

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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1

HOUSE BILL 1122

Short Title: Controlled Substances Evidence.

(Public)

Sponsors: Representative Gulley.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING
2 THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND
3 JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR
4 UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY,
5 WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION
6 OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 90-95 reads as rewritten:

10 **"§ 90-95. Violations; penalties.**

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

12 (1) To manufacture, sell or deliver, or possess with intent to manufacture,
13 sell or deliver, a controlled substance;

14 (2) To create, sell or deliver, or possess with intent to sell or deliver, a
15 counterfeit controlled substance;

16 (3) To possess a controlled substance.

17 (b) Except as provided in subsections (h) and (i) of this section, any person who
18 violates G.S. 90-95(a)(1) with respect to:

19 (1) A controlled substance classified in Schedule I or II shall be punished as
20 a Class H felon;

- 1 (2) A controlled substance classified in Schedule III, IV, V, or VI shall be
2 punished as a Class I felon, but the transfer of less than 5 grams of
3 marijuana for no remuneration shall not constitute a delivery in
4 violation of G.S. 90-95(a)(1).
- 5 (c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.
- 6 (d) Except as provided in subsections (h) and (i) of this section, any person who
7 violates G.S. 90-95(a)(3) with respect to:
- 8 (1) A controlled substance classified in Schedule I shall be punished as a
9 Class I felon;
- 10 (2) A controlled substance classified in Schedule II, III, or IV shall be
11 guilty of a Class 1 misdemeanor. If the controlled substance exceeds
12 four tablets, capsules, or other dosage units or equivalent quantity of
13 hydromorphone or if the quantity of the controlled substance, or
14 combination of the controlled substances, exceeds one hundred tablets,
15 capsules or other dosage units, or equivalent quantity, the violation shall
16 be punishable as a Class I felony. If the controlled substance is
17 phencyclidine, or cocaine and any salt, isomer, salts of isomers,
18 compound, derivative, or preparation thereof, or coca leaves and any
19 salt, isomer, salts of isomers, compound, derivative, or preparation of
20 coca leaves, or any salt, isomer, salts of isomers, compound, derivative
21 or preparation thereof which is chemically equivalent or identical with
22 any of these substances (except decocanized coca leaves or any
23 extraction of coca leaves which does not contain cocaine or ecgonine),
24 the violation shall be punishable as a Class I felony.
- 25 (3) A controlled substance classified in Schedule V shall be guilty of a
26 Class 2 misdemeanor;
- 27 (4) A controlled substance classified in Schedule VI shall be guilty of a
28 Class 3 misdemeanor, but any sentence of imprisonment imposed must
29 be suspended and the judge may not require at the time of sentencing
30 that the defendant serve a period of imprisonment as a special condition
31 of probation. If the quantity of the controlled substance exceeds one-half
32 of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce
33 (avoirdupois) of the extracted resin of marijuana, commonly known as
34 hashish, the violation shall be punishable as a Class 1 misdemeanor. If
35 the quantity of the controlled substance exceeds one and one-half
36 ounces (avoirdupois) of marijuana or three-twentieths of an ounce
37 (avoirdupois) of the extracted resin of marijuana, commonly known as
38 hashish, or if the controlled substance consists of any quantity of
39 synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from
40 the resin of marijuana, the violation shall be punishable as a Class I
41 felony.
- 42 (d1) Except as authorized by this Article, it is unlawful for any person to:

- 1 (1) Possess an immediate precursor chemical with intent to manufacture a
2 controlled substance; or
3 (2) Possess or distribute an immediate precursor chemical knowing, or
4 having reasonable cause to believe, that the immediate precursor
5 chemical will be used to manufacture a controlled substance.

