

**An Outline of the Drug Laws of
the United States of America and of the State of North Carolina**

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This is the first in a series of monthly columns on topics of interest to persons who are, or who may become, involved with the criminal justice system of the State of North Carolina or of the United States Government. Today's column will focus on drug crimes in North Carolina and the state and federal laws which control them. Prohibited acts and the penalties therefore are addressed in a general manner in this column, but full details can be found in the state Controlled Substances Act¹ and in the federal Drug Abuse Prevention and Control Act.²

Prohibited drugs under both state and federal laws include commonly known controlled substances such as marijuana and cocaine. They also include many prescription drugs which are legal to possess and use with a doctor's prescription, but which are illegal if possessed and used without that doctor's prescription. Both the state and federal laws classify illegal drugs, and punish those drug crimes, based on various factors. Among them are the addictive nature of the drug, the potential for abuse, any currently accepted medical use, the potential for physical or psychological dependence, and the potential risk to public health.

Prohibited Acts

It is unlawful under both state and federal law to perform certain acts involving controlled substances. These acts included possession of a controlled substance for personal use and possession of a controlled substance with intent to sell, deliver, or distribute it to someone else. Also prohibited are manufacturing or creating a controlled substance, and actually selling, delivering, or distributing a controlled substance.³ It is also unlawful to knowingly assist or help another person to commit one of those acts (aiding and abetting), to attempt to commit one of those acts whether or not the deal is completed, or to conspire with another person to commit one of those acts.⁴

It has been my experience that many of my clients in drug cases, have been arrested not for their own drug deals, but for assisting a family member or a friend in that person's drug deal. For example, suppose a person drives his friend to the convenience store, knowing that the friend

¹G.S. 90-95, et seq.

²21 U.S.C. 841 through 21 U.S.C. 848

³G.S. 90-95(a) and 21 U.S.C. 841(a), et seq.

⁴G.S. 14.2.5 (attempts), G.S. 90-98 (conspiracies), 18 U.S.C. 2 (aiding and abetting).

intends to buy or sell drugs when he gets there. And suppose that the driver has nothing else to do with the deal, expects no payment for his driving, but stays therein the car with the others while the drug deal is completed. When the deal goes bad, the driver is also arrested. Under current law, the driver is just as guilty as his friend and the friend's contact. The driver always tells me, "I'm not guilty, this was not my deal." But the law says otherwise because that driver knowingly assisted his friend in making that drug deal happen, and the driver will be convicted.

Another common example involves a situation where a wife stays home with the children while her husband leaves the house to work all day. On his way out, the husband says, "I'm expecting a package, stay home and get it." Because of six previous deliveries of packages in the same manner, the wife knows that what the husband really means is "my marijuana should arrive from Santa Ana today, stay home and get it." The wife stays home and signs for the package when it comes. Then she is arrested immediately afterwards because the package delivery man is really an undercover police officer making a controlled delivery of controlled substances. She tells me "I'm not guilty, all I did was sign for a package, and I never even opened it." But the wife will be convicted of violating the drug laws if the prosecutor can prove her prior knowledge of her husband's previous shipments. The proof, in the form of the receipts from the previous shipments, are often found in the house, which is always searched when a drug arrest is made.

"Maintaining" Offenses

It is also unlawful under both state and federal law to maintain a vehicle, boat, aircraft, or any type of building for the purpose of transporting controlled substances, storing controlled substances, using controlled substances, or distributing controlled substances.⁵ Any such vehicles, boats, aircraft, or buildings which are used in violation of the state or federal controlled substance laws can be taken away and forfeited to the government under some circumstances.⁶

Use of Juveniles

In recent years, crime statistics have shown an increase in drug crimes committed by underage persons. The use of juveniles to commit drug offenses not only subjects those juveniles to punishment under both state and federal laws, but those crimes are more severely punished for the dealer who recruits and uses those juveniles to commit his drug offenses.⁷

Protection of school children from drug dealers and their activities has also been the focus of increased legislative action and more concentrated law enforcement activities. It is illegal under both state and federal law to distribute controlled substances in any schools, or within 300

⁵G.S. 90-108(a)(7) and 21 U.S.C. 856(a).

⁶G.S. 90-112 and 21 U.S.C. 853, et seq.

⁷G.S. 90-95.4, et seq., and 21 U.S.C. 861.

feet (state law) or 1,000 feet (federal law) of school grounds. This applies to all schools, whether public or private, and regardless of the grade levels taught in such schools.⁸ Elementary schools, secondary schools, junior colleges, vocational schools, and universities all receive protection from these statutes. Likewise, playgrounds, youth centers, and public swimming pools all enjoy this increased protection. Penalties for violating these restrictions during a drug deal can double the otherwise-applicable punishment. Second offenders under these statutes can face triple the otherwise-applicable punishment.⁹

“Drug Lords”

