

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 267
Second Edition Engrossed 3/21/89
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Short Title: Drug Violation Changes.

(Public)

Sponsors:

Referred to:

February 20, 1989

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT AN ADULT WHO USES, SOLICITS, OR HIRES A
2 MINOR TO COMMIT A DRUG VIOLATION IS GUILTY OF A CLASS E
3 FELONY AND IS STRICTLY LIABLE FOR THE MINOR'S DRUG
4 ADDICTION, TO INCREASE THE SENTENCE FOR THE ILLEGAL SALE OR
5 DELIVERY OF DRUGS TO A MINOR OR A PREGNANT WOMAN, AND TO
6 PROVIDE THAT A PERSON TWENTY YEARS OF AGE OR OLDER WHO
7 COMMITS A DRUG OFFENSE ON SCHOOL PROPERTY OR WITHIN 300
8 FEET OF THE BOUNDARY OF A PUBLIC SCHOOL IS GUILTY OF A CLASS
9 E FELONY.
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11 The General Assembly of North Carolina enacts:

12 Section 1. Article 5 of Chapter 90 of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 90-95.4. Employing minor to commit a drug law violation.**

15 (a) A person 18 years of age or over who uses, solicits, directs, hires, or employs
16 a person under 18 years of age to commit a violation of G.S. 90-95 shall be punished as
17 a Class E felon.

18 (b) Mistake of Age. Mistake of age is not a defense to a prosecution under this
19 section.

1 (c) A person who is convicted under this section shall be strictly liable in any
2 civil action brought for damages on behalf of a minor arising out of the minor's drug
3 addiction which was contributed to, influenced, or induced by said person."

4 Sec 2. G.S. 90-95(e) reads as rewritten:

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

8 (1),(2) Repealed by Session Laws 1979, c. 760, s. 5.

9 (3) If any person commits an offense under this Article for which the
10 prescribed punishment includes imprisonment for not more than two
11 years, and if he has previously been convicted for one or more offenses
12 under any law of North Carolina or any law of the United States or any
13 other state, which offenses are punishable under any provision of this
14 Article, he shall be punished as a Class I felon;

15 (4) If any person commits an offense under this Article for which the
16 prescribed punishment includes imprisonment for not more than six
17 months, and if he has previously been convicted for one or more
18 offenses under any law of North Carolina or any law of the United
19 States or any other state, which offenses are punishable under any
20 provision of this Article, he shall be guilty of a misdemeanor and shall
21 be sentenced to a term of imprisonment of not more than two years or
22 fined not more than two thousand dollars (\$2,000), or both in the
23 discretion of the court;

24 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
25 selling or delivering a controlled substance to a person under ~~16-18~~
26 years of age or a pregnant female shall be punished as a Class E ~~felon;~~
27 felon. It shall not be a defense that the defendant mistakenly believed
28 that the recipient of the controlled substance was 18 years of age or
29 older, even if the mistaken belief was reasonable. It shall not be a
30 defense that the defendant did not know that the recipient was
31 pregnant;

32 (6) For the purpose of increasing punishment, previous convictions for
33 offenses shall be counted by the number of separate trials at which
34 final convictions were obtained and not by the number of charges at a
35 single trial;

36 (7) If any person commits an offense under this Article for which the
37 prescribed punishment requires that any sentence of imprisonment be
38 suspended, and if he has previously been convicted for one or more
39 offenses under any law of North Carolina or any law of the United
40 States or any other state, which offenses are punishable under any
41 provision of this Article, he shall be guilty of a misdemeanor and shall
42 be sentenced to a term of imprisonment of not more than six months or
43 fined not more than five hundred dollars (\$500.00), or both in the
44 discretion of the court.;

- 1 (8) Any person 20 years of age or older who commits an offense under
2 G.S. 90-95(a)(1) on public school property or within 300 feet of the
3 boundary of real property used for a public school shall be punished as
4 a Class E felon. For purposes of this subdivision, the transfer of less
5 than five grams of marijuana for no remuneration shall not constitute a
6 delivery in violation of G.S. 90-95(a)(1). A person sentenced under
7 this subdivision must serve a mandatory term of imprisonment of no
8 less than two years, notwithstanding the provisions of G.S. 90-95(h)(5)
9 or any other law. The sentencing judge may not suspend the
10 mandatory two-year term of imprisonment or place the person on
11 probation for the mandatory two-year term of imprisonment. During
12 that time the prisoner is not eligible for early parole or early release."
13 Sec. 3. This act shall become effective October 1, 1989, and shall apply to
14 offenses occurring on or after that date.