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## MOTOR VEHICLES AND TRAFFIC

### *Drivers' Licenses: Provide for Suspension, Revocation, or Delay in Issuance For Conviction of Controlled Substance Related Offenses; Formation of Intervention Program*

CODE SECTIONS:	O.C.G.A. §§ 40-5-22.1 (new), 40-5-75 (new)
BILL NUMBERS:	HB 1185, HB 1200
ACT NUMBERS:	1267, 1268
SUMMARY:	The Acts provide for a delay in the issuance of the driver's license of any person under age sixteen who is adjudicated guilty of driving under the influence of alcohol or of possession of a controlled substance or marijuana, and for the revocation or suspension of the driver's license of any person convicted of possession of a controlled substance or marijuana. The Acts also provide for the issuance or reinstatement of drivers' licenses following the completion of the intervention program established by the Acts' enabling legislation.
EFFECTIVE DATE:	July 1, 1990

#### *History*

The impetus behind these bills was the perceived inadequacy of existing state sponsored education programs for alcohol and drug abusers;<sup>1</sup> such programs were designed before a dramatic increase in arrests, accidents, and deaths resulting from driving under the influence of alcohol or drugs.<sup>2</sup> In 1986, Governor Joe Frank Harris established a DUI Assessment Task Force to research the circumstances of DUI offenders in Georgia and to evaluate the DUI education programs available. The Task Force found that the State education programs for those convicted of driving under the influence of alcohol or drugs were

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1. Telephone interview with Jane Martin, Director of Risk Reduction Programs, Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse (March 23, 1990) [hereinafter Martin Interview].

2. Governor's Office, DUI Assessment Task Force Pamphlet (undated) (available in Georgia State University College of Law Library) ("In 1988, there were 66,000 DUI arrests which involved 13,493 accidents. These accidents resulted in over 10,000 injuries and 573 deaths — which represent 35% of all traffic deaths in Georgia.").

designed and operated on the premise that most offenders were social users of drugs or alcohol.<sup>3</sup> As social users were not perceived to be serious problem drinkers, the programs were generally short and not very intense.<sup>4</sup> The Task Force's research revealed that most offenders were not social users, but habitual drug and alcohol abusers with serious addiction problems.<sup>5</sup> The Task Force found that social users are likely to refrain from driving under the influence after having been arrested once because they realize the economic and status consequences of a DUI conviction.<sup>6</sup> Habitual users, however, are not deterred by the consequences of their actions.<sup>7</sup>

In conjunction with the Task Force, the Governor's Office funded and initiated a *DUI Assessment and Intervention Pilot Project* for first time DUI offenders.<sup>8</sup> The Project was operated by the Department of Human Resources with the cooperation of the Georgia Department of Public Safety.<sup>9</sup> It consisted of four major parts:<sup>10</sup> (1) assessment, to determine whether the offender was a social or problem drinker;<sup>11</sup> (2) intervention, a counseling program for those first offenders identified as problem drinkers; (3) evaluation, to determine the effectiveness of the assessment and intervention portions; and, (4) self-funding, through fees paid by the offenders.<sup>12</sup> A pilot program was set up in each of nine Georgia counties.<sup>13</sup> At the end of two years, the Task Force evaluated the pilot program<sup>14</sup>

3. Martin Interview, *supra* note 1.

4. *Id.*

5. Interview with Mary Carole Cooney, Deputy Attorney for the City of Atlanta and member of the Governor's DUI Assessment Task Force (April 23, 1990) [hereinafter Cooney Interview].

6. *Id.*

7. *Id.*

8. Martin Interview, *supra* note 1.

9. *Id.*

10. Governor's Office, A Report to Governor Joe Frank Harris from the DUI Assessment Task Force at 1 (Dec. 21, 1988) (available in Georgia State University College of Law Library) [hereinafter 1988 Task Force Report].

11. To perform this assessment, the program utilizes the Substance Abuse/Life Circumstance Evaluation (SALCE). *Id.* SALCE is an evaluation method used by hospitals, courts, treatment agencies and mental health agencies throughout the country. It is designed to assess not only alcohol and drug abuse behavior, but also the role that attitude might play in that behavior. ADE, Incorporated, Report defining SALCE (undated) (available in Georgia State University College of Law Library).

12. 1988 Task Force Report, *supra* note 10, at 1.

13. *Id.* at 7. "The programs were located in Clarke, Clayton, DeKalb, Dougherty, Floyd, Glynn, Hall, Laurens, and Ware counties. Several of the programs also accepted referrals from judges in neighboring counties." *Id.*

14. The findings of the Task Force were as follows:

Assessment Results

64% of first offenders were found to be problem drinkers; 36% were social drinkers.

Demographics

and made recommendations.<sup>15</sup> The result of those recommendations was the 1990 amendment to Title 40 of the Code which established the intervention program and enabled HB 1185 and HB 1200 to follow.<sup>16</sup>

### *HB 1185*

The Act adds a Code section expanding the existing definition of those individuals restricted from initial access to a driver's license.<sup>17</sup>

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The typical first offender is a young (age 20-30), white, single male, with a high school education, and employed with an income over \$10,000.

