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CRIMES AND OFFENSES

Controlled Substances: Set the Minimum Amount of Marijuana that Qualifies for Drug Trafficking

CODE SECTION:	O.C.G.A. § 16-13-31 (amended)
BILL NUMBER:	HB 196
ACT NUMBER:	40
GEORGIA LAWS:	2003 Ga. Laws 257
SUMMARY:	The Act changes the amount of marijuana that qualifies for trafficking from 50 pounds to 10 pounds.
EFFECTIVE DATE:	July 1, 2003

History

The Code defines trafficking as selling, manufacturing, growing, delivering, or possessing large quantities of drugs.¹ Trafficking laws target dealers who sell large quantities of drugs, as opposed to individual drug users.² The minimum quantity of marijuana that qualifies as trafficking has changed over the years.³ The original minimum amount was 100 pounds, but it dwindled down to 50 pounds.⁴ However, the 50 pound minimum has not effectively kept marijuana off of Georgia's streets.⁵ Some drug dealers carry no more than 49 pounds of marijuana at any given time to avoid a trafficking charge, which carries a greater penalty than a mere possession charge.⁶ Representative Victor Hill of the 81st district, a former homicide detective, was concerned with the marijuana trade's escalating effects.⁷ He remarked that some people think that

1. O.C.G.A. § 16-13-31 (1999).

2. See Audio Recording of House Proceedings, Mar. 28, 2003 (remarks by Rep. Tom Bordeaux), at <http://www.legis.state.ga.us/services/leg/audio/2003/archive> [hereinafter House Audio].

3. Compare 1980 Ga. Laws 432, § 1, at 435 (formerly found at GA. CODE ANN. § 79A-811 (1980)), with 1989 Ga. Laws 1594, § 1, at 1596 (formerly found at O.C.G.A. § 16-13-31 (1999)).

4. Compare 1980 Ga. Laws 432, § 1, at 435 (formerly found at GA. CODE ANN. § 79A-811 (1980)), with 1989 Ga. Laws 1594, § 1, at 1596 (formerly found at O.C.G.A. § 16-13-31 (1999)).

5. See generally Telephone Interview with Rep. Victor Hill, House District No. 81 (Apr. 15, 2003) [hereinafter Hill Interview].

6. See *id.*

7. See HB 196, as introduced, 2003 Ga. Gen. Assem.; Hill Interview, *supra* note 5.

marijuana is less harmful than other drugs.⁸ However, in his experience, many homicides are the result of marijuana dealings.⁹ Furthermore, children in middle school have been coming home under the influence of marijuana.¹⁰ Thus, Representative Hill asserted that marijuana may present an even greater danger than other drugs if children have access to it.¹¹ The bill's purpose was to lower the minimum amount of marijuana needed to charge someone with trafficking.¹² By lowering this amount from 50 pounds to 10 pounds, dealers seeking to avoid a trafficking charge would have to make more trips to deliver large amounts of marijuana, increasing the risk of apprehension.¹³

Bruce Mirken, Director of Communications for the Marijuana Policy Project, was concerned about HB 196.¹⁴ He worried that the bill would negatively affect people who use marijuana for medical purposes.¹⁵

[P]eople . . . who live in a state that does not allow medical use, such as Georgia, will get together in co-ops and collectively grow it for their own use. In that sort of situation, there might be 10 pounds in one place at one time, and those folks could be facing extremely harsh penalties.¹⁶

While Mr. Mirken suggests that Georgia could address this problem by making an exception for medical use, other problems would still persist.¹⁷ Instead of imposing criminal penalties, Mr. Mirken believes that legalization is the best way to effectively address the marijuana problem.¹⁸ If marijuana were legal, Georgia and other states could regulate its use, as states do with tobacco and

8. See Hill Interview, *supra* note 5.

9. See *id.*

10. See *id.*

11. *Id.*

12. See House Audio, *supra* note 2.

13. *Id.*

14. See Telephone Interview with Bruce Mirken, Director of Communications for the Marijuana Policy Project (Apr. 15, 2003) [hereinafter Mirken Interview].

