

The House Committee on Judiciary Non-civil offers the following substitute to HB 336:

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 40-6-391 of the Official Code of Georgia Annotated, relating to driving under the influence of alcohol, drugs, or other intoxicating substances, so as to substantially revise the punishment provisions related to driving under the influence of alcohol, drugs, or other intoxicating substances; to amend Code Section 40-5-85 of the Official Code of Georgia Annotated, relating to reinstatement of licenses suspended for driving under the influence of alcohol or drugs and red stripe on licenses of repeat offenders, so as to correct a cross-reference; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(c)(1) Every person convicted of violating subsection (a) of this Code section shall:

(A) Upon a first conviction thereof, be guilty of a misdemeanor and shall be punished as follows:

(i) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation; provided, however, that in the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under this division conditioned upon the person's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1;

(ii) A period of imprisonment of not fewer than ten days and not more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the alcohol concentration of the person convicted was 0.08 grams or more at the time of the offense, the judge may suspend,

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1 stay, or probate all but 24 hours of any term of imprisonment imposed under this
2 division;

3 (iii) Not fewer than 40 hours of community service, except that if the alcohol
4 concentration of the person convicted was less than 0.08 grams at the time of the
5 offense, the period of community service shall be not fewer than 30 hours;

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

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

12 (vi) If the alcohol concentration of the person convicted was 0.08 grams or more at
13 the time of the offense, the court shall, in addition to any other provision of probation,
14 order as a condition of probation that the person convicted obtain and use an ignition
15 interlock device for a minimum period of 120 days, pursuant to the terms of Articles
16 7 and 9 of Chapter 8 of Title 42; provided, however, that for a first offense in
17 violation of this Code section, the six-month period prescribed by subsection (b) of
18 Code Section 42-8-112 shall not apply, and the period shall be determined by the
19 court pursuant to this division and:

20 (I) Such person shall have installed and shall maintain in each motor vehicle
21 registered in such person's name throughout the period ordered by the court a
22 functioning, certified ignition interlock device, unless the court exempts the person
23 from the requirements of this division based upon the court's determination that
24 such requirements would subject the person to undue financial hardship; and

25 (II) Such person shall have installed and shall maintain in any other motor vehicle
26 to be driven by such person a functioning, certified ignition interlock device, and
27 such person shall not during such period drive any motor vehicle whatsoever that
28 is not so equipped.

29 For the purposes of this division, a plea of nolo contendere shall constitute a
30 conviction; and a conviction of any offense under the law of another state or territory
31 substantially conforming to any offense under this Code section shall be deemed a
32 conviction of violating this Code section; and

33 (vii) A period of probation of 12 months, less any days during which the person
34 convicted is actually incarcerated;

35 (B) Upon a second conviction thereof, be guilty of a high and aggravated misdemeanor
36 and shall be punished as follows:

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

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

(iii) Not fewer than 30 days of community service, except that if the alcohol concentration of the person convicted was less than 0.08 grams at the time of the offense, the period of community service shall be not fewer than 60 hours;

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

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

(vi) A period of probation of 12 months, less any days during which the person convicted is actually incarcerated;

(C) Upon a third or subsequent conviction thereof, be guilty of a felony and shall be punished as provided for in subparagraph (D) or (E) of this paragraph, as applicable;

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

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

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

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

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

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

(vi) A period of probation of five years, less any days during which the person convicted is actually incarcerated;

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

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

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

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

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

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

(vi) A period of probation of three years, less any days during which the person convicted is actually incarcerated; and

(F) Upon a fourth or subsequent conviction thereof, be guilty of a felony and shall be punished as follows:

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

(ii) A period of imprisonment of not less than one year and not more than five years, all but one year 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
2 of such term of imprisonment, in accordance with division (vi) of this subparagraph,
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 (iii) Not fewer than 60 days of community service;

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

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

12 (vi) A period of probation of five years, less any days during which the person
13 convicted is actually incarcerated.

