

JAN 23 2015

A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 PART I.

2 SECTION 1. The legislature finds that the benefits of
3 establishing a civil violation for the possession of small
4 amounts of marijuana far outweigh the benefits of the current
5 criminal treatment of this offense.

6 The legislature also finds that the costs to enforce
7 criminal marijuana possession statutes are substantial.
8 According to an update to the report entitled *Budgetary*
9 *Implications of Marijuana Decriminalization and Legalization for*
10 *Hawai'i*, which was completed in December of 2012 by David C.
11 Nixon, an economist from the University of Hawaii, state and
12 county law enforcement agencies spent \$9,300,000 in 2011 to
13 enforce marijuana possession laws. Meanwhile, a recent
14 scientific survey of registered voters in the State conducted by
15 QMark Research found that sixty-three per cent of those surveyed
16 favored making marijuana possession and personal use a violation



1 instead of a crime, and sixty-six per cent favored outright
2 legalization of marijuana.

3 Accordingly, the purpose of this Act is to decriminalize
4 the possession of up to a certain amount of marijuana.
5 Possession of one ounce or less of marijuana is still prohibited
6 conduct under this Act; however, it will simply be handled in a
7 different, more appropriate manner. Moreover, this Act does not
8 amend laws regarding driving under the influence of an
9 intoxicant or other criminal infractions committed under the
10 influence, or infractions pertaining to sales or manufacturing
11 of marijuana. Nor does this Act amend laws regarding the use of
12 marijuana for medical purposes.

13 PART II.

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

17 "CHAPTER
18 MARIJUANA

19 § -1 **Definitions.** As used in this chapter, unless the
20 context requires otherwise:

21 "Court" means the district court.



1 "Notice of violation" means a notice of violation of
2 section 329-A.

3 § -2 Notice; form; determination final unless contested.

4 (a) A notice of violation shall include the summons for the
5 purposes of this section. Whenever a notice of violation is
6 issued to a person, the person's signature and current address
7 shall be noted on the notice. If the person refuses to sign the
8 notice of violation, the officer shall record this refusal on
9 the notice and issue the notice to the person. Individuals to
10 whom a notice of violation is issued under this section need not
11 be arraigned before the court, unless required by rule of the
12 supreme court.

13 (b) The form for the notice of violation shall be
14 prescribed by rules of the district court, which shall be
15 uniform throughout the State.

16 (c) The notice of violation shall include the following:

17 (1) A statement of the total amount for the violation
18 established pursuant to section 329- , to be paid by
19 the person;



- 1 (2) A statement of the options provided in section
2 -3(b) for answering the notice and the procedures
3 necessary to exercise the options;
- 4 (3) A statement that the person to whom the notice is
5 issued must answer, choosing one of the options
6 specified in section -3(b), within twenty-one days
7 of issuance of the notice;
- 8 (4) A statement that failure to answer the notice of
9 violation within twenty-one days of issuance shall
10 result in the entry of judgment by default for the
11 State and may result in the assessment of a late
12 penalty and that if the person to whom the notice was
13 issued fails to pay the total amount specified in the
14 default judgment within an additional thirty days or
15 to otherwise take action to set aside the default, the
16 person shall be subject to the provisions of section
17 706-647;
- 18 (5) A statement that, at a hearing conducted pursuant to
19 section -5 to contest the notice of violation, no
20 officer shall be present unless the person timely
21 requests the court to have the officer present, and



1 that the standard of proof to be applied by the court
2 is whether a preponderance of the evidence proves that
3 the specified violation was committed;

4 (6) A space in which the signature of the person to whom
5 the notice was issued may be affixed; and

6 (7) The date, time, and place at which the person to whom
7 the notice was issued must appear in court, if the
8 person is required by the notice to appear in person
9 at the hearing.

10 § -3 **Answer required.** (a) A person who receives a
11 notice of violation shall answer the notice within twenty-one
12 days of the date of issuance of the notice. There shall be
13 included with the notice of violation a preaddressed envelope
14 directed to the clerk of the applicable district court.

