

House Bill 336

By: Representatives Levitas of the 82nd, Bearden of the 68th, Talton of the 145th, Bridges of the 10th, Chambers of the 81st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 40-6-391 of the Official Code of Georgia Annotated, relating to
2 driving under the influence of alcohol, drugs, or other intoxicating substances, so as to
3 increase the mandatory sentences; to provide for related matters; to provide for an effective
4 date and applicability; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Code Section 40-6-391 of the Official Code of Georgia Annotated, relating to driving under
8 the influence of alcohol, drugs, or other intoxicating substances, is amended by revising
9 subsection (c) in its entirety as follows:

10 "(c) Every person convicted of violating subsection (a) of this Code section shall:

11 (1) Upon a first conviction thereof, except regarding a violation where the alcohol
12 concentration of the person convicted was 0.15 grams or more at the time of the offense,
13 be guilty of a misdemeanor and shall be punished and have a sentence imposed as
14 follows:

15 (A) A fine of not less than \$500.00 and not more than \$1,000.00, which fine shall not,
16 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
17 or probation;

18 (B) A period of imprisonment of not fewer than ten days and not more than 12 months,
19 which period of imprisonment may, at the sole discretion of the judge, be suspended,
20 stayed, or probated; provided, however, that if the alcohol concentration of the person
21 convicted was 0.08 grams or more at the time of the offense, the judge may suspend,
22 stay, or probate all but 24 hours of any term of imprisonment imposed under this
23 subparagraph;

24 (C) Not fewer than 40 hours of community service, except that for a conviction for
25 violation of subsection (a) of this Code section where the person's alcohol

1 concentration was less than 0.08 grams at the time of the offense, the period of
2 community service shall be not fewer than 30 hours;

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

6 (E) If the defendant is sentenced to a period of imprisonment of fewer than 12 months,
7 a period of probation of 12 months, less any days during which the defendant is actually
8 incarcerated;

9 (2) Upon a:

10 (A) First conviction where the alcohol concentration of the person convicted was 0.15
11 grams or more at the time of the offense, or

12 (B) Second conviction,

13 shall be guilty of a high and aggravated misdemeanor;

14 (3) For a violation of subsection (a) of this Code section that also satisfies the terms and
15 conditions of subparagraph (A) of paragraph (2) of this subsection, or, alternatively, that
16 also satisfies the terms and conditions of subparagraph (B) of paragraph (2) of this
17 subsection, be punished as follows:

18 (A) A fine of not less than \$750.00 and not more than \$5,000.00, which fine shall not,
19 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
20 or probation;

21 (B) A period of imprisonment of not fewer than ten days and not more than 12 months,
22 which period of imprisonment may, at the sole discretion of the judge, be suspended,
23 stayed, or probated, except that if the alcohol concentration of the person convicted was
24 0.08 grams or more at the time of the offense, the judge may suspend, stay, or probate
25 all but 96 hours of any term of imprisonment imposed under this subparagraph;

26 (C) Not fewer than 80 hours of community service, except that for a conviction for
27 violation of this paragraph where the person's alcohol concentration was less than 0.08
28 grams at the time of the offense, the period of community service shall be not fewer
29 than 60 hours;

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

33 (E) If the defendant is sentenced to a period of imprisonment of fewer than 12 months,
34 a period of probation of 12 months, less any days during which the defendant is actually
35 incarcerated;

36 (4) Upon a third or subsequent conviction thereof, be guilty of a felony;

1 (5) Upon a third violation, occurring within a ten-year period of time, as measured from
2 the dates of previous arrests for which a conviction was obtained or a plea of nolo
3 contendere was accepted to the date of the current arrest for which a conviction is
4 obtained or a plea of nolo contendere is accepted, be punished and have a sentence
5 imposed as follows:

6 (A) A fine of not less than \$1,000.00 nor more than \$5,000.00, which fine shall not,
7 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
8 or probation;

9 (B) A period of imprisonment of not less than one year and not more than five years,
10 all but 180 days of which period of imprisonment may, at the sole discretion of the
11 judge, be suspended, stayed or probated. The judge shall probate at least a portion of
12 such term of imprisonment, in accordance with subparagraph (F) of this paragraph,
13 thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42
14 and to such other terms and conditions as the judge may impose;

15 (C) Not fewer than 120 days of community service;

