

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



Georgia's new evidence code has changed the way law enforcement officers should interact with hearing impaired motorists on the state's roadways. Pete Lamb reviews both the old law and the recent changes, and offers officers on the road effective strategies for applying the new legal requirements when they discover that the person they have stopped is unable to hear.

feature articles

- | | |
|--|---|
| <i>Missouri v. McNeely</i> | 5 |
| <i>A Summary of Traffic Laws Enacted by the 2013 Session of the Georgia General Assembly</i> | 6 |



Don't forget to visit our Training Web page to register for our traffic safety-related conferences and training courses.

LAW ENFORCEMENT INTERACTIONS WITH THE HEARING IMPAIRED UNDER GEORGIA'S NEW EVIDENCE CODE

By Pete Lamb, DRE/SFST Instructor

Georgia's new evidence code, which took effect on January 1, 2013, generally reflects the General Assembly's desire to enact the Federal Rules of Evidence. However, several of the new rules either differ significantly from their Federal counterparts or simply *do not have counterparts* in the Federal Rules of Evidence. One such portion of the new code that is particularly important to police officers engaged in traffic enforcement concerns Georgia's new rules governing the interaction between law enforcement officers and hearing impaired persons. See generally O.C.G.A. § 24-6-650, *et seq.* Georgia law has long included procedural requirements for officers investigating and potentially arresting hearing impaired suspects, but the 2013 evidence code revisions made significant substantive changes to the legal definitions concerning the hearing impaired and the procedures that must be followed. In order to assist traffic enforcement officers adjust their approach to hearing impaired suspects, this article will examine the substantive legal changes in the new code, review relevant portions of existing appellate case law, and formulate some recommended guidelines for officers faced with the investigation and arrest of a hearing impaired person.

"Arrested" and "Taken into Custody:" Words that Matter

Before January 1, 2013, the procedures to be followed by law enforcement officers dealing with hearing impaired suspects were codified at O.C.G.A. § 24-9-103 and were triggered when such suspects were "taken into custody." The new provisions for hearing impaired suspects can be found at O.C.G.A. § 24-6-653. Significantly, in newly-enacted O.C.G.A. § 24-6-653(a), the old "taken into custody" language has been replaced with the words "is arrested." The significance of this alteration is not merely semantic. Under Georgia law, officers take persons "into custody" for a variety of reasons (including deprivation) not rising to the level

of formal arrest; however, officers only "arrest" persons for violations of law. Therefore, based on the change in the language of the statute, it appears that in cases where a hearing impaired person is "taken into custody" for purposes other than arrest, the provisions of the new statute simply do not apply. Though it is true that the term "in custody" appears in O.C.G.A. § 24-6-653(b)(1), the context and usage of the term clearly indicates the legislative intent to prevent use of the requirements concerning sign-language interpreters for hearing impaired arrestees as a basis for delaying the release of such persons. This usage obviously implies that an arrest has already occurred, which reinforces the conclusion that the 2013 provisions only apply *after* a hearing impaired person has been formally arrested.

Request for a Qualified Interpreter

Former Code Section 24-9-103(b)(1) required that, upon taking a hearing impaired person "into custody," the arresting agency request a qualified interpreter from the Department of Labor, and further indicated that the department "shall" provide the interpreter. New O.C.G.A. § 24-6-653(b)(1) eliminates those requirements, and instead provides as follows:

Except as provided in paragraph (2) of this subsection, no interrogation, warning, informing of rights, taking of statements, or other investigatory procedures shall be undertaken upon a hearing impaired person unless a qualified interpreter has been provided or the law enforcement agency has taken such other steps as may be reasonable to accommodate such person's disability. No answer, statement, admission, or other evidence acquired through the interrogation of a hearing impaired person shall be admissible in any criminal or quasi-criminal proceedings unless such was knowingly and

continued >

voluntarily given. No hearing impaired person who has been taken into custody and who is otherwise eligible for release shall be detained because of the unavailability of a qualified interpreter.

The new statutory text indicates at least three important changes to the law regarding the interaction between law enforcement and the hearing impaired. First, law enforcement agencies are no longer required to request sign language interpreters from the Department of Labor. Second, law enforcement agencies are permitted to proceed with investigative procedures involving a hearing impaired suspect as long as they take “such other steps as may be reasonable” to accommodate the hearing impaired person’s disability. Finally, there is no longer an absolute requirement that a qualified interpreter be present while interrogation (or a similar activity) is being conducted, and evidence (including answers, statements, and admissions) obtained from the hearing impaired suspect are not subject to automatic suppression due to the absence of an interpreter. Instead, such evidence is *admissible* as long as it was knowingly and voluntarily provided by the suspect.

