

House Bill 47

By: Representatives Petrea of the 166th, Collins of the 71st, Jones of the 25th, McDonald of the 26th, Cameron of the 1st, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Sections 40-6-393 and 52-7-12.2 of the Official Code of Georgia Annotated,
2 relating to homicide by vehicle and homicide by vessel, respectively, so as to require
3 restitution for certain convictions of homicide by vehicle or vessel when operating such
4 vehicle or vessel under the influence of alcohol or drugs; to provide for standards for such
5 award amount; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 40-6-393 of the Official Code of Georgia Annotated, relating to homicide by
10 vehicle, is amended as follows:

11 "40-6-393.

12 (a) Any person who, without malice aforethought, causes the death of another person
13 through the violation of subsection (a) of Code Section 40-6-163, Code Sections 40-6-390
14 through 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of
15 homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by
16 imprisonment for not less than three years nor more than 15 years.

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17 (b) Any driver of a motor vehicle who, without malice aforethought, causes an accident
18 which causes the death of another person and leaves the scene of the accident in violation
19 of subsection (b) of Code Section 40-6-270 commits the offense of homicide by vehicle in
20 the first degree and, upon conviction thereof, shall be punished by imprisonment for not
21 less than three years nor more than 15 years.

22 (c) Any person who causes the death of another person, without an intention to do so, by
23 violating any provision of this title other than subsection (a) of Code Section 40-6-163,
24 subsection (b) of Code Section 40-6-270, Code Sections 40-6-390 through 40-6-391, or
25 subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the
26 second degree when such violation is the cause of said death and, upon conviction thereof,
27 shall be punished as provided in Code Section 17-10-3.

28 (d) Any person who, after being declared a habitual violator as determined under Code
29 Section 40-5-58 and while such person's license is in revocation, causes the death of
30 another person, without malice aforethought, by operation of a motor vehicle, commits the
31 offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be
32 punished by imprisonment for not less than five years nor more than 20 years, and
33 adjudication of guilt or imposition of such sentence for a person so convicted may be
34 suspended, probated, deferred, or withheld but only after such person shall have served at
35 least one year in the penitentiary.

36 (e)(1) In addition to the penalties provided for in this Code section, the court shall
37 require any person convicted under subsection (a) of this Code section for a violation of
38 Code Section 40-6-391 or under subsection (d) of this Code section to make restitution
39 pursuant to Article 1 of Chapter 14 of Title 17 when the victim was the parent or guardian
40 of a minor child. Such restitution shall be in the form of child support to each of the
41 victim's minor children until the earlier date of when such child reaches the age of 18 or
42 graduates from high school. In making a determination of the appropriate amount of
43 support for a child, the court shall consider:

- 44 (A) The financial resources and needs of the child;
 45 (B) The financial resources and needs of the surviving parent or guardian of the child,
 46 which may include the state if the child is in the protective custody of the Division of
 47 Family and Children Services of the Department of Human Services;
 48 (C) The standard of living to which the child is accustomed;
 49 (D) The physical and emotional condition of the child and the child's educational
 50 needs;
 51 (E) The child's physical and legal custody arrangements; and
 52 (F) The reasonable work related child care expenses of the surviving parent or
 53 guardian.
- 54 (2) No restitution shall be ordered pursuant to this subsection when a civil judgment for
 55 the death has been obtained prior to sentencing. Any restitution amount ordered pursuant
 56 to this subsection shall be offset by any civil judgment or any award paid pursuant to
 57 Chapter 15 of Title 17 after sentencing which compensates for child support."

58 **SECTION 2.**

59 Code Section 52-7-12.2 of the Official Code of Georgia Annotated, relating to homicide by
 60 vessel, is amended as follows:

61 "52-7-12.2.

62 (a) Any person who, without malice aforethought, causes the death of another person
 63 through the violation of subsection (j) of Code Section 52-7-8.2, Code Section 52-7-12 or
 64 52-7-12.1, subsection (b) of Code Section 52-7-13, or subsection (c) of Code Section
 65 52-7-25 commits the offense of homicide by vessel in the first degree. A person convicted
 66 under this subsection shall be guilty of a felony and shall be punished by imprisonment for
 67 not less than three years nor more than 15 years.

68 (b) Any operator of a vessel who, without malice aforethought, causes a collision or
 69 accident which causes the death of another person and leaves the scene of the collision or

70 accident in violation of subsection (a) of Code Section 52-7-14 commits the offense of
71 homicide by vessel in the first degree and, upon conviction thereof, shall be punished by
72 imprisonment for not less than three years nor more than 15 years.

73 (c) Any person who causes the death of another person, without an intention to do so, by
74 violating any provision of this title other than subsection (j) of Code Section 52-7-8.2,
75 Code Section 52-7-12 or 52-7-12.1, subsection (b) of Code Section 52-7-13, subsection (a)
76 of Code Section 52-7-14, or subsection (c) of Code Section 52-7-25 commits the offense
77 of homicide by vessel in the second degree when such violation is the cause of said death.
78 A person convicted under this subsection shall be guilty of a misdemeanor and shall be
79 punished as provided in Code Section 17-10-3.

80 (d)(1) In addition to the penalties provided for in this Code section, the court shall
81 require any person convicted under subsection (a) of this Code section for a violation of
82 Code Section 52-7-12 to make restitution pursuant to Article 1 of Chapter 14 of Title 17
83 when the victim was the parent or guardian of a minor child. Such restitution shall be in
84 the form of child support to each of the victim's minor children until the earlier date of
85 when such child reaches the age of 18 or graduates from high school. In making a
86 determination of the appropriate amount of support for a child, the court shall consider:

- 87 (A) The financial resources and needs of the child;
88 (B) The financial resources and needs of the surviving parent or guardian of the child,
89 which may include the state if the child is in the protective custody of the Division of
90 Family and Children Services of the Department of Human Services;
91 (C) The standard of living to which the child is accustomed;
92 (D) The physical and emotional condition of the child and the child's educational
93 needs;
94 (E) The child's physical and legal custody arrangements; and
95 (F) The reasonable work related child care expenses of the surviving parent or
96 guardian.

97 (2) No restitution shall be ordered pursuant to this subsection when a civil judgment for
98 the death has been obtained prior to sentencing. Any restitution amount ordered pursuant
99 to this subsection shall be offset by any civil judgment or any award paid pursuant to
100 Chapter 15 of Title 17 after sentencing which compensates for child support."

101

SECTION 3.

102 All laws and parts of laws in conflict with this Act are repealed.