

## **Title 13A Chapter 12 Article 5**

### **Division 2 - Drug Possession and Sale Offenses**

#### **Section 13A-12-210 Short title.**

This division shall be entitled "The Drug Crimes Amendments Act of 1987."

*(Acts 1987, No. 87-603, p. 1047, §1; 1988, 1st Ex. Sess., No. 88-918, p. 512, §2(11).)*

#### **Section 13A-12-211 Unlawful distribution of controlled substances; possession with intent to distribute a controlled substance.**

(a) A person commits the crime of unlawful distribution of controlled substances if, except as otherwise authorized, he or she sells, furnishes, gives away, delivers, or distributes a controlled substance enumerated in Schedules I through V.

(b) Unlawful distribution of controlled substances is a Class B felony.

(c) A person commits the crime of unlawful possession with intent to distribute a controlled substance if, except as otherwise authorized by law, he or she knowingly possesses any of the following quantities of a controlled substance:

(1) More than eight grams, but less than 28 grams, of cocaine or of any mixture containing cocaine.

(2) More than two grams, but less than four grams, of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin.

(3) More than eight grams, but less than 28 grams, of 3,4-methylenedioxy amphetamine, or of any mixture containing 3,4-methylenedioxy amphetamine.

(4) More than eight grams, but less than 28 grams, of 5-methoxy-3, 4-methylenedioxy amphetamine, or of any mixture containing 5-methoxy-3, 4-methylenedioxy amphetamine.

(5) More than eight grams, but less than 28 grams, of amphetamine or any mixture containing amphetamine, its salt, optical isomer, or salt of its optical isomer thereof.

(6) More than eight grams, but less than 28 grams, of methamphetamine or any mixture containing methamphetamine, its salts, optical isomers, or salt of its optical isomers thereof.

(d) Unlawful possession with intent to distribute a controlled substance is a Class B felony.

*(Acts 1987, No. 87-603, p. 1047, §2; Act 2001-971, 3rd Sp. Sess., p. 873, §2; Act 2012-393, p. 1052, §1.)*

#### **Section 13A-12-212 Unlawful possession or receipt of controlled substances.**

(a) A person commits the crime of unlawful possession of controlled substance if:

(1) Except as otherwise authorized, he or she possesses a controlled substance enumerated in Schedules I through V.

(2) He or she obtains by fraud, deceit, misrepresentation, or subterfuge or by the alteration of a prescription or written order or by the concealment of a material fact or by the use of a false name or giving a false address, a controlled substance enumerated in Schedules I through V or a precursor chemical enumerated in Section 20-2-181.

(b) Unlawful possession of a controlled substance is a Class D felony.

*(Acts 1987, No. 87-603, p. 1047, §3; Act 2012-237, p. 445, §2; Act 2015-185, §2.)*

### **Section 13A-12-213 Unlawful possession of marihuana in the first degree.**

(a) A person commits the crime of unlawful possession of marihuana in the first degree if, except as otherwise authorized:

(1) He or she possesses marihuana for other than personal use; or

(2) He or she possesses marihuana for his or her personal use only after having been previously convicted of unlawful possession of marihuana in the second degree or unlawful possession of marihuana for his or her personal use only.

(b) Unlawful possession of marihuana in the first degree pursuant to subdivision (1) of subsection (a) is a Class C felony.

(c) Unlawful possession of marihuana in the first degree pursuant to subdivision (2) of subsection (a) is a Class D felony.

*(Acts 1987, No. 87-603, p. 1047, §4; Act 2015-185, §2.)*

### **Section 13A-12-214 Unlawful possession of marihuana in the second degree.**

(a) A person commits the crime of unlawful possession of marihuana in the second degree if, except as otherwise authorized, he possesses marihuana for his personal use only.

(b) Unlawful possession of marihuana in the second degree is a Class A misdemeanor.

