
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 law enforcement
2 across the State has confiscated fentanyl test strips among
3 registered participants in Hawaii's statewide syringe exchange
4 program, thereby increasing the risk of accidental overdose or
5 fatal overdose. Although fentanyl test strip distribution is an
6 established feature of Hawaii's statewide syringe exchange
7 program and its ongoing overdose prevention efforts, some argue
8 that fentanyl test strips are not exempt from the State's
9 existing paraphernalia law.

10 The legislature further finds that, for over three decades,
11 Hawaii's statewide syringe exchange program has effectively
12 prevented the transmission of the human immunodeficiency virus,
13 also referred to as HIV, among persons who inject drugs. The
14 program also provides needed outreach and linkage services to
15 improve the health and well-being of those from the State's
16 under-resourced and medically vulnerable populations, including
17 those on the neighbor islands.

1 Drug law enforcement in the State, like the larger criminal
2 legal system, continues to disproportionately impact Native
3 Hawaiian residents and families. Under-resourced persons,
4 including those who are unhoused, are also subject to
5 disproportionate involvement in the criminal legal system across
6 the State.

7 According to a December 2020 report from The Pew Charitable
8 Trusts, Hawaii has the longest average term of probation in the
9 United States at fifty-nine months. That is well over twice the
10 national average of just under two years and six times the
11 average term of Kansas, the state with the shortest average
12 probation term.

13 The American Public Health Association recognizes in its
14 policy statement "Defining and Implementing a Public Health
15 Response to Drug Use and Misuse" that "the current 'war on
16 drugs' is a 'severely flawed' approach based on 'misplaced
17 priorities and strategies'". The American Public Health
18 Association notes that "the domestic drug war has also been an
19 engine of mass incarceration". Further, "criminalization of
20 substance use further stigmatizes people who use drugs, making
21 it more difficult to engage people in health care and other



1 services". As such, the American Public Health Association
2 calls for a full policy reorientation that includes ending the
3 criminalization of drug possession and people who use drugs.

4 An October 2022 article in the New England Journal of
5 Medicine called for the federal government to encourage states
6 to repeal their paraphernalia laws entirely, noting that these
7 laws were calling them harmful and unnecessary, and reduced
8 access to safer use supplies. Furthermore, the article noted
9 how the enforcement of paraphernalia laws falls
10 disproportionately on people of color and members of other
11 marginalized groups and called upon the federal government to
12 take an active role in shifting the country's legal environment
13 from "one that stigmatizes and criminalizes people who use drugs
14 to one that prioritizes their agency, dignity, and health".

15 Although possession of syringes obtained through the
16 Hawaii's statewide syringe exchange program are exempt from
17 criminal charges under Hawaii's existing paraphernalia law, the
18 mere presence of any amount of a drug like heroin or
19 amphetamines, including unusable traces and residue, in a
20 syringe can be charged as a class C felony that carries a
21 penalty of up to five years in prison.



1 Accordingly, the purpose of this Act is to repeal the
2 prohibited acts related to drug paraphernalia under the uniform
3 controlled substances act, which will:

4 (1) Help ensure the efficacy of Hawaii's ongoing public
5 health efforts to prevent accidental overdoses, fatal
6 overdoses, and the transmission of the human
7 immunodeficiency virus and hepatitis C;

8 (2) Facilitate the expansion of harm reduction-based
9 public health interventions among under resourced
10 persons; and

11 (3) Reduce the involvement of persons with behavioral
12 health problems in the State's criminal legal system.

13 SECTION 2. Section 325-21, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§~~325-21~~§~~ **Sale of sterile syringes for the prevention**

16 **of disease.** (a) The sale of sterile hypodermic syringes in a
17 pharmacy, physician's office, or health care institution for the
18 purpose of preventing the transmission of dangerous blood-borne
19 diseases, may be made solely by:

20 (1) A pharmacist licensed under chapter 461;

21 (2) A physician as defined in section 327E-2;



1 (3) A health care provider as defined in section 327E-2;
2 or

3 (4) An authorized agent of a pharmacy, as defined in
4 section 461-1, or of a health care institution, as
5 defined in section 327E-2, operating under the
6 direction of a licensed pharmacist or physician.