Gone with the Wind: The One-Hour Waiting Period

Subsection (b)(2) of Code Section 24-6-653 also makes important changes to Georgia law. Under former O.C.G.A. § 24-9-103(b)(2), after requesting a qualified interpreter from the Department of Labor, an arresting officer had to wait at least one hour before he could proceed with his investigation, unless the hearing impaired suspect waived his or her right to an interpreter. The new statute is substantively different, and provides as follows:

If a qualified interpreter is not available, an arresting officer may interrogate or take a statement from such person, provided that if the hearing impaired person cannot hear spoken words with a hearing aid or other sound amplification device, such interrogation and answers thereto shall be in writing and shall be preserved and turned over to the court in the event such person is tried for the alleged offense.

O.C.G.A. § 24-6-653(b)(2) (2013). The provision includes at least two substantive changes. First, law enforcement officials are no longer required to wait one hour for a qualified interpreter before proceeding with their investigation. Instead, investigations are allowed to proceed when it becomes apparent that no interpreter is available. Secondly, when the law enforcement agency proceeds with the investigation, it must determine whether the hearing impaired suspect can or cannot hear spoken words through use of some amplification device (such as a hearing-aid); if the suspect cannot do so, the interrogation and answers must

be preserved in writing for use as evidence at trial. As a practical matter, this requirement appears to be based on good, old-fashioned common sense.

Defining a “Qualified Interpreter”

Another important change resulting from the new evidence code is a change in how the term “qualified interpreter” is defined. Prior to January 1, 2013, former Code Section 24-9-101(6) defined a “qualified interpreter” as “any person certified as an interpreter by the National Registry of Interpreters for the Deaf or approved as an interpreter by the Georgia Registry of Interpreters for the Deaf.” However, in the new evidence code, the definition of “qualified interpreter” was moved to O.C.G.A. § 24-6-651(6), and now provides that “[q]ualified interpreter” means any person certified as an interpreter for hearing impaired persons by the Registry of Interpreters for the Deaf or a court qualified interpreter.” The new statute excludes the former requirement that an interpreter be approved by the Georgia Registry of Interpreters for the Deaf, and adds the new term “court-qualified interpreter.” According to the new O.C.G.A. § 24-6-651(2), a “court qualified interpreter is defined as, “any person licensed as an interpreter for the hearing impaired pursuant to Code Section 15-1-14.”

Code Section 15-1-14 authorizes the Georgia Supreme Court to promulgate rules governing foreign language and hearing impaired interpreters for use in courts throughout the State. The Court has done so by adopting the “Rules of Use of Interpreters,” which can be found at Ga. Sup. Ct. Note (2013). (The Rules can be easily accessed online at http://www.georgiacourts.org/files/INTERPRETERS%20RULES_FINAL_07_03_12.pdf.) The rules requiring “Certification, Conditional Approval, Registration, and Training of Interpreters” are located in Appendix B, and section III specifically addresses the qualifications of hearing impaired interpreters. Section III provides that “[t]o be recognized as a court qualified interpreter or qualified interpreter in Georgia, an interpreter must hold a current certification from the Registry of Interpreters for the Deaf.” However, the Supreme Court appears to recognize that interpreters satisfying these requirements may not always be available. Section VIII of Appendix B rules allows for “other persons” to interpret court proceedings when a qualified interpreter is not available so long as they “comply with the standards for interpreting of the Georgia Commission on Interpreters to the best of their ability.” Appendix B, Section VIII, Georgia Supreme Court Rules concerning Requirement for Certification, Conditional Approval, Registration, and Training of Interpreters (2003).

Reading new Code Section 24-6-651 alongside the Georgia Supreme Court’s rules regarding hearing impaired interpreters, it appears that as

long as law enforcement agencies take “reasonable steps” to accommodate the a hearing impaired suspect’s disability during investigations, any evidence that results should be admissible at trial. Though agencies would be well-advised to provide hearing impaired suspects with “qualified interpreters” whenever that is possible, there is no absolute requirement that only certified interpreters be used. However, when a qualified interpreter is not utilized, agencies should carefully document the steps they took to reasonably accommodate and communicate with the hearing impaired party.

A Review of Existing Case Law

O.C.G.A. § 24-6-653(b)(1) expressly provides officers may proceed with “interrogation, warning, informing of rights, taking of statements, or other investigatory procedures” in regard to a hearing impaired arrestee if a qualified interpreter is not available. Existing Georgia case law addressing these issues has primarily come in the in the context of DUI enforcement. In order to gain a fuller understanding of what the new statutory provisions actually permit, a review of these prior cases is invaluable.

