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Session of the General Assembly

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2025 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2025.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice Forms Annotated.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

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VOLUME 28A

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Proximate Cause in Accidents Involving Pedestrians, 90 A.L.R.7th 4.

40-6-2. Obedience to authorized persons directing traffic.

No person shall fail or refuse to comply with any lawful order or direction of any law enforcement officer or firefighter, nonsworn employee or volunteer authorized under Code Section 35-1-11, or

individual designated under Code Section 20-2-1131 with the authority to direct, control, or regulate traffic.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 24; Code 1933, § 68A-104, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 516, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 654, § 2; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2019, p. 302, § 2-3/HB 459.

Amendments.

The 2019 amendment, effective July 1, 2019, substituted the present provi-

sions of this Code section for the former provisions, which read: “No person shall fail or refuse to comply with any lawful order or direction of any police officer, firefighter, police volunteer authorized under Code Section 35-1-11, or school-crossing guard designated by a local law enforcement agency invested by law with authority to direct, control, or regulate traffic.”

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40-6-10. Insurance requirements for operation of motor vehicles generally; proof or evidence of required minimum insurance coverage.

(a)(1) As used in this Code section, the term “mobile electronic device” means a portable computing and communication device that has a display screen with touch input or a miniature keyboard.

(1.1) Upon the request of the insured, an insurer may issue a verification as to the existence of minimum motor vehicle liability insurance coverage as required under Chapter 34 of Title 33 in an electronic format to a mobile electronic device to the extent available. This paragraph shall not require an insurer to provide such verification of coverage in real time.

(1.2) The owner or operator of a motor vehicle for which minimum motor vehicle liability insurance coverage is required under Chapter 34 of Title 33 shall keep proof or evidence of required minimum insurance coverage in the vehicle at all times during the operation of the vehicle. The owner of a motor vehicle shall provide to any operator of such vehicle proof or evidence of required minimum insurance coverage for the purposes of compliance with this subsection. The proof or evidence of required minimum insurance coverage required by this subsection may be produced in either paper or electronic format. Acceptable electronic formats include a display of electronic images on a mobile electronic device.

(1.3) Any individual who is required to maintain increased liability coverage as provided for in Code Section 33-7-16 shall keep proof or evidence of such coverage during the operation of any motor vehicle. Such proof or evidence of such coverage may be produced in either paper or electronic format, including a display of electronic images on a mobile electronic device.

(2) The following shall be acceptable proof of insurance on a temporary basis:

(A) If the policy providing such coverage was applied for within the last 30 days, a current written binder for such coverage for a period not exceeding 30 days from the date such binder was issued shall be considered satisfactory proof or evidence of required minimum insurance coverage;

(B) If the vehicle is operated under a rental agreement, a duly executed vehicle rental agreement shall be considered satisfactory proof or evidence of required minimum insurance coverage; and

(C) If the owner acquired ownership of the vehicle within the past 30 days, if the type of proof described in subparagraph (A) of this paragraph is not applicable but the vehicle is currently effectively provided with required minimum insurance coverage under the terms of a policy providing required minimum insurance coverage for another motor vehicle, then a copy of the insurer's declaration of coverage under the policy providing such required minimum insurance coverage for such other vehicle shall be considered satisfactory proof or evidence of required minimum insurance coverage for the vehicle, but only if accompanied by proof or evidence that the owner acquired ownership of the vehicle within the past 30 days.

(2.1) If the vehicle is insured under a fleet policy as defined in Code Section 40-2-137 providing the required minimum insurance coverage or if the vehicle is engaged in interstate commerce and registered under the provisions of Article 3A of Chapter 2 of this title, the insurance information card issued by the insurer shall be considered satisfactory proof of required minimum insurance coverage for the vehicle.

(2.2) If the vehicle is insured under a certificate of self-insurance issued by the Commissioner of Insurance providing the required minimum insurance coverage under which the vehicle owner did not report the vehicle identification number to the Commissioner of Insurance, the insurance information card issued by the Commissioner of Insurance shall be considered satisfactory proof of required minimum insurance coverage for the vehicle, but only if accompanied by a copy of the certificate issued by the Commissioner of Insurance.

(3) The requirement under this Code section that proof or evidence of minimum liability insurance be maintained in a motor vehicle at all times during the operation of the vehicle or produced in electronic format shall not apply to the owner or operator of any vehicle for which the records or data base of the Department of Revenue indicates that required minimum insurance coverage is currently effective.

(4) Except as otherwise provided in paragraph (7) of this subsection, any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

(5) Every law enforcement officer in this state shall determine if the operator of a motor vehicle subject to the provisions of this Code section has the required minimum insurance coverage every time the law enforcement officer stops the vehicle or requests the presentation of the driver's license of the operator of the vehicle.

(6) If a law enforcement officer of this state determines that the owner or operator of a motor vehicle subject to the provisions of this Code section does not have proof or evidence of required minimum insurance coverage, the arresting officer shall issue a uniform traffic citation for operating a motor vehicle without proof of insurance. If the court or arresting officer determines that the operator is not the owner, then a uniform traffic citation may be issued to the owner for authorizing the operation of a motor vehicle without proof of insurance.

(7) If the person receiving a citation under this subsection shows to the court having jurisdiction of the case that required minimum insurance coverage was in effect at the time the citation was issued, the court may impose a fine not to exceed \$25.00. The court shall not in this case forward a record of the disposition of the case to the Department of Driver Services, and the driver's license of such person shall not be suspended.

(8)(A) For purposes of this Code section, a valid insurance card or verification in electronic format on a mobile electronic device shall be sufficient proof of insurance only for any vehicle covered under a fleet policy as defined in Code Section 40-2-137. The insurance card or verification in electronic format on a mobile electronic device for a fleet policy shall contain at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, and the name of the insured and may, but shall not be required to, include the year, make, model, and vehicle identification number of the vehicle insured. If the operator of any vehicle covered under a fleet policy as defined in Code Section 40-2-137 presents a valid insurance card or verification in electronic format on a mobile electronic device for a fleet policy to any law enforcement officer or agency, and the officer or agency does not recognize the insurance card or verification in electronic format on a mobile electronic device as valid proof of insurance and impounds or tows such vehicle for lack of proof of insurance, the law enforcement agency or political subdivision shall be liable for and limited to the fees of the wrongful impoundment or towing of the vehicle, which in no way waives or diminishes any sovereign immunity of such governmental entity. If a person displays verification in electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as

consenting to law enforcement to access other contents of such mobile electronic device.

