

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.

contents



The Prosecuting Attorneys' Council of Georgia takes this opportunity to thank Sgt. Pete Lamb for the help he has given us over the years in our traffic training program and we wish him well on his retirement and new pursuits. We also thank the Richmond County Sheriff for allowing him to make such great contributions to the law enforcement and prosecution community. Pete is the author of the main article which addresses the hairy issue of police officers turning defense witnesses in impaired driving cases.

This issue of GTP also sets out the traffic related laws passed by the Georgia Legislature in their 2010 session, as well as an article addressing enforcement of the legislation that bans texting while driving.

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Shining Some Light on the Dark Side: The Ex-Police Officer as DUI Defense Expert

By Sgt. Pete Lamb, Richmond County Sheriff's Office, Retired

INCREASINGLY IN GEORGIA AND ACROSS the nation, defense attorneys are calling on former police officers to testify as experts on behalf of their clients who are being prosecuted for the offense of Driving Under the Influence. These former officers, who have a great deal of experience, both in teaching officers and in enforcement activity, have now chosen to capitalize on this knowledge in order to exonerate the very same persons they would have previously arrested for impaired driving. Most of these officers are former SFST Instructors, Drug Recognition Experts and Drug Recognition Expert Instructors.

There are a few recurring themes in the written reports these experts submit and the testimony they deliver on the stand. The issues that are addressed by these experts usually deal with the following:

- ♦ **Horizontal Gaze Nystagmus** (qualifying the subject, speed of the passes, height of the stimulus and distance from the face)
- ♦ **Things that didn't happen** (he wasn't involved in a crash, he didn't fall out of the car, he didn't throw up, he didn't argue, etc.)
- ♦ **Citing of other studies** allegedly in conflict with the evidence (use of studies concerning Positional Alcohol Nystagmus, original NHTSA studies, etc.)
- ♦ **Breath Test Issues** ("margins of error" on the Intoxilyzer 5000, lack of a Toxi Trapt, failure to follow the 20-minute waiting period, gender bias, spicy food or yeast issues, etc.)

It is highly recommended that if the defense is going to bring in an expert, then you should seek out a rebuttal expert of your own. For breath test or Intoxilyzer issues, Chris Tilson with the State Crime Lab does an excellent job of refuting issues which are raised by defense experts who challenge the reliability of the breath testing instrument. For other issues related to field sobriety testing try to find a local SFST Instructor. For drug impaired

driving issues, a certified Drug Recognition Expert (DRE) or DRE Instructor is your best witness. A DRE or DRE Instructor can also be very useful in testifying about field sobriety issues as well. For those occasions where you don't have a local expert of your own, here are a few pointers:

Horizontal Gaze Nystagmus

Some defense experts argue that there is a minimum time for the proper administration of HGN. This is not true. No "minimum time" is specified anywhere in the protocol for the overall administration of this test. The only part of HGN where a minimum time is mentioned is in the checking of the second clue (Distinct and Sustained Nystagmus at Maximum Deviation). All other times are qualified as "approximately". For example, Equal Tracking is approximately a one-second pass, Lack of Smooth Pursuit is an approximate two-second pass (*SFST Student Manual*, p. VIII-7 [08/06]), and Onset of Nystagmus Prior to 45 Degrees is approximately a four-second pass (*SFST Student Manual*, p. VIII-7 [08/06]). The timing for the check for Vertical Gaze Nystagmus is quantified as approximately four seconds (*SFST Student Manual*, p. VIII-8 [08/06]). Since the definitions for "approximate" all include words such as *estimated, fairly accurate, rough, near, ballpark and inexact*, I don't think it's possible to pinpoint a minimum time for all of the 16 passes involved in the administration of HGN or VGN.

