

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE DRS75035-MA-93 (02/02)

Short Title: Increase DWI Penalty/Child in Vehicle.

(Public)

Sponsors: Senators Purcell, Allran, and Atwater (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT DWI SENTENCING BE AT LEVEL ONE IF THE OFFENSE OCCURS WITH A CHILD LESS THAN SIXTEEN YEARS OF AGE IN THE VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179(c) reads as rewritten:

"(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 Level One punishment under subsection (g) of this section if it is determined that the defendant had a child under the age of 16 years in the vehicle at the time of the offense, or 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
 - b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
 - c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.



1 (4) ~~Driving by the defendant while a child under the age of 16 years was in the~~
2 ~~vehicle at the time of the offense.~~

3 In imposing a Level One or Two punishment, the judge may consider the aggravating and
4 mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there
5 are no grossly aggravating factors in the case, the judge must weigh all aggravating and
6 mitigating factors and impose punishment as required by subsection (f)."

7 **SECTION 2.** This act becomes effective December 1, 2011, and applies to
8 offenses committed on or after that date.