

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 766
Apr 15, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH30336-ML-123

Short Title: Revise Marijuana Laws. (Public)

Sponsors: Representatives Autry, Dahle, Harrison, and Hawkins (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO DECRIMINALIZE POSSESSION OF FOUR OUNCES OR LESS OF
3 MARIJUANA AND ALLOW FOR THE EXPUNCTION OF POSSESSION OF
4 MARIJUANA OFFENSES INVOLVING POSSESSION OF FOUR OUNCES OR LESS
5 OF MARIJUANA.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. DECRIMINALIZE POSSESSION OF FOUR OUNCES OR LESS OF**
9 **MARIJUANA**

10 **SECTION 1.(a)** G.S. 90-95 reads as rewritten:

11 "**§ 90-95. Violations; penalties.**

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

13 ...

14 (3) To possess a controlled substance. For purposes of this subdivision, the term
15 "controlled substance" does not include marijuana in quantities of 4 ounces
16 (avoirdupois) or less.

17 ...

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

20 ...

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

35"



1 **SECTION 1.(b)** This section becomes effective December 1, 2019, and applies to
2 offenses committed on or after that date.

3
4 **PART II. EXPUNCTION BY PETITION OF CERTAIN POSSESSION OF MARIJUANA**
5 **OFFENSES**

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

8 **"§ 15A-145.8. Expunction of certain possession of marijuana offenses.**

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

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

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

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

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

35 (f) No filing fee shall be required to file a petition under this section, and the costs of
36 expunging the records shall not be taxed against the petitioner."

37 **SECTION 2.(b)** This section becomes effective December 1, 2019.

38
39 **PART III. AUTOMATIC EXPUNCTION OF CERTAIN POSSESSION OF**
40 **MARIJUANA OFFENSES**

41 **SECTION 3.(a)** On or before July 1, 2020, the Department of Justice, in
42 collaboration with the Administrative Office of the Courts, shall review court records to identify
43 any person convicted solely of a violation of G.S. 90-95(a)(3) for possession of marijuana to
44 determine if the person's conviction qualifies for expunction under G.S. 15A-145.8, as enacted
45 by Section 2 of this act.

46 **SECTION 3.(b)** No later than December 1, 2020, the Department of Justice shall
47 file a petition in accordance with G.S. 15A-145.8 on behalf of each person the Department
48 identifies under subsection (a) of this section.

49 **SECTION 3.(c)** A court, upon receiving a petition under subsection (a) of this
50 section, shall, without holding a hearing, order the expunction in accordance with
51 G.S. 15A-145.8.

1 **SECTION 3.(d)** To the extent practicable, the Department of Justice shall send
2 notice to each person it files a petition on behalf of under subsection (b) of this section informing
3 the person that the Department is filing the petition and the effect of filing the petition.
4 Additionally, without publishing personally identifiable information, the Department shall
5 publish on the Department's Web site notice of the process conducted under this section.

6 **SECTION 3.(e)** This section does not create or authorize a private right of action to
7 enforce the provisions of this section for a person the Department fails to identify under
8 subsection (a) of this section.

9
10 **PART IV. EFFECTIVE DATE**

11 **SECTION 4.** Except as otherwise provided in this act, this act becomes effective
12 December 1, 2019.