I recently heard a defense expert argue that the speed of the pass for Lack of Smooth Pursuit was approximately two seconds. He went on to say that the return speed also had to be two seconds, so the overall time was four seconds per eye, per pass. Regarding the speed of this pass, the *SFST Student Manual* says; "Movement of the stimulus should take approximately two seconds out and two seconds back for each eye." (p. VIII-7). However, the evaluator is **not** checking for any behavior of the eye during any of the return passes, so the speed of the return pass is not critical. This is an ex-

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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.

ample of how a defense expert's exaggeration of the protocols can do damage to the state's evidence if not challenged. Defense experts will cite "Nystagmus Testing in Intoxicated Individuals" by Dr. Karl Citek (*Optometry*, Vol. 74, No. 11, Nov. 2003) to support their "too fast is improper" position. The defense experts say that the study claims that a speed of greater than 30 degrees per second is too fast. This is disinformation because the study does not say this. In fact, the study states that, "Virtually all normal individuals can make smooth pursuit eye movements to track targets up to 30 degrees/sec, and most can track targets at speeds up to 100 deg/sec...for impaired individuals, catch-up saccades are readily evident for target speeds of about 30 deg/sec".

A more recent NHTSA study addressed variations in the administration of this test, to include not only speed of the passes, but also height of the stimulus and distance from the face. *The Robustness of the Horizontal Gaze Nystagmus Test in Standardized Field Sobriety Tests* (No. 339, January 2008) concluded that when the speed of the pass for Lack of Smooth Pursuit is administered at one second instead of two seconds, the result is a false negative. This, of course, is weighted in favor of the violator. The study also found that a stimulus held at four inches above eye level (instead of two inches) made no difference and that there was also no observational impact when the subject's BAC was at or exceeded .10 or where the stimulus was held at 20 inches from the subject's face. Finally, the study found that if the stimulus was held at 10 inches, the result was slightly more accurate findings. Both the **Robustness** study and the **Intoxicated Test-ing** article are available through NHTSA.

Things That Did Not Happen

The defense expert will say that NHTSA training indicates that there are plenty of other manifestations of impairment which may be observed during the various stages of DUI detection. Those indicators include, but are not limited to; delayed or improper response to blue lights, fumbling for license or other documents, staggering from the vehicle, vomiting, and staggered walk to the place for field testing. The defense expert will say that if none of these things happen, the person has

demonstrated some measure of sobriety. Officers are NOT trained that the driver has to be falling-down stumbling drunk to be charged with DUI. The fact that the driver did not crash his vehicle when the blue lights came on was not evidence that he was a safe driver.

Odor of Alcohol

The experts will cite a 1998 study sponsored by the Southern California Research Institute which says that there is no way to correlate the odor of alcohol with a level of impairment. No well-trained officer would attempt to do so.

Normal Behavior

Some experts will take note of the fact that the officer observed slurred speech, blood-shot eyes, droopy eyelids, difficulty walking or standing and suggest that since the officer isn't familiar with the driver's "normal" speech, appearance or walk, he cannot say that these behaviors are the result of an impaired condition. This writer's response from the witness stand is; "By normal, do you mean sober? I have no idea how the driver behaves when not under the influence, but can properly testify as to the demeanor while impaired."

Breath Testing Issues

Bear in mind that these former police officers who are now defense experts, made DUI arrests while they were wearing a badge and gun. For them the Intoxilyzer was a perfectly reliable instrument to assess the driver's breath alcohol content. Now that they are working for the defense, the instrument is no more reliable than a sewing machine to determine the ethyl alcohol content of a breath sample. It is suggested that you point out the change (flip-flop, about-face) in their position: "You relied on the Intoxilyzer for evidence to support your DUI cases in the past...does this mean that all your previous DUI cases were faulty?" As stated previously, make use of an expert from the State Crime Lab to refute reliability issues with the instrument.

The Last Bullet Fired

Remember that these defense experts made DUI cases in the past. Make use of that ex-

...> **upcoming training**

DRE - DUI & Crash Investigation
 August 31, 2010
 Georgia Public Safety Training Center
 1000 Indian Springs Drive
 Forsyth, Georgia 31029
 8:00 AM - 4:00 PM

Basic DUI & Crash Investigation
 August 31 - September 2, 2010
 Georgia Public Safety Training Center
 1000 Indian Springs Drive
 Forsyth, Georgia 31029
 8:00 AM - 4:00 PM

For more information on these training courses, please visit our website at:
www.pacga.org/training/pac.shtml

perience to your advantage. Give them a "hypothetical" case based on the same facts as the present DUI case you are trying. Ask the experts if they would have made the arrest for DUI if presented with the same facts. Surprisingly often they will admit that they would also have arrested the driver for DUI. If you can close your cross examination with that statement, it's a powerful message to leave with the jury. Most of the former law enforcement defense experts will be truthful enough to concede that there was probable cause to arrest the driver for DUI. They are just hoping that no one asks them.