In *State v. Webb*, 212 Ga.App. 872 (1994), the arresting officer used the services of a friend of the defendant to convey the Implied Consent warning through sign language. In addition, the officer showed the defendant a printed form containing the Implied Consent language. *Id.* The form was initialed by the interpreter/friend (who did not satisfy the requirements for a “qualified interpreter” because (s)he was *not* certified by the National Registry of Interpreters for the Deaf). *Id.* The trial court suppressed the defendant’s 0.300 test results the officer had failed to comply with the (now-eliminated) statutory requirement waiting one hour after requesting a qualified interpreter before conveying the warning to the defendant. *Id.* at 873. In reversing the trial court, the Court of Appeals noted that the pre-2013 law allowed officers to “interrogate” suspect if a “qualified interpreter” could not be provided within an hour. However, the Court also held that the Implied Consent statutes had been interpreted as only requiring an officer to *convey* the Implied Consent warning to a suspect driver, and not as requiring a showing that the driver *understood* the warning. *Id.* at 874. Therefore, the Court reasoned that “although the legislature did not specify what procedure is required in the case of a hearing impaired person arrested for driving under the influence, since he is as a matter of law ‘a direct and immediate threat to the welfare and safety of the general public’ (O.C.G.A. § 40-5-55(a)), the laws requiring the presence of a ‘qualified interpreter’ do not vitiate his implied consent.” *Id.* As a result of *Webb*, therefore, the pre-2013 provisions relating to hearing impaired suspects arrested for DUI seem to have been interpreted such that the one-hour wait requirement for a qualified interpreter was unnecessary if the State

continued >

could show that the Implied Consent notice was properly conveyed to the hearing impaired driver. This approach appears to have carried over into the newly-enacted O.C.G.A. § 24-6-653.

In *State v. Woody*, 215 Ga.App. 448 (1994), a different panel of the Court of Appeals re-examined the *Webb* holding and declined to follow it. Instead, the Court held that the requirements of former Code Section 24-9-103 regarding law enforcement's duty to request a qualified interpreter and the one-hour waiting period for such an interpreter were *mandatory*. *Id.* at 450. In the *Woody* case, the officer read the Implied Consent warning to the defendant's mother and asked her to communicate it to her son. *Id.* at 448. The officer further testified that Woody personally read the warning, *Id.* at 448; however, the defendant's mother testified both that (1) her son did not have his glasses and could not read without them, and (2) her ability to communicate with her son was marginal, *Id.* at 449. She also testified that she did NOT inform her son of his right to an independent test. *Id.* The Court said that, under the circumstances, the substance of the Implied Consent warning had *not* been properly conveyed to the defendant. *Id.* The Court did note that if, after the one-hour wait, a written and preserved record of communications had been made pursuant to former Code Section 24-9-103(b)(2), then the reading of the warning would have been valid and permitted the admission of the test results. *Id.* at 450. However, the failure to follow the then-existing statutory requirements led the Court to conclude that the defendant's chemical test should be suppressed. *Id.*

The following year the Court of Appeals decided *Allen v. State*, 218 Ga.App. 844 (1995). In an opinion authored by the judge that wrote the opinion in *Webb*, the Court significantly backed away from the result in that case, explaining that the *Webb* decision hinged on the fact that a sign language interpreter was actually present. Therefore, the court reasoned that the "spirit and intent" of the law governing interpreters for hearing impaired suspects was followed in that case. *Id.* at 846. As in *Woody*, the Court expressly held that the one-hour waiting period after requesting a hearing impaired interpreter was an absolute requirement, but the Court frankly acknowledged the significant problems created for law enforcement in the context of a DUI investigation; indeed, the Court went so far as to urge the General Assembly to change the law. *Id.* at 849. However, the Court held that a hearing impaired driver could "intelligently waive" the requirement for an interpreter, and "then the officer may proceed with written interrogatories and the impaired person should answer in writing, and the officer then proceed under the implied consent law." *Id.* Ultimately, the defendant's breath test in *Allen* was suppressed because (1) the defendant's implied consent rights were not

conveyed to her by a competent sign language interpreter within the meaning of the implied consent law; (2) the police did not wait one hour after requesting an interpreter before proceeding with their investigation; and (3) the advice given to appellant was inaccurate and misleading and she was denied her express request to have an independent test. *Id.*

The most recent case addressing the issue of hearing impaired DUI suspects is *Yates v. State*, 248 Ga.App. 35 (2001). In *Yates*, the defendant informed the officer that he was deaf, but able to lip-read. *Id.* After testing positive on an alco-sensor, the defendant refused further field testing. *Id.* Subsequently, the officer asked the defendant to read the Implied Consent warning while the officer read it aloud. *Id.* The defendant informed the officer that he could not understand him and requested his own personal interpreter. *Id.* He later refused to submit to a state-administered breath test until his own interpreter was present. *Id.* The trial court denied the defendant's motion to suppress his refusal, and the defendant appealed. *Id.* In reversing the trial court, the Court of Appeals held that the statutory requirements for provision of a hearing impaired interpreter were not met. According to the Court, the officer "did not try to obtain a qualified interpreter, nor did he communicate with Yates in writing after requesting an interpreter and waiting an hour for one to be provided." *Id.* at 36.