(B) For any vehicle covered under a policy of motor vehicle liability insurance that is not a fleet policy as defined in Code Section 40-2-137, the insurer shall issue a policy information card which shall contain, or may make available in an electronic format on a mobile electronic device, at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, name of the insured, and year, make, model, and vehicle identification number of each vehicle insured; the owner or operator of the motor vehicle shall keep such policy information card in the vehicle at all times during operation of the vehicle for purposes of Code Section 40-6-273.1, but any such policy information card or policy information in an electronic format on a mobile electronic device shall not be sufficient proof of insurance for any purposes of this Code section except as otherwise provided in this Code section. If a person displays policy information in an electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as consenting to law enforcement to access other contents of such mobile electronic device.

(b) An owner or any other person who knowingly operates or knowingly authorizes another to operate a motor vehicle without effective insurance on such vehicle or without an approved plan of self-insurance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both. An operator of a motor vehicle shall not be guilty of a violation of this Code section if such operator maintains a policy of motor vehicle insurance which extends coverage to any vehicle the operator may drive. An owner or operator of a motor vehicle shall not be issued a citation by a law enforcement officer for a violation of this Code section if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the Department of Revenue.

(c) Any person who knowingly makes a false statement or certification under Code Section 40-5-71 or this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

(d) Except for vehicles insured under a fleet policy as defined in Code Section 40-2-137 or under a plan of self-insurance approved by the Commissioner of Insurance, insurance coverage information from records of the Department of Revenue shall be prima-facie evidence of

the facts stated therein and shall be admissible as evidence in accordance with Code Section 24-9-924 for the purposes of this Code section.

History.

Code 1981, § 40-6-10, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 1079, § 1; Ga. L. 2000, p. 429 §§ 5, 5A; Ga. L. 2001, p. 1228, § 2A; Ga. L. 2002, p. 1, § 1; Ga. L. 2003, p. 261, § 5; Ga. L. 2005, p. 334, § 18-1/HB 501; Ga. L. 2008, p. 209, § 1/HB 1235; Ga. L. 2010, p. 143, § 10/HB 1005; Ga. L. 2011, p. 99, § 59/HB 24; Ga. L. 2013, p. 607, § 1/HB 254; Ga. L. 2019, p. 1056, § 40/SB 52; Ga. L. 2025, p. 725, § 2/SB 121, effective May 14, 2025.

Amendments.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modern-

ize, and correct the Code, substituted “the Department of Driver Services” for “the department” in the second sentence of paragraph (a)(7); and substituted “the Department of Revenue” for “the department” at the end of the last sentence of subsection (b) and in the middle of subsection (d).

The 2025 amendment, effective May 14, 2025, added paragraph (a)(1.3).

40-6-11. Insurance requirements for operation of motorcycles.

(a) For the purposes of this Code section, “motorcycle” means any motor vehicle traveling on public streets or highways having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor and a moped.

(b) No owner of a motorcycle or any other person, other than a self-insurer as defined in Chapter 34 of Title 33, shall operate or authorize any other person to operate the motorcycle unless the owner has liability insurance on the motorcycle equivalent to that required as evidence of security for bodily injury and property damage liability under Code Section 40-9-37. Any person who violates this subsection shall be guilty of a misdemeanor.

(c) The operator of a motorcycle shall keep proof or evidence of the minimum insurance coverage required by this Code section in his or her immediate possession or on the motorcycle at all times when such person is operating the motorcycle but only under the same circumstances and of the same type as prescribed for operators of other motor vehicles in Code Section 40-6-10. Any person who violates this subsection shall be subject to a fine not to exceed \$25.00; however, there shall be no suspension of the person’s operator’s license or motor vehicle license tag for a violation of this subsection.

(d)(1) Insurance coverage information from records of the Department of Revenue shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section 24-9-924 for the purposes of this Code section.

(2) Every law enforcement officer in this state shall request the

operator of a motorcycle subject to the provisions of subsection (c) of this Code section to produce proof or evidence of minimum insurance coverage required by this Code section at any time the law enforcement officer stops the motorcycle or requests the presentation of the driver's license of such operator.

(e) An owner or operator of a motorcycle shall not be issued a citation by a law enforcement officer for a violation of this Code section if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the Department of Revenue.

History.

Code 1981, § 40-6-11, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2785, § 22; Ga. L. 2000, p. 429, §§ 6, 6A; Ga. L. 2003, p. 261, § 6; Ga. L. 2011, p. 99, § 60/HB 24; Ga. L. 2019, p. 1056, § 40/SB 52.

Amendments.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted “the Department of Revenue” for “the department” near the beginning of paragraph (d)(1) and at the end of subsection (e).

40-6-15. Knowingly driving motor vehicle on suspended, canceled, or revoked registration.

(a) Any person who knowingly drives a motor vehicle on any public road or highway of this state at a time when the vehicle registration of such vehicle is suspended, canceled, or revoked shall be guilty of a misdemeanor.

(b) Upon a first conviction thereof or a plea of nolo contendere, such person shall be punished by imprisonment for not more than 12 months and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00, at the discretion of the court.

(c) For a second or subsequent conviction within five years as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months and there may be imposed in addition thereto a fine of not less than \$1,000.00 nor more than \$2,500.00.

(d) The Department of Revenue, upon receiving a record of the conviction of any person under this Code section upon a charge of driving a vehicle while the registration of such vehicle was suspended or revoked, shall extend the period of suspension or revocation for six months. The Department of Revenue may reinstate the suspended or revoked vehicle registration following the expiration of the original suspension or revocation period, the additional six-month suspension

imposed pursuant to this subsection, and upon payment of a restoration fee of \$210.00, or \$200.00 when such reinstatement is processed by mail.

