

House Bill 1046

By: Representatives Jones of the 62<sup>nd</sup>, Dawkins-Haigler of the 91<sup>st</sup>, Smith of the 41<sup>st</sup>, and Waites of the 60<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 16-13-2 of the Official Code of Georgia Annotated, relating to  
2 possession of marijuana and conditional discharge for possession of controlled substances  
3 as first offense and certain nonviolent property crimes, so as to provide that possession of one  
4 ounce or less of marijuana is not punishable by imprisonment; to change penalty provisions  
5 relating to possession of one ounce or less of marijuana; to amend Titles 15 and 16 and Code  
6 Section 17-7-72 of the Official Code of Georgia Annotated, relating to courts, crimes and  
7 offenses, and jurisdiction of probate courts to try certain drug and alcohol offenses,  
8 respectively, so as to provide for conforming cross-references; to provide for additional  
9 penalties for possession of one ounce or less of marijuana to benefit the County Drug Abuse  
10 and Treatment Education Fund; to provide for related matters; to repeal conflicting laws; and  
11 for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 PART I  
14 SECTION 1-1.

15 Code Section 16-13-2 of the Official Code of Georgia Annotated, relating to possession of  
16 marijuana and conditional discharge for possession of controlled substances as first offense  
17 and certain nonviolent property crimes, is amended by revising subsection (b) as follows:

18 "(b)(1) As used in this subsection, the term:

19 (A) 'Clinical evaluation' shall have the same meaning as set forth in Code Section  
20 40-5-1.

21 (B) 'Substance abuse treatment' program shall have the same meaning as set forth in  
22 Code Section 40-5-1.

23 (2) Notwithstanding any law to the contrary, any person who is charged with possession  
24 of marijuana, which possession is of It shall be unlawful for any person to possess or  
25 have under his or her control one ounce or less of marijuana, shall be guilty of a

26 ~~misdemeanor and punished by imprisonment for a period not to exceed 12 months or a~~  
 27 ~~fine not to exceed \$1,000.00, or both, or public works not to exceed 12 months. A person~~  
 28 ~~failing to comply with this subsection shall not be guilty of any criminal act or violation~~  
 29 ~~of any ordinance but shall be subject to punishment as follows:~~

30 (A) For a first violation, a fine not to exceed \$250.00 and a clinical evaluation and, if  
 31 recommended as a part of such evaluation, completion of a substance abuse treatment  
 32 program; provided, however, that in the court's discretion such evaluation and treatment  
 33 may be waived;

34 (B) For a second violation, a fine not to exceed \$500.00 and a clinical evaluation and,  
 35 if recommended as a part of such evaluation, completion of a substance abuse treatment  
 36 program; provided, however, that in the court's discretion such evaluation and treatment  
 37 may be waived; and

38 (C) For a third and for subsequent violations, a fine not to exceed \$750.00 and a  
 39 clinical evaluation and, if recommended as a part of such evaluation, completion of a  
 40 substance abuse treatment program; provided, however, that in the court's discretion  
 41 such evaluation and treatment may be waived."

## 42 PART II

### 43 SECTION 2-1.

44 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
 45 subsection (b) of Code Section 15-7-4, relating to state court jurisdiction, as follows:

46 "(b) Each state court shall have jurisdiction, within the territorial limits of the county or  
 47 counties for which it was created and concurrent with other courts having such jurisdiction,  
 48 over possession of one ounce or less of marijuana, in accordance with Code Sections  
 49 Section 16-13-2 and 16-13-30."

### 50 SECTION 2-2.

51 Said title is further amended by revising Code Section 15-9-30.6, relating to probate court  
 52 jurisdiction over certain drug and alcohol offenses, as follows:

53 "15-9-30.6.

54 (a) Subject to the provisions of subsection (c) of this Code section, in addition to any other  
 55 jurisdiction vested in the probate courts, probate courts which have jurisdiction over  
 56 misdemeanor traffic offenses in accordance with Code Section 40-13-21 shall have the  
 57 right and power to conduct trials, receive pleas of guilty, and impose sentence upon  
 58 defendants for the following offenses:

- 59 (1) Possession of one ounce or less of marijuana, in accordance with Code Sections  
 60 Section 16-13-2 and 16-13-30; and
- 61 (2) Any violation of paragraph (2) of subsection (a) of Code Section 3-3-23 which is  
 62 punishable as a misdemeanor, but not violations punishable as high and aggravated  
 63 misdemeanors.
- 64 (b) The jurisdiction conferred by subsection (a) of this Code section shall be concurrent  
 65 with other courts having jurisdiction over such violations.
- 66 (c) A probate court shall not have the power to dispose of ~~misdemeanor~~ cases as provided  
 67 in subsection (a) of this Code section unless the defendant shall first waive in writing a trial  
 68 by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court  
 69 and, if probable cause exists, the defendant shall be immediately bound over to a court in  
 70 the county having jurisdiction to try the ~~offense~~ case wherein a jury may be impaneled."

### 71 SECTION 2-3.

72 Said title is further amended by revising Code Section 15-10-260, relating to magistrate court  
 73 jurisdiction and penalties, as follows:

74 "15-10-260.

