

House Bill 253

By: Representatives Momtahan of the 17<sup>th</sup>, Kelley of the 16<sup>th</sup>, Seabaugh of the 34<sup>th</sup>, Tarvin of the 2<sup>nd</sup>, McCollum of the 30<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and  
2 offenses, so as to provide for the offense of drug-induced homicide; to provide for enhanced  
3 penalties for the distribution of certain controlled substances; to provide for enhanced  
4 penalties for the distribution of controlled substances within 1,000 feet of any substance  
5 abuse treatment facility; to provide for related matters; to repeal conflicting laws; and for  
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
10 amended in Code Section 16-5-1, relating to murder, malice murder, felony murder, and  
11 murder in the second degree, by revising subsections (d) and (e) and adding a new subsection  
12 to read as follows:

13 "(d)(1) A person commits the offense of murder when, in the commission of a violation  
14 of subsection (b) or (c) of Code Section 16-13-30 or a violation of Code Section  
15 16-13-32.7, he or she causes the death of another human being, irrespective of malice or  
16 intent, by manufacturing or distributing any controlled substance that also contains the

17 Schedule II controlled substance fentanyl as provided in subparagraph (F) of  
18 paragraph (2) of Code Section 16-13-26.

19 (2) Where the accused is charged with the offense of murder based upon the distribution  
20 of a controlled substance, lack of knowledge that the controlled substance contained  
21 fentanyl shall not be a defense.

22 (e) A person commits the offense of murder in the second degree when, in the commission  
23 of cruelty to children in the second degree, he or she causes the death of another human  
24 being irrespective of malice.

25 ~~(e)(1)~~(f)(1) A person convicted of the offense of murder shall be punished by death, by  
26 imprisonment for life without parole, or by imprisonment for life.

27 (2) A person convicted of the offense of murder in the second degree shall be punished  
28 by imprisonment for not less than ten nor more than 30 years."

29 **SECTION 2.**

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

33 "(e.1) Any person who violates subsection (a) of this Code section with respect to the  
34 Schedule II controlled substance fentanyl as provided in subparagraph (F) of paragraph (2)  
35 of Code Section 16-13-26 shall be guilty of a felony, and upon conviction thereof, shall be  
36 punished as follows:

37 (1) If the aggregate weight, including any mixture, is 4 grams or more, but less than 14  
38 grams, such person shall be sentenced to a minimum term of imprisonment for not less  
39 than three nor more than seven years;

40 (2) If the aggregate weight, including any mixture, is 14 grams or more, but less than 28  
41 grams, such person shall be sentenced to a minimum term of imprisonment for not less  
42 15 nor more than 20 years; and

43 (3) If the aggregate weight, including any mixture, is 28 grams or more, such person  
44 shall be sentenced to a term of life imprisonment."

45 **SECTION 3.**

46 Said title is further amended by adding a new Code section to Article 2 of Chapter 13,  
47 relating to regulation of controlled substances, to read as follows:

48 "16-13-32.7.

49 (a) It shall be unlawful for any person to manufacture, distribute, dispense, or possess with  
50 intent to distribute a controlled substance in, on, or within 1,000 feet of any real property  
51 owned by or leased to any public or private treatment facility as provided in Code Section  
52 37-7-80.

53 (b) Any person who violates or conspires to violate subsection (a) of this Code section  
54 shall be guilty of a felony and upon conviction shall receive the following punishment:

55 (1) Upon a first conviction, imprisonment for not more than 20 years or a fine of not  
56 more than \$20,000.00, or both; or

57 (2) Upon a second or subsequent conviction, imprisonment for not less than five years  
58 nor more than 40 years or a fine of not more than \$40,000.00, or both. It shall be  
59 mandatory for the court to impose a minimum sentence of five years which may not be  
60 suspended unless otherwise provided by law.

61 A sentence imposed under this Code section shall be served consecutively to any other  
62 sentence imposed.

63 (c) A conviction arising under this Code section shall not merge with a conviction arising  
64 under any other provision of this article."

65 **SECTION 4.**

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