*(Acts 1987, No. 87-603, p. 1047, §5.)*

### **Section 13A-12-214.1 Unlawful possession of certain chemical compounds.**

(a) The possession of salvia divinorum or salvinatorum A, including all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts shall be illegal in this state.

(b) A violation of subsection (a) shall be subject to the same penalties as a violation of Sections 13A-12-213 and 13A-12-214.

*(Act 2010-717, p. 1778, §1; Act 2012-267, p. 517, §2.)*

### **Section 13A-12-214.2 (Repealed effective July 1, 2019) Possession and use of cannabidiol.**

(a) This section shall be known and may be cited as "Carly's Law."

(b) As used in this section, the following words shall have the following meanings:

(1) AUTHORIZED BY THE UAB DEPARTMENT. Authorized by the UAB Department means that Cannabidiol (CBD) has been prescribed by a health care practitioner employed by or on behalf of the UAB Department.

(2) CANNABIDIOL (CBD). [13956-29-1]. A (non-psychoactive) cannabinoid found in the plant Cannabis sativa L. or any other preparation thereof that is essentially free from plant material and has a THC level of no more than 3 percent. Also known as (synonyms): 2-[(1R,6R)-3-Methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol; trans-(-)-2-p-mentha-1,8-dien-3-yl-5-pentylresorcinol; (-)-Cannabidiol; (-)-trans-Cannabidiol; Cannabidiol (7CI); D1(2)-trans-Cannabidiol.

(3) DEBILITATING EPILEPTIC CONDITION. Epilepsy or other neurological disorder, or the treatment of epilepsy or other neurological disorder that, as diagnosed by a board-certified neurologist under the employment or authority of the UAB Department, produces serious, debilitating, or life-threatening seizures.

(4) UAB DEPARTMENT. The Department of Neurology at the University of Alabama at Birmingham, its successors, or any subdivisions.

(c) In a prosecution for the unlawful possession of marijuana under the laws of this state, it is an affirmative and complete defense to the prosecution that the defendant has a debilitating epileptic condition and used or possessed cannabidiol (CBD) pursuant to a prescription authorized by the UAB Department.

(d) In a prosecution for the unlawful possession of marijuana under the laws of this state, it is an affirmative and complete defense to the prosecution that the defendant possessed cannabidiol (CBD) because he or she is the parent or caretaker of an individual who has a debilitating epileptic condition and who has a prescription for the possession and use of cannabidiol (CBD) as authorized by the UAB Department, and where the parent or caretaker's possession of the CBD is on behalf of and otherwise for the prescribed person's use only.

(e) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from the home of a parent based solely upon the parent's or child's possession or use of cannabidiol (CBD) as authorized by this section.

(f) A prescription for the possession or use of cannabidiol (CBD) as authorized by this section shall be provided exclusively by the UAB Department for a debilitating epileptic condition. Health care practitioners of the UAB Department shall be the sole authorized source of any prescription for the use of cannabidiol (CBD), and shall be the sole authorized source to use cannabidiol (CBD) in or as a part of the treatment of a person diagnosed with a debilitating epileptic condition. A health care practitioner of the UAB Department shall have the sole authority to determine the use or amount of cannabidiol (CBD), if any, in the treatment of an individual diagnosed with a debilitating epileptic condition.

(g) The UAB Department and any UAB School of Medicine affiliated pediatric training entity, including any authorized physician, nurse, attendant, or agent thereof, shall not be subject to prosecution for the unlawful possession, use, distribution, or prescription of marijuana under the laws of this state for its activities arising directly out of or directly related to the prescription or use of cannabidiol (CBD) in the treatment of individuals diagnosed with a debilitating epileptic condition.

(h) The UAB Department will establish a research and development study purposed to determine medical uses and benefits of cannabidiol (CBD) for individuals with debilitating epileptic conditions.

