

House Bill 336 (AS PASSED HOUSE AND SENATE)

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 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) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as
 2 a part of such evaluation, completion of a substance abuse treatment program as defined
 3 in Code Section 40-5-1; provided, however, that in the court's discretion such
 4 evaluation may be waived; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (4) For the fourth or subsequent conviction within a ten-year period of time, as measured
 18 from 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 \$1,000.00 and not more than \$5,000.00, which fine shall
 22 not, except as provided in subsection (g) of this Code section, be subject to suspension,
 23 stay, or probation;

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

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

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

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

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

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

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

18 (6) For the purpose of imposing a sentence under this subsection, a plea of nolo
 19 contendere or an adjudication of delinquency based on a violation of this Code section
 20 shall constitute a conviction.

21 (7) For purposes of determining the number of prior convictions or pleas of nolo
 22 contendere pursuant to the felony provisions of paragraph (4) of this subsection, only
 23 those offenses for which a conviction is obtained or a plea of nolo contendere is accepted
 24 on or after July 1, 2008, shall be considered; provided, however, that nothing in this
 25 subsection shall be construed as limiting or modifying in any way administrative
 26 proceedings or sentence enhancement provisions under Georgia law, including, but not
 27 limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17."

28 SECTION 3.

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

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

35 (2) Notwithstanding any provision of this Code section to the contrary, any court
 36 authorized to hear misdemeanor or high and aggravated misdemeanor cases involving

1 violations of this Code section shall be authorized to exercise the power to probate,
2 suspend, or stay any sentence imposed. Such power shall, however, be limited to the
3 conditions and limitations imposed by subsection (c) of this Code section."

4 **SECTION 4.**

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

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

10 **SECTION 5.**

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

16 **SECTION 6.**

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