6 Any person who violates this subsection shall be punished as a Class H felon.

7 (d2) The immediate precursor chemicals to which subsection (d1) of this section
8 applies are those immediate precursor chemicals designated by the Commission pursuant
9 to its authority under G.S. 90-88, and the following (until otherwise specified by the
10 Commission):

- 11 (1) Anthranilic acid.
12 (2) Benzyl cyanide.
13 (3) Chloroephedrine.
14 (4) Chloropseudoephedrine.
15 (5) D-lysergic acid.
16 (6) Ephedrine.
17 (7) Ergonovine maleate.
18 (8) Ergotamine tartrate.
19 (9) Ethyl Malonate.
20 (10) Ethylamine.
21 (11) Isosafrole.
22 (12) Malonic acid.
23 (13) Methylamine.
24 (14) N-acetylanthranilic acid.
25 (15) N-ethylephedrine.
26 (16) N-ethylepseudoephedrine.
27 (17) N-methylephedrine.
28 (18) N-methylpseudoephedrine.
29 (19) Norpseudoephedrine.
30 (20) Phenyl-2-propane.
31 (21) Phenylacetic acid.
32 (22) Phenylpropanolamine.
33 (23) Piperidine.
34 (24) Piperonal.
35 (25) Propionic anhydride.
36 (26) Pseudoephedrine.
37 (27) Pyrrolidine.
38 (28) Safrole.
39 (29) Thionylchloride.

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

- 43 (1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

- 1 (3) If any person commits a Class 1 misdemeanor under this Article and if
2 he has previously been convicted for one or more offenses under any
3 law of North Carolina or any law of the United States or any other state,
4 which offenses are punishable under any provision of this Article, he
5 shall be punished as a Class I felon. The prior conviction used to raise
6 the current offense to a Class I felony shall not be used to calculate the
7 prior record level;
- 8 (4) If any person commits a Class 2 misdemeanor, and if he has previously
9 been convicted for one or more offenses under any law of North
10 Carolina or any law of the United States or any other state, which
11 offenses are punishable under any provision of this Article, he shall be
12 guilty of a Class 1 misdemeanor. The prior conviction used to raise the
13 current offense to a Class 1 misdemeanor shall not be used to calculate
14 the prior conviction level;
- 15 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
16 selling or delivering a controlled substance to a person under 16 years of
17 age or a pregnant female shall be punished as a Class D felon. Mistake
18 of age is not a defense to a prosecution under this section. It shall not be
19 a defense that the defendant did not know that the recipient was
20 pregnant;
- 21 (6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and
22 (e)(4), previous convictions for offenses shall be counted by the number
23 of separate trials at which final convictions were obtained and not by the
24 number of charges at a single trial;
- 25 (7) If any person commits an offense under this Article for which the
26 prescribed punishment requires that any sentence of imprisonment be
27 suspended, and if he has previously been convicted for one or more
28 offenses under any law of North Carolina or any law of the United
29 States or any other state, which offenses are punishable under any
30 provision of this Article, he shall be guilty of a Class 2 misdemeanor;
- 31 (8) Any person 21 years of age or older who commits an offense under G.S.
32 90-95(a)(1) on property used for an elementary or secondary school or
33 within 300 feet of the boundary of real property used for an elementary
34 or secondary school shall be punished as a Class E felon. For purposes
35 of this subdivision, the transfer of less than five grams of marijuana for
36 no remuneration shall not constitute a delivery in violation of G.S. 90-
37 95(a)(1).
- 38 (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal
39 institution or local confinement facility shall be guilty of a Class I
40 felony.
- 41 (f) Any person convicted of an offense or offenses under this Article who is
42 sentenced to an active term of imprisonment that is less than the maximum active term
43 that could have been imposed may, in addition, be sentenced to a term of special

1 probation. Except as indicated in this subsection, the administration of special probation
2 shall be the same as probation. The conditions of special probation shall be fixed in the
3 same manner as probation, and the conditions may include requirements for rehabilitation
4 treatment. Special probation shall follow the active sentence. No term of special
5 probation shall exceed five years. Special probation may be revoked in the same manner
6 as probation; upon revocation, the original term of imprisonment may be increased by no
7 more than the difference between the active term of imprisonment actually served and the
8 maximum active term that could have been imposed at trial for the offense or offenses for
9 which the person was convicted, and the resulting term of imprisonment need not be
10 diminished by the time spent on special probation.

