

The House Committee on Health and Human Services offers the following substitute to HB 719:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 15-11-471, Title 16, and Code Section 31-22-9.1 of the Official
2 Code of Georgia Annotated, relating to definitions relative to juvenile delinquency, crimes
3 and offenses, and who may perform HIV tests, respectively, so as to provide for the
4 modernization of HIV related laws to align with science to ensure that laws and policies
5 support current understanding of best public health practices for preventing and treating HIV,
6 scientific evidence about routes of transmission, and the public health goals of promoting
7 HIV prevention and treatment; to revise definitions; to provide that certain conduct by a
8 person living with HIV is unlawful if such conduct has a significant risk of transmission; to
9 provide that hypodermic needles and syringes and any residual amounts therein are not
10 considered drug related objects; to provide that employees and agents of syringe services
11 programs are not subject to certain offenses relating to transactions in drug related objects;
12 to provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Code Section 15-11-471 of the Official Code of Georgia Annotated, relating to definitions
16 relative to juvenile delinquency, is amended by revising paragraph (7) as follows:

17 "(7) 'HIV test' means any antibody, antigen, viral particle, viral culture, or other test to
18 indicate the presence of HIV in the human body, ~~and such test has been approved for~~
19 ~~such purposes by the regulations of the Department of Community Health."~~

20 **SECTION 2.**

21 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
22 amended by revising Code Section 16-5-60, relating to reckless conduct causing harm to or
23 endangering the bodily safety of another, conduct by HIV infected persons, and assault by
24 HIV infected persons or hepatitis infected persons, as follows:

25 "16-5-60.

26 (a)(1) Any term used in this Code section and defined in Code Section 31-22-9.1 shall
27 have the meaning provided for such term in Code Section 31-22-9.1.

28 (2) As used in this Code section, the term 'person living with HIV' means a person who
29 has a confirmed positive HIV test, whether or not that person has AIDS, or who has been
30 clinically diagnosed as having AIDS.

31 (b) A person who causes bodily harm to or endangers the bodily safety of another person
32 by consciously disregarding a substantial and unjustifiable risk that his or her act or
33 omission will cause harm or endanger the safety of the other person and the disregard
34 constitutes a gross deviation from the standard of care which a reasonable person would
35 exercise in the situation is guilty of a misdemeanor.

36 (c) A person ~~who is an HIV infected person~~ living with HIV who, ~~after obtaining~~
37 ~~knowledge of being infected with HIV:~~

38 (1) Knowingly engages in a sexual act with the intent to transmit HIV and intercourse
39 ~~or performs or submits to any sexual act involving the sex organs of one person and the~~
40 ~~mouth or anus of another person and the HIV infected person does not disclose his or her~~
41 ~~status as being a person living with HIV to the other person the fact of that infected~~
42 ~~person's being an HIV infected person prior to that intercourse or sexual act; when such~~
43 ~~act has a significant risk of transmission based on current scientifically supported levels~~
44 ~~of risk of transmission; provided, however, that this paragraph shall not apply to a person~~
45 ~~living with HIV who is forced into a sexual act against his or her will; or~~

46 (2) ~~Knowingly allows another person to use a hypodermic needle, syringe, or both, for~~
47 ~~the introduction of drugs or any other substance into or for the withdrawal of body fluids~~
48 ~~from the other person's body and the needle or syringe so used had been previously used~~
49 ~~by the HIV infected person for the introduction of drugs or any other substance into or~~
50 ~~for the withdrawal of body fluids from the HIV infected person's body and where that~~
51 ~~infected person does not disclose to the other person the fact of that infected person's~~
52 ~~being an HIV infected person prior to such use;~~

53 (3)(2) Offers or consents to perform with another person an act of a sexual intercourse
54 act for money with the intent to transmit HIV without disclosing his or her status as being
55 a person living with HIV to that other person ~~the fact of that infected person's being an~~
56 ~~HIV infected person prior to offering or consenting to perform that the sexual act of~~
57 ~~sexual intercourse; when such act has a significant risk of transmission based on current~~
58 ~~scientifically supported levels of risk of transmission~~

59 (4) ~~Solicits another person to perform or submit to an act of sodomy for money without~~
60 ~~disclosing to that other person the fact of that infected person's being an HIV infected~~
61 ~~person prior to soliciting that act of sodomy; or~~

62 ~~(5) Donates blood, blood products, other body fluids, or any body organ or body part~~
 63 ~~without previously disclosing the fact of that infected person's being an HIV infected~~
 64 ~~person to the person drawing the blood or blood products or the person or entity~~
 65 ~~collecting or storing the other body fluids, body organ, or body part,~~

66 is guilty of a felony misdemeanor and, upon conviction thereof, shall be punished by
 67 imprisonment for not more than ~~ten years~~ 12 months.