One final category of drug offense that I want to address is that of the so-called “drug lord.” Anyone defined as a leader, manager, or principal organizer of certain drug distribution activities is subject to these laws. Such persons can be charged under the state and federal statutes prohibiting continuing criminal enterprises.¹⁰ These statutes usually require on-going, organized drug distribution activities. They also usually require that five or more other persons be involved and subject to the leadership of the person charged with operating a continuing criminal enterprise.¹¹ Penalties for anyone convicted under these so-called “drug lord” statutes will be subject to much more severe penalties than for lesser drug trafficking offenses. For example, under federal law, such person “shall be imprisoned for life.”¹²

State Penalties

Penalties for controlled substance violations, under both state and federal law, can range from probation for minor offenses to incredibly long prison sentences for major offenses.¹³ Very minor drug possessions are often classified as misdemeanors, and the penalties range from probation to a maximum of 120 days imprisonment.¹⁴ Possession with intent to distribute a controlled substance, for example, and most non-trafficking drug felonies described herein, are generally punished with penalties ranging from several few months up to two years or more

⁸G.S. 90-95(e)(8) and 21 U.S.C. 860(a).

⁹21 U.S.C. 860(b).

¹⁰G.S. 90-95.1 and 21 U.S.C. 848.

¹¹G.S. 90-95.1(c) and 21 U.S.C. 848 (c).

¹²G.S. 90-95.1(a) and 21 U.S.C. 848(b).

¹³G.S. 90-95(a) through 90-95(h) and 21 U.S.C. 841(b).

¹⁴G.S. 15A-1340.23(c).

imprisonment.¹⁵

Drug trafficking is another matter entirely, and upon conviction of these more serious drug offenses, that person will receive a mandatory minimum sentence of imprisonment, the length of which is based primarily on the quantity of drugs involved.¹⁶ North Carolina drug trafficking offenses, the amounts of the drugs required for various punishment levels, and the terms of imprisonment that will be imposed are all shown on the chart that accompanies this column. These mandatory prison terms imposed by North Carolina state courts are among the most severe in this country.

There is one exception to mandatory punishment as shown on the drug chart. In the case of someone who co-operates with law enforcement officers, referred to as rendering “substantial assistance,” that person can get less than the mandatory minimum sentence. The statute that defines substantial assistance requires a defendant to provide accurate information which leads to “the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals,” involved in his crime or in other crimes known to that defendant.¹⁷

Federal Penalties

Federal penalties for drug crimes differ somewhat from the state penalties shown above. For some offenses, however, the federal statutes also require mandatory minimum sentences upon conviction.¹⁸ A partial listing of the federal mandatory minimum sentences for some common illegal drugs is included below.

A statutory penalty of not less than five (5) years and not more than 40 years is required for crimes involving: at least 5 grams but less than 50 grams of crack cocaine; at least 500 grams but less than 5 kilograms of powdered cocaine; at least 5 grams but less than 50 grams of methamphetamine; and at least 100 kilograms of marijuana.

A statutory penalty of not less than ten (10) years and not more than life in prison is required for crimes involving: at least 50 grams of crack cocaine; at least 5 kilograms of powdered cocaine; at least 50 grams of methamphetamine; and at least 1,000 kilograms of marijuana.

Since 1987, sentencing in federal court has also been conducted by calculations made

¹⁵G.S. 15A-1340.17(c).

¹⁶G.S. 90-95(h).

¹⁷G.S. 90-95(h)(5).

¹⁸21 U.S.C. 841(b).

based on sentencing guidelines which were provided for every federal crime, including all drug offenses. Under guideline sentencing, if the guidelines called for a sentence which was less than the statutory mandatory minimum, the mandatory minimum always controlled the length of the sentence. However, if the guidelines were more than the statutory mandatory minimum, then the guidelines controlled the length of the sentence.

This guideline sentencing scheme has recently become advisory instead of mandatory as a result of a January 12, 2005 decision of the United States Supreme Court.¹⁹ The changes wrought in federal sentencing for drug offenses will be the subject of another column, which will appear in this space in the near future. It is simply too early to tell exactly what sentencing changes will occur in federal drug cases as a result of the Booker decision, but it is clear that the implications will require far more room for discussion than is available today.

Parole Abolished

In the past, both state and federal laws allowed a person sentenced to prison to be paroled, which means that the person could be released on supervision after serving only a portion of the prison term imposed. Parole has been abolished for many years in both the state and federal judicial systems, and anyone committing a crime today is going to serve his sentence without parole.

Conclusion

The consequences for possession, sale, delivery, distribution, or any of the numerous other crimes related to controlled substances have become increasingly severe in recent years in both state and federal court. There seems to be no end to the number of persons willing to gamble their freedom for the quick money they think can be made from dealing drugs. There is also an incredibly large, and growing, population of state and federal inmates who have been convicted and imprisoned for violations of the controlled substance laws. There is no doubt that knowledge of these laws will not deter a person who is determined to earn a living in the drug business. However, perhaps the general knowledge set forth in this column will help to enlighten the public on just how serious drug crimes and penalties have become in our society.

A court jester once said that getting involved with drugs is bad for your health because “it causes your body to be thrown in jail.” The lesson to be learned is this: avoid drugs and you can avoid jail.

¹⁹United States v. Booker, 125 S.Ct. 738 (January 12, 2005).