The common theme in *Webb*, *Woody*, *Allen*, and *Yates* is that each case emphasizes the importance of written communication between law enforcement officers and suspects once it appears that a qualified interpreter will not be available. In *Webb*, there was a form containing the Implied Consent warning signed by the defendant and initialed by his interpreter/friend. 212 Ga.App. at 872. In *Woody*, the court held that "all communication, including any questions [the defendant] had and his acknowledgment that he understood his rights, should have been in writing so the trial court could have a record of the exchange." 215 Ga.App. at 450. The *Allen* court held that after the one hour waiting period was observed, "[an] officer may proceed with written interrogatories and the impaired person should answer in writing, and the officer then proceed under the implied consent law." 218 Ga.App. at 849. A similar emphasis was placed on the importance of written documentation of compliance with the Implied Consent by the Court in *Yates*. As noted in *Yates*, the requirements for hearing impaired suspects are not limited to DUI cases; instead, the law "is clear in its application to *any* hearing impaired person taken into custody for allegedly violating *any* criminal law." 248 Ga.App. at 36.

The Waiver Issue

As under pre-2013 Georgia law, O.C.G.A. § 24-6-655 contains a provision under which a

hearing impaired suspect can waive his or her right to a qualified interpreter. The statute indicates that any such waiver must be in writing; however, nothing in the statute requires that a waiver *precede* questioning. Nevertheless, as a practical matter, obtaining the waiver in advance is highly advisable.

O.C.G.A. § 24-6-657: An Absolute Bar to Questioning?

Subsection (c) of newly-enacted O.C.G.A. § 24-6-657 provides that "[w]henver a qualified interpreter is *required* by this article, the agency or law enforcement agency shall not take any action until such interpreter is in full view of and spatially situated so as to assure effective communication with the hearing impaired person (*emphasis added*)." At first glance, this statute appears to bar any action by law enforcement regarding a hearing impaired suspect until a qualified hearing impaired interpreter is present. However, officers are encouraged to remember that under O.C.G.A. § 24-6-653(b), a qualified interpreter is not *required* until a suspect is *under arrest*; prior to arrest, if no interpreter is available, "interrogation, warning, informing of rights, taking of statements, or other investigatory procedures" may proceed as long as a law enforcement agency "has taken such other steps as may be reasonable to accommodate [the hearing impaired] person's disability." Only at the point that a suspect is *arrested* does O.C.G.A. § 24-6-653(a) absolutely *require* a law enforcement agency to provide a suspect with an interpreter, and only at that point will O.C.G.A. § 24-6-657 operate to bar further law enforcement activity until an interpreter is present. Therefore, officers should take great care to avoid communicating that a hearing impaired suspect is under arrest (either expressly or by taking actions that would cause a reasonable person in the hearing impaired suspect's position to feel that they are not simply temporarily detained) until such an arrest is warranted by the circumstances of the investigation.

Taking it "On the Road"

Given the substantive and procedural changes effected by the new evidence code regarding hearing impaired suspects, what practical steps should law enforcement officers and agencies take when dealing with the investigation and prospective arrest of a hearing impaired suspect? The following general guidelines provide patrol officers a framework within which to approach "interrogation, warning, informing of rights, taking of statements, or other investigatory procedures" regarding hearing impaired offenders:

- Because "qualified interpreters" for the hearing impaired are certified by the Registry of Interpreters for the Deaf or satisfy the requirements for a "court qualified interpreter" under the Supreme Court rules,

continued >

law enforcement agencies should reach out to their prosecutors and judges to determine what qualified interpreters are available within their jurisdiction. Where possible, contact information for these interpreters should be obtained for later use.

