

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 637

Short Title: Expunction of Marijuana Offense. (Public)

Sponsors: Representative Alexander (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PENALTY IMPOSED FOR POSSESSION OF CERTAIN
QUANTITIES OF MARIJUANA AND TO PROVIDE FOR THE EXPUNCTION OF A
CLASS 3 MISDEMEANOR CONVICTION OF POSSESSION OF MARIJUANA THAT
OCCURRED PRIOR TO DECEMBER 1, 2013.

The General Assembly of North Carolina enacts:

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

"(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
(avoirdupois) of marijuana, 7 grams of a synthetic cannabinoid or any
mixture containing such substance, 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 ounces
(avoirdupois) of marijuana, 21 grams of a synthetic cannabinoid or any
mixture containing such substance, 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.~~ punished as
follows:

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

1. If the quantity is less than one ounce (avoirdupois), the
violation is an infraction.
2. If the quantity is one ounce (avoirdupois) or more, but less
than one and one-half ounces (avoirdupois), the violation is a
Class 3 misdemeanor. However, any sentence of
imprisonment imposed must be suspended, and the judge may



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- 1 not require at the time of sentencing that the defendant serve
2 a period of imprisonment as a special condition of probation.
3 3. If the quantity is one and one-half ounces (avoirdupois) or
4 more, but less than two ounces (avoirdupois), the violation is
5 a Class 1 misdemeanor.
6 4. If the quantity is two ounces (avoirdupois) or more, the
7 violation is a Class I felony.

8 b. If the controlled substance is the extracted resin of marijuana,
9 commonly known as hashish, the penalty is as follows:

- 10 1. If the quantity is one-twentieth of an ounce (avoirdupois) or
11 less, the violation is a Class 3 misdemeanor. However, any
12 sentence of imprisonment imposed must be suspended, and
13 the judge may not require at the time of sentencing that the
14 defendant serve a period of imprisonment as a special
15 condition of probation.
16 2. If the quantity is three-twentieths of an ounce (avoirdupois)
17 or less, but more than one-twentieth of an ounce
18 (avoirdupois), the violation is a Class 1 misdemeanor.
19 3. If the quantity is more than three-twentieths of an ounce
20 (avoirdupois), the violation is a Class I felony.

21 c. If the controlled substance consists of any quantity of synthetic
22 tetrahydrocannabinols or tetrahydrocannabinols isolated from the
23 resin of marijuana, the violation is a Class I felony."

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

26 **"§ 15A-145.6. Expunction of certain possession of marijuana offenses.**

27 (a) A person who was convicted of a Class 3 misdemeanor under G.S. 90-95(d)(4) for
28 possession of marijuana before December 1, 2013, and who has not previously been convicted
29 of any felony or misdemeanor other than a traffic violation under the laws of the United States
30 or the laws of this State or any other state may, in the court where the person was convicted,
31 file a petition for expunction of the offense from the person's criminal record. The petition
32 cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of
33 any period of probation, whichever occurs later.

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

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

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

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

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

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

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

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

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

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

39 **SECTION 3.** This act becomes effective December 1, 2013.