HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

H.C.R. NO. 127
H.D. 1
S.D. 1

HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY ON THE POTENTIAL IMPACT ON ADMINISTRATIVE AND JUDICIAL SYSTEMS OF STATE GOVERNMENT OF DECRIMINALIZING THE ILLEGAL POSSESSION OF DRUGS FOR PERSONAL USE IN HAWAII.

WHEREAS, despite a longstanding policy that enforces illicit drug prohibition and imposes some of the world's harshest penalties for drug possession and sales, illicit drug use in the United States has been increasing, according to the results from the 2013 National Survey on Drug Use and Health; and

WHEREAS, the survey, conducted annually by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services, found that an estimated 24,600,000 people aged twelve or older nationally--9.4 per cent of the population--had used an illicit drug in the past month, up from 8.3 per cent in 2002; and

WHEREAS, there is a growing heroin epidemic in the United States, particularly along the East Coast and in many cases beginning when patients are legally prescribed drugs containing opium; and

WHEREAS, acknowledging the need for a change in solutions to illicit drug use, the federal administration's 2014 National Drug Control Strategy presented a marked departure from previous approaches to national drug policy by focusing on both the public health and public safety aspects of drug use and substance use disorders, recognizing addiction as a disease, emphasizing the importance of preventing drug use, and promoting treatment to those who need it, including those who are involved in the criminal justice system; and
WHEREAS, the 2014 National Drug Control Strategy also recognized that many people charged with drug-related crimes are afflicted with an underlying substance abuse disorder that warrants the diversion of non-violent offenders to drug treatment instead of prison; and

WHEREAS, in Hawaii, drug court and related programs alleviate prison overcrowding and offer more effective rehabilitation options for qualified defendants by providing them with an opportunity to be granted community supervision to obtain substance abuse treatment in lieu of incarceration; and

WHEREAS, while the distribution of marijuana remains a federal offense, in 2013 the United States Department of Justice, in the wake of recent state ballot initiatives that legalized the possession of marijuana for personal use, announced an update to its marijuana enforcement policy that deferred the federal government's right to challenge state marijuana legalization laws under the expectation that each affected state would implement an appropriate regulatory system; and

WHEREAS, Hawaii is among twenty-three states that authorize and regulate medical uses of marijuana; and

WHEREAS, nineteen states and the District of Columbia have decriminalized the possession of small amounts of marijuana for personal use; and

WHEREAS, the foregoing examples at the national and state levels demonstrate a burgeoning trend towards addressing illegal drug use by focusing on treatment on a wider scale; and

WHEREAS, in 2001, Portugal became the first European country to officially abolish all criminal penalties for the possession of drugs for personal use, making these violations exclusively an administrative matter processed in noncriminal proceedings, while continuing to prosecute drug trafficking as a criminal offense; and

WHEREAS, the strategy behind Portugal's drug decriminalization framework was to maintain the prohibition against using or possessing an illicit drug for personal use without authorization but to replace penalties of imprisonment...
with the offer of therapy, under the belief that the fear of jail time drives drug addicts underground and that incarceration is more expensive than treatment; and

WHEREAS, under Portugal's revamped drug control regime, a person found in illegal possession of small amounts of drugs is ordered to appear before a panel consisting of members with a legal, medical, or social services background who determine whether and to what extent the person is addicted to drugs; and

WHEREAS, depending upon the panel's final determination, the person found in illegal possession of small amounts of drugs may be referred to a voluntary treatment program, ordered to pay a fine, or subjected to administrative sanctions, such as community service, suspension of a professional license, or restrictions on where the person may visit or who the person may associate with; and

WHEREAS, the Cato Institute, which is a public policy research organization that conducts independent, nonpartisan research on a wide range of policy issues, commissioned a 2009 report that found the following results of drug decriminalization in Portugal:

(1) No adverse effect on drug usage rates, which are among the lowest in the European Union, and particularly when compared with states with stringent criminalization regimes;

(2) A decrease in lifetime prevalence rates for drug use among various age groups, particularly for youths in the critical age groups of thirteen to fifteen year olds and sixteen to eighteen year olds;

(3) A dramatic decrease in drug-related deaths, including from sexually transmitted diseases; and

(4) Steady declines in drug trafficking convictions; and

WHEREAS, the Cato Institute report also found that money saved on drug enforcement allowed for increased resources for drug treatment programs; and
WHEREAS, the positive results from Portugal's drug
decriminalization system provide a potential model for more
effectively managing drug-related problems in the United States;
now, therefore,

BE IT RESOLVED by the House of Representatives of the
Twenty-eighth Legislature of the State of Hawaii, Regular
Session of 2016, the Senate concurring, that the Legislative
Reference Bureau is requested to conduct a study on the
potential impact on state government of decriminalizing the
illegal possession of drugs for personal use in Hawaii; and

BE IT FURTHER RESOLVED that the study include:

(1) A survey of all existing criminal drug offenses in
Hawaii that are class C felonies or lower offenses and
pertain to the illegal possession of a harmful drug,
detrimental drug, marijuana, or marijuana concentrate,
as defined in section 712-1240, Hawaii Revised
Statutes;

(2) A review of the current national drug policy of
Portugal pertaining to the illegal possession of drugs
for personal use, with a focus on the use of the
policy as a potential model for the decriminalization
of certain or all of the offenses identified under
paragraph (1); and

(3) The potential impact on administrative and judicial
systems of state government of decriminalizing certain
or all of the offenses identified under paragraph (1),
such that the conduct constituting an offense would
constitute an administrative or civil violation rather
than a criminal offense; and

BE IT FURTHER RESOLVED that the Legislative Reference
Bureau is requested to submit a written report of its findings
and recommendations, including any proposed legislation, to the
Legislature no later than twenty days prior to the convening of
the Regular Session of 2017; and

BE IT FURTHER RESOLVED that the Judiciary and the
Department of Public Safety are each requested to provide
statistics and other information as may be requested by the Bureau to assist in the timely completion of the study; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of the Legislative Reference Bureau, Chief Justice, Administrative Director of the Courts, and Director of Public Safety.