**South Carolina General Assembly**

119th Session, 2011-2012

**H. 5113**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Rutherford

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Introduced in the House on March 29, 2012

Currently residing in the House Committee on **Judiciary**

Summary: Possession of controlled substance penalties

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/29/2012 House Introduced and read first time ([House Journal‑page 88](file:///h:\hj%20archive\2012\03-29-12.docx))

3/29/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 88](file:///h:\hj%20archive\2012\03-29-12.docx))

**VERSIONS OF THIS BILL**

[3/29/2012](file:///p:\pprever\2011-12\5113_20120329.docx)

**A** **BILL**

TO AMEND SECTIONS 44‑53‑370 AND 44‑53‑375, BOTH AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, BOTH RELATING TO POSSESSION, MANUFACTURE, AND TRAFFICKING IN CERTAIN CONTROLLED SUBSTANCES, SO AS TO REMOVE MANDATORY MINIMUM PENALTIES AND ALLOW PERSONS WHO COMMIT CERTAIN CONTROLLED SUBSTANCE OFFENSES TO BE PAROLED AND PARTICIPATE IN SUPERVISED FURLOUGH, COMMUNITY SERVICE, WORK RELEASE, WORK CREDITS, EDUCATION CREDITS, AND GOOD CONDUCT CREDITS PROGRAMS; AND TO CREATE A STUDY COMMITTEE TO REVIEW THE STATE’S DRUG LAWS, TO PROVIDE FOR THE MEMBERSHIP AND STAFFING OF THE STUDY COMMITTEE, AND TO PROVIDE FOR THE STUDY COMMITTEE’S TERMINATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑53‑370 of the 1976 Code, as last amended by Act 289 of 2010, is further amended to read:

“Section 44‑53‑370. (a) Except as authorized by this article it shall be unlawful for any person:

(1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;

(2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

(b) A person who violates subsection (a) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty‑five thousand dollars, or both. For a second offense, or if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits~~. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted~~;

(2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, or, if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, or, if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender is guilty of a felony and, upon conviction, must be imprisoned not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits~~. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted~~;

(3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits~~. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted~~;

(4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, the sentence must be twice the first offense. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits~~. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted~~;

(c) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.

(d) A person who violates subsection (c) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than two thousand dollars, or both, except as provided in subsection (d)(4). Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(3) cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense, the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(4) possession of more than: one gram of cocaine, one hundred milligrams of alpha‑ or beta‑eucaine, four grains of opium, four grains of morphine, two grains of heroin, one hundred milligrams of isonipecaine, twenty‑eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4‑methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to twenty‑eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44‑53‑450 upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections 17‑22‑10 through 17‑22‑160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14‑1‑205. The assessment portion of the bail must be distributed as provided in Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable.

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(1) ten pounds or more of marijuana is guilty of a felony which is known as ‘trafficking in marijuana’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten pounds or more, but less than one hundred pounds:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of ten thousand dollars;

2. for a second offense, a term of imprisonment of not less than five years nor more than twenty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifteen thousand dollars;

3. for a third or subsequent offense, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(b) one hundred pounds or more, but less than two thousand pounds, or one hundred to one thousand marijuana plants regardless of weight, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(c) two thousand pounds or more, but less than ten thousand pounds, or more than one thousand marijuana plants, but less than ten thousand marijuana plants regardless of weight, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(d) ten thousand pounds or more, or ten thousand marijuana plants, or more than ten thousand marijuana plants regardless of weight, a term of imprisonment of not less than twenty‑five years nor more than thirty years ~~with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars;

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44‑53‑210(b)(4), is guilty of a felony which is known as ‘trafficking in cocaine’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten grams or more, but less than twenty‑eight grams:

1. for a first offense, a term of imprisonment of not less than three years nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(b) twenty‑eight grams or more, but less than one hundred grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years and not more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty‑five years nor more than thirty years ~~with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars;

(3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44‑53‑190 or 44‑53‑210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as ‘trafficking in illegal drugs’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) four grams or more, but less than fourteen grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

2. for a second or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of one hundred thousand dollars;

