

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 49
Committee Substitute Favorable 2/24/11
Committee Substitute #2 Favorable 3/9/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H49-PCS50398-SA-62

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 (f3) 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) 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:



* H 4 9 - P C S 5 0 3 9 8 - S A - 6 2 *

- 1 (1) A prior conviction for an offense involving impaired driving if:
2 a. The conviction occurred within seven years before the date of the
3 offense for which the defendant is being sentenced; or
4 b. The conviction occurs after the date of the offense for which the
5 defendant is presently being sentenced, but prior to or
6 contemporaneously with the present sentencing; or
7 c. The conviction occurred in district court; the case was appealed to
8 superior court; the appeal has been withdrawn, or the case has been
9 remanded back to district court; and a new sentencing hearing has
10 not been held pursuant to G.S. 20-38.7.

11 Each prior conviction is a separate grossly aggravating factor.

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13 was revoked under G.S. 20-28, and the revocation was an impaired driving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

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

24 ...

25 (f3) Aggravated Level One Punishment. – A defendant subject to Aggravated Level One
26 punishment may be fined up to ten thousand dollars (\$10,000) and shall be sentenced to a term
27 of imprisonment that includes a minimum term of not less than 12 months and a maximum
28 term of not more than 36 months. Notwithstanding G.S. 15A-1371, a defendant sentenced to a
29 term of imprisonment pursuant to this subsection shall not be eligible for parole. However, the
30 defendant shall be released from the Department of Correction on the date equivalent to the
31 defendant's maximum imposed term of imprisonment less four months and shall be supervised
32 by the Division of Community Corrections under and subject to the provisions of Article 84A
33 of Chapter 15A of the General Statutes and shall also be required to abstain from alcohol
34 consumption for the four-month period of supervision as verified by a continuous alcohol
35 monitoring system. For purposes of revocation, violation of the requirement to abstain from
36 alcohol or comply with the use of a continuous alcohol monitoring system shall be deemed a
37 controlling condition under G.S. 15A-1368.4.

38 The term of imprisonment may be suspended only if a condition of special probation is
39 imposed to require the defendant to serve a term of imprisonment of at least 120 days. If the
40 defendant is placed on probation, the judge shall impose as requirements that the defendant (i)
41 abstain from alcohol consumption for a minimum of 120 days to a maximum of the term of
42 probation, as verified by a continuous alcohol monitoring system pursuant to subsections (h1)
43 and (h3) of this section, and (ii) obtain a substance abuse assessment and the education or
44 treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of
45 probation. The judge may impose any other lawful condition of probation.

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

1 defendant obtain a substance abuse assessment and the education or treatment required by
2 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
3 may impose any other lawful condition of probation.

4 ...

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

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

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

21"

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

23 "(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has
24 two or more previous offenses involving impaired driving for which the person has been
25 convicted, and the most recent offense occurred within the five years immediately preceding
26 the date of the offense for which the person's license is being ~~revoked, or (ii) revoked, (ii)~~
27 G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense
28 resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the
29 revocation is permanent."

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

31 "**§ 20-17.8. Restoration of a license after certain driving while impaired convictions;**
32 **ignition interlock.**

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

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

36 (2) The person has been convicted of another offense involving impaired
37 driving, which offense occurred within seven years immediately preceding
38 the date of the offense for which the person's license has been
39 ~~revoked; or~~

40 (3) The person was sentenced pursuant to G.S. 20-179(f3).

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

44 ...

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

50 (1) A restriction that the person may operate only a vehicle that is equipped with
51 a functioning ignition interlock system of a type approved by the

1 Commissioner. The Commissioner shall not unreasonably withhold approval
2 of an ignition interlock system and shall consult with the Division of
3 Purchase and Contract in the Department of Administration to ensure that
4 potential vendors are not discriminated against.

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

7 (3) An alcohol concentration restriction as follows:

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

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

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

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

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

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

37 (3) An alcohol concentration restriction as follows:

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

41 b. If the ignition interlock system is required pursuant to subdivision
42 (a)(2) or (a)(3) of this section, a requirement that the person not drive
43 with an alcohol concentration of greater than 0.00; or

44 c. If the ignition interlock system is required pursuant to subdivision
45 (a)(1) of this section, and the person has also been convicted, based
46 on the same set of circumstances, of: (i) driving while impaired in a
47 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
48 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
49 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
50 homicide resulting from the operation of a motor vehicle when the

1 offense involved impaired driving, a requirement that the person not
2 drive with an alcohol concentration of greater than 0.00.

3"

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

5 "(a) In every criminal case in the superior or district court, wherein the defendant is
6 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
7 prosecuting witness, the following costs shall be assessed and collected, except that when the
8 judgment imposes an active prison sentence, costs shall be assessed and collected only when
9 the judgment specifically so provides, and that no costs may be assessed when a case is
10 dismissed.

11 ...

12 (10) For support of the General Court of Justice, the sum of one hundred dollars
13 (\$100.00) is payable by a defendant convicted under G.S. 20-138.1 or
14 G.S. 20-138.2, for a second or subsequent conviction under G.S. 20-138.2A,
15 or for a second or subsequent conviction under G.S. 20-138.2B, to be
16 remitted to the State Treasurer. This fee shall be in addition to the fee
17 required by subdivision (4a) of this subsection."

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

19 "(i) In addition to any other condition of pretrial release, the judicial official authorizing
20 pretrial release may order any defendant (i) charged with an offense involving impaired
21 driving, as defined by G.S. 20-4.01(24a), and (ii) having a prior conviction for an offense
22 involving impaired driving that occurred within seven years before the date of the offense for
23 which the defendant is being placed on pretrial release to abstain from alcohol consumption as
24 verified by an approved continuous alcohol monitoring system for the period of pretrial release
25 or until this condition is removed by entry of order of a court of competent jurisdiction."

26 **SECTION 6.** This act becomes effective December 1, 2011, and applies to
27 offenses committed on or after that date.