7 (b) The seller under subsection (a) shall provide the
8 purchaser written educational material approved by the
9 department of health under subsection ~~[(e)]~~ (d) about prevention
10 of blood-borne diseases, drug treatment, and safe disposal of
11 used syringes at sites where syringes are sold.

12 ~~[(e) The sale or purchase of sterile hypodermic syringes~~
13 ~~under subsection (a) shall not constitute an offense under~~
14 ~~section 329-43.5.~~

15 ~~(d)]~~ (c) Nothing in this section provides immunity from
16 prosecution to any person who violates any law that prohibits or
17 regulates the use, possession, dispensing, distribution, or
18 promotion of controlled substances, dangerous drugs, detrimental
19 drugs, or harmful drugs, including but not limited to violation
20 of section 329-41, 329-42, or 712-1241 to 712-1249.6.



1 ~~[(e)]~~ (d) The department of health shall produce and make
2 available to pharmacies, physicians' offices, and health care
3 institutions written educational material about prevention of
4 blood-borne diseases, drug treatment, and safe disposal of used
5 syringes for distribution under subsection (b).

6 ~~[(f)]~~ (e) For purposes of this section, "sell" or "sale"
7 means to transfer to another for value or consideration."

8 SECTION 3. Section 325-114, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[\+]§325-114[\+]~~ **Criminal liability.** ~~[(a) Exchanges under~~
11 ~~the sterile needle and syringe exchange program shall not~~
12 ~~constitute an offense under section 329-43.5 for the participant~~
13 ~~or for the employees of the department or its designees.~~

14 ~~(b)]~~ Nothing in this part provides immunity from
15 prosecution to any person for violation of any law prohibiting
16 or regulating the use, possession, dispensing, distribution, or
17 promotion of controlled substances, dangerous drugs, detrimental
18 drugs, or harmful drugs. Nothing in this part provides immunity
19 from prosecution to any person for violation of sections 329-41,
20 329-42, or 712-1241 through 712-1249.6."



1 SECTION 4. Section 329-55, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The following are subject to forfeiture according to
4 the procedures set forth in the Penal Code:

5 (1) All controlled substances and anabolic steroids which
6 have been manufactured, cultivated, grown,
7 distributed, dispensed, or acquired in violation of
8 this chapter;

9 (2) All raw materials, products, and equipment of any kind
10 which are used, or intended for use, in manufacturing,
11 cultivating, growing, compounding, processing,
12 delivering, importing, or exporting any controlled
13 substance or anabolic steroid in violation of this
14 chapter;

15 (3) All property which is used, or intended for use, as a
16 container for property described in paragraph (1) or
17 (2);

18 (4) All conveyances, including aircraft, vehicles, or
19 vessels which are used or intended for use, to
20 transport, or in any manner to facilitate the
21 transportation, for the purpose of sale, delivery or



1 receipt of property described in paragraph (1) or (2),
2 subject to the provisions of chapter 712A;

3 (5) All books, records, and research products and
4 materials, including formulas, microfilms, tapes, and
5 data which are used, or intended for use, in violation
6 of this chapter;

7 (6) All moneys, negotiable instruments, securities, or
8 other things of value furnished or intended to be
9 furnished by any person in exchange for a controlled
10 substance or anabolic steroid in violation of this
11 chapter, all proceeds traceable to such an exchange,
12 and all moneys, negotiable instruments, and securities
13 used or intended to be used to facilitate any
14 violation of this chapter, subject to the provisions
15 of chapter 712A; and

16 (7) All firearms which are visible, carried during, or
17 used in furtherance of a violation of this chapter or
18 chapter 712, part IV[~~;~~and

19 ~~(8) All drug paraphernalia as defined by section 329-1]."~~

20 SECTION 5. Section 353-66, Hawaii Revised Statutes, is
21 amended by amending subsection (f) to read as follows:



1 "(f) The Hawaii paroling authority may require a paroled
2 prisoner to undergo and complete a substance abuse treatment
3 program when the paroled prisoner has committed a violation of
4 the terms and conditions of parole involving possession or use,
5 not including to distribute or manufacture as defined in section
6 712-1240, of any dangerous drug, detrimental drug, harmful drug,
7 intoxicating compound, marijuana, or marijuana concentrate, as
8 defined in section 712-1240, or unlawful methamphetamine
9 trafficking as provided in section 712-1240.6~~[, or involving~~
10 ~~possession or use of drug paraphernalia under section 329-43.5]~~.

