
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
10 under-resourced populations; and reduce the involvement of
11 individuals with behavioral health challenges in the State's
12 criminal legal system, which disproportionately impacts Native
13 Hawaiian residents and families.

14 The purpose of this Act is to:

15 (1) Remove items used to plant, propagate, cultivate,
16 grow, harvest, test, analyze, pack, repack, store,
17 contain, conceal, inject, ingest, inhale, or otherwise
18 introduce into the human body controlled substances
19 from the law prohibiting drug paraphernalia under the
20 Uniform Controlled Substances Act; and



1 (2) Restrict the law prohibiting drug paraphernalia under
2 the Uniform Controlled Substances Act to only prohibit
3 items used for the manufacturing, compounding,
4 converting, production, processing, or preparing of
5 controlled substances.

6 SECTION 2. Section 329-43.5, Hawaii Revised Statutes, is
7 amended by amending subsections (a) and (b) to read as follows:

8 "(a) Except as provided in subsection (e), it is unlawful
9 for 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, or prepare[~~r~~
12 ~~test, analyze, pack, repack, store, contain, conceal, inject,~~
13 ~~ingest, inhale, or otherwise introduce into the human body]~~ a
14 controlled substance in violation of this chapter. A violation
15 of this subsection shall constitute a violation subject to a
16 fine of no 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, or prepare[
2 ~~test, analyze, pack, repack, store, contain, conceal, inject,~~
3 ~~ingest, inhale, or otherwise introduce into the human body]~~ a
4 controlled substance in violation of this chapter. A violation
5 of this subsection shall constitute a violation subject to a
6 fine of no more than \$500."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Controlled Substances; Drug Paraphernalia; Manufacture

Description:

Removes items used to plant, propagate, cultivate, grow, harvest, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body controlled substances from the law prohibiting drug paraphernalia under the Uniform Controlled Substances Act. Restricts the law prohibiting drug paraphernalia under the Uniform Controlled Substances Act to only prohibit items used for the manufacturing, compounding, converting, production, processing, or preparing of controlled substances. (SD1)

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