

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 241
PROPOSED COMMITTEE SUBSTITUTE S241-PCS85136-RK-27

Short Title: Increase DWI Penalty/Child in Vehicle.

(Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT DWI SENTENCING BE AT LEVEL ONE IF THE OFFENSE OCCURS WITH A CHILD LESS THAN EIGHTEEN YEARS OF AGE IN THE VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that the grossly aggravating factor in subdivision (4) of this subsection applies or two or more of the other grossly aggravating factors apply. If the judge does not find that the aggravating factor at subdivision (4) of this subsection applies, The then the judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the other grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

- a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
- b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
- c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.



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- 1 (2) Driving by the defendant at the time of the offense while his driver's license
2 was revoked under G.S. 20-28, and the revocation was an impaired driving
3 revocation under G.S. 20-28.2(a).
4 (3) Serious injury to another person caused by the defendant's impaired driving
5 at the time of the offense.
6 (4) Driving by the defendant while a child under the age of ~~16~~18 years was in
7 the vehicle at the time of the offense.

8 In imposing a Level One or Two punishment, the judge may consider the aggravating and
9 mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there
10 are no grossly aggravating factors in the case, the judge must weigh all aggravating and
11 mitigating factors and impose punishment as required by subsection (f)."

12 **SECTION 2.** This act becomes effective December 1, 2011, and applies to
13 offenses committed on or after that date.