VOLUME 12, ISSUE 2, JULY 2015

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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Photograph by Ed Jackson, © 2013 GeorgiaInfo and the State Digital Library of Georgia. Used with permission

In the landmark case of Williams v. State, the Supreme Court of Georgia held that there is a clear distinction between "Implied Consent" and "Actual Consent" pursuant to the Fourth Amendment and Georgia Constitution, and that the State must show both before the result of a state-administered chemical test is admissible in a DUI trial.

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Williams v. State: Implied v. Actual Consent

By Todd Hayes
Senior Traffic Safety Resource Prosecutor
Prosecuting Attorneys' Council of Georgia

In *Williams v. State*, S14A1625 (March 27, 2015), the Supreme Court of Georgia articulated for the first time a clear distinction between a DUI suspect's "consent" for purposes of the Implied Consent statute and "actual consent" (which would permit a warrantless search of a suspect's bodily fluids) under the Fourth Amendment and Georgia Constitution. The Defendant was arrested and charged with Driving Under the Influence of Alcohol and Failure to Maintain Lane. The stop resulted from the officer's reasonable articulable suspicion, and the Defendant was arrested based on probable cause. After placing the Defendant in custody, the arresting officer did not read the *Miranda* warning to the Defendant, but did read the statutory Implied Consent notice and requested the Defendant to submit to blood and urine testing. The Defendant verbally responded to the notice by saying "yes." No other conversation about the Defendant's tests took place. Furthermore, the parties agreed that exigent circumstances did not exist, and that the officer did not obtain a search warrant for the defendant's blood or urine.

Prior to trial, the Defendant moved to suppress the results of his state-administered blood test. He argued that consent obtained pursuant to the Implied Consent statute *alone* does not amount to voluntary consent under the Fourth Amendment or the related portion of the Georgia Constitution. In denying his motion, the trial court rejected the arguments that: (1) Implied Consent implicates the Fourth Amendment; and (2) that Implied Consent is not a valid exception to the Fourth Amendment's search warrant requirement.

The Supreme Court of Georgia held that the trial court's reasoning was flawed because the extraction of blood from a DUI subject does, in fact, implicate the search and seizure provisions of the United States and Georgia Constitutions. Furthermore, warrantless searches are presumptively invalid, and the state bears the burden of establishing the existence of one of a small number of specifically established exceptions in order to justify the failure to obtain a warrant. And here, the Court focused on two well-established exceptions to the warrant requirement in the context of state-administered blood tests—exigent circumstances and consent.

In regard to exigent circumstances, the Court noted that in *Schmerber v. California*, 384 U.S. 757 (1966), the Supreme Court of the United States recognized the legal nexus between the elimination of alcohol from the human body and the existence of an exigency that would permit an officer to obtain a blood sample without a warrant.[1] That holding was subsequently refined in *Missouri v. McNeely*, 569 U.S. ___, 133 S.Ct. 1552, 185 L.E.2d 696 (2013), which held that although the dissipation of alcohol by a suspect's body may support a finding of exigency, it does not do so categorically. Instead, "[w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." *Id*. at 1563. Since the parties here stipulated no exigencies existed, the Court next examined whether there was valid consent to justify the warrantless search of the Defendant.

The Court observed that there was no question that the Defendant submitted to the state-administered chemical test of his blood after the arresting officer read him the appropriate Implied Consent notice. However, citing *Cooper v. State*, 277 Ga. 282 (2003), ***the Court clarified that there is a distinction between "consent" for purposes of the Implied Consent statute and "consent" under the Fourth Amendment***. Furthermore, the Court suggested that one of the implications of *McNeely* is a heightened need for the state to demonstrate "actual consent" as an exception to the warrant requirement in addition to a suspect's Implied Consent. The Court stated that while *McNeely* did not directly address whether a suspect's consent to the testing of bodily substances satisfied the Fourth Amendment, the courts of other states have indicated that "mere compliance with statutory implied consent requirements does not, per se, equate to actual, and therefore voluntary, consent on the part of the suspect so as to be an exception to the constitutional mandate of a warrant." See *People v.*

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Harris, 2015 WL 708606 (Cal.App. 4 Dist., 2015); *Weems v. State*, 434 S.W.3d 655 (Tex. App. 2014); *State v. Padley*, 354 Wis.2d 545 (Wis. App. 2014); *State v. Moore*, 354 Or. 493 (Or. 2013); and *State v. Brooks*, 838 N.W.2d 563 (Minn. 2013).