(b) fourteen grams or more but less than twenty‑eight grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars;

(c) twenty‑eight grams or more, a ~~mandatory term~~ of imprisonment of not less than twenty‑five years nor more than forty years~~, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars;

(4) fifteen grams or more of methaqualone is guilty of a felony which is known as ‘trafficking in methaqualone’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) fifteen grams but less than one hundred fifty grams:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of ten thousand dollars;

2. for a second or subsequent offense, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(b) one hundred fifty grams but less than fifteen hundred grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(c) fifteen hundred grams but less than fifteen kilograms, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(d) fifteen kilograms or more, a term of imprisonment of not less than twenty‑five years nor more than thirty years ~~with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars;

(5) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of lysergic acid diethylamide (LSD) is guilty of a felony which is known as ‘trafficking in LSD’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

1. for a first offense, a term of imprisonment of not less than three years nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty thousand dollars;

2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, ~~no part of which may be suspended or probation granted,~~ and a fine of forty thousand dollars;

3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years and not more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(c) one thousand dosage units or the equivalent quantity, or more, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years, ~~no part of which may be suspended nor probation granted,~~ and a fine of one hundred thousand dollars;

(6) one gram or more of flunitrazepam is guilty of a felony which is known as ‘trafficking in flunitrazepam’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) one gram but less than one hundred grams:

1. for a first offense a term of imprisonment of not less than one year nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of ten thousand dollars;

2. for a second or subsequent offense, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(b) one hundred grams but less than one thousand grams, a ~~mandatory~~ term of imprisonment of not more than twenty years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(c) one thousand grams but less than five kilograms, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(d) five kilograms or more, a term of imprisonment of not less than twenty‑five years~~,~~ nor more than thirty years~~, with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars;

(7) fifty milliliters or milligrams or more of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid is guilty of a felony which is known as ‘trafficking in gamma hydroxybutyric acid’ and, upon conviction, must be punished as follows:

(a) for a first offense, a term of imprisonment of not less than one year nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of ten thousand dollars;

(b) for a second or subsequent offense, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars.

A person convicted and sentenced under this subsection ~~to a mandatory term of imprisonment of twenty‑five years, a mandatory minimum term of imprisonment of twenty‑five years, or a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years~~ is ~~not~~ eligible for parole, extended work release, as provided in Section 24‑13‑610, or supervised furlough, as provided in Section 24‑13‑710. Notwithstanding Section 44‑53‑420, a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this section with a full sentence or punishment and not one‑half of the sentence or punishment prescribed for the offense.

The weight of any controlled substance in this subsection includes the substance in pure form or any compound or mixture of the substance.

The offense of possession with intent to distribute described in Section 44‑53‑370(a) is a lesser included offense to the offenses of trafficking based upon possession described in this subsection.

(8) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of 3, 4‑methalenedioxymethamphetamine (MDMA) is guilty of a felony which is known as ‘trafficking in MDMA or ecstasy’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

(i) for a first offense, a term of imprisonment of not less than three years nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of forty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years and not more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(c) one thousand dosage units or the equivalent quantity, or more, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of one hundred thousand dollars.

(f) It shall be unlawful for a person to administer, distribute, dispense, deliver, or aid, abet, attempt, or conspire to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit one of the following crimes against that individual:

(1) kidnapping, Section 16‑3‑910;

(2) trafficking in persons, Section 16‑3‑930;

(3) criminal sexual conduct in the first, second, or third degree, Sections 16‑3‑652, 16‑3‑653, and 16‑3‑654;

(4) criminal sexual conduct with a minor in the first or second degree, Section 16‑3‑655;

(5) criminal sexual conduct where victim is legal spouse (separated), Section 16‑3‑658;

(6) spousal sexual battery, Section 16‑3‑615;

(7) engaging a child for a sexual performance, Section 16‑3‑810;

(8) committing lewd act upon child under sixteen, Section 16‑15‑140;

(9) petit larceny, Section 16‑13‑30 (A); or

(10) grand larceny, Section 16‑13‑30 (B).

