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# MOTOR VEHICLES AND TRAFFIC Drivers' Licenses: Change Certain Provision Relating to Revocation of Licenses of Persons Under 21; Change Certain Provisions Relating to Period of License Suspension and Conditions Regarding Return of License; Change Certain Provisions Relating to Clinical Evaluation and Substance Abuse Treatment Programs; Change Certain provisions Relating to Limited Motor Vehicle Driving Permits; Change Certain Provisions Relating to Terms and Conditions for Suspension of License; Change Certain provisions Relating to

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# Use of an Ignition Interlock Device as a Probation Condition

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## MOTOR VEHICLES AND TRAFFIC

*Drivers' Licenses: Change Certain Provisions Relating to Revocation of Licenses of Persons Under 21; Change Certain Provisions Relating to Period of License Suspension and Conditions Regarding Return of License; Change Certain Provisions Relating to Clinical Evaluation and Substance Abuse Treatment Programs; Change Certain Provisions Relating to Limited Motor Vehicle Driving Permits; Change Certain Provisions Relating to Terms and Conditions for Suspension of License; Change Certain Provisions Relating to Use of an Ignition Interlock Device as a Probation Condition*

**CODE SECTIONS:** O.C.G.A. §§ 40-5-57, -63, -64, -67, 42-8-110 to -118 (amended)

**BILL NUMBER:** HB 1458

**ACT NUMBER:** 874

**GEORGIA LAWS:** 2000 Ga. Laws 1457

**SUMMARY:** The Act amends several Code sections to correct inconsistencies in Georgia's DUI and drivers' license revocation laws. Most importantly, it alters some provisions that were created in the 1999 Act, known as "Heidi's Law," regarding the use of an automobile ignition interlock device (IID). The Act allows a concurrent running of license revocation and the administrative suspension period for individuals under twenty-one years of age. Additionally, the Act increases the mandatory suspension of a driver's license to ten months for a person convicted of two DUIs within five years and eliminates the limited driving permits that were previously available to such individual after 120 days. Finally, the Act changed many provisions related to IIDs, making an IID a necessary condition of probation

for an individual who wants a probationary license.

EFFECTIVE DATE: May 1, 2000<sup>1</sup>

### *History*

Even though there was a great deal of support in the 1999 Georgia General Assembly for the bill that was named "Heidi's Law,"<sup>2</sup> the Act itself proved to be difficult, if not impossible, to effectively implement.<sup>3</sup> The difficulties were caused by several inconsistencies between the provisions of Heidi's Law and other portions of the Georgia Code, as well as some internal inconsistencies with the law itself.<sup>4</sup> The Georgia Assembly enacted Heidi's Law to require persons convicted of driving under the influence of intoxicating substances (DUI) to have an ignition interlock device (IID) installed on their cars and used for a period of six months before they could apply to have their drivers' licenses reinstated.<sup>5</sup> Unfortunately, due to the administrative difficulties in the law, only 151 offenders actually received the devices of the 3,141 DUI offenders who should have been issued an IID after the law was passed.<sup>6</sup>

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1. See 2000 Ga. Laws 1457, §§ 7-8, at 1471. The Act took effect upon approval by the Governor. See *id.*

2. See *Review of Selected 1999 Georgia Legislation*, 16 GA. ST. U. L. REV. 191, 200 (1999) [hereinafter *Selected 1999 Legislation*]; see also Peter Mantius et al., *1999 Georgia Legislature Capitol Insider: Curb On Drunk Drivers is Awaiting Barnes' OK*, ATLANTA J. & CONST., Mar. 24, 1999, at B8 (indicating that the House unanimously passed Heidi's Law).

3. See Lucy Soto, *Heidi's Law, Little Enforced, Getting Weaker: Bill on Governor's Desk Gives Judges More Discretion and Redefines DUI Offenders Affected by Statute*, ATLANTA J. & CONST., Mar. 13, 2000, at B1. While several critics felt that this legislation was weakening Georgia's DUI laws, Representative Bobby Parham, one of HB 1458's sponsors and the Chairman of the House Motor Vehicles Committee, believed that the bill actually strengthened the state's DUI laws by making the provisions of the law administratively enforceable. See Telephone Interview with Rep. Bobby Parham, House District No. 122 (July 7, 2000) [hereinafter Parham Interview].

4. See Telephone Interview with Randy Clayton, Coordinator of the Georgia Criminal Justice Improvement Counsel (May 19, 2000) [hereinafter Clayton Interview].

5. See 1999 Ga. Laws 391, § 12, at 399-400 (formerly found at O.C.G.A. § 42-8-111 (Supp. 1999)). When an IID is attached to an automobile's ignition system, it prevents the driver from starting the vehicle if his breath-alcohol concentration measures above a certain level. See *Selected 1999 Legislation*, supra note 2.

