

Senate Bill 587

By: Senators Bearden of the 30th and Brass of the 28th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-13-31 of the Official Code of Georgia Annotated, relating to
2 trafficking in cocaine, illegal drugs, marijuana, or methamphetamine and penalties, so as to
3 provide for the offense of trafficking in fentanyl and fentanyl analog structural class; to
4 provide for mandatory minimum penalties and for departure therefrom; to amend Code
5 Section 4-8-27, Titles 16 and 17, Article 2 of Chapter 9 of Title 42, and Code
6 Section 45-12-37 of the Official Code of Georgia Annotated, relating to certificates of
7 registration for dog ownership, requirements for issuance of certificate, individuals excluded
8 from receiving registration, limitation of ownership, and annual renewal, crimes and
9 offenses, criminal procedure, grants of pardons, paroles, and other relief, and reward for
10 information leading to arrest and conviction of person selling dangerous or narcotic drugs
11 generally and rewards by counties and municipalities, respectively, so as to provide for
12 conforming changes; to provide for related matters; to provide for an effective date; to repeal
13 conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15

SECTION 1.

16 Code Section 16-13-31 of the Official Code of Georgia Annotated, relating to trafficking in
17 cocaine, illegal drugs, marijuana, or methamphetamine and penalties, is amended by adding
18 a new subsection and revising paragraph (2) of subsection (g) 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 fentanyl or the fentanyl analog structural class
21 or any mixture containing any such substance in violation of this article commits the felony
22 offense of trafficking in fentanyl and, upon conviction thereof, shall be punished as
23 follows:

24 (1) If the quantity of such substances involved is less than one gram, the person shall be
25 sentenced to a mandatory minimum term of imprisonment of five years and shall pay a
26 fine of \$100,000.00;

27 (2) If the quantity of such substances involved is one gram or more, but less than
28 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment
29 of 15 years and shall pay a fine of \$500,000.00; and

30 (3) If the quantity of such substances involved is 28 grams or more, the person shall be
31 sentenced to a mandatory minimum term of life imprisonment and shall pay a fine of
32 \$1 million."

33 "(2)(A) In the court's discretion, the judge may depart from the mandatory minimum
34 sentence specified for a person who is convicted of a violation of this Code section as
35 set forth in subparagraph (B) of this paragraph if the judge concludes that:

36 (i) The defendant was not a leader of the criminal conduct;

37 (ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous
38 object during the crime;

39 (iii) The criminal conduct did not result in a death or serious bodily injury to a person
40 other than to a person who is a party to the crime;

41 (iv) The defendant has no prior felony conviction; and

42 (v) The interests of justice will not be served by the imposition of the prescribed
43 mandatory minimum sentence.

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

46 (i) Any person convicted of violating paragraph (1) of subsection (b.1) of this Code
47 section, imprisonment for not less than six months nor more than five years and a fine
48 of not less than \$25,000.00 nor more than \$100,000.00; provided, however, that
49 imprisonment for six months shall be limited to first offenses and include an order
50 that such person obtain substance abuse treatment and services;

51 ~~(i)~~(ii) Any person convicted of violating paragraph (1) of subsection (b) or (d) of this
52 Code section, imprisonment for not less than two years and six months to nor more
53 than five years imprisonment and a fine of not less than \$25,000.00 nor more than
54 \$50,000.00;

55 ~~(ii)~~(iii) Any person convicted of violating paragraph (1) of subsection (c) of this Code
56 section, imprisonment for not less than two years and six months to nor more than
57 five years imprisonment and a fine of not less than \$50,000.00 nor more than
58 \$100,000.00;

59 ~~(iii)~~(iv) Any person convicted of violating paragraph (2) of subsection (c) of this
60 Code section, imprisonment for not less than three years and six months to nor more
61 than seven years imprisonment and a fine of not less than \$125,000.00 nor more than
62 \$250,000.00;

63 ~~(iv)~~(v) Any person convicted of violating subparagraph (a)(1)(A), paragraph (2) of
64 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(A)
65 of this Code section, or paragraph (1) of subsection (e) or (f) of this Code section,
66 imprisonment for not less than five to nor more than ten years imprisonment and a
67 fine of not less than \$100,000.00 nor more than \$200,000.00;

68 ~~(v)~~(vi) Any person convicted of violating paragraph (2) of subsection (b) of this Code
69 section, imprisonment for not less than five to nor more than ten years imprisonment
70 and a fine of not less than \$50,000.00 nor more than \$100,000.00;

