

Senate Bill 491

By: Senators Schaefer of the 50th, Grant of the 25th, Douglas of the 17th and Balfour of the 9th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated,
2 relating to serious traffic offenses, so as to provide that a person convicted of driving under
3 the influence of drugs, alcohol, or other intoxicating substances on the fifth or subsequent
4 offense shall be guilty of a felony; to prescribe the punishment therefor; to provide for related
5 matters; to provide for applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to
9 serious traffic offenses, is amended by striking subsection (c) of Code Section 40-6-391,
10 relating to driving under the influence of alcohol, drugs, or other intoxicating substances, and
11 inserting in its place a new subsection (c) to read as follows:

12 "(c) A person convicted of violating this Code section shall, upon a first or second
13 conviction thereof, be guilty of a misdemeanor and, upon a third or fourth subsequent
14 conviction thereof, be guilty of a high and aggravated misdemeanor and, upon a fifth or
15 subsequent conviction thereof, be guilty of a felony and shall be punished as follows:

16 (1) First conviction with no conviction of and no plea of nolo contendere accepted to a
17 charge of violating this Code section within the previous ~~five~~ ten years, as measured from
18 the dates of previous arrests for which convictions were obtained or pleas of nolo
19 contendere were accepted to the date of the current arrest for which a conviction is
20 obtained or a plea of nolo contendere is accepted:

21 (A) A fine of not less than \$300.00 nor more than \$1,000.00, which fine shall not,
22 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
23 or probation;

24 (B) A period of imprisonment of not less than ten days nor more than 12 months,
25 which period of imprisonment may, at the sole discretion of the judge, be suspended,
26 stayed, or probated, except that if the offender's alcohol concentration at the time of the

1 offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24
2 hours of any term of imprisonment imposed under this subparagraph;

3 (C) Not less than 40 hours of community service, except that for a conviction for
4 violation of subsection (k) of this Code section where the person's alcohol
5 concentration at the time of the offense was less than 0.08 grams, the period of
6 community service shall be not less than 20 hours;

7 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
8 the Department of Driver Services. The sponsor of any such program shall provide
9 written notice of such approval to the person upon enrollment in the program; and

10 (E) If the defendant is sentenced to a period of imprisonment for less than 12 months,
11 a period of probation of 12 months less any days during which the defendant is actually
12 incarcerated;

13 (2) For the second conviction within a ~~five-year~~ ten-year period of time, as measured
14 from the dates of previous arrests for which convictions were obtained or pleas of nolo
15 contendere were accepted to the date of the current arrest for which a conviction is
16 obtained or a plea of nolo contendere is accepted:

17 (A) A fine of not less than \$600.00 nor more than \$1,000.00, which fine shall not,
18 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
19 or probation;

20 (B) A period of imprisonment of not less than 90 days nor more than 12 months. The
21 judge shall probate at least a portion of such term of imprisonment, in accordance with
22 subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions
23 of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge
24 may impose; provided, however, that the offender shall be required to serve not less
25 than 72 hours of actual incarceration;

26 (C) Not less than 30 days of community service;

27 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
28 the Department of Driver Services. The sponsor of any such program shall provide
29 written notice of such approval to the person upon enrollment in the program; and

30 (E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if
31 indicated by such evaluation, completion of a substance abuse treatment program as
32 defined in Code Section 40-5-1; and

33 (F) A period of probation of 12 months less any days during which the defendant is
34 actually incarcerated; or

35 (3) For the third or fourth ~~subsequent~~ conviction within a ~~five-year~~ ten-year period of
36 time, as measured from the dates of previous arrests for which convictions were obtained

1 or pleas of nolo contendere were accepted to the date of the current arrest for which a
2 conviction is obtained or a plea of nolo contendere is accepted:

3 (A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall
4 not, except as provided in subsection (g) of this Code section, be subject to suspension,
5 stay, or probation;

6 (B) A mandatory period of imprisonment of not less than 120 days nor more than 12
7 months. The judge shall probate at least a portion of such term of imprisonment, in
8 accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to
9 the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and
10 conditions as the judge may impose; provided, however, that the offender shall be
11 required to serve not less than 15 days of actual incarceration;

12 (C) Not less than 30 days of community service;

13 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
14 the Department of Driver Services. The sponsor of any such program shall provide
15 written notice of such approval to the person upon enrollment in the program; and

16 (E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if
17 indicated by such evaluation, completion of a substance abuse treatment program as
18 defined in Code Section 40-5-1; and

19 (F) A period of probation of 12 months less any days during which the defendant is
20 actually incarcerated; or

21 (4) Notwithstanding any other provision of this Code section, for a fifth or subsequent
22 conviction within a ten-year period of time, as measured from the dates of previous
23 arrests for which convictions were obtained or pleas of nolo contendere were accepted
24 to the date of the current arrest for which a conviction is obtained or a plea of nolo
25 contendere is accepted:

26 (A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall
27 not, except as provided in subsection (g) of this Code section, be subject to suspension,
28 stay, or probation;

29 (B) A mandatory period of imprisonment of not less than 12 months nor more than
30 three years. The judge shall probate at least a portion of such term of imprisonment, in
31 accordance with subparagraph (E) of this paragraph, thereby subjecting the offender to
32 the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and
33 conditions as the judge may impose; provided, however, that the offender shall be
34 required to serve not less than 180 days of actual incarceration;

35 (C) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
36 the Department of Driver Services. The sponsor of any such program shall provide
37 written notice of such approval to the person upon enrollment in the program;

1 (D) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if
 2 indicated by such evaluation, completion of a substance abuse treatment program as
 3 defined in Code Section 40-5-1; and

4 (E) A period of probation of three years less any days during which the defendant is
 5 actually incarcerated.

6 For the purposes of imposing a sentence under this subsection, a plea of nolo contendere
 7 or an adjudication of delinquency based on a violation of this Code section shall constitute
 8 a conviction."

9 **SECTION 2.**

10 Said article is further amended by striking paragraph (2) of subsection (k) of said Code
 11 Section 40-6-391 and inserting in its place a new paragraph (2) to read as follows:

12 "(2) Every person convicted of violating this subsection shall be guilty of a misdemeanor
 13 for the first and second convictions and upon a third or fourth subsequent conviction
 14 thereof be guilty of a high and aggravated misdemeanor and upon a fifth or subsequent
 15 conviction thereof be guilty of a felony and shall be punished and fined as provided in
 16 subsection (c) of this Code section, provided that any term of imprisonment served shall
 17 be subject to the provisions of Code Section 17-10-3.1, and any period of community
 18 service imposed on such person shall be required to be completed within 60 days of the
 19 date of sentencing."

20 **SECTION 3.**

21 This Act shall apply to offenses committed on or after July 1, 2006.

22 **SECTION 4.**

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