

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 356

Short Title: DWI Gross Aggravator - Child in Car.

(Public)

Sponsors: Representatives Easterling; Colton, Gardner, Gottovi, Holt, Lemmond, McAllister, Stamey, and Warner.

Referred to: Judiciary II.

February 25, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PRESENCE OF A CHILD UNDER THE AGE OF SIXTEEN IN A VEHICLE DRIVEN BY A PERSON CONVICTED OF DRIVING WHILE IMPAIRED A GROSSLY AGGRAVATING FACTOR IN SENTENCING.

The General Assembly of North Carolina enacts:

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

"(c) Determining Existence of Grossly Aggravating Factors; Habitual Offender. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two prior offenses involving impaired driving and the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment under subsection (g) if he determines that two or more of the following grossly aggravating factors apply:

- (1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years before the date of the offense for which the defendant is being sentenced.
- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).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 was in the
2 vehicle.

3 If the judge determines that only one of the above grossly aggravating factors applies,
4 he must impose the Level Two punishment under subsection (h). In imposing a Level
5 One or Two punishment, the judge may consider the aggravating and mitigating factors
6 in subsections (d) and (e) in determining the appropriate sentence. If there are no
7 grossly aggravating factors in the case, the judge must weigh all aggravating and
8 mitigating factors and impose punishment as required by subsection (f)."

9 Sec. 2. This act becomes effective October 1, 1993.