11 If the paroled prisoner fails to complete the substance abuse
12 treatment program or the Hawaii paroling authority determines
13 that the paroled prisoner cannot benefit from any substance
14 abuse treatment program, the paroled prisoner shall be subject
15 to revocation of parole and return to incarceration. As a
16 condition of parole, the Hawaii paroling authority may require
17 the paroled prisoner to:

18 (1) Be assessed by a certified substance abuse counselor
19 for substance abuse dependency or abuse under the
20 applicable Diagnostic and Statistical Manual and
21 Addiction Severity Index;



- 1 (2) Present a proposal to receive substance abuse
2 treatment in accordance with the treatment plan
3 prepared by a certified substance abuse counselor
4 through a substance abuse treatment program that
5 includes an identified source of payment for the
6 treatment program;
- 7 (3) Contribute to the cost of the substance abuse
8 treatment program; and
- 9 (4) Comply with any other terms and conditions for parole.

10 As used in this subsection, "substance abuse treatment
11 program" means drug or substance abuse treatment services
12 provided outside a correctional facility by a public, private,
13 or nonprofit entity that specializes in treating persons who are
14 diagnosed with having substance abuse or dependency and
15 preferably employs licensed professionals or certified substance
16 abuse counselors.

17 Nothing in this subsection shall be construed to give rise
18 to a cause of action against the State, a state employee, or a
19 treatment provider."

20 SECTION 6. Section 706-622.5, Hawaii Revised Statutes, is
21 amended by amending subsection (1) to read as follows:



1 "(1) Notwithstanding section 706-620(3), a person
2 convicted for the first or second time for [~~any offense under~~
3 ~~section 329-43.5, except offenses under subsections (a) and (b)~~
4 ~~of that section which constitute violations, involving the~~
5 ~~possession or use of drug paraphernalia or]~~ any felony offense
6 under part IV of chapter 712 involving the possession or use of
7 any dangerous drug, detrimental drug, harmful drug, intoxicating
8 compound, marijuana, or marijuana concentrate, as defined in
9 section 712-1240, but not including any offense under part IV of
10 chapter 712 involving the distribution or manufacture of any
11 such drugs or substances and not including any methamphetamine
12 offenses under sections 712-1240.7, 712-1240.8 as that section
13 was in effect before July 1, 2016, 712-1241, and 712-1242, is
14 eligible to be sentenced to probation under subsection (2) if
15 the person meets the following criteria:

16 (a) The court has determined that the person is nonviolent
17 after reviewing the person's criminal history, the
18 factual circumstances of the offense for which the
19 person is being sentenced, and any other relevant
20 information;



1 (b) The person has been assessed by a certified substance
2 abuse counselor to be in need of substance abuse
3 treatment due to dependency or abuse under the
4 applicable Diagnostic and Statistical Manual and
5 Addiction Severity Index; and

6 (c) Except for those persons directed to substance abuse
7 treatment under the supervision of the drug court, the
8 person presents a proposal to receive substance abuse
9 treatment in accordance with the treatment plan
10 prepared by a certified substance abuse counselor
11 through a substance abuse treatment program that
12 includes an identified source of payment for the
13 treatment program."

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

16 "(7) The court may require a defendant to undergo and
17 complete a substance abuse treatment program when the defendant
18 has committed a violation of the terms and conditions of
19 probation involving possession or use, not including to
20 distribute or manufacture as defined in section 712-1240, of any
21 dangerous drug, detrimental drug, harmful drug, intoxicating



1 compound, marijuana, or marijuana concentrate, as defined in
2 section 712-1240, or unlawful methamphetamine trafficking as
3 provided in section 712-1240.6~~[, or involving possession or use~~
4 ~~of drug paraphernalia under section 329-43.5]~~. If the defendant
5 fails to complete the substance abuse treatment program or the
6 court determines that the defendant cannot benefit from any
7 other suitable substance abuse treatment program, the defendant
8 shall be subject to revocation of probation and incarceration.
9 The court may require the defendant to:

- 10 (a) Be assessed by a certified substance abuse counselor
11 for substance abuse dependency or abuse under the
12 applicable Diagnostic and Statistical Manual and
13 Addiction Severity Index;
- 14 (b) Present a proposal to receive substance abuse
15 treatment in accordance with the treatment plan
16 prepared by a certified substance abuse counselor
17 through a substance abuse treatment program that
18 includes an identified source of payment for the
19 treatment program;
- 20 (c) Contribute to the cost of the substance abuse
21 treatment program; and



1 (d) Comply with any other terms and conditions of
2 probation.

