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GEORGIA traffic PROSECUTOR

A Publication of the Prosecuting Attorneys' Council of Georgia Traffic Safety Program

···> our mission

The goal of PAC's Traffic Safety Program is to effectively assist and be a resource to prosecutors and law enforcement in keeping our highways safe by helping to prevent injury and death on Georgia roads.

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Photo courtesy: Middle Georgia Traffic Enforcement Network

feature article >

Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial...

O.C.G.A. § 40-5-67.1

additional features

Getting it Right: Georgia's Implied Consent Law

By Fay McCormack, Traffic Safety Resource Coordinator, Prosecuting Attorneys' Council

On May 6, 2008, Deputy Loring of the Forsyth County Sheriff's Department saw Cynthia Page make an improper turn onto McFarland Road and pulled her over. Page's eyes appeared bloodshot and watery, so Loring asked her to perform field sobriety tests, one of which showed impairment. Loring then asked Page to blow into a portable breathalyzer. Page twice asked about her rights regarding the test, including the consequences of a refusal, and Loring twice told her the test was voluntary. After Page asked more questions, Loring put the breathalyzer in his patrol car and arrested Page for DUI -- less safe. Page asked, "I don't get a DUI if I blow correctly at the jail, correct?" Loring responded, "I've determined you are a less safe driver. You are under arrest for DUI." Loring then read Page the implied consent warning and requested that she submit to a blood test. Page offered to take a breath test instead. Loring informed Page that she would have to submit to a blood test before she could have an independent breath test. Page stated that she would not submit to "anything except breath" and stated, "If I pass, you can't arrest me for DUI, right?" Loring responded, "I want blood." Loring read Page the implied consent warning a second time and again asked Page if she would take a blood test. Loring drove Page to jail, where she asked to take a breath test. Loring again told Page that she would have to take a blood test before she could have a breath test. Page then agreed to take a blood test. On the way to the hospital, Page again asked what would happen if she refused to submit to the blood test. Loring responded that she would be charged with "DUI refusal." At the hospital, Loring read Page the implied consent warning for a third time. Loring also allowed Page to call her attorney. Her blood was then drawn. Afterward, Loring drove Page back to jail and administered a breath test to her. The result was 0.00. The toxicology test indicated that 0.24 milligrams per liter of benzoylecgonine, a metabolite of cocaine, was present in her blood.

In addition to the facts found by Judge Philip Smith in the trial court, the Court of Appeals noted that Page testified at the hearing that one of the reasons that she did not want her blood drawn was because "there were things in my past prior to that night that may not have been the best decision I made . . . [t]hat may . . . have . . . influenced a night in which I was innocent." Loring testified that Page asked him, "how far back does the blood test check?"

At the hearing on the Motion to Suppress, Page contended, as she did on appeal, that she did not freely and voluntarily consent to the state-administered blood test because Loring provided her with false and misleading information concerning the consequences of her failure to take the test which confused her and impaired her ability to make an informed decision under the implied consent law and amounted to an "unlawful inducement." The Court contrasted this case with *State v. Terry*, 236 Ga. App. 248 (1999), where it affirmed the grant of a defendant's motion to suppress evidence of her refusal to submit to a chemical test based on evidence that the officer, after correctly informing the defendant of her implied consent rights, subsequently misinformed her that she would have to "bond out" of jail before she could obtain an independent test. Based on the evidence presented in the *Page* case, Judge Smith concluded that Loring properly advised Page of her rights pursuant to OCGA § 40-5-67.1 (g) (2) (B); that in response to her repeated questioning, Loring informed Page that she was being arrested for DUI -- less safe; and that Loring made no extraneous statements of the law beyond the implied consent notice. In challenging this ruling, Page asked the Court of Appeals to reweigh the evidence; but the court, citing *State v Sanders*, 274 Ga. App 393(2005), and *State v Ellison*, 272 Ga. App 898 (2005), said that is not the function of an appellate court; that they could not, and would not, usurp the authority of the trial judge to consider such factors as demeanor and other credibility-related

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This newsletter is a publication of the Prosecuting Attorneys' Council of Georgia. The "Georgia Traffic Prosecutor" encourages readers to share varying viewpoints on current topics of interest. The views expressed in this publication are those of the authors and not necessarily of the State of Georgia, PACOG or the Council staff. Please send comments, suggestions or articles to Fay McCormack at fmccormack@pacga.org.

evidence in reaching its decision. The court affirmed the trial court's ruling that Page freely and voluntarily consented to the state-administered blood test.