71 ~~(vi)~~(vii) Any person convicted of violating subparagraph (a)(1)(B), paragraph (2) of
72 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(B)
73 of this Code section, or paragraph (2) of subsection (e) or (f) of this Code section,
74 imprisonment for not less than seven years and six months to nor more than 15 years
75 imprisonment and a fine of not less than \$150,000.00 nor more than \$300,000.00;

76 (viii) Any person convicted of violating paragraph (2) of subsection (b.1) of this
77 Code section, imprisonment for not less than seven nor more than 15 years and a fine
78 of not less than \$100,000.00 nor more than \$500,000.00;

79 ~~(vii)~~(ix) Any person convicted of violating paragraph (3) of subsection (c) of this
80 Code section, imprisonment for not less than seven years and six months to nor more
81 than 15 years imprisonment and a fine of not less than \$500,000.00 nor more than \$1
82 million;

83 ~~(viii)~~(x) Any person convicted of violating paragraph (2) of subsection (d) of this
84 Code section, imprisonment for not less than seven years and six months to nor more
85 than 15 years imprisonment and a fine of not less than \$125,000.00 nor more than
86 \$250,000.00;

87 ~~(ix)~~(xi) Any person convicted of violating paragraph (3) of subsection (b) of this
88 Code section, imprisonment for not less than 12 years and six months to nor more
89 than 25 years imprisonment and a fine of not less than \$250,000.00 nor more than
90 \$500,000.00; and

91 ~~(x)~~(xii) Any person convicted of violating subparagraph (a)(1)(C), paragraph (2) of
92 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(C)
93 of this Code section, or paragraph (3) of subsection (e) or (f) of this Code section,

94 imprisonment for not less than 12 years and six months to nor more than 25 years
 95 imprisonment and a fine of not less than \$500,000.00 nor more than \$1 million; and
 96 (xiii) Any person convicted of violating paragraph (3) of subsection (b.1) of this
 97 Code section, imprisonment for not less than 15 years nor more than life and a fine
 98 of not less than \$500,000.00 nor more than \$1 million.

99 (C) If a judge reduces the mandatory minimum sentence pursuant to this paragraph, the
 100 judge shall specify on the record the circumstances for the reduction and the interests
 101 served by such departure. Any such order shall be appealable by the State of Georgia
 102 pursuant to Code Section 5-7-1.

103 (D) As used in this paragraph, the term:

104 (i) 'Dangerous weapon' shall have the same meaning as set forth in Code
 105 Section 16-11-121.

106 (ii) 'Firearm' shall have the same meaning as set forth in Code Section ~~16-11-127.1~~
 107 16-11-131.

108 (iii) 'Hazardous object' shall have the same meaning as set forth in Code
 109 Section 20-2-751.

110 (iv) 'Leader' means a person who planned and organized others and acted as a guiding
 111 force in order to achieve a common goal."

112 **SECTION 2.**

113 Code Section 4-8-27 of the Official Code of Georgia Annotated, relating to certificates of
 114 registration for dog ownership, requirements for issuance of certificate, individuals excluded
 115 from receiving registration, limitation of ownership, and annual renewal, is amended by
 116 revising paragraph (3) of subsection (f) as follows:

117 "(3) A felony involving trafficking in ~~cocaine, illegal drugs, marijuana,~~
 118 ~~methamphetamine, or ecstasy as provided for in~~ of substances in violation of Code
 119 Sections 16-13-31 and 16-13-31.1"

120 **SECTION 3.**

121 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
122 amended in Code Section 16-11-106, relating to possession of firearm or knife during
123 commission of or attempt to commit certain crimes, by revising paragraph (5) of
124 subsection (b) as follows:

125 "(5) Any crime involving the trafficking of ~~cocaine, marijuana, or illegal drugs as~~
126 ~~provided in~~ substances in violation of Code Section 16-13-31,"

127 **SECTION 4.**

128 Said title is further amended in Code Section 16-11-133, relating to minimum periods of
129 confinement for persons convicted who have prior convictions, by revising paragraph (5) of
130 subsection (b) as follows:

131 "(5) Any crime involving the trafficking of ~~cocaine, marijuana, or illegal drugs as~~
132 ~~provided in~~ substances in violation of Code Section 16-13-31,"

133 **SECTION 5.**

134 Said title is further amended in Code Section 16-11-160, relating to use of machine guns,
135 sawed-off rifles, sawed-off shotguns, or firearms with silencers during commission of certain
136 offenses and enhanced criminal penalties, by revising division (a)(2)(B)(iii) as follows:

137 "(iii) Trafficking in ~~cocaine, illegal drugs, marijuana, or methamphetamine as~~
138 ~~provided in~~ of substances in violation of Code Section 16-13-31."