15 (b) Provided that the notice of violation does not require
16 an appearance in person at a hearing as set forth in section
17 -2(c)(7), in answering a notice of violation, a person shall
18 have the following options:

19 (1) Admit the commission of the violation in one of the
20 following ways:



1 (A) By mail or in person, by completing the
2 appropriate portion of the notice of violation or
3 preaddressed envelope and submitting it to the
4 authority specified on the notice together with
5 payment of the total amount stated on the notice
6 of violation; provided that payment by mail shall
7 be in the form of a check, money order, or by an
8 approved credit or debit card; provided further
9 that payment in person shall be in the form of
10 United States currency, check, money order, or by
11 an approved credit or debit card; or

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

17 (2) Deny the commission of the violation and request a
18 hearing to contest the violation by completing the
19 appropriate portion of the notice of violation or
20 preaddressed envelope and submitting it, either by
21 mail or in person, to the authority specified on the



1 notice. A denial may include assertion of affirmative
2 defenses, including that the person is duly registered
3 with the department of health pursuant to section 329-
4 123 and asserts the medical use of marijuana as an
5 affirmative defense pursuant to section 329-125. In
6 lieu of appearing in person at a hearing, the person
7 may submit a written statement of grounds on which the
8 person contests the notice of violation, which shall
9 be considered by the court as a statement given in
10 court pursuant to section -5(a).

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

16 **§ -4 Court action after answer or failure to answer.**

17 (a) When an admitting answer is received, the court shall enter
18 judgment in favor of the State in the total amount specified in
19 the notice of violation. If the total amount is not submitted
20 with the answer, the court may take action as provided in
21 section -6.



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

13 (c) If the person fails to answer within twenty-one days
14 of issuance of the notice of violation, the court shall take
15 action as provided in subsection (d).

16 (d) Whenever judgment by default in favor of the State is
17 entered, the court shall mail a notice of entry of default
18 judgment to the address provided by the person when the notice
19 of violation was issued. The notice of entry of default
20 judgment shall advise the person that the total amount specified
21 in the default judgment shall be paid within thirty days of



1 entry of default judgment and shall explain the procedure for
2 setting aside a default judgment. The notice of entry of
3 default judgment shall also inform the person that if the total
4 amount is not paid within thirty days, the court shall take
5 action as provided in section -6.

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

13 Upon receipt of the application and required appearance
14 bond, the court shall take action pursuant to section -6.
15 Thereafter, the court shall determine whether good cause or
16 excusable neglect exists for the person's failure to take action
17 necessary to prevent entry of judgment by default. If so, the
18 application to set aside default judgment shall be granted, the
19 default judgment shall be set aside, and the notice of violation
20 shall be disposed of pursuant to this chapter. If not, the
21 application to set aside default judgment shall be denied, the



1 appearance bond shall be forfeited and applied to satisfy
2 amounts due under the default judgment, and the notice of
3 violation shall be finally disposed. In either case, the court
4 shall determine the existence of good cause or excusable neglect
5 and notify the person of its decision on the application in
6 writing.

7 § -5 Hearings. (a) In proceedings to contest a notice
8 of violation where the person to whom the notice was issued has
9 timely requested a hearing and appears at the hearing:

10 (1) In lieu of the personal appearance by the officer who
11 issued the notice of violation, the court shall
12 consider the notice of violation and any other written
13 report made by the officer, if provided to the court
14 by the officer, together with any oral or written
15 statement by the person to whom the notice of
16 violation was issued;

17 (2) The court may compel by subpoena the attendance of the
18 officer who issued the notice of violation and other
19 witnesses from whom it may wish to hear;



1 (3) The standard of proof to be applied by the court shall
2 be whether, by a preponderance of the evidence, the
3 court finds that the violation was committed; and

4 (4) After due consideration of the evidence and arguments,
5 if any, the court shall determine whether commission
6 of the violation has been established. Where the
7 commission of the violation has not been established,
8 judgment in favor of the defendant, dismissing the
9 notice of violation or any count therein with
10 prejudice, shall be entered in the record. Where it
11 has been established that the violation was committed,
12 the court shall enter judgment in favor of the State
13 and shall assess a monetary assessment pursuant to
14 section 329- . The court also shall inform the
15 person of the right to request a trial pursuant to
16 section -8. If the person requests a trial at the
17 time of the hearing, the court shall provide the
18 person with a trial date as soon as practicable.

