

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 654
HOUSE BILL 274

AN ACT TO INCREASE THE PENALTIES FOR CERTAIN VIOLATIONS OF THE
CONTROLLED SUBSTANCES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95 is hereby rewritten to read as follows:

"G.S. 90-95. Violations; penalties. — (a) Except as authorized by this Article, it is unlawful for any person:

- (1) to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;
 - (2) to create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;
 - (3) to possess a controlled substance.
- (b) Any person who violates G.S. 90-95(a)(1) with respect to:
- (1) a controlled substance classified in Schedule I or II shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than 10 years or fined not more than ten thousand dollars (\$10,000), or both in the discretion of the court;
 - (2) a controlled substance classified in Schedule III, IV, V, or VI shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars (\$5,000), or both in the discretion of the court, but the transfer of less than 5 grams of marihuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1);
- (c) Any person who violates G.S. 90-95(a)(2) shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars (\$5,000), or both in the discretion of the court.
- (d) Any person who violates G.S. 90-95(a)(3) with respect to:
- (1) a controlled substance classified in Schedule I shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars (\$5,000), or both in the discretion of the court;
 - (2) a controlled substance classified in Schedule II, III or IV shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars (\$2,000), or both in the discretion of the court; but if the quantity of the controlled substance, or combination of the controlled substances, exceeds 100 tablets, capsules, or other dosage units, or equivalent quantity, the violation shall be a felony punishable by a term of imprisonment of not more than five years or a fine of not more than five thousand dollars (\$5,000), or both in the discretion of the court;
 - (3) a controlled substance classified in Schedule V shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more

than six months or fined not more than five hundred dollars (\$500.00), or both in the discretion of the court;

- (4) a controlled substance classified in Schedule VI shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars (\$500.00), or both in the discretion of the court; but if the quantity of the controlled substance exceeds one ounce (avoirdupois) of marihuana or one-tenth of an ounce (avoirdupois) of the extracted resin of marihuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marihuana, the violation shall be a felony punishable by a term of imprisonment of not more than five years or a fine of not more than five thousand dollars (\$5,000), or both in the discretion of the court.

(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) If any person commits a felony under this Article after having been previously convicted of an offense under any law of North Carolina or any law of the United States or any other state, which offense would be punishable as a felony under this Article, he shall be sentenced to a term of imprisonment of up to twice the term otherwise prescribed or fined up to twice the fine otherwise prescribed, or both in the discretion of the court;
- (2) If any person commits a felony under this Article after having been previously convicted two or more times of offenses under any law of North Carolina or any law of the United States or any other state, which offenses would be punishable as felonies under this Article, he shall be sentenced to a term of imprisonment of not less than 10 years nor more than 30 years or fined not more than thirty thousand dollars (\$30,000), or both in the discretion of the court;
- (3) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than two years, 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 felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars (\$5,000), or both in the discretion of the court;
- (4) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than six months, 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 misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars (\$2,000), or both in the discretion of the court;
- (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by delivering a controlled substance to a person under 16 years of age shall be guilty of a felony and shall be sentenced to a term of imprisonment of not less than five years nor more than 30 years.

(6) For the purpose of increasing punishment, previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence but shall not preclude parole. If parole is granted, special probation shall become effective in place of parole. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation. A person whose special probation term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory or to the Charlotte, North Carolina, Police Department Laboratory for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court division of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed."

Sec. 2. Subsection (a) of G.S. 90-96 is hereby amended by striking out the word "violating" as it appears immediately after the words "is found guilty of and immediately before the words "this Article by possessing" in the first sentence of the subsection and substituting therefor the words "a misdemeanor under", and subsection (a) of G.S. 90-96 is further amended by adding the following sentence at the end of the subsection: "Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal."

Sec. 3. G.S. 90-96 is amended by adding a new section to be numbered G.S. 90-96.1 to read as follows:

"§ 90-96.1. Immunity from prosecution for minors. — Whenever any person who is not more than 18 years of age, who has not previously been convicted of any offense under this Article or under any statute of the United States of any state relating to controlled substances included in any schedule of this Article, is accused with possessing or distributing a controlled substance in violation of G.S. 90-95(a)(1) or G.S. 90-95(a)(2) or G.S. 90-95(a)(3), the court may, upon recommendation of the solicitor, grant said person immunity from prosecution for said violation(s) if said person shall disclose the identity of the person or persons from whom he obtained the controlled substance(s) for which said person is being accused of possessing or distributing."

Sec. 4. This act shall not apply to any offense committed prior to the effective date of this act, and any such offense shall be punishable as provided by the law in effect at the time such offense was committed.

Sec. 5. This act shall become effective January 1, 1974.

In the General Assembly read three times and ratified, this the 22nd day of May, 1973.