

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 888

Short Title: Drug Law Amendments.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

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:

- (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) Except as provided in subsections (h) and (i) of this section, 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 punished as a Class H felon, except that the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felon;
- (2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. The transfer of less than 5 grams of marijuana for no

1 remuneration shall not constitute a delivery in violation of G.S. 90-  
2 95(a)(1).

3 (c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

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

6 (1) A controlled substance classified in Schedule I shall be punished as a  
7 Class I felon;

8 (2) A controlled substance classified in Schedule II, III, or IV shall be  
9 guilty of a Class 1 misdemeanor. If the controlled substance exceeds  
10 four tablets, capsules, or other dosage units or equivalent quantity of  
11 hydromorphone or if the quantity of the controlled substance, or  
12 combination of the controlled substances, exceeds one hundred tablets,  
13 capsules or other dosage units, or equivalent quantity, the violation shall  
14 be punishable as a Class I felony. If the controlled substance is  
15 methamphetamine, amphetamine, phencyclidine, or cocaine and any  
16 salt, isomer, salts of isomers, compound, derivative, or preparation  
17 thereof, or coca leaves and any salt, isomer, salts of isomers, compound,  
18 derivative, or preparation of coca leaves, or any salt, isomer, salts of  
19 isomers, compound, derivative or preparation thereof which is  
20 chemically equivalent or identical with any of these substances (except  
21 decocanized coca leaves or any extraction of coca leaves which does not  
22 contain cocaine or ecgonine), the violation shall be punishable as a  
23 Class I felony.

24 (3) A controlled substance classified in Schedule V shall be guilty of a  
25 Class 2 misdemeanor;

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

41 (d1) Except as authorized by this Article, it is unlawful for any person to:

42 (1) Possess an immediate precursor chemical with intent to manufacture a  
43 controlled substance; or

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

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

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

- 9 ~~(1) Anthranilic acid.~~  
10 (1) Anhydrous ammonia.  
11 (1a) 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 (10a) Iodine.  
22 (11) Isosafrole.  
23 (11a) Lithium.  
24 (12) Malonic acid.  
25 (13) Methylamine.  
26 (14) N-acetylanthranilic acid.  
27 (15) N-ethylephedrine.  
28 (16) N-ethylepseudoephedrine.  
29 (17) N-methylephedrine.  
30 (18) N-methylpseudoephedrine.  
31 (19) Norpseudoephedrine.  
32 (20) Phenyl-2-propane.  
33 (21) Phenylacetic acid.  
34 (22) Phenylpropanolamine.  
35 (23) Piperidine.  
36 (24) Piperonal.  
37 (25) Propionic anhydride.  
38 (26) Pseudoephedrine.  
39 (27) Pyrrolidine.  
40 (27a) Red phosphorous.  
41 (28) Safrole.  
42 (28a) Sodium.  
43 (29) Thionylchloride.

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

4 (1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

5 (3) If any person commits a Class 1 misdemeanor under this Article and if  
6 he has previously been convicted for one or more offenses under any  
7 law of North Carolina or any law of the United States or any other state,  
8 which offenses are punishable under any provision of this Article, he  
9 shall be punished as a Class I felon. The prior conviction used to raise  
10 the current offense to a Class I felony shall not be used to calculate the  
11 prior record level.

12 (4) If any person commits a Class 2 misdemeanor, and if he has previously  
13 been convicted for one or more offenses under any law of North  
14 Carolina or any law of the United States or any other state, which  
15 offenses are punishable under any provision of this Article, he shall be  
16 guilty of a Class 1 misdemeanor. The prior conviction used to raise the  
17 current offense to a Class 1 misdemeanor shall not be used to calculate  
18 the prior conviction level.

19 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by  
20 selling or delivering a controlled substance to a person under 16 years of  
21 age but more than 13 years of age or a pregnant female shall be  
22 punished as a Class D felon. Any person 18 years of age or over who  
23 violates G.S. 90-95(a)(1) by selling or delivering a controlled substance  
24 to a person who is 13 years of age or younger shall be punished as a  
25 Class C felon. Mistake of age is not a defense to a prosecution under  
26 this section. It shall not be a defense that the defendant did not know  
27 that the recipient was pregnant.

28 (6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and  
29 (e)(4), previous convictions for offenses shall be counted by the number  
30 of separate trials at which final convictions were obtained and not by the  
31 number of charges at a single trial.

32 (7) If any person commits an offense under this Article for which the  
33 prescribed punishment requires that any sentence of imprisonment be  
34 suspended, and if he has previously been convicted for one or more  
35 offenses under any law of North Carolina or any law of the United  
36 States or any other state, which offenses are punishable under any  
37 provision of this Article, he shall be guilty of a Class 2 misdemeanor.

38 (8) Any person 21 years of age or older who commits an offense under G.S.  
39 90-95(a)(1) on property used for an elementary or secondary school or  
40 within 300 feet of the boundary of real property used for an elementary  
41 or secondary school shall be punished as a Class E felon. For purposes  
42 of this subdivision, the transfer of less than five grams of marijuana for

1 no remuneration shall not constitute a delivery in violation of G.S. 90-  
2 95(a)(1).

3 (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal  
4 institution or local confinement facility shall be guilty of a Class H  
5 felony.

