

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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SENATE BILL 791*

Short Title: Revise Marijuana Laws. (Public)

Sponsors: Senators Lowe, Fitch, Foushee (Primary Sponsors); and Waddell.

Referred to: Rules and Operations of the Senate

June 1, 2018

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF MARIJUANA THAT MAY BE LEGALLY POSSESSED FOR PERSONAL USE AND TO ALLOW FOR THE EXPUNCTION OF RECORDS RELATED TO CERTAIN CONVICTIONS FOR POSSESSION OF MARIJUANA.

The General Assembly of North Carolina enacts:

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

"§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

...

(3) To possess a controlled substance. For purposes of this subdivision, the term "controlled substance" does not include marijuana in quantities of four ounces (avoirdupois) or less.

...

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

...

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

...."

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

"§ 15A-145.7. Expunction of certain possession of marijuana offenses.



1 (a) A person who was convicted of a violation of G.S. 90-95(a)(3) for possession of
2 marijuana, and the quantity of marijuana possessed was four ounces (avoirdupois) or less, may
3 file a petition in the court of the county where the person was convicted for expunction of the
4 offense from the person's criminal record and any other official record containing an entry
5 relating to the person's apprehension, charge, trial, or conviction. The court, after notice to the
6 district attorney, shall hold a hearing on the petition and, upon finding that the violation of
7 G.S. 90-95(a)(3) involved possession of marijuana in an amount of four ounces (avoirdupois) or
8 less, the court shall order the expunction.

9 (b) Any petition for expungement under this section shall be on a form approved by the
10 Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of
11 expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

12 (c) No person as to whom such an order has been entered under this section shall be held
13 thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise
14 giving a false statement or response to any inquiry made for any purpose, by reason of the
15 person's failure to recite or acknowledge any expunged entries concerning apprehension, charge,
16 or trial.

17 (d) The court shall also order that the conviction ordered expunged under this section be
18 expunged from the records of the court and direct all law enforcement agencies bearing record
19 of the same to expunge their records of the conviction. The clerk shall notify State and local
20 agencies of the court's order as provided in G.S. 15A-150.

21 (e) Any other applicable State or local government agency shall expunge from its records
22 entries made as a result of the conviction ordered expunged under this section. The agency shall
23 also reverse any administrative actions taken against a person whose record is expunged under
24 this section as a result of the charges or convictions expunged. This subsection shall not apply to
25 the Department of Justice for DNA records and samples stored in the State DNA Database and
26 the State DNA Databank.

27 (f) A person who files a petition for expunction under this section must pay the clerk of
28 superior court a fee of one hundred dollars (\$100.00) at the time the petition is filed. Fees
29 collected under this subsection shall be deposited in the General Fund. This subsection does not
30 apply to petitions filed by an indigent."

31 **SECTION 3.** Section 1 of this act becomes effective July 1, 2018, and applies to
32 offenses committed on or after that date. The remainder of this act becomes effective July 1,
33 2018.