11 ~~(g) Whenever matter is submitted to the North Carolina State Bureau of~~
12 ~~Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or~~
13 ~~to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical~~
14 ~~analysis to determine if the matter is or contains a controlled substance, the report of that~~
15 ~~analysis certified to upon a form approved by the Attorney General by the person~~
16 ~~performing the analysis shall be admissible without further authentication in all~~
17 ~~proceedings in the district court division of the General Court of Justice as evidence of~~
18 ~~the identity, nature, and quantity of the matter analyzed.~~

19 (g1) Whenever matter is submitted to the North Carolina State Bureau of
20 Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or
21 to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical
22 analysis to determine if the matter is or contains a controlled substance, the report of that
23 analysis certified to upon a form approved by the Attorney General by the person
24 performing the analysis shall be admissible without further authentication in all
25 proceedings in the district court and superior court divisions of the General Court of
26 Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided,
27 however, that a report is admissible in a criminal proceeding in the superior court
28 division or in an adjudicatory hearing in juvenile court in the district court division only
29 if:

- 30 (1) The State notifies the defendant at least 10 days before trial of its
31 intention to introduce the report into evidence under this subsection and
32 provides a copy of the report to the defendant, and
33 (2) The defendant fails to notify the State at least five days before trial that
34 the defendant objects to the introduction of the report into evidence.

35 Nothing in this subsection precludes the right of any party to call any witness or to
36 introduce any evidence supporting or contradicting the evidence contained in the report.

37 (g2) Procedure for establishing chain of custody without calling unnecessary
38 witnesses. –

- 39 (1) For the purpose of establishing the chain of physical custody or control
40 of evidence consisting of or containing a substance tested or analyzed to
41 determine whether it is a controlled substance, a statement signed by
42 each successive person in the chain of custody that the person delivered
43 it to the other person indicated on or about the date stated is prima facie

1 evidence that the person had custody and made the delivery as stated,
2 without the necessity of a personal appearance in court by the person
3 signing the statement.

4 (2) The statement shall contain a sufficient description of the material or its
5 container so as to distinguish it as the particular item in question and
6 shall state that the material was delivered in essentially the same
7 condition as received. The statement may be placed on the same
8 document as the report provided for in subsection (g1) of this section.

9 (3) The provisions of this subsection may be utilized by the State only if:

10 a. The State notifies the defendant at least 10 days before trial of its
11 intention to introduce the statement into evidence under this
12 subsection and provides the defendant with a copy of the
13 statement, and

14 b. The defendant fails to notify the State at least five days before
15 trial that the defendant objects to the introduction of the
16 statement into evidence.

17 (4) Nothing in this subsection precludes the right of any party to call any
18 witness or to introduce any evidence supporting or contradicting the
19 evidence contained in the statement.

20 (h) Notwithstanding any other provision of law, the following provisions apply
21 except as otherwise provided in this Article.

22 (1) Any person who sells, manufactures, delivers, transports, or possesses
23 in excess of 50 pounds (avoirdupois) of marijuana shall be guilty of a
24 felony which felony shall be known as "trafficking in marijuana" and if
25 the quantity of such substance involved:

26 a. Is in excess of 50 pounds, but less than 100 pounds, such person
27 shall be punished as a Class H felon and shall be sentenced to a
28 minimum term of 25 months and a maximum term of 30 months
29 in the State's prison and shall be fined not less than five thousand
30 dollars (\$5,000);

31 b. Is 100 pounds or more, but less than 2,000 pounds, such person
32 shall be punished as a Class G felon and shall be sentenced to a
33 minimum term of 35 months and a maximum term of 42 months
34 in the State's prison and shall be fined not less than twenty-five
35 thousand dollars (\$25,000);

36 c. Is 2,000 pounds or more, but less than 10,000 pounds, such
37 person shall be punished as a Class F felon and shall be
38 sentenced to a minimum term of 70 months and a maximum term
39 of 84 months in the State's prison and shall be fined not less than
40 fifty thousand dollars (\$50,000);

41 d. Is 10,000 pounds or more, such person shall be punished as a
42 Class D felon and shall be sentenced to a minimum term of 175
43 months and a maximum term of 219 months in the State's prison