68 ~~(d) A person who is an HIV infected person or hepatitis infected person and who, after~~
 69 ~~obtaining knowledge of being infected with HIV or hepatitis, commits an assault with the~~
 70 ~~intent to transmit HIV or hepatitis, using his or her body fluids (blood, semen, or vaginal~~
 71 ~~secretions), saliva, urine, or feces upon:~~

72 ~~(1) A peace officer while the peace officer is engaged in the performance of his or her~~
 73 ~~official duties or on account of the peace officer's performance of his or her official~~
 74 ~~duties; or~~

75 ~~(2) A correctional officer while the correctional officer is engaged in the performance~~
 76 ~~of his or her official duties or on account of the correctional officer's performance of his~~
 77 ~~or her official duties~~

78 is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for
 79 ~~not less than five nor more than 20 years."~~

80 SECTION 3.

81 Said title is further amended in Code Section 16-13-1, relating to drug related objects, by
 82 revising paragraph (3) of subsection (a) as follows:

83 "(3) 'Drug related object' means any machine, instrument, tool, equipment, contrivance,
 84 or device which an average person would reasonably conclude is intended to be used for
 85 one or more of the following purposes:

86 (A) To introduce into the human body any dangerous drug or controlled substance
 87 under circumstances in violation of the laws of this state;

88 (B) To enhance the effect on the human body of any dangerous drug or controlled
 89 substance under circumstances in violation of the laws of this state;

90 (C) To conceal any quantity of any dangerous drug or controlled substance under
 91 circumstances in violation of the laws of this state; or

92 (D) To test the strength, effectiveness, or purity of any dangerous drug or controlled
 93 substance under circumstances in violation of the laws of this state.

94 This term shall not include a hypodermic needle or syringe."

95 **SECTION 4.**

96 Said title is further amended in Code Section 16-13-30, relating to the purchase, possession,
97 manufacture, distribution, or sale of controlled substances or marijuana, by adding a new
98 subsection to read as follows:

99 "(n) This Code section shall not apply to an unusable amount of a controlled substance in
100 or on a hypodermic needle or syringe."

101 **SECTION 5.**

102 Said title is further amended in Code Section 16-13-32, relating to transactions in drug
103 related objects, civil forfeiture, and penalties, by revising subsections (a) and (e) as follows:

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

105 (1) 'Drug related object' means any instrument, device, or object which is designed or
106 marketed as useful primarily for one or more of the following purposes:

107 (A) To ~~inject~~, ingest, inhale, or otherwise introduce marijuana or a controlled substance
108 into the human body;

109 (B) To enhance the effect of marijuana or a controlled substance on the human body;

110 (C) To test the strength, effectiveness, or purity of marijuana or a controlled substance;

111 (D) To process or prepare marijuana or a controlled substance for introduction into the
112 human body;

113 (E) To conceal any quantity of marijuana or a controlled substance; or

114 (F) To contain or hold marijuana or a controlled substance while it is being introduced
115 into the human body.

116 This term shall not include a hypodermic needle or syringe.

117 (2) 'Knowing' means either actual or constructive knowledge of the drug related nature
118 of the object; and a person or corporation has constructive knowledge of the drug related
119 nature of the object if he or it has knowledge of facts which would put a reasonable and
120 prudent person on notice of the drug related nature of the object."

121 "(e) All instruments, devices, and drug related objects which are distributed or possessed
122 in violation of this Code section and any proceeds are declared to be contraband, and no
123 person shall have a property right in them and shall be forfeited according to the procedure
124 set forth in Chapter 16 of Title 9. As used in this subsection, the term 'proceeds' shall have
125 the same meaning as set forth in Code Section 9-16-2."

126 **SECTION 6.**

127 Said title is further amended by revising Code Section 16-13-32.1, relating to transactions
128 in drug related objects, evidence as to whether object is drug related, civil forfeiture, and
129 penalties, as follows:

130 "16-13-32.1.

