

House Bill 535 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 18th, Hong of the 103rd, Leverett of the 123rd, Evans of the 57th, and Miller of the 62nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia
2 Annotated, relating to schedules, offenses, and penalties relative to the regulation of
3 controlled substances, so as to clarify and revise mandatory minimum departure provisions
4 for defendants convicted of trafficking of certain substances; to provide for a statutory
5 sentencing limit applicable to the offense of trafficking in fentanyl; to amend Code Section
6 42-8-38 of the Official Code of Georgia Annotated, relating to arrest or graduated sanctions
7 for probationers violating terms, hearing, disposition of charge, and procedure when
8 probation revoked in county other than that of conviction, so as to provide for credit for time
9 served regarding probation revocation sentencing; to provide for effective dates and
10 applicability; to provide for related matters; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
15 relating to schedules, offenses, and penalties relative to the regulation of controlled
16 substances, is amended by revising subsections (b.1) and (g) through (i) of Code Section

17 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine
18 and penalties, as follows:

19 "(b.1) Except as authorized by this article, any person who sells, manufactures, delivers,
20 brings into this state, or has possession of four grams or more of fentanyl as identified in
21 subparagraph (F) of paragraph (2) of Code Section 16-13-26, the fentanyl analog structural
22 class as identified in paragraph (13) of Code Section 16-13-25, or any salt, isomer, or salt
23 of an isomer thereof, as described in Schedules I and II, of any mixture containing four
24 grams or more of fentanyl any such substance in violation of this article commits the felony
25 offense of trafficking in fentanyl and, upon conviction thereof, shall be punished as
26 follows:

27 (1) If the quantity of such substances involved is four grams or more, but less than eight
28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
29 ten years and shall pay a fine of \$75,000.00;

30 (2) If the quantity of such substances involved is eight grams or more, but less than 14
31 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
32 15 years and shall pay a fine of \$150,000.00;

33 (3) If the quantity of such substances involved is 14 grams or more, but less than 28
34 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
35 25 years and shall pay a fine of \$250,000.00; and

36 (4) If the quantity of such substances involved is 28 grams or more, the person shall be
37 sentenced to a mandatory minimum term of imprisonment of 35 years and shall pay a fine
38 of \$750,000.00."

39 "(g)(1) The district attorney may move the sentencing court to impose a reduced or
40 suspended sentence upon any person who is convicted of a violation of this Code section
41 who provides substantial assistance in the identification, arrest, or conviction of any of
42 his or her accomplices, accessories, coconspirators, or principals. Upon good cause
43 shown, the motion may be filed and heard in camera. Upon hearing such motion, the

44 sentencing court may impose a reduced or suspended sentence if such court finds that the
45 defendant has rendered such substantial assistance.

46 (2)(A) The sentencing court may, in its discretion, depart from the mandatory
47 minimum sentence specified for a person who is convicted of a violation of this Code
48 section as set forth in subparagraph (B) of this paragraph if such court concludes that:

- 49 (i) The defendant was not a leader of the criminal conduct;
50 (ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous
51 object during the crime;
52 (iii) The criminal conduct did not result in a death or serious bodily injury to a person
53 other than to a person who is a party to the crime;
54 (iv) The defendant has no prior felony conviction; and
55 (v) The interests of justice will not be served by the imposition of the prescribed
56 mandatory minimum sentence.

57 (B) The sentencing departure ranges pursuant to subparagraph (A) of this paragraph
58 shall be as follows:

- 59 (i) Any person convicted of violating subparagraph (a)(1)(A) of this Code section,
60 paragraph (2) of subsection (a) of this Code section relating to the quantity of drugs
61 specified in subparagraph (a)(1)(A) of this Code section, or paragraph (1) of
62 subsection (e) or (f) of this Code section, imprisonment for not less than five nor more
63 than ten years and a fine of not less than \$100,000.00 nor more than \$200,000.00;
64 (ii) Any person convicted of violating subparagraph (a)(1)(B) of this Code section,
65 paragraph (2) of subsection (a) of this Code section relating to the quantity of drugs
66 specified in subparagraph (a)(1)(B) of this Code section, or paragraph (2) of
67 subsection (e) or (f) of this Code section, imprisonment for not less than seven years
68 and six months nor more than 15 years and a fine of not less than \$150,000.00 nor
69 more than \$300,000.00;

- 70 (iii) Any person convicted of violating subparagraph (a)(1)(C) of this Code section,
71 paragraph (2) of subsection (a) of this Code section relating to the quantity of drugs
72 specified in subparagraph (a)(1)(C) of this Code section, or paragraph (3) of
73 subsection (e) or (f) of this Code section, imprisonment for not less than 12 years and
74 six months nor more than 25 years and a fine of not less than \$500,000.00 nor more
75 than \$1 million;
- 76 (iv) Any person convicted of violating paragraph (1) of subsection (b) or (d) of this
77 Code section, imprisonment for not less than two years and six months nor more than
78 five years and a fine of not less than \$25,000.00 nor more than \$50,000.00;
- 79 (v) Any person convicted of violating paragraph (2) of subsection (b) of this Code
80 section, imprisonment for not less than five years nor more than ten years and a fine
81 of not less than \$50,000.00 nor more than \$100,000.00;
- 82 (vi) Any person convicted of violating paragraph (3) of subsection (b) of this Code
83 section, imprisonment for not less than 12 years and six months nor more than 25
84 years and a fine of not less than \$250,000.00 nor more than \$500,000.00;
- 85 (vii) Any person convicted of violating paragraph (1) of subsection (b.1) of this Code
86 section, imprisonment for not less than two years and six months nor more than ~~five~~
87 ten years and a fine of not less than \$12,500.00 nor more than ~~\$25,000.00~~ \$75,000.00;
- 88 (viii) Any person convicted of violating paragraph (2) of subsection (b.1) of this
89 Code section, imprisonment for not less than five years nor more than ~~ten~~ 15 years
90 and a fine of not less than \$25,000.00 nor more than ~~\$50,000.00~~ \$150,000.00;
- 91 (ix) Any person convicted of violating paragraph (3) of subsection (b.1) of this Code
92 section, imprisonment for not less than ten years nor more than ~~20~~ 25 years and a fine
93 of not less than \$50,000.00 nor more than ~~\$100,000.00~~ \$250,000.00;
- 94 (x) Any person convicted of violating paragraph (4) of subsection (b.1) of this Code
95 section, imprisonment for not less than 15 years nor more than ~~30~~ 35 years and a fine
96 of not less than \$250,000.00 nor more than ~~\$500,000.00~~ \$750,000.00;