- When initiating law enforcement action against a hearing impaired suspect, officers and agencies should make every effort to obtain the services of a qualified interpreter *and document the attempt*. However, it is *no longer necessary to wait one hour* before proceeding with investigative activity once it becomes apparent that no interpreter is available.
- If this effort to locate a qualified hearing impaired interpreter is unsuccessful, then agencies must take “reasonable steps” to accommodate the hearing impaired person’s disability. Agencies should determine the precise nature of such steps in advance, and should be prepared to assist their prosecutors to explain those steps to a court in order to preserve the admissibility of any evidence obtained.
- Among the steps agencies should consider when a qualified interpreter is not available is to direct all questions to the arrestee *in writing*, and to have his or her responses documented *in writing*, as well. Although this requirement technically only applies to suspects that cannot hear spoken words through use of some amplification device (such as a hearing-aid), agencies should seriously consider adopting it for *all hearing impaired suspects* in order to avoid later confusion or disputes concerning the extent to which a suspect understood his or her communications with officers.
- Agencies should develop and implement a policy for preserving the written communications as evidence for later use, whether at trial or to deal with issues surrounding officer liability.
- Finally, agencies that wish to allow a hearing impaired suspect to waive the presence of a qualified interpreter should develop a written form for that purpose that is preserved for later use in the same way as communications between officers and the suspect. GTP

Officers and agencies that follow, or at least consider, these guidelines should be well prepared to face the challenges that arise from both traffic stops and investigations concerning hearing impaired suspects.

Pete Lamb is a Drug Recognition Expert (DRE)/Standardized Field Sobriety Testing Instructor who retired from the Richmond County Sheriff’s Office in 2010 after 30 years of service.

*He received his Juris Doctorate from Atlanta’s John Marshall Law School in May of 2013 and will receive the “DRE Emeritus” award from the IACP in August of 2013. Pete has accepted a position as an Assistant District Attorney with the District Attorney’s Office for the Augusta Judicial Circuit. Among his other accomplishments, Pete has authored numerous articles for the “Georgia Traffic Prosecutor;” helped edit the recently-published 2013-2014 edition of **Carlson on Evidence: Comparing the Georgia and Federal Rules**, and is a contributor to **Criminal Offenses and Defenses in Georgia** (authored by Associate Dean Paul M. Kurtz of the University of Georgia School of Law).*

TEXTING WHILE DRIVING

involves all

3 MAJOR TYPES of DISTRACTION:



Manual: Taking your hands off the wheel.



Visual: Taking your eyes off the road.



Cognitive: Taking your mind off driving.

Source: NHTSA’s “Safety 1n Numb3rs Newsletter,” Volume 1, Issue 1, April 2013, available at http://www.nhtsa.gov/staticfiles/numbers/Safety-InNumbers_Nletter101_811742.pdf.

continued >

Missouri v. McNeely:

The U.S. Supreme Court Rules That Natural Dissipation of Alcohol in the Bloodstream Does Not *Per Se* Constitute Exigent Circumstances Sufficient to Justify Conducting a Blood Test Without a Warrant

By Gary Bergman, Staff Attorney, Prosecuting Attorneys' Council of Georgia

In *Missouri v. McNeely*, No. 11-1425 (April 17, 2013), an officer on routine patrol stopped McNeely around 2:00 a.m. for speeding and crossing the centerline. The officer noticed obvious signs of intoxication. McNeely agreed to perform, but failed, a battery of field sobriety tests. The officer then arrested him for DWI (driving while intoxicated). McNeely was taken by the officer to a hospital where the officer read him Missouri's implied consent rights and requested a blood test. McNeely refused. The officer, without securing a search warrant, then directed a hospital lab technician to take a blood sample, which was secured at 2:35 a.m. The results showed McNeely's BAC to be more than twice the legal limit.

The Court framed the question as follows: "[W]hether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for non-consensual blood testing in all drunk-driving cases." In *Schmerber v. California*, 384 U.S. 757, 770 (1966), the Court upheld a warrantless blood test of a person arrested for DUI because the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction

of evidence." Specifically, the Court noted that the officer in *Schmerber* did not have time to seek out a magistrate and secure a warrant because the officer needed time to bring the accused to a hospital and to investigate the scene of the accident. Thus, in finding the warrantless blood test reasonable in *Schmerber*, the Court considered all of the facts and circumstances and based its holding on those specific facts. In other words, *Schmerber* did not create a *per se* rule, but rather embraced the totality of circumstances approach in which the metabolization of alcohol in the bloodstream and the ensuing loss of evidence is just one factor to be considered in deciding whether a warrant is required.



Photo courtesy of "Kenyan Jurist Blogspot," accessed 6/29/13, reproduced for educational purposes under the Fair Use Doctrine (<http://kenyanjurist.blogspot.com/2011/06/comment-on-supreme-court-bill-2011.html>).