(e) For purposes of pleading nolo contendere, only one nolo contendere plea shall be accepted to a charge of driving a motor vehicle with a suspended, canceled, or revoked vehicle registration within a five-year period of time as measured from the date of the previous arrest for which a conviction was obtained or plea of nolo contendere was accepted to the date of the current arrest. All other nolo contendere pleas within such period of time shall be considered convictions.

(f) Notwithstanding the limits set forth in Article 14 of this chapter and in any municipal charter, any municipal court of any municipality in this state shall be authorized to impose the punishment provided for in this Code section upon a conviction of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section.

History.

Code 1981, § 40-6-15, enacted by Ga. L. 2002, p. 1024, § 6; Ga. L. 2015, p. 60, § 4-24/SB 100; Ga. L. 2019, p. 1056, § 40/SB 52.

ize, and correct the Code, substituted “The Department of Revenue” for “The department” at the beginning of the first and second sentences of subsection (d).

Amendments.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modern-

40-6-16. Procedure for passing certain stationary vehicles.

(a) This Code section shall be known and may be cited as the “Spencer Pass Law.”

(b) The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or blue lights shall approach the authorized emergency vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(c) The operator of a motor vehicle approaching a stationary towing or recovery vehicle, a stationary highway maintenance vehicle, or a

stationary utility service vehicle that is utilizing traffic cones or displaying flashing or revolving yellow, amber, or white lights shall approach the vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the towing, recovery, highway maintenance, or utility service vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(d)(1) Violation of subsection (b) of this Code section shall be punished by a fine of not more than \$500.00.

(2) Violation of subsection (c) of this Code section shall be punished by a fine of not more than \$250.00.

(e) As used in this Code section, the term:

(1) “Utility service vehicle” means any vehicle being used by an employee or contractor of any entity, including, but not limited to, a political subdivision of this state or a local authority or commission related thereto, an electric cooperative, or a public or private corporation, in connection with the provision of utility services.

(2) “Utility services” means and includes electric, natural gas, water, waste-water, cable, telephone, or telecommunication services or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights of way, and associated infrastructure.

History.

Code 1981, § 40-6-16, enacted by Ga. L. 2003, p. 427, § 1; Ga. L. 2006, p. 231, § 2/SB 64; Ga. L. 2011, p. 593, § 1/HB 156; Ga. L. 2016, p. 61, § 1/HB 767; Ga. L. 2024, p. 518, § 1/HB 1193, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted “or revolving” and substituted “or white” for “white, or red” in the beginning of subsection (c).

40-6-16.1. Procedure for passing vehicle with active sanitation workers.

(a) As used in this Code section, the term “sanitation worker” means an individual engaged in the collection and transport of residential or commercial solid waste and recyclables as authorized by a county or municipal governing authority.

(b) The operator of a motor vehicle approaching a vehicle with active

sanitation workers that is displaying flashing or revolving yellow, amber, or white lights shall approach the vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be at least ten miles per hour less than the posted speed limit or 25 miles per hour, whichever is more, and be prepared to stop.

(c) Violation of subsection (b) of this Code section shall be punished by a fine of not more than \$250.00.

History.

Code 1981, § 40-6-16.1, enacted by Ga. L. 2015, p. 323, § 1/HB 206; Ga. L. 2024, p. 518, § 2/HB 1193, effective July 1, 2024.

stituted “or white” for “white, or red” in the beginning of subsection (b).

Amendments.

The 2024 amendment, effective July 1, 2024, inserted “or revolving” and sub-

ARTICLE 2

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

40-6-28. Restricted access/managed lanes.

(a) The Department of Transportation may install gates, signs, or barriers, or any combination thereof, to restrict access to managed lanes.

(b) No person shall drive any vehicle through, around, or under any barrier or closed or moving gate of a managed lane.

(c) No vehicle shall enter or exit a managed lane at any point other than designated entry or exit points unless directed by authorized emergency personnel.

History.

Code 1981, § 40-6-28, enacted by Ga. L. 2015, p. 1058, § 5/SB 125; Ga. L. 2019, p. 1056, § 40/SB 52.

ize, and correct the Code, substituted “The Department of Transportation” for “The department” at the beginning of subsection (a).

Amendments.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modern-

ARTICLE 3

DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND
PASSING, FOLLOWING TOO CLOSELY

40-6-48. Driving on roadways laned for traffic.

Law reviews.

For article, “Crimes of Suspicion,” see
72 Emory L.J. 1429 (2023).

JUDICIAL DECISIONS

Stop not justified. — Defendant’s motion to suppress was properly granted as the officer lacked reasonable articulable suspicion to justify the stop of the defendant’s vehicle because it was not entirely clear that the defendant failed to maintain the defendant’s lane as it was not clear that the defendant’s car went over the road’s far right white line; and, even if the defendant did drive over the white line, the defendant appeared to do so to avoid the officer’s patrol car, which was drifting into the defendant’s lane. *State v. Shaw*, 353 Ga. App. 102, 836 S.E.2d 208, 2019 Ga. App. LEXIS 668 (2019).

Driving on fog line is not a violation. — Under Georgia law, a motorist does not violate O.C.G.A. § 40-6-48(1) when the motorist drives on, but does not cross over, a fog line. *Chapman v. State*, 368 Ga. App. 682, 890 S.E.2d 313, 2023 Ga. App. LEXIS 328 (2023).

Evidence insufficient. — Evidence was insufficient to support the defendant’s

conviction for failure to maintain a lane because the officer observed the defendant driving in the middle of an unlined roadway, swerve in the officer’s direction, and weave within the officer’s lane after turning onto another roadway with marked lanes. *Lute v. State*, 368 Ga. App. 70, 889 S.E.2d 195, 2023 Ga. App. LEXIS 262 (2023).

Trial court erred not finding two year delay in trial presumptively prejudicial. — After the defendant received a traffic citation on January 16, 2021, but the trial was not held until March 22, 2023, due to COVID-19 restrictions on jury trials, the trial court erred making the legal conclusion that the two-year delay was not presumptively prejudicial as well as by failing to set forth its speedy trial analysis and factual findings. *Barker v. State*, 370 Ga. App. 562, 898 S.E.2d 566, 2024 Ga. App. LEXIS 55 (2024).

40-6-49. Following too closely.