(g) A person who violates subsection (f) with respect to:

(1) a controlled substance classified in Schedule I (b) or (c) which is a narcotic drug or lysergic acid diethylamide (LSD), or in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than fifteen years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

~~Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted;~~

(2) any other controlled substance or gamma hydroxybutyrate is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than fifteen years or fined not more than twenty‑five thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than twenty‑five years, or fined not more than forty thousand dollars, or both.

~~Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted.~~”

SECTION 2. Section 44‑53‑375 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“Section 44‑53‑375. (A) A person possessing less than one gram of methamphetamine or cocaine base, as defined in Section 44‑53‑110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44‑53‑370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty‑five thousand dollars, or both;

(2) for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection ~~for a first offense or second offense~~ may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. ~~Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.~~

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44‑53‑110, 44‑53‑210(d)(1), or 44‑53‑210(d)(2), is guilty of a felony which is known as ‘trafficking in methamphetamine or cocaine base’ and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty‑eight grams:

(a) for a first offense, a term of imprisonment of not less than three years nor more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(2) twenty‑eight grams or more, but less than one hundred grams:

(a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years and not more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(3) one hundred grams or more, but less than two hundred grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(4) two hundred grams or more, but less than four hundred grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of one hundred thousand dollars;

(5) four hundred grams or more, a term of imprisonment of not less than twenty‑five years nor more than thirty ~~years with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars.

(D) Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.

(E)(1) It is unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains nine grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. A person who violates this subsection is guilty of a felony known as ‘trafficking in ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances’ and, upon conviction, must be punished as follows if the quantity involved is:

(a) nine grams or more, but less than twenty‑eight grams:

(i) for a first offense, a term of imprisonment of not more than ten years~~, no part of which may be suspended nor probation granted,~~ and a fine of twenty‑five thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(b) twenty‑eight grams or more, but less than one hundred grams:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not less than twenty‑five years and not more than thirty years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a ~~mandatory~~ term of imprisonment of not more than twenty‑five years~~, no part of which may be suspended nor probation granted,~~ and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty‑five years nor more than thirty years ~~with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted,~~ and a fine of two hundred thousand dollars.

(2) This subsection does not apply to:

(a) a consumer who possesses products:

(i) containing ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with typical medicinal or household use, as indicated by storage location, and possession of the products in a variety of strengths, brands, types, purposes, and expiration dates; or

(ii) for agricultural use containing anhydrous ammonia if the consumer has reformulated the anhydrous ammonia by means of additive so as effectively to prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors’ salts, isomers, or salts of isomers, or a combination of any of these substances; or

(b) products labeled for pediatric use pursuant to federal regulations and according to label instructions primarily intended for administration to children under twelve years of age; or

(c) products that the Drug Enforcement Administration and the Department of Health and Environmental Control, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors’ salts, isomers, or salts of isomers, or a combination of any of these substances.

(3) This subsection preempts all local ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

(F) ~~Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty‑five years, a mandatory minimum term of imprisonment of twenty‑five years, or a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24‑13‑610, or supervised furlough as provided in Section 24‑13‑710.~~

~~(G)~~ A person eighteen years of age or older may be charged with unlawful conduct toward a child pursuant to Section 63‑5‑70, if a child was present at any time during the unlawful manufacturing of methamphetamine.”

SECTION 3. (A) There is created a study committee to review the drug laws of the State and make recommendations to the General Assembly concerning proposed changes.

(B) The study committee must be composed of five members of the Senate, appointed by the Chairman of the Senate Judiciary Committee, and five members of the House of Representatives, appointed by the Chairman of the House Judiciary Committee. The study committee shall review corresponding drug laws in other states, with particular emphasis on other southern states, in order to determine whether amendments should be proposed to the state’s existing drug statutes.

(C) Vacancies in the membership of the study committee must be filled for the remainder of the unexpired term in the manner of original appointment.

(D) The Chairmen of the Senate and House Judiciary Committees shall provide appropriate staffing for the study committee.

(E) The study committee shall make a report of its recommendations to the General Assembly no later than January 31, 2013, at which time the study committee must be dissolved.

SECTION 4. This act takes effect upon approval by the Governor.

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