

House Bill 716

By: Representatives Rakestraw of the 19<sup>th</sup>, Powell of the 32<sup>nd</sup>, Petrea of the 166<sup>th</sup>, and Pruett of the 149<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To enact the "Georgia Pre-Arrest Diversion for Drug and Mental Health Treatment Act"; to  
2 amend Title 35 of the Official Code of Georgia Annotated, relating to law enforcement  
3 officers and agencies, so as to provide for self-referral to law enforcement officers and  
4 agencies by persons seeking treatment for drug or alcohol abuse or dependence or mental  
5 health issues; to provide for definitions; to provide for immunity from arrest or prosecution  
6 for certain drug violations for persons who initiate self-referral; to enable programs of active  
7 outreach by law enforcement officers and agencies for certain persons observed to display  
8 signs of drug or alcohol abuse or dependence or mental health issues; to enable law  
9 enforcement officers to provide certain information or treatment transportation assistance to  
10 certain persons involved in drug related medical or mental health illness response events; to  
11 enable law enforcement officers to provide transportation to treatment facilities for persons  
12 in need of drug or alcohol abuse or dependence or mental health assistance; to amend  
13 Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to  
14 general provisions regarding controlled substances so as to provide for immunity from arrest  
15 or prosecution for drug violations for certain persons consenting to treatment for alcoholism,  
16 drug dependence, or drug abuse; to provide for technical assistance by law enforcement  
17 officers and agencies in drug court divisions; to amend Chapter 1 of Title 15 of the Official  
18 Code of Georgia Annotated, relating to general provisions regarding courts, so as to provide  
19 for law enforcement participation in planning groups for drug court and mental health court  
20 divisions; to require certain written guidelines of prosecuting attorneys relating to immunity  
21 from arrest or prosecution for certain drug violations for certain persons; to amend Article 2  
22 of Chapter 7 of Title 37 of the Official Code of Georgia Annotated, relating to hospitalization  
23 and treatment of voluntary patients, so as to allow for peace officers to take arrested persons  
24 suffering from alcoholism, drug dependence, drug abuse, or mental health issues for  
25 voluntary treatment; to provide for written reports; to provide for an effective date; to provide  
26 for related matters; to provide for a short title; to repeal conflicting laws; and for other  
27 purposes.

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

29 **PART I**  
30 **SECTION 1-1.**

31 This Act shall be known and may be cited as the "Georgia Pre-Arrest Diversion for Drug and  
32 Mental Health Treatment Act."

33 **PART II**  
34 **SECTION 2-1.**

35 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and  
36 agencies, is amended by adding a new chapter to read as follows:

37 "CHAPTER 1A.

38 35-1A-1.

39 As used in this chapter, the term:

40 (1) 'Assisted delivery' means voluntarily requested transportation to a treatment program  
41 for abusers of drugs or alcohol or for mental health issues of any individual who, in the  
42 determination of the law enforcement officer, may benefit from such treatment program.

43 (2) 'Drug violation' means:

44 (A) A violation of subsection (a) of Code Section 16-13-30 for possession of a  
45 controlled substance if the aggregate weight, including any mixture, is less than four  
46 grams of a solid substance, less than one milliliter of liquid substance, or if the  
47 substance is placed onto a secondary medium with a combined weight of less than four  
48 grams;

49 (B) A violation of paragraph (1) of subsection (j) of Code Section 16-13-30 for  
50 possession of less than one ounce of marijuana;

51 (C) A violation of Code Section 16-13-32.2, relating to possession and use of drug  
52 related objects; or

53 (D) A violation relating to the possession or use of opium, heroin, morphine, or any  
54 derivative or synthetic drug of that group.

55 35-1A-2.