JUDICIAL DECISIONS

Citation deficient. — Trial court erred in denying the defendant’s motion to quash a charge of following too closely in violation of O.C.G.A. § 40-6-49 because the citation failed to allege the essential elements of the offense as the citation

stated no facts and only the legal conclusion that the defendant followed too closely in violation of that statute. *Strickland v. State*, 349 Ga. App. 673, 824 S.E.2d 555, 2019 Ga. App. LEXIS 207 (2019).

40-6-53.1. Designated commercial motor vehicle restricted highways.

(a) For purposes of this Code section, the term “commercial motor

vehicle restricted highway” means the portion of a highway designated by the Department of Transportation as a scenic highway that spans more than one county and that has upon it installed by such department fixed gates in order to prohibit the entrance and operation of motor vehicles upon such highway during hazardous weather conditions.

(b) No person shall operate a motor vehicle equipped with more than six wheels on a commercial motor vehicle restricted highway that has been properly marked pursuant to subsection (c) of this Code section.

(c) The Department of Transportation shall erect and maintain official traffic-control devices at the entrance of and upon any commercial motor vehicle restricted highway giving notice of the prohibition provided for by this Code section.

(d) Any person that violates this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$250.00.

History.

Code 1981, § 40-6-53.1, enacted by Ga. L. 2024, p. 752, § 4/HB 516, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2024.

40-6-56. Procedure for passing a bicyclist.

(a) The operator of a motor vehicle approaching a bicycle shall approach the bicycle with due caution and shall proceed as follows:

(1) Make a lane change into a lane not adjacent to the bicycle if possible in the existing road and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be at least ten miles per hour less than the posted speed limit or 25 miles per hour, whichever is more, and proceed around the bicycle with at least three feet between such vehicle and the bicycle at all times.

(b) Any violation of this Code section shall be a misdemeanor punished by a fine of not more than \$250.00.

History.

Code 1981, § 40-6-56, enacted by Ga. L. 2011, p. 426, § 2/HB 101; Ga. L. 2021, p. 470, § 1/HB 353.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted the present provi-

sions of this Code section for the former provisions, which read: “(a) As used in this Code section, the term ‘safe distance’ means not less than three feet.

“(b) Notwithstanding any provision of this article to the contrary, when feasible, the operator of a motor vehicle, when

overtaking and passing a bicycle that is proceeding in the same direction on the roadway, shall leave a safe distance between such vehicle and the bicycle and shall maintain such clearance until safely past the overtaken bicycle.” See Editor’s notes for applicability.

Editor’s notes. Ga. L. 2021, p. 470, § 2/HB 353, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 2021, and shall apply to offenses committed on or after that date.”

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. An offense arising from a violation of O.C.G.A. § 40-6-56 does not appear to be an offense

for which fingerprinting is required. 2021 Op. Att’y Gen. No. 21-1.

ARTICLE 4
RIGHT OF WAY

40-6-71. Yield when turning left.

JUDICIAL DECISIONS

Evidence sufficient for conviction. — Evidence that the defendant turned left at an intersection in front of a car approaching from the opposite direction, causing a collision, was sufficient to support the defendant’s conviction for failure

to yield the right of way. *Oduok v. State*, 347 Ga. App. 178, 817 S.E.2d 145, 2018 Ga. App. LEXIS 449 (2018), cert. dismissed, No. S19C0145, 2019 Ga. LEXIS 360 (Ga. May 6, 2019).

40-6-72. Stopping and yielding.

JUDICIAL DECISIONS

Probable cause for arrest for violation. — Police officer was entitled to qualified immunity in an excessive-use-of-force case because tackling an arrestee is not categorically unconstitutional and cases of gratuitous use of force on a non-resisting suspect were inapposite, given evidence the arrestee resisted handcuffing; reasonable force could be used to effectuate arrest because probable cause existed to believe the arrestee committed misdemeanors by driving without headlights, running a stop sign, and driving

under the influence. *Turner v. Ochoa*, No. 24-10707, 2024 U.S. App. LEXIS 24632 (11th Cir. Sept. 30, 2024).

Evidence sufficient. — Evidence that the defendant failed to yield the right of way and used a mobile device to the point that the defendant was distracted supported the convictions for homicide by vehicle, reckless driving, failure to exercise due care, and failure to stop at a stop sign. *Holley v. State*, 363 Ga. App. 107, 871 S.E.2d 13, 2022 Ga. App. LEXIS 129 (2022).

40-6-73. Entering or crossing roadway.

JUDICIAL DECISIONS

Testimony about right-of-way. — Based on the police officer’s extensive

experience and training and the fact that the officer was the lead investigator in

reconstructing the wreck, the trial court did not err by permitting the officer to testify about which driver had the right of way because, based on the physical evidence and calculations the officer had performed, the officer concluded that the defendant driver had already established the driver's lane of travel by the time the decedent's vehicle came into view; and the

officer's conclusion that the driver had the right of way was admissible as an assessment of fact and not a legal conclusion. *Golden Peanut Co. v. Miller*, 363 Ga. App. 384, 870 S.E.2d 511, 2022 Ga. App. LEXIS 116 (2022), vacated, 317 Ga. 22, 891 S.E.2d 776, 2023 Ga. LEXIS 176 (2023), vacated, 369 Ga. App. 364, 893 S.E.2d 533, 2023 Ga. App. LEXIS 460 (2023).

40-6-74. Operation of vehicles on approach of authorized emergency vehicles.

JUDICIAL DECISIONS

Stop not justified as defendant did not obstruct roadway. — Defendant's motion to suppress was properly granted as the officer lacked reasonable articulable suspicion to justify the stop of the defendant's vehicle because the defendant did not obstruct the roadway and did not fail to yield the right-of-way to the officer

as the video showed that the defendant passed the patrol car in the far right lane, leaving two other empty lanes open for the patrol car to proceed forward unobstructed. *State v. Shaw*, 353 Ga. App. 102, 836 S.E.2d 208, 2019 Ga. App. LEXIS 668 (2019).

ARTICLE 5

RIGHTS AND DUTIES OF PEDESTRIANS

40-6-92. Crossing roadway elsewhere than at crosswalk.

