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

11 (b) Possession or delivery of authorized objects shall not
12 constitute [~~an~~] a criminal offense [~~under section 329-43.5~~] for
13 program staff acting in the course and scope of official duties;
14 provided that delivery is limited to other program staff or to
15 syringe exchange participants pursuant to this part. Possession
16 of authorized objects shall not constitute [~~an~~] a criminal
17 offense [~~under section 329-43.5~~] for syringe exchange
18 participants participating in a program visit. The department
19 shall establish a specific list of authorized objects, which may
20 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;



- 1 (c) Contribute to the cost of the substance abuse
2 treatment program; and
- 3 (d) Comply with any other terms and conditions of
4 probation."

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 ~~(c) 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 on July 1, 3000.



Report Title:

Controlled Substances; Drug Paraphernalia; Repeal

Description:

Repeals the law prohibiting drug paraphernalia under the Uniform Controlled Substances Act. Effective 7/1/3000. (HD1)

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