56 (a) Each state, county, and local law enforcement agency shall maintain a program  
57 wherein persons desiring treatment for drug or alcohol abuse or dependence or mental

58 health issues may contact such law enforcement agency for information as to available  
59 treatment programs for abusers of drugs or alcohol or persons with mental health issues or  
60 for assisted delivery, and, upon request of such person such law enforcement agency shall  
61 refer such person into such treatment program for abusers of drugs or alcohol or for persons  
62 with mental health issues.

63 (b) Law enforcement agencies shall adopt written policies that set forth the manner in  
64 which its law enforcement officers shall implement the purposes of this Code section.

65 (c) Any person who in good faith contacts a state, county, or local law enforcement agency  
66 pursuant to this Code section for information as to available treatment programs, assisted  
67 delivery, or a referral shall not be arrested, charged, or prosecuted for a drug violation  
68 resulting solely from the seeking of such information or assisted delivery.

69 35-1A-3.

70 (a) Each state, county, and local law enforcement agency shall adopt written policies  
71 enabling its law enforcement officers to identify persons who are not at the time subject to  
72 investigation or arrest pursuant to Article 2 of Chapter 4 of Title 17 and who are observed  
73 to display signs of drug or alcohol abuse or dependence or mental health issues and who,  
74 in the law enforcement officer's determination, may benefit from information about  
75 available treatment programs for abusers of drugs or alcohol or persons with mental health  
76 issues or assisted delivery, and, upon request of such person such law enforcement agency  
77 shall refer such person into such treatment program for abusers of drugs or alcohol or for  
78 persons with mental health issues.

79 (b) Such written policies shall enable such law enforcement officers to provide such  
80 persons with information as to available treatment programs for abusers of drugs or alcohol  
81 or persons with mental health issues, assisted delivery, or a referral.

82 35-1A-4.

83 Each state, county, and local law enforcement agency shall adopt written policies enabling  
84 its law enforcement officers to provide information as to available treatment programs for  
85 abusers of drugs or alcohol or persons with mental health issues or assisted delivery in  
86 response to contacts and persons seeking or needing medical assistance as provided for in  
87 Code Section 16-13-5, and, upon request of such person such law enforcement agency shall  
88 refer such person into such treatment program for abusers of drugs or alcohol or for persons  
89 with mental health issues.

90 35-1A-5.

91 Each state, county, and local law enforcement agency shall adopt written policies for its  
 92 law enforcement officers for the emergency admission of persons arrested for penal  
 93 offenses or for whom there is probable cause to arrest for a drug violation pursuant to  
 94 subsection (b.1) of Code Section 16-13-5 and for the admission of voluntary patients  
 95 pursuant to Code Sections 37-3-42 and 37-7-20.1, respectively.

96 35-1A-6.

97 Each state, county, and local law enforcement agency shall adopt written policies enabling  
 98 such law enforcement agency and its law enforcement officers to provide any requested  
 99 and reasonable technical assistance to drug court divisions provided for under Code Section  
 100 15-1-15 and mental health court divisions provided for under Code Section 15-1-16.

101 35-1A-7.

102 Each state, county, and local law enforcement agency shall comply with the provisions of  
 103 this chapter on and after January 1, 2019."

104

### **PART III**

105

#### **SECTION 3-1.**

106 Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to  
 107 general provisions regarding controlled substances, is amended by revising Code Section  
 108 16-13-5, relating to immunity from arrest or prosecution for persons seeking medical  
 109 assistance for drug overdose, as follows:

110 "16-13-5.

111 (a) As used in this Code section, the term:

112 (1) 'Drug overdose' means an acute condition, including, but not limited to, extreme  
 113 physical illness, decreased level of consciousness, respiratory depression, coma, mania,  
 114 or death, resulting from the consumption or use of a controlled substance or dangerous  
 115 drug by the distressed individual in violation of this chapter or that a reasonable person  
 116 would believe to be resulting from the consumption or use of a controlled substance or  
 117 dangerous drug by the distressed individual.

