

Weight of Marijuana and Criminal and Tax Law

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Conclusive research has shown that wet (uncured) marijuana is not psychoactive. Before drying, decarboxylation of inactive THCA acid into delta9 THC has not yet occurred. During the curing (drying) process, the COOH bonded to the THCA is released. The result is marijuana's psychoactive compound delta9 THC. The State of North Carolina's laws do not distinguish between the uncured weight of marijuana from the cured (dry) weight, necessary for marijuana to be consumed or sold. No one purchases wet marijuana at a price comparable to suggested market value because approximately 80% of this weight consists of water, both in the plant tissue and chemically bonded by carbon to the THC molecule. No one smokes fresh, wet, uncured marijuana because it cannot produce a euphoric effect. Decarboxylation must occur by drying prior to its combustion that occurs with smoking (this does not occur when attempting to smoke uncured marijuana), drying must also occur before eating marijuana, if it is to produce a euphoric effect.

North Carolina's G.S. 15A-903(a)(1) allows the State to retain only a small random sample of marijuana to be made available to prosecutors and notably the defendants for the discovery rights. This deprives the defense of having all the evidence available to them. The actual weight of marijuana is an essential element of the criminal statute. The marijuana's weight is the primary factor in determining the NC unauthorized substance tax assessment.

'Mature stalks' are found on all mature marijuana plants. The percentage by weight of marijuana's 'mature stalks' can vary widely by different cultivation methods and by genetic variation. NC G.S. 90-87(16) clearly exempts 'mature stalks' from being considered toward the weight of 'marijuana' for criminal sentencing purposes. 'Mature stalks' are exempt because the State has recognized that they have neither intrinsic value as an intoxicant, nor any noteworthy market value. Marijuana's 'shade leaves' are a waste product for marijuana farmers. These leaves are not smoked, and are not psychoactive. Likewise, male marijuana plants do not produce smokeable buds nor THC (the psychoactive ingredient of 'marijuana'). Marijuana's initial wet, uncured weight can be over 500% of the final, dried, consumable and marketable weight. Uncured marijuana cannot be bagged or jarred because without curing because it would mold, rot, and become valueless. The State's weighing of water content in uncured marijuana has resulted in many citizens receiving far harsher imprisonment, taxes and fines. Marijuana trafficking in North Carolina carries a mandatory minimum 2-year sentence for anyone possessing 10 lbs. or more. One pound of marijuana may weigh 6lbs before it dries and is useable. Many small farmers end up with trafficking charges because of this discrepancy. I do not believe this was legislature's intent, nor is it just. The marijuana trafficking statutes, § 90-95 (h) (1) section (a through d), are all unreasonably harsh by commanding lengthy mandatory minimum prison sentences. At the very least, the weight of marijuana required to warrant adding a trafficking charge should be restored to its initial threshold of 50lbs, and should be dried, and shade leaves, stems and all stalks removed before weighing. Because of recent scientific proof showing marijuana's usefulness, and its benign non-toxic effects along with current attitudes toward marijuana, trafficking in marijuana should be removed from our current laws. Currently some citizens are being charged twice for the same 10 lbs., one trafficking count for cultivation and another for possession, and this is in addition to manufacturing and possession charges.

North Carolina's Unauthorized Substance Tax Act, Article 2D § 105-113.106 (6) has a different definition of what constitutes 'marijuana', divergent from North Carolina's Controlled Substance Act's definition found in § 90-87(16). These statutes also differ in their definitions of exemptions of parts of the plant not to be considered as 'marijuana', respectively 105-113.107A - Exemptions and § 90-87(16). N.C.'s drug tax law § 105.113.107(a)(1) commands for a tax of 40 ¢ per gram for stems and stalks that have been separated from and not mixed with any other parts of the marijuana plant. Yet the next paragraph, § 105.113.107(a)(1a), commands for a tax of \$3.50 a gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section. In § 105-113.107A (b) (1), it states, "the tax levied in this article does not apply to the following marijuana: (1) Harvested mature marijuana stalks when separated from and not mix with any other parts of the marijuana plant.

Any knowledgeable and reasonable person would assume that all stalks and large stems would eventually be separated from the rest of the marijuana plant. It is impossible separate the stalks prior to harvest, yet a reasonable person would assume that separation would eventually occur. Therefore, requiring mature stalks to be separated from and not mixed with other parts of the plant to qualify under NC § 105-113.107A(b)(1)'s exemptions seems far from reasonable or just. For example, the roots of the marijuana plant are exempt from tax liability under § 105-113.107A(b)(4), whether separated or not. As mentioned, N.C. G.S. 90-87(16) clearly exempts 'mature stalks' (separated or not), which is not considered 'marijuana' by its definition.