Here, the Court held that the trial court failed to consider whether the Defendant gave "actual consent" to the procuring and testing of his blood, despite the fact that he said "yes" after being read the Implied Consent notice. To make such a determination, the Court noted that a trial court must examine "the voluntariness of the consent under the totality of the circumstances." Therefore, the trial court's order was vacated and the case was remanded for further proceedings.

Prosecutors handling DUI cases involving state-administered chemical tests obtained based on an affirmative response to the Implied Consent warning are strongly encouraged to analyze the facts of each case for circumstances demonstrating the free and voluntary nature of the defendant's submission to testing. Defendants are likely to challenge the admission of the results of their tests using one or more of the following arguments: (1) the Defendant was under arrest (and likely in handcuffs) when they agreed to be tested; (2) the Implied Consent warning itself is allegedly "inherently coercive;" or (3) the Defendant was "too impaired" to be able to give actual consent. Furthermore, prosecutors are advised to work with their local law enforcement agencies to develop a protocol whereby officers can establish free and voluntary consent pursuant to the Fourth Amendment and Georgia Constitution in addition to the Implied Consent statute. GTP

Endnote

1. In fact, in *Strong v. State*, 231 Ga. 514 (1973) the Georgia Supreme Court itself had expressly provided that the body's elimination of alcohol constituted an exigent circumstance in and of itself, and allowed for a warrantless blood test incident to arrest. However, based on *Missouri v. McNeely*, 133 S.Ct. 1552, 185 L.E.2d 696 (2013), the Court specifically overruled that portion of *Strong*.

>>> fact:

Seat belts, for example, were patented in 1885, first offered in American-made cars in 1949, and were required by law in all seating positions of vehicles in 1968. The first State law requiring belt use was passed in 1984, when few drivers (15%) wore their seat belts. In the latest survey, 87 percent of front seat occupants buckle up every day. In 2013 alone, the use of seat belts saved 12,584 lives. In the past 5 years, the use of seat belts in passenger vehicles saved over 62,000 lives.

-Statistics courtesy NHTSA (www.nhtsa.gov/nhtsa/SafetyInNum3ers/june2015/S1N_June15_ChangeTrafficSafety_1.html)

Probable Cause: *The Accused Probably Could Have Committed The Crime*

By Wystan Getz
Senior Supervising Assistant Solicitor-General
DeKalb County Solicitor-General's Office

In its recent opinion *Hughes v. State*, 296 Ga. 744 (2015), the Supreme Court of Georgia clarified how trial courts should assess the existence of probable cause to justify an arrest, particularly in the context of a DUI. The Court did not alter the definition of probable cause, and restated the principle that "[p]robable cause exists if the arresting officer has knowledge and reasonably trustworthy information about facts and circumstances sufficient for a prudent person to believe that the accused has committed an offense." *Hughes* at 748 *citing Devega v. State*, 286 Ga. 448, 451 (2010). However, the Court refocused the nature of a trial court's inquiry into probable cause. There are three directives from *Hughes* that now govern trial court determinations of probable cause: 1) Probable cause exists by definition if a reasonable officer could conclude that a defendant probably committed a crime, 2) Innocent explanations in isolation do not negate probable cause, and 3) The facts of any given case all exist together. In other words, when a court is called to evaluate whether probable cause justified an arrest, if the facts of the case provide a reasonable officer with a basis to believe that an individual *could have committed a crime*, probable cause exists. Probable cause *still exists* even if those facts could also support innocent behavior, because the requirement that every reasonable hypothesis but guilt be excluded applies only to findings of guilt beyond a reasonable doubt. Weighing alternative hypotheses is inappropriate for determining probable cause. Similarly, the trial courts ought not disregard or discount facts because those facts could have an innocent explanation. A proper assessment of probable cause places all of the facts and circumstances into the context of the case.

Could a Reasonable Officer Conclude . . .