Ms. Page also contended that the procedures Deputy Loring used to get her consent following her unequivocal refusal were not reasonable and were not applied in a fair manner. She based this argument in part on the fact that the videotape of the stop shows her refusing to take the blood test and that she was later unfairly persuaded to take the test. She asked the court to follow their ruling in *Howell v. State*, 266 Ga. App. 480 (2004), which held that the police acted unfairly and unreasonably when they instructed the defendant to blow into an Intoxilyzer even though he had unequivocally refused to take a breath test after being read implied consent warnings. Page argued that even though she allowed blood to be taken from her arm at the hospital, her consent was invalid under *Howell.* The court disagreed, stating that, although Page refused when asked at the scene of the traffic stop whether she would take a blood test, the evidence adduced at the hearing shows that she later rescinded her refusal and consented to the test. Although he was not required to do so, the officer even permitted her to call an attorney before her blood was drawn. By contrast, the defendant in *Howell* unequivocally revoked his implied consent and was not asked again whether he would consent to a state-administered test before being instructed to submit to one. *Howell* was thus distinguishable from this case. Here, the officer's actions, including reading Page the implied consent warnings multiple times, were reasonable and the procedure he utilized was fair.

Page asserted that the results of her blood test should have been suppressed because she conditioned her consent upon the ability to speak with an attorney. The Court of Appeals refused to disturb the factual finding of the trial court which found that Page submitted to the blood test after being read the implied consent warning a third time and that her consent was not conditional. The trial court noted, and the Appeals Court agreed, that a suspect is not entitled to an attorney when deciding whether to submit to a state-administered test. The fact that Loring permitted Page to call an attorney was a mere courtesy and did not invalidate her consent.

On March 4, 2009 the Georgia Court of Appeals affirmed the Forsyth County jury's conviction of Cynthia Page for the offenses of Driving Under the Influence of a Controlled Substance Per Se [O.C.G.A. § 40-6-391(a)(6)] and Making an Improper Left Turn [O.C.G.A. § 40-6-120(a)(2)].

Page v. State 296 Ga. App. 431 (2009)

Left: Deputy Loring of the Forsyth County Sheriff's Department

Issuing Traffic Citations to Foreign Drivers

By Chuck Olson, General Counsel, Prosecuting Attorneys' Council of Georgia

Visitors to Georgia from foreign countries are allowed to drive in Georgia for up to one year if they have a valid driver's license issued by the driver's licensing agency in their home country and they are lawfully admitted to the United States. Rocha v. State, 250 Ga. App. 209, 211-212 (2001), *Schofield v. Hertz* Corp., 201 Ga. App. 830, 832 (1991).

This Summer, there have been complaints from several of the foreign consulates in Atlanta that law enforcement officers have issued citations to their citizens for driving without a license because they didn't have their passport with them when they were stopped for a traffic violation. According to the Office of the Legal Counsel of the United States Department of State, there is no Federal law or regulation that requires foreign visitors to the United States to have their passport on their person at all times. There also is no Georgia law that would require foreign drivers to keep their passport on their person at all times.

In 2008, the legislature, in an attempt to make it easier for police officers to recognize valid foreign driver's licenses, amended O.C.G.A. § 40-5-21 to add a requirement that if the foreign driver's license is a language other than English, the driver must also have in his or her possession an International Driver's Permit (IDP) in addition to their home country license. This amendment became effective on January 1, 2009.

The IDP is a translation of the foreign license which generally must be obtained in the driver's home country before departing for the United States. It is valid for one year from the date of issuance. Driver's from English speaking countries, such as Australia, Bahamas, Canada, Great Britain, Guyana, Fiji, Ireland, India, Jamaica, New Zealand, Nigeria or Uganda, do not have to carry an IDP.

However, if during that time, a foreign national becomes a legal resident of Georgia, they must obtain a Georgia driver's license within 30 days of becoming a resident. O.C.G.A. § 40-5-20. However, they no longer have to surrender their foreign driver's license. O.C.G.A. § 40-5-20(c)(2).

Just the Facts: 2008 Traffic Alcohol-Related Fatalities

Courtesy: NHTSA

Drivers are considered to be alcohol-impaired when their blood alcohol concentration (BAC) is .08 grams per deciliter (g/dL) or higher. Thus, any fatality occurring in a crash involving a driver with a BAC of .08 or higher is considered to be an alcohol-impaired-driving fatality. The term "driver" refers to the operator of any motor vehicle, including a motorcycle.

