D. 1
C.D. 1

APPROVED this **23** day of **MAY**, 2008



GOVERNOR OF THE STATE OF HAWAII