19 (b) If a person for whom a hearing has been scheduled to
20 contest the notice of violation or to assert affirmative
21 defenses fails to appear at the hearing, the court shall enter



1 judgment by default for the State and take action as provided in
2 section -4(d). If the total amount of the monetary
3 assessment, fees, surcharges, or costs is not paid within thirty
4 days of entry of default judgment, the court shall take action
5 as provided in section -6.

6 **§ -6 Failure to pay fine.** When the person issued a
7 notice of violation fails to pay the total amount of the fine,
8 the fine may be collected in the same manner as a judgment in a
9 civil action. The State may collect the fee or fine, including
10 costs, interest, and attorney's fees pursuant to section
11 706-647.

12 **§ -7 Time computation.** In computing any period of time
13 prescribed or allowed by sections -1 through -9, the day
14 of the act, event, or default from which the period of time
15 begins to run shall not be included. The last day of the period
16 so computed shall be included, unless it is a Saturday, Sunday,
17 or legal holiday in which event the period runs until the end of
18 the next day that is not a Saturday, Sunday, or legal holiday.
19 Intermediate Saturdays, Sundays, and legal holidays shall be
20 included. Whenever an act required to be performed under this
21 chapter may be accomplished by mail, the act shall be deemed to



1 have been performed on the date of the postmark on the mailed
2 article.

3 § -8 Trial and concurrent trial. (a) There shall be no
4 right to trial unless the defendant contests the notice of
5 violation pursuant to section -5. If, after proceedings to
6 contest the notice of violation, a determination is made that
7 the defendant committed the violation, judgment shall enter in
8 favor of the State. The defendant may request a trial pursuant
9 to the Hawaii rules of evidence and the rules of the district
10 court; provided that any request for trial shall be made within
11 thirty days of entry of judgment. If, after appearing in person
12 at a hearing to contest the notice of violation, the person
13 requests a trial at the conclusion of the hearing, the court
14 shall provide the person with a trial date as soon as
15 practicable.

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



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

5 (1) Any written or oral statement made by the defendant in
6 proceedings conducted pursuant to section -4(b);

7 and

8 (2) Any testimony given by the defendant in the violation
9 trial.

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

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



1 § -9 **Rules.** (a) The supreme court may adopt rules of
2 procedure for the conduct of all proceedings pursuant to this
3 chapter.

4 (b) Chapter 626 shall not apply in proceedings conducted
5 pursuant to this chapter, except for the rules governing
6 privileged communications, and proceedings conducted under
7 section -8.

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

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

19 (e) Chapter 91 shall not apply in proceedings before the
20 court.



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

4 PART III.

5 SECTION 3. Chapter 329, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§329- Possession of marijuana. (a) Intentional or
9 knowing possession by a legal adult of one ounce or less of
10 marijuana, any mixture or preparation thereof, or the
11 paraphernalia to consume the marijuana or mixture shall
12 constitute a civil violation subject to a fine not to exceed
13 \$100.

14 (b) All fines and penalties collected under this section
15 shall be deposited into the general fund."

16 SECTION 4. Chapter 604, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§604- Enforcement of civil violations for marijuana
20 possession. Jurisdiction is conferred upon the district courts
21 to try all cases arising from the violation of section 329-



1 and to impose the penalties prescribed for a violation under
2 329- . Jurisdiction is in the district court of the circuit
3 where the alleged violation occurred."