131 (a) It shall be unlawful for any person or corporation to sell, rent, lease, give, exchange,
132 otherwise distribute, or possess with intent to distribute any object or materials of any kind
133 which such person or corporation intends to be used for the purpose of planting,
134 propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,
135 producing, processing, preparing, testing, analyzing, packaging, repackaging, storing,
136 containing, concealing, ~~injecting~~, ingesting, inhaling, or otherwise introducing into the
137 human body marijuana or a controlled substance.

138 (b) Unless stated within the body of the advertisement or notice that the object or materials
139 that are advertised or about which information is disseminated are not available for
140 distribution of any sort in this state, it shall be unlawful for any person or corporation to
141 sell, rent, lease, give, exchange, distribute, or possess with intent to distribute any
142 advertisement of any kind or notice of any kind which gives information, directly or
143 indirectly, on where, how, from whom, or by what means any object or materials may be
144 obtained or made, which object or materials such person or corporation intends to be used
145 for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing,
146 compounding, converting, producing, processing, preparing, testing, analyzing, packaging,
147 repackaging, storing, containing, concealing, ~~injecting~~, ingesting, inhaling, or otherwise
148 introducing into the human body marijuana or a controlled substance.

149 (c) In determining whether any object or materials are intended for any of the purposes
150 listed in subsections (a) and (b) of this Code section, a court or other authority shall
151 consider all logically relevant factors. In a trial under this Code section, any evidence
152 admissible on this question under the rules of evidence shall be admitted. Subject to the
153 rules of evidence, when they are the object of an offer of proof in a court proceeding, the
154 following factors are among those that should be considered by a court or other authority
155 on this question:

- 156 (1) Statements by an owner or anyone in control of the object or materials;
- 157 (2) Instructions provided with the object or materials;
- 158 (3) Descriptive materials accompanying the object or materials;
- 159 (4) National and local advertising or promotional materials concerning the object or
160 materials;
- 161 (5) The appearance of, and any writing or other representations appearing on, the object
162 or materials;
- 163 (6) The manner in which the object or materials are displayed for sale or other
164 distribution;
- 165 (7) Expert testimony concerning the object or materials; and

166 (8) Any written or pictorial materials which are present in the place where the object is
167 located.

168 (d) For a first offense, any person or corporation which violates any provision of this Code
169 section shall be guilty of a misdemeanor. For a second offense, the defendant shall be
170 guilty of a misdemeanor of a high and aggravated nature. For a third or subsequent
171 offense, the defendant shall be guilty of a felony and, upon conviction thereof, shall be
172 imprisoned for not less than one year nor more than five years and shall be fined not more
173 than \$5,000.00.

174 (e) All objects and materials which are distributed or possessed in violation of this Code
175 section and any proceeds are declared to be contraband and no person shall have a property
176 right in them and shall be forfeited according to the procedure set forth in Chapter 16 of
177 Title 9. As used in this subsection, the term 'proceeds' shall have the same meaning as set
178 forth in Code Section 9-16-2.

179 (f) This Code section shall not apply to hypodermic needles or syringes."

180 **SECTION 7.**

181 Said title is further amended by revising Code Section 16-13-32.2, relating to possession and
182 use of drug related objects, as follows:

183 "16-13-32.2.

184 (a) It shall be unlawful for any person to use, or possess with the intent to use, any object
185 or materials of any kind for the purpose of planting, propagating, cultivating, growing,
186 harvesting, manufacturing, compounding, converting, producing, processing, preparing,
187 testing, analyzing, packaging, repackaging, storing, containing, concealing, ~~injecting,~~
188 ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled
189 substance.

190 (b) Any person or corporation which violates any provision of this Code section shall be
191 guilty of a misdemeanor.

192 (c) This Code section shall not apply to hypodermic needles or syringes."

193 **SECTION 8.**

194 Code Section 31-22-9.1 of the Official Code of Georgia Annotated, relating to who may
195 perform HIV tests, is amended by revising paragraph (12) of subsection (a) as follows:

196 "(12) 'HIV test' means any antibody, antigen, viral particle, viral culture, or other test to
197 indicate the presence of HIV in the human body, ~~which test has been approved for such~~
198 ~~purposes by the regulations of the department."~~

199

SECTION 9.

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