Article 2D § 105-113.106(6) 's provisions pertaining to 'growing marijuana' are impossible to comply with, and should be considered unconstitutional. § 105-113.106(6) defines marijuana as 'all parts of the genus Cannabis, whether growing or not' and as stated before, § 105-113.107(a) (1a) calls for an excise tax of \$3.50 per gram of 'marijuana'. N.C.

Article 2D § 105-113.109 (requiring payment during actual or constructive possession) is impossible to comply with concerning growing plants. Being a growing plant, its weight is changing continuously and therefore is unable to be determined accurately. Taking into consideration that a growing plant is attached to exempt growing roots, determination of the taxable part's weight is impossible to accurately assess. § 105-113.109 also demands the drug tax stamps shall be permanently affixed to the unauthorized substance. Growing plants, especially outdoors, do not

have a place to attach stamps where the plant will not outgrow and cause detachment.

The excessive mandatory minimum prison sentences for marijuana infractions under the N.C. G.S. § 90-95 (h) (1) section (a through d) are all based on the weight of the marijuana. Therefore, by not determining the cured weight without 'mature stalks' of 'marijuana' prior to destruction and independent inspection and concurred confirmation by defendants; defendants' right to examine and test plants under G.S.15A-903(a)(1) and defendants' State and Federal Constitutional rights to due process are denied by removing the chance of a fair and reasonable opportunity to investigate, prepare and present their defense. Destruction by the State of marijuana held as evidence, before an agreed weight between the State and defendants, also violates defendants' right of confrontation under Article 1, Section 23 of the Constitution of the State of North Carolina. Mandatory minimums sentences should not be allowed for marijuana related offences.

Past cases concerning the destruction of marijuana prior to independent determination of its weight have been ruled in favor of the State. In light of recent research and these new arguments, premature destruction of marijuana evidence by the State should not be considered actions taken in 'good faith', and considered violations of defendants' rights previously mentioned. N.C. G.S. 90-87(16) needs to be amended to include plant moisture in the list of exempt parts of marijuana; this would more fairly apply the law by preventing unfair sentencing and fines. All stalks (mature or not), shade leaves, and male plants should be added to G.S. 90-87(16)'s exemption list also. Article 2D § 105-113.106(6) needs to reflect G.S. 90-87(16) by exempting all stalks (hemp fiber) separated or not, from tax liability. The valueless waste product, 'shade leaves', should not be taxed at \$3.50 a gram and should be added along with male plants and most importantly the 'moisture of wet or non-dried' marijuana to § 105-113.107A and NC GS § 90-87(16)'s list of exemptions.

Legalization through regulation and a tax makes much more sense than waging war against the citizens of our State. Marijuana does not hurt society, while marijuana laws are destructive to society by creating criminals out of otherwise hard working, tax paying, good people. Alcohol and tobacco abuse causes many health and social problems, while marijuana's effects are relatively benign to individuals and society. Until the criminal aspect is removed from marijuana, reason and justice, are replaced by oppression and hypocrisy. Please make your voice heard.

Insanity in the courts: in this drug tax case, Docket No 2002-683 (NC) (in PDF format) The State charged a citizen \$39,654.72 for 1.9 pounds of marijuana by considering its initial wet weight (with some root balls) of 17.75 pounds. This demonstrates why are laws are unfair, harsh, and need to be revised. This tax case, NC Docket No 2003-269 May 19,2003 is an example of the State weighting dilute mixtures (in this case 20 pounds {9120 grams} of homemade chocolate fudge), resulting in a \$44,847.60 assessment when including penalties and interest with no mention of the additional criminal charges.

In the infamous case, STATE OF NORTH CAROLINA v. BRIAN FRANK GONZALES NC NO. COA03-606 - June 1, 2004 the State appealed the dismissal of trafficking charges that were rationalized in trial court by charging him with the fresh wet weight of 25.5 pounds even though the SBI certified the marijuana's weight at 6.9 pounds 1 month later. The State won this case in appellate court. It is now the duty of citizens of North Carolina to inform your State Representatives and schedule appointments with them, or at least call to tell them how you feel and encourage them to support changing the laws the way they are currently worded. See my proposed statute revisions, and a proposed Medical Marijuana Act of North Carolina -adapted from MPP's model legislation – Click HereDavid Oppenheimer - Performance Impressions — my company's website, Online Steinel Products Outlet with Heat Guns, Motion Activated Lighting — Ultimate Vaporizer Kits (1/2 price of Volcano with better temp. control and flavor) and More visit our Free Online Concert Photo Galleries (Jam Bands, Bonnaroo and Tour)This page is online at: <http://www.performanceimpressions.com/nclaw.html>