118 (2) 'Drug violation' means:

119 (A) A violation of subsection (a) of Code Section 16-13-30 for possession of a  
 120 controlled substance if the aggregate weight, including any mixture, is less than four  
 121 grams of a solid substance, less than one milliliter of liquid substance, or if the

122 substance is placed onto a secondary medium with a combined weight of less than four  
 123 grams;

124 (B) A violation of paragraph (1) of subsection (j) of Code Section 16-13-30 for  
 125 possession of less than one ounce of marijuana; ~~or~~

126 (C) A violation of Code Section 16-13-32.2, relating to possession and use of drug  
 127 related objects; or

128 (D) A violation relating to the possession or use of opium, heroin, morphine, or any  
 129 derivative or synthetic drug of that group.

130 (3) 'Medical assistance' means aid provided to a person by a health care professional  
 131 licensed, registered, or certified under the laws of this state who, acting within his or her  
 132 lawful scope of practice, may provide diagnosis, treatment, or emergency medical  
 133 services.

134 (4) 'Seeks medical assistance' means accesses or assists in accessing the 9-1-1 system or  
 135 otherwise contacts or assists in contacting law enforcement or a poison control center and  
 136 provides care to a person while awaiting the arrival of medical assistance to aid such  
 137 person.

138 (b) Any person who in good faith seeks medical assistance for a person experiencing or  
 139 believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted  
 140 for a drug violation if the evidence for the arrest, charge, or prosecution of such drug  
 141 violation resulted solely from seeking such medical assistance. Any person who is  
 142 experiencing a drug overdose and, in good faith, seeks medical assistance for himself or  
 143 herself or is the subject of such a request shall not be arrested, charged, or prosecuted for  
 144 a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation  
 145 resulted solely from seeking such medical assistance. Any such person shall also not be  
 146 subject to, if related to the seeking of such medical assistance:

147 (1) Penalties for a violation of a permanent or temporary protective order or restraining  
 148 order; or

149 (2) Sanctions for a violation of a condition of pretrial release, condition of probation, or  
 150 condition of parole based on a drug violation.

151 (b.1) Any person for whom there is probable cause to arrest for a drug violation and who,  
 152 upon an offer of the law enforcement officer, consents to be immediately taken to a facility  
 153 pursuant to Code Section 37-7-20.1 for observation and diagnosis of alcoholism, drug  
 154 dependence, or drug abuse and is found to show evidence of alcoholism, drug dependence,  
 155 or drug abuse and to be suitable for treatment, shall not be arrested, charged, or prosecuted  
 156 for such drug violation during the pendency of such treatment throughout the time by  
 157 which a prosecution may be commenced for such violation pursuant to Chapter 3 of

158 Title 17 and, upon successful completion of such treatment, shall not be arrested, charged,  
 159 or prosecuted for such drug violation.

160 (c) Nothing in this Code section shall be construed to limit the admissibility of any  
 161 evidence in connection with the investigation or prosecution of a crime with regard to a  
 162 defendant who does not qualify for the protections of subsection (b) of this Code section  
 163 or with regard to other crimes committed by a person who otherwise qualifies for  
 164 protection pursuant to subsection (b) or (b.1) of this Code section. Nothing in this Code  
 165 section shall be construed to limit any seizure of evidence or contraband otherwise  
 166 permitted by law. Nothing in this Code section shall be construed to limit or abridge the  
 167 authority of a law enforcement officer to detain or take into custody a person in the course  
 168 of an investigation or to effectuate an arrest for any offense except as provided in  
 169 subsection (b) or (b.1) of this Code section."