The existence of probable cause turns on whether the facts and circumstances of a case "could lead a prudent person – that is, a reasonable officer – to conclude that the suspect probably has committed an offense." *Hughes* at 748. This means that even if the facts support an inference other than that the accused as committed an offense, probable cause still exists so long as those facts could also support the inference that the person committed an offense. "[W]here the totality of the facts and circumstances known to an officer would permit reasonable officers to draw differing conclusions about whether the suspect probably has committed a crime, probable cause exists, and it is for the officer – not judges, trial or appellate – to decide which of the several reasonable conclusions to draw." *Hughes* at 749.

The inquiry into probable cause is objective. For that reason, the motive, or inner thoughts, of the officer is irrelevant. However, the officer's training and experience are pertinent because, according to the Court, the officer's "training and experience are among the facts and circumstances known to the officer." *Hughes*, fn. 9. Therefore, if an officer's training and experience cause him or her to know that certain behaviors or certain facts are indicative of the commission of a particular crime, that is relevant to whether the officer could conclude that the accused committed that crime.

Innocent Explanations Do Not Negate Probable Cause

Because the correct probable cause standard is based upon whether a reasonable officer could conclude that a suspect probably committed an offense, whether some of the facts and circumstances of a given case may have potentially innocent explanations is not a concern. In the DUI context, whether unsteadiness, sleepiness, and glassy eyes "could have been susceptible of innocent explanations" does not eliminate the existence of probable cause. *Hughes* at 751. As a result, arguments that an officer's observations could have explanations other than impairment now have very little weight, if indeed they still have any at all. According to the Supreme Court, "[i]nnocent behavior frequently will provide the basis for a showing of probable cause… [the] fact than an innocent explanation may be consistent with the facts does not negate probable cause." *Hughes* at 751 – 752.

When an officer knows that a person has been in a vehicle collision and observes that the person is unsteady, seems sleepy, has glassy eyes, and is in possession of drugs, the officer has probable cause for a lawful arrest even if those behaviors could also have innocent explanations such as being a result of the collision or from a lack of sleep. So long as those facts could support that the accused committed the crime, probable cause exists.

The Facts Exist Together, and Defendants Cannot Divide and Conquer

When a particular fact, such as red and glassy eyes, has a potentially innocent explanation (such as allergies or lack of sleep) trial courts cannot simply give that fact no weight. The proper approach is to consider all of the facts and circumstances together, rather than to take a "divide-and-conquer approach [that considers] each of the several facts and circumstances known to the officers in isolation." *Hughes* at 751. This means that trial courts *must* take into account the total package of facts. That an airbag's explosion in a driver's face following a wreck may itself make the driv-

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er appear dazed does not allow the trial court to disregard the dazed appearance. Instead, the court must take the dazed appearance in the context of the rest of the facts, including the presence of intoxicants or any other evidence of impairment. If the dazed appearance could have resulted from intoxication, probable cause exists. The burden of proof on the State when probable cause is before the trial court is not whether the accused actually committed the crime. Instead the "job of the trial court [is] to determine whether reasonable officers could have concluded" that the accused "probably" committed the crime. *Hughes* at 752.

A Sea-Change in Georgia Probable Cause Jurisprudence

Hughes disapproves of a series of Court of Appeals cases where trial courts found a lack of probable cause based upon a divide and conquer approach. For instance, in *Gray v. State*, 267 Ga.App. 753 (2004), the trial court found that "all alleged indicia of impairment were caused by the accident and that Gray adequately explained the accident to the officer," and therefore concluded "that the only evidence of DUI was the presence of alcohol in Gray's body." However, under the *Hughes* rationale, probable cause to support the arrest in *Gray actually existed*. This is because, based on *Hughes*, the trial court should not have disregarded the indicia of impairment in light of the presence of alcohol, even in the face of potentially innocent explanations. Facts that *could be* indicia of impairment allow reasonable officers to believe that a particular driver is probably committing the offense of DUI.

