

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH50108-LH-10 (10/13)

Short Title: Amend Possession of Marijuana.

(Public)

Sponsors: Representative K. Alexander.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE PENALTY IMPOSED FOR POSSESSION OF CERTAIN
3 QUANTITIES OF MARIJUANA AND TO PROVIDE FOR THE EXPUNCTION OF A
4 CLASS 3 MISDEMEANOR CONVICTION OF POSSESSION OF MARIJUANA THAT
5 OCCURRED PRIOR TO DECEMBER 1, 2011.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 90-95(d)(4) reads as rewritten:

8 "(d) Except as provided in subsections (h) and (i) of this section, any person who
9 violates G.S. 90-95(a)(3) with respect to:

10 ...

11 (4) A controlled substance classified in Schedule VI shall be ~~guilty of a Class 3~~
12 ~~misdemeanor, but any sentence of imprisonment imposed must be suspended~~
13 ~~and the judge may not require at the time of sentencing that the defendant~~
14 ~~serve a period of imprisonment as a special condition of probation. If the~~
15 ~~quantity of the controlled substance exceeds one half of an ounce~~
16 ~~(avoirdupois) of marijuana or one twentieth of an ounce (avoirdupois) of the~~
17 ~~extracted resin of marijuana, commonly known as hashish, the violation~~
18 ~~shall be punishable as a Class 1 misdemeanor. If the quantity of the~~
19 ~~controlled substance exceeds one and one half ounces (avoirdupois) of~~
20 ~~marijuana or three twentieths of an ounce (avoirdupois) of the extracted~~
21 ~~resin of marijuana, commonly known as hashish, or if the controlled~~
22 ~~substance consists of any quantity of synthetic tetrahydrocannabinols or~~
23 ~~tetrahydrocannabinols isolated from the resin of marijuana, the violation~~
24 ~~shall be punishable as a Class I felony, punished as follows:~~

25 a. If the controlled substance is marijuana, the penalty is as follows:

26 1. If the quantity is less than one ounce (avoirdupois), the
27 violation is an infraction.

28 2. If the quantity is one ounce (avoirdupois) or more, but less
29 than one and one-half ounces (avoirdupois), the violation is a
30 Class 3 misdemeanor. However, any sentence of
31 imprisonment imposed must be suspended, and the judge may
32 not require at the time of sentencing that the defendant serve
33 a period of imprisonment as a special condition of probation.



- 1 3. If the quantity is one and one-half ounces (avoirdupois) or
2 more, but less than two ounces (avoirdupois), the violation is
3 a Class 1 misdemeanor.
- 4 4. If the quantity is two ounces (avoirdupois) or more, the
5 violation is a Class I felony.
- 6 b. If the controlled substance is the extracted resin of marijuana,
7 commonly known as hashish, the penalty is as follows:
- 8 1. If the quantity is one-twentieth of an ounce (avoirdupois) or
9 less, the violation is a Class 3 misdemeanor. However, any
10 sentence of imprisonment imposed must be suspended, and
11 the judge may not require at the time of sentencing that the
12 defendant serve a period of imprisonment as a special
13 condition of probation.
- 14 2. If the quantity is three-twentieths of an ounce (avoirdupois)
15 or less, but more than one-twentieth of an ounce
16 (avoirdupois), the violation is a Class 1 misdemeanor.
- 17 3. If the quantity is more than three-twentieths of an ounce
18 (avoirdupois), the violation is a Class I felony.
- 19 c. If the controlled substance consists of any quantity of synthetic
20 tetrahydrocannabinols or tetrahydrocannabinols isolated from the
21 resin of marijuana, the violation is a Class I felony."

22 **SECTION 2.** Article 5 of Chapter 15A of the General Statutes is amended by
23 adding a new section to read:

24 "**§ 15A-145.4. Expunction of certain possession of marijuana offenses.**

25 (a) A person who was convicted of a Class 3 misdemeanor under G.S. 90-95(d)(4) for
26 possession of marijuana before December 1, 2011, and who has not previously been convicted
27 of any felony or misdemeanor other than a traffic violation under the laws of the United States
28 or the laws of this State or any other state may, in the court where the person was convicted,
29 file a petition for expunction of the offense from the person's criminal record. The petition
30 cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of
31 any period of probation, whichever occurs later.

32 (b) The petition shall contain, but not be limited to, the following:

- 33 (1) An affidavit by the petitioner that the petitioner has been of good behavior
34 for the period since the date of conviction of the misdemeanor in question or
35 since the completion of any period of probation, whichever occurs later, and
36 has not been convicted of any felony or misdemeanor other than a traffic
37 violation under the laws of the United States or the laws of this State or any
38 other state.
- 39 (2) Verified affidavits of two persons who are not related to the petitioner or to
40 each other by blood or marriage, that they know the character and reputation
41 of the petitioner in the community in which the petitioner lives and that the
42 petitioner's character and reputation are good.
- 43 (3) A statement that the petition is a motion in the cause in the case wherein the
44 petitioner was convicted.
- 45 (4) An application on a form approved by the Administrative Office of the
46 Courts requesting and authorizing a name-based State and national criminal
47 history record check by the Department of Justice using any information
48 required by the Administrative Office of the Courts to identify the individual
49 and a search of the confidential record of expunctions maintained by the
50 Administrative Office of the Courts. The application shall be forwarded to

1 the Department of Justice and to the Administrative Office of the Courts,
2 which shall conduct the searches and report their findings to the court.

3 (5) An affidavit by the petitioner that no restitution orders or civil judgments
4 representing amounts ordered for restitution entered against the petitioner
5 are outstanding.

6 (c) The petition shall be served upon the district attorney of the court wherein the case
7 was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to
8 file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

9 (d) The judge to whom the petition is presented may call upon a probation officer for
10 any additional investigation or verification of the petitioner's conduct during the time period
11 that has lapsed since the date of the conviction or completion of probation that the judge deems
12 desirable.

13 (e) If the court, after hearing, finds that the petitioner has remained of good behavior
14 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for the
15 period of time from the date of conviction of the misdemeanor in question or the completion of
16 any period of probation, as appropriate, and the petitioner has no outstanding restitution orders
17 or civil judgments representing amounts ordered for restitution entered against the petitioner,
18 the court shall order that the petitioner be restored, in the contemplation of the law, to the status
19 the petitioner occupied before such arrest or indictment or information.

20 No person as to whom such order has been entered shall be held thereafter under any
21 provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of
22 the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or
23 response to any inquiry made of the person for any purpose.

24 (f) The court shall also order that the misdemeanor conviction be expunged from the
25 records of the court. The court shall direct all law enforcement agencies, the Department of
26 Correction, the Division of Motor Vehicles, and any other State or local government agencies
27 identified by the petitioner as bearing record of the same to expunge their records of the
28 petitioner's conviction or a civil revocation of a drivers license as the result of a criminal
29 charge. This subsection does not apply to civil or criminal charges based upon the civil
30 revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local
31 agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified
32 copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation,
33 provided the underlying criminal charge is also expunged.

34 (g) A person who files a petition for expunction of a criminal record under this section
35 must pay the clerk of superior court a fee of one hundred twenty-five dollars (\$125.00) at the
36 time the petition is filed. Fees collected under this subsection shall be deposited in the General
37 Fund. This subsection does not apply to petitions filed by an indigent."

38 **SECTION 3.** This act becomes effective December 1, 2011.