

House Bill 1475

By: Representative Mobley of the 58th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-13-2 of the Official Code of Georgia Annotated, relating to
2 conditional discharge for possession of controlled substances as first offense and dismissal
3 of charges, so as to expand the types of crimes that may be eligible for conditional discharge;
4 to provide for a definition; to provide for judicial discretion; to amend Titles 15, 16, 17, 40,
5 and 42 of the Official Code of Georgia Annotated, relating respectively to courts, crimes and
6 offenses, criminal procedure, motor vehicles and traffic, and penal institutions, so as to
7 correct cross-references; to provide for related matters; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Code Section 16-13-2 of the Official Code of Georgia Annotated, relating to conditional
12 discharge for possession of controlled substances as first offense and dismissal of charges,
13 is amended by striking said Code section and inserting in lieu thereof the following:

14 "16-13-2.

15 (a) As used in this Code section, the term 'rehabilitative treatment program' means
16 outpatient treatment, halfway house treatment, narcotic replacement therapy, drug
17 education or prevention courses, vocational training, family counseling, literacy training,
18 community service, or inpatient or residential drug treatment as needed to address severe
19 dependence, special detoxification, or relapse situations.

20 (b) Whenever any person defendant who has not previously been convicted of any offense
21 under Article 2 or Article 3 of this chapter or of any statute of the United States or of any
22 state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic
23 drugs, or controlled substance in Schedule I or II, pleads guilty to or is found guilty of
24 possession or sale of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic
25 drug, or controlled substance in Schedule I or II, which offense did not involve the use,
26 attempted use, or threatened use of physical force against another person, the court may

1 without entering a judgment of guilt and with the consent of such ~~person~~ defendant defer
 2 further proceedings and place ~~him~~ the defendant on probation upon such reasonable terms
 3 and conditions as the court may require, ~~preferably terms which require~~ and the court shall
 4 require the ~~person~~ defendant to undergo a ~~comprehensive rehabilitation~~ rehabilitative
 5 treatment program, including, if necessary, medical treatment, not to exceed three years,
 6 designed to acquaint ~~him~~ the defendant with the ill effects of drug abuse and to provide ~~him~~
 7 the defendant with knowledge of the gains and benefits which can be achieved by being
 8 a good member of society. If, during the course of the rehabilitative treatment program, the
 9 treatment provider determines that the defendant is unsuitable for the treatment being
 10 provided but may be suitable for other rehabilitative treatment programs, the court may
 11 modify the terms of its order to ensure that the defendant receives the alternative treatment
 12 or program.

13 (c) Upon violation of a term or condition, the court may enter an adjudication of guilt and
 14 proceed accordingly. Any defendant who has failed to successfully complete a
 15 rehabilitative treatment program shall not receive a sentence that exceeds the sentence to
 16 which the defendant would have been subject had the person declined to participate in the
 17 rehabilitative treatment program.

18 (d) Upon fulfillment of the terms and conditions, the court shall discharge the person
 19 defendant and dismiss the proceedings against him the defendant. Discharge and dismissal
 20 under this Code section shall be without court adjudication of guilt and shall not be deemed
 21 a conviction for purposes of this Code section or for purposes of disqualifications or
 22 disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this
 23 Code section may occur only once with respect to any person.

24 (e) Upon application by the defendant and good cause shown, the court may allow a
 25 defendant who has been previously convicted of any offense under Article 2 or Article 3
 26 of this chapter or of any statute of the United States or of any state relating to narcotic
 27 drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs to plead guilty in
 28 accordance with subsection (b) of this Code section.

29 (f) The provisions of this Code section shall not be available to any person who:

30 (1) Has been convicted within the previous five years of a felony involving the use,
 31 attempted use, or threatened use of physical force against another person;

32 (2) In addition to a plea or finding of guilt pursuant to subsection (b) of this Code
 33 section, is charged or convicted in the same proceeding with a felony not related to the
 34 use of drugs;

35 (3) Refuses participation in a rehabilitative treatment program; or

36 (4) Has two separate convictions for nonviolent drug offenses, has participated in two
 37 separate courses of rehabilitative treatment programs under this Code section, and is

1 found by the court by clear and convincing evidence to be unsuitable for any available
 2 form of rehabilitative treatment program.

3 16-13-2.1.

4 (b) Notwithstanding any law to the contrary, any person who is charged with possession
 5 of marijuana, which possession is of one ounce or less, shall be guilty of a misdemeanor
 6 and punished by imprisonment for a period not to exceed 12 months or a fine not to exceed
 7 \$1,000.00, or both, or public works not to exceed 12 months."

8 **SECTION 2.**

9 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by striking
 10 subsection (b) of Code Section 15-7-4, relating to jurisdiction of state courts of counties, and
 11 inserting in lieu thereof the following:

12 "(b) Each state court shall have jurisdiction, within the territorial limits of the county or
 13 counties for which it was created and concurrent with other courts having such jurisdiction,
 14 over possession of one ounce or less of marijuana, in accordance with Code Sections
 15 ~~16-13-2~~ 16-13-2.1 and 16-13-30."