Thus, the Court found, in those impaired driving cases in which law enforcement can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so. In rejecting the bright-line *per se* rule, the Court also noted that the proposed rule failed to account for technological advances in communications made in the 47 years since *Schmerber* which "allows for the more expeditious processing of warrant applications, particularly in contexts like drunk driving investigations where the evidence offered to establish probable cause is simple." In fact, adopting a *per se* rule would ignore current and future technological developments in warrant procedures and could diminish the incentives for jurisdictions to pursue progressive approaches to warrant acquisition that preserve the protections afforded by the warrant while also meeting the legitimate interests of law enforcement. Accordingly, "while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case...it does not do so categorically. Whether a warrantless blood test...is reasonable must be determined case by case based on the totality of the circumstances." 



DID YOU KNOW?

According to data released by the National Highway Traffic Safety Administration, while driving in 2012:

- 1 in 2 drivers answered calls;
- 1 in 4 drivers placed calls;
- 3 in 5 YOUNG drivers answered calls;
- 1 in 3 YOUNG drivers placed calls; and
- 2 in 5 YOUNG drivers were observed manipulating a hand-held device (more double than in 2010).

Source: NHTSA's "Safety 1n Numb3ers newsletter," Volume 1, Issue 1, April 2013 available at http://www.nhtsa.gov/staticfiles/numbers/SafetyInNumbers_Nletter101_811742.pdf.

continued >

A SUMMARY OF TRAFFIC LAWS ENACTED BY THE 2013 SESSION OF THE GEORGIA GENERAL ASSEMBLY

Summaries by Todd Hayes, Traffic Safety Resource Prosecutor, Prosecuting Attorneys' Council of Georgia



Photo courtesy of Ken Lund, shared through Flickr and licensed under the Creative Commons Attribution-Share Alike 2.0 Generic license (<http://creativecommons.org/licenses/by-sa/2.0/legalcode>).

The 2013 Session of the General Assembly directly addressed very little in terms of traffic safety issues. However, a number of bills that indirectly affect Georgia's driving public were passed, and the laws regarding boating and hunting under the influence of alcohol were significantly revised. The following summaries cover new legislation that has the potential to impact Georgia traffic prosecutors.

House Bill 99

Malt beverages; amount produced by a person in his or her private residence; change

Spencer, Jason; 180th
Effective 7/1/13.

House Bill 99 increases the amount of home-brewed malt liquor that may be brewed in a household from 50 gallons per year to 100 gallons per year, or 200 gallons per year if there are two or more persons of legal drinking age in the household. The bill also permits the transportation of home-brewed malt liquors for purposes of "home-brew special events" (i.e., brewing competitions) under specified conditions, and amends the Open Container statute (O.C.G.A. § 40-6-253) to allow for such transportation.

House Bill 254

Motor vehicles; electronic proof of insurance may be accepted under certain circumstances; provide

Williamson, Bruce; 115th
Effective 5/6/13.

House Bill 254 amends O.C.G.A. § 40-6-10, relating to insurance requirements for operation of motor vehicles, by permitting insurance companies to issue proof of motor vehicle insurance coverage as required by Chapter 34 of

Title 33 to their customers in an electronic format via a mobile electronic device (i.e., a smart phone or tablet device). However, the amendment does not require such electronic proof to be available in "real time." In addition, the bill permits electronic proof-of-insurance to be used for purposes of keeping proof of insurance in insured vehicles and for proving the existence of fleet insurance and makes such electronic proof unnecessary when the records or data

base of the Department of Revenue indicate that a motorist has effective insurance. Finally, the legislation clarifies that motorists do not expose the remaining contents of their mobile devices for search and seizure by displaying electronic proof of insurance.

House Bill 323

Motor vehicles; age for operation of certain commercial motor vehicle operators; modify

Powell, Alan; 32nd
Effective 7/1/13 and 1/1/14 (Section 12 relating to covered farm vehicles).

House Bill 323 raises the driving age for interstate drivers of motor vehicles for motor carriers from 18 to 21 years of age. It also requires motor carriers or operators of commercial motor vehicles to comply with federal motor carrier safety, seatbelt, and hours of service/duty status standards and requirements. Failure to wear a seatbelt in a commercial motor vehicle is made a misdemeanor punishable by a \$50 fine, which is exempted from surcharges. The legislation also establishes the "Regulatory Compliance Section" of the Motor Carrier Compliance Division of the Department of Public Safety, and charges it with the regulation of the operation of motor carriers and limousine carriers (in accordance with Article 3 of Title 40), motor carrier safety (pursuant to O.C.G.A. § 40-1-8), and hazardous materials transportation (in accordance with Article 2 of Title 40). Civil penalties and emergency suspensions by the Commissioner of Public Safety for failure to comply with motor carrier, limousine, or hazardous materials regulations are authorized by the bill. Finally, "covered farm vehicles," as defined by the bill, are exempted from regulation as commercial motor vehicles.

