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# A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

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

1 SECTION 1. The legislature finds that, in 1979, the  
2 federal Drug Enforcement Administration promulgated a Model Drug  
3 Paraphernalia Act, which led to the criminalization of drug  
4 paraphernalia under the laws of most states, including Hawaii.

5 The legislature further finds that a growing body of legal  
6 and public health scholarship has called for the repeal of state  
7 drug paraphernalia laws. A November 2019 article published in  
8 the *American Journal of Public Health* concluded that the full  
9 and immediate repeal of drug paraphernalia laws is warranted to  
10 reduce opioid overdose deaths and related harms and would free  
11 scarce public resources for evidence-based approaches to  
12 reducing drug-related harm. Similarly, an October 2022 article  
13 published in the *New England Journal of Medicine* characterized  
14 drug paraphernalia laws as harmful and unnecessary, finding that  
15 such laws reduce access to safer-use supplies and are enforced  
16 disproportionately against people of color and other  
17 marginalized groups. That article further urged federal



1 leadership to encourage the repeal of drug paraphernalia laws  
2 and to shift the legal environment from one that stigmatizes and  
3 criminalizes people who use drugs to one that prioritizes their  
4 agency, dignity, and health. More recently, an October 2024  
5 column published by *The Network for Public Health Law* advocated  
6 for the repeal of state drug paraphernalia laws, citing worsened  
7 health outcomes associated with continued criminalization.

8 The legislature notes that leading public health  
9 organizations have long recognized the harms caused by  
10 criminalization-based drug policy. In its 2013 policy  
11 statement, *Defining and Implementing a Public Health Response to*  
12 *Drug Use and Misuse*, the American Public Health Association  
13 described the current "war on drugs" as a severely flawed  
14 approach based on misplaced priorities and strategies, and  
15 observed that the domestic drug war has been an engine of mass  
16 incarceration. It further concluded that criminalization of  
17 substance use stigmatizes people who use drugs, making it more  
18 difficult to engage them in health care and other essential  
19 services, and therefore recommended a full policy reorientation,  
20 including the end of criminal penalties for drug possession and  
21 the decriminalization of people who use drugs.



1       The legislature recognizes the substantial evidence linking  
2       incarceration itself to poor health outcomes. A 2018 report by  
3       the Robert Wood Johnson Foundation, *Mass Incarceration Threatens*  
4       *Health Equity in America*, found that incarcerated individuals  
5       face greater risks of chronic health conditions both during  
6       incarceration and long after release. The report further  
7       documents that incarceration exposes people to conditions such  
8       as poor sanitation and ventilation and the use of solitary  
9       confinement, all of which are detrimental to long-term physical  
10      and mental health.

11       As a result, some states have begun to reevaluate their  
12      approach to drug paraphernalia laws. In 2023, Minnesota became  
13      the first state to repeal its drug paraphernalia laws entirely.  
14      Hawaii has also taken steps toward reform. Act 72, Session Laws  
15      of Hawaii 2017, reduced the offense of simple possession or use  
16      of drug paraphernalia from a class C felony to a violation,  
17      punishable by a fine of no more than \$500.

18       Despite this reform, possession of drug paraphernalia  
19      continues to serve as an entry point into the criminal legal  
20      system. Possession of even unusable traces or residue of  
21      certain controlled substances, often found on drug



1 paraphernalia, remains classified as a class C felony, carrying  
2 a potential penalty of up to five years' imprisonment and a  
3 \$10,000 fine.

4 Furthermore, Hawaii continues to maintain some of the  
5 longest probation terms in the nation. According to a December  
6 2020 report from the Pew Charitable Trusts, *States Can Shorten*  
7 *Probation and Protect Public Safety*, Hawaii has the longest  
8 average term of probation in the United States at fifty-nine  
9 months, well over twice the national average of just under two  
10 years and six times the average term of Kansas.

11 Significant disparities persist throughout Hawaii's  
12 criminal legal system, reflecting broader patterns of unequal  
13 treatment and enforcement. Drug law enforcement in Hawaii, like  
14 the larger operation of the criminal legal system, continues to  
15 disproportionately impact Native Hawaiian residents and  
16 families. People from under-resourced communities, including  
17 those who are unhoused, are also subject to disproportionate  
18 involvement in the criminal legal system across the State.

19 In recognition of these ongoing racial inequities, the  
20 legislature adopted House Concurrent Resolution No. 112, S.D. 1,  
21 Regular Session of 2021, unequivocally declaring racism to be an



1 ongoing public health crisis and committing to "dismantle all  
2 forms of racism [and] its impacts on the delivery and  
3 implementation of human and social services, economic  
4 development, health care, and public safety".

5 This Act is intended to help ensure the efficacy of  
6 Hawaii's ongoing public health efforts to prevent accidental and  
7 fatal overdoses and the transmission of the human  
8 immunodeficiency virus (HIV) and hepatitis C; facilitate the  
9 expansion of harm reduction-based interventions for under-  
10 resourced populations; and reduce the involvement of individuals  
11 with behavioral health challenges in the State's criminal legal  
12 system, which disproportionately impacts Native Hawaiian  
13 residents and families.

14 The purpose of this Act is to repeal the law prohibiting  
15 drug paraphernalia under the uniform controlled substances act.

16 SECTION 2. Section 325-21, Hawaii Revised Statutes, is  
17 amended by amending subsection (c) to read as follows:

18 "(c) The sale or purchase of sterile hypodermic syringes  
19 under subsection (a) shall not constitute [~~an~~] a criminal  
20 offense [~~under section 329-43.5~~]."