Pete Lamb recently retired as a Sergeant with the Richmond County Sheriff's Office where he led the DUI Task Force. He is a SFST/DRE Instructor and a frequent lecturer for PAC. Pete has also lectured for the Southern Association of Toxicologists and staff with the Medical College of Georgia on the DRE Program and Recognizing Signs and Symptoms of Street Drug Use. This year, Pete enrolled at John Marshall Law School in Atlanta. He will graduate in 2013.

...> **alcohol-related fatalities in Georgia**

In 2008, the state of Georgia had the lowest proportion of alcohol-related fatalities in the southeast Region IV of the National Highway Traffic Safety Administration (NHTSA). During this time period, Georgia had 416 alcohol impaired-related* fatalities, which accounted for 28 percent of all roadway fatalities (1,493). Although, the neighboring state of Alabama had the lowest number of alcohol-related fatalities, in 2008, the 315 alcohol deaths represented 33 percent of all Alabama roadway fatalities.

Forty-four (28 percent) of all 159 Georgia counties experienced zero alcohol-related fatalities in 2008. Fulton, Gwinnett, DeKalb, and Cobb counties experienced the highest number of alcohol-related fatalities with 30, 24, 19, and 18 alcohol-impaired fatalities, respectively. Yet, these counties had lower percentages (26 to 40 percent) of alcohol-related deaths when compared to the more rural counties of Montgomery (2), Echols (1), Hancock (1), Talbot (1), and Wilkinson (1), where 67 to 100 percent of roadway fatalities were related to alcohol.

* Drivers are considered to be alcohol-impaired when their blood alcohol concentration (BAC) is 0.08 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.

(Courtesy NHTSA)

Traffic Legislation 2010

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

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

House Bill 1309 - effective June 24, 2010

O.C.G.A. §16-13-25 adds synthetic cannabinoids, known as "K2," to the Schedule I list of controlled substances.

HB 1021 - effective July 1, 2010

O.C.G.A. § 16-13-71(b) adds Salvinorin A to the list of dangerous drugs.

O.C.G.A. § 16-13-72(4.3) makes an exception for possession, planting, cultivation, growing, or harvesting of *Salvia divinorum* or *Salvia divinorum* A strictly for aesthetic, landscaping, or decorative purposes."

Senate Bill 392 - effective July 1, 2010

O.C.G.A. § 20-1-10 defines "educational institutions" and requires that these state funded institutions verify that motor carriers or contract carriers are properly certified for transporting students.

O.C.G.A. § 46-7-3 requires passenger transportation carriers under the authority of the Public Service Commission to provide certification and proof of insurance.

HB 194 - effective October 1, 2010

O.C.G.A. § 26-4-81 requires that prescription drug labels include a designation indicating when a generic drug has been substituted for a brand name prescription drug and provides for exceptions to this requirement.

HB 1174 – effective July 1, 2010

O.C.G.A. § 32-6-24 relating to the regulation maintenance and use of public roads is amended to provide for the regulation of oversize and overweight loads on streets or highways.

O.C.G.A. § 32-6-27 relates to enforcement of load limitations and sets out the procedure to assess damages for excess weight. This legislation changes the designation of certain streets or highways relative to oversize and overweight loads.

O.C.G.A. § 32-6-28 establishes a certification program for drivers of oversized vehicle escorts; and requires persons permitted to operate oversize or overweight loads to maintain certain insurance coverage.

O.C.G.A. §§ 40-1-1 & 40-6-70 provide that drivers approaching a traffic signal that is properly signed as a pedestrian hybrid beacon and operating in the unactivated dark mode are not required to stop.

O.C.G.A. § 40-14-9 states that evidence obtained by speed detection devices in a variable speed zone is inadmissible as evidence in court.

SB 354 - effective July 1, 2010

O.C.G.A. § 32-7-2 clarifies the authority provided to counties and municipalities to remove roads and streets from their road and street systems when it is determined that such removal is in the public interest.

