

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 49
PROPOSED COMMITTEE SUBSTITUTE H49-PCS11048-SA-4

Short Title: Laura's Law.

(Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR DWI OFFENDERS WITH THREE OR MORE GROSSLY AGGRAVATING FACTORS, TO AUTHORIZE THE COURT TO REQUIRE CONTINUOUS ALCOHOL MONITORING FOR CERTAIN OFFENDERS, AND TO INCREASE THE COURT COSTS FOR DWI OFFENDERS.

The General Assembly of North Carolina enacts:

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

"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. – After a conviction under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

...

(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 Aggravated Level One punishment under subsection (g) of this section if it is determined that three or more grossly aggravating factors apply. The judge must impose the Level One punishment under subsection ~~(g)~~(g1) of this section if it is determined that two ~~or more~~ grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the 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



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5 superior court; the appeal has been withdrawn, or the case has been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

8 Each prior conviction is a separate grossly aggravating factor.

- 9 (2) Driving by the defendant at the time of the offense while his driver's license
10 was revoked under G.S. 20-28, and the revocation was an impaired driving
11 revocation under G.S. 20-28.2(a).
12 (3) Serious injury to another person caused by the defendant's impaired driving
13 at the time of the offense.
14 (4) Driving by the defendant while a child under the age of 16 years was in the
15 vehicle at the time of the offense.

16 In imposing an Aggravated Level One, a Level ~~One~~-One, or a Level Two punishment, the
17 judge may consider the aggravating and mitigating factors in subsections (d) and (e) in
18 determining the appropriate sentence. If there are no grossly aggravating factors in the case, the
19 judge must weigh all aggravating and mitigating factors and impose punishment as required by
20 subsection (f).

21 ...

22 (g) Aggravated Level One Punishment. – A defendant subject to Aggravated Level One
23 punishment may be fined up to ten thousand dollars (\$10,000) and shall be sentenced to a term
24 of imprisonment that includes a minimum term of not less than 12 months and a maximum
25 term of not more than 36 months. Notwithstanding G.S. 15A-1371, a defendant sentenced to a
26 term of imprisonment pursuant to this subsection shall not be eligible for parole. However, the
27 defendant shall be released from the Department of Correction on the date equivalent to the
28 defendant's maximum imposed term of imprisonment less four months, and shall be supervised
29 by the Division of Community Corrections under and subject to the provisions of Article 84A
30 of Chapter 15A of the General Statutes and shall also be required to abstain from alcohol
31 consumption for the four-month period of supervision as verified by a continuous alcohol
32 monitoring system. For purposes of revocation, violation of the requirement to abstain from
33 alcohol or comply with the use of a continuous alcohol monitoring system shall be deemed a
34 controlling condition under G.S. 15A-1368.4.

35 The term of imprisonment may be suspended only if a condition of special probation is
36 imposed to require the defendant to serve a term of imprisonment of at least 120 days.
37 Subsection (k1) of this section shall not apply to a defendant sentenced pursuant to this
38 subsection. If the defendant is placed on probation, the judge shall impose as requirements that
39 the defendant (i) abstain from alcohol consumption for a minimum of 120 days, to a maximum
40 of the term of probation, as verified by a continuous alcohol monitoring system pursuant to
41 subsections (h1) and (h3) of this section, and (ii) obtain a substance abuse assessment and the
42 education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a
43 condition of probation. The judge may impose any other lawful condition of probation.

44 (g1) Level One Punishment. – A defendant subject to Level One punishment may be
45 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
46 that includes a minimum term of not less than 30 days and a maximum term of not more than
47 24 months. The term of imprisonment may be suspended only if a condition of special
48 probation is imposed to require the defendant to serve a term of imprisonment of at least 30
49 days. If the defendant is placed on probation, the judge shall impose a requirement that the
50 defendant obtain a substance abuse assessment and the education or treatment required by

1 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
2 may impose any other lawful condition of probation.

3 ...