14 (2) If a person has been convicted of violating subsection (k) of this Code section and
15 is subsequently convicted of violating subsection (a) of this Code section within a
16 ten-year period of time, as measured from the dates of arrest for which a conviction was
17 obtained or a plea of nolo contendere was accepted for a violation of subsection (k) of
18 this Code section to the date of the current arrest for which a conviction is obtained or a
19 plea of nolo contendere is accepted for a violation of subsection (a) of this Code section,
20 such person shall be punished by applying the applicable level or grade of conviction
21 specified in this subsection such that the previous conviction of violating subsection (k)
22 of this Code section shall be treated as a previous violation of subsection (a) of this Code
23 section.

24 (3) Except for a first offense, any person sentenced pursuant to this subsection shall not
25 be eligible for any form of pardon, parole, or early release administered by the State
26 Board of Pardons and Paroles or for any earned time, early release, work release, leave,
27 or any other sentence-reducing measures under programs administered by the Department
28 of Corrections, by the sheriff of any county of this state, or by any political subdivision
29 of this state, the effect of which would be to reduce the sentence imposed pursuant to this
30 subsection; provided, however, that, except for the minimum periods of incarceration set
31 forth in this subsection, this paragraph shall not apply to a second offense for violating
32 this Code section if, as part of the person's sentence, he or she is participating in a drug
33 court program for substance abuse established pursuant to Code Section 15-1-15 or a
34 substantially similar program which in the court's discretion has been approved by the
35 court.

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

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

(6) For purposes of determining the appropriate level of offense pursuant to the provisions of this subsection, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after July 1, 2002, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way administrative proceedings or sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to administrative proceedings pursuant to this title, the placement of ignition interlock devices pursuant to Title 42, and punishment of recidivist offenders pursuant to Title 17."

SECTION 2.

Said Code section is further amended by revising subsection (g) as follows:

"(g)(1) If the payment of the fine required under subsection (c) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under ~~paragraph (2) or (3) of subsection (c)~~ subparagraph (c)(2)(B) or (c)(2)(F) of this Code section for a second or subsequent conviction conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1."

SECTION 3.

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

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

(2)(A) Every person convicted of violating this subsection shall be guilty of a misdemeanor upon the first conviction, shall be guilty of a high and aggravated misdemeanor upon a second conviction, and shall be punished as follows:

(B) Upon the first conviction:

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

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

(iii) Not fewer than 40 hours of community service;

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

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

(vi) A period of probation of 12 months, less any days during which the person convicted is actually incarcerated;

(C) Upon the second conviction:

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

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

(iii) Not fewer than 30 days of community service;

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

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

(vi) A period of probation of 12 months, less any days during which the person convicted is actually incarcerated; and

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

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

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

(B) A period of imprisonment of not less than one year and not more than three years, all but 120 days of which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service;

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

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

(F) A period of probation of three years, less any days during which the person convicted is actually incarcerated.

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

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

SECTION 4.

Code Section 40-5-85 of the Official Code of Georgia Annotated, relating to reinstatement of licenses suspended for driving under the influence of alcohol or drugs and red stripe on licenses of repeat offenders, is amended by revising said Code section as follows:

"40-5-85.

~~Notwithstanding any other provision of this chapter, any~~ Any person convicted ~~within five years of his or her first conviction as measured in paragraph (2) of subsection (c) of Code Section 40-6-391~~ for a second time of the or subsequent offense of driving under the

1 influence of alcohol, ~~or drugs,~~ or other intoxicating substances in violation of Code Section
2 40-6-391 shall, upon compliance with all other requirements for reinstatement of his or her
3 license as provided for in this chapter, be issued a driver's license which may bear a red
4 stripe thereon. After seven years with no additional convictions for driving under the
5 influence of alcohol, ~~or drugs,~~ or other intoxicating substances any such person shall be
6 issued a regular driver's license without such red stripe provided that he or she is otherwise
7 entitled to such license under the laws of this state."

8 **SECTION 5.**

9 This Act shall become effective on July 1, 2007, and shall be applied to offenses occurring
10 on or after July 1, 2007.

11 **SECTION 6.**

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