4 PART IV.

5 SECTION 5. Section 302A-1002, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~§~~302A-1002~~§~~] **Reporting of crime-related incidents.**

8 The board shall adopt rules pursuant to chapter 91 to:

9 (1) Require a report to appropriate authorities from a
10 teacher, official, or other employee of the department
11 who knows or has reason to believe that an act has
12 been committed or will be committed, which:

13 (A) Occurred or will occur on school property during
14 school hours or during activities supervised by
15 the school; and

16 (B) Involves crimes relating to arson, assault,
17 burglary, disorderly conduct, dangerous weapons,
18 dangerous drugs, harmful drugs, extortion,
19 firearms, gambling, harassment, intoxicating
20 drugs, [~~marijuana or marijuana concentrate,~~] more
21 than one ounce of marijuana, murder, attempted



1 murder, sexual offenses, rendering a false alarm,
2 criminal property damage, robbery, terroristic
3 threatening, theft, or trespass;

4 (2) Establish procedures for disposing of any incident
5 reported; and

6 (3) Impose, in addition to any other powers or authority
7 the department may have to discipline school
8 officials, appropriate disciplinary action for failure
9 to report these incidents, including probation,
10 suspension, demotion, and discharge of school
11 officials."

12 SECTION 6. Section 329-125, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) A qualifying patient or the primary caregiver may
15 assert the medical use of marijuana as an affirmative defense to
16 any prosecution, civil or criminal, involving marijuana under
17 this [†]part[†], section 329- , or chapter 712; provided that
18 the qualifying patient or the primary caregiver strictly
19 complied with the requirements of this part."

20 SECTION 7. Section 353-66, Hawaii Revised Statutes, is
21 amended by amending subsection (f) to read as follows:



1 "(f) The Hawaii paroling authority may require a paroled
2 prisoner to undergo and complete a substance abuse treatment
3 program when the paroled prisoner has committed a violation of
4 the terms and conditions of parole involving possession or use,
5 not including to distribute or manufacture as defined in section
6 712-1240, of any dangerous drug, detrimental drug, harmful drug,
7 intoxicating compound, more than one ounce of marijuana, or
8 marijuana concentrate, as defined in section 712-1240, unlawful
9 methamphetamine trafficking in the first degree as provided in
10 section [~~712-1240.6,~~] 712-1240.7 or in the second degree as
11 provided in section 712-1240.8, or involving possession or use
12 of drug paraphernalia under section 329-43.5. If the paroled
13 prisoner fails to complete the substance abuse treatment program
14 or the Hawaii paroling authority determines that the paroled
15 prisoner cannot benefit from any substance abuse treatment
16 program, the paroled prisoner shall be subject to revocation of
17 parole and return to incarceration. As a condition of parole,
18 the Hawaii paroling authority may require the paroled prisoner
19 to:

- 20 (1) Be assessed by a certified substance abuse counselor
21 for substance abuse dependency or abuse under the



1 applicable Diagnostic and Statistical Manual of Mental
2 Disorders and Addiction Severity Index;

3 (2) Present a proposal to receive substance abuse
4 treatment in accordance with the treatment plan
5 prepared by a certified substance abuse counselor
6 through a substance abuse treatment program that
7 includes an identified source of payment for the
8 treatment program;

9 (3) Contribute to the cost of the substance abuse
10 treatment program; and

11 (4) Comply with any other terms and conditions for parole.

12 As used in this subsection, "substance abuse treatment
13 program" means drug or substance abuse treatment services
14 provided outside a correctional facility by a public, private,
15 or nonprofit entity that specializes in treating persons who are
16 diagnosed with having substance abuse or dependency and
17 preferably employs licensed professionals or certified substance
18 abuse counselors.

19 Nothing in this subsection shall be construed to give rise
20 to a cause of action against the State, a state employee, or a
21 treatment provider."



SECTION 8. Section 706-625, Hawaii Revised Statutes, is amended by amending subsection (7) to read as follows:

"(7) The court may require a defendant to undergo and complete a substance abuse treatment program when the defendant has committed a violation of the terms and conditions of probation involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, more than one ounce of marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking in the first degree as provided in section [~~712-1240.6,~~] 712-1240.7 or in the second degree as provided in section 712-1240.8, or involving possession or use of drug paraphernalia under section 329-43.5. If the defendant fails to complete the substance abuse treatment program or the court determines that the defendant cannot benefit from any other suitable substance abuse treatment program, the defendant shall be subject to revocation of probation and incarceration. The court may require the defendant to:

(a) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the



1 applicable Diagnostic and Statistical Manual of Mental
2 Disorders and Addiction Severity Index;

3 (b) Present a proposal to receive substance abuse
4 treatment in accordance with the treatment plan
5 prepared by a certified substance abuse counselor
6 through a substance abuse treatment program that
7 includes an identified source of payment for the
8 treatment program;

9 (c) Contribute to the cost of the substance abuse
10 treatment program; and

11 (d) Comply with any other terms and conditions of
12 probation.