(i) The UAB Department and any UAB School of Medicine affiliated pediatric training entity, including any authorized physician, nurse, attendant or agent thereof, shall not be subject to prosecution for the unlawful possession, use, or distribution of marijuana under the laws of this state for its activities arising directly out of or directly related to the department's research and development activities in pursuit of medical benefits and uses of cannabidiol (CBD), as long as the prescription, treatment or use of cannabidiol (CBD) is provided only to individuals diagnosed with a debilitating epileptic condition.

(j) Pursuant to the filing requirements of Rule 15.3 of the Alabama Rules of Criminal Procedure, the defendant shall produce a valid prescription, certification of a debilitating epileptic condition, and the name of the prescribing health care professional authorized by the UAB Department.

(k) This section is repealed July 1, 2019.

(l) Nothing in this section shall be construed to allow or accommodate the prescription, testing, medical use, or possession of any other form of Cannabis other than that defined by this section.

*(Act 2014-277, p. 881, §§1-4.)*

### **Section 13A-12-214.3 Possession and use of cannabidiol for certain debilitating conditions.**

- (a) (1) This section shall be known and may be cited as Leni's Law.
- (2) For the purposes of this section, the following terms shall have the following meanings:
- a. CANNABIDIOL (CBD). [13956-29-1]. A (nonpsychoactive) cannabinoid found in the plant *Cannabis sativa* L. or any other preparation thereof that is free from plant material and has a THC level (delta-9-tetrahydrocannabinol) of no more than three percent relative to CBD according to the rules adopted by the Alabama Department of Forensic Sciences. Also known as (synonyms): 2-[(1R,6R)-3-Methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol; trans-(-)-2-p-mentha-1,8-dien-3-yl-5-pentylresorcinol; (-)-Cannabidiol; (-)-trans-Cannabidiol; Cannabidiol (7CI); D1(2)-tran-Cannabidiol and that is tested by a independent third-party laboratory.
  - b. DEBILITATING MEDICAL CONDITION. A chronic or debilitating disease or medical condition including one that produces seizures for which a person is under treatment.
- (3) In addition to the affirmative defense provided in Section 13A-12-214.2, in a prosecution for the unlawful possession of marijuana in the second degree under Section 13A-12-214, it is an affirmative and complete defense that the defendant used or possessed CBD if the defendant satisfies either of the following:
- a. He or she has a debilitating medical condition.
  - b. He or she is the parent or legal guardian of a minor who has a debilitating medical condition, and the CBD is being used by the minor.
- (4) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from the home of a parent or guardian, nor initiate any child protection action or proceedings, based solely upon the parent's or child's possession or use of CBD as allowed by this section.
- (5) Nothing in this section shall be construed to require the various individual or group insurance organizations providing protection, indemnity, or insurance against hospital, medical, or surgical expenses, or health maintenance organizations to provide payment or reimbursement for prescriptions of CBD.
- (6) Nothing in this section shall be construed to allow or accommodate the prescription, testing, medical use, or possession of any other form of Cannabis other than that defined in this section.
- (b) The Legislature finds and declares the following:
- (1) This section is intended to authorize only the limited use of nonpsychoactive CBD as defined in this section only for specified debilitating conditions that produce seizures and is not intended as a generalized authorization of medical marijuana.
  - (2) It is the intent of the Legislature to maintain existing criminal prohibitions of marijuana, except as expressly provided in existing law or as expressly provided in this section. (*Act 2016-268, §§1, 2.*)

### **Section 13A-12-215 Sale, furnishing, etc., of controlled substances by persons over age 18 to persons under age 18.**

If the offender is over the age of 18 and the offense consists of selling, furnishing or giving such controlled substances as enumerated in Schedules I, II, III, IV and V to a person who has not attained the

age of 18 years the offender shall be guilty of a Class A felony. The imposition or execution of sentence shall not be suspended, and probation shall not be granted.

*(Acts 1971, No. 1407, p. 2378, §406; Acts 1987, No. 87-603, p. 1047, §8; Code 1975, §20-2-73; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, §2(1).)*

### **Section 13A-12-216 Schedules of controlled substances.**

The Schedules I through V referred to in this division are the schedules contained in Sections 20-2-20 through 20-2-31, or in those schedules as revised and republished annually by the State Board of Health pursuant to Section 20-2-32.

