

JAN 19 2017

A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 SECTION 1. Chapter 329, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§329- Possession of marijuana. (a) Notwithstanding
5 any law to the contrary, possession of one ounce or less of
6 marijuana shall not be subject to arrest, prosecution, or
7 criminal liability; provided that possession of any marijuana in
8 or on the real property comprising a school or open possession
9 of marijuana in a school zone shall constitute a civil violation
10 subject to a fine of not more than \$250.

11 (b) For purposes of this section:

12 "Open possession of marijuana" means possession of
13 marijuana that is carried in a non-opaque, unsealed bag or
14 container or a non-opaque bag or container that is incapable of
15 being securely closed.



1 "School" means any public or private preschool,
2 kindergarten, elementary, intermediate, middle, secondary, or
3 high school.

4 "School zone" shall have the same meaning as in section
5 291C-104."

6 SECTION 2. Section 302A-1002, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~§~~302A-1002~~§~~ **Reporting of crime-related incidents.**

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

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

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

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



1 more than one ounce of marijuana, murder,
2 attempted murder, sexual offenses, rendering a
3 false alarm, criminal property damage, robbery,
4 terroristic threatening, theft, or trespass;

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

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

13 SECTION 3. Section 329-125, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

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



1 SECTION 4. Section 353-66, Hawaii Revised Statutes, is
2 amended by amending subsection (f) to read as follows:

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



1 SECTION 5. Section 706-625, Hawaii Revised Statutes, is
2 amended by amending subsection (7) to read as follows:

3 "(7) The court may require a defendant to undergo and
4 complete a substance abuse treatment program when the defendant
5 has committed a violation of the terms and conditions of
6 probation involving possession or use, not including to
7 distribute or manufacture as defined in section 712-1240, of any
8 dangerous drug, detrimental drug, harmful drug, intoxicating
9 compound, more than one ounce of marijuana, or marijuana
10 concentrate, as defined in section 712-1240, unlawful
11 methamphetamine trafficking as provided in section 712-1240.6,
12 or involving possession or use of drug paraphernalia under
13 section 329-43.5. If the defendant fails to complete the
14 substance abuse treatment program or the court determines that
15 the defendant cannot benefit from any other suitable substance
16 abuse treatment program, the defendant shall be subject to
17 revocation of probation and incarceration. The court may
18 require the defendant to:

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



1 applicable Diagnostic and Statistical Manual and
2 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 6. Section 712-1209, Hawaii Revised Statutes, is
5 amended by amending subsection (3) to read as follows:

6 "(3) For purposes of this section:

7 "School" has the same meaning as in section [~~712-~~
8 ~~1249.6(6)-~~] 712-1249.6(7).

9 "Sexual conduct" has the same meaning as in section
10 712-1200(2)."

11 SECTION 7. Section 712-1240, Hawaii Revised Statutes, is
12 amended by amending the definition of "detrimental drug" to read
13 as follows:

14 ""Detrimental drug" means any substance or immediate
15 precursor defined or specified as a "Schedule V substance" by
16 chapter 329, or any marijuana~~[r]~~; provided that one ounce or
17 less of marijuana shall not be deemed a detrimental drug under
18 section 712-1251 or 712-1255."

19 SECTION 8. Section 712-1247, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:



- 1 "(1) A person commits the offense of promoting a
2 detrimental drug in the first degree if the person knowingly:
- 3 (a) Possesses four hundred or more capsules or tablets
4 containing one or more of the Schedule V substances;
- 5 (b) Possesses one or more preparations, compounds,
6 mixtures, or substances of an aggregate weight of one
7 ounce or more, containing one or more of the Schedule
8 V substances;
- 9 (c) Distributes fifty or more capsules or tablets
10 containing one or more of the Schedule V substances;
- 11 (d) Distributes one or more preparations, compounds,
12 mixtures, or substances of an aggregate weight of one-
13 eighth ounce or more, containing one or more of the
14 Schedule V substances;
- 15 (e) Possesses one or more preparations, compounds,
16 mixtures, or substances of an aggregate weight of one
17 pound or more, containing any marijuana;
- 18 (f) Distributes one or more preparations, compounds,
19 mixtures, or substances [~~of an aggregate weight of one~~
20 ~~ounce or more,~~] containing [~~any~~] more than one ounce
21 of marijuana;



- 1 (g) Possesses, cultivates, or has under the person's
- 2 control twenty-five or more marijuana plants; or
- 3 (h) Sells or barteres any marijuana or any Schedule V
- 4 substance in any amount."

5 SECTION 9. Section 712-1248, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

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

- 9 (a) Possesses fifty or more capsules or tablets containing
- 10 one or more of the Schedule V substances;
- 11 (b) Possesses one or more preparations, compounds,
- 12 mixtures, or substances, of an aggregate weight of
- 13 one- eighth ounce or more, containing one or more of
- 14 the Schedule V substances;
- 15 (c) Possesses one or more preparations, compounds,
- 16 mixtures, or substances, of an aggregate weight of one
- 17 ounce or more, containing [~~any~~] more than one ounce of
- 18 marijuana; or
- 19 (d) Distributes any marijuana or any Schedule V substance
- 20 in any amount."



