



Law Enforcement Update Summer – 2006

The following information is being distributed to Sheriff's Offices and Police Departments in the State of Georgia to update them on issues that directly affect driver's license law. Included in this update are legislative changes to the Official Code of Georgia and procedural clarifications based on questions and comments from criminal justice agencies around the state.

In all instances, DDS strongly encourages officers and deputies to operate in accordance with the policy of their employer. Any discrepancy between those policies and the information presented here should be reconciled between DDS and the proper authority within those law enforcement agencies (contact information is provided at the end of this update). Except when required by law or departmental policy, officers and deputies have discretion in making all charges. Nothing in this guide should be construed to require that an officer make a charge, only to suggest the proper course of action to take should a particular charge be made.

Suspensions for Failure to Appear – 2006 Change

House Bill 1253 has amended O.C.G.A. §40-5-121(b), relating to driver's license suspensions for failure to respond to a citation. Pursuant to that change, effective July 1, 2006, officers are no longer required to verify a serve date to charge for driving while license is suspended (O.C.G.A. §40-5-121) for Failure to Appear. A license suspended for failure to appear will remain so indefinitely, or until the individual clears the Failure to Appear with the appropriate court, presents proof of clearance to DDS, and pays the mandatory reinstatement fee. Thus, when an officer comes into contact with someone operating a motor vehicle and a check of the individual's driver's license indicates that they have been suspended for failing to appear for a previous citation (but does not necessarily indicate a service date), the officer has probable cause to make an arrest.

Suspensions for Insurance Cancellation – 2006 Change

House Bill 1253 has amended O.C.G.A. §40-5-121(b), relating to driving while license is suspended or revoked. Pursuant to that change, effective July 1, 2006, officers are no longer required to verify a serve date to charge for driving while license is suspended for an insurance cancellation. (*Note: Because DDS no longer suspends a Georgia driver's license for insurance cancellation - see below - there should not be many instances in which a person is driving on a suspended license for insurance cancellation*). Thus, when an officer comes into contact with someone operating a motor vehicle and a check of the individual's driver's license indicates that they have been suspended for insurance cancellation (but does not necessarily indicate a service date), the officer has probable cause to make an arrest.

Future Suspensions

There are several instances in which a driver's license may indicate a "valid" status, but shows a pending suspension with a future effective date. This is due to administrative procedures on the part of DDS and is not an error. In these instances, *the license is still valid*. As a courtesy, the officer may choose to notify the individual that there is a pending suspension of their license and encourage that person to contact DDS. Serving notice of the suspension, seizing the driver's license, or requiring the driver to post a cash bond would not be appropriate given the fact that the license is still valid.



Other License Suspensions

All licenses suspended under O.C.G.A. §40-5-63 are considered to be suspended by operation of law. Therefore, officers are not required to verify service to establish probable cause for an arrest {*Eppinger v. State*, 236 Ga. App. 426; 512 S.E.2d 320}.

For all other suspensions (not FTA, Insurance Cancellation, or outlined in O.C.G.A. §40-5-63), there is no statutory requirement of service for a license suspension to be valid. Therefore, officers are not required to verify service to establish probable cause for an arrest.

Note: There is a statutory requirement for verification of service for a Habitual Violator Revocation.

Out-of-State Suspensions

Whenever the check of an out-of-state driver's license indicates that it is suspended in the home state, the officer is not required to verify service and, at that time, has probable cause to make an arrest and seize the license. At court, however, the officer or the prosecutor may be required to show that, under the provisions of the individual's home state department of motor vehicles, the person had received legal notice that their license was suspended.

If the officer chooses to make the charge for driving on a suspended license, the driver should be required to post a cash bond, and not simply released on an appearance citation. In either event, the officer should seize the out-of-state license and forward the license to DDS.

Cancelled License due to Social Security Verification

Driver's license information is verified with the Social Security Administration database. If there is a discrepancy between the information provided and the information in the database (example: different spellings of a name, changed middle/maiden names, or a typographical error), the license is cancelled because of "SSN Verification." Current license holders are given notice and 120 days to correct any error found. Technically, the individual does not have a valid driver's license and may be charged under O.C.G.A. §40-5-20.

Foreign Licenses

Individuals are permitted to drive on the streets and highways of the State of Georgia with a valid license from another country. International Driver's Permits are issued by the foreign nations consulate/embassy and are simply an English translation of the individual's foreign license. An international driver's permit must be accompanied by the actual foreign license to be valid. Officers should only seize a foreign license in instances where they would also seize a Georgia license pursuant to an arrest. (updated after original publication of this document – 083106).

