

JAN 24 2018

A BILL FOR AN ACT

RELATING TO PROMOTING DANGEROUS DRUGS.

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 reducing the penalty for the promotion of dangerous drugs from a
4 class C felony to a misdemeanor for first time offenders far
5 outweighs the benefits of the current felonization of this
6 offense.

7 The legislature further finds that the costs of enforcing
8 the promoting of a dangerous drug in the third degree provisions
9 are substantial. Per a *Civil Beat* article "Hawaii is Spending
10 Tens of Millions of Dollars to Lock up Low-Level Drug Offenders"
11 (November 5, 2015), as of 30 September, 2015, two hundred
12 individuals were being held in violation of promoting dangerous
13 drug in the third degree offenses. At a cost of \$140 per day,
14 and with average sentences of more than two and a half years,
15 these two hundred non-violent offenders alone are costing the
16 State over \$25,000,000.



1 The legislature additionally finds that the collateral
2 effects of having a felony conviction are far more severe than
3 those of having a misdemeanor, resulting in untold costs to the
4 individual as well as to the greater society, and that this Act
5 therefore is meant to compliment the intent of Act 72, Session
6 Laws of Hawaii 2017, relating to drug paraphernalia.

7 The legislature also finds that numerous other states have
8 misdemeanor penalties for personal drug use and possession
9 offenses, with Oregon passing a law in 2017, supported by both
10 the State Sheriffs and Chiefs of Police Associations,
11 referencing among other concerns the unintended consequences
12 that a felony conviction can have in creating barriers to
13 housing and employment.

14 The legislature further finds that these funds spent on
15 incarceration are better spent on community programming and
16 rehabilitation, such as those envisioned by the currently
17 stalled diversion program, Justice Restoration Initiative,
18 created by Act 139, Session Laws of Hawaii 2012, as well as the
19 Community Outreach Court and the Law Enforcement Assisted
20 Diversion (LEAD) pilot program.



1 The legislature, additionally finds that immigrants
2 convicted of class C felonies are potentially deportable under
3 current immigration law and denied avenues for relief. Given the
4 gravely broken immigration system, the harsh enforcement regime
5 of the current presidential administration, and Hawaii's pro-
6 immigrant policies most prominently display in Hawaii's legal
7 challenges to the current president's ban on certain travelers
8 from predominantly Muslim countries, this double jeopardy
9 treatment for a non-violent offense is severely disproportionate
10 and incongruous with the State's values.

11 Accordingly, the purpose of this Act is to establish the
12 offense of promoting a dangerous drug in the fourth degree as a
13 misdemeanor and to amend related provisions for the promotion of
14 dangerous drugs in the second and third degree for consistency.

15 Part II

16 SECTION 2. 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- Promoting a dangerous drug in the fourth degree.

20 (1) A person commits the offense of promoting a dangerous drug
21 in the fourth degree if the person is a first time offender who



1 knowingly possesses any of the following or any of their
2 respective salts, isomers, and salts of isomers:

3 (a) Cocaine under two grams;

4 (b) Methamphetamine under two grams;

5 (c) Heroin under one gram;

6 (d) Oxycodone under forty pills;

7 (e) 3.4-methylenedioxymethamphetamine (MDMA) under one
8 gram or five pills;

9 (f) Lysergic acid diethylamide under forty units; or

10 (g) Two of the above if the amount of each is half of the
11 above stipulated amount, three of the above if the
12 amount is one-third of the above stipulated amount,
13 and so forth.

14 (2) Promotion of a dangerous drug in the fourth degree is
15 a misdemeanor."

16 SECTION 3. Section 712-1242, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of promoting a dangerous
19 drug in the second degree if the person knowingly:

20 (a) Possesses twenty-five or more capsules, tablets,
21 ampules, dosage units, or syrettes, containing one or



1 more dangerous drugs[+] other than oxycodone, genetic
2 equivalents to oxycodone, or lysergic acid
3 diethylamide;

4 (b) Possesses forty or more capsules, tablets, ampules,
5 dosage units, or syrettes, containing:

6 (i) Oxycodone or generic equivalents;

7 (ii) Lysergic acid diethylamide; or

8 (iii) A combination of not more than half of the above
9 stipulated amounts of each substance;

10 [~~(b)~~] (c) Possesses one or more preparations, compounds,
11 mixtures, or substances of an aggregate weight of:

12 (i) One-eighth ounce or more, containing
13 methamphetamine, heroin, morphine, or cocaine or
14 any of their respective salts, isomers, and salts
15 of isomers; or

16 (ii) One-fourth ounce or more, containing any
17 dangerous drug; or

18 [~~(e)~~] (d) Distributes any dangerous drug in any amount."

19 SECTION 4. Section 712-1243, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:



"(1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount~~[-]~~; unless the person meets the criteria of section 712- (1)."

Part III

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY:

Will Egan
By Request



S.B. NO. 2880

Report Title:

Drug Possession; First Time Offender Penalty Reduction;
Misdemeanor

Description:

Establishes the misdemeanor offense of promoting a dangerous drug in the fourth degree for first time offenders who possess smaller amounts of a dangerous drug. Amends related provisions for the promotion of the promotion of dangerous drugs in the second and third degree for consistency.

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

