

House Bill 364

By: Representatives Boddie of the 62<sup>nd</sup>, Trammell of the 132<sup>nd</sup>, Shannon of the 84<sup>th</sup>, Beverly of the 143<sup>rd</sup>, Thomas of the 39<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to general provisions regarding controlled substances, so as to authorize second  
3 chances under conditional discharge for controlled substances violations under certain  
4 circumstances; to provide for terms and conditions and procedures; to amend Article 3 of  
5 Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation for  
6 first offenders, so as to authorize second chances under first offender treatment of criminal  
7 charges under certain circumstances; to provide for terms and conditions and procedures; to  
8 provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to  
12 general provisions regarding controlled substances, is amended by revising subsection (a) of  
13 Code Section 16-13-2, relating to conditional discharge for possession of controlled  
14 substances as first offense and certain nonviolent property crimes, dismissal of charges, and  
15 restitution to victims, as follows:

16 "(a)(1) Except as provided in paragraph (2) of this subsection, whenever ~~Whenever~~ any  
17 person who has not previously been convicted of any offense under Article 2 or Article 3  
18 of this chapter or of any statute of the United States or of any state relating to narcotic  
19 drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is  
20 found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or  
21 hallucinogenic drug, the court may without entering a judgment of guilt and with the  
22 consent of such person defer further proceedings and place him or her on probation upon  
23 such reasonable terms and conditions as the court may require, preferably terms which  
24 require ~~the~~ such person to undergo a comprehensive rehabilitation program, including,  
25 if necessary, medical treatment, not to exceed three years, designed to acquaint him or  
26 her with the ill effects of drug abuse and to provide him or her with knowledge of the

27 gains and benefits which can be achieved by being a good member of society. Upon  
 28 violation of a term or condition, the court may enter an adjudication of guilt and proceed  
 29 accordingly. Upon fulfillment of the terms and conditions, the court shall discharge ~~the~~  
 30 such person and dismiss the proceedings against him or her. Discharge and dismissal  
 31 under this Code section shall be without court adjudication of guilt and shall not be  
 32 deemed a conviction for purposes of this Code section or for purposes of disqualifications  
 33 or disabilities imposed by law upon conviction of a crime. ~~Discharge~~ Except as provided  
 34 in paragraph (2) of this Code section, discharge and dismissal under this Code section  
 35 may occur only once with respect to any person.

36 (2) If a defendant has been sentenced under this Code section when such defendant was  
 37 between 17 and 25 years of age and has successfully completed such sentence but has not  
 38 been convicted of a subsequent offense for a period of at least five years, the court shall  
 39 be authorized to sentence the defendant under this Code section a second time, provided  
 40 that the offense is not:

41 (A) An offense under Article 2 or Article 3 of this chapter or of any statute of the  
 42 United States or of any state relating to trafficking in narcotic drugs, in marijuana, in  
 43 stimulant, depressant, or hallucinogenic drugs, or in other controlled substances;

44 (B) A forcible felony which shall include any felony which involves the use or threat  
 45 of physical force or violence against any person and further includes, without  
 46 limitation, murder; murder in the second degree; burglary in any degree; robbery;  
 47 armed robbery; home invasion in any degree; kidnapping; hijacking of an aircraft or  
 48 hijacking a motor vehicle in the first degree; aggravated stalking; rape; aggravated child  
 49 molestation; aggravated sexual battery; arson in the first degree; the manufacturing,  
 50 transporting, distribution, or possession of explosives with intent to kill, injure, or  
 51 intimidate individuals or destroy a public building; terroristic threats; or acts of treason  
 52 or insurrection;

53 (C) A crime involving domestic violence which shall include the occurrence of one or  
 54 more of the following acts between past or present spouses, persons who are parents of  
 55 the same child, parents and children, stepparents and stepchildren, foster parents and  
 56 foster children, other persons living or formerly living in the same household, or  
 57 persons who have had an intimate relationship which shall mean a significant  
 58 relationship of a romantic or intimate nature characterized by the expectation of  
 59 affectionate or sexual involvement over a period of time and on a continuing basis  
 60 during the course of the relationship which may include, but not be limited to, an  
 61 engagement to be married and which does not include a casual or business relationship  
 62 or a relationship that ended more than 12 months prior to the act giving rise to the  
 63 charge:

64 (i) Any felony; or  
 65 (ii) Commission of the offense of battery, simple battery, assault, simple assault,  
 66 stalking, criminal damage to property, unlawful restraint, theft by taking, theft by  
 67 shoplifting, possession of less than one ounce of marijuana, or criminal trespass.

68 The term 'domestic violence' shall not be deemed to include reasonable discipline  
 69 administered by a parent to a child in the form of corporal punishment, restraint, or  
 70 detention; or

71 (D) An offense under Code Section 40-6-391.