In 2008, 11,773 people were killed in alcohol-impaired-driving crashes. These alcohol-impaired-driving fatalities accounted for 32 percent of the total motor vehicle traffic fatalities in the United States.

Traffic fatalities in alcohol-impaired-driving crashes decreased nearly 10 percent from 13,041 in 2007 to 11,773 in 2008. The alcohol-impaired-driving fatality rate per 100 million VMT decreased to 0.40 in 2008 from 0.43 in 2007. The 11,773 fatalities in alcohol-impaired-driving crashes during 2008 represent an average of one alcohol-impaired-driving fatality every 45 minutes.

Estimates of alcohol-impaired driving are generated using BAC values reported to the Fatality Analysis Reporting System (FARS) and imputed BAC values when they are not reported. The term "alcohol-impaired" does not indicate that a crash or a fatality was caused by alcohol impairment.

In 2008, all 50 States, the District of Columbia, and Puerto Rico had, by law, created a threshold making it illegal per se to drive with a BAC of .08 or higher. Of the 11,773 people who died in alcohol-impaired-driving crashes in 2008, 8,027 (68%) were drivers with a BAC of .08 or higher. The remaining fatalities consisted of 3,054 (26%) motor vehicle occupants and 692 (6%) nonoccupants.

The national rate of alcohol-impaired-driving fatalities in motor vehicle crashes in 2008 was 0.40 per 100 million vehicle miles of travel.

Children

In 2008, a total of 1,347 children age 14 and younger were killed in motor vehicle traffic crashes. Of those 1,347 fatalities, 216 (16%) occurred in alcohol-impaired-driving crashes. Out of those 216 deaths, 99 (46%) were occupants of a vehicle with a driver who had a BAC level of .08 or higher. Another 34 children age 14 and younger who were killed in traffic crashes in 2008 were pedestrians or pedalcyclists who were struck by drivers with a BAC of .08 or higher.

Time of Day and Day of Week

The rate of alcohol impairment among drivers involved in fatal crashes was four times higher at night than during the day (36% versus 9%). In 2008, 15 percent of all drivers involved in fatal crashes during the week were alcohol-impaired, compared to 32 percent on weekends.

2009 Legislative Update

By Jennifer Ammons, General Counsel, Department of Driver Services

House Bill 2

- Requires all public employers to verify employment eligibility of all new employees. Employers will be required to post their user ID's on their websites.
- Contractors providing physical performance of services for the state must also verify employment eligibility of all new employees and subcontractors.
- Jails must determine nationality of anyone confined (in accordance with Vienna Convention).
- All governmental entities must verify the lawful presence of any applicant for public benefits.

Effective January 1, 2010.

House Bill 71

- Amends O.C.G.A. §16-9-4 to provide that it is not a defense to a charge of manufacturing, possessing, etc. false identity documents if the card states that it is a novelty or other words indicating that the card is not a legitimate form of identification (requested by GBI for Secure ID cases).

Effective October 1, 2009.

House Bill 160

- Governor's "Super-Speeder" Bill to raise funds to support trauma care.
- Increases reinstatement fees for many suspensions.
- All speeding charges must indicate if the offense occurred on a two-lane road; DDS will be making additional changes to the UTC and GECPS to accommodate this requirement.
- The bill also enacted a new code section, O.C.G.A. §40-6-189 that imposes the "Super-Speeder" penalties, which include the following:
  - Fee imposed for speeding 85+ miles per hour or more on any road or highway or 75+ miles per hour on any two-lane road or highway.
  - Failure to pay the Super-Speeder fee within 90 days after receipt of the notice will result in a license suspension.
  - Customer must pay the Super-Speeder fee and a $50.00 reinstatement fee.

The reinstatement fee increases go into effect on July 1, 2009. The Super-Speeder fee goes into effect on January 1, 2010.

House Bill 549

- Section 1 amends O.C.G.A. §21-2-231 to require Superior Court Clerks to submit monthly lists to Secretary of State identifying jurors who appear for service but deny United States citizenship.

This section is effective January 1, 2010.

- Section 2 amends O.C.G.A. §40-5-2 to allow DDS to expand the amount of data provided to counties and AOC for creating jury lists.

This section was effective upon the Governor's signing of the bill on April 30, 2009.