SB 397 - effective July 1, 2010

O.C.G.A. § 35-3-191 establishes the statewide Blue Alert system to aid in the search for missing law enforcement officers, the apprehension of a suspect for a crime involving the death or serious injury of a peace officer, and provides that the Georgia Bureau of Investigation administer the Blue Alert system.

HB 1005 - effective May 20, 2010 unless otherwise indicated

O.C.G.A. § 40-1-1 provides a definition for "limousine" and "taxicab" in the general provisions relating to motor vehicles and provides for the registration and licensing of taxicabs and limousines.

O.C.G.A. § 40-2-9 provides for an "In God We Trust" decal on license plates. Effective January 1, 2011.

O.C.G.A. § 40-2-86.21 provides for a special license plate supporting Zoo Atlanta.

O.C.G.A. § 40-2-20 provides for the registration of vehicles and makes it a misdemeanor to display a license plate or temporary license plate in violation of the registration requirements. Effective January 1, 2011.

O.C.G.A. § 40-2-29 provides that the new owner of a motor vehicle must register and obtain a license plate within seven days after acquiring said vehicle and that a person unable to fully comply shall register the vehicle and receive a temporary operating permit that will be valid until the end of the initial registration period as provided in O.C.G.A. § 40-2-21(a) (1).

O.C.G.A. § 40-2-168 adds a new code section mandating that taxicab and limousine owners obtain a distinctive license plate.

O.C.G.A. § 40-6-26(d) explains the meaning of "satisfactory proof" of insurance coverage for the purpose of issuing or renewing motor vehicle registration. Effective January 1, 2011.

O.C.G.A. § 40-2-137 revises the entire code section relating to definitions and notification of termination of insurance coverage of vehicles.

Revises O.C.G.A. § 40-5-72 (a) & (c) relating to the forwarding of license, tag, and tag registration to the Department of Driver Services.

Revises O.C.G.A. § 40-6-10(a) & (e), relating to insurance requirements for operation of a motor vehicle.

O.C.G.A. § 40-3-26 relating to delivery of the certificate of title and notice to lien holders is revised.

O.C.G.A. § 40-5-71 is repealed.

HB 1012 - effective July 1, 2010

O.C.G.A. § 40-2-86.18 expands the definition of family member in order to increase the persons eligible for a special license plate

as a family member of a service member killed in action.

HB 396 - effective July 1, 2010 - provides for various clarifications and changes relating to operations of the Department of Driver Services.

O.C.G.A. § 40-5-1 relating to definitions regarding drivers' licenses is amended by revising paragraph (12) to read: "(12) 'Mail' means to deposit in the United States mail properly addressed and with postage prepaid. For purposes of payment of a reinstatement or restoration fee for a driver's license suspension or revocation, 'mail' shall also mean payment via means other than personal appearance."

O.C.G.A. § 40-5-2 authorizes the commissioner of driver services to regulate the retention of conviction and withdrawal information on a driving record.

O.C.G.A. § 40-5-21.1 extends the effective period of a temporary license, permit, or identification card of a lawful immigrant from three to five years.

O.C.G.A. § 40-5-52 requires the department to review license suspensions at least once every five years and to reinstate a license based on out-of-state suspension if the department determines the suspension is no longer warranted.

O.C.G.A. § 40-5-23 designates the noncommercial classes of motor vehicles for which operators may be licensed – Classes C, D, E, F, M and P.

O.C.G.A. § 40-5-24(c) provides for Class E and F noncommercial vehicles and drivers' licenses for the operation of such vehicles.

O.C.G.A. § 40-5-24 (d) provides for application for an instructional permit to operate noncommercial vehicles.

O.C.G.A. § 40-5-25 (a) and (c) revises driver's license applications and fees.

O.C.G.A. § 40-5-28 prohibits the use of biological identifiers such as fingerprints, DNA and retinal scan. However no license is valid until signed by the licensee.

O.C.G.A. § 40-5-32 (a) provides for the expiration of every driver's license on the licensee's birthday five years after issuance of the license. Exception – commercial license with H or X endorsement as defined in O.C.G.A. § 40-5-150 (c) expires on the date of expiration of the licensee's security threat assessment conducted by the Transportation Security Administration of the U.S. Department of Homeland Security.