#### Intervention Impact

The research findings suggest a significant improvement in the overall well-being of the participants after completing the Intervention as demonstrated in the following areas:

**Driving Behavior.** Participants demonstrated a dramatic reduction in the number of times they drove after drinking, following the Intervention.

**Drinking Behavior.** Over half the participants said they were drinking less because of the Intervention, and 15% indicated they had quit drinking after the Intervention.

**Job Performance.** Rates of absenteeism and lateness to work declined dramatically, from 60% pre-Intervention to less than 25% post-Intervention.

**Family Relationships.** There were significant reductions in the number of times per week participants had arguments at home.

**Emotional Well-Being.** Feelings of anger, guilt and depression showed a clear decline for all participants.

*Id.* at 2.

The Task Force also found the self-funding portion of the program to be successful.

*Id.*

15. The Task Force recommendations were: for the implementation of a statewide risk reduction program, "which would include assessment, education, and intervention, as a license sanction for all DUI offenders"; that the program be funded by offender paid fees of \$45 for assessment, \$50 for education, and \$75 for intervention; that evaluation of the program be continued to monitor its effectiveness; and that "a pilot study focusing on juvenile drinking and driving be conducted . . ." 1988 Task Force Report, *supra* note 10, at 2-3.

16. *Id.*; HB 663, passed in the 1990 legislative session, established the intervention program. O.C.G.A. §§ 40-5-1, -58, -70, -72, -80, -82, -83, (Supp. 1990).

17. O.C.G.A. 40-5-22.1 (Supp. 1990). The preceding Code section, O.C.G.A. § 40-5-22 (1989), sets forth the minimum age requirements for obtaining a driver's license and provides that a driver's license shall not be issued to those persons:

- (1) [Whose license has been suspended or revoked;]
- (2) Whose license is currently under suspension or revocation in any other state upon grounds which would authorize the suspension or revocation of a license under this chapter;
- (3) Who is a habitual user of alcohol or any drug to a degree rendering him incapable of safely driving a motor vehicle;
- (4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;
- (5) Who is required by this chapter to take an examination, unless such person shall have successfully passed such examination; or

The new section adds to that category children under 16 years of age who have been "adjudicated delinquent of" or convicted of "driving under the influence of alcohol or drugs or of possession of marijuana or a controlled substance."<sup>18</sup> The convicting or adjudicating court<sup>19</sup> will issue an order suspending such child's privilege to receive a driver's license or learner's permit until the child reaches age 17 for a first conviction and age 18 for a second conviction.<sup>20</sup> The court must notify the Department of Public Safety within 15 days of the date of such Order.<sup>21</sup> The Department of Public Safety may not issue a license or a permit contrary to such an Order.<sup>22</sup>

The Act further provides for reinstatement of the privilege "if the child submits proof of completion of a certified assessment component and the education/intervention component or the intensive intervention component of a DUI alcohol and drug use risk reduction program as prescribed by the Department of Human Resources or operated by or under contract with the juvenile court . . ."<sup>23</sup> This language was added by the Senate Judiciary Committee substitute<sup>24</sup> and refers to the pilot treatment program evaluated by the Governor's Task Force, which was officially established by statute during the 1990 legislative session.<sup>25</sup> The child must pay a fee to the Department of Public Safety of \$35.00, or \$25.00 when the application is processed by mail.<sup>26</sup>

### *HB 1200*

While HB 1185 addressed the ability of a person to initially obtain a driver's license, this Act concerns those offenders who already have a driver's license.<sup>27</sup> The Act provides for the suspension or revocation of the driver's license of a person convicted of possession of a controlled substance or marijuana.<sup>28</sup> The offense of driving under the influence is not addressed in this Code section. Any person convicted of possession

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(6) Who the commissioner has good cause to believe would not, by reason of physical or mental disability, be able to operate a motor vehicle with safety upon the highway.

O.C.G.A. § 40-5-22 (Supp. 1990).

18. O.C.G.A. § 40-5-22.1 (Supp. 1990).

19. The term "adjudication," rather than "conviction," is generally used to refer to a juvenile court decision.

20. O.C.G.A. § 40-5-22.1 (Supp. 1990).

21. *Id.*

22. *Id.*

23. *Id.*

24. HB 1185 (SCS), 1990 Ga. Gen. Assem.

25. O.C.G.A. §§ 40-5-80, -82, -83 (Supp. 1990).

26. O.C.G.A. § 40-5-22.1 (Supp. 1990).

27. O.C.G.A. § 40-5-75 (Supp. 1990).

28. O.C.G.A. § 40-5-75(a) (Supp. 1990).

of a controlled substance shall have his driver's license suspended.<sup>29</sup> The length and severity of the penalties depend on the number of convictions the driver has. The first conviction shall result in suspension of the driver's license for 120 days.<sup>30</sup> A person acquires his "first" conviction if that person has had no arrest and conviction, and a plea of nolo contendere has not been accepted to such an offense, within the previous five years.<sup>31</sup> A plea of nolo contendere to a charge of possession of a controlled substance or marijuana<sup>32</sup> shall constitute a conviction when determining the existence of a first conviction.<sup>33</sup>