After *Hughes*, arguments that a trial court should disregard a defendant's "red eyes" because of his or her allergies, that his or her unsteadiness was caused by being on the road for hours, or that he or she "always" talks in a low mumbled fashion have very little, if any, merit. Indeed, it is error for a court to adopt such a "divide and conquer" approach for assessing probable cause. As long as the facts of a case, when considered together, *could* support a reasonable officer's conclusion that someone committed the crime of DUI, probable cause exists. Therefore, after *Hughes*, trial courts finding a lack of probable cause to arrest for DUI must do so either because ***no*** facts exist to support probable impairment, or because the court finds the testimony of the arresting officer to lack credibility. GTP

Wystan Getz attended the Case Western Reserve University School of Law in Cleveland, Ohio, and graduated from Emory's Law School in 1998. The bulk of his legal career was spent as an indigent defense panel attorney in Gwinnett County, focusing on post-conviction representation of different sorts. Mr. Getz has been lead counsel on approximately 100 direct appeals. He joined the staff of the DeKalb County Solicitor-General's Office in the Spring of 2012.

Accountability: Thoughts on *Jones v. State*

By Robert W. Smith, Jr.
State Resource Prosecutor: RICO/Appeals
Prosecuting Attorneys' Council of Georgia

If you heard both loud cheers and screams of agony coming from the State Judicial Building on June 1st around 8:00 AM, the reason more than likely was the release of *Jones v. State* (S14G1061), 2015 Ga. LEXIS 349 . Under Georgia's *old* evidence code, prior convictions for DUI were often admissible as "similar transactions" in subsequent DUI prosecutions. When the General Assembly enacted Georgia's new "modernized" Evidence Code in 2013, one of the biggest concerns for prosecutors was whether the State would retain the ability to continue this practice. In March, 2014, the Court of Appeals held that the new Code ***did not*** allow for the admission of prior DUI convictions in subsequent DUI prosecutions for the purposes of proving "intent" or "knowledge." However, the Georgia Supreme Court's opinion in *Jones* continued what has become a growing trend by holding that the Court of Appeals got it *wrong*.

According to the Supreme Court, to determine if evidence is admissible under 404(b), courts should employ the three part test articulated in *Bradshaw v. State*, 295 Ga. 650, 656 (2015): (1) Evidence of other acts must be relevant to an issue other than the defendant's character; (2) the probative value of the evidence must not be substantially outweighed by its unfair prejudice; and (3) there must be sufficient proof that the defendant committed the act in question. As a general rule, "Rule 404(b), therefore, is, on its face, *an evidentiary rule of inclusion* which contains a non-exhaustive list of purposes other than bad character for which other acts evidence is deemed relevant and may be properly offered into evidence." *Jones*, slip op. at 7 (emphasis added). Although DUI crimes are general intent crimes, the State must nevertheless prove that the defendant had the ***intent***: (1) to drive (2) with a BAC of .08 or higher; OR, (1) to drive (2) under the influence of alcohol (3) to the extent he was a less safe driver, in order to secure a conviction. *Id.* at 9. "Intent, therefore, was a material issue in the State's prosecution and because the same state of mind was required for committing the prior act and the charged crimes, i.e., the general intent to drive while under the influence of alcohol, evidence of Jones' prior conviction was relevant under Rule 404(b) to show Jones' intent on this occasion." *Id.* The Court also pointed out that since the defendant argued that he was not intoxicated, but had suffered a head trauma in the past, the prior acts became "all the more relevant." *Id.* at 11. The prior acts would also help the jury understand why the defendant attempted to conceal and minimize his alcohol consumption when he was stopped and questioned. "The relevancy of evidence of a prior state of mind and the introduction of evidence of repetitive conduct to allow a jury to draw logical inferences about a defendant's knowledge and state of mind from such conduct is well-established." *Id.* at 12.

Because the Court of Appeals never reached the second prong of *Bradshaw*, the Supreme Court remanded the case so that the lower court could conduct the required analysis under O.C.G.A. § 24-4-403. However, the Court offered the Court of Appeals some guidance. "We caution that the potential for prejudice caused by the introduction of other acts evidence is great and the often subtle distinctions between the permissible purposes of intent and knowledge and the impermissible purpose of proving character may sometimes be difficult to discern . . . Unfortunately, there is no mechanical solution for this balancing test." *Id.* at 14-15. Nevertheless, the Supreme Court concluded its analysis by citing *United States v. Merrill*, 513 F.3d 1293, 1301 (11th Cir. 2008) and *United States v. Terzado-Madruga*, 897 F.2d 1099, 1119 (11th Cir. 1990), which, when read together, stand for the dual propositions that exclusion of evidence pursuant to O.C.G.A. § 24-4-403 "is an extraordinary remedy which should be used only sparingly since it permits the trial court to exclude concededly probative evidence," and that in close cases, the balance under the rule should be struck in favor of admissibility. *Id.* at 16.