- 97 (xi) Any person convicted of violating paragraph (1) of subsection (c) of this Code
98 section, imprisonment for not less than two years and six months nor more than five
99 years and a fine of not less than \$50,000.00 nor more than \$100,000.00;
- 100 (xii) Any person convicted of violating paragraph (2) of subsection (c) of this Code
101 section, imprisonment for not less than three years and six months nor more than
102 seven years and a fine of not less than \$125,000.00 nor more than \$250,000.00;
- 103 (xiii) Any person convicted of violating paragraph (3) of subsection (c) of this Code
104 section, imprisonment for not less than seven years and six months nor more than 15
105 years and a fine of not less than \$500,000.00 nor more than \$1 million; and
- 106 (xiv) Any person convicted of violating paragraph (2) of subsection (d) of this Code
107 section, imprisonment for not less than seven years and six months nor more than 15
108 years and a fine of not less than \$125,000.00 nor more than \$250,000.00.
- 109 (C) If the sentencing court departs from the mandatory minimum sentence pursuant to
110 this paragraph, such court shall specify on the record the circumstances for such
111 departure and the interests served by such departure. Any such order shall be
112 appealable by the State of Georgia pursuant to Code Section 5-7-1.
- 113 (D) As used in this paragraph, the term:
- 114 (i) 'Dangerous weapon' shall have the same meaning as set forth in Code Section
115 16-11-121.
- 116 (ii) 'Firearm' shall have the same meaning as set forth in Code Section 16-11-131.
- 117 (iii) 'Hazardous object' shall have the same meaning as set forth in Code Section
118 20-2-751.
- 119 (iv) 'Leader' means a person who planned and organized others and acted as a guiding
120 force in order to achieve a common goal.
- 121 (3) The sentencing court may, in its discretion, depart from the mandatory minimum
122 sentence specified in this Code section for a person who is convicted of a violation of this

123 Code section when the prosecuting attorney and the defendant have agreed to a sentence
124 that is below such mandatory minimum.

125 (h)(1) Except as provided in paragraph (2) of this subsection and subsection (g) of this
126 Code section, any Any person who violates any provision of this Code section shall be
127 punished as provided for in the applicable mandatory minimum punishment; provided,
128 however, that any such punishment imposed shall be and for not more than 30 years of
129 imprisonment and by a fine not to exceed \$1 million.

130 (2) Except as provided in subsection (g) of this Code section, any person who violates
131 any provision of subsection (b.1) of this Code section shall be punished as provided for
132 in the applicable mandatory minimum punishment; provided, however, that any such
133 punishment imposed shall be for not more than 40 years of imprisonment and by a fine
134 not to exceed \$1 million.

135 (i) Except as provided in subsection (g) of this Code section and notwithstanding the
136 provisions of Code Section 16-13-2 to the contrary, with respect to any person who is
137 found to have violated this Code section, no portion of the mandatory minimum sentence
138 shall be suspended, stayed, probated, deferred, or otherwise withheld by the sentencing
139 court. Any sentence imposed pursuant to subsection (g) of this Code section shall not be
140 reduced by any earned time, early release, work release, leave, or other sentence-reducing
141 measures under programs administered by the Department of Corrections, the effect of
142 which would be to reduce the period of incarceration ordered by the sentencing court ~~or~~
143 ~~any form of pardon, parole, or commutation of sentence by the State Board of Pardons and~~
144 ~~Paroles;~~ provided, however, that during the final year of incarceration, a defendant so
145 sentenced shall be eligible to be considered for participation in a Department of Corrections
146 administered transitional center or work release program."

147 **SECTION 2.**

148 Code Section 42-8-38 of the Official Code of Georgia Annotated, relating to arrest or
149 graduated sanctions for probationers violating terms, hearing, disposition of charge, and
150 procedure when probation revoked in county other than that of conviction, is amended by
151 revising subsection (c) as follows:

152 "(c) After the hearing, the court may revoke, modify, or continue the probation. If the
153 probation is revoked, the court may order the execution of the sentence originally imposed
154 or of any portion thereof. In such event, the time that the defendant has served under
155 probation shall be considered as time served and shall be deducted from and considered a
156 part of the time he or she was originally sentenced to serve. Regarding any carceral
157 sentence imposed pursuant to a revocation of probation, a person shall be given full credit
158 for time served for each day served in confinement since the date of the commission of the
159 violation in accordance with Code Section 17-10-11, excluding any time tolled in
160 accordance with Code Section 42-8-36."

161 **SECTION 3.**

162 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon
163 its approval by the Governor or upon its becoming law without such approval and shall apply
164 to offenses committed on or after such date.

165 (b) Section 2 of this Act shall become effective on July 1, 2026.

166 **SECTION 4.**

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