JUDICIAL DECISIONS

Crossing outside of crosswalk. — Defendant's motion for summary judgment was improperly denied on the plaintiff's negligence action against the defendant related to a fatal car accident as the plaintiff presented no evidence that any specific negligent act or omission by the defendant was the proximate cause of the death of the plaintiff's spouse because there was no evidence that the defendant was driving in an unsafe manner; an

officer testified that there were no crosswalks for pedestrians in the area; and no evidence showed that the spouse had already entered the roadway under safe conditions, which might have excused the spouse's failure to legally cross the roadway at a crosswalk or intersection. *Ireland v. Williams*, 351 Ga. App. 124, 830 S.E.2d 538, 2019 Ga. App. LEXIS 408 (2019).

40-6-93. Drivers to exercise due care in relation to pedestrians.

JUDICIAL DECISIONS

Struck with car while jogging. — In a personal injury case in which the plaintiff alleged that the defendant struck the plaintiff with a car while the plaintiff was jogging, the trial court did not err by denying

the defendant summary judgment on the plaintiff's negligence per se claim because O.C.G.A. § 40-6-93 required motorists to exercise ordinary care to discover and avoid persons in the roadway; that statute

was designed to protect the plaintiff and to prevent the defendant from hitting the plaintiff; and, even if the plaintiff was negligent, a question of fact remained as

to whether the defendant’s negligence was greater. *Nash v. Reed*, 349 Ga. App. 381, 825 S.E.2d 853, 2019 Ga. App. LEXIS 172 (2019).

40-6-95. Pedestrian under influence of alcohol or drug.

JUDICIAL DECISIONS

Jury instruction not required. — In a first-degree vehicular homicide, driving under the influence of alcohol per se, and driving under the influence of alcohol to the extent that it was less safe for her to drive case, the trial court was not required to provide a jury instruction regarding an intoxicated pedestrian. In the criminal context, it simply was not relevant that the victim was negligent unless the defendant’s conduct did not substantially contribute to the cause of the injury. *Butler v. State*, 363 Ga. App. 753, 871 S.E.2d 902, 2022 Ga. App. LEXIS 189 (2022).

Invited error on pedestrian right-

of-way. — By agreeing with the trial court’s decision to tell the jury that the court already had provided the law applicable to the jury’s questions, the defendant invited any potential error in that regard and thus waived appellate review of the issue about whether the trial court sufficiently responded to the jury’s question regarding pedestrian right-of-way regardless of whether the pedestrian was in the crosswalk or not, and about not charging the jury regarding intoxicated pedestrians. *Butler v. State*, 363 Ga. App. 753, 871 S.E.2d 902, 2022 Ga. App. LEXIS 189 (2022).

ARTICLE 6

TURNING, STARTING, SIGNALING

40-6-120. Methods of turning at intersections.

JUDICIAL DECISIONS

Statute was not unconstitutionally vague. — Language of O.C.G.A. § 40-6-120(2)(B) provided clear notice to the defendant that the defendant was required to complete a turn in the left lane and that notice was consistent with other portions of the statute when read in

context. Accordingly, § 40-6-120(2)(B) as applied to the defendant was not void for vagueness under the due process clause of the fourteenth amendment. *State v. Newsom*, 319 Ga. 607, 905 S.E.2d 618, 2024 Ga. LEXIS 164 (2024).

40-6-123. Turning movements; signals required on turning, changing lanes, slowing, or stopping.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

Defective citation. Citation charging

defendant with improper/erratic lane change in violation of O.C.G.A. § 40-6-123 was substantially defective and, there-

fore, the trial court erred by denying the defendant's motion to quash because the citation simply alleged that the defendant violated the section and did not contain an essential element of the offense, that de-

fendant changed lanes without first ascertaining that such movement could be made with reasonable safety. *Smith v. State*, 366 Ga. App. 399, 883 S.E.2d 147, 2023 Ga. App. LEXIS 14 (2023).

ARTICLE 8

SCHOOL BUSES

40-6-163. Duty of driver of vehicle meeting or overtaking school bus; reporting of violations; civil monetary penalty for violations captured by school bus camera.

(a) Except as provided in subsection (b) of this Code section, the driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching such school bus when there are in operation on the school bus the visual signals as specified in Code Sections 40-8-111 and 40-8-115, and such driver shall not proceed until the school bus resumes motion or the visual signals are no longer actuated. A violation of this subsection for which a driver has been issued a uniform traffic citation shall be punished as for a high and aggravated misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$1,000.00 or by confinement for not more than 12 months, or both.

(b) The driver of a vehicle upon a highway with separate roadways that are separated by a grass median, unpaved area, or physical barrier need not stop upon meeting or passing a school bus which is on the separate roadway or upon a controlled access highway when the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(c) Every school bus driver who observes a violation of subsection (a) of this Code section is authorized and directed to record specifically the vehicle description, license number of the offending vehicle, and time and place of occurrence on forms furnished by the Department of Public Safety. Such report shall be submitted within 15 days of the occurrence of the violation to the local law enforcement agency which has law enforcement jurisdiction where the alleged offense occurred.

(d)(1) As used in this subsection, the term:

(A) "Agent" means a person or entity that is authorized by a law enforcement agency or governing body to administer the procedures contained herein and:

(i) Provides services to such law enforcement agency or governing body;

(ii) Operates, maintains, leases, or licenses a video recording device; or

(iii) Is authorized by such law enforcement agency or governing body to review and assemble the recorded images.

(B) “Owner” means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(C) “Recorded images” means images recorded by a video recording device mounted on a school bus with a clear view of vehicles passing the bus on either side and showing the date and time the recording was made and an electronic symbol showing the activation of amber lights, flashing red lights, stop arms, and brakes.

(D) “Video recording device” means a camera capable of recording digital images showing the date and time of the images so recorded.

(2) Subsection (a) of this Code section may be enforced by using recorded images as provided in this subsection.

