

House Bill 1136

By: Representatives Rice of the 51<sup>st</sup> and Powell of the 29<sup>th</sup>

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, penalties,  
3 publication of notice of conviction for persons convicted for a second time, and endangering  
4 a child, so as to modify provisions relating to a clinical evaluation; to provide for related  
5 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 SECTION 1.

8 Code Section 40-6-391 of the Official Code of Georgia Annotated, relating to driving under  
9 the influence of alcohol, drugs, or other intoxicating substances, penalties, publication of  
10 notice of conviction for persons convicted for a second time, and endangering a child, is  
11 amended by revising subsection (c) as follows:

12 "(c) Every person convicted of violating this Code section shall, upon a first or second  
13 conviction thereof, be guilty of a misdemeanor, upon a third conviction thereof, be guilty  
14 of a high and aggravated misdemeanor, and upon a fourth or subsequent conviction thereof,  
15 be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and  
16 shall be punished as follows:

17 (1) First For the first conviction with no conviction of and no plea of nolo contendere  
18 accepted to a charge of violating this Code section within the previous ten years, as  
19 measured from the dates of previous arrests for which convictions were obtained or pleas  
20 of nolo contendere were accepted to the date of the current arrest for which a conviction  
21 is obtained or a plea of nolo contendere is accepted:

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

25 (B) A period of imprisonment of not fewer than ten days nor more than 12 months,  
26 which period of imprisonment may, at the sole discretion of the judge, be suspended,

27 stayed, or probated, except that if the offender's alcohol concentration at the time of the  
 28 offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24  
 29 hours of any term of imprisonment imposed under this subparagraph;

30 (C) Not fewer than 40 hours of community service, except that for a conviction for  
 31 violation of subsection (k) of this Code section where the person's alcohol concentration  
 32 at the time of the offense was less than 0.08 grams, the period of community service  
 33 shall be not fewer than 20 hours;

34 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,  
 35 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of  
 36 any such program shall provide written notice of the department's approval of the  
 37 program to the person upon enrollment in the program;

38 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section  
 39 40-5-1 ~~and~~, if recommended as a part of such evaluation, completion of a substance  
 40 abuse treatment program as defined in Code Section 40-5-1; provided, however, that  
 41 in the court's discretion such evaluation may be waived; and

42 (F) If the person is sentenced to a period of imprisonment for fewer than 12 months,  
 43 a period of probation of 12 months less any days during which the person is actually  
 44 incarcerated;

45 (2) For the second conviction within a ten-year period of time, as measured from the  
 46 dates of previous arrests for which convictions were obtained or pleas of nolo contendere  
 47 were accepted to the date of the current arrest for which a conviction is obtained or a plea  
 48 of nolo contendere is accepted:

49 (A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not,  
 50 except as provided in subsection (g) of this Code section, be subject to suspension, stay,  
 51 or probation;

52 (B) A period of imprisonment of not fewer than 90 days and not more than 12 months.  
 53 The judge shall probate at least a portion of such term of imprisonment, in accordance  
 54 with subparagraph (F) of this paragraph, thereby subjecting the offender to the  
 55 provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions  
 56 as the judge may impose; provided, however, that the offender shall be required to  
 57 serve not fewer than 72 hours of actual incarceration;

58 (C) Not fewer than 30 days of community service;

59 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,  
 60 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of  
 61 any such program shall provide written notice of the department's approval of the  
 62 program to the person upon enrollment in the program;

63 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section  
 64 40-5-1 ~~and~~, if recommended as a part of such evaluation, completion of a substance  
 65 abuse treatment program as defined in Code Section 40-5-1; and

66 (F) A period of probation of 12 months less any days during which the person is  
 67 actually incarcerated;

68 (3) For the third conviction within a ten-year period of time, as measured from the dates  
 69 of previous arrests for which convictions were obtained or pleas of nolo contendere were  
 70 accepted to the date of the current arrest for which a conviction is obtained or a plea of  
 71 nolo contendere is accepted:

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

75 (B) A mandatory period of imprisonment of not fewer than 120 days and not more than  
 76 12 months. The judge shall probate at least a portion of such term of imprisonment, in  
 77 accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to  
 78 the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and  
 79 conditions as the judge may impose; provided, however, that the offender shall be  
 80 required to serve not fewer than 15 days of actual incarceration;

81 (C) Not fewer than 30 days of community service;

82 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,  
 83 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of  
 84 any such program shall provide written notice of the department's approval of the  
 85 program to the person upon enrollment in the program;

86 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section  
 87 40-5-1 ~~and~~, if recommended as a part of such evaluation, completion of a substance  
 88 abuse treatment program as defined in Code Section 40-5-1; and

89 (F) A period of probation of 12 months less any days during which the person is  
 90 actually incarcerated;

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

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

98 (B) A period of imprisonment of not less than one year and not more than five years;  
 99 provided, however, that the judge may suspend, stay, or probate all but 90 days of any

100 term of imprisonment imposed under this paragraph. The judge shall probate at least  
 101 a portion of such term of imprisonment, in accordance with subparagraph (F) of this  
 102 paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8  
 103 of Title 42 and to such other terms and conditions as the judge may impose;

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

107 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,  
 108 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of  
 109 any such program shall provide written notice of the department's approval of the  
 110 program to the person upon enrollment in the program;

111 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section  
 112 40-5-1 ~~and~~, if recommended as a part of such evaluation, completion of a substance  
 113 abuse treatment program as defined in Code Section 40-5-1; and

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

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

120 (5) If a person has been convicted of violating subsection (k) of this Code section  
 121 premised on a refusal to submit to required testing or where such person's alcohol  
 122 concentration at the time of the offense was 0.08 grams or more, and such person is  
 123 subsequently convicted of violating subsection (a) of this Code section, such person shall  
 124 be punished by applying the applicable level or grade of conviction specified in this  
 125 subsection such that the previous conviction of violating subsection (k) of this Code  
 126 section shall be considered a previous conviction of violating subsection (a) of this Code  
 127 section;

128 (6) For the purpose of imposing a sentence under this subsection, a plea of nolo  
 129 contendere based on a violation of this Code section shall constitute a conviction; and

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

137 **SECTION 2.**

138 This Act shall become effective on July 1, 2012.

139 **SECTION 3.**

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