License Exemptions

Officers should note that O.C.G.A. §40-5-21 lists specific circumstances in which an individual who has been in the State of Georgia more than 30 days is not required to obtain a Georgia license (including migrant farm workers, students, and certain military personnel). Officers should consider these exemptions before making a charge under O.C.G.A. §40-5-20.

License Displayed in Lieu of Bail

Pursuant to §17-6-11, a law enforcement officer in the State of Georgia may accept, in lieu of requiring a cash bond or incarceration, the display of a valid driver's license for any charge relating to traffic and other offenses as outlined in the code section, excepting the circumstances listed below. As many officers know, issuing an appearance citation is not sufficient and the driver should be forced to post a cash bond or go before an appropriate judicial official if they hold a license from a 'non-compact' state. (States that are not members of the Nonresident Violator Compact: Alaska, California, Michigan, Montana, Oregon, and Wisconsin).

Officers may not issue an appearance citation in lieu of bail for “any other offense for which a license may be suspended for a first offense by the commissioner of driver services, any offense covered under Code Section 40-5-54, or any offense covered under Article 15 of Chapter 6 of Title 40;” {O.C.G.A. §17-6-11(a)}

Officers should not release an individual on an appearance citation if they are being charged with any of the following offenses for which their license will be suspended if convicted:

- Homicide by Vehicle (1st and 2nd Degree) (§40-6-393)
- Serious Injury by Vehicle (§40-6-394)
- Feticide by Vehicle (§40-6-393.1)
- Any felony in the commission of which a motor vehicle is used
- Fraudulent or Fictitious Use of or application for a license or ID card (§40-5-120 or §40-5-125)
- Operating a motor vehicle with a Revoked, Cancelled, or Suspended Registration (§40-6-15)
- Racing on Highways or Streets (§40-6-186)
- Hit & Run/Leaving the Scene of an Accident (§40-6-270)
- Using a Motor Vehicle in Fleeing or Attempting to Elude an Officer (§40-6-395)
- Driving Under the Influence (§40-6-391)
- Possession of a Controlled Substance or Marijuana (V.G.C.S.A., see §40-5-75)
- **(error: Driving without Insurance removed – custodial arrest not allowed under §17-6-11, please pass this correction on to other officers)**

AND offenses in Article 15 of Chapter 6 of Title 40 that do not result in the mandatory suspension of a license:

- Reckless Driving (§40-6-390)
- Homicide or serious injury by interference with an official traffic-control device or railroad sign (§40-6-396)
- Aggressive Driving (§40-6-397)

For Drivers Under the age of 21, any of the above charges and:

- Any offense for which four or more points are assessable under §40-5-57, including:
 - Improper passing on a hill or curve (§40-6-45(a)(1))
 - Unlawful passing of a school bus (§40-6-163)
 - Exceeding the speed limit by 24 mph or more (§40-6-181)
- Purchasing an alcoholic beverage (§3-3-23(a)(2))
- Misrepresenting age for the purpose of illegally obtaining any alcoholic beverage (§3-3-23(a)(3))
- Misrepresenting identity or using false identification for the purpose of purchasing or obtaining any alcoholic beverage (§3-3-23(a)(5))

Note: a conviction for simple Underage Possession of Alcohol under §3-3-23(a)(2) will not, in and of itself, generate a suspension and a law enforcement officer does not have to require a cash bond for this offense.

Commercial Driver’s License Disqualification

Georgia is required to disqualify (similar to suspension) an individual from operating a commercial motor vehicle upon conviction for certain offenses. In compliance with federal mandates, an individual who does not hold, and who may actually never intend to hold, a commercial driver’s license, will still have their commercial status disqualified if convicted of these offenses. As long as the non-commercial status is valid, and they are operating a non-commercial motor vehicle for which they have the correct license class, *their license is valid (note: if the disqualification is only temporary, the driver may still present an actual commercial driver’s license, which is also used to represent their non-commercial status)*. There is no need for the officer to seize their license or serve them with a notice of suspension.

Operating a motor vehicle on a suspended, cancelled, or revoked registration:

There are several instances for which the registration of a vehicle will be suspended, cancelled, or revoked. Under, §40-6-15, it is illegal for an individual to *knowingly* operate a motor vehicle that has a suspended, canceled, or



revoked registration. Officers should note that the cancellation and revocation of registration is not limited to issues relating to insurance for the vehicle. If this charge is made, please note that it is a fingerprintable offense. If the individual pleads or is found guilty, or pleads *nolo contendere*, it will result in the mandatory suspension of the individual's driver's license in accordance with O.C.G.A. §40-5-54. Furthermore, it is considered a habitual violator contributor in accordance with O.C.G.A. §40-5-58. Therefore, the driver should be required to post a cash bond and not be issued an appearance citation.