#### 170 **PART IV**

#### 171 **SECTION 4-1.**

172 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
 173 paragraph (3) of subsection (a) of Code Section 15-1-15, relating to drug court divisions, as  
 174 follows:

175 "(3) Each drug court division shall establish a planning group to develop a work plan.  
 176 The planning group shall include the judges, prosecuting attorneys, public defenders,  
 177 community supervision officers, and persons having expertise in the field of substance  
 178 abuse. The planning group may also request technical assistance from law enforcement  
 179 agencies and their law enforcement officers. The work plan shall address the operational,  
 180 coordination, resource, information management, and evaluation needs of the drug court  
 181 division. The work plan shall include drug court division policies and practices related  
 182 to implementing the standards and practices developed pursuant to paragraph (4) of this  
 183 subsection. The work plan shall ensure a risk and needs assessment is used to identify  
 184 the likelihood of recidivating and identify the needs that, when met, reduce recidivism.  
 185 The work plan shall ensure that drug court division eligibility shall be focused on  
 186 moderate-risk and high-risk offenders as determined by a risk and needs assessment. The  
 187 drug court division shall combine judicial supervision, treatment of drug court division  
 188 participants, and drug testing."

#### 189 **SECTION 4-2.**

190 Said title is further amended by revising paragraph (3) of subsection (b) of Code Section  
 191 15-1-16, relating to mental health court divisions, as follows:

192 "(3) Each mental health court division shall establish a planning group to develop a  
 193 written work plan. The planning group shall include judges, prosecuting attorneys,  
 194 sheriffs or their designees, public defenders, community supervision officers, and persons  
 195 having expertise in the field of mental health. The planning group may also request  
 196 technical assistance from other law enforcement agencies and their law enforcement  
 197 officers. The work plan shall address the operational, coordination, resource, information  
 198 management, and evaluation needs of the mental health court division. The work plan  
 199 shall include mental health court division policies and practices related to implementing  
 200 the standards and practices developed pursuant to paragraph (4) of this subsection. The  
 201 work plan shall ensure a risk and needs assessment is used to identify the likelihood of  
 202 recidivating and identify the needs that, when met, reduce recidivism. The work plan  
 203 shall ensure that mental health court division eligibility shall be focused on moderate-risk  
 204 and high-risk offenders as determined by a risk and needs assessment. The mental health  
 205 court division shall combine judicial supervision, treatment of mental health court  
 206 division participants, and drug and mental health testing. Defendants charged with  
 207 murder, murder in the second degree, armed robbery, rape, aggravated sodomy,  
 208 aggravated sexual battery, aggravated child molestation, or child molestation shall not be  
 209 eligible for entry into the mental health court division, except in the case of a separate  
 210 court supervised reentry program designed to more closely monitor mentally ill offenders  
 211 returning to the community after having served a term of incarceration. Any such court  
 212 supervised community reentry program for mentally ill offenders shall be subject to the  
 213 work plan as provided for in this paragraph."

214 **SECTION 4-3.**

215 Said title is further amended in Article 1 of Chapter 18, relating to general provisions  
 216 regarding prosecuting attorneys, by adding a new Code section to read as follows:

217 "15-18-32.

218 Each prosecuting attorney for any court in this state shall create written guidelines for the  
 219 implementation of subsection (b.1) of Code Section 16-13-5."

220 **PART V**

221 **SECTION 5-1.**

222 Article 2 of Chapter 7 of Title 37 of the Official Code of Georgia Annotated, relating to  
 223 hospitalization and treatment of voluntary patients, is amended by adding a new Code section  
 224 to read as follows:

225 "37-7-20.1.  
226 A peace officer may take any person to a facility within the county or an adjoining county  
227 for examination by a physician for evidence of alcoholism, drug dependence, or drug abuse  
228 that is suitable for admission and treatment pursuant to Code Section 37-7-20 if such  
229 person is committing a penal offense, voluntarily desires to be taken to any such facility,  
230 and the peace officer has probable cause for believing that such person is suffering from  
231 alcoholism, drug dependence, or drug abuse. The peace officer shall execute a written  
232 report detailing the circumstances under which such person was taken into custody and  
233 such report shall be made a part of such patient's clinical record."

234

**PART VI**

235

**SECTION 6-1.**

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