

House Bill 719

By: Representatives Silcox of the 52nd, Cooper of the 43rd, Newton of the 123rd, Drenner of the 85th, and Henson of the 86th

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 modernization of HIV related laws to align with science to
3 ensure that laws and policies support current understanding of best public health practices
4 for preventing and treating HIV, scientific evidence about routes of transmission, and the
5 public health goals of promoting HIV prevention and treatment; to provide that certain
6 conduct by a person living with HIV is unlawful if such conduct has a significant risk of
7 transmission; to provide that hypodermic needles and syringes and any residual amounts
8 therein are not considered drug related objects; to provide that employees and agents of
9 syringe services programs are not subject to certain offenses relating to transactions in drug
10 related objects; to authorize the Department of Public Health to promulgate rules and
11 regulations; to provide for definitions; to provide for related matters; to repeal conflicting
12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

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

19 "16-5-60.

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

22 (2) As used in this Code section, the term 'person living with HIV' means a person who
23 has been determined to be infected with HIV, whether or not that person has AIDS, or
24 who has been clinically diagnosed as having AIDS.

25 (b) A person who causes bodily harm to or endangers the bodily safety of another person
26 by consciously disregarding a substantial and unjustifiable risk that his or her act or

27 omission will cause harm or endanger the safety of the other person and the disregard
 28 constitutes a gross deviation from the standard of care which a reasonable person would
 29 exercise in the situation is guilty of a misdemeanor.

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

32 (1) Knowingly engages in a sexual act with the intent to transmit HIV and intercourse
 33 ~~or performs or submits to any sexual act involving the sex organs of one person and the~~
 34 ~~mouth or anus of another person and the HIV infected person does not disclose his or her~~
 35 ~~status as being HIV infected to the other person the fact of that infected person's being~~
 36 ~~an HIV infected person prior to that intercourse or sexual act; when such act has a~~
 37 ~~significant risk of transmission based on current scientifically supported levels of risk of~~
 38 ~~transmission; provided, however, that this paragraph shall not apply to an HIV infected~~
 39 ~~person that engages in sexual activity with force and against his or her will; or~~

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

47 (3)(2) Offers or consents to perform with another person ~~an act of a sexual intercourse~~
 48 ~~act for money with the intent to transmit HIV without disclosing his or her status as being~~
 49 ~~HIV infected to that other person the fact of that infected person's being an HIV infected~~
 50 ~~person prior to offering or consenting to perform that the sexual act of sexual intercourse;~~
 51 ~~when such act has a significant risk of transmission based on current scientifically~~
 52 ~~supported levels of risk of transmission~~

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

56 (5) Donates blood, blood products, other body fluids, or any body organ or body part
 57 without previously disclosing the fact of that infected person's being an HIV infected
 58 person to the person drawing the blood or blood products or the person or entity
 59 collecting or storing the other body fluids, body organ, or body part,

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

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

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

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

69 ~~(2) A correctional officer while the correctional officer is engaged in the performance~~
 70 ~~of his or her official duties or on account of the correctional officer's performance of his~~
 71 ~~or her official duties~~

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

74 **SECTION 2.**

75 Said title is further amended in Code Section 16-13-1, relating to drug related objects, by
 76 revising paragraph (3) and by adding a new paragraph to subsection (a) to read as follows:

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

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

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

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

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

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

89 "(6) 'Residual amount' means an unusable amount of a controlled substance."

90 **SECTION 3.**

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

94 "(n) This Code section shall not apply to a residual amount in or on a hypodermic needle
 95 or syringe."

96

SECTION 4.

97 Said title is further amended by revising Code Section 16-13-32, relating to transactions in
 98 drug related objects, civil forfeiture, and penalties, as follows:

99 "16-13-32.

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

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

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

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

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

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

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

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

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

113 (2) 'Knowing' means either actual or constructive knowledge of the drug related nature
 114 of the object; and a person or corporation has constructive knowledge of the drug related
 115 nature of the object if he or it has knowledge of facts which would put a reasonable and
 116 prudent person on notice of the drug related nature of the object.