Please be advised of the following important distinctions:

§40-5-30 – Restricted Licenses:

This code section specifically refers to the alpha-numeric restrictions that are indicated on the front of a driver's license and that are explained in detail on the reverse of the license. For example, restriction B requires that an individual use corrective lenses when operating a motor vehicle. These restrictions should not be confused with license conditions for class CP and D licenses as described below.

§40-5-24 – License Conditions:

This code section specifically refers to the conditions placed upon a driver who holds a valid Class CP or D license (i.e. allowed driving times, passenger limitations, etc). Please note that a Class CP license is technically a driver's license. Though it may be referred to as an 'instruction permit,' 'learner's permit,' or 'permit,' there is a clear distinction between these and limited permits as described below.

Conditions for a Class CP: a person who is at least 21 years of age and who has a valid Class A, B, or C license must be occupying the seat next to the driver and be capable of exercising control of the vehicle.

Conditions for a Class D: a Class D license holder may not operate a motor vehicle between Midnight and 6:00 AM; for the first six months after issuance, they may not have any passengers in the vehicle who are not members of the driver's immediate family; after the first six months, they may have no more than three passengers under the age of 21 who are not members of the driver's immediate family; (*note: after January 1, 2007, for the second six month period after issuance, no more than 1 passenger under the age of 21 who is not a member of the driver's immediate family is allowed*).

§40-5-64 – Limited driving permits for certain offenders

This code section specifically refers to the limited permits issued to individuals whose regular license is suspended for certain offenses (e.g. DUI). The conditions of these limited permits may include the purpose, routes, times, and vehicles that may be operated by the holder of the limited permit. These conditions are indicated on the front of the driver's license and are explained in detail on the reverse of the license. Class CP and D license holders should not be charged under this code section. They hold an instructional permit, not a limited permit. Violations of conditions of their instructional permit should be charged under §40-5-24 as described above.

Other important distinctions

Please note that there is a distinction between the aforementioned offenses and the following offenses. Any charges for these offenses should be filed under the code section indicated:

Operating a motor vehicle without a license on person: §40-5-29

Operating a motor vehicle with an expired driver's license: §40-5-20 or §40-5-32 (depending on court preference)

Operating a motor vehicle without a valid driver's license or operating a class of motor vehicle for which an individual does not have a valid driver's license: §40-5-20

Operating a commercial motor vehicle without a commercial driver's license on person: §40-5-146

Note: CDL holders MUST have their CDL on them at all times when operating a commercial motor vehicle

Officers should always exercise due diligence by ensuring that they are charging under the correct code sections for the driver's license issues described above. Unintentionally making the wrong charge may result in unnecessary and erroneous administrative action taken against an individual's driver's license and cause that person undue hardship.



Other Notable Changes

Senate Bill 64 (effective April 20, 2006)

Section 2 Amends O.C.G.A. §40-6-16, relating to the procedure for passing stationary authorized emergency vehicles, stationary towing or recovery vehicles, or stationary highway maintenance vehicles, as follows:

"(c) Violation of subsection (a) or (b) of this Code section shall be punished by a fine of not more than \$500.00."

Section 3 amends O.C.G.A. §40-8-91 by adding to new subsections that read as follows:

"(e) Whenever a motorist driving on the roadways of this state is directed to stop by a law enforcement officer in a law enforcement vehicle marked as required under this Code section, the motorist may continue to drive until a reasonably safe location for stopping is reached. Such motorist shall indicate to the officer his or her intent to proceed to a safe location by displaying the vehicle's flashing lights or turn signal. In proceeding to a safe location, the motorist shall observe the posted maximum speed limit.

(f) An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section."

House Bill 1275 (effective July 1, 2006)

SECTION 1.

Amends O.C.G.A. §16-18-12(a)(8), relating to penalties for violations of O.C.G.A. §§16-8-2 through 16-8-9, to read as follows:

"(8) If the property that was the subject of the theft was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto, including without limitation any such trailer, semi trailer, container, or other associated equipment, or the cargo being transported therein or thereon, by imprisonment for not less than three years nor more than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if applicable, the revocation of the defendant's commercial driver's license in accordance with Code Section 40-5-151, or both such fine and imprisonment any combination of such penalties. For purposes of this paragraph, the term 'vehicle' includes without limitation any railcar."

House Bill 1392 (effective July 1, 2006)

SECTION 2.

