

BILL NO. 30-0018

Thirtieth Legislature of the Virgin Islands

March 6, 2013

An Act to reduce the penalties for the possession of small amounts of marijuana to fines rather than imprisonment, and to exclude possession, distribution and manufacturing of marijuana from the class of crimes under which license revocation is mandatory upon conviction

PROPOSED BY: Senator Terrence “Positive” Nelson

1 **WHEREAS**, the Constitution of the United States and federal law do not prohibit
2 states and territories from having criminal penalties that differ from federal law; and

3 **WHEREAS**, fourteen states have decriminalized simple marijuana possession,
4 namely Alaska, California, Colorado, Connecticut, Maine, Massachusetts, Minnesota,
5 Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio and Oregon; and

6 **WHEREAS**, decriminalization is the removal of [criminal penalties](#) in relation to
7 certain acts, although regulated permits or fines might still apply; and

8 **WHEREAS**, decriminalization typically reflects the changing views of society, as
9 society may come to view a particular act as not harmful; and

1 **WHEREAS**, examples of subject matters that have been the subject of changing
2 views on criminality over time in various societies include abortion and homosexuality; and

3 **WHEREAS**, decriminalization does not “legalize” activity, which would be
4 accomplished by removing all or most legal detriments from a previously illegal act; and

5 **WHEREAS**, on the national level, it is estimated that the United States spends \$12.1
6 billion on law enforcement and judicial costs related to marijuana possession, and an
7 additional \$16.9 billion in corrections costs for those convicted of marijuana possession,
8 totaling \$29 billion annually; and

9 **WHEREAS**, in the small state of Connecticut, the Connecticut Office of Fiscal
10 Analysis estimated that decriminalizing simple possession of marijuana by imposing a \$250
11 fine would save the state and local police departments \$30 million per year, and would save
12 an additional \$1.9 million in court and probation costs; and

13 **WHEREAS**, the savings resulting from a reduction in law enforcement, court and
14 corrections costs from arrest and prosecution for simple possession of marijuana are of great
15 significance given the current fiscal crisis engulfing the government of the Virgin Islands;
16 and

17 **WHEREAS**, decriminalization of marijuana would free-up criminal justice
18 resources to address more serious crimes, which is particularly salient given that the murder
19 rate in the U.S. Virgin Islands is at an all-time high; and

20 **WHEREAS**, according to a study by the Centers for Disease Control, in 2007 there
21 were 23,199 alcohol-induced deaths in the United States, excluding accidents and
22 homicides, while there were no marijuana-induced deaths; and

23 **WHEREAS**, according to the Centers for Disease Control, more than 300 people die
24 in the United States each year due to alcohol overdoses, while there has never been a
25 reported case of a marijuana overdose; and

1 **WHEREAS**, a University of California, Los Angeles (UCLA) study found a lower
2 lung cancer rate among marijuana-only smokers than non-smokers, while alcohol has been
3 found to contribute to a variety of long-term negative health effects, including cancers and
4 cirrhosis of the liver; and

5 **WHEREAS**, studies have shown that alcohol use increases the likelihood of
6 domestic abuse and sexual assaults, while marijuana use has not been linked to an increase
7 in either of these crimes; and

8 **WHEREAS**, harsh penalties for marijuana possession are not associated with lower
9 marijuana use rates and, in some cases, the opposite has been found; and

10 **WHEREAS**, according to a study released by the Citizens' Commission on Civil
11 Rights in 2000, 13% of the nation's drug users are African American; 8% are Hispanic
12 Americans and 76% are Caucasian Americans, which is a rough match with each group's
13 share of the United States population, yet African Americans represent almost 38% of all
14 drug arrests, 59% of drug convictions, and a staggering 74% of those sentenced for a drug
15 offense; and

16 **WHEREAS**, according to statistics by the Human Rights Watch and the U.S.
17 Department of Justice Bureau of Statistics released in 2000, even though African Americans
18 and Caucasian Americans use marijuana at about the same rate, African Americans are 2.5
19 times more likely to be arrested for marijuana possession offenses than Caucasian
20 Americans, and African American Males are 13 times more likely to go to jail for drug
21 offenses than Caucasian American males; and

22 **WHEREAS**, according to the Institute of Medicine, Marijuana and Medicine,
23 nausea, appetite loss, pain and anxiety are all afflictions that can be mitigated by the use of
24 marijuana; and

1 **WHEREAS**, the American College of Physicians urges an evidence-based review of
2 marijuana’s status to determine whether it should be classified as a Schedule I controlled
3 substance, and strongly supports allowing the medical usage of marijuana; Now, Therefore,

4 ***Be it enacted by the Legislature of the Virgin Islands:***

5 **SECTION 1.** Title 19, part III, chapter 29, subchapter I of the Virgin Islands Code
6 is amended by adding a new section 607a to read as follows:

7 **“607a. Possession of marijuana**

8 (a) *Definitions*

9 For the purposes of this chapter, the term—

10 (1) ‘Marijuana’ or ‘Marihuana’ means any and all parts of the hemp plant
11 cannabis, whether growing or not, the seeds thereof, the resin extracted from any
12 part of the plant, and every compound, manufacture, salt, derivative, mixture or
13 preparation of the plant, its seeds, or its resin. ‘Marijuana’ does not include fiber
14 produced from the stalks, oil or cake made from the seeds of the plant, or sterilized
15 seed of the plant which is incapable of germination if these items exist apart from
16 any other item defined as ‘marijuana’ in this section. ‘Marijuana’ does not include
17 ‘marijuana concentrate’ as defined in subsection 2 of this section.

18 (2) ‘Marijuana concentrate’ means hashish, tetrahydrocannabinols, or any
19 alkaloid, salt, derivative, preparation, compound, or mixture whether natural or
20 synthesized, of tetrahydrocannabinols.