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

19 (E) Undergo a clinical evaluation as defined in Code Section 40-5-1 and, if indicated
20 by such evaluation, completion of a substance abuse treatment program as defined in
21 Code Section 40-5-1; and

22 (F) If the person convicted is sentenced to a period of imprisonment of fewer than five
23 years, a period of probation of five years, less any days during which the defendant is
24 actually incarcerated;

25 (6) Upon a third violation, occurring after a ten-year period of time, as measured from
26 the dates of previous arrests for which a conviction was obtained or a plea of nolo
27 contendere was accepted to the date of the current arrest for which a conviction is
28 obtained or a plea of nolo contendere is accepted, be punished as follows:

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

32 (B) A period of imprisonment of not less than one year and not more than three years,
33 all but 60 days of which period of imprisonment may, at the sole discretion of the
34 judge, be suspended, stayed or probated. The judge shall probate at least a portion of
35 such term of imprisonment, in accordance with subparagraph (F) of this paragraph,
36 thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42
37 and to such other terms and conditions as the judge may impose;

- 1 (C) Not fewer than 120 days of community service;
- 2 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
3 the Department of Driver Services. The sponsor of any such program shall provide
4 written notice of such approval to the person upon enrollment in the program;
- 5 (E) Undergo a clinical evaluation as defined in Code Section 40-5-1 and, if indicated
6 by such evaluation, completion of a substance abuse treatment program as defined in
7 Code Section 40-5-1; and
- 8 (F) If the person convicted is sentenced to a period of imprisonment of fewer than three
9 years, a period of probation of three years, less any days during which the defendant is
10 actually incarcerated; and
- 11 (7) Upon a fourth or subsequent conviction, be guilty of a felony and be punished as
12 follows:
- 13 (A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall
14 not, except as provided in subsection (g) of this Code section, be subject to suspension,
15 stay, or probation;
- 16 (B) A period of imprisonment of not less than one year and not more than five years,
17 all but one year of which period of imprisonment may, at the sole discretion of the
18 judge, be suspended, stayed or probated. The judge shall probate at least a portion of
19 such term of imprisonment, in accordance with subparagraph (F) of this paragraph,
20 thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42
21 and to such other terms and conditions as the judge may impose;
- 22 (C) Not fewer than 120 days of community service;
- 23 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
24 the Department of Driver Services. The sponsor of any such program shall provide
25 written notice of such approval to the person upon enrollment in the program;
- 26 (E) Undergo a clinical evaluation as defined in Code Section 40-5-1 and, if indicated
27 by such evaluation, completion of a substance abuse treatment program as defined in
28 Code Section 40-5-1; and
- 29 (F) If the person convicted is sentenced to a period of imprisonment for fewer than five
30 years, a period of probation of five years less any days during which the defendant is
31 actually incarcerated.
- 32 (8) For purposes of imposing sentence, pursuant to this subsection, under the applicable
33 level or grade of conviction for a violation of subsection (a) of this Code section and for
34 purposes of imposing, pursuant to this subsection, the applicable punishment and fine for
35 a person convicted of violating subsection (a) of this Code section, a violation of
36 subsection (k) of this Code section, occurring within a ten-year period of time of a
37 conviction for a violation of subsection (a) of this Code section, as measured from the

1 dates of arrest for which a conviction was obtained or a plea of nolo contendere was
 2 accepted for a violation of subsection (k) of this Code section to the date of the current
 3 arrest for which a conviction is obtained or a plea of nolo contendere is accepted for a
 4 violation of subsection (a) of this Code section, shall be considered a conviction for a
 5 violation of subsection (a) of this Code section.

6 (9) Any person sentenced pursuant to this subsection shall not be eligible for any form
 7 of pardon, parole, or early release administered by the State Board of Pardons and Paroles
 8 or for any earned time, early release, work release, leave, or any other sentence-reducing
 9 measures under programs administered by the Department of Corrections, the effect of
 10 which would be to reduce the sentence imposed pursuant to this subsection that is not
 11 subject to being suspended, stayed or probated by express provisions of this subsection,
 12 except as may be authorized by any existing or future provisions of the Constitution of
 13 Georgia.

14 (10) For the purpose of imposing a sentence under this subsection, a plea of nolo
 15 contendere based on a violation of this Code section shall constitute a conviction.

