

JAN 25 2017

A BILL FOR AN ACT

RELATING TO DRUG PARAPHERNALIA.

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

1 SECTION 1. The legislature finds that the benefits of
2 making the offenses of possession and delivery of drug
3 paraphernalia civil violations far outweigh the benefits of the
4 current felony criminal treatment of these offenses.

5 The costs of enforcing these drug paraphernalia offenses as
6 felonies are substantial. According to an article published on
7 the Civil Beat website on November 5, 2015, entitled "Hawaii is
8 Spending Tens of Millions of Dollars to Lock up Low-Level Drug
9 Offenders", one hundred sixty-seven individuals were being held
10 by the State for violations of paraphernalia offenses as of
11 September 30, 2015. At an estimated cost of \$140 per day, and
12 with average sentences of more than two and a half years, these
13 one hundred sixty-seven nonviolent offenders alone are costing
14 the State more than \$20,000,000.

15 The legislature further finds that state funds are better
16 spent on community programs and rehabilitation of nonviolent,
17 low-risk drug offenders, as envisioned by the diversion program



1 created by Act 149, Session Laws of Hawaii 2014, however, the
2 appropriation for that program was repealed the following year
3 and the program itself was repealed on June 30, 2016.

4 The legislature also finds that immigrants convicted of
5 class C felonies are potentially deportable under current
6 immigration laws. Given the nation's gravely dysfunctional
7 immigration system, this double jeopardy treatment of immigrants
8 convicted of nonviolent drug paraphernalia offenses is severely
9 disproportionate.

10 Accordingly, the purpose of this Act is to decriminalize
11 the use, possession, and delivery of drug paraphernalia, and to
12 instead make these offenses civil violations.

13 SECTION 2. Section 329-43.5, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) Except as provided in subsection (e), it is unlawful
16 for any person to use, or to possess with intent to use, drug
17 paraphernalia to plant, propagate, cultivate, grow, harvest,
18 manufacture, compound, convert, produce, process, prepare, test,
19 analyze, pack, repack, store, contain, conceal, inject, ingest,
20 inhale, or otherwise introduce into the human body a controlled
21 substance in violation of this chapter. [~~Any person who~~



1 ~~violates] A violation of this section [is guilty of] shall~~
2 ~~constitute a [class C felony and upon conviction may be~~
3 ~~imprisoned pursuant to section 706 660 and, if appropriate as~~
4 ~~provided in section 706 641, fined pursuant to section 706 640.]~~
5 ~~civil violation subject to a fine of \$100.~~

6 (b) Except as provided in subsection (e), it is unlawful
7 for any person to deliver, possess with intent to deliver, or
8 manufacture with intent to deliver drug paraphernalia, knowing
9 or under circumstances where one reasonably should know, that it
10 will be used to plant, propagate, cultivate, grow, harvest,
11 manufacture, compound, convert, produce, process, prepare, test,
12 analyze, pack, repack, store, contain, conceal, inject, ingest,
13 inhale, or otherwise introduce into the human body a controlled
14 substance in violation of this chapter. ~~[Any person who~~
15 ~~violates] A violation of this section [is guilty of] shall~~
16 ~~constitute a [class C felony and upon conviction may be~~
17 ~~imprisoned pursuant to section 706 660 and, if appropriate as~~
18 ~~provided in section 706 641, fined pursuant to section 706 640.]~~
19 ~~civil violation subject to a fine of \$100."~~



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY: Will Ezero

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S.B. NO. 1248

Report Title:

Drug Paraphernalia; Use, Possession, and Delivery; Civil Violations

Description:

Changes drug paraphernalia use, possession, and delivery offenses from felonies to civil violations.

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