- 1 and shall be fined not less than two hundred thousand dollars
2 (\$200,000).
- 3 (2) Any person who sells, manufactures, delivers, transports, or possesses
4 1,000 tablets, capsules or other dosage units, or the equivalent quantity,
5 or more of methaqualone, or any mixture containing such substance,
6 shall be guilty of a felony which felony shall be known as "trafficking in
7 methaqualone" and if the quantity of such substance or mixture
8 involved:
- 9 a. Is 1,000 or more dosage units, or equivalent quantity, but less
10 than 5,000 dosage units, or equivalent quantity, such person shall
11 be punished as a Class G felon and shall be sentenced to a
12 minimum term of 35 months and a maximum term of 42 months
13 in the State's prison and shall be fined not less than twenty-five
14 thousand dollars (\$25,000);
- 15 b. Is 5,000 or more dosage units, or equivalent quantity, but less
16 than 10,000 dosage units, or equivalent quantity, such person
17 shall be punished as a Class F felon and shall be sentenced to a
18 minimum term of 70 months and a maximum term of 84 months
19 in the State's prison and shall be fined not less than fifty thousand
20 dollars (\$50,000);
- 21 c. Is 10,000 or more dosage units, or equivalent quantity, such
22 person shall be punished as a Class D felon and shall be
23 sentenced to a minimum term of 175 months and a maximum
24 term of 219 months in the State's prison and shall be fined not
25 less than two hundred thousand dollars (\$200,000).
- 26 (3) Any person who sells, manufactures, delivers, transports, or possesses
27 28 grams or more of cocaine and any salt, isomer, salts of isomers,
28 compound, derivative, or preparation thereof, or any coca leaves and
29 any salt, isomer, salts of isomers, compound, derivative, or preparation
30 of coca leaves, and any salt, isomer, salts of isomers, compound,
31 derivative or preparation thereof which is chemically equivalent or
32 identical with any of these substances (except decocainized coca leaves
33 or any extraction of coca leaves which does not contain cocaine) or any
34 mixture containing such substances, shall be guilty of a felony, which
35 felony shall be known as "trafficking in cocaine" and if the quantity of
36 such substance or mixture involved:
- 37 a. Is 28 grams or more, but less than 200 grams, such person shall
38 be punished as a Class G felon and shall be sentenced to a
39 minimum term of 35 months and a maximum term of 42 months
40 in the State's prison and shall be fined not less than fifty thousand
41 dollars (\$50,000);
- 42 b. Is 200 grams or more, but less than 400 grams, such person shall
43 be punished as a Class F felon and shall be sentenced to a

- 1 minimum term of 70 months and a maximum term of 84 months
2 in the State's prison and shall be fined not less than one hundred
3 thousand dollars (\$100,000);
- 4 c. Is 400 grams or more, such person shall be punished as a Class D
5 felon and shall be sentenced to a minimum term of 175 months
6 and a maximum term of 219 months in the State's prison and
7 shall be fined at least two hundred fifty thousand dollars
8 (\$250,000).
- 9 (3a) Any person who sells, manufactures, delivers, transports, or possesses
10 1,000 tablets, capsules or other dosage units, or the equivalent quantity,
11 or more of amphetamine, its salts, optical isomers, and salts of its
12 optical isomers or any mixture containing such substance, shall be
13 guilty of a felony which felony shall be known as "trafficking in
14 amphetamine" and if the quantity of such substance or mixture involved:
- 15 a. Is 1,000 or more dosage units, or equivalent quantity, but less
16 than 5,000 dosage units, or equivalent quantity, such person shall
17 be punished as a Class G felon and shall be sentenced to a
18 minimum term of 35 months and a maximum term of 42 months
19 in the State's prison and shall be fined not less than twenty-five
20 thousand dollars (\$25,000);
- 21 b. Is 5,000 or more dosage units, or equivalent quantity, but less
22 than 10,000 dosage units, or equivalent quantity, such person
23 shall be punished as a Class F felon and shall be sentenced to a
24 minimum term of 70 months and a maximum term of 84 months
25 in the State's prison and shall be fined not less than fifty thousand
26 dollars (\$50,000);
- 27 c. Is 10,000 or more dosage units, or equivalent quantity, such
28 person shall be punished as a Class D felon and shall be
29 sentenced to a minimum term of 175 months and a maximum
30 term of 219 months in the State's prison and shall be fined not
31 less than two hundred thousand dollars (\$200,000).
- 32 (3b) Any person who sells, manufactures, delivers, transports, or possesses
33 28 grams or more of methamphetamine shall be guilty of a felony which
34 felony shall be known as "trafficking in methamphetamine" and if the
35 quantity of such substance or mixture involved:
- 36 a. Is 28 grams or more, but less than 200 grams, such person shall
37 be punished as a Class G felon and shall be sentenced to a
38 minimum term of 35 months and a maximum term of 42 months
39 in the State's prison and shall be fined not less than fifty thousand
40 dollars (\$50,000);
- 41 b. Is 200 grams or more, but less than 400 grams, such person shall
42 be punished as a Class F felon and shall be sentenced to a
43 minimum term of 70 months and a maximum term of 84 months

