

Senate Bill 164

By: Senators Hufstetler of the 52nd, Kirkpatrick of the 32nd, Orrock of the 36th and Butler of the 55th

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 are not considered drug related objects; to
10 provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

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

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

18

SECTION 2.

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

23 "16-5-60.

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

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

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

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

36 (1) Knowingly engages in a sexual act with the intent to transmit HIV and intercourse
 37 ~~or performs or submits to any sexual act involving the sex organs of one person and the~~
 38 ~~mouth or anus of another person and the HIV infected person does not disclose his or her~~
 39 status as being a person living with HIV to the other person ~~the fact of that infected~~
 40 ~~person's being an HIV infected person prior to that intercourse or sexual act; when such~~

41 act has a significant risk of transmission based on current scientifically supported levels
42 of risk of transmission; provided, however, that this paragraph shall not apply to a person
43 living with HIV who is forced into a sexual act against his or her will; or

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

51 ~~(3)(2) Offers or consents to perform with another person an act of a sexual intercourse~~
52 ~~act for money with the intent to transmit HIV without disclosing his or her status as being~~
53 ~~a person living with HIV to that other person the fact of that infected person's being an~~
54 ~~HIV infected person prior to offering or consenting to perform that the sexual act of~~
55 ~~sexual intercourse; when such act has a significant risk of transmission based on current~~
56 ~~scientifically supported levels of risk of transmission~~

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

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

64 is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for
65 not more than ~~ten~~ five years.

66 ~~(d) A person who is an HIV infected person or hepatitis infected person and who, after~~
67 ~~obtaining knowledge of being infected with HIV or hepatitis, commits an assault with the~~

68 ~~intent to transmit HIV or hepatitis, using his or her body fluids (blood, semen, or vaginal~~
69 ~~secretions), saliva, urine, or feces upon:~~

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

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

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

78

SECTION 3.

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

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

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

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

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

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

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

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SECTION 4.

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

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

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

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

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

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

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

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

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

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

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

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

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SECTION 5.

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

122 "16-13-32.1.

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

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

141 (c) In determining whether any object or materials are intended for any of the purposes
142 listed in subsections (a) and (b) of this Code section, a court or other authority shall
143 consider all logically relevant factors. In a trial under this Code section, any evidence
144 admissible on this question under the rules of evidence shall be admitted. Subject to the

145 rules of evidence, when they are the object of an offer of proof in a court proceeding, the
146 following factors are among those that should be considered by a court or other authority
147 on this question:

- 148 (1) Statements by an owner or anyone in control of the object or materials;
- 149 (2) Instructions provided with the object or materials;
- 150 (3) Descriptive materials accompanying the object or materials;
- 151 (4) National and local advertising or promotional materials concerning the object or
152 materials;
- 153 (5) The appearance of, and any writing or other representations appearing on, the object
154 or materials;
- 155 (6) The manner in which the object or materials are displayed for sale or other
156 distribution;
- 157 (7) Expert testimony concerning the object or materials; and
- 158 (8) Any written or pictorial materials which are present in the place where the object is
159 located.

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

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

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

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SECTION 6.

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

175 "16-13-32.2.

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

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

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

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SECTION 7.

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

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

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SECTION 8.

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