Another exception - an applicant for a Class C, E, F, or M noncommercial driver's license who is under 60 has the option to apply for a license to expire in either five or eight years. After age 64, renewal reverts to every five years. A vet-

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eran or honorary license holder will be allowed to keep his expired license as a souvenir.

O.C.G.A. § 40-5-53 (b) provides that fees paid to counties for reporting traffic citation information shall be subject to appropriations.

O.C.G.A. § 40-5-53 (b) authorizes DDS to suspend the driver's license or privilege to drive in Georgia of any person who fails to respond to a citation to appear in court for a traffic violation other than a parking violation. The language on the citation stating that failure to appear shall result in suspension is sufficient notice to support a conviction for violating O.C.G.A. § 40-5-121 if the violator drives after the imposition of the suspension. The DDS will continue to send notice of suspension by certified mail.

“Proof of receipt of said notice shall be admissible to support a conviction for a violation of Code Section 40-5-121 if such person drives subsequent to the imposition of such a suspension following his or her failure to appear.” This part of the law has the effect of removing the automatic presumption of notice of a suspension for drivers operating a motor vehicle following a suspension of a driver's license for failure to appear.

O.C.G.A. § 40-5-63 designates the proper order for processing information supporting the suspension of a driver's license and provides that the department treat each conviction received in the order the convictions are processed, even if it is not the order in which the offenses occurred.

O.C.G.A. § 40-5-64 (d) & (e) clarifies the provisions relating to permittees (persons with limited driving permits) applying for an ignition interlock limited driving permit. Also provides the fees and conditions of renewal of limited driving permits.

Amends O.C.G.A. § 40-5-75 relating to license suspensions by operation of law for drug convictions by mandating revocation of the limited driving permit of any person convicted of any law or ordinance relating to moving vehicles, or who is convicted of violating the conditions endorsed on the permit.

O.C.G.A. § 40-5-82 expands requirements for any person operating a DUI Alcohol or Drug Use Risk Reduction Program by requiring fingerprinting, and that the person is a U.S. citizen or lawful resident.

O.C.G.A. § 40-5-100 reduces the effective date of an identification card from 10 to eight years.

O.C.G.A. § 40-5-100 prohibits the unauthorized scanning of another person's driver's license, permit, or identification card.

O.C.G.A. § 40-5-171 requires the department to include the international handicapped symbol on identification cards issued to persons with disabilities.

O.C.G.A. § 40-5-173 authorizes the DDS to place on the ID card for persons with disabilities wording selected by the department that is indicative of the presence of urgent medical information. The department may print

the urgent medical indicator and wording on the reverse of any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion.

O.C.G.A. § 40-5-174 mandates that the ID card issued to persons with disabilities indicate whether the disability creates mobility limitations which prevent him or her from climbing stairs or otherwise from entering normally designed buses or other vehicles normally used for public transportation. When so marked, the identification card for persons with disabilities shall serve as sufficient proof of the need for special transportation services for persons with disabilities provided by any entity in this state. The department may print the transportation indicator on any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion.

O.C.G.A. § 40-5-175 requires the department to place priority seating indicators on the identification card of persons with disabilities. When so marked, the identification card for persons with disabilities shall be sufficient to admit the holder to seating for persons with disabilities at public events in this state.

O.C.G.A. § 40-13-2.1 (c) Provides that the signature of any person to whom a citation is issued may be captured electronically.

O.C.G.A. § 40-16-4 clarifies that the DDS is authorized to enter into contracts.

O.C.G.A. § 43-12A-6, addresses eligibility to operate an ignition interlock device; requires that applicants submit fingerprints for a search of the records by the FBI and GBI. Applicant must be a US citizen or lawful resident.

O.C.G.A. § 43-13-4 requires that driver training school operators submit fingerprints for a search of the records by the FBI and GBI and must be a US citizen or lawful resident.

O.C.G.A. § 43-13-5 requires that driver training school instructors submit fingerprints for a search of the records by the FBI and GBI and must be a US citizen or lawful resident.

O.C.G.A. § 43-13-6.1 requires that alcohol and drug awareness program instructors must also submit fingerprints for a search of the records by the FBI and GBI and must be a US citizen or lawful resident.