3 As used in this subsection, "substance abuse treatment
4 program" means drug or substance abuse treatment services
5 provided outside a correctional facility by a public, private,
6 or nonprofit entity that specializes in treating persons who are
7 diagnosed with substance abuse or dependency and preferably
8 employs licensed professionals or certified substance abuse
9 counselors.

10 Nothing in this subsection shall be construed to give rise
11 to a cause of action against the State, a state employee, or a
12 treatment provider."

13 SECTION 8. Section 329-43.5, Hawaii Revised Statutes, is
14 repealed.

15 [~~§329-43.5 Prohibited acts related to drug paraphernalia.~~

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



1 ~~substance in violation of this chapter. A violation of this~~
2 ~~subsection shall constitute a violation subject to a fine of no~~
3 ~~more than \$500.~~

4 ~~(b) Except as provided in subsection (c), it is unlawful~~
5 ~~for any person to deliver, possess with intent to deliver, or~~
6 ~~manufacture with intent to deliver drug paraphernalia, knowing~~
7 ~~or under circumstances where one reasonably should know, that it~~
8 ~~will be used to plant, propagate, cultivate, grow, harvest,~~
9 ~~manufacture, compound, convert, produce, process, prepare, test,~~
10 ~~analyze, pack, repack, store, contain, conceal, inject, ingest,~~
11 ~~inhale, or otherwise introduce into the human body a controlled~~
12 ~~substance in violation of this chapter. A violation of this~~
13 ~~subsection shall constitute a violation subject to a fine of no~~
14 ~~more than \$500.~~

15 ~~(c) Any person eighteen years of age or over who violates~~
16 ~~subsection (b) by delivering drug paraphernalia to a person or~~
17 ~~persons under eighteen years of age who are at least three years~~
18 ~~younger than that adult person is guilty of a class B felony and~~
19 ~~upon conviction may be imprisoned pursuant to section 706-660~~
20 ~~and, if appropriate as provided in section 706-641, fined~~
21 ~~pursuant to section 706-640.~~



1 ~~(d) It is unlawful for any person to place in any~~
2 ~~newspaper, magazine, handbill, or other publication any~~
3 ~~advertisement, knowing or under circumstances where one~~
4 ~~reasonably should know, that the purpose of the advertisement,~~
5 ~~in whole or in part, is to promote the sale of objects designed~~
6 ~~or intended for use as drug paraphernalia. Any person who~~
7 ~~violates this section is guilty of a class C felony and upon~~
8 ~~conviction may be imprisoned pursuant to section 706-660 and, if~~
9 ~~appropriate as provided in section 706-641, fined pursuant to~~
10 ~~section 706-640.~~

11 ~~(e) Subsections (a) and (b) shall not apply to a person~~
12 ~~who is authorized to:~~

13 ~~(1) Acquire, possess, cultivate, use, distribute, or~~
14 ~~transport cannabis pursuant to the definition of~~
15 ~~"medical use" under section 329-121, while the person~~
16 ~~is facilitating the medical use of cannabis by a~~
17 ~~qualifying patient; or~~

18 ~~(2) Dispense, manufacture, or produce cannabis or~~
19 ~~manufactured cannabis products pursuant to and in~~
20 ~~compliance with chapter 329D, while the person is~~
21 ~~facilitating the medical use of cannabis by a~~



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1 ~~qualifying patient pursuant to part IX of chapter~~
2 ~~329."]~~

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:

Doug Carnas

JAN 20 2023



H.B. NO. 431

Report Title:

Uniform Controlled Substances Act; Drug Paraphernalia

Description:

Repeals the prohibited acts related to drug paraphernalia under the uniform controlled substances act.

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