House Bill 349

Criminal cases; provide state with more direct appeal rights

Golick, Rich; 40th

Effective 7/1/13; applicable to offenses committed on or after 7/1/13.

HB 349 is legislation resulting from the second year report of the 2012 Special Council on Criminal Justice Reform. It addresses a wide range of criminal justice topics, ranging from the State's right to appeal to mandatory minimum sentencing to driver's licenses. (The tag line on the General Assembly website only mentions the state's expanded appellate rights.) In Sections 1, 2, and 3 (O.C.G.A. Chapter 5-7) the State is given the right to directly appeal pretrial orders that would exclude the introduction of evidence that is "a substantial proof of a material fact" and certain orders transferring serious violent felonies from superior court to juvenile court. The problems caused by *Wilson v. State*, 291 Ga. 458 (2012), are addressed in Sections 4, 5 and 6 by removing the word "knowingly" from the trafficking statutes and by adding a new O.C.G.A. § 16-13-54.1 that provides that "the state shall not have the burden of proving that a defendant knew the weight or quantity of the controlled substance or marijuana." Sections 4, 5, 7, 8 and 9 include provisions establishing procedures for downward departures from certain mandatory minimum sentences, one of which allows downward departures if the prosecution and the defense agree to a downward departure. Section 10 creates a permanent Georgia Council on Criminal Justice Reform. Section 11 addresses child hearsay. Sections 12 and 13 deal with restoration of driver's licenses for defendants who successfully complete a drug or DUI court program. Sections 13 and 14 make technical changes in Title 42.

House Bill 407

Drivers' licenses; mandatory use of ignition interlock devices following second conviction for driving under influence of alcohol or drugs; modify and extend provisions

Powell, Alan; 32nd
Effective 7/1/13.

For persons convicted of DUI for the second time in five years, House Bill 407 raises from six months to one year the time the offender must install and maintain an ignition interlock device coincident with the issuance of an ignition interlock device limited permit. The bill

continued >

clarifies that convicted offenders exempted from the ignition interlock requirements of O.C.G.A. § 42 -8, Article 7 are not eligible for a limited permit or any other form of driving privilege for a period of one year. Further, the legislation extends the time period associate with an ignition interlock device limited permit from 8 months to one year.

House Bill 475

Drivers' licenses; commissioner to enter into reciprocal agreements on behalf of Georgia for recognition of licenses issued by foreign territories; authorize

Pak, B.J.; 108th
Effective 7/1/13.

House Bill 475 authorizes the Commissioner of Drivers' Services to enter into agreements with foreign countries exempting citizens of those countries from the knowledge test and the on-the-road driving test required for driver's license applicants so long as the foreign citizen holds a valid driver's license of an equivalent class from his country of origin and the foreign nation extends the same treatment to Georgia drivers. Before entering into such an agreement, the commissioner must determine that the traffic laws of the foreign are sufficiently similar to Georgia traffic laws so that traffic safety is not compromised, and the Department of Economic Development must certify that persons or entities from the foreign country are contributing or will contribute to Georgia's economy by stimulating job growth. Foreign states designated as state sponsors of terrorism by the U.S. Department of State are ineligible to enter into such agreements. The agreements do not cover commercial licenses or motorcycle licenses.

Senate Bill 120

Probate Courts; provide for prosecuting attorneys in counties where there is not state court

Crosby, John; 13th
Effective 5/6/13.

In counties where there is no State Court, Senate Bill 120 allows Probate Court judges to request the circuit District Attorney to provide his or her assistants as prosecutors in criminal cases and allows county governments to fix rates of compensation for the assistant districts attorneys who do so. If a district attorney declines to assist the Probate Court, the bill authorizes county governments to appoint a prosecutor for the Probate Court who shall serve at the pleasure of the county governing authority. The bill delineates the powers, responsibilities, and authority of Probate Court prosecutors.

Senate Bill 122

Drivers' Licenses; authorize the issuance of a temporary driving permit; noncitizen applicant whose license has expired; filed extension

Hill, Hunter; 6th
Effective 1/1/14.

Senate Bill 122 permits non-U.S. citizens who validly obtained a Georgia Drivers' License or Identification Card during a period of time in which they were legally present in the United States to obtain a temporary driving permit or identification card valid for 120 days upon presentation of proof to the Department of Drivers Services that they have filed for an extension of their legal stay in the United States with the U.S. Department of Homeland Security. The noncitizen applicant may apply for the temporary license or identification beginning 30 days prior to the expiration of their existing license or identification, and may not reapply for an additional temporary permit unless they are first able to renew their existing license or identification.