(3) For the purpose of enforcement pursuant to this subsection:

(A) The owner of a motor vehicle shall be liable for a civil monetary penalty to the governing body of the law enforcement agency provided for in subparagraph (B) of this paragraph if such vehicle is found, as evidenced by recorded images, to have been operated in disregard or disobedience of subsection (a) of this Code section and such disregard or disobedience was not otherwise authorized by law. The amount of such civil monetary penalty shall be \$1,000.00;

(B) The law enforcement agency authorized to enforce the provisions of this Code section shall send by first class mail addressed to the owner of the motor vehicle not later than ten days after obtaining the name and address of the owner of the motor vehicle:

(i) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(ii) An image taken from the recorded image showing the vehicle involved in the infraction;

(iii) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce this Code section and stating that, based upon inspec-

tion of recorded images, the owner's motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law;

(iv) A statement of the inference provided by subparagraph (D) of this paragraph and of the means specified therein by which such inference may be rebutted;

(v) Information advising the owner of the motor vehicle of the manner and time in which liability as alleged in the citation may be contested in court; and

(vi) A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and result in a civil monetary penalty;

(C) Proof that a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section shall be evidenced by recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of recorded images, a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(D) Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection (a) of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(i) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation and identifies the name of the operator of the vehicle at the time of the alleged violation; or

(ii) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(4) A violation for which a civil penalty is imposed pursuant to this subsection shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such

violation shall be deemed noncriminal, and imposition of a civil penalty pursuant to this subsection shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage; provided, however, that upon any second or subsequent violation in the same jurisdiction, the law enforcement agency shall request insurance coverage information for such owner from the Department of Revenue and send notice of the violations to the insurance carrier of such owner.

(5) If a person is mailed a citation by first class mail pursuant to subparagraph (B) of paragraph (3) of this subsection, such person may pay the penalty or request a court date. Any citation executed pursuant to this paragraph shall provide to the person issued the citation at least 30 business days from the mailing of the citation to inspect information collected by the video recording device in connection with the violation. If the person requesting a court date fails to appear on the date and time of such hearing or if a person has not paid the penalty for the violation or filed a police report or notarized statement pursuant to subparagraph (D) of paragraph (3) of this subsection, such person shall then be sent a second citation by first class mail. The second citation shall include all information required in subparagraph (B) of paragraph (3) of this subsection for the initial citation and shall include a hearing date and time. If a person fails to appear on the date and time of such hearing set out in the second citation or if the person has failed to pay the penalty or file an appropriate document for rebuttal, the person issued the second citation shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided in paragraph (3) of this subsection.

(6) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this subsection. Any person receiving a notice pursuant to subparagraph (B) of paragraph (3) of this subsection shall have the right to contest such liability for the civil monetary penalty in the magistrate court or other court of competent jurisdiction for a traffic violation. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this subsection except as provided in subparagraph (A) of paragraph (3) of this subsection; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(7) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty and any late fee is not paid within 30 days after the final notice was mailed and of the consequences for failure to pay such penalty and any late fee.

(8) The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under paragraph (7) of this subsection was mailed if a violation has not been contested and the assessed penalty has not been paid, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The referral to the Department of Revenue shall include the following:

(A) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;

(B) The date on which the violation occurred;

(C) The citation number issued for the violation; and

(D) The date when the notice required under this Code section was mailed.

(9) If the Department of Revenue receives a referral under paragraph (8) of this subsection, such referral shall be entered into the motor vehicle data base within five days of receipt and the Department of Revenue shall refuse to renew the registration of such motor vehicle unless and until the civil monetary penalty plus any late fee is paid to the agent or governing body.

(10) The Department of Revenue shall remove the penalty on a vehicle registration if any person presents the Department of Revenue with adequate proof from the agent or governing body that the penalty and any late fee, if applicable, has been paid.

(11) Recorded images made for purposes of this subsection shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(12) A governing authority shall not impose a civil penalty under this subsection on the owner of a motor vehicle if the operator of the

vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

(13) A local school system may enter into an intergovernmental agreement with a local governing authority to offset expenses regarding the implementation and ongoing operation of video recording devices serving the purpose of capturing recorded images of motor vehicles unlawfully passing a school bus.

(14) Any school bus driver operating a vehicle equipped with an activated video recording device shall be exempt from the recording provisions of subsection (c) of this Code section.

(15) The money collected and remitted to the governing body pursuant to subparagraph (B) of paragraph (3) of this subsection shall only be used by such governing body to fund local law enforcement or public safety initiatives. This paragraph shall not preclude the appropriation of a greater amount than collected and remitted under this subsection.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 89; Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 1175, § 1; Ga. L. 1986, p. 819, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 257, § 1/SB 57; Ga. L. 2018, p. 1057, § 1/HB 978; Ga. L. 2019, p. 1, § 1/SB 25; Ga. L. 2019, p. 1056, § 40/SB 52; Ga. L. 2020, p. 493, § 40/SB 429; Ga. L. 2023, p. 554, § 7/HB 183, effective July 1, 2023; Ga. L. 2024, p. 270, § 5/HB 409, effective July 1, 2024.

Amendments.

The first 2019 amendment, effective February 15, 2019, in subsection (b), substituted “that are separated by a grass median, unpaved area, or physical barrier” for “or a divided highway, including, but not limited to, a highway divided by a turn lane,” near the beginning and substituted “on the separate roadway” for “on a different roadway or on another half of a divided highway,” near the middle. See Editor’s notes for applicability.

The second 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted “in subparagraph (B) of this para-

graph” for “in subparagraph (d)(3)(B) of this Code Section” in subparagraph (d)(3)(A); substituted “subparagraph (B) of paragraph (3) of this subsection” for “subparagraph (B) of this paragraph”; in paragraph (d)(6); substituted “of subsection (c) of this Code section” for “of subsection (c) of Code Section 40-6-163” in paragraph (d)(14); and substituted “subparagraph (B) of paragraph (3) of this subsection” for “subparagraph (d)(3)(B) of this Code section” in paragraph (d)(15).

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted “entity that” for “entity who” in subparagraph (d)(1)(A) and substituted “data base” for “database” in the first sentence of paragraph (d)(9).