13 As used in this subsection, "substance abuse treatment
14 program" means drug or substance abuse treatment services
15 provided outside a correctional facility by a public, private,
16 or nonprofit entity that specializes in treating persons who are
17 diagnosed with substance abuse or dependency and preferably
18 employs licensed professionals or certified substance abuse
19 counselors.



1 Nothing in this subsection shall be construed to give rise
2 to a cause of action against the State, a state employee, or a
3 treatment provider."

4 SECTION 9. Section 712-1240, Hawaii Revised Statutes, is
5 amended by amending the definition of "detrimental drug" to read
6 as follows:

7 "'Detrimental drug" means any substance or immediate
8 precursor defined or specified as a "Schedule V substance" by
9 chapter 329, or any marijuana[-]; provided that one ounce or
10 less of marijuana shall not be deemed a detrimental drug under
11 section 712-1251 or 712-1255."

12 SECTION 10. Section 712-1248, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

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

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

18 (b) Possesses one or more preparations, compounds,
19 mixtures, or substances, of an aggregate weight of
20 one- eighth ounce or more, containing one or more of
21 the Schedule V substances;



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

(d) Distributes any marijuana or any Schedule V substance in any amount."

SECTION 11. Section 712-1249, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of promoting a detrimental drug in the third degree if the person knowingly possesses ~~[any]~~ more than one ounce of marijuana or any Schedule V substance in any amount."

SECTION 12. Section 712-1255, Hawaii Revised Statutes, is amended to read as follows:

"§712-1255 Conditional discharge. (1) Whenever any person who has not previously been convicted of any offense under this chapter or chapter 329, except for a civil violation under section 329- , or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug,



1 detrimental drug, or an intoxicating compound under section 712-
2 1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250, the
3 court, without entering a judgment of guilt and with the consent
4 of the accused, may defer further proceedings and place the
5 accused on probation upon terms and conditions. Upon violation
6 of a term or condition, the court may enter an adjudication of
7 guilt and proceed as otherwise provided.

8 (2) Upon fulfillment of the terms and conditions, the
9 court shall discharge the person and dismiss the proceedings
10 against the person.

11 (3) Discharge and dismissal under this section shall be
12 without adjudication of guilt and is not a conviction for
13 purposes of this section or for purposes of disqualifications or
14 disabilities imposed by law upon conviction of a crime.

15 (4) There may be only one discharge and dismissal under
16 this section with respect to any person.

17 (5) After conviction[7] for any offense under this chapter
18 or chapter 329, except for a conviction of a civil violation
19 under section 329- , but prior to sentencing, the court shall
20 be advised by the prosecutor whether the conviction is the
21 defendant's first or a subsequent offense. If it is not a first



1 offense, the prosecutor shall file an information setting forth
2 the prior convictions. The defendant shall have the opportunity
3 in open court to affirm or deny that the defendant is identical
4 with the person previously convicted. If the defendant denies
5 the identity, sentence shall be postponed for such time as to
6 permit the trial, before a jury if the defendant has a right to
7 trial by jury and demands a jury, on the sole issue of the
8 defendant's identity with the person previously convicted."

9 (6) For purposes of this section, a conviction for one or
10 more civil violations under section 329- shall not constitute
11 a prior offense that would make a conditional discharge
12 described in this section unavailable to the defendant."

13 PART V.

14 SECTION 13. This Act does not affect rights and duties
15 that matured, penalties that were incurred, and proceedings that
16 were begun before its effective date.

17 SECTION 14. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 15. This Act shall take effect upon its approval.

20 INTRODUCED BY: Will Enys
[Signature]



Report Title:

Marijuana; Possession; Decriminalization; Enforcement

Description:

Provides that possession of less than one ounce of marijuana shall be a civil rather than criminal offense. Establishes penalties for violations. Provides for enforcement, notice, and adjudication of violations.

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