21 (3) ‘Manufacture’ means to produce, prepare, cultivate or propagate.

22 (b) *Simple possession of marijuana*

23 Notwithstanding any other law to the contrary:

1 (1)(A) Any person who possesses two (2) ounces or less of marijuana
2 commits an infraction that is a civil offense punishable by a fine of \$100, and may
3 be subject to forfeiture of the contraband.

4 (B) Any person under the age of eighteen at the time of the offense, who
5 possesses two ounces or less of marijuana commits an infraction that is a civil
6 offense punishable by a fine of \$100, and may be subject to forfeiture of the
7 contraband. The parents or guardians of any such offender shall be notified and the
8 offender shall be required to complete an approved drug awareness program within
9 one year of the offense. Any such offender who fails to complete an approved drug
10 awareness program within one year of the offense, may be referred to the Family
11 Division of the Superior Court of the Virgin Islands for delinquency proceedings.

12 (C) All civil penalties permitted in this section may be assessed by the
13 appropriate court, however, if the Commissioner of Health promulgates regulations
14 establishing a procedure for the administrative assessment of civil penalties, the
15 Commissioner may proceed by means of either court assessment or by
16 administrative procedure.

17 (2) Any person who openly and publicly displays, consumes, or uses two
18 ounces or less of marijuana commits a misdemeanor and, upon conviction thereof,
19 shall be punished by a fine of not more than \$200.

20 (3) Any person who possesses more than two ounces, but eight ounces or
21 less, of marijuana commits a misdemeanor and, upon conviction thereof, shall be
22 punished by a fine of not more than \$200 and not less than \$100.

23 (4) Any person who possesses more than eight ounces, but sixteen ounces or
24 less, of marijuana, or who possesses three ounces or less of marijuana concentrate,

1 commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of
2 not more than \$1,000 and not less than \$200.

3 (5) Any person who possesses more than sixteen ounces of marijuana, or
4 who possesses more than three ounces of marijuana concentrate, commits a
5 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more
6 than \$5,000.

7 (c) *Possession of marijuana with intent to distribute*

8 Notwithstanding any other law to the contrary:

9 (1) It shall be unlawful for any person knowingly or intentionally to
10 dispense, sell, distribute, or possess with intent to dispense, sell or distribute
11 marijuana or marijuana concentrate. Any person who violates this subsection shall
12 be punishable as follows:

13 (A) If the offense involves sixteen or less ounces of marijuana or
14 marijuana concentrate, the offender commits a misdemeanor and, upon
15 conviction thereof, shall be sentenced to a term of imprisonment of not more
16 than one year, a fine of not more than \$1,000, or both.

17 (B) If the offense involves more than sixteen ounces but less than
18 five pounds of marijuana or marijuana concentrate, the offender commits a
19 misdemeanor and, upon conviction thereof, shall be sentenced to a term of
20 imprisonment of not more than one year, a fine of not more than \$5,000, or
21 both.

22 (C) If the offense involves more than five pounds of marijuana or
23 marijuana concentrate, the offender commits a felony and, upon conviction
24 thereof, shall be sentenced to a term of imprisonment of not more than two
25 years, a fine of not more than \$10,000, or both.

1 (d) *Manufacturing of marijuana*

2 Notwithstanding any other law to the contrary:

3 (1) It shall be unlawful for any person knowingly or intentionally to
4 manufacture, or to be allowed to be processed or manufactured on land owned or
5 controlled by him, any marijuana or marijuana concentrate. Any person who
6 violates this subsection shall be punishable as follows:

7 (A) If the offense involves ten or fewer plants, the offender commits
8 a misdemeanor and, upon conviction thereof, shall be punished by a fine not
9 less than \$100 and not more than \$1,000.

10 (B) If the offense involves more than ten plants but fewer than fifty
11 plants, the offender commits a misdemeanor and, upon conviction thereof,
12 shall be sentenced to a term of imprisonment of not more than one year, a
13 fine of not more than \$5,000, or both.

14 (C) If the offense involves fifty or more plants, the offender commits
15 a felony, and upon conviction thereof, shall be sentenced to a term of
16 imprisonment of not more than two years, a fine of not more than \$10,000, or
17 both.”

18 **SECTION 2.** Title 19, part III, chapter 29, subchapter I, section 614a of the Virgin
19 Islands Code is amended by deleting subsections (a)(1) and (2) in their entirety, and by
20 renumbering the remaining subsections accordingly.

21 **SECTION 3.** Title 20, part II, chapter 35, section 378 of the Virgin Islands Code is
22 amended in both subsections (a) and (b) by adding a sentence at the end of each subsection
23 to read as follows: “This penalty shall not be applicable to persons convicted pursuant to
24 Title 19, section 607a, Virgin Islands Code.”

BILLSUMMARY

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2 Section I of this bill amends title 19, part III, chapter 29, subchapter I of the Virgin
3 Islands Code by reducing the penalties for the possession of small amounts of marijuana to
4 fines rather than imprisonment. Internal § 607a, subsection (a) sets forth definitions of
5 terms as used in the section. Subsection (b) establishes reduced penalties for simple
6 possession of marijuana. Subsection (c) enumerates penalties for possession of marijuana
7 with intent to distribute. Subsection (d) enumerates penalties for manufacturing marijuana.

8 Section II amends title 19, part III, chapter 29, subchapter I, section 614a of the
9 Virgin Islands Code by removing the provisions regarding the trafficking of marijuana.

10 Section III amends title 20, part II, chapter 35, section 378 of the Virgin Islands
11 Code by excluding possession, distribution and manufacturing of marijuana from the class
12 of crimes under which license revocation is mandatory upon conviction.

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15 **BR13-0037/February 13, 2013/**
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