- Fields will now include the following: Name, address, date of birth, gender, ethnic information (if available), address and date of most recent address change, document issue date and expiration date, and DL or ID.

Senate Bill 44

- Directs state agencies to give preference to materials made in Georgia whenever making procurement decisions, though geographic preference should not outweigh decisions relative to quality.
- Particularly applies to contracts exceeding $100,000.00.

Effective July 1, 2009.

Senate Bill 86

- Requires proof of citizenship along with an application to register to vote.
- Acceptable documents include the following:
  - Driver's license or identification card, birth certificate, U.S. passport, naturalization documents, other immigration documents, BIA card, other documents approved by SEB.

Effective January 1, 2010.

Senate Bill 170

- Directs state agencies not to do business with companies from or friendly with the Sudanese government.
- Requires contractors to provide documentation that they are not subject to this exclusion.

Effective upon the Governor's signature on April 29, 2009.

Senate Bill 196

- Section 1 amends O.C.G.A. §40-5-20 to clarify that anyone convicted of driving without a license (DWOL) in violation of O.C.G.A. §40-5-20(a) should be punished according to O.C.G.A. §40-5-121 (driving with a suspended license).
- Section 1 retains language from SB-350 (2008) that created an affirmative defense for DWOL if the person brings a valid driver's license to court, though the license need not have been valid on the date of the incident in order for the defendant to be eligible for this defense.
- Section 2 creates a new Code Section, §40-5-57.3, that will suspend a defendant's driver's license for a period of thirty (30) days if he or she is convicted of a second or subsequent violation of O.C.G.A. §40-6-77 within five (5) years.
- Section 3 amends O.C.G.A. §40-5-121 to delete the verbiage from SB-350 (2008) that created an affirmative defense to DWSL if the defendant appears in court with a valid driver's license.
- Section 4 amends O.C.G.A. §40-6-77 to amend the definition of serious injury in the context of injuries resulting from collisions that occur when a motorist fails to yield the right of way to a motorcyclist, bicyclist, pedestrian, or farmer operating any vehicle used to transport agricultural products, livestock, farm machinery, or farm supplies.
- Section 5 amends O.C.G.A. §40-6-96 to prohibit pedestrians from walking in the roadway if a sidewalk is provided unless there is not a vehicle within 1000 feet of the pedestrian or the sidewalk is too dangerous to use.
- Section 6 amends O.C.G.A. §40-5-83 to increase the assessment fee for DUI Drug or Alcohol Use Risk Reduction Programs from $75.00 to $82.00. Requested by DHR to offset additional expenses resulting from the drastic increase in clinical evaluations/ treatment following the enactment of HB-336 (2008).
- Section 7 amends O.C.G.A. §40-6-144 to allow local governments the authority to authorize children age twelve (12) and younger to ride their bicycles on the sidewalk.

Effective July 1, 2009.

Senate Bill 199

- Amends O.C.G.A. §§15-9-1.1 and 15-10-137 to allow the Probate Judges Council and the Magistrate Courts Training Council the option of suspending training for calendar years 2009 and 2010.
- If training is suspended, judges who receive training will get credit for such training in 2010 or 2011.

Effective upon the Governor's signature on May 4, 2009.

Copies of all bills are available on the General Assembly's website: www.legis.state.ga.us

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Prosecuting Attorneys' Council of Georgia
Traffic Safety Program
104 Marietta Street, NW
Suite 400
Atlanta, Georgia 30303

····> traffic safety program staff

Fay McCormack
Traffic Safety Coordinator
404-969-4001 (Atlanta)
fmccormack@pacga.org

····> fact:

Drunk driving is the nation's most frequently committed violent crime, killing someone every 30 minutes. Because drunk driving is so prevalent, about three in every ten Americans will be involved in an alcohol-related crash at some time in their lives. In 2006, an estimated 17,602 people died in alcohol-related traffic crashes in the USA. These deaths constituted 41 percent of the nation's 42,642 total traffic fatalities.

-Statistics courtesy NHTSA (www.nhtsa.gov)

The "Georgia Traffic Prosecutor" addresses a variety of matters affecting prosecution of traffic-related cases and is available to prosecutors and others involved in traffic safety. Upcoming issues will provide information on a variety of matters, such as ideas for presenting a DUI/Vehicular Homicide case, new strategies being used by the DUI defense bar, case law alerts and other traffic-related matters. If you have suggestions or comments, please contact Editor Fay McCormack at PAC.