Senate Bill 136

"Kyle Glover Boat Education Law" and "Jake and Griffin BUI Law"; provide for greater public protection for hunting and boating

Miller, Butch; 49th
Effective 5/15/13.

Senate Bill 136 extensively revises boating safety laws and the boating and hunting under the influence statutes. For both hunting and boating, the bill lowers the legal alcohol limit to 0.08 (identical to the driving limit), updates the applicable implied consent language, and conforms the applicable implied consent warnings to the language used in the driving context. The bill also allows law enforcement officers to obtain the bodily substances of suspected offenders for chemical testing purposes with voluntary consent or a search warrant (as permitted for driving under the influence.) The periods of suspension for hunting and boating privileges based upon refusal to submit to chemical testing and for convictions based upon an unlawful alcohol concentration are lengthened by the legislation, and reinstatement of those privileges is conditioned upon completion of a substance abuse risk reduction program. In addition, the penalties for boating under the influence are amended to mirror the penalties for driving under the influence (i.e., 1st and 2nd convictions in ten years are misdemeanors; 3rd is a high and aggravated misdemeanor; and 4th is a felony). The required age for children to wear personal floatation devices on boats is raised to 13. The age for personal watercraft operation and vessel operation on the waters of the State is raised to 16, with provisions made for persons ages 12-15 to operate such vessels if supervised by an adult over age 18 or after completion of an approved boating safety course. Finally, the bill requires persons

age 16 and younger to complete a boating safety course before being permitted to operate a vessel on the waters of the State. 

>>>

UPCOMING TRAINING EVENTS

JULY 9, 2013

Joint Prosecutor & Law Enforcement DUI Training

C. E. Weir Center
307 E. Bryan Street
Douglas, GA 31533
8:00 AM - 3:00 PM

July 21-24, 2013

Summer Conference

Jekyll Island Convention Center
Jekyll Island, GA

AUGUST 5, 2013

Joint Prosecutor & Law Enforcement DUI Training

Pope Center
48 Lexington Avenue
Washington, GA
8:00 AM - 3:00 PM

AUGUST 7, 2013

Joint Prosecutor & Law Enforcement DUI Training

Peach County Fire House #3
1701 U.S. Highway 341 North
Fort Valley, GA 31030
8:00 AM - 3:00 PM

AUGUST 22, 2013

Joint Prosecutor & Law Enforcement DUI Training

Savannah Civic Center
2nd Floor ~ O'Bryan Room
301 W. Oglethorpe Avenue
Savannah, GA 31401
8:00 AM - 3:00 PM

AUGUST 23, 2013

Current Issues in DUI Prosecutions

Savannah Civic Center
2nd Floor ~ O'Bryan Room
301 W. Oglethorpe Avenue
Savannah, GA 31401
8:00 AM - 3:00 PM

AUGUST 28-30, 2013

Basic DUI Training

Brasstown Valley Lodge
6321 Highway 76
Young Harris, GA 30582

SEPTEMBER 20, 2013

Joint Prosecutor & Law Enforcement DUI Training

Roswell-Alpharetta Public Safety
Training Center (RAPSTC)
11565 Maxwell Road
Alpharetta, GA 30009
9:00 AM - 4:00 PM

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

continued >

GEORGIA IS DOING WELL . . . BUT MUST DO BETTER!

From the Governor's Office of Highway Safety

A federal study released in December 2012 shows Georgia ranks below the national average and Southeastern states in alcohol-related traffic fatalities for 2011.

Data from the National Highway Traffic Safety Administration (NHTSA) shows that in 2011, the state experienced 24 fewer traffic deaths than in 2010, which accounts for a 1.9 percent reduction; and 22 fewer alcohol-impaired driving deaths, which represents a 7.4% reduction. Georgia was 5 percent better than the national average for total reduction in alcohol-related fatalities.

However, Georgia is still on track to experience an increase in fatalities for 2012 for the first time in six years. As of Thursday, December 13, 2012, Georgia had experienced 67 more traffic fatalities than at the same time in 2011. Our efforts are paying off in lives—**BUT WE CAN DO BETTER!**

Information released by GOHS; see <<http://www.gahighwaysafety.org/georgia-sees-improvements-in-traffic-and-alcohol-deaths-as-nhtsa-releases-2011-data>>.

GEORGIA traffic PROSECUTOR

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

>>> GEORGIA TRAFFIC SAFETY RESOURCE PROGRAM



Todd Hayes
Traffic Safety
Resource Prosecutor
404-969-4001 (Atlanta)
thayes@pacga.org

>>> 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 Todd Hayes at PAC.