6 (f) Any person convicted of an offense or offenses under this Article who is  
7 sentenced to an active term of imprisonment that is less than the maximum active term  
8 that could have been imposed may, in addition, be sentenced to a term of special  
9 probation. Except as indicated in this subsection, the administration of special probation  
10 shall be the same as probation. The conditions of special probation shall be fixed in the  
11 same manner as probation, and the conditions may include requirements for rehabilitation  
12 treatment. Special probation shall follow the active sentence. No term of special  
13 probation shall exceed five years. Special probation may be revoked in the same manner  
14 as probation; upon revocation, the original term of imprisonment may be increased by no  
15 more than the difference between the active term of imprisonment actually served and the  
16 maximum active term that could have been imposed at trial for the offense or offenses for  
17 which the person was convicted, and the resulting term of imprisonment need not be  
18 diminished by the time spent on special probation.

19 (g) 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 15 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 (g1) 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 (g) 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 15 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 10 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 10 pounds, but less than 50 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 50 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 e. ~~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 or amphetamine shall be guilty  
34 of a felony which felony shall be known as 'trafficking in  
35 ~~methamphetamine~~ methamphetamine or amphetamine' and if the quantity  
36 of 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~~ Class F felon and shall be sentenced to a  
39 minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84  
40 months in the State's prison and shall be fined not less than fifty  
41 thousand 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~~ Class E felon and shall be sentenced to a



- 1 minimum term of ~~70-90~~ months and a maximum term of ~~84-117~~  
2 months in the State's prison and shall be fined not less than one  
3 hundred thousand dollars (\$100,000);
- 4 c. Is 400 grams or more, such person shall be punished as a ~~Class D~~  
5 Class C felon and shall be sentenced to a minimum term of ~~175~~  
6 225 months and a maximum term of ~~249-279~~ months in the  
7 State's prison and shall be fined at least two hundred fifty  
8 thousand dollars (\$250,000).
- 9 (4) Any person who sells, manufactures, delivers, transports, or possesses  
10 four grams or more of opium or opiate, or any salt, compound,  
11 derivative, or preparation of opium or opiate (except apomorphine,  
12 nalbuphine, analoxone and naltrexone and their respective salts),  
13 including heroin, or any mixture containing such substance, shall be  
14 guilty of a felony which felony shall be known as "trafficking in opium  
15 or heroin" and if the quantity of such controlled substance or mixture  
16 involved:
- 17 a. Is four grams or more, but less than 14 grams, such person shall  
18 be punished as a Class F felon and shall be sentenced to a  
19 minimum term of 70 months and a maximum term of 84 months  
20 in the State's prison and shall be fined not less than fifty thousand  
21 dollars (\$50,000);
- 22 b. Is 14 grams or more, but less than 28 grams, such person shall be  
23 punished as a Class E felon and shall be sentenced to a minimum  
24 term of 90 months and a maximum term of 117 months in the  
25 State's prison and shall be fined not less than one hundred  
26 thousand dollars (\$100,000);
- 27 c. Is 28 grams or more, such person shall be punished as a Class C  
28 felon and shall be sentenced to a minimum term of 225 months  
29 and a maximum term of 279 months in the State's prison and  
30 shall be fined not less than five hundred thousand dollars  
31 (\$500,000).
- 32 (4a) Any person who sells, manufactures, delivers, transports, or possesses  
33 100 tablets, capsules, or other dosage units, or the equivalent quantity,  
34 or more, of Lysergic Acid Diethylamide, or any mixture containing such  
35 substance, shall be guilty of a felony, which felony shall be known as  
36 "trafficking in Lysergic Acid Diethylamide". If the quantity of such  
37 substance or mixture involved:
- 38 a. Is 100 or more dosage units, or equivalent quantity, but less than  
39 500 dosage units, or equivalent quantity, such person shall be  
40 punished as a Class G felon and shall be sentenced to a minimum  
41 term of 35 months and a maximum term of 42 months in the  
42 State's prison and shall be fined not less than twenty-five  
43 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. G.S. 90-95.3 reads as rewritten:

29        "**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases;  
30        restitution for drug analyses. ~~analyses; restitution for seizure and cleanup~~  
31        of clandestine laboratories.**

32        (a)    When any person is convicted of an offense under this Article, the court may  
33        order him to make restitution to any law-enforcement agency for reasonable expenditures  
34        made in purchasing controlled substances from him or his agent as part of an  
35        investigation leading to his conviction.

36        (b)    When any person is convicted of an offense under this Article, the court may  
37        order him to make restitution in the sum of one hundred dollars (\$100.00) to the State of  
38        North Carolina for the expense of analyzing any controlled substance possessed by him  
39        or his agent as part of an investigation leading to his conviction. Any funds received  
40        under this subsection shall be deposited in the General Fund. ~~Fund~~; however, if the  
41        analysis was performed by the State Bureau of Investigation Crime Laboratory the funds  
42        shall be deposited into the Department of Justice Special Fund.

1       (c) When any person is convicted of an offense under this Article involving the  
2 manufacture of controlled substances, the court must order the person to make restitution  
3 for the actual cost of cleanup to the law enforcement agency that cleaned up any  
4 clandestine laboratory used to manufacture the controlled substances, including personnel  
5 overtime, equipment, and supplies."

6               Section 3. Section 1 of this act becomes effective December 1, 1999, and  
7 applies to offenses committed on or after that date. The remainder of this act is effective  
8 when it becomes law.