



SPONSOR: Rep. Keeley & Sen. Henry & Sen. Townsend  
Reps. Baumbach, Heffernan, J. Johnson, Q. Johnson,  
Kowalko, Mitchell, Osienski, Paradee, Potter, Viola, K.  
Williams; Sen. Peterson

HOUSE OF REPRESENTATIVES  
148th GENERAL ASSEMBLY

HOUSE BILL NO. 39

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MARIJUANA.

1 WHEREAS, the General Assembly finds that it is in the best interest of the people of this State to provide an  
2 alternative to incarceration for marijuana possession for personal use;

3 NOW, THEREFORE:

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

5 Section 1. Amend Section 4701, Title 16 of the Delaware Code by making deletions as shown by strike through and  
6 insertions as shown by underline and redesignating accordingly:

7 § 4701 Definitions.

8 (33) "Personal use quantity" shall mean one ounce or less of a controlled substance or a counterfeit controlled  
9 substance classified in § 4714(d)(19) of this title.

10 Section 2. Amend Section 4764, Title 16 of the Delaware Code by making deletions as shown by strike through  
11 and insertions as shown by underline as follows:

12 § 4764 Possession of marijuana; class B misdemeanor, ~~or unclassified misdemeanor, or civil violation~~.

13 (a) Any person who knowingly or intentionally ~~possesses~~, uses, ~~or consumes~~, or possesses more than a personal use  
14 quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as  
15 otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

16 (b) Any person who knowingly or intentionally ~~possesses~~, uses, ~~or consumes~~, or possesses more than a personal  
17 use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as  
18 otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575 and  
19 imprisoned not more than 3 months.

20 (c) Notwithstanding any other provision of law, any person who knowingly or intentionally possesses a personal use  
21 quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as

otherwise authorized by this chapter, shall be assessed a civil penalty of \$100.00 in addition to such routine assessments necessary for the administration of civil violations. Private use or consumption of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title shall likewise be punishable by a civil penalty under this subsection. The person shall not be subject to any other form of criminal or civil punishment. Unpaid fines shall double if not paid within ninety (90) days of the offense.

(d) Notwithstanding any other provision of law, any person who knowingly or intentionally uses or consumes up to a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title in a public place, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$200 and imprisoned not more than five days.

(e) Information concerning the violation of an offense classified in § 4764(c) this title shall not appear on a certified criminal record or any database of criminal offenders. A violation for which a civil penalty is imposed shall not be classified as a criminal offense and shall not appear on a certified criminal record.

(f) Nothing contained herein shall be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, such as Marinol, or the possession of more than one ounce of marijuana, or selling, manufacturing, or trafficking in marijuana.

(g) Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices, or policies concerning the operation of motor vehicles or other actions taken while under the influence of marijuana.

Section 3. Amend Section 4771, Title 16 of the Delaware Code by making insertions as shown by strike through and deletions as shown by underline as follows:

§ 4771 Drug paraphernalia.

(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17) of this title. Except that any person charged under § 4764 (a), (b), or (d), or assessed a civil penalty under § 4764(c), shall not also be charged with this offense.

(b) It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell or offer for sale drug paraphernalia, as defined in § 4701(17) of this title, knowing or under circumstances where one should reasonably know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, re-pack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

Section 4. Amend Section 4774, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4774 Penalties.

(a) Possession. — Except as described in subsection (b) of this section, any ~~Any~~ person who uses or possesses with intent to use drug paraphernalia is guilty of a class B misdemeanor.

(b) Possession for personal use of marijuana. -- Any person who uses or possesses drug paraphernalia for the use or possession of a personal use quantity of marijuana shall be assessed a civil penalty of not more than \$100.00, in addition to such routine assessments necessary for the administration of civil violations.

Section 5. Amend Section 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4795 Jurisdiction.

(a) The Superior Court shall have original and exclusive jurisdiction over any violation of this chapter by persons 18 years of age or older.

(b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of Common Pleas shall have original jurisdiction over any violation of:

(1) Section 4764(a), (b), and (d) of this title;

(2) Section 4771 of this title, except where jurisdiction over the civil penalty resides in the Justice of the Peace Court pursuant to subsection (c) of this section;

by persons 18 years of age or older.

(c) The Justice of the Peace Court shall have original jurisdiction over any violation of:

(1) Section 4764(c) of this title;

(2) Section 4774(b) of this title;

by persons 18 years of age or older.

(c) The Family Court shall have original and exclusive jurisdiction over violations of this chapter by persons under age 18.

Section 6. This Act takes effect six months after its enactment into law and shall be applicable to all marijuana offenses, however courts shall retain the discretion to prohibit possession or use of marijuana as a condition of probation or pre-trial release.

#### SYNOPSIS

The purpose of this bill is to decriminalize the possession or private use of a personal use quantity of marijuana. More specifically, persons who possess one ounce or less of marijuana shall be assessed a civil penalty that will not become part of a criminal record and must forfeit the marijuana. Likewise, the private use or consumption of less than an ounce of marijuana shall be punishable by a civil penalty. Persons charged with one of these civil violations are not subject to incarceration. Furthermore, under Section 2 of this bill the public use or consumption of an ounce or less of marijuana will be an unclassified misdemeanor punishable by a fine of not more than \$200 or imprisonment for not more than 5 days. This penalty is in line with the penalty for possession or consumption of an open container of alcohol in most municipalities in the state. This bill does not in any manner modify Title 21 driving offenses nor does it prohibit municipal regulation of marijuana use, consumption, or possession. A person charged or assessed a civil violation in connection with a personal use quantity of marijuana cannot also be charged with possession of drug paraphernalia. A person who is not charged with personal use quantity of marijuana possession can still be charged or assessed a civil violation of possession of drug paraphernalia. This bill does not repeal or modify existing laws relating to medical

marijuana or penalties for the operation of motor vehicles under the influence.