

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1081
HOUSE BILL 267

AN ACT TO PROVIDE THAT IT IS A FELONY OFFENSE FOR A PERSON EIGHTEEN YEARS OF AGE OR OLDER TO EMPLOY A MINOR TO COMMIT A DRUG VIOLATION, TO PROVIDE THAT A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO HIRES A MINOR TO COMMIT A DRUG VIOLATION IS CIVILLY LIABLE FOR DAMAGES FOR DRUG ADDICTION PROXIMATELY CAUSED BY THE VIOLATION, TO INCREASE THE SENTENCE FOR THE ILLEGAL SALE OR DELIVERY OF DRUGS TO A MINOR OR A PREGNANT WOMAN, AND TO PROVIDE THAT A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO COMMITS A DRUG OFFENSE ON SCHOOL PROPERTY OR WITHIN 300 FEET OF THE BOUNDARY OF A SCHOOL IS GUILTY OF A CLASS E FELONY.

The General Assembly of North Carolina enacts:

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

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

(a) A person who is at least 18 years old but less than 21 years old who hires a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as a felony that is one class more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired.

(b) A person 21 years of age or older who hires a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as a felony that is two classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired.

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

(d) The term 'minor' as used in this section is defined as an individual who is less than 18 years of age."

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

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

(1),(2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than two years, and if he has previously been convicted for one or more offenses

under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon;

- (4) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than six months, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars (\$2,000), or both in the discretion of the court;
- (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class E felon; felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;
- (6) For the purpose of increasing punishment, previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;
- (7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars (\$500.00), or both in the discretion of the ~~court.~~ court;
- (8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). A person sentenced under this subdivision must serve a mandatory term of imprisonment of no less than two years, notwithstanding the provisions of G.S. 90-95(h)(5) or any other law. The sentencing judge may not suspend the mandatory two-year term of imprisonment or place the person on probation for the mandatory two-year term of imprisonment. During that time the prisoner is not eligible for early parole or early release."

Sec. 3. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-95.5. Civil liability - employing a minor to commit a drug offense.

A person 21 years of age or older, who hires or employs a person under 18 years of age to commit a violation of G.S. 90-95 is liable in a civil action for damages for drug addiction proximately caused by the violation. The doctrines of contributory negligence and assumption of risk are no defense to liability under this section."

Sec. 4. This act shall become effective October 1, 1990. This act shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.