O.C.G.A. § 46-7-85.10 modifies the requirements for a chauffeur's permit and requires permitted chauffeurs to be fingerprinted.

O.C.G.A. § 46-7-92 requires the Public Service Commission to provide to motor carriers an informational packet emphasizing that it is illegal to allow persons under the age of 21 to possess or consume alcoholic beverages.

HB 258 - effective July 1, 2010

O.C.G.A. § 40-15-22 (b) allows a person 15 years of age or older who has a parent or guardian who is medically incapable of being licensed to operate a motor vehicle to drive with the disabled person in the vehicle.

O.C.G.A. § 40-5-24 authorizes the holder of

a Class C instructional permit to drive a Class C motor vehicle when accompanied by a disabled parent or guardian who has been issued an identification card containing the international handicapped symbol.

O.C.G.A. § 40-5-64 authorizes the issuance of a limited driving permit to a driver between 18 and 21 years old who has his or her license suspended for driving 24 or more miles per hour but less than 34 miles per hour over the speed limit.

HB 1224 - effective July 1, 2010

O.C.G.A. § 46-5-30 (c) & (d) provides a defense for persons charged with driving in violation of a vision restriction where such person provides proof that he or she no longer has a vision condition warranting the restriction.

SB 6 - effective July 1, 2010

O.C.G.A. § 40-5-30 changes provisions relating to the period of suspension of a license while driving on a restricted license giving the court the authority to order suspension of up to six months.

SB 419 - effective July 1, 2010

Adds new code section, O.C.G.A. § 40-5-38 to provide for the notation on drivers' licenses of a diagnosis of post traumatic stress disorder.

HB 23 - effective July 1, 2010

O.C.G.A. § 40-5-57 (c)(1)(A) provides for a one point violation for use of a wireless telecommunications device.

O.C.G.A. § 40-6-241.1, new code section reads:

(a) As used in the Code section, the term:

(1) 'Engage in a wireless communication' means talking, writing, sending, or reading a text-based communication, or listening on a wireless telecommunications device.

(2) 'Wireless telecommunications device' means a cellular telephone, a text-messaging device, a personal digital assistant, a stand alone computer, or any other substantially similar wireless device that is used to initiate or receive a wireless communication with another person. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, subscription-based emergency communications, in-vehicle security, navigation, and remote diagnostics systems or amateur or ham radio devices.

(b) Except in a driver emergency and as provided in subsection (c) of this Code section, no person who has an instruction permit or a Class D license and is under 18 years of age shall operate a motor vehicle on any public road or highway of this state while engaging in a wireless communication using a wireless telecommunications device.

(c) The provisions of this Code section shall not apply to a person who has an instruction permit or a Class D license and is under 18 years of age who engages in a wireless communication using a wireless telecommunications device to do any of the following:

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- (1) Report a traffic accident, medical emergency, or serious road hazard;
- (2) Report a situation in which the person believes his or her personal safety is in jeopardy;
- (3) Report or avert the perpetration or potential perpetration of a criminal act against the driver or another person; or
- (4) Engage in a wireless communication while the motor vehicle is lawfully parked.

(d) (1) Any conviction for a violation of the provisions of this Code section shall be punishable by a fine of \$150.00. The provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. The court imposing such fine shall forward a record of the disposition of the case of unlawfully operating a motor vehicle while using a wireless telecommunications device to the Department of Driver Services.

(2) If the operator of the moving motor vehicle is involved in an accident at the time of a violation of this Code section, then the fine shall be equal to double the amount of the fine imposed in paragraph (1) of this subsection. The law enforcement officer investigating the accident shall indicate on the written accident form whether such operator was engaging in a wireless communication at the time of the accident.

(e) Each violation of this Code section shall constitute a separate offense.

SB 360 - effective July 1, 2010
O.C.G.A. § 40-5-57.1 (c)(1)(A) relating to suspension or revocation of the licenses of habitually negligent or dangerous drivers and the point system is amended to assess 1 point for operating a vehicle while text messaging.

O.C.G.A. § 40-6-241.2 is a new Code section:
 The Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.