4 (h1) The judge may impose, as a condition of probation for defendants subject to Level
5 One or Level Two punishments, that the defendant abstain from alcohol consumption for a
6 minimum of 30 days, to a maximum of ~~60 days, the term of probation,~~ as verified by a
7 continuous alcohol monitoring system. ~~The total cost to the defendant for the continuous~~
8 ~~alcohol monitoring system may not exceed one thousand dollars (\$1,000).~~ The defendant's
9 abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type
10 approved by the Department of Correction.

11 ~~(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good~~
12 ~~cause shown, that the defendant should not be required to pay the costs of the continuous~~
13 ~~alcohol monitoring system, the court shall not impose the use of a continuous alcohol~~
14 ~~monitoring system unless the local governmental entity responsible for the incarceration of the~~
15 ~~defendant in the local confinement facility agrees to pay the costs of the system.~~

16 (h3) Any fees or costs paid pursuant to ~~subsections (h1) or (h2)~~ subsection (h1) of this
17 section shall be paid to the clerk of court for the county in which the judgment was entered or
18 the deferred prosecution agreement was filed. Fees or costs collected under this subsection shall
19 be transmitted to the entity providing the continuous alcohol monitoring system.

20 ...

21 (k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order
22 that a term of imprisonment imposed as a condition of special probation under ~~any level of~~
23 ~~punishment~~ subsection (g1), (h), (i), (j), or (k) of this section be served as an inpatient in a
24 facility operated or licensed by the State for the treatment of alcoholism or substance abuse
25 where the defendant has been accepted for admission or commitment as an inpatient. The
26 defendant shall bear the expense of any treatment unless the trial judge orders that the costs be
27 absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the
28 premises of the treatment facility and require that the defendant follow the rules of the
29 treatment facility. The judge may credit against the active sentence imposed on a defendant the
30 time the defendant was an inpatient at the treatment facility, provided such treatment occurred
31 after the commission of the offense for which the defendant is being sentenced. This section
32 shall not be construed to limit the authority of the judge in sentencing under any other
33 provisions of law.

34"

35 **SECTION 2.** G.S. 20-19(e) reads as rewritten:

36 "(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has
37 two or more previous offenses involving impaired driving for which the person has been
38 convicted, and the most recent offense occurred within the five years immediately preceding
39 the date of the offense for which the person's license is being ~~revoked, or (ii) revoked,~~ (ii)
40 G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(g) for the offense
41 resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the
42 revocation is permanent."

43 **SECTION 3.** G.S. 20-17.8 reads as rewritten:

44 "**§ 20-17.8. Restoration of a license after certain driving while impaired convictions;**
45 **ignition interlock.**

46 (a) Scope. – This section applies to a person whose license was revoked as a result of a
47 conviction of driving while impaired, G.S. 20-138.1, and:

48 (1) The person had an alcohol concentration of 0.15 or ~~more; or more;~~

49 (2) The person has been convicted of another offense involving impaired
50 driving, which offense occurred within seven years immediately preceding

1 the date of the offense for which the person's license has been
2 ~~revoked~~; or

3 (3) The person was sentenced pursuant to G.S. 20-179(g).

4 For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as
5 shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the
6 Division to determine that person's alcohol concentration.

7 ...

8 (b) **(Effective until December 1, 2014)** Ignition Interlock Required. – Except as
9 provided in subsection (1) of this section, when the Division restores the license of a person
10 who is subject to this section, in addition to any other restriction or condition, it shall require
11 the person to agree to and shall indicate on the person's drivers license the following
12 restrictions for the period designated in subsection (c):

13 (1) A restriction that the person may operate only a vehicle that is equipped with
14 a functioning ignition interlock system of a type approved by the
15 Commissioner. The Commissioner shall not unreasonably withhold approval
16 of an ignition interlock system and shall consult with the Division of
17 Purchase and Contract in the Department of Administration to ensure that
18 potential vendors are not discriminated against.

19 (2) A requirement that the person personally activate the ignition interlock
20 system before driving the motor vehicle.