- 75 (a) This article governs trials of misdemeanor violations of Code Sections 16-13-30,  
 76 ~~16-13-2~~, 16-8-14, 16-8-14.1, 3-3-23, and 16-7-21 and violations of Code Section 16-13-2.
- 77 (b) Magistrate courts are authorized to conduct trials and impose sentences for violations  
 78 ~~of and~~ misdemeanors specified in subsection (a) of this Code section; provided, however,  
 79 that the violation must have occurred in the unincorporated area of the county.
- 80 (c) A person convicted of a violation of ~~a misdemeanor~~ specified in subsection (a) of this  
 81 Code section shall be punished as provided in paragraphs (1) through (4) of this subsection  
 82 as follows:
- 83 (1) For possession of ~~less than~~ one ounce or less of marijuana, as provided in subsection  
 84 (b) of Code Section 16-13-2;
- 85 (2) For misdemeanor theft by shoplifting, as provided in paragraph (1) of subsection (b)  
 86 of Code Section 16-8-14;
- 87 (3) For misdemeanor refund fraud, as provided in paragraph (1) of subsection (b) of  
 88 Code Section 16-8-14.1;
- 89 (4) For furnishing alcoholic beverages to, and purchase and possession of alcoholic  
 90 beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and
- 91 (5) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.
- 92 (d) The jurisdiction of magistrate courts to try and dispose of the ~~misdemeanor~~ violations  
 93 enumerated in subsection (a) of this Code section shall be concurrent with the jurisdiction  
 94 of any other courts having jurisdiction to try and dispose of such cases."

95 **SECTION 2-4.**

96 Said title is further amended by revising subsection (a) of Code Section 15-21-100, relating  
 97 to imposition of additional penalties for certain offenses for the County Drug Abuse  
 98 Treatment and Education Fund, as follows:

99 "(a)(1) In every case in which any court shall impose a fine, which shall be construed to  
 100 include costs, for any offense prohibited by Code Section 16-13-2, 16-13-30, 16-13-30.1,  
 101 16-13-30.2, 16-13-30.3, 16-13-30.5, 16-13-31, 16-13-31.1, 16-13-32, 16-13-32.1,  
 102 16-13-32.2, 16-13-32.3, 16-13-32.4, 16-13-32.5, or 16-13-32.6, there shall be imposed  
 103 as an additional penalty a sum equal to 50 percent of the original fine. The additional 50  
 104 percent penalty shall also be imposed in every case in which a fine is imposed for  
 105 violation of:

106 ~~(1)(A)~~ Code Section 3-3-23.1;

107 ~~(2)(B)~~ Code Section 40-6-391; or

108 ~~(3)(C)~~ Code Section 40-6-393 or 40-6-394 if the offender was also charged with a  
 109 violation of Code Section 40-6-391.

110 (2) If no fine is provided for in the applicable Code section, and the judge places the  
 111 defendant on probation, the fine authorized by Code Section 17-10-8 shall be applicable."

112 **SECTION 2-5.**

113 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 114 amended by revising paragraph (4) of subsection (b) of Code Section 16-11-106, relating to  
 115 possession of a firearm or knife during the commission of or attempt to commit certain  
 116 crimes, as follows:

117 "(4) Any crime involving the possession, manufacture, delivery, distribution, dispensing,  
 118 administering, selling, or possession with intent to distribute any controlled substance or  
 119 marijuana as provided in Code Section ~~Sections~~ Sections 16-13-2 and 16-13-30, any counterfeit  
 120 substance as defined in Code Section 16-13-21, or any noncontrolled substance as  
 121 provided in Code Section 16-13-30.1; or"

122 **SECTION 2-6.**

123 Said title is further amended by revising subparagraph (a)(2)(B) of Code Section 16-13-5,  
 124 relating to immunity from arrest or prosecution for persons seeking medical assistance for  
 125 a drug overdose, as follows:

126 "(B) A violation of ~~paragraph (1)~~ of subsection ~~(j)~~ (b) of Code Section ~~16-13-30~~  
 127 16-13-2 for possession of ~~less than~~ one ounce or less of marijuana; or"

128 **SECTION 2-7.**

129 Said title is further amended by revising paragraph (1) of subsection (j) of Code Section  
 130 16-13-30, relating to purchase, possession, manufacture, distribution, or sale of controlled  
 131 substances or marijuana, as follows:

132 "(j)(1) It shall be unlawful for any person to ~~possess, have under his or her control,~~  
 133 manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with  
 134 intent to distribute marijuana or possess or have under his or her control more than one  
 135 ounce of marijuana."

136 **SECTION 2-8.**

137 Code Section 17-7-72 of the Official Code of Georgia Annotated, relating to jurisdiction of  
 138 probate courts to try certain drug and alcohol offenses, is amended as follows:

139 "17-7-72.

140 In probate courts which have jurisdiction over misdemeanor possession of marijuana in  
 141 accordance with Code ~~Sections~~ Section 16-13-2 ~~and 16-13-30~~ and certain misdemeanor  
 142 violations of Code Section 3-3-23 pursuant to Code Section 15-9-30.6, the following  
 143 offenses may be tried upon a summons or citation without an accusation:

144 (1) Possession of one ounce or less of marijuana, in accordance with Code ~~Sections~~  
 145 Section 16-13-2 ~~and 16-13-30~~; and

146 (2) Any violation of paragraph (2) of subsection (a) of Code Section 3-3-23 which is  
 147 punishable as a misdemeanor, but not violations punishable as high and aggravated  
 148 misdemeanors."

149 **PART III**150 **SECTION 3-1.**

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