Jones represents a rather large shift in the interpretation of the new Evidence Code. First, prosecutors must change their phraseology. Evidence under O.C.G.A. § 24-4-404(b) should not be referred to as "prior bad acts", or "similar transactions." The Supreme Court was clear—the correct term is simply "other act evidence." Second, the Court of Appeals' decision to eliminate the use of O.C.G.A. § 24-4-404(b) in DUI cases was error, and with the support of a *unanimous* Supreme Court, other acts evidence is back with a vengeance. The Court has outlined a clear test for determining the admissibility of such evidence, and has warned that there *is* a line beyond with other acts cannot come before a factfinder. However, there can no longer be any doubt that the "default setting" under O.C.G.A. §§ 24-4-404(b) and 24-4-403 permits *admission* of the evidence. But like all things in life, with an ability or advantage comes the responsibility and obligation to use it *fairly and ethically*. As prosecutors, we must and should hold accountable those who commit crimes, break our laws, and endanger the safety of themselves and other motorists. But at the end of the day, we too must be *accountable to the law* and resist the temptation to become bullies. GTP

Robert W. Smith, Jr. joined the Prosecuting Attorneys' Council in April, 2015 as a State Resource Prosecutor specializing in RICO/Appeals.

Robert is a 1995 graduate of Wake Forest and received his law degree from Mercer School of Law in 1998. He worked as a law clerk for the Brunswick Judicial Circuit, and also as an Assistant Solicitor General for Coweta County, an Assistant District Attorney in the Atlanta and Griffin Judicial Circuits, and an Assistant Attorney General. Robert was Lead Counsel in over 75 reported decisions of the Georgia appellate courts. He has successfully argued before the 11th Circuit Court of Appeals of the United States, Georgia Supreme Court and Georgia Court of Appeals. He serves on the faculty for Emory School of Law Kessler Trial Techniques and the PAC Basic Litigation course.

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Traffic Legislative Update

By Joseph L. Stone
Traffic Safety Resource Prosecutor
Prosecuting Attorneys' Council of Georgia

HB 1

"Haleigh's Hope Act" (Medical Marijuana)
Sponsor: Peake, Allen 141st
Governor approved 4/16/15; effective 4/16/15

HB 1 defines "low THC oil" as oil that contains not more than 5% tetrahydrocannabinol and an amount of cannabidiol equal to, or greater than, the THC. New O.C.G.A. § 16-12-191 makes it lawful to possess no more than 20 ounces of low THC oil if you are registered with the Department of Public Health, possess a registration card and the oil is in a pharmaceutical container that indicates the percentage of THC contained in the oil. It is a misdemeanor to possess 20 ounces or less of low THC oil and not meet the requirements above. Also, it is lawful to possess 20 ounces or less of low THC oil if you are a participant, caregiver, employee or agent of an authorized clinical study and possess a permit and the oil is in a pharmaceutical container. Manufacturing or dispensing or possession of greater than 20 ounces of low THC oil is a felony with increasing incremental punishment depending on the amount. Employers are not required to make any accommodations for individuals who use medical marijuana.

HB 118

Drivers' licenses; issuance of commercial licenses and instruction permits to comply with federal law; amend certain provisions
Sponsor: Tanner, Kevin 9th
Governor approved 5/12/15; effective 5/12/15

HB 118 modifies existing O.C.G.A. § 40-5-125 by making the use of a false or fictitious name or address when applying for any drivers' license a felony punishable in accordance with O.C.G.A. § 16-10-20 (false statements and writings). Also, new a subsection (c) is added to that section which makes knowingly making a false statement, concealing a material fact, or committing fraud when applying for a commercial drivers' license (CDL) or permit, punishable in accordance with O.C.G.A. § 16-10-20. Section 2 amends O.C.G.A. § 40-5-142(18.2)(H) so that violation of the new O.C.G.A. § 40-5-125(c) is a "major traffic violation" for commercial drivers' license purposes. Specifically, commercial drivers cannot hold a wireless phone to conduct voice communication, use more than a single button on a wireless phone to begin or end voice communications, or reach for a wireless phone so that he or she is no longer properly positioned in the driver's seat.