The 2023 amendment, effective July 1, 2023, in paragraph (d)(7), substituted “of the consequences for failure to pay such penalty and any late fee” for “that such referral shall result in the nonrenewal of the registration of such motor vehicle and shall prohibit the title transfer of such motor vehicle within this state” at the end; in paragraph (d)(8), deleted “of an ordinance or resolution adopted under

this article” following “if a violation” and inserted “, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed” in the first sentence of the introductory language, added subparagraph (d)(8)(C), redesignated former subparagraph (d)(8)(C) as present subparagraph (d)(8)(D), substituted a period for “; and” at the end of subparagraph (d)(8)(D), and deleted former subparagraph (d)(8)(D), which read: “The seal, logo, emblem, or electronic seal of the governing body.”; substituted the current provisions of paragraph (d)(9) for the former provisions, which read: “(9) If the Department of Revenue receives a referral under paragraph (8) of this subsection, such referral shall be entered into the motor vehicle data base within five days of receipt and the Department of Revenue shall refuse to renew the registration of such motor vehicle and shall prohibit the title transfer of such vehicle within this state unless and until the civil monetary penalty plus any late fee is paid to the governing body. The Department of Revenue shall mail a notice to the registered owner of such motor vehicle that informs such owner:

“(A) That the registration of the vehicle involved in the violation will not be permitted to be renewed;

“(B) That the title of the vehicle involved in the violation will not be permitted to be transferred in this state;

“(C) That the aforementioned penalties are being imposed due to the failure to pay the civil monetary penalty plus any late fee for an ordinance violation adopted under the authority of this Code section; and

“(D) Of the procedure that the person may follow to remove the penalties.”; and, in paragraph (d)(10), substituted “penalty” for “penalties” and inserted “registration” and “from the agent or governing body”.

The 2024 amendment, effective July 1, 2024, added the second sentence in subsection (a), substituted “\$1,000.00” for “\$250.00” at the end of subparagraph (d)(3)(A), and added the proviso at the end of paragraph (d)(4).

Editor’s notes.

Ga. L. 2019, p. 1, § 2/SB 25, not codified by the General Assembly, provides: “Any violation of subsection (b) of Code Section 40-6-163 of the Official Code of Georgia Annotated shall be adjudicated and punished based upon such subsection as it existed at the time the violation was committed.”

Ga. L. 2024, p. 270, § 1/HB 109, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Addy’s Law.’”

OPINIONS OF THE ATTORNEY GENERAL

Stopping for a school bus on a divided highway. — O.C.G.A. § 40-6-163, as amended by the General Assembly during the 2018 session, does not require a vehicle travelling on a three or five lane road divided by a center turn lane to stop

for a school bus that is stopped on the opposite side of the road with its visual signals engaged. 2018 Op. Att’y Gen. No. U18-2 (decided prior to 2019 amendment which clarified the statutory language).

40-6-165. Operation of school buses.

Law reviews.

For article on the 2018 amendment of

this Code section, see 35 Georgia St. U.L. Rev. 139 (2018).

ARTICLE 9
SPEED RESTRICTIONS

40-6-180. Basic rules.

JUDICIAL DECISIONS

ANALYSIS

PROCEDURE

Procedure

Accusation insufficient. — Conviction for driving too fast was reversed because the accusation did not allege the defendant’s speed or estimate the defendant’s speed and O.C.G.A. § 40-6-180 standing alone was insufficient to define a crime. *Woods v. State*, 361 Ga. App. 844, 864 S.E.2d 194, 2021 Ga. App. LEXIS 521 (2021).

Accusation subject to demurrer. —

Accusation for failure to maintain a lane was subject to a general demurrer because the accusation did not allege that the defendant failed to maintain a lane until the defendant ascertained that such movement could be made safely. *Woods v. State*, 361 Ga. App. 844, 864 S.E.2d 194, 2021 Ga. App. LEXIS 521 (2021).

40-6-181. Maximum limits.

(a) The limits specified in this Code section or established as authorized in this article shall be the maximum lawful vehicle speeds, except when a special hazard exists that requires a lower speed for compliance with Code Section 40-6-180.

(b) Consistent with the provision of engineering and traffic investigations regarding maximum speed limits as provided in Code Section 40-6-182, no person shall drive a vehicle at a speed in excess of the following maximum limits:

- (1) Thirty miles per hour in any urban or residential district unless otherwise designated by appropriate signs;
- (2) Thirty-five miles per hour on a highway that is an unpaved county road unless designated otherwise by appropriate signs;
- (3) Seventy miles per hour on a highway that is part of the federal interstate system and highways that are physically divided with full control of access and that are part of the state highway system, provided that such speed limit is designated by appropriate signs;
- (4) Sixty-five miles per hour on highways that are physically divided without full control of access and that are part of the state highway system, provided that such speed limit is designated by appropriate signs; and

(5) Fifty-five miles per hour in other locations.

(c) The maximum speed limits set forth in this Code section may be altered as authorized in Code Sections 40-6-182, 40-6-183, and 40-6-188.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 48; Ga. L. 1963, p. 26, § 1; Ga. L. 1974, p. 11, § 1; Code 1933, § 68A-802, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1982, p. 1290, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1988, p. 30, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 759, § 1.1; Ga. L. 1996, p. 469, § 1.1; Ga. L. 2014, p. 851, § 8/HB 774; Ga. L. 2021, p. 526, § 10/HB 577; Ga. L. 2024, p. 752, § 5/HB 516, effective July 1, 2024.

Amendments.

The 2021 amendment, effective July 1, 2021, added “unless otherwise designated by appropriate signs” at the end of paragraph (b)(1).

The 2024 amendment, effective July 1, 2024, redesignated former paragraphs (b)(1.1) and (b)(2) as present paragraphs (b)(2) and (b)(3), respectively; deleted for-

mer paragraph (b)(3), which read: “Seventy miles per hour on a highway on the federal interstate system which is inside of an urbanized area of 50,000 population or more, provided that such speed limit is designated by appropriate signs;”; inserted “a highway that is” in paragraph (b)(2); in paragraph (b)(3), substituted “highway that is part of” for “highway on” and “highways that are physically divided with full control of access and that are part of the state highway system” for “on physically divided highways with full control of access which are outside of an urbanized area of 50,000 population or more”; and substituted “highways that are physically divided without full control of access and that are part of” for “those sections of physically divided highways without full access control on” in paragraph (b)(4).