21 (3) An alcohol concentration restriction as follows:

22 a. If the ignition interlock system is required pursuant only to
23 subdivision (a)(1) of this section, a requirement that the person not
24 drive with an alcohol concentration of 0.04 or greater;

25 b. If the ignition interlock system is required pursuant to subdivision
26 (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a
27 requirement that the person not drive with an alcohol concentration
28 of greater than 0.00; or

29 c. If the ignition interlock system is required pursuant to subdivision
30 (a)(1) of this section, and the person has also been convicted, based
31 on the same set of circumstances, of: (i) driving while impaired in a
32 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
33 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
34 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
35 homicide resulting from the operation of a motor vehicle when the
36 offense involved impaired driving, a requirement that the person not
37 drive with an alcohol concentration of greater than 0.00.

38 (b) **(Effective December 1, 2014)** Ignition Interlock Required. – Except as provided in
39 subsection (1) of this section, when the Division restores the license of a person who is subject
40 to this section, in addition to any other restriction or condition, it shall require the person to
41 agree to and shall indicate on the person's drivers license the following restrictions for the
42 period designated in subsection (c):

43 (1) A restriction that the person may operate only a vehicle that is equipped with
44 a functioning ignition interlock system of a type approved by the
45 Commissioner. The Commissioner shall not unreasonably withhold approval
46 of an ignition interlock system and shall consult with the Division of
47 Purchase and Contract in the Department of Administration to ensure that
48 potential vendors are not discriminated against.

49 (2) A requirement that the person personally activate the ignition interlock
50 system before driving the motor vehicle.

51 (3) An alcohol concentration restriction as follows:

- 1 a. If the ignition interlock system is required pursuant only to
- 2 subdivision (a)(1) of this section, a requirement that the person not
- 3 drive with an alcohol concentration of 0.04 or greater;
- 4 b. If the ignition interlock system is required pursuant to subdivision
- 5 (a)(2) or (a)(3) of this section, a requirement that the person not drive
- 6 with an alcohol concentration of greater than 0.00; or
- 7 c. If the ignition interlock system is required pursuant to subdivision
- 8 (a)(1) of this section, and the person has also been convicted, based
- 9 on the same set of circumstances, of: (i) driving while impaired in a
- 10 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
- 11 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
- 12 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
- 13 homicide resulting from the operation of a motor vehicle when the
- 14 offense involved impaired driving, a requirement that the person not
- 15 drive with an alcohol concentration of greater than 0.00.

16"

17 **SECTION 4.** G.S. 7A-304(a) reads as rewritten:

18 "(a) In every criminal case in the superior or district court, wherein the defendant is

19 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the

20 prosecuting witness, the following costs shall be assessed and collected, except that when the

21 judgment imposes an active prison sentence, costs shall be assessed and collected only when

22 the judgment specifically so provides, and that no costs may be assessed when a case is

23 dismissed.

24 ...

25 (10) For support of the General Court of Justice, the sum of one hundred dollars

26 (\$100.00) is payable by a defendant convicted under G.S. 20-138.1 or

27 G.S. 20-138.2, for a second or subsequent conviction under G.S. 20-138.2A,

28 or for a second or subsequent conviction under G.S. 20-138.2B, to be

29 remitted to the State Treasurer. This fee shall be in addition to the fee

30 required by subsection (4a) of this section."

31 **SECTION 5.** G.S. 15A-534 is amended by adding a new subsection to read:

32 "(i) In addition to any other condition of pretrial release, the judicial official authorizing

33 pretrial release may order any defendant (i) charged with an offense involving impaired

34 driving, as defined by G.S. 20-4.01(24a), and (ii) having a prior conviction for an offense

35 involving impaired driving that occurred within seven years before the date of the offense for

36 which the defendant is being placed on pretrial release, to abstain from alcohol consumption as

37 verified by an approved continuous alcohol monitoring system for the period of pretrial release

38 or until this condition is removed by entry of order of a court of competent jurisdiction."

39 **SECTION 6.** This act becomes effective December 1, 2011, and applies to

40 offenses committed on or after that date.