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## MOTOR VEHICLES AND TRAFFIC; PENAL INSTITUTIONS Driver's Licenses, Probation: Modify Procedures and Penalties Relating to Driving Under the Influence of Drugs or Alcohol

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## MOTOR VEHICLES AND TRAFFIC; PENAL INSTITUTIONS

### *Driver's Licenses, Probation: Modify Procedures and Penalties Relating to Driving Under the Influence of Drugs or Alcohol*

CODE SECTIONS: O.C.G.A. §§ 40-5-54(a), -55, -61(d), -62(b),  
-63 (amended), 42-8-110 to -118 (new)  
BILL NUMBERS: HB 24, SB 28  
ACT NUMBERS: 477, 370  
SUMMARY: SB 28 authorizes courts to require the  
installation of ignition interlock devices as a  
condition of probation for persons convicted of  
drunk driving twice within a five year period.  
HB 24 requires habitual violators and persons  
whose licenses have been suspended for DUI  
offenses to complete a DUI Alcohol or Drug Use  
Risk Reduction Program before receiving a new  
driver's license.  
EFFECTIVE DATE: July 1, 1993

### *History*

During the 1993 session the General Assembly once again showed its concern for problems relating to driving under the influence of drugs or alcohol (DUI).<sup>1</sup> Governor Zell Miller continued to push for stricter DUI laws, though he ran into opposition in his efforts to suspend the licenses of suspected first-time DUI offenders before their conviction.<sup>2</sup>

### *SB 28*

With the passage of SB 28 on the last day of the session, the General Assembly added a new weapon to the state's DUI arsenal.<sup>3</sup> The Act

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1. For a survey of last session's DUI legislation, see *Legislative Review*, 9 GA. ST. U.L. REV. 298 (1992).

2. Mark Sherman, *Cracking Down on DUIs: Governor Pushes License Suspension for First Offenders*, ATLANTA J. & CONST., Feb. 4, 1993, at D3. The Governor's efforts to suspend the licenses of alleged first time offenders before conviction were embodied in SB 27, as introduced, 1993 Ga. Gen. Assem., which passed the Senate but not the House. Final Composite Status Sheet, Mar. 23, 1993.

3. SB 28 was part of Governor Zell Miller's legislative agenda and was sponsored by Senators Mark Taylor, Senate District 12, Steve Henson, Senate District 55, and Robert Brown, Senate District 26. A similar bill did not pass last year, but SB 28 benefited from inclusion in the Governor's agenda and from the passage of a year's time during which legislators could consider the merits of using ignition interlock

allows courts sitting in areas where the local government has opted into the program<sup>4</sup> to require two time DUI offenders and habitual DUI violators to have ignition interlock devices<sup>5</sup> installed in their vehicles as a condition of probation.<sup>6</sup> The Act is an "effort to curb drunk driving through the use of technology."<sup>7</sup>

Several conditions must be met before the court can require the installation of a device. First, the local government in which the court sits must "opt-in" by establishing a provider center which has functioning devices available.<sup>8</sup> Second, a person must have been convicted of DUI under Code section 40-6-391 twice within a five-year period, measured by the dates of the arrests,<sup>9</sup> or must have a "third or subsequent" conviction, in which case the court "shall require"

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devices to fight drunk driving. Telephone Interview with Cindy Wright, Governor's Executive Council (June 1, 1993) [hereinafter Wright Interview].

4. As introduced, the bill would have been administered on the statewide level through the Department of Public Safety (DPS). SB 28, as introduced, 1993 Ga. Gen. Assem. A House floor amendment, eventually adopted, provided that the article did not apply if the county or municipality served by the court did not have a provider center (a facility established by local government to provide and install the devices). SB 28 (HFACS), 1993 Ga. Gen. Assem. By contemplating that some local governments may not have provider centers, the Act appears to set up an "opt-in" program. Preferring statewide administration through the DPS, the Governor's office opposed this amendment. Wright Interview, *supra* note 3. Representatives Bobby Eugene Parham, House District 122, and Tommy Chambless, House District 163, offered the amendment in an effort to make sales of the devices competitive, thereby keeping prices reasonable and allowing more than a few persons to profit from sales of the devices. Telephone Interview with Rep. Bobby Eugene Parham, House District No. 122 (Apr. 16, 1993) [hereinafter Parham Interview]. There are only five manufacturers of the device, only two of which are licensed in Georgia. *Id.* The devices are sold through franchise agreements. *Id.* The amendment supporters feared that use of statewide administration might "make two people rich." *Id.* By having local governments operate the provider centers, Representatives Parham and Chambless hope that more franchises will be granted, thus promoting competition and spreading the profit around. *Id.* Although local governments that "opt-in" must purchase the devices themselves, the Commissioner of Public Safety, or a designee, will regulate the procurement. O.C.G.A. § 42-8-115(a) (Supp. 1993). This provision was added by the amendment under discussion. SB 28 (HFACS), 1993 Ga. Gen. Assem. Although the Act is now an "opt-in" program rather than a statewide one, the Governor's office expects that selling the program to local governments will not be difficult. Wright Interview, *supra* note 3.