1 SECTION 10. Section 712-1249, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

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

7 SECTION 11. Section 712-1249.6, Hawaii Revised Statutes,
8 is amended to read as follows:

9 "**§712-1249.6 Promoting a controlled substance in, on, or**
10 **near schools, school vehicles, public parks, or public housing**
11 **projects or complexes.** (1) A person commits the offense of
12 promoting a controlled substance in, on, or near schools, school
13 vehicles, public parks, or public housing projects or complexes
14 if the person knowingly:

15 (a) Distributes or possesses with intent to distribute a
16 controlled substance in any amount in or on the real
17 property comprising a school, public park, or public
18 housing project or complex;

19 (b) Distributes or possesses with intent to distribute a
20 controlled substance in any amount within seven
21 hundred and fifty feet of the real property comprising



1 a school, public park, or public housing project or
2 complex;

3 (c) Distributes or possesses with intent to distribute a
4 controlled substance in any amount while on any school
5 vehicle, or within ten feet of a parked school vehicle
6 during the time that the vehicle is in service for or
7 waiting to transport school children; or

8 (d) Manufactures methamphetamine or any of its salts,
9 isomers, and salts of isomers, within seven hundred
10 and fifty feet of the real property comprising a
11 school, public park, or public housing project or
12 complex.

13 (2) A person who violates subsection (1)(a), (b), or (c)
14 is guilty of a class C felony. A person who violates subsection
15 (1)(d) is guilty of a class A felony.

16 (3) Any person with prior conviction or convictions under
17 subsection (1)(a), (b), or (c) is punishable by a term of
18 imprisonment of not less than two years and not more than ten
19 years.



S.B. NO. 16

1 (4) Any individual convicted under subsection (3) of this
2 section shall not be eligible for parole until the individual
3 has served the minimum sentence required by such subsection.

4 (5) For the purposes of this section, mere possession of
5 marijuana in an amount of one ounce or less shall not constitute
6 a possession with intent to distribute without other conduct
7 indicating intent to distribute.

8 ~~[(5)]~~ (6) For the purposes of this section, "school
9 vehicle" means every school vehicle as defined in section
10 286-181 and any regulations adopted pursuant to that section.

11 ~~[(6)]~~ (7) For purposes of this section, "school" means any
12 public or private preschool, kindergarten, elementary,
13 intermediate, middle secondary, or high school.

14 ~~[(7)]~~ (8) For purposes of this section, "public housing
15 project or complex" means a housing project directly controlled,
16 owned, developed, or managed by the Hawaii public housing
17 authority pursuant to the federal or state low-rent public
18 housing program."

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



1 "§712-1255 Conditional discharge. (1) Whenever any
2 person who has not previously been convicted of any offense
3 under this chapter or chapter 329, except for a civil violation
4 under section 329- , or under any statute of the United States
5 or of any state relating to a dangerous drug, harmful drug,
6 detrimental drug, or an intoxicating compound, pleads guilty to
7 or is found guilty of promoting a dangerous drug, harmful drug,
8 detrimental drug, or an intoxicating compound under section
9 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250,
10 the court, without entering a judgment of guilt and with the
11 consent of the accused, may defer further proceedings and place
12 the accused on probation upon terms and conditions. Upon
13 violation of a term or condition, the court may enter an
14 adjudication of guilt and proceed as otherwise provided.

15 (2) Upon fulfillment of the terms and conditions, the
16 court shall discharge the person and dismiss the proceedings
17 against the person.

18 (3) Discharge and dismissal under this section shall be
19 without adjudication of guilt and is not a conviction for
20 purposes of this section or for purposes of disqualifications or
21 disabilities imposed by law upon conviction of a crime.



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

3 (5) After conviction, for any offense under this chapter
4 or chapter 329, except for a conviction of a civil violation
5 under section 329- , but prior to sentencing, the court shall
6 be advised by the prosecutor whether the conviction is the
7 defendant's first or a subsequent offense. If it is not a first
8 offense, the prosecutor shall file an information setting forth
9 the prior convictions. The defendant shall have the opportunity
10 in open court to affirm or deny that the defendant is identical
11 with the person previously convicted. If the defendant denies
12 the identity, sentence shall be postponed for such time as to
13 permit the trial, before a jury if the defendant has a right to
14 trial by jury and demands a jury, on the sole issue of the
15 defendant's identity with the person previously convicted.

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



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1 SECTION 13. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 14. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: John M.
Paul R. ...
Rose E. ...
...
B



S.B. NO. 16

Report Title:

Marijuana; Possession; Decriminalization; School Zones

Description:

Decriminalizes the possession of one ounce or less of marijuana. Creates a civil penalty for possession of marijuana on school property or in open possession in a school zone.

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

