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SESSION 2011

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HOUSE BILL 49  
Committee Substitute Favorable 2/24/11  
Committee Substitute #2 Favorable 3/9/11

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:

(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



- 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          (f3)    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          (g)    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 (g), (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(f3) 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(f3).

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 subdivision (4a) of this subsection."

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.