

JAN 23 2020

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# A BILL FOR AN ACT

RELATING TO DRUG OFFENSES.

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

1           SECTION 1. The legislature finds that criminal justice  
2 policies that impose harsh prison sentences increase  
3 incarceration rates and costs, but frequently do not result in a  
4 commensurate reduction in crime rates. A growing body of  
5 national research explains that incarceration only has a  
6 marginal effect on crime. In fact, the Vera Institute of  
7 Justice found in a 2017 report that increasing incarceration in  
8 state and communities that already have high incarceration rates  
9 results in even higher crime rates. The report also identified  
10 nineteen states that reduced their incarceration rates alongside  
11 their crime rates. This data suggests that excessive  
12 incarceration does not necessarily improve public safety.

13           Furthermore, the legislature finds that incarceration is a  
14 particularly expensive and ineffective response to the public  
15 health problem of personal drug use. Enforcement of the offense  
16 of promotion of a dangerous drug in the third-degree costs state  
17 taxpayers over \$13,000,000 each year to incarcerate low-level,



1 non-violent offenders. These drug possession offenses are  
2 classified as felonies and result in lengthy prison sentences  
3 and exacerbate the severe overcrowding conditions in Hawai'i's  
4 prisons. Despite decades of policies focused on criminalization  
5 and incarceration of drug users, a 2018 study of drug use in  
6 Hawai'i showed that from 2011 to 2016, there were no significant  
7 changes in adult or youth substance use. Hawai'i's experience  
8 corroborates mounting national data demonstrating that  
9 incarceration has no effect on rates of drug use or overdose  
10 deaths, but actually increases recidivism among those at low  
11 risk to reoffend. Despite its substantial expense,  
12 incarceration has not adequately deterred substance abuse or  
13 otherwise made Hawai'i communities safer. Thus, applying the  
14 harsh treatment of felony level classification and punishment to  
15 all drug possession offenses, especially those at the lowest  
16 level, has proven to be excessively costly and woefully  
17 ineffective.

18 The legislature also finds that reducing Hawai'i's  
19 overreliance on lengthy incarceration as a response to  
20 non-violent drug possession can save substantial human and  
21 financial resources, which can be reinvested in other proven



1 treatment methods to improve public health and safety. Other  
2 jurisdictions across the nation have experienced the same cost-  
3 benefit imbalance with regard to incarceration for drug crimes  
4 and, as a result, at least five states have reclassified all  
5 felony personal drug possession offenses as misdemeanors. These  
6 states are beginning to see significant reductions in their  
7 incarcerated populations and corrections spending, and are  
8 reinvesting their savings into proven treatment solutions as  
9 well as enforcement against more serious crimes. Moreover, with  
10 these policy changes, these states have taken aggressive steps  
11 toward reducing the harmful collateral consequences of felony  
12 convictions that ripple through the lives of those convicted,  
13 their families, and communities, while improving the health and  
14 safety of their communities.

15 The legislature finds that the imposition of incarceration  
16 to punish simple, low-level drug possession offenses should be  
17 limited in favor of the reduced or alternative sentencing  
18 options of misdemeanor classification. This will help reduce  
19 prison overcrowding, save taxpayer dollars, and free up  
20 resources to be reinvested into more effective treatment  
21 programs. The potential benefits of reducing the penalties for



1 first-time and low-level drug offenders far outweigh the high  
2 costs of treating these non-violent offenses as felonies.

3 Accordingly, the purpose of this Act is to:

4 (1) Establish a new misdemeanor offense of promoting a  
5 dangerous drug in the fourth degree, to include  
6 possession of dangerous drugs in the smallest amounts;  
7 and

8 (2) Limit the class C felony offense of promoting a  
9 dangerous drug in the third degree to include  
10 possession of certain dangerous drugs in an amount or  
11 weight equal to one-sixteenth of one ounce or more.

12 SECTION 2. Chapter 712, Hawaii Revised Statutes, is  
13 amended by adding a new section to part IV be appropriately  
14 designated and to read as follows:

15 "§712- Promoting a dangerous drug in the fourth degree.

16 (1) A person commits the offense of promoting a dangerous drug  
17 in the fourth degree if the person knowingly possesses any  
18 dangerous drug in any amount under one-sixteenth of an ounce.

19 (2) Promoting a dangerous drug in the fourth degree is a  
20 misdemeanor."



# S.B. NO. 2793

1 SECTION 3. Section 712-1243, Hawaii Revised Statutes, is  
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of promoting a dangerous  
4 drug in the third degree if the person knowingly possesses [~~any~~  
5 ~~dangerous drug in any amount.~~] one or more preparations,  
6 compounds, mixtures, or substances of an aggregate weight of  
7 one-sixteenth of an ounce or more, containing methamphetamine,  
8 heroin, morphine, or cocaine or any of their respective salts,  
9 isomers, and salts of isomers."

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

12 SECTION 5. This Act, upon its approval, shall take effect  
13 retroactive to June 1, 1972; provided that person convicted  
14 under section 712-1243, Hawaii Revised Statutes, prior to the  
15 effective date of this Act shall be deemed convicted of a  
16 misdemeanor and not wrongfully convicted within the meaning of  
17 chapter 661B, Hawaii Revised Statutes.

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INTRODUCED BY: Karl M. (B/R)



# S.B. NO. 2793

**Report Title:**

Promoting a Dangerous Drug in the Third Degree; Promoting a Dangerous Drug in the Fourth Degree

**Description:**

Establishes a new misdemeanor offense of promoting a dangerous drug in the fourth degree, to include possession of dangerous drugs in the smallest amounts. Limits the class C felony offense of promoting a dangerous drug in the third degree to include possession of certain dangerous drugs in an amount or weight equal to one-sixteenth of one ounce or more. Retroactive to 6/1/1972.

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

