

Senate Bill 491

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

**AS PASSED SENATE**

**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.