1 SECTION 3. Section 325-114, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:

3         "(a) Possession or delivery of needles or syringes shall  
4 not constitute [an] a criminal offense [~~under section 329-43.5~~] for program staff acting in the course and scope of official  
5 duties; provided that delivery is limited to other program staff  
6 or to syringe exchange participants pursuant to this part.

7 Possession of needles or syringes shall not constitute [an] a  
8 criminal offense [~~under section 329-43.5~~] for syringe exchange  
9 participants participating in a program visit.

10         (b) Possession or delivery of authorized objects shall not  
11 constitute [an] a criminal offense [~~under section 329-43.5~~] for  
12 program staff acting in the course and scope of official duties;  
13 provided that delivery is limited to other program staff or to  
14 syringe exchange participants pursuant to this part. Possession  
15 of authorized objects shall not constitute [an] a criminal  
16 offense [~~under section 329-43.5~~] for syringe exchange  
17 participants participating in a program visit. The department  
18 shall establish a specific list of authorized objects, which may  
19 be updated from time to time as needed."



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, marijuana, or marijuana concentrate, as  
10 defined in section 712-1240, or unlawful methamphetamine  
11 trafficking as provided in section 712-1240.6[, ~~or involving~~  
12 ~~possession or use of drug paraphernalia under section 329-43.5~~].

13 If the paroled prisoner fails to complete the substance abuse  
14 treatment program or the Hawaii paroling authority determines  
15 that the paroled prisoner cannot benefit from any substance  
16 abuse treatment program, the paroled prisoner shall be subject  
17 to revocation of parole and return to incarceration. As a  
18 condition of parole, the Hawaii paroling authority may require  
19 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 706-622.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (1) to read as follows:

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

17 (2) if the person meets the following criteria:

18 (a) The court has determined that the person is nonviolent  
19 after reviewing the person's criminal history, the  
20 factual circumstances of the offense for which the



1                   person is being sentenced, and any other relevant  
2                   information;

3                   (b) The person has been assessed by a certified substance  
4                   abuse counselor to be in need of substance abuse  
5                   treatment due to dependency or abuse under the  
6                   applicable Diagnostic and Statistical Manual and  
7                   Addiction Severity Index; and  
8                   (c) Except for those persons directed to substance abuse  
9                   treatment under the supervision of the drug court, the  
10                  person presents a proposal to receive substance abuse  
11                  treatment in accordance with the treatment plan  
12                  prepared by a certified substance abuse counselor  
13                  through a substance abuse treatment program that  
14                  includes an identified source of payment for the  
15                  treatment program."

16                  SECTION 6. Section 706-625, Hawaii Revised Statutes, is  
17                  amended by amending subsection (6) to read as follows:

18                  "(6) The court may require a defendant to undergo and  
19                  complete a substance abuse treatment program when the defendant  
20                  has committed a violation of the terms and conditions of  
21                  probation involving possession or use, not including to



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

11 The court may require the defendant to:

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



5 SECTION 7. Section 329-43.5, Hawaii Revised Statutes, is  
6 repealed.

7 [~~§329-43.5 Prohibited acts related to drug paraphernalia.~~]

8 (a) Except as provided in subsection (e), it is unlawful for

9 any person to use, or to possess with intent to use, drug

10 paraphernalia 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. A violation of this

15 subsection shall constitute a violation subject to a fine of no

16 more than \$500.

17 (b) Except as provided in subsection (e), it is unlawful  
18 for any person to deliver, possess with intent to deliver, or  
19 manufacture with intent to deliver drug paraphernalia, knowing  
20 or under circumstances where one reasonably should know, that it  
21 will be used to plant, propagate, cultivate, grow, harvest,



1 manufacture, compound, convert, produce, process, prepare, test,  
2 analyze, pack, repack, store, contain, conceal, inject, ingest,  
3 inhale, or otherwise introduce into the human body a controlled  
4 substance in violation of this chapter. A violation of this  
5 subsection shall constitute a violation subject to a fine of no  
6 more than \$500.

7 (c) Any person eighteen years of age or over who violates  
8 subsection (b) by delivering drug paraphernalia to a person or  
9 persons under eighteen years of age who are at least three years  
10 younger than that adult person is guilty of a class B felony and  
11 upon conviction may be imprisoned pursuant to section 706-660  
12 and, if appropriate as provided in section 706-641, fined  
13 pursuant to section 706-640.

14 (d) It is unlawful for any person to place in any  
15 newspaper, magazine, handbill, or other publication any  
16 advertisement, knowing or under circumstances where one  
17 reasonably should know, that the purpose of the advertisement,  
18 in whole or in part, is to promote the sale of objects designed  
19 or intended for use as drug paraphernalia. Any person who  
20 violates this section is guilty of a class C felony and upon  
21 conviction may be imprisoned pursuant to section 706-660 and, if



1 appropriate as provided in section 706-641, fined pursuant to  
2 section 706-640.

3 (e) Subsections (a) and (b) shall not apply to a person  
4 who is authorized to:

5 (1) Acquire, possess, cultivate, use, distribute, or  
6 transport cannabis pursuant to the definition of  
7 "medical use" under section 329-121, while the person  
8 is facilitating the medical use of cannabis by a

9 qualifying patient; or

10 (2) Dispense, manufacture, or produce cannabis or  
11 manufactured cannabis products pursuant to and in  
12 compliance with chapter 329D, while the person is  
13 facilitating the medical use of cannabis by a  
14 qualifying patient pursuant to part IX of chapter  
15 329.]"

16 SECTION 8. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval.

19

INTRODUCED BY:

Dan Garnes

JAN 15 2026



# H.B. NO. 1549

**Report Title:**

Controlled Substances; Drug Paraphernalia; Repeal

**Description:**

Repeals the law prohibiting drug paraphernalia under the Uniform Controlled Substances Act.

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

