

JAN 20 2017

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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 certain state  
2 policies should be revised in response to our current economic  
3 climate. One of these policies relates to criminal offenses  
4 that prohibit the possession of marijuana. The legislature  
5 further finds that the costs to enforce criminal marijuana  
6 possession statutes are substantial. According to a report  
7 entitled *The Budgetary Implications of Marijuana*  
8 *Decriminalization and Legalization for Hawai'i*, which was  
9 completed in December of 2012 by David C. Nixon, an economist  
10 from the University of Hawaii, state and county law enforcement  
11 agencies spent \$9,300,000 in 2011 to enforce marijuana  
12 possession laws. Meanwhile, a recent scientific survey of  
13 registered voters in the State conducted by Qmark Research in  
14 2014 found that sixty-three per cent of those surveyed favored  
15 making possession and personal use of marijuana a civil  
16 violation instead of a crime, and sixty per cent favored  
17 outright legalization of marijuana. The decriminalization study



1 indicates that less than two per cent of all arrests in Hawaii  
2 between the years of 1997 and 2004 were for marijuana  
3 possession. Furthermore, of the misdemeanor marijuana drug  
4 cases brought in district court, approximately sixty-five per  
5 cent are dismissed, stricken, or not prosecuted. A relatively  
6 small proportion, approximately twenty-five per cent, result in  
7 convictions. As the decriminalization study concludes: "Few  
8 [of those arrested for marijuana possession] are actually  
9 prosecuted under the law, fewer convicted, and virtually none  
10 serve jail time. Of those convicted, probation is the usual  
11 sentence for first time offenders." Clearly, although the cost  
12 to enforce marijuana possession laws is substantial, the  
13 resulting conviction rate is low.

14 The legislature finds that the low conviction and arrest  
15 rates do not act as a deterrent to marijuana users. The  
16 decriminalization study compared the findings of a study  
17 surveying the number of households engaged in the regular use of  
18 marijuana with actual arrest rates. The results of this  
19 comparison indicate that the risk of arrest is between 1.54 per  
20 cent and 2.16 per cent in any given year for members of  
21 households in which there is regular marijuana use. According



1 to the decriminalization study, the chance of a marijuana user  
2 being arrested and convicted is approximately 0.4 per cent. It  
3 is clear that the arrest and conviction risks associated with  
4 marijuana use do not act as a deterrent to marijuana use, and  
5 few of those who use marijuana on a regular basis experience the  
6 consequences of these risks, notwithstanding the costs to  
7 enforce the criminal statutes prohibiting such conduct.

8 A number of states have passed laws decriminalizing  
9 marijuana to some degree. Typically, decriminalization means no  
10 prison time or criminal record for first-time possession of a  
11 small amount of marijuana for personal consumption. The conduct  
12 is treated like a minor traffic violation. According to the  
13 National Organization for the Reform of Marijuana Laws, the  
14 following states have decriminalized possession of a small  
15 amount of marijuana for personal consumption: California,  
16 Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts,  
17 Minnesota, Mississippi, Nebraska, Nevada, New York, North  
18 Carolina, Ohio, Rhode Island, and Vermont. The following states  
19 have gone a step further and legalized the possession of some  
20 amount of marijuana for personal use: Alaska, California,



1 Colorado, District of Columbia, Maine, Massachusetts, Nevada,  
2 Oregon, and Washington.

3 According to a report prepared by the Connecticut Law  
4 Revision Commission for the Judiciary Committee of the  
5 Connecticut General Assembly, studies of states that have  
6 reduced penalties for possession of small amounts of marijuana  
7 have found that:

- 8 (1) Expenses for arrests and prosecution of marijuana  
9 possession offenses were significantly reduced;
- 10 (2) If marijuana use increased, it increased less in  
11 states with reduced penalties when compared to states  
12 that did not reduce their penalties, and "the largest  
13 proportionate increase occurred in those states with  
14 the most severe penalties"; and
- 15 (3) Reducing the penalties for marijuana possession has  
16 virtually no effect on either the choice or frequency  
17 of use of alcohol or illegal "harder" drugs such as  
18 cocaine.

19 In Hawaii county, a voter initiative was passed in 2008 by  
20 a majority of 35,000 voters that directs county law enforcement  
21 officials to treat the "adult personal use" of marijuana as its



1 lowest law enforcement priority and prohibits the county from  
2 accepting or expending funds for the marijuana eradication  
3 program and for enforcing potential offenses for the adult  
4 personal use of marijuana.

5 The legislature further finds that the costs associated  
6 with criminal prosecution for possession of marijuana are  
7 extremely high in relation to the benefits of prosecuting those  
8 offenses. Authorizing the counties to legalize marijuana would  
9 greatly reduce the costs for prosecution and enforcement and  
10 generate tax revenue.

11 The purpose of this Act is to authorize the counties to  
12 adopt ordinances to legalize marijuana cultivation, possession,  
13 sale, transfer, and use, for persons over the age of twenty-one.

14 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
15 by adding a new section to be appropriately designated and to  
16 read as follows:

17 "§46- Legalization of marijuana. (a) Notwithstanding  
18 any law to the contrary, any county may adopt an ordinance,  
19 excluding referendums and initiatives, to legalize marijuana  
20 cultivation, possession, sale, transfer, and use within its



1 geographical boundaries by any person over the age of twenty-one  
2 years, whether for personal, commercial, or medicinal purposes.

3 (b) An ordinance adopted in accordance with subsection (a)  
4 shall:

5 (1) Supercede statutes prohibiting the cultivation,  
6 possession, sale, transfer, and use of marijuana,  
7 including part IX of chapter 329 and part IV of  
8 chapter 712; and

9 (2) Not be recognized in any county that has not adopted  
10 the same or similar ordinance.

11 (c) A county that adopts an ordinance under this section  
12 shall adopt administrative rules pursuant to chapter 91 to  
13 regulate the cultivation, possession, sale, transfer, and use of  
14 marijuana. An ordinance shall not become effective until the  
15 rules are adopted."

16 SECTION 3. Chapter 712, Hawaii Revised Statutes, is  
17 amended by adding a new section to part IV to be appropriately  
18 designated and to read as follows:

19 "§712- County legalization of marijuana. (a) A person  
20 who cultivates, possesses, sells, transfers, or uses marijuana  
21 in any amount shall not be deemed in violation of this part in



1 any county that has adopted an ordinance and administrative  
2 rules pursuant to section 46- .

3 (b) This part shall not be enforceable in a county that  
4 has adopted an ordinance and rules pursuant to section 46- ."

5 SECTION 4. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before the effective date of county ordinances adopted  
8 pursuant to this Act and administrative rules adopted thereto.

9 SECTION 5. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

*Ronald E. Reed*

*Joe DeLong*

*John*

*Will Eyo*



# S.B. NO. 814

**Report Title:**

Marijuana; County Authorization to Legalize

**Description:**

Authorizes the counties to adopt ordinances to legalize marijuana cultivation, possession, sale, transfer, and use, for persons over the age of twenty-one. Clarifies that penal code provisions pertaining to drug and intoxicating compounds offenses do not apply to counties that have adopted ordinances legalizing marijuana and adopted administrative rules to regulate marijuana.

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