15. See *id.*

16. *Id.*

17. *Id.*

18. See *id.*

alcohol.¹⁹ Mr. Mirken asserts that when the state bans something, the state loses any ability to exert rational regulation over it and thus turns the unregulated marketplace over to criminals.²⁰

HB 196

Representatives Victor Hill of the 81st district, Mike Barnes of the 84th district, Virgil Fludd of the 48th district, David Lucas of the 105th district, and Ronald Forster of the 3rd district sponsored HB 196.²¹ Representative Hill introduced HB 196 on the House floor on March 28, 2003.²² Originally, the bill would have set the minimum trafficking amount at 25 pounds.²³ Representative Hill emphasized the importance of lowering the qualifying amount for trafficking from 50 pounds to 25 pounds by comparing the minimum trafficking amounts of other drugs.²⁴ One ounce of cocaine or methamphetamines would result in a trafficking charge, but for marijuana the law required 50 pounds.²⁵ Representative Tom Bordeaux of the 125th district was concerned that lowering the pound requirement would be contrary to the meaning of trafficking.²⁶ Representative Bordeaux emphasized that trafficking laws are intended for substantial amounts and thus punish large dealers as opposed to individual sellers.²⁷

However, Representative James Mills of the 67th district remarked that even 10 pounds of marijuana constitutes a large amount.²⁸ Accordingly, Representative Hill moved to amend the bill to set the minimum trafficking weight for marijuana at 10 pounds, and the House adopted the amendment.²⁹ The House passed the bill, as amended, on March 28, 2003.³⁰

19. See Mirken Interview, *supra* note 14.

20. *Id.*

21. See HB 196, as introduced, 2003 Ga. Gen. Assem.

22. See State of Georgia Final Composite Status Sheet, HB 196, Apr. 25, 2003; House Audio, *supra* note 2 (remarks by Rep. Victor Hill).

23. See HB 196, as introduced, 2003 Ga. Gen. Assem.

24. See House Audio, *supra* note 2.

25. *Id.*

26. See *id.*

27. *Id.*

28. *Id.*

29. See HB 196 (HFA), 2003 Ga. Gen. Assem.

30. See Georgia House of Representatives Voting Record, HB 196 (Mar. 28, 2003).

Senator Bill Hamrick of the 30th district introduced HB 196 on the Senate floor on April 17, 2003.³¹ Senator Charles Clay of the 37th district offered an amendment to delay implementation for one year.³² Senator Clay reasoned that lowering the minimum weight from 50 pounds to 10 pounds may significantly burden the prison system.³³ Therefore, the proposed amendment would allow the Department of Corrections time to consider the impact and prepare for it.³⁴

Senator Nadine Thomas of the 10th district rose in opposition of the floor amendment.³⁵ Senator Thomas emphasized that drug dealers already think that Georgia is a marijuana-friendly state.³⁶ Therefore, she believed that the Senate should send a message that Georgia is tough on marijuana trafficking by immediately implementing the bill.³⁷ Senator Clay eventually asked for unanimous consent to withdraw the amendment.³⁸ The amendment was withdrawn, and the Senate passed HB 196 on April 17, 2003.³⁹

31. *See* Audio Recording of Senate Proceedings, Apr. 17, 2003 (remarks by Sen. Bill Hamrick), at <http://www.legis.state.ga.us/services/leg/audio/2003/archive> [hereinafter Senate Audio].

32. *See id.* (remarks by Sen. Charles Clay).

33. *Id.*

34. *Id.*

35. *See id.* (remarks by Sen. Nadine Thomas).

36. Senate Audio, *supra* note 31.

37. *Id.*

38. *Id.* (remarks by Sen. Charles Clay).

39. *See* Georgia Senate Voting Record, HB 196 (Apr. 17, 2003).

The Act

The Act amends Code section 16-13-31.⁴⁰ The Act lowers the minimum quantity for marijuana trafficking from 50 pounds to 10 pounds.⁴¹ The Act penalizes a person caught with a quantity of 10 pounds of marijuana with a mandatory minimum five-year prison sentence and a fine of \$100,000.⁴² This penalty increases if the person possesses 2000 pounds or more of marijuana.⁴³

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40. *Compare* 1989 Ga. Laws 1594, § 1, at 1596 (formerly found at O.C.G.A. § 16-13-31 (1999)), with O.C.G.A. § 16-13-31 (Supp. 2003).

41. *Compare* 1989 Ga. Laws 1594, § 1, at 1596 (formerly found at O.C.G.A. § 16-13-31 (1999)), with O.C.G.A. § 16-13-31 (Supp. 2003).

42. *Compare* 1989 Ga. Laws 1594, § 1, at 1596 (formerly found at O.C.G.A. § 16-13-31 (1999)), with O.C.G.A. § 16-13-31 (Supp. 2003).

43. *Compare* 1989 Ga. Laws 1594, § 1, at 1596 (formerly found at O.C.G.A. § 16-13-31 (1999)), with O.C.G.A. § 16-13-31 (Supp. 2003).