16 (11) Under this subsection, the term 'at the time of the offense' shall mean at any time
 17 within three hours after the driving or being in actual physical control of a moving
 18 vehicle from alcohol consumed before such driving or being in actual physical control
 19 of a moving vehicle ended."

20 SECTION 2.

21 Said Code section is further amended by revising subsection (k) in its entirety as follows:

22 "(k)(1) A person under the age of 21 shall not drive or be in actual physical control of
 23 any moving vehicle while the person's alcohol concentration is 0.02 grams or more at any
 24 time within three hours after such driving or being in physical control from alcohol
 25 consumed before such driving or being in actual physical control ended.

26 (2) Every person convicted of violating this subsection shall be guilty of a misdemeanor
 27 upon the first conviction and shall be guilty of a high and aggravated misdemeanor upon
 28 a second conviction and shall be punished and fined and have sentence imposed as
 29 follows:

30 (A) Upon the first conviction:

31 (i) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not,
 32 except as provided in subsection (g) of this Code section, be subject to suspension,
 33 stay, or probation;

34 (ii) A period of imprisonment of not fewer than ten days and not more than 12
 35 months, all but 24 hours of which period of imprisonment may, at the sole discretion
 36 of the judge, be suspended, stayed, or probated;

1 (iii) Not fewer than 40 hours of community service;
 2 (iv) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved
 3 by the Department of Driver Services. The sponsor of any such program shall
 4 provide written notice of such approval to the person upon enrollment in the program;
 5 and

6 (v) If the defendant is sentenced to a period of imprisonment of fewer than 12
 7 months, a period of probation of 12 months, less any days during which the defendant
 8 is actually incarcerated; and

9 (B) Upon the second conviction:

10 (i) A fine of not less than \$750.00 and not more than \$5,000.00, which fine shall not,
 11 except as provided in subsection (g) of this Code section, be subject to suspension,
 12 stay, or probation;

13 (ii) A period of imprisonment of not fewer than 120 days and not more than 12
 14 months, all but 72 hours of which period of imprisonment may, at the sole discretion
 15 of the judge, be suspended, stayed or probated. The judge shall probate at least a
 16 portion of such term of imprisonment, in accordance with division (vi) of this
 17 subparagraph, thereby subjecting the offender to the provisions of Article 7 of
 18 Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose;

19 (iii) Not fewer than 60 days of community service;

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

23 (v) Undergo a clinical evaluation as defined in Code Section 40-5-1 and, if indicated
 24 by such evaluation, completion of a substance-abuse treatment program as defined in
 25 Code Section 40-5-1; and

26 (vi) If the defendant is sentenced to a period of imprisonment of fewer than 12
 27 months, a period of probation of 12 months, less any days during which the defendant
 28 is actually incarcerated.

29 Any term of imprisonment served under this paragraph shall be subject to the provisions
 30 of Code Section 17-10-3.1.

31 (3) Every person convicted of violating this subsection for the third and any subsequent
 32 conviction shall be guilty of a felony and shall be punished and fined as follows:

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

36 (B) A period of imprisonment of not less than one year and not more than three years,
 37 all but 120 days of which period of imprisonment may, at the sole discretion of the

1 judge, be suspended, stayed or probated. The judge shall probate at least a portion of
2 such term of imprisonment, in accordance with subparagraph (F) of this paragraph,
3 thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42
4 and to such other terms and conditions as the judge may impose;

5 (C) Not fewer than 120 days of community service;

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

9 (E) Undergo a clinical evaluation as defined in Code Section 40-5-1 and, if indicated
10 by such evaluation, completion of a substance abuse treatment program as defined in
11 Code Section 40-5-1; and

12 (F) If the defendant is sentenced to a period of imprisonment of fewer than three years,
13 a period of probation of three years less any days during which the defendant is actually
14 incarcerated.

15 (4) Any period of community service imposed on a person under this subsection totaling
16 30 days or fewer shall be completed within 120 days of the date that the person convicted
17 has served all time of actual incarceration after sentencing under this subsection, and any
18 period of community service imposed upon such person totaling more than 30 days shall
19 be completed within one year; provided, however, that the court in sentencing the person
20 convicted may shorten the time by which such community service shall be completed.

21 (5) No plea of nolo contendere shall be accepted for any person under the age of 21
22 charged with a violation of this Code section."

23 SECTION 3.

24 This Act shall become effective on July 1, 2007, and shall be applied to offenses occurring
25 on or after that date.

26 SECTION 4.

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