6. See *Legislature Approves Tightening DUI Bill*, AP NEWSWIRE, Mar. 9, 2000, available in Westlaw, GANEWS.

The Georgia Department of Public Safety and several state probate judges were the two main groups that brought these problems to the attention of the Georgia General Assembly.<sup>7</sup> These groups notified Representative Bobby Parham of the 122nd District that the law, as written, seemed to give the second time DUI offenders the option to elect whether to install an IID on their cars or simply forgo driving for six months.<sup>8</sup> In spite of this fact, the law prohibited the Department of Public Safety from reissuing a license to anyone unless the person had used an IID for six months.<sup>9</sup> The result was an administrative nightmare in which judges did not know how to sentence second time DUI offenders, and the Department of Public Safety did not know how to reissue suspended licenses.<sup>10</sup> After thoroughly reviewing the problems caused by Heidi's Law, Representatives Bobby Parham and Alan Powell, of the 23rd House District, sponsored HB 1458.<sup>11</sup>

### *HB 1458*

#### *Consideration by the House*

HB 1458 was introduced to the House on February 15, 2000.<sup>12</sup> The House assigned the bill to its Motor Vehicles Committee, which favorably reported the bill, without changes.<sup>13</sup> The bill was engrossed to prevent amendments or substitutes on February 16, 2000, and the House unanimously passed HB 1458, as introduced, on February 23, 2000.<sup>14</sup>

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7. See Clayton Interview, *supra* note 4.

8. See *id.*

9. See *id.*

10. See Parham Interview, *supra* note 3. Representative Parham commented that the original Heidi's Law was a perfect example of how not to enact legislation. See *id.* He said that it was done so quickly in response to a terrible tragedy that no one considered the ramifications of the law or how it would be administered. See *id.* It was absolutely necessary to amend the law so that it could be effectively enforced. See *id.*

11. See HB 1458, as introduced, 2000 Ga. Gen. Assem.

12. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

13. See *id.*

14. See Georgia House of Representatives Voting Record, HB 1458 (Feb. 23, 2000); Audio Recording of House Proceedings, Feb. 23, 2000 (remarks by Rep. Alan Powell) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter House Audio]. Representative Powell explained the bill to the House, specifically highlighting the changes made to Heidi's Law. See *id.*

*Consideration by the Senate*

The Senate Public Safety Committee favorably reported the bill on March 3, 2000, without changes.<sup>15</sup> Since the bill had been engrossed in the House, the Senate refused to accept any amendments or substitutes to the bill.<sup>16</sup> Nevertheless, Senator Thomas E. Price of the 56th District offered an amendment to the bill that would have replaced the “two DUI convictions in five years” provision of the bill with the “two DUI convictions in a lifetime” provision of the 1999 law.<sup>17</sup> Senator Price explained that when Heidi’s Law passed the Senate last year, it would have required IID installation for only one DUI conviction in a lifetime.<sup>18</sup> The House changed this provision during the 1999 session to require the IID only when a person received *two* DUIs in a lifetime.<sup>19</sup> Senator Price did not want this provision to be watered down even further to two DUIs in a five year period as proposed in HB 1458.<sup>20</sup> In spite of his pleas and a great deal of debate regarding the engrossment procedure in the House, his amendment failed by a vote of 22 to 33.<sup>21</sup> Thus, the Senate passed HB 1458, as introduced, by a vote of 53 to 2.<sup>22</sup>

Governor Roy Barnes signed HB 1458 into law on May 1, 2000.<sup>23</sup>

*The Act*

The Act is divided into six sections, each affecting different sections of the Georgia Code.<sup>24</sup> Section 1 of the Act amends Code section 40-5-57.1 by allowing the administrative suspension period and drivers’ license revocation period for drivers under

15. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

16. See Audio Recording of Senate Proceedings, Mar. 9, 2000 (remarks by Sen. Michael S. Meyer von Bremen) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter Senate Audio]. The bill had been engrossed because of its highly technical nature and the importance of correcting the flaws in Heidi’s Law. See Clayton Interview, *supra* note 4.

17. See Failed Senate Floor Amendment to HB 1458, introduced by Sen. Thomas Price, Mar. 9, 2000; Senate Audio, *supra* note 16 (remarks by Sen. Thomas E. Price).