HB 123

Motor vehicles; use of safety chain or cable when operating a motor vehicle drawing a trailer; provide
Sponsor: Yates, John 73rd
Governor approved 5/5/15; effective 7/1/15

HB 123 amends O.C.G.A. § 40-6-254 to define a "load" to include, but not be limited to, a trailer required to be registered under Chapter 2 of Title 40.

HB 147

Motor vehicles; initial two-year registration period for certain vehicles; provide
Sponsor: Powell, Alan 32nd
Governor approved 5/6/15; effective 7/1/15

HB 147 amends O.C.G.A. § 40-2-20 to allow for the purchaser of a new motor vehicle to register the vehicle for 2 years at the initial registration. Thereafter, the vehicle shall be registered annually.

HB 206

Uniform rules of the road; procedure for passing sanitation vehicles; provide
Sponsor: Harrell, Brett 106th
Governor approved 5/5/15; effective 7/1/15

HB 206 amends Article 1 of Chapter 6 of Title 40 to add new O.C.G.A. § 40-6-16.1 to define the term "sanitation worker" and require vehicles passing sanitation trucks with active sanitation workers and displaying flashing lights to move over to the adjacent lane if possible and if not, to slow down and be prepared to stop. The fine for violating this Code Section shall not be more than $250.

HB 325

Safety belts; definition of term passenger vehicle; modify
Sponsor: Hitchens, Bill 161st
Governor approved 5/6/15; effective 7/1/15

HB 325 amends O.C.G.A. § 40-8-76.1 to revise the definition of "passenger vehicle" to include vehicles designed to carry 15 or fewer passengers. The Bill exempts vehicles designed to carry 11-15 passengers made before July 1, 2015.

HB 361

Juvenile Code; enact reforms as recommended by Georgia Council on Criminal Justice Reforms; provisions
Sponsor: Welch, Andrew 110th
Governor approved 5/6/15; effective 5/6/15

The Bill amends O.C.G.A. §§ 15-11-10 and 15-11-630 which establish juvenile traffic offenses, so that these provisions only applies if the child is under 17 years of age.

SB 100

Motor Vehicles and Traffic; provide for applicability with current federal reg. in the safe operations of motor carriers and commercial motor vehicles
Sponsor: Harper, Tyler 7th
Governor approved 4/16/15; effective 7/1/15

Part 1 of the Bill eliminates O.C.G.A. § 3-3-23.1(b)(3), which suspended the drivers' licenses of underage persons convicted of purchasing, attempting to purchase, or possessing alcoholic beverages.

Section 3-3 eliminates school nonattendance suspensions from the list of consequences for failing to adhere to compulsory school attendance requirements.

Section 4-4 adds new subsection (a)(1)(C) to O.C.G.A. § 40-2-20, which allows county tag agents to issue a one-time, 30 day temporary operating permit for vehicles that fail to satisfy federal emission standards. Section 4-8 eliminates school attendance requirements (*NOT the enrollment requirement*) for suspension of the drivers' licenses of persons under age 18. Also, DDS is authorized to issue limited driving permits to applicants who are suspended in another jurisdiction as long as the person would qualify for the permit if the offense had occurred in Georgia. Section 4-14 repeals O.C.G.A. § 40-5-57.2, thereby eliminating license suspensions for gas drive-offs. Section 4-15 eliminates license suspensions for minor in possession, misrepresenting age to purchase alcohol, and misrepresenting one's identity to purchase alcohol (O.C.G.A. §§ 3-3-23(a)(2), (3) and (5), respectively). Further, license suspensions for persons under 21 convicted of hit and run, racing, fleeing & attempting to elude, reckless driving, offenses for which four or more points are assessable, and DUI are made effective upon conviction by operation of law. Section 4-16 repeals O.C.G.A. § 40-5-63(e) and (f), which provided the suspension periods for minor in possession and related offenses. Section 4-17 removes school attendance suspensions from the list of suspensions for which a limited permit can be obtained, because the Bill eliminates such suspensions. This section also expands the work restriction on limited permits and ignition interlock limited permits so as to allow persons who drive in the normal course of their job to continue to do so, even though they do not have a "place of employment." Section 4-18 eliminates license suspensions for violations of the Georgia Controlled Substances Act, but retains them for DUI-Drugs offenses. Section 4-24 revises O.C.G.A. § 40-6-15 to allow only one nolo contendere plea to driving with a suspended registration within a five year period.