72 In order to do so, the defendant shall file a verified petition with the court requesting that  
 73 the judge proceed under this Code section and setting forth the facts and special  
 74 circumstances necessary to enable the judge to determine that doing so is in the best  
 75 interest of justice. The judge shall review the defendant's criminal record as shown on  
 76 the records of the Georgia Crime Information Center in deciding whether to allow the  
 77 defendant's case to be disposed of in accordance with this Code section. The judge, as  
 78 part of the record of the disposition of the charge, shall set forth, under seal of the court,  
 79 his or her reasons for agreeing that it is in the best interest of justice to allow the  
 80 defendant to proceed under this Code section a second time. The prosecutor may enter  
 81 into a consent order with the defendant and agree to proceed under this Code section. If  
 82 no consent order can be agreed upon, the court shall conduct a hearing and determine  
 83 whether to permit the defendant to proceed under this Code section."

84 **SECTION 2.**

85 Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to  
 86 probation for first offenders, is amended by revising subsections (a) and (l) of Code  
 87 Section 42-8-60, relating to probation prior to adjudication of guilt, violation of probation,  
 88 and review of criminal record by judge, and adding a new subsection to read as follows:

89 "(a) ~~When~~ Except as otherwise provided in subsection (m) of this Code section, when a  
 90 defendant has not been previously convicted of a felony, the court may, upon a guilty  
 91 verdict or plea of guilty or nolo contendere and before an adjudication of guilt, without  
 92 entering a judgment of guilt and with the consent of the defendant, defer further  
 93 proceedings and:

94 (1) Place the defendant on probation; or

95 (2) Sentence the defendant to a term of confinement."

96 "(l) ~~A~~ Except as provided in subsection (m) of this Code section, a defendant shall not  
 97 avail himself or herself of this article on more than one occasion.

98 (m) If a defendant has been sentenced under this article when such defendant was between  
 99 17 and 25 years of age and has successfully completed such sentence but has not been

100 convicted of a subsequent offense for a period of at least five years, the court shall be  
 101 authorized to sentence the defendant under this article a second time, provided that the  
 102 offense is not:

103 (1) A forcible felony which shall include any felony involving the use or threat of  
 104 physical force or violence against any person and further includes, without limitation,  
 105 murder; murder in the second degree; burglary in any degree; robbery; armed robbery;  
 106 home invasion in any degree; kidnapping; hijacking of an aircraft or hijacking a motor  
 107 vehicle in the first degree; aggravated stalking; rape; aggravated child molestation;  
 108 aggravated sexual battery; arson in the first degree; the manufacturing, transporting,  
 109 distribution, or possession of explosives with intent to kill, injure, or intimidate  
 110 individuals or destroy a public building; terroristic threats; or acts of treason or  
 111 insurrection;

112 (2) Any crime that constitutes trafficking in any controlled substance; or

113 (3) A crime involving domestic violence which shall include the occurrence of one or  
 114 more of the following acts between past or present spouses, persons who are parents of  
 115 the same child, parents and children, stepparents and stepchildren, foster parents and  
 116 foster children, other persons living or formerly living in the same household, or persons  
 117 who have had an intimate relationship which shall mean a significant relationship of a  
 118 romantic or intimate nature characterized by the expectation of affectionate or sexual  
 119 involvement over a period of time and on a continuing basis during the course of the  
 120 relationship which may include, but not be limited to, an engagement to be married and  
 121 which does not include a casual or business relationship or a relationship that ended more  
 122 than 12 months prior to the act giving rise to the charge:

123 (A) Any felony; or

124 (B) Commission of the offenses of battery, simple battery, assault, simple assault,  
 125 stalking, criminal damage to property, unlawful restraint, or criminal trespass.

126 The term 'domestic violence' shall not be deemed to include reasonable discipline  
 127 administered by a parent to a child in the form of corporal punishment, restraint, or  
 128 detention.

129 In order to do so, the defendant shall file a verified petition with the court requesting that  
 130 the judge proceed under this article and setting forth the facts and special circumstances  
 131 necessary to enable the judge to determine that doing so is in the best interest of justice.

132 The judge shall review the defendant's criminal record as shown on the records of the  
 133 Georgia Crime Information Center in deciding whether to sentence the defendant in  
 134 accordance with this article. The judge, as part of the record of the disposition of the  
 135 charge, shall set forth, under seal of the court, his or her reasons for agreeing that it is in  
 136 the best interest of justice to allow the defendant to be sentenced under this article a second

137 time. The prosecutor may enter into a consent order with the defendant and agree to  
138 proceed under this article. If no consent order can be agreed upon, the court shall conduct  
139 a hearing and determine whether to permit the defendant to proceed under this article."

140

**SECTION 3.**

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