18. See Senate Audio, *supra* note 16 (remarks by Sen. Thomas E. Price).

19. See *id.*

20. See *id.*

21. See *id.* (vote on amendment).

22. See Georgia Senate Voting Record, HB 1458 (Mar. 9, 2000).

23. See 2000 Ga. Laws 1457, § 8, at 1471.

24. See 2000 Ga. Laws 1457, §§ 1-6, at 1457-71.

the age of twenty-one whose license has been suspended and revoked for the same offense to run concurrently.<sup>25</sup> It also combined the fee payment for restoration of drivers' licenses so that the individuals whose licenses had been both administratively suspended as well as revoked did not have to pay twice to have their licenses reissued.<sup>26</sup>

Section 2 increased the mandatory drivers' license suspension to ten months for persons who had been convicted twice within a five year period of violating Code section 40-6-391 (Driving Under the Influence (DUI)).<sup>27</sup> However, the section provides that this ten month period can be reduced if the driver has an IID installed on his car.<sup>28</sup>

Section 3 amends Code section § 40-5-63.1 by eliminating the provision that allowed the issuance of limited driving permits after the end of 120 days to individuals who had committed two DUI offenses within the past five years.<sup>29</sup> However, it is still possible for such individuals to get a limited driving permit if they have IIDs installed on their cars.<sup>30</sup>

In Section 4, the Act provides for the issuance of a limited driving permit to any person who has his driver's license suspended if he is subject to a court order that requires him to put an IID on his car.<sup>31</sup>

Section 5 amends Code section 40-5-67.1 by mandating that individuals who have been convicted under Code section 40-6-391 twice within the last five years cannot apply to have their licenses reinstated until they have served a suspension of ten months.<sup>32</sup>

25. Compare 1997 Ga. Laws 760, § 15, at 777-78 (formerly found at O.C.G.A. § 40-5-57.1 (1997)), with O.C.G.A. § 40-5-57.1 (Supp. 2000).

26. Compare 1997 Ga. Laws 760, § 15, at 777-78 (formerly found at O.C.G.A. § 40-5-57.1 (1997)), with O.C.G.A. § 40-5-57.1 (Supp. 2000).

27. Compare 1997 Ga. Laws 760, § 16, at 779-80 (formerly found at O.C.G.A. § 40-5-63 (1997)), with O.C.G.A. § 40-5-63 (Supp. 2000).

28. See *infra* text accompanying notes 34-35 (discussing Section 6 of the Act).

29. Compare 1997 Ga. Laws 760, § 17, at 780-81 (formerly found at O.C.G.A. § 40-5-63.1 (1997)), with O.C.G.A. § 40-5-63.1 (Supp. 2000).

30. See *infra* text accompanying notes 34-35 (discussing Section 6 of the Act).

31. Compare 1999 Ga. Laws 391, § 5, at 394-95 (formerly found at O.C.G.A. § 40-5-64 (Supp. 1999)), with O.C.G.A. § 40-5-64 (Supp. 2000).

32. Compare 1998 Ga. Laws 210, § 2, at 211-12 (formerly found at O.C.G.A. § 40-5-67.1 (Supp. 1999)), with O.C.G.A. § 40-5-67.1 (Supp. 2000).

The heart of the Act is Section 6, and it affects Code sections 42-8-110 to -118. Code section 42-8-110 is amended by eliminating competitive bidding requirements for IIDs.<sup>33</sup> Code section 42-8-111 was significantly changed to provide that any person who is convicted of a second or subsequent DUI within five years and receives probation must either be ordered to install an IID on his automobile and use such device for six months after a 120 day suspension or not drive at all for ten months.<sup>34</sup> Additionally, in order to receive the limited driver permit, the individual must submit proof of completion of a DUI risk reduction program.<sup>35</sup>

Additionally, the Act provides that individuals who are habitual violators (individuals who have been convicted of three or more DUIs within a five year period) must install IIDs if they want probationary licenses.<sup>36</sup> Other specifics regarding the use of IIDs were added to the remaining Code sections in Article 7 of Chapter 8 of Title 42.<sup>37</sup>

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33. Compare 1999 Ga. Laws 391, § 11, at 399 (formerly found at O.C.G.A. § 42-8-110 (Supp. 1999)), with O.C.G.A. § 42-8-110 (Supp. 2000).

34. Compare 1999 Ga. Laws 391, § 12, at 399-400 (formerly found at O.C.G.A. § 42-8-111 (Supp. 1999)), with O.C.G.A. § 42-8-111 (Supp. 2000).

35. Compare 1999 Ga. Laws 391, § 12, at 399-400 (formerly found at O.C.G.A. § 42-8-111 (Supp. 1999)), with O.C.G.A. § 42-8-111 (Supp. 2000).

36. Compare 1993 Ga. Laws 568, § 1, at 568-69 (formerly found at O.C.G.A. § 42-8-112 (1997)), with O.C.G.A. § 42-8-112 (Supp. 2000).

37. Compare 1993 Ga. Laws 568, § 1, at 568-69 (formerly found at O.C.G.A. §§ 42-8-113 to -118 (1997)), with O.C.G.A. §§ 42-8-113 to -118 (Supp. 2000).