

House Bill 858

By: Representatives Massey of the 24th and Powell of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 13 of Title 40 of the Official Code of Georgia Annotated,
2 relating to arrests, trials, and appeals relative to traffic offenses, so as to change certain
3 provisions relating to restrictions on ability of courts to change or modify traffic law
4 sentences or judgments; to provide for recognition of certain changes in traffic law sentences
5 or judgments by the Department of Motor Vehicle Safety; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 13 of Title 40 of the Official Code of Georgia Annotated, relating to
10 arrests, trials, and appeals relative to traffic offenses, is amended by striking Code Section
11 40-13-32, relating to restrictions on ability of courts to change or modify traffic law
12 sentences or judgments, and inserting in lieu thereof the following:

13 "40-13-32.

14 (a) No court having jurisdiction over cases arising out of the traffic laws of this state or the
15 traffic laws of any county or municipal government shall change or modify a traffic law
16 sentence or judgment rendered pursuant to a conviction, plea of guilty, or plea of nolo
17 contendere after 90 days from the date of judgment, except for the purpose of correcting
18 clerical errors therein or modifying or vacating such a sentence or judgment in accordance
19 with an order of an appellate court, unless there is strict compliance with all of the
20 following requirements:

- 21 (1) A motion to change or modify the sentence or judgment is made by the defendant to
22 the court rendering the judgment;
- 23 (2) Notice, including a copy of the motion and rule nisi, is given to the prosecuting
24 official who brought the original charge at least ten days prior to the motion hearing; and
- 25 (3) A hearing is held with opportunity for the state to be heard.

1 (b) If the original judgment is changed or modified pursuant to this Code section, the judge
 2 shall certify to the Department of Motor Vehicle Safety that such change or modification
 3 is a true and correct copy of the change or modification and that the requirements set forth
 4 in paragraphs (1) through (3) of subsection (a) of this Code section have been met.

5 (c)(1) Except for orders correcting clerical errors or modifying or vacating sentences or
 6 judgments rendered pursuant to convictions, pleas of guilty, or pleas of nolo contendere
 7 in accordance with orders of appellate courts, the Department of Motor Vehicle Safety
 8 shall not recognize as valid any change or modification order nor make any changes to
 9 a driver's history unless such change or modification as submitted to the department is
 10 in strict compliance with the requirements set forth in subsections (a) and (b) of this Code
 11 section.

12 (2) Whenever a judgment in a case arising out of the traffic laws of this state and
 13 rendered pursuant to a conviction, plea of guilty, or plea of nolo contendere has been
 14 vacated in accordance with an order of an appellate court, the court vacating such
 15 judgment shall forward a copy of the order to the Department of Motor Vehicle Safety
 16 within ten days, the department shall upon receipt of such copy remove such judgment
 17 from its record of the driver's history, and any suspension or revocation of a driver's
 18 license or assessment of points based on such judgment shall be void from the beginning.

19 (d) In the case of municipal courts, notice to the city attorney, or to the solicitor in those
 20 cases where the municipal court has a solicitor, shall be deemed to be notice as provided
 21 for in this Code section.

22 (e) In all cases wherein notice is required in this Code section, same shall be deemed
 23 sufficient if sent by certified mail or statutory overnight delivery, return receipt requested,
 24 with adequate postage thereon, to the correct address of the prosecuting official.

25 (f) Notwithstanding other laws and specifically notwithstanding Code Section 17-7-93, a
 26 motion to change or modify a traffic law sentence or judgment may, at any time prior to
 27 the expiration of the term of court following the term at which judgment and sentence were
 28 pronounced or within 90 days of the time judgment and sentence were pronounced,
 29 whichever time period is greater, be made by the defendant and accepted by the court as
 30 provided in this Code section."

31 SECTION 2.

32 All laws and parts of laws in conflict with this Act are repealed.