*(Acts 1987, No. 87-603, p. 1047, §10; Code 1975, §13A-12-216; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, §2(12).)*

### **Section 13A-12-217 Unlawful manufacture of controlled substance in the second degree.**

(a) A person commits the crime of unlawful manufacture of a controlled substance in the second degree if, except as otherwise authorized in state or federal law, he or she does any of the following:

(1) Manufactures a controlled substance enumerated in Schedules I to V, inclusive.

(2) Possesses precursor substances as determined in Section 20-2-181, in any amount with the intent to unlawfully manufacture a controlled substance.

(b) Unlawful manufacture of a controlled substance in the second degree is a Class B felony.

*(Act 2001-971, 3rd Sp. Sess., p. 873, §1.)*

### **Section 13A-12-218 Unlawful manufacture of controlled substance in the first degree.**

(a) A person commits the crime of unlawful manufacture of a controlled substance in the first degree if he or she violates Section 13A-12-217 and two or more of the following conditions occurred in conjunction with that violation:

(1) Possession of a firearm.

(2) Use of a booby trap.

(3) Illegal possession, transportation, or disposal of hazardous or dangerous materials or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment.

(4) A clandestine laboratory operation was to take place or did take place within 500 feet of a residence, place of business, church, or school.

(5) A clandestine laboratory operation actually produced any amount of a specified controlled substance.

(6) A clandestine laboratory operation was for the production of controlled substances listed in Schedule I or Schedule II.

(7) A person under the age of 17 was present during the manufacturing process.

(b) Unlawful manufacture of a controlled substance in the first degree is a Class A felony.

*(Act 2001-971, 3rd Sp. Sess., p. 873, §1.)*

### **Section 13A-12-219 Unlawful possession of anhydrous ammonia.**

(a) A person commits the crime of unlawful possession of anhydrous ammonia if he or she purchases, possesses, transfers, or distributes any amount of anhydrous ammonia, knowing, or under circumstances where one reasonably should know, that the anhydrous ammonia will be used to unlawfully manufacture a controlled substance.

(b) Unlawful possession of anhydrous ammonia is a Class B felony.

*(Act 2001-971, 3rd Sp. Sess., p. 873, §1.)*

### **Division 3 - Drug Trafficking Offenses.**

#### **Section 13A-12-231 Trafficking in cannabis, cocaine, etc.; mandatory minimum terms of imprisonment; trafficking in illegal drugs; trafficking in amphetamine and methamphetamine; habitual felony offender act.**

Except as authorized in Chapter 2, Title 20:

(1) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of one kilo or 2.2 pounds of any part of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin including the completely defoliated mature stalks of the plant, fiber produced from the stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination is guilty of a felony, which felony shall be known as "trafficking in cannabis." Nothing in this subdivision shall apply to samples of tetrahydrocannabinols including, but not limited to, all synthetic or naturally produced samples of tetrahydrocannabinols which contain more than 15 percent by weight of tetrahydrocannabinols and which do not contain plant material exhibiting the external morphological features of the plant cannabis. If the quantity of cannabis involved:

a. Is in excess of one kilo or 2.2 pounds, but less than 100 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of twenty-five thousand dollars (\$25,000).

b. Is 100 pounds or more, but less than 500 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of fifty thousand dollars (\$50,000).

c. Is 500 pounds or more, but less than 1,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred thousand dollars (\$200,000).

d. Is 1,000 pounds or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(2) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine or of any mixture containing cocaine, described in Section 20-2-25(1), is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

a. Is 28 grams or more, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is one kilo, but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars (\$250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(3) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 20-2-23(b)(2) or Section 20-2-25(1)a., or four grams or more of any mixture containing any such substance, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is 28 grams or more, but less than 56 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of five hundred thousand dollars (\$500,000).