117 (b) Except as otherwise authorized in subsection (c) of this Code section, it ~~It~~ shall be
 118 unlawful for any person or corporation, knowing the drug related nature of the object, to
 119 sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug related
 120 object. It shall also be unlawful for any person or corporation, knowing the drug related
 121 nature of the object, to display for sale, or possess with the intent to distribute any drug
 122 related object. Unless stated within the body of the advertisement or notice that the object
 123 that is advertised or about which information is disseminated is not available for
 124 distribution of any sort in this state, it shall be unlawful for any person or corporation,
 125 knowing the drug related nature of the object, to distribute or disseminate in any manner
 126 to any person any advertisement of any kind or notice of any kind which gives information,
 127 directly or indirectly, on where, how, from whom, or by what means any drug related
 128 object may be obtained or made.

129 (c)~~(1)~~ It shall be unlawful for any person or corporation, other than a licensed
 130 pharmacist, a pharmacy intern or pharmacy extern as defined in Code Section 26-4-5, ~~or~~
 131 a practitioner licensed to dispense dangerous drugs, or a person employed by or acting
 132 as an agent of a registered syringe services program, to sell, lend, rent, lease, give,

133 exchange, or otherwise distribute to any person a hypodermic syringe or needle designed
 134 or marketed primarily for human use. It shall be an affirmative defense that the
 135 hypodermic syringe or needle was marketed for a legitimate medical purpose.

136 (2) A person employed by or acting as an agent of a registered syringe services program
 137 shall be immune from civil and criminal liability arising from the possession, distribution,
 138 or exchange of hypodermic needles or syringes and related supplies as part of such
 139 syringe services program.

140 (3) The Department of Public Health shall be authorized to promulgate rules and
 141 regulations for the purpose of supervising the activities of syringe services programs,
 142 including provisions for the registration of such programs.

143 (4) As used in this subsection, the term 'syringe services program' means an organization
 144 which provides substance abuse and harm reduction counseling, education, and referral
 145 services for substance abuse disorder treatment; training and provision of naloxone to
 146 reverse opioid overdoses; screening for HIV, sexually transmitted diseases, and
 147 tuberculosis; referrals and linkage to HIV, sexually transmitted diseases, and tuberculosis
 148 prevention, treatment, and care services; safer injection supplies; and evidence based
 149 interventions to reduce negative consequences of drug related behaviors.

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

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

161 **SECTION 5.**

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

165 "16-13-32.1.

166 (a) It shall be unlawful for any person or corporation to sell, rent, lease, give, exchange,
 167 otherwise distribute, or possess with intent to distribute any object or materials of any kind
 168 which such person or corporation intends to be used for the purpose of planting,

169 propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,
170 producing, processing, preparing, testing, analyzing, packaging, repackaging, storing,
171 containing, concealing, ~~injecting~~, ingesting, inhaling, or otherwise introducing into the
172 human body marijuana or a controlled substance.

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

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

- 191 (1) Statements by an owner or anyone in control of the object or materials;
- 192 (2) Instructions provided with the object or materials;
- 193 (3) Descriptive materials accompanying the object or materials;
- 194 (4) National and local advertising or promotional materials concerning the object or
195 materials;
- 196 (5) The appearance of, and any writing or other representations appearing on, the object
197 or materials;
- 198 (6) The manner in which the object or materials are displayed for sale or other
199 distribution;
- 200 (7) Expert testimony concerning the object or materials; and
- 201 (8) Any written or pictorial materials which are present in the place where the object is
202 located.

203 (d) For a first offense, any person or corporation which violates any provision of this Code
204 section shall be guilty of a misdemeanor. For a second offense, the defendant shall be
205 guilty of a misdemeanor of a high and aggravated nature. For a third or subsequent

206 offense, the defendant shall be guilty of a felony and, upon conviction thereof, shall be
207 imprisoned for not less than one year nor more than five years and shall be fined not more
208 than \$5,000.00.

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

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

215 **SECTION 6.**

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

218 "16-13-32.2.

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

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

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

228 **SECTION 7.**

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