ARTICLE 10

STOPPING, STANDING, AND PARKING

PART 1

GENERAL PROVISIONS

40-6-200. How vehicles to be parked; powers of Department of Transportation and local authorities.

JUDICIAL DECISIONS

Evidence sufficient to support conviction for improper parking. — Defendant’s claim that the evidence was insufficient to support the convictions for DUI and improper parking lacked merit since the evidence showed that the defendant had bloodshot eyes, slurred speech,

an odor of alcohol on the defendant’s breath and person, failed all of the field sobriety tests, and registered positive on the alco-sensor. *Ghant v. State*, 368 Ga. App. 472, 890 S.E.2d 379, 2023 Ga. App. LEXIS 344 (2023).

40-6-203. Stopping, standing, or parking prohibited in specified places; stopping or standing for collecting municipal solid waste or recovered materials.

JUDICIAL DECISIONS

Violation not negligence as to one striking rear of parked carrier.

In a personal injury action wherein plaintiff collided with a boom truck vehicle without braking or even slowing prior to impact, summary judgment in favor of the city was upheld because there was no affirmative evidence that the city was negligent as the boom truck was parked on a straight, flat section of the street, and plaintiff's failure to see the large, well-lit boom truck was inexplicable. *Usry v. City of Sandersville*, 374 Ga. App. 439, 913 S.E.2d 72, 2025 Ga. App. LEXIS 67 (2025).

Parked garbage truck. Trial court erred in denying the city's motion for summary judgment because a genuine issue of material fact did not exist as to whether the hazard lights on the city waste collection truck were flashing because the city employees unequivocally testified that the driver activated the truck's hazard lights as the driver stopped

on the road prior to the accident; the plaintiff testified that, prior to the collision, the plaintiff never saw lights or even the truck itself; and a state trooper who investigated the accident testified that the trooper did not know if the lights were flashing prior to the accident as the hazard lights were damaged by the collision. *City of Sandersville v. Usry*, 365 Ga. App. 426, 878 S.E.2d 768, 2022 Ga. App. LEXIS 451 (2022).

Evidence sufficient to support conviction for improper parking. — Defendant's claim that the evidence was insufficient to support the convictions for DUI and improper parking lacked merit since the evidence showed that the defendant had bloodshot eyes, slurred speech, an odor of alcohol on the defendant's breath and person, failed all of the field sobriety tests, and registered positive on the alco-sensor. *Ghant v. State*, 368 Ga. App. 472, 890 S.E.2d 379, 2023 Ga. App. LEXIS 344 (2023).

PART 2

PARKING FOR PERSONS WITH DISABILITIES

40-6-228. Enforcement.

(a) Any county or municipal law enforcement agency of the state which is empowered to enforce the provisions of this part may, in its discretion, appoint any person who is a citizen of the United States, is of good moral character, and has not previously been convicted of a felony to enforce the provisions of Code Section 40-6-226 within the county or municipality in which the appointing law enforcement agency exercises jurisdiction. Each person appointed pursuant to this Code section shall take and subscribe an oath of office as prescribed by the appointing authority. Any person appointed and sworn pursuant to this subsection shall be authorized to enforce the provisions of this part in the same manner as any law enforcement officer of the state or any county or municipality of the state subject to the limitations provided in subsections (b) and (c) of this Code section.

(b) No person appointed pursuant to subsection (a) of this Code section shall be deemed a peace officer under the laws of this state or:

(1) Be deemed an employee of or receive any compensation from the state, county, municipality, or appointing law enforcement agency, but the appointing law enforcement agency shall provide any person so appointed with a uniform consisting of a pith helmet and a windbreaker jacket which shall remain the property of the appointing law enforcement agency;

(2) Be required to complete any training or be certified pursuant to the requirements of Chapter 8 of Title 35;

(3) Have the power or duty to enforce any other traffic or criminal laws of the state, county, or municipality;

(4) Have the power to possess and carry firearms and other weapons for the purpose of enforcing the parking laws for persons with disabilities; provided, however, that a person who is a lawful weapons carrier as defined in Code Section 16-11-125.1 shall not be in violation of this paragraph; or

(5) Be entitled to any indemnification from the state, county, or municipality for any injury or property damage sustained by such person as a result of attempting to enforce the parking laws of the state for persons with disabilities.

(c) Neither the state nor any county, municipality, or other political subdivision of the state or any department, agency, board, or officer of the state or any county, municipality, or political subdivision of the state shall be liable or accountable for or on account of any act or omission of any person appointed pursuant to this Code section in connection with such person's enforcement of the provisions of Code Section 40-6-226. No person appointed pursuant to this Code section shall be liable on account of any act or omission in connection with such person's enforcement of the provisions of Code Section 40-6-226.

(d) It shall be unlawful for any person willfully to obstruct, resist, impede, or interfere with any person appointed pursuant to this Code section in connection with such person's enforcement of Code Section 40-6-226 or to retaliate or discriminate in any manner against such person as a reprisal for any act or omission of such person. Any violation of this subsection shall be punishable as a misdemeanor.

History.

Code 1981, § 40-6-227, enacted by Ga. L. 1988, p. 389, § 1; Code 1981, § 40-6-228, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 504, § 1; Ga. L. 1995, p. 1302, § 8; Ga. L. 1997, p. 521, § 1; Ga. L. 2010, p. 524, § 1/HB 1338; Ga.

L. 2010, p. 963, § 2-16/SB 308; Ga. L. 2022, p. 74, § 17/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, substituted "is a lawful weapons carrier as defined in Code Section 16-11-125.1" for "possesses a valid weapons

carry license issued under Code Section 16-11-129 and who carries such weapon in a manner permitted under Code Section 16-11-126” in paragraph (b)(4).

Editor’s notes.

Ga. L. 2022, p. 74, § 1/SB 319, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Chairman John Meadows Act.’”

Ga. L. 2022, p. 74, § 2/SB 319, not codified by the General Assembly, provides: “The General Assembly finds and determines that:

“(1) The Second Amendment to the United States Constitution recognizes the right of the people to keep and bear arms

and that such right shall not be infringed; and

“(2) The people of