d. Is 56 grams or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(4) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1,000 or more pills or capsules of methaqualone, as described in Section 20-2-1, et seq., is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 1,000 pills or capsules, but less than 5,000 pills or capsules, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and pay a fine of fifty thousand dollars (\$50,000).

b. Is 5,000 capsules or more, but less than 25,000 capsules, that person shall be imprisoned to a mandatory minimum term of imprisonment of 10 calendar years and pay a fine of one hundred thousand dollars (\$100,000).

c. Is 25,000 pills or more, but less than 100,000 pills or capsules, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of five hundred thousand dollars (\$500,000).

d. Is 100,000 capsules or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(5) Any person who knowingly sells, manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of 500 or more pills or capsules of hydromorphone as is described in Section 20-2-1, et seq., is guilty of a felony which shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 500 pills or capsules or more but less than 1,000 pills or capsules, the person shall be sentenced to a mandatory term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 1,000 pills or capsules or more, but less than 4,000 pills or capsules, the person shall be sentenced to a mandatory term of imprisonment of 10 calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is 4,000 pills or capsules or more but less than 10,000 pills or capsules, the person shall be sentenced to a mandatory term of imprisonment of 25 calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

d. Is more than 10,000 pills or capsules; the person shall be sentenced to a mandatory term of life in prison without parole.

(6) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of 3,4-methylenedioxy amphetamine, or of any mixture containing 3,4-methylenedioxy amphetamine, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 28 grams or more, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is one kilo, but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars (\$250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(7) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of 5-methoxy-3, 4-methylenedioxy amphetamine, or of any mixture containing 5-methoxy-3, 4-methylenedioxy amphetamine is guilty of a felony, which felony shall be known as "trafficking in illegal drugs" if the quantity involved:

a. Is 28 grams or more, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is one kilo, but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars (\$250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(8) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of phencyclidine, or any mixture containing phencyclidine, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars (\$100,000).



c. Is 28 grams or more, but less than 56 grams, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars (\$250,000).

d. Is 56 grams or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(9) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of lysergic acid diethylamide, of four grams or more of any mixture containing lysergic acid diethylamide, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is 28 grams or more, but less than 56 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of five hundred thousand dollars (\$500,000).

d. Is 56 grams or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(10) Any person who knowingly sells, manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of amphetamine or any mixture containing amphetamine, its salt, optical isomer, or salt of its optical isomer thereof, is guilty of a felony, which felony shall be known as "trafficking in amphetamine." If the quantity involved:

a. Is 28 grams or more but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is one kilo but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars (\$250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(11) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of methamphetamine or any mixture containing methamphetamine, its salts, optical isomers, or salt of its optical isomers thereof, is guilty of a felony, which felony shall be known as "trafficking in methamphetamine." If the quantity involved:

a. Is 28 grams or more but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is one kilo but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars (\$250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(12) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 56 or more grams of a synthetic controlled substance or a synthetic controlled substance analogue, as described in subdivision (4) or (5) of subsection (a) of Section 20-2-23, is guilty of a felony, which felony shall be known as "trafficking in synthetic controlled substances." If the quantity involved:

a. Is 56 grams or more, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars (\$50,000).

b. Is 500 grams or more, but less than 1 kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of one hundred thousand dollars (\$100,000).

c. Is one kilo, but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars (\$250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(13) The felonies of "trafficking in cannabis," "trafficking in cocaine," "trafficking in illegal drugs," "trafficking in amphetamine," "trafficking in methamphetamine," and "trafficking in synthetic controlled substances" as defined in subdivisions (1) through (12), above, shall be treated as Class A felonies for purposes of Title 13A, including sentencing under Section 13A-5-9. Provided, however, that the sentence of imprisonment for a defendant with one or more prior felony convictions who violates subdivisions (1) through (12) of this section shall be the sentence provided therein, or the sentence provided under Section 13A-5-9, whichever is greater. Provided further, that the fine for a defendant with one or more prior felony convictions who violates subdivisions (1) through (12) of this section shall be the fine provided therein, or the fine provided under Section 13A-5-9, whichever is greater.