5. As used in the Act, an ignition interlock device "means a constant monitoring device . . . which prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol concentration of the operator through the taking of a deep lung breath sample." O.C.G.A. § 42-8-110(a) (Supp. 1993).

6. *Id.* § 42-8-111(a)-(b) (Supp. 1993).

7. Wright Interview, *supra* note 3.

8. O.C.G.A. § 42-8-111(c) (Supp. 1993); *see also supra* note 4 and accompanying text.

9. O.C.G.A. § 42-8-111(a) (Supp. 1993). Under this section a plea of *nolo contendere* constitutes a conviction. *Id.*

installation of a certified device.<sup>10</sup> It is not clear whether the “third or subsequent” conviction must come within a five-year period, or if the provision instead applies to three or more convictions regardless of the time period. Given the omnipresence of the five-year period language in this and other DUI legislation, it is likely that the “third or subsequent” provision also contemplates a five-year period. Finally, the device itself must be certified.<sup>11</sup>

When all other conditions are met in second DUI conviction cases, the court “may” order that the convicted person not drive a motor vehicle for six months or more unless the “vehicle is equipped with a functioning, certified ignition interlock device.”<sup>12</sup> Any person so ordered must: 1) complete a DUI or Drug Use Risk Reduction program and give a certificate of completion to the court or probation department; and 2) have a device installed and give the court or probation department certification of having done so.<sup>13</sup> As noted above, the process is mandatory for a “third or subsequent conviction.”<sup>14</sup>

When the court requires use of a device as a condition of probation by a person whose license has not been suspended or revoked, the person must give proof of compliance to the court or probation officer within thirty days, or, absent a finding of good cause entered on the court record, the court will revoke the person’s probation.<sup>15</sup> If use of a device is required as a condition of probation for a person whose driving privilege *has* been suspended or revoked, that person must give proof of compliance to the court or probation officer *and* the Department of

10. *Id.* § 42-8-111(b) (Supp. 1993). This provision requiring installation of a device upon a third or subsequent conviction was added through an amendment by Sen. Johnny Isakson, Senate District 21. SB 28 (SFA), 1993 Ga. Gen. Assem.

11. O.C.G.A. § 42-8-110(a) (Supp. 1993). The Commissioner of Public Safety or his designee is to certify the devices and the providers of the devices. *Id.* § 42-8-115(a) (Supp. 1993). The Act lists standards for the devices. *Id.* The Commissioner is authorized by O.C.G.A. § 42-8-115(b) to use information from an independent agency and is required by O.C.G.A. § 42-8-115(d) to consult with the National Highway Traffic Safety Administration before certifying any device. *Id.* § 42-8-115(b), (d) (Supp. 1993). Certified providers must put a label on each device warning that “any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor and may be subject to civil liability.” *Id.* § 42-8-116 (Supp. 1993).

12. *Id.* § 42-8-111(a) (Supp. 1993).

13. *Id.* While local governments must establish provider centers and purchase devices in order to “opt-in” to the Act and enforce its provisions, the provider centers may charge fees “reasonably calculated to compensate the county or municipality for the total direct and indirect costs of operating the provider center,” and may also require a security deposit. *Id.* § 42-8-110(e) (Supp. 1993). This provision was added by floor amendment. SB 28 (HFACS), 1993 Ga. Gen. Assem. It is consistent with the original intent that the Act should not cost the taxpayers money, but should be paid for by the offenders. Wright Interview, *supra* note 3.

14. O.C.G.A. § 42-8-111(b) (Supp. 1993).

15. *Id.* § 42-8-112(a) (Supp. 1993).