- 1 in the State's prison and shall be fined not less than one hundred
2 thousand dollars (\$100,000);
- 3 c. Is 400 grams or more, such person shall be punished as a Class D
4 felon and shall be sentenced to a minimum term of 175 months
5 and a maximum term of 219 months in the State's prison and
6 shall be fined at least two hundred fifty thousand dollars
7 (\$250,000).
- 8 (4) Any person who sells, manufactures, delivers, transports, or possesses
9 four grams or more of opium or opiate, or any salt, compound,
10 derivative, or preparation of opium or opiate (except apomorphine,
11 nalbuphine, analoxone and naltrexone and their respective salts),
12 including heroin, or any mixture containing such substance, shall be
13 guilty of a felony which felony shall be known as "trafficking in opium
14 or heroin" and if the quantity of such controlled substance or mixture
15 involved:
- 16 a. Is four grams or more, but less than 14 grams, such person shall
17 be punished as a Class F felon and shall be sentenced to a
18 minimum term of 70 months and a maximum term of 84 months
19 in the State's prison and shall be fined not less than fifty thousand
20 dollars (\$50,000);
- 21 b. Is 14 grams or more, but less than 28 grams, such person shall be
22 punished as a Class E felon and shall be sentenced to a minimum
23 term of 90 months and a maximum term of 117 months in the
24 State's prison and shall be fined not less than one hundred
25 thousand dollars (\$100,000);
- 26 c. Is 28 grams or more, such person shall be punished as a Class C
27 felon and shall be sentenced to a minimum term of 225 months
28 and a maximum term of 279 months in the State's prison and
29 shall be fined not less than five hundred thousand dollars
30 (\$500,000).
- 31 (4a) Any person who sells, manufactures, delivers, transports, or possesses
32 100 tablets, capsules, or other dosage units, or the equivalent quantity,
33 or more, of Lysergic Acid Diethylamide, or any mixture containing such
34 substance, shall be guilty of a felony, which felony shall be known as
35 "trafficking in Lysergic Acid Diethylamide". If the quantity of such
36 substance or mixture involved:
- 37 a. Is 100 or more dosage units, or equivalent quantity, but less than
38 500 dosage units, or equivalent quantity, such person shall be
39 punished as a Class G felon and shall be sentenced to a minimum
40 term of 35 months and a maximum term of 42 months in the
41 State's prison and shall be fined not less than twenty-five
42 thousand dollars (\$25,000);

- 1 b. Is 500 or more dosage units, or equivalent quantity, but less than
2 1,000 dosage units, or equivalent quantity, such person shall be
3 punished as a Class F felon and shall be sentenced to a minimum
4 term of 70 months and a maximum term of 84 months in the
5 State's prison and shall be fined not less than fifty thousand
6 dollars (\$50,000);
- 7 c. Is 1,000 or more dosage units, or equivalent quantity, such
8 person shall be punished as a Class D felon and shall be
9 sentenced to a minimum term of 175 months and a maximum
10 term of 219 months in the State's prison and shall be fined not
11 less than two hundred thousand dollars (\$200,000).
- 12 (5) Except as provided in this subdivision, a person being sentenced under
13 this subsection may not receive a suspended sentence or be placed on
14 probation. The sentencing judge may reduce the fine, or impose a prison
15 term less than the applicable minimum prison term provided by this
16 subsection, or suspend the prison term imposed and place a person on
17 probation when such person has, to the best of his knowledge, provided
18 substantial assistance in the identification, arrest, or conviction of any
19 accomplices, accessories, co-conspirators, or principals if the sentencing
20 judge enters in the record a finding that the person to be sentenced has
21 rendered such substantial assistance.
- 22 (6) Sentences imposed pursuant to this subsection shall run consecutively
23 with and shall commence at the expiration of any sentence being served
24 by the person sentenced hereunder.
- 25 (i) The penalties provided in subsection (h) of this section shall also apply to any
26 person who is convicted of conspiracy to commit any of the offenses described in
27 subsection (h) of this section."
- 28 Section 2. This act becomes effective December 1, 1997, and applies to
29 criminal offenses committed on or after that date.