SB 134

Speed Detection Devices; provide for a rebuttable presumption for law enforcement agencies' use of speed detection devices
Sponsor: Stone, Jesse 23rd
Governor approved 5/6/15; effective 7/1/15

HB 134 amends O.C.G.A. § 36-81-8 which will require local governments to report the total amount of speeding fine revenue they generate to the Department of Community Affairs. Section 2 revises O.C.G.A. § 40-14-11. When fines collected based on speed detection devices used by a municipal or county law enforcement agency equal or exceed 35 (reduced from 40) percent of the agency's budget, a rebuttable presumption arises that the agency is "employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety." Fines collected for viola-

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tions of O.C.G.A. § 40-6-180 must be included in this calculation. However, fines from tickets where the violator exceeded the speed limit by 20 miles per hour or more are not considered.

SB 160

Alcoholic Beverages; revise penalties for a violation of Code Section 3-3-23
Sponsor: Williams, Michael 27th
Governor approved 5/6/15; effective 7/1/15

SB 160, Section 1, amends Article 2 of Chapter 3 of Title 3 by revising subsection (d) and (e) of O.C.G.A. § 3-3-23.1 requiring law enforcement to arrest by citation any person accused of violating paragraph (2), (3) or (5) of section (a) of O.C.G.A. § 3-3-23. If the person poses a threat to himself or others the officer may affect a custodial arrest. If the person has a license or permit the officer may seize it to ensure the accused's appearance in court.

Section 1A amends Article 2 of Chapter 11 of Title 16 by adding new O.C.G.A. § 16-11-46.1 to prohibit the identification of a minor in an obscene depiction or to electronically impose the facial features of a minor in an obscene depiction. GTP

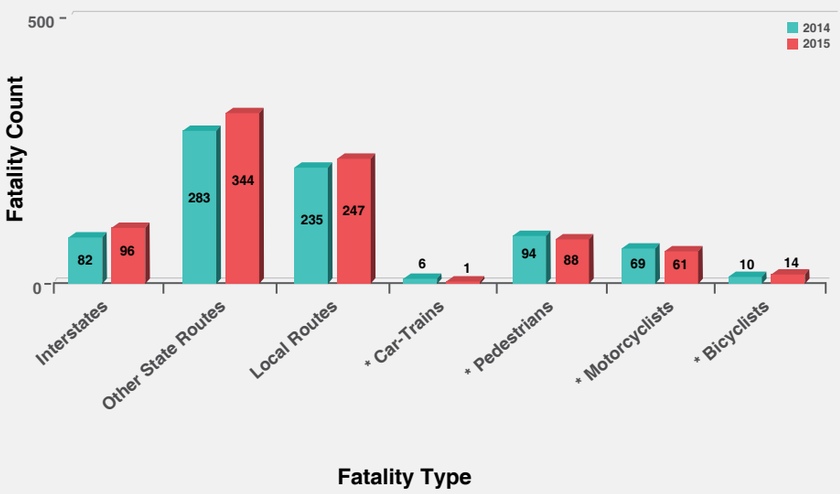
>>> DID YOU KNOW?