Public Safety (DPS) by the date when the suspension or revocation ends, or, absent a finding of good cause entered on the court record, the court will revoke or terminate the probation.<sup>16</sup>

Under Code sections 40-5-63 and 40-5-67.2, persons convicted of certain DUI offenses whose licenses have been suspended may apply for reinstatement after 120 days. Under the Act, such persons must have a device installed prior to applying for reinstatement.<sup>17</sup> For a second or subsequent suspension under either of the above Code sections, the DPS will hold the person's driver's license for a minimum of thirty days, after which time the person is eligible to apply for and receive a six month ignition interlock permit, but must show proof of completing a DUI or Drug Use Risk Reduction program and of installation of a device before receiving the permit.<sup>18</sup>

When use of a device is ordered, the court includes that fact in the record of conviction or violation given to the DPS.<sup>19</sup> The information is entered in the DPS records and the person's driver's license must reflect that he or she may only drive motor vehicles equipped with a device.<sup>20</sup> Fees for the license are prescribed at Code section 42-8-111(e), which allows usual fees for all but habitual violators, who must pay the \$210 (\$200 if processed by mail) prescribed by Code section 40-5-58(G). Such higher fees are "more punitive than revenue enhancing."<sup>21</sup>

Persons required to use the device must report to the provider center every thirty days so that device operation may be monitored.<sup>22</sup> Evidence that a device has been tampered with will be reported in writing to DPS or the court, and malfunctioning devices will be replaced or repaired, as determined by DPS or the court, at the provider's expense.<sup>23</sup>

The Act provides a limited exception to its operation for persons who must "operate a motor vehicle in the course and scope" of their employment.<sup>24</sup> The exception applies only if the vehicle is owned by the employer, the employer has notice of the person's restriction under the Act, and the person has proof of such notification in his possession

16. *Id.* § 42-8-112(b) (Supp. 1993).

17. *Id.* Persons convicted under O.C.G.A. § 40-5-63 were covered in the original bill. SB 28, as introduced, 1993 Ga. Gen. Assem. Persons convicted under O.C.G.A. § 40-5-67.2 were added by the committee substitute. SB 28 (HCS), 1993 Ga. Gen. Assem. Note that drivers issued a device prior to 120 days after suspension may drive only for certain enumerated purposes. O.C.G.A. § 42-8-112(b) (Supp. 1993).

18. *Id.* § 42-8-112(b) (Supp. 1993).

19. *Id.* § 42-8-111(c) (Supp. 1993).

20. *Id.*

21. See *Legislative Review*, *supra* note 1, at 300 n.15.

22. O.C.G.A. § 42-8-112(c) (Supp. 1993).

23. *Id.*

24. *Id.* § 42-8-114(a) (Supp. 1993).

or in the vehicle.<sup>25</sup> The exception does not apply to a vehicle owned by a business entity when that business entity "is all or partly owned or controlled by a person otherwise subject" to the Act.<sup>26</sup> There is no exception for rented, leased, or loaned vehicles.<sup>27</sup> A person subject to the Act must so notify any person from whom he or she intends to rent, lease, or borrow a motor vehicle.<sup>28</sup>

The Act provides that DPS will revoke driving privileges of those who violate terms of probation under the Act for one year for the first violation<sup>29</sup> and for five years upon a second violation during the same period of probation.<sup>30</sup> In both instances the revocation of driving privileges begins on the date the court revokes probation due to the violation,<sup>31</sup> and the court must inform the DPS of probation revocation by court order.<sup>32</sup>

The Act makes it a misdemeanor for a person required to use a device to *ask* someone else to blow into the device for him, or otherwise to start a vehicle equipped with a device in order to allow the person subject to the Act to drive,<sup>33</sup> as well as making it a misdemeanor for the person asked, or anyone else, to actually do so.<sup>34</sup> The Act also makes it a misdemeanor for anyone to "tamper with, or circumvent the operation of" a device.<sup>35</sup>

#### *HB 24*

As introduced by Representative Bobby Eugene Parham, HB 24 was part of the DPS' legislative package.<sup>36</sup> The bill proposed two changes, both of which were adopted in the Act. First, under 1992 Ga. Laws 1284, "[m]anslaughter resulting from the operation of a vehicle" was taken off the list of offenses which result in automatic driver's license suspension.<sup>37</sup> This was done because there is no longer such a criminal charge for manslaughter, the charge now being called homicide by vehicle in the first or second degree.<sup>38</sup> Second, under 1992 Ga. Laws

25. *Id.*

26. *Id.* § 42-8-114(b) (Supp. 1993).

27. *Id.* § 42-8-113(a) (Supp. 1993).

28. *Id.*

29. *Id.* § 42-8-117(a) (Supp. 1993).

30. *Id.* § 42-8-117(b) (Supp. 1993).

31. *Id.* § 42-8-117(a)-(b) (Supp. 1993).

32. *Id.* This requirement was added by SB 28 (HCS), 1993 Ga. Gen. Assem., and adopted in the Act. SB 28 (HCS), 1993 Ga. Gen. Assem.

33. O.C.G.A. § 42-8-118(a), (d) (Supp. 1993).

34. *Id.* § 42-8-118(b), (d) (Supp. 1993).