16 **SECTION 3.**

17 Said title is further amended by striking paragraph (1) of subsection (a) of Code Section
 18 15-9-30.6, relating to the probate court's jurisdiction to try certain drug and alcohol offenses,
 19 and inserting in lieu thereof the following:

20 "(1) Possession of one ounce or less of marijuana, in accordance with Code Sections
 21 ~~16-13-2~~ 16-13-2.1 and 16-13-30; and"

22 **SECTION 4.**

23 Said title is further amended by striking subsection (a) and paragraph (1) of subsection (c)
 24 of Code Section 15-10-260, relating to the magistrate court's jurisdiction and penalties, and
 25 inserting in lieu thereof the following:

26 "(a) This article governs trials of misdemeanor violations of Code Sections 16-13-30 and
 27 ~~16-13-2~~ 16-13-2.1, relating to possession of less than one ounce of marijuana; Code
 28 Section 16-8-14, relating to theft by shoplifting of \$300.00 or less; Code Section 3-3-23,
 29 relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic
 30 beverages by, a person under 21 years of age; and Code Section 16-7-21, relating to
 31 criminal trespass."

32 "(1) For possession of less than one ounce of marijuana, as provided in ~~subsection (b) of~~
 33 Code Section ~~16-13-2~~ 16-13-2.1;"

SECTION 5.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by striking paragraph (2) of subsection (j) of Code Section 16-13-30, relating to purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana and penalties, and inserting in lieu thereof the following:

"(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section ~~16-13-2~~ 16-13-2.1, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years."

SECTION 6.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by striking Code Section 17-7-72, relating to the jurisdiction of probate courts to try certain drug and alcohol offenses, and inserting in lieu thereof the following:

"17-7-72.

In probate courts which have jurisdiction over misdemeanor possession of marijuana in accordance with Code Sections ~~16-13-2~~ 16-13-2.1 and 16-13-30 and certain misdemeanor violations of Code Section 3-3-23 pursuant to Code Section 15-9-30.6, the following offenses may be tried upon a summons or citation without an accusation:

(1) Possession of one ounce or less of marijuana, in accordance with Code Sections ~~16-13-2~~ 16-13-2.1 and 16-13-30; and

(2) Any violation of paragraph (2) of subsection (a) of Code Section 3-3-23 which is punishable as a misdemeanor, but not violations punishable as high and aggravated misdemeanors."

SECTION 7.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by striking the introductory language of subsection (a) and subsection (b) of Code Section 40-5-75, relating to suspension of driver's licenses by operation of law, and inserting in lieu thereof the following:

"(a) The driver's license of any person convicted of possession, distribution, manufacture, cultivation, sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer a controlled substance or marijuana, or driving or being in actual physical control of any moving vehicle while under the influence of such a substance in violation of ~~subsection (b) of Code Section 16-13-2~~ 16-13-2.1, subsection (a), (b), or (j) of Code Section 16-13-30, or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection

1 (a) of Code Section 40-6-391; or the law of any other jurisdiction shall by operation of law
 2 be suspended and such suspension shall be subject to the following terms and conditions:"
 3 "(b) Whenever a person is convicted of possession, distribution, manufacture, cultivation,
 4 sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture, cultivate,
 5 sell, or transfer a controlled substance or marijuana, or driving or being in actual physical
 6 control of any moving vehicle while under the influence of such substance in violation of
 7 ~~subsection (b) of Code Section 16-13-2~~ 16-13-2.1, subsection (a), (b), or (j) of Code
 8 Section 16-13-30, or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection (a) of
 9 Code Section 40-6-391; or the law of any other jurisdiction, the court in which such
 10 conviction is had shall require the surrender to it of any driver's license then held by the
 11 person so convicted and the court shall thereupon forward such license and a copy of its
 12 order to the department within ten days after the conviction. The periods of suspension
 13 provided for in this Code section shall begin on the date of such person's conviction for the
 14 offense resulting in such suspension; provided, however, that, effective July 1, 1994, if, at
 15 the time of conviction of any offense listed in subsection (a) of this Code section, the
 16 person does not have a driver's license or the person's driver's license has been previously
 17 suspended, the periods of suspension specified by this Code section shall not commence
 18 until the person applies for the issuance or reinstatement of a driver's license."

19 SECTION 8.

20 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 21 by striking paragraph (2) of subsection (d) of Code Section 42-8-34, relating to probation
 22 revocation hearings, and inserting in lieu thereof the following:

23 "(2) In addition to any other provision of law, any person convicted of a violation of
 24 Code Section 40-6-391 or ~~subsection (b) of Code Section 16-13-2~~ 16-13-2.1 who is
 25 sentenced to probation or a suspended sentence by a municipal, magistrate, probate, state,
 26 or superior court shall also be required by the court to pay a one-time fee of \$25.00. The
 27 clerk of court, or if there is no clerk the person designated to collect fines, fees, and
 28 forfeitures for such court, shall collect such fee and remit the same to the general fund of
 29 the state treasury not later than the tenth day of the month after such fee is collected and
 30 shall be subject to rule and attachment in the same manner as clerks of superior court for
 31 failure to so collect and remit."

32 SECTION 9.

33 All laws and parts of laws in conflict with this Act are repealed.