**A** **BILL**

TO AMEND SECTIONS 44‑53‑370, 44‑53‑375, AND 44‑53‑450, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO CONTROLLED SUBSTANCE OFFENSES AND PENALTIES, SO AS TO DECRIMINALIZE POSSESSION OF TWENTY‑EIGHT GRAMS OR ONE OUNCE OR LESS OF MARIJUANA OR TEN GRAMS OR LESS OF HASHISH AND AUTHORIZE LAW ENFORCEMENT TO ISSUE A CIVIL CITATION FOR POSSESSION OF THAT SAME QUANTITY OF MARIJUANA OR HASHISH; TO DECREASE PENALTIES FOR FIRST OFFENSE POSSESSION OF LESS THAN ONE GRAM OF METHAMPHETAMINE OR COCAINE BASE AND REQUIRE COMPLETION OF A DRUG TREATMENT OR REHABILITATION PROGRAM AS PART OF THE SENTENCE; AND TO REQUIRE THE COURT TO PLACE PERSONS ON PROBATION WHO ARE GUILTY OF A FIRST OFFENSE POSSESSION OF CERTAIN CONTROLLED SUBSTANCES.

Whereas, nationwide, more than 1.25 million people are arrested for drug possession each year; and

Whereas, in South Carolina alone, an average of sixty‑five people are arrested every day on possession charges; and

Whereas, in 2007, marijuana possession arrests accounted for ninety‑one percent of all marijuana‑related arrests in South Carolina; and

Whereas, South Carolina is ranked fifth in the nation for violent crimes and these marijuana possession arrests are made at the expense of preventing and solving violent crimes; and

Whereas, many sit in jail for months because they can’t raise bail money, or they plead guilty just to be able to go home to their families; and

Whereas, many are forced to take harsh plea deals because prosecutors threaten even longer sentences if they exercise their rights by filing motions or going to trial, and courts would not be able to facilitate the increased number of judicial proceedings; and

Whereas, being caught with just a few grams of any control substance, or sometimes trace amounts of drugs, leads to crushing criminal justice debt from fines, court costs, and legal fees; and

Whereas, South Carolina must reform its criminal penalties for marijuana possession to free up the necessary time and money to prosecute and incarcerate violent criminals who cause true havoc and loss of life in our communities; and

Whereas, according to a report by Human Rights Watch, South Carolina ranks sixth in the United States for the ratio of citizens arrested for drug possession (575 arrests per 100,000 population); and

Whereas, in 2017, the cost of incarceration to the South Carolina Department of Corrections, based on all funds spent, is $20,925 annually, equaling $57.33 per day; and

Whereas, the average cost of a visit to an outpatient rehabilitation facility ranges from $17.78 to $26.72 per day; and

Whereas, when comparing the cost of treatment versus incarceration nationally, every dollar spent on prevention and treatment saves seven dollars in societal costs. Now, therefore,

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

SECTION 1. Section 44‑53‑370(d)(4) of the 1976 Code is amended to read:

“(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~~ may be issued a citation and must be fined not less than one hundred dollars ~~nor~~ and not more than two hundred dollars. For a second or subsequent violation, a person must be issued a citation and must be fined not less than two hundred dollars and not more than one thousand dollars. A person issued a citation must not be taken into custody or arrested for such violation. ~~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~~ must 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.”

SECTION 2. Section 44‑53‑375(A) of the 1976 Code is amended to read:

“(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~~ one year or fined not more than ~~five~~ three thousand dollars, or both. For a first offense the court, upon approval of the solicitor, ~~may~~ shall 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.”

SECTION 3. Section 44‑53‑450(A) of the 1976 Code is amended to read:

“(A) Whenever any person who has not previously been convicted of any offense under this article or any offense under any state or federal statute relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under Section 44‑53‑370(c) and (d), or Section 44‑53‑375(A), the court, without entering a judgment of guilt, ~~and with the consent of the accused, may~~ shall defer further proceedings and place him on probation upon terms and conditions as it requires, including the requirement that such person cooperate in a treatment and rehabilitation program of a state‑supported facility or a facility approved by the commission, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record shall be forwarded to and retained by the Department of Narcotic and Dangerous Drugs under the South Carolina Law Enforcement Division solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this article. Discharge and dismissal under this section may occur only once with respect to any person.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