35. *Id.* § 42-8-118(c), (d) (Supp. 1993).

36. Parham Interview, *supra* note 4.

37. O.C.G.A. § 40-5-54(a) (Supp. 1993).

38. Telephone Interview with Captain J.L. Howell, DPS Division Director for Driver's Licenses (Apr. 16, 1993) [hereinafter Howell Interview]. Vehicular homicide is

913, wherein the phrase "traffic accident resulting in serious injuries or fatalities" is defined, the words "or lacerations" were removed.<sup>39</sup> DPS wanted this change because, taken literally, "lacerations" can mean no more than a simple break in the skin, and the term accordingly made the provision a "nightmare to administrate" for officers in the field who must sometimes determine whether to administer chemical tests to a driver depending on whether the driver has been in a serious accident as defined by the Code provision.<sup>40</sup> The provision in fact contemplates some sort of "real injury," and removing the words "or lacerations" helps clarify the intent of the statute.<sup>41</sup>

A related floor amendment was adopted in the Act. As introduced the bill provided that "a blood test with drug screen *shall* be administered to any person operating a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities."<sup>42</sup> The amendment changed "shall" to "may."<sup>43</sup> This change was made due to cost considerations, because a blood test with drug screen must be performed by health care personnel and is therefore much more expensive than the field test an officer may now opt to give.<sup>44</sup>

Senator Richard Marable offered a floor substitute which incorporated the bill as introduced and amended by the House.<sup>45</sup> The substitute required completion of a DUI or Drug Use Risk Reduction Program before returning or reinstating a driver's license in three circumstances.<sup>46</sup>

First, 1989 Ga. Laws 632 was amended by referring the reader to Code section 40-5-62 to determine whether a revoked license could be reinstated.<sup>47</sup> The substitute then amended 1992 Ga. Laws 793 to provide that the DPS "shall not issue a new license to any person whose license was revoked as a habitual violator for three violations of Code section 40-6-391 [DUI] within a five-year period" unless the person shows he or she has completed an "approved DUI or Drug Use Risk Reduction Program."<sup>48</sup>

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found at O.C.G.A. § 40-6-393 (Supp. 1992).

39. O.C.G.A. § 40-5-55(c) (Supp. 1993).

40. Howell Interview, *supra* note 38.

41. *Id.*

42. HB 24, as introduced, 1993 Ga. Gen. Assem. (emphasis added).

43. HB 24 (HFA), 1993 Ga. Gen. Assem.

44. Howell Interview, *supra* note 38.

45. HB 24 (SFS), 1993 Ga. Gen. Assem.

46. *See id.* DPS, at whose initiative the original bill was introduced, supported the Senate floor substitute, as it included the changes DPS wanted and added training program requirements DPS favors. Howell Interview, *supra* note 38.

47. O.C.G.A. § 40-5-61(d) (Supp. 1993).

48. HB 24 (SFS), 1993 Ga. Gen. Assem. The programs are to be approved by the Department of Human Resources. O.C.G.A. § 40-5-63(a)(2) (Supp. 1993).

The second circumstance added by the amendment, that one must submit proof of completion of an approved DUI or Drug Use Risk Reduction Program before having a license reinstated, is found in Code section 40-5-63(a)(2). This section of the Act concerns driver's license suspensions after second convictions and allows persons whose licenses have been suspended under Code section 40-5-54, which lists offenses other than DUI that mandate license suspension, to choose between completing a defensive driving course or an approved DUI Alcohol or Drug Use Risk Reduction Program.<sup>49</sup> The amendment adds language which makes it clear that persons whose licenses have been suspended for DUI offenses *must* complete the DUI or Drug Use Risk Reduction Program (i.e., may *not* opt for the defensive driving course), and pay the prescribed fee.<sup>50</sup>

The third circumstance added by the amendment concerns "all cases" wherein the DPS may return a license before the full period of suspension has run.<sup>51</sup> Again there is no discretion. Whenever a person's license has been suspended due to a DUI conviction, the license "shall not become valid, shall remain suspended, and shall not be returned to such driver or otherwise reinstated" until the person shows proof of completion of an approved DUI Alcohol or Drug Use Risk Reduction Program.<sup>52</sup> This requirement is "[i]n addition to any other requirement the [DPS] may impose."<sup>53</sup>

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49. *Id.* § 40-5-63(a)(2) (Supp. 1993).

50. *Id.* The fee is \$210 or \$200 if processed by mail. *Id.*

51. *Id.* § 40-5-63(c) (Supp. 1993).

52. *Id.*

53. *Id.*