

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1174

Short Title: Increase Penalty/Drug Sales @ Parks.

(Public)

Sponsors: Representative Miller.

Referred to: Judiciary II.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR THE SALE OF DRUGS
IN PUBLIC PARKS AND PLAYGROUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled

1 substance to a person who is 13 years of age or younger shall be
2 punished as a Class C felon. Mistake of age is not a defense to a
3 prosecution under this section. It shall not be a defense that the
4 defendant did not know that the recipient was pregnant.

5 (6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and
6 (e)(4), previous convictions for offenses shall be counted by the
7 number of separate trials at which final convictions were obtained and
8 not by the number of charges at a single trial.

9 (7) If any person commits an offense under this Article for which the
10 prescribed punishment requires that any sentence of imprisonment be
11 suspended, and if he has previously been convicted for one or more
12 offenses under any law of North Carolina or any law of the United
13 States or any other state, which offenses are punishable under any
14 provision of this Article, he shall be guilty of a Class 2 misdemeanor.

15 (8) Any person 21 years of age or older who commits an offense under
16 G.S. 90-95(a)(1) on property used for an elementary or secondary
17 school or within 300 feet of the boundary of real property used for an
18 elementary or secondary school shall be punished as a Class E felon.
19 For purposes of this subdivision, the transfer of less than five grams of
20 marijuana for no remuneration shall not constitute a delivery in
21 violation of G.S. 90-95(a)(1).

22 (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal
23 institution or local confinement facility shall be guilty of a Class H
24 felony.

25 (10) Any person 21 years of age or older who commits an offense under
26 G.S. 90-95(a)(1) on property that is a playground in a public park or
27 within 300 feet of the boundary of real property that is a playground in
28 a public park shall be punished as a Class E felon. For purposes of this
29 subdivision, the transfer of less than five grams of marijuana for no
30 remuneration shall not constitute a delivery in violation of G.S. 90-
31 95(a)(1). For purposes of this subdivision the term "playground"
32 means any outdoor facility (including any parking lot appurtenant
33 thereto) intended for recreation open to the public, and with any
34 portion thereof containing three or more separate apparatuses intended
35 for the recreation of children including, but not limited to, sliding
36 boards, swingsets, and teeterboards."

37 **SECTION 2.** This act becomes effective December 1, 2001, and applies to
38 offenses committed on or after that date.