At the end of the 120 day time period, the person may apply to the Department of Public Safety for reinstatement of the license by showing proof of completion of the rehabilitation program prescribed by the Department of Human Resources.<sup>34</sup> This is the same program juvenile offenders must complete under HB 1185. The bill, as introduced, required that the offender "have completed the educational/intervention component of the First Offender DUI Alcohol or Drug Use Risk Reduction Program."<sup>35</sup> The Senate Judiciary Committee substitute changed the language to include other approved treatment programs.<sup>36</sup> The Senate committee substitute also added the requirement for payment of a \$35.00 or \$25.00 restoration fee.<sup>37</sup>

If a plea of nolo contendere is accepted for a first offense, the judge shall include in his order that the defendant must complete the First Offender DUI Risk Reduction Program within 120 days.<sup>38</sup> The judge shall also notify the defendant that failure to complete such a program by the specified date will result in the suspension of the defendant's driver's license.<sup>39</sup>

29. *Id.* Revocation, not suspension, is required for the conviction of an offense in violation of O.C.G.A. §§ 16-13-30(a) or (j). Subsection (a) of that Code section provides that it is unlawful to possess or have in one's control any of the chemical compounds identified in O.C.G.A. § 19-13-28 (Supp. 1990) as controlled substances. Subsection (j) makes it unlawful for any person to "possess, have under his control, manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute marijuana." O.C.G.A. §§ 16-13-30(a), (j) (1988).

30. O.C.G.A. § 40-5-75(a)(1) (Supp. 1990).

31. *Id.* There are few actual first offenders. Many of those who qualify as first offenders for purposes of the statute do so because their previous offenses occurred more than five years ago, or in another jurisdiction, or while the person was a juvenile. Cooney Interview, *supra* note 5.

32. A violation of O.C.G.A. § 16-13-30(a) or (j).

33. O.C.G.A. § 40-5-75(a)(1) (Supp. 1990).

34. *Id.*

35. HB 1200, as introduced, 1990 Ga. Gen. Assem.

36. HB 1200 (SCS), 1990 Ga. Gen. Assem.

37. O.C.G.A. § 40-5-75(a)(1) (Supp. 1990).

38. O.C.G.A. § 40-5-75(c)(1) (Supp. 1990).

39. *Id.*

The Act requires suspension of an offender's driver's license for three years upon a second conviction of possession of a controlled substance or marijuana within five years of a first conviction.<sup>40</sup> The offender may apply for reinstatement of his license after one year by submitting proof of completion of a treatment program prescribed by the Department of Human Resources and paying a restoration fee.<sup>41</sup>

A third conviction within five years shall result in a five year suspension of the offender's driver's license.<sup>42</sup> The offender may apply for a three-year driving permit at the end of two years,<sup>43</sup> but the conditions for the issuance of such permit are more stringent than for reinstatement after a first or second conviction. To obtain the permit, the person must not have been convicted of or have pleaded no contest to a drug related offense, including driving under the influence, for two years preceding the application.<sup>44</sup> The person must also have completed and paid for a licensed drug treatment program, paid a \$25.00 permit fee,<sup>45</sup> and submitted proof of insurance coverage.<sup>46</sup> The Department of Public Safety must issue the permit if the applicant can show extreme hardship.<sup>47</sup> "Extreme hardship" means that the person "cannot reasonably obtain other transportation, and, therefore, . . . would be prohibited from": going to work or performing work related duties;<sup>48</sup> "receiving scheduled medical care or obtaining prescription drugs;"<sup>49</sup> attending school where he is regularly enrolled;<sup>50</sup> or, attending meetings of a recognized substance abuse support organization.<sup>51</sup>

A person whose license is suspended under this Code section, and is convicted of driving without a license, is subject to civil and criminal penalties.<sup>52</sup>

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40. O.C.G.A. § 40-5-75(a)(2) (Supp. 1990). For purposes of a second conviction, a plea of *nolo contendere* constitutes a conviction. *Id.*

41. *Id.*

42. O.C.G.A. § 40-5-75(a)(3) (Supp. 1990).

43. *Id.*

44. O.C.G.A. § 40-5-75(a)(3)(A) (Supp. 1990).

45. O.C.G.A. § 40-5-75(a)(3)(B) (Supp. 1990).

46. O.C.G.A. § 40-5-75(a)(3)(C) (Supp. 1990). The code sections setting forth the requirements for proof of insurance are O.C.G.A. §§ 40-9-80—83 (1989).

47. O.C.G.A. § 40-5-75(a)(3)(D) (Supp. 1990).

48. O.C.G.A. § 40-5-75(a)(3)(D)(i) (Supp. 1990).

49. O.C.G.A. § 40-5-75(a)(3)(D)(ii) (Supp. 1990).

50. O.C.G.A. § 40-5-75(a)(3)(D)(iii) (Supp. 1990).

51. O.C.G.A. § 40-5-75(a)(3)(D)(iv) (Supp. 1990).

52. O.C.G.A. § 40-5-75(f) (Supp. 1990).