(14) Notwithstanding any provision of law to the contrary, any person who has possession of a firearm during the commission of any act proscribed by this section shall be punished by a term of imprisonment of five calendar years which shall be in addition to, and not in lieu of, the punishment otherwise provided, and a fine of twenty-five thousand dollars (\$25,000); the court shall not suspend the five-year additional sentence of the person or give the person a probationary sentence.

*(Acts 1980, No. 80-587, p. 926; Acts 1986, No. 86-534, p. 1035, §2; Acts 1987, No. 87-708, p. 1246, §2; §20-2-80 transferred to this section by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, §2(4); Acts 1990, No. 90-389, p. 533, §2; Acts 1991, No. 91-447, p. 817, §1; Acts 1995, No. 95-543, p. 1135, §1; Act 2012-267, p. 517, §2; Act 2014-184, p. 530, §2.)*

**Section 13A-12-232 Sentence not to be suspended, deferred, etc., prior to mandatory minimum term; reduction, suspension, etc., of sentence for assistance in arrest, conviction, etc., of accessories, principals, etc.**

(a) Notwithstanding the provisions of Chapter 22, Title 15, or any other provision of law, with respect to any person who is found to have violated Section 13A-12-231, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for any type of parole, probation, work release, supervised intensive restitution program, release because of deduction from sentence for good behavior under corrections incentive time act or any other program, furlough, pass, leave, or any other type of early, conditional, or temporary release program, nor shall such person

be permitted to leave the penitentiary for any reason whatsoever except for necessary court appearances and for necessary medical treatment, prior to serving the mandatory minimum term of imprisonment prescribed in this article or 15 years, whichever is less. Nothing contained in this section shall be construed in any way to render any inmate eligible for parole, probation, suspended sentence, furlough, pass, leave, or any type or early, conditional, or temporary release program of any type to which the inmate is not otherwise eligible under other provision of law. Nor shall anything in this section be construed to render any person sentenced to life imprisonment without parole under this or any other act eligible for parole, probation, suspended sentence, furlough, pass, leave, or any type of early, conditional, or temporary release program at any time.

(b) The prosecuting attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of Section 13A-12-231, except where the sentence is life imprisonment without parole, and who provides substantial assistance in the arrest, or in the conviction of any of his accomplices, accessories, coconspirators, or principals. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance. Under no circumstances may the judge reduce or suspend the sentence except upon motion of the prosecuting attorney.

*(Acts 1980, No. 80-587, p. 926; Acts 1986, No. 86-534, p. 1035, §2; Acts 1987, No. 87-708, p. 1246, §3; Code 1975, §20-2-81; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, §2(5).)*

### **Section 13A-12-233 Drug trafficking enterprise defined; punishment.**

(a) This section shall be known as the "Alabama Drug Trafficking Enterprise Act." For purposes of this section, a person is engaged in a criminal enterprise for the purpose of trafficking in illegal drugs if that person violates any provision of Section 13A-12-231, and such violation is:

(1) Undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(2) From which such person obtains substantial income or resources.

(b) For purposes of this section, "substantial income" means any amount exceeding the established minimum wage, as established by law.

(c) Any person who engages in a criminal enterprise for the purpose of trafficking in illegal drugs shall be punished as follows:

(1) Upon the first conviction of violation of this section, he shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years or for any mandatory term of calendar years up to and including life without parole and to a fine of not less than \$50,000.00 nor more than \$500,000.00.

(2) Upon the second conviction of violation of this section, he must be sentenced to a mandatory term of imprisonment for life without parole and to a fine of not less than \$150,000.00 nor more than \$1,000,000.00.