Creates O.C.G.A. §40-6-77, a new Code Section, to read as follows:

"40-6-77.

Any person who causes a serious injury to another person as a result of a collision with a motorcyclist, bicyclist, pedestrian, or farmer operating any vehicle used to transport agricultural products, livestock, farm machinery, or farm supplies by committing any right of way violation under this chapter when such motorcyclist, bicyclist, pedestrian, or farmer operating any vehicle used to transport agricultural products, livestock, farm machinery, or farm supplies is abiding by the provisions of this title shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00 in addition to any other penalties stipulated by law. For purposes of this Code section, serious injury shall include, but shall not be limited to, causing bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, by seriously disfiguring his or her body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless."

Law Enforcement Guide to DDS Forms

DS-1205 – ALS Suspension Notification & Chemical Test Report

Purpose:

serves as a temporary driver's license for the arrestee when signed by the officer (date of issuance + 30 days)

Note: The DS-1205 should not be signed by the officer (thus activating it) if the driver did not have a valid license at the time of arrest.

When it is used:

when an individual is charged pursuant to §40-6-391 AND was requested to submit to a state administered chemical test AND:

- the driver refused implied consent, OR
- chemical tests indicated a BAC of .08 grams or more for a driver 21 years of age or older, OR
- chemical tests indicated a BAC of .02 grams or more for a driver under 21 years of age, OR
- chemical tests indicated a BAC of .04 grams or more for a driver operating a commercial motor vehicle

Note: If a particular situation is not described above exactly, please do not create an extra line; refer to the 180-day sticker below.

What else should be done:

the officer should seize the driver's license and forward it along with the DS-1205 to Driver Services within 10 days of issuance

DS-1127 - 180-Day Temporary Permit

Purpose:

serves as a temporary driver's license for the arrestee when affixed to the driver's copy of the citation for §40-6-391 (date of citation + 180 days)

When it is used:

when an individual is charged pursuant to §40-6-391 AND the driver was requested to submit to state administered chemical test AND:

- the results indicated an alcohol concentration in violation of §40-6-391 but less than the level for an administrative suspension as outlined on the DS-1205 (a 'less-safe' DUI)
- the chemical test results are pending at the time of processing the arrestee (either for alcohol or drugs)

What else should be done:

the officer should seize the driver's license; affix a 180-day sticker to the arrestee's copy of the citation; the driver's license should be attached to the 'court copy' of the UTC and forwarded to the court where it shall be held pending disposition

DS-1205S – Supplemental Chemical Test Report

Purpose:

used to notify DDS of the final results of a chemical test for DUI-alcohol

When it is used:

when the final results arrive for a chemical test that was pending at the time of arrest;

What else should be done:

the appropriate BAC should be indicated on the form and submitted to DDS if:



- chemical tests indicated a BAC of .08 grams or more for a driver 21 years of age or older, OR
- chemical tests indicated a BAC of .02 grams or more for a driver under 21 years of age, OR
- chemical tests indicated a BAC of .04 grams or more for a driver operating a commercial motor vehicle

Note: The DS-1205S is not applicable, and should not be submitted to DDS, if the chemical tests indicated: a BAC level less than described above, the presence of any drug, or the presence of any inhalant/vapor as described in §40-6-391(a)(3).

DS-1030 – Personal Service on Habitual Violator

Purpose:

official notice of personal service on an individual whose license has been revoked

When it is used:

when an officer has contact with an individual who has been classified a habitual violator pursuant to §40-5-58, and had their license revoked by DDS, but has not been declared and served of that habitual violator revocation

What else should be done:

seize the driver’s license and forward it along with the form to DDS

DS-1150 – Official Notice of Personal Service for Suspension

Purpose:

official notice of personal service on an individual whose license has been suspended

When it is used:

when an officer has contact with an individual who has had their license suspended by DDS resulting from a conviction as outlined in Chapter 5 of Title 40 in O.C.G.A., but has not been served notice of that suspension

What else should be done:

seize the driver’s license and forward it along with the form to DDS

DDS Contact Information

***When a member of the general public contacts court or law enforcement personnel inquiring about driver’s license issues, please direct them to the DDS Customer Contact Center at (678) 413-8400. **Please** do not provide them the information listed below. ***

Court and law enforcement personnel only may contact the following with questions or to arrange training for their agency:

Brandon Poarch
 Judicial Liaison – Business Standards Unit
 Georgia Department of Driver Services
 Office: (678) 413-8444
 Cell: (404) 535-5617
 Email: bpoarch@dds.ga.gov

