

House Bill 336 (RULES COMMITTEE SUBSTITUTE) (AM)

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

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to  
2 drivers' licenses, so as to change certain provisions relating to clinical evaluations and  
3 substance abuse treatment programs for certain offenders; to amend Code Section 40-6-391  
4 of the Official Code of Georgia Annotated, relating to driving under the influence of alcohol,  
5 drugs, or other intoxicating substances, so as to revise the punishment provisions related to  
6 driving under the influence of alcohol, drugs, or other intoxicating substances; to provide that  
7 a fourth violation of the crime of driving under the influence within ten years is a felony; to  
8 provide for related matters; to provide for an effective date and applicability; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to drivers' licenses,  
13 is amended by revising Code Section 40-5-63.1, relating to clinical evaluation and substance  
14 abuse treatment programs for certain offenders, as follows:

15 "40-5-63.1.

16 In addition to any and all other conditions of license reinstatement, issuance, or restoration  
17 under Code Section 40-5-58, 40-5-62, or 40-5-63, any person with two or more convictions  
18 ~~of violation of~~ for violating Code Section 40-6-391 within ~~five~~ ten years, as measured from  
19 the dates of previous arrests for which convictions were obtained to the date of the current  
20 arrest for which a conviction is obtained, shall be required to undergo a clinical evaluation  
21 and, if ~~indicated by~~ recommended as a part of such evaluation, ~~must~~ shall complete a  
22 substance abuse treatment program; prior to such license reinstatement, issuance, or  
23 restoration; provided, however, that such evaluation and treatment shall be at such person's  
24 expense except as otherwise provided by Code Section 37-7-120. Acceptable proof of  
25 completion of such a program ~~must~~ shall be submitted to the department prior to license  
26 reinstatement, issuance, or restoration. For purposes of this Code section, a plea of nolo



1 (E) Unless the judge issues a written finding stating that the public safety will not be  
 2 jeopardized by allowing the person to forego a clinical evaluation as defined in Code  
 3 Section 40-5-1 and further stating the reason why foregoing such evaluation serves the  
 4 interest of justice, the person shall have such evaluation and, if recommended as a part  
 5 of such evaluation, shall complete a substance abuse treatment program as defined in  
 6 Code Section 40-5-1; and

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

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

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

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

23 (C) Not ~~less~~ fewer than 30 days of community service;

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

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

31 (F) A period of probation of 12 months less any days during which the ~~defendant~~  
 32 person is actually incarcerated; ~~or~~

33 (3) For the third ~~or subsequent~~ conviction within a ~~five-year~~ ten-year period of time, as  
 34 measured from the dates of previous arrests for which convictions were obtained or pleas  
 35 of nolo contendere were accepted to the date of the current arrest for which a conviction  
 36 is obtained or a plea of nolo contendere is accepted:

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

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

10 (C) Not ~~less~~ fewer than 30 days of community service;

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

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

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

20 (4) For the fourth or subsequent conviction within a ten-year period of time, as measured  
 21 from the dates of previous arrests for which convictions were obtained or pleas of nolo  
 22 contendere were accepted to the date of the current arrest for which a conviction is  
 23 obtained or a plea of nolo contendere is accepted:

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

27 (B) A period of imprisonment of not less than one year and not more than five years;  
 28 provided, however, that the judge may suspend, stay, or probate all but 90 days of any  
 29 term of imprisonment imposed under this paragraph. The judge shall probate at least  
 30 a portion of such term of imprisonment, in accordance with subparagraph (F) of this  
 31 paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8  
 32 of Title 42 and to such other terms and conditions as the judge may impose;

33 (C) Not fewer than 60 days of community service; provided, however, that if a  
 34 defendant is sentenced to serve three years of actual imprisonment, the judge may  
 35 suspend the community service;

1 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor  
2 of any such program shall provide written notice of the department's approval of the  
3 program to the person upon enrollment in the program;

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

7 (F) A period of probation of five years less any days during which the person is  
8 actually imprisoned;

9 provided, however, that if the ten-year period of time as measured in this paragraph  
10 commenced prior to July 1, 2008, then such fourth or subsequent conviction shall be a  
11 misdemeanor of a high and aggravated nature and punished as provided in paragraph (3)  
12 of this subsection.

13 (5) If a person has been convicted of violating subsection (k) of this Code section  
14 premised on a refusal to submit to required testing or where such person's alcohol  
15 concentration at the time of the offense was 0.08 grams or more, and such person is  
16 subsequently convicted of violating subsection (a) of this Code section, such person shall  
17 be punished by applying the applicable level or grade of conviction specified in this  
18 subsection such that the previous conviction of violating subsection (k) of this Code  
19 section shall be considered a previous conviction of violating subsection (a) of this Code  
20 section.

21 (6) The mandatory minimum punishment for any person sentenced pursuant to this  
22 subsection shall not allow such person to be eligible for any form of pardon, parole, or  
23 early release administered by the State Board of Pardons and Paroles or for any  
24 earned-time, early release, work release, leave, or any other sentence-reducing measures  
25 under programs administered by the Department of Corrections, by the sheriff of any  
26 county of this state, or by any political subdivision of this state, the effect of which would  
27 be to reduce the sentence imposed pursuant to this subsection; provided, however, that  
28 this paragraph shall not apply to any violation of this Code section if, as part of the  
29 person's sentence, he or she is participating for the first time and has never before  
30 participated in either a drug court program for substance abuse established pursuant to  
31 Code Section 15-1-15 or a substantially similar program which has been approved by the  
32 Judicial Council of Georgia.

33 (7) For the purpose of imposing a sentence under this subsection, a plea of nolo  
34 contendere or an adjudication of delinquency based on a violation of this Code section  
35 shall constitute a conviction.

36 (8) For purposes of determining the number of prior convictions or pleas of nolo  
37 contendere pursuant to the felony provisions of paragraph (4) of this subsection, only

1 those offenses for which a conviction is obtained or a plea of nolo contendere is accepted  
 2 on or after July 1, 2008, shall be considered; provided, however, that nothing in this  
 3 subsection shall be construed as limiting or modifying in any way administrative  
 4 proceedings or sentence enhancement provisions under Georgia law, including, but not  
 5 limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17."

### 6 **SECTION 3.**

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

8 "(d)(1) Notwithstanding the limits set forth in any municipal charter, any municipal court  
 9 of any municipality shall be authorized to impose the misdemeanor or high and  
 10 aggravated misdemeanor punishments provided for in this Code section upon a  
 11 conviction of violating this Code section or upon a conviction of violating any ordinance  
 12 adopting the provisions of this Code section.

13 (2) Notwithstanding any provision of this Code section to the contrary, any court  
 14 authorized to hear misdemeanor or high and aggravated misdemeanor cases involving  
 15 violations of this Code section shall be authorized to exercise the power to probate,  
 16 suspend, or stay any sentence imposed. Such power shall, however, be limited to the  
 17 conditions and limitations imposed by subsection (c) of this Code section."

### 18 **SECTION 4.**

19 Said Code section is further amended by revising paragraph (2) of subsection (g) as follows:

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

### 24 **SECTION 5.**

25 This Act shall become effective on July 1, 2008, and shall be applied to offenses occurring  
 26 on or after July 1, 2008; provided, however, that for purposes of determining the number of  
 27 prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph  
 28 (4) of subsection (c) of Code Section 40-6-391, only those offenses for which a conviction  
 29 or a plea of nolo contendere is obtained on or after July 1, 2008, shall be considered.

### 30 **SECTION 6.**

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