(3) In no event shall the term of imprisonment or the amount of fine imposed under this section be less than the corresponding term of imprisonment or fine authorized in Section 13A-12-231, for the underlying violation of that section, including application of the Habitual Felony Offender Act, as determined by the type and amount of the particular illegal drug involved.

(d) The courts of Alabama shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under Section 20-2-93 as they shall deem proper. (Acts 1990, No. 90-471, p. 687.)

#### **Division 4 - Sale on or Near School Campus.**

##### **Section 13A-12-250 Additional penalty if unlawful sale on or near school campus.**

In addition to any penalties heretofore or hereafter provided by law for any person convicted of an unlawful sale of a controlled substance, there is hereby imposed a penalty of five years' incarceration in a state corrections facility with no provision for probation if the situs of such unlawful sale was on the campus or within a three-mile radius of the campus boundaries of any public or private school, college, university or other educational institution in this state.

(Acts 1987, No. 87-610, p. 1060; Code 1975, §20-2-79; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, §2; Acts 1989, No. 89-950, p. 1872.)

#### **Division 5 - Drug Paraphernalia Offenses.**

##### **Section 13A-12-260 Drug paraphernalia; use or possession; delivery or sale; forfeiture.**

(a) Definition of "drug paraphernalia". As used in this section, the term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the controlled substances laws of this state. It includes but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding-controlled substances;

(9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, tetrahydro cannabinols, cocaine, hashish, or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons, and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bonges;

m. Ice pipes or chillers;

n. Glass tubes which are hollow, cylindrical items made of glass which are smaller than three-quarters of an inch in diameter, shorter than 12 inches in length, and which are not sealed with glass at both ends.

(b) Factors in determining whether object is drug paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this section or to a controlled substance;

(4) The existence of any residue of controlled substances on the object;

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of the controlled substances laws of this state; the innocence of an owner, or of anyone in control of the object, as to a direct violation of such laws shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(6) Instructions, oral or written, provided with the object concerning its use;

(7) Descriptive materials accompanying the object which explain or depict its use;

(8) National and local advertising concerning its use;

(9) The manner in which the object is displayed for sale;

(10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(12) The existence and scope of legitimate uses for the object in the community;

(13) Expert testimony concerning its use.

(c) Use or possession with intent to use. It shall be unlawful for any person to use, or to possess with intent to use, or to use to inject, ingest, inhale or otherwise introduce into the human body, drug paraphernalia to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal a controlled substance in violation of the controlled substances laws of this state. Any person who violates this subsection is guilty of a Class A misdemeanor and upon conviction shall be punished as prescribed by law.

(d) (1) It shall be unlawful for any person to use, deliver, or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, or to possess with intent to use, drug paraphernalia to manufacture a controlled substance in violation of the controlled substances laws of this state.

(2) Any person who violates this subsection is guilty of a Class C felony. If a person is in violation of this subsection and is in possession of a firearm at the time of the offense, the person shall be guilty of a Class B felony.

(e) Delivery or sale.

(1) It shall be unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the controlled substances laws of this state. Any person who violates this section is guilty of a Class A misdemeanor and upon conviction shall be punished as prescribed by law. A person who is convicted of a subsequent violation of this subsection shall be guilty of a Class C felony and punished as prescribed by law. Any person convicted of violating this subsection who previously has been convicted of violating subdivision (2) of this subsection shall be subject to the same penalties specified for subsequent violations of this subsection.

(2) Any person 18 years of age or over who violates subdivision (1) of this subsection by delivering drug paraphernalia to a person under 18 years of age who is at least three years his junior shall be guilty of a Class B felony and upon conviction shall be punished as prescribed by law.

(f) Contraband; forfeiture. All drug paraphernalia used in violation of this section shall be contraband and subject to the forfeiture laws of this state and Section 20-2-93 as amended, in particular.

*(Acts 1986, No. 86-425, p. 771; §20-2-75.1; Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, §2; Act 2009-566, p. 1665, §1; Act 2012-237, p. 445, §2.)*