139 **SECTION 6.**

140 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
141 amended in Code Section 17-6-1, relating to when offenses bailable, procedure, schedule of
142 bails, and appeal bonds, by revising subsection (g) as follows:

143 "(g) No appeal bond shall be granted to any person who has been convicted of murder,
 144 rape, aggravated sodomy, armed robbery, home invasion in any degree, aggravated child
 145 molestation, child molestation, kidnapping, trafficking ~~in cocaine or marijuana~~ of
 146 substances in violation of Code Section 16-13-31, aggravated stalking, or aircraft hijacking
 147 and who has been sentenced to serve a period of incarceration of five years or more. The
 148 granting of an appeal bond to a person who has been convicted of any other felony offense
 149 or of any misdemeanor offense involving an act of family violence as defined in Code
 150 Section 19-13-1, or of any offense delineated as a high and aggravated misdemeanor or of
 151 any offense set forth in Code Section 40-6-391, shall be in the discretion of the convicting
 152 court. Appeal bonds shall terminate when the right of appeal terminates, and such bonds
 153 shall not be effective as to any petition for review or petition or application for writ of
 154 certiorari unless the court in which the petition for review or petition or application is filed
 155 so specifies."

156 **SECTION 7.**

157 Said title is further amended in Code Section 17-6-12, relating to unsecured judicial release,
 158 requirement, effect of failure of person charged to appear for trial, and consideration of
 159 criminal record, by revising division (a)(1)(B)(xiii) as follows:

160 "(xiii) ~~Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine~~ of
 161 substances in violation of Code Section 16-13-31;"

162 **SECTION 8.**

163 Said title is further amended in Code Section 17-10-9.1, relating to voluntary surrender to
 164 county jail or correctional institution and release of defendant, by revising paragraph (9) of
 165 subsection (a) as follows:

166 "(9) Trafficking of substances in violation of ~~Violating~~ Code Section 16-13-31, ~~relating~~
 167 ~~to trafficking in cocaine or marijuana;~~"

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SECTION 9.

169 Article 2 of Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to
170 grants of pardons, paroles, and other relief, is amended in Code Section 42-9-42, relating to
171 procedure for granting relief from sentence, conditions and prerequisites, public access to
172 information, and violation of parole, by revising division (b)(1)(B)(xxix) as follows:

173 “(xxix) ~~Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine of~~
174 substances in violation of Code Section 16-13-31;”

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SECTION 10.

176 Said article is further amended in Code Section 42-9-60, relating to overcrowding of prison
177 system as creating state of emergency, paroling inmates to reduce prison system population
178 to capacity, and annual report of inmates paroled, by revising paragraph (2) of subsection (a)
179 as follows:

180 “(2) 'Dangerous offender' means a state prison inmate who is imprisoned for conviction
181 of any one or more of the following crimes as defined by Title 16, the 'Criminal Code of
182 Georgia': murder, voluntary manslaughter, kidnapping, armed robbery, rape, aircraft
183 hijacking, aggravated sodomy, aggravated battery, aggravated assault, incest, child
184 molestation, child abuse, or enticing a child for indecent purposes, or any felony
185 ~~punishable under~~ violation of trafficking of substances in violation of Code
186 Section 16-13-31, ~~relating to prohibited acts regarding marijuana, cocaine, and illegal~~
187 ~~drugs~~. The term 'dangerous offender' shall also include an inmate who is incarcerated for
188 a second or subsequent time for the commission of a crime for which the inmate could
189 have been sentenced to life imprisonment.”

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SECTION 11.

191 Code Section 45-12-37 of the Official Code of Georgia Annotated, relating to reward for
192 information leading to arrest and conviction of person selling dangerous or narcotic drugs

193 generally and rewards by counties and municipalities, is amended by revising subsection (b)
194 as follows:

195 "(b) Any person, other than a law enforcement officer, who furnishes information leading
196 to the arrest and conviction of a person who is charged with selling dangerous drugs in
197 violation of Code Section 16-13-72 may receive a reward of up to \$500.00. Any person,
198 other than a law enforcement officer, who furnishes information leading to the arrest and
199 conviction of a person who is charged with selling a controlled substance in violation of
200 Code Section 16-13-30 or trafficking of substances in violation of Code Section 16-13-31,
201 may receive a reward of \$1,000.00."

202 **SECTION 12.**

203 This Act shall become effective upon its approval by the Governor or upon its becoming law
204 without such approval.

205 **SECTION 13.**

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