Georgia Department of Transportation

Georgia Traffic Deaths - Yearly Total and Comparison
GDOT Office of Traffic & Operations
Fatalities as of Friday, July 17, 2015

	TOTAL		YTD		YTD Change	
Fatality Type	2013	2014	2014	2015	Diff	%
Interstates	189	153	82	96	14	17%
Other State Routes	539	564	283	344	61	22%
Local Routes	461	453	235	247	12	5%
* Car-Trains	9	7	6	1	-5	-83%
* Pedestrians	180	170	94	88	-6	-6%
* Motorcyclists	113	134	69	61	-8	-12%
*B icyclists	27	19	10	14	4	40%
Total Fatalities	1,189	1,170	600	687	87	15%

* Included in Total



>>> UPCOMING TRAINING EVENTS

JULY 23, 2015

Advanced Family Violence Training
Tybee Island Police Department
78 Van Horn Street
Tybee Island, GA 31328
9:00 AM - 4:00 PM

AUGUST 10, 2015

Joint Prosecutor & Law Enforcement Drug Impaired Driving Training
Reinhardt University - North Fulton Campus
4100 Old Milton Parkway
Alpharetta, GA 30005
8:00AM - 3:00PM

AUGUST 20, 2015

Joint Prosecutor & Law Enforcement Drug Impaired Driving Training
Tybee Island Police Department
78 Van Horne Street
Tybee Island, GA 31328
8:00AM - 3:00PM

AUGUST 21, 2015

Joint Prosecutor & Law Enforcement DUI Training
Tybee Island Police Department
78 Van HorneStreet
Tybee Island, GA 31328
8:00AM - 3:00PM

SEPTEMBER 10, 2015

Joint Prosecutor & Law Enforcement DUI Training
Coweta Justice Center / Cranford Hall
72 Greenville Street
Newnan, GA 30263
8:00AM - 3:00PM

SEPTEMBER 11, 2015

Joint Prosecutor & Law Enforcement Drug Impaired Driving Training
Coweta Justice Center / Cranford Hall
72 Greenville Street
Newnan, GA 30263
8:00AM - 3:00PM

SEPTEMBER 24, 2015

Joint Prosecutor & Law Enforcement DUI Training
Cornelia Police Department
514 Nicolon Drive
Cornelia, GA 30531
8:00 AM - 3:00 PM

SEPTEMBER 25, 2015

Joint Prosecutor & Law Enforcement Drug Impaired Driving Training
Cornelia Police Department
514 Nicolon Drive
Cornelia, GA 30531
8:00 AM - 3:00 PM

Visit the PAC website to read more about our training events or to register to attend a course www.pacga.org.

Coming In September:
"Protecting Lives, Saving Futures"

Uncredited photo used courtesy of hotels.com.
http://www.coopercarry.com/project/brasstown-valley-resort-conference-center/

The Traffic Safety Resource Program, in conjunction with the Governor's Office of Highway Safety, will present NHTSA's *"Protecting Lives, Saving Futures"* course, from September 2-4, 2015 at Brasstown Valley Lodge in Young Harris, Georgia. Interested law enforcement officers and prosecutors responsible for the investigation and prosecution of impaired driving cases are encouraged to attend. Attendees will receive advanced training on standardized field sobriety evaluations, blood and breath testing, drugged driving trends, trial preparation, and dealing with defense experts. In addition, the course will feature both a live alcohol workshop and a hands-on Intoxilyzer 9000 laboratory. Completion of the course will allow prosecutors and officers alike to better investigate, understand and present cases involving alcohol and drug impairment. GTP

Protecting Lives, Saving Futures
Brasstown Valley Lodge
6321 Highway 76
Young Harris, GA 30582
September 2-4, 2015

To preregister for this event, call Kelly McWaters at (770) 282-6300, or visit the PAC website at: *http://www.pacga.org/site/content/33*.

GEORGIA traffic PROSECUTOR

Prosecuting Attorneys' Council of Georgia
Traffic Safety Program
1590 Adamson Parkway, Fourth Floor
Morrow, Georgia 30260

>>> GEORGIA TRAFFIC SAFETY RESOURCE PROGRAM

Todd Hayes
Senior Traffic Safety Resource Prosecutor
(770) 282-6300
thayes@pacga.org

Joe Stone
Traffic Safety Resource Prosecutor
(770) 282-6300
jlstone@pacga.org

>>> fact:

Seven months into 2015, Georgia has experienced a 15% increase in traffic fatalities. That represents 87 more lives lost on Georgia's roads and highways than during the same portion of 2014. Increased traffic enforcement of speeding, seat belts and impaired driving will save lives.

Source: Georgia Department of Transportation Daily Fatality Report

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 Todd Hayes or Joe Stone at PAC.