

Ordinance #39 Possession of Marihuana Forbidden

Ordinance #39 was revoked and will accept the State Code regulations

Motion Passed on July 18, 2017

1st Reading July 5, 2017

2nd Reading July 18, 2017

3rd Reading Waived

**§60A-4-401. Prohibited acts A; penalties.**

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than twenty-five thousand dollars, or both;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) it is 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 act. Any person who violates this subsection is guilty of a misdemeanor and, disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both. Provided, That notwithstanding any other provision of this act to the contrary, any first offense for possession of Synthetic Cannabinoids as defined by subdivision L

(32) subsection, (d), section 101, article 1 of this chapter; 3,4-methylenedioxypropylamphetamine (MDA) and 3,4-methylenedioxypropylamphetamine and/or mephedrone as defined in subsection (f), section 101, article 1 of this chapter; or less than 15 grams of marijuana, shall be disposed of under said section.

(d) it is unlawful for any person knowingly or intentionally:

( 1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more who violates subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

**§60A-4-407. Conditional discharge for first offense of possession.**

(a) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 401 (c), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms

and conditions. 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 or her. Discharge and dismissal under this section shall be without 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 under section 408. The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only one discharge and dismissal under this section with respect to any b person

(b) After a period of not less than six months which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this chapter, the person may apply to the court for an order to expunge from all official records all recordation's of his or her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this section has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(c) Notwithstanding any provision of this code to the contrary, any person prosecuted pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of section 401 (c) of this article. Payment of such costs may be made a condition of probation.

The costs assessed pursuant to this section, whether as a term of probation or not,

shall be distributed as other court costs in accordance with section two, article three, chapter fifty, section four, article two-a, chapter fourteen, section four, article twenty- b

nine, chapter thirty and sections two, seven and ten, article five, chapter sixty-two  
this code.