

CHAPTER 38
FORMERLY
HOUSE BILL NO. 39
AS AMENDED BY
HOUSE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MARIJUANA.

WHEREAS, the General Assembly finds that it is in the best interest of the people of this State to provide an alternative to incarceration for marijuana possession for personal use;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 4701, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly:

§ 4701 Definitions.

(33) “Personal use quantity” shall mean one ounce or less of marijuana in the form of leaf marijuana. Leaf marijuana means the dried leaves and flowering tops of the plant cannabis sativa L.

Section 2. Amend Section 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4764 Possession of marijuana; class B misdemeanor, ~~or unclassified misdemeanor, or civil violation~~.

(a) Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. Any person 18 years of age or older who knowingly or intentionally ~~possesses, uses, or consumes, or possesses other than a personal use quantity of~~ a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(b) Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$100. Any person 18 years of age or older who knowingly or intentionally ~~possesses, uses, or consumes, or possesses other than a personal use quantity of~~ a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, ~~and~~ imprisoned not more than 3 months, or both.

(c) Any person 21 years of age or older who knowingly or intentionally possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be assessed a civil penalty of \$100.00 in addition to such routine assessments necessary for the administration of civil violations and the marijuana shall be forfeited. Private use or consumption by a person 21 years of age or older of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title shall likewise be punishable by a civil penalty under this subsection. Any person 18 years of age or older, but under 21 years of age, who commits any of the acts described in this subsection shall be assessed a civil penalty of \$100 for the first offense and shall be guilty of an unclassified misdemeanor and fined \$100 for a second or subsequent offense. Unpaid fines shall double if not paid within 90 days of final adjudication of the violation.

(d) Any person 18 years of age or older who knowingly or intentionally uses or consumes up to a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title in an area accessible to the public or in a moving vehicle, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$200, imprisoned not more than five days, or both. For purposes of this section “area accessible to the public” means any of the following:

(1) Sidewalks, streets, alleys, parking lots, parks, playgrounds, stores, restaurants, and any other areas to which the general public is invited.

(2) Any outdoor location within a distance of 10 feet from a sidewalk, street, alley, parking lot, park, playground, store, restaurant, or any other area to which the general public is invited.

(3) Any outdoor location within a distance of 10 feet from the entrances, exits, windows that open, or ventilation intakes of any public or private building.

(e) Information concerning a civil offense classified in §4764(c) of this title shall not appear on a person's certified criminal record.

(f) Nothing contained herein shall be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, such as Marinol, or the possession of more than one ounce of marijuana, or selling, manufacturing, or trafficking in marijuana.

(g) Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices, or policies concerning the operation of motor vehicles or other actions taken while under the influence of marijuana.

(h) Nothing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure.

(i) Any person who was convicted of a single criminal offense under subsection (c) of this section and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (c) of this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section which remains outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373(c), 4374 and 4375 of Title 11. Nothing in this section shall prohibit the Family Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon pursuant to §§ 4361 through 4363 of Title 11 shall not prohibit an expungement under this section. All sentencing orders for violations of this section by persons under the age of 21 at the time of the offense shall state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to applications for expungement plus a \$100 fee payable to the State Bureau of Investigation for administrative costs.

Section 3. Amend Section 4771, Title 16 of the Delaware Code by making insertions as shown by strike through and deletions as shown by underline as follows:

§ 4771 Drug paraphernalia.

(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17) of this title. Except that any person charged under § 4764 (a), (b), or (d), or assessed a civil penalty under § 4764(c), shall not also be charged with this offense if in possession of drug paraphernalia pertaining to the use of marijuana.

(b) It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell or offer for sale drug paraphernalia, as defined in § 4701(17) of this title, knowing or under circumstances where one should reasonably know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, re-pack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

Section 4. Amend Section 4774, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4774 Penalties.

(a) Possession. — Except as described in subsection (b) of this section, any ~~Any~~ person who uses or possesses with intent to use drug paraphernalia is guilty of a class B misdemeanor.

(b) Possession for personal use of marijuana. -- Any person who uses or possesses drug paraphernalia for the use or possession of a personal use quantity of marijuana shall be assessed a civil penalty of not more than \$100.00, in addition to such routine assessments necessary for the administration of civil violations.

Section 5. Amend Section 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4795 Jurisdiction.

(a) The Superior Court shall have original and exclusive jurisdiction over any violation of this chapter by persons 18 years of age or older.

(b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of Common Pleas shall have original jurisdiction over any violation of:

(1) Section 4764(a), (b), and (d) of this title;

(2) Section 4771 of this title, except where jurisdiction over the civil penalty resides in the Justice of the Peace Court pursuant to subsection (c) of this section; by persons 18 years of age or older.

(c) The Justice of the Peace Court shall have original jurisdiction over any violation of:

(1) Section 4764(c) of this title;

(2) Section 4774(b) of this title; by persons 18 years of age or older.

(c) The Family Court shall have original and exclusive jurisdiction over violations of this chapter by persons under age 18.

Section 6. This Act takes effect six months after its enactment into law and shall be applicable to all marijuana offenses, however courts shall retain the discretion to prohibit possession or use of marijuana as a condition of probation or pre-trial release.

Approved June 18, 2015