(a) As used in the Code section, the term 'wireless telecommunications device' means a cellular telephone, a text messaging device, a personal digital assistant, a stand alone computer, or any other substantially similar wireless device that is used to initiate or receive a wireless communication with another person. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, subscription based emergency communications, in-vehicle security, navigation devices, and remote diagnostics systems, or amateur or ham radio devices.

(b) No person who is 18 years of age or older or who has a Class C license shall operate a motor vehicle on any public road or highway of this state while using a wireless telecommunications device to write, send, or read any

text based communication, including but not limited to a text message, instant message, e-mail, or Internet data.

(c) The provisions of this Code section shall not apply to:

(1) A person reporting a traffic accident, medical emergency, fire, serious road hazard, or a situation in which the person reasonably believes a person's health or safety is in immediate jeopardy;

(2) A person reporting the perpetration or potential perpetration of a crime;

(3) A public utility employee or contractor acting within the scope of his or her employment when responding to a public utility emergency;

(4) A law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) A person engaging in wireless communication while in a motor vehicle which is lawfully parked.

(d) Any conviction for a violation of the provisions of this Code section shall be a misdemeanor punishable by a fine of \$150.00. The provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. The court imposing such fine shall forward a record of the disposition to the Department of Driver Services. Any violation of this Code section shall constitute a separate offense.

HB 1231 - effective July 1, 2010
O.C.G.A. § 40-6-120 clarifies the proper manner to execute a left-hand turn and makes an improper left-hand turn a misdemeanor.

O.C.G.A. § 40-6-395 (b)(5)(A) modifies certain conditions required for punishing fleeing or eluding a peace officer as a felony so that fleeing to escape arrest for certain offenses while driving in excess of 20 mph is a felony, and fleeing while driving under the influence under certain conditions is a felony.

O.C.G.A. § 40-6-228 (a) & (c) changes provisions relating to the enforcement of disability parking so that persons appointed to enforce disability parking laws are no longer required to be disabled.

HB 898 - effective July 1, 2010
O.C.G.A. § 40-6-395 (j)(1) modifies the required contents of the notice that must be published providing information about a person convicted of driving under the influence of alcohol, drugs, or other intoxicating substances for the second or subsequent offense.

HB 207 - effective July 1, 2010
O.C.G.A. § 40-7-3 expands the definition of "off-road vehicle" to include government and agricultural vehicles.

O.C.G.A. § 40-7-4 prohibits the operation of off-road vehicles in perennial streams and provides for exceptions.

O.C.G.A. § 40-7-6 authorizes greater civil penalties for the enforcement of off-road vehicle restrictions and makes such violations a civil rather than a criminal offense.

O.C.G.A. § 15-9-30.8 provides the probate courts with jurisdiction to impose the penalties for off-road vehicle violations.

SB 458 - effective July 1, 2010
O.C.G.A. § 40-8-76.1, which relates to the use of safety belts in passenger vehicles, is amended to include pickup trucks, vans, and sport utility vehicles. Exceptions: motorcycles; motor driven cycles; or off-road vehicles or pickup trucks being used by an owner, driver, or occupant 18 years of age or older in connection with agricultural pursuits that are usual and normal to the user's farming operation.

HB 981 - effective July 1, 2010
O.C.G.A. § 40-8-91(b) authorizes the commissioner of public safety to have patrol vehicles painted a solid color in addition to the two-toned color.

O.C.G.A. § 50-5-60.3 excludes emergency response vehicles from the requirements relating to use of retreaded tires.

SB 410 - effective July 1, 2010
O.C.G.A. § 40-8-92 designates ambulances as emergency vehicles and excludes ambulance providers from permit requirements for use of a red light.

....> fact

In 2008, there were a total of 1,021 drivers killed in Georgia. Of those driver fatalities, 331 had a recorded BAC equal to 0.00, 31 had BAC less than 0.08, and 207 of those that died had a BAC greater than 0.08. However, 43% (439) of all drivers killed were not tested for alcohol consumption.

(Courtesy NHTSA)

GEORGIA traffic PROSECUTOR

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---> fact:

Every day, 32 people in the United States die in motor vehicle crashes that involve an alcohol-impaired driver. This amounts to one death every 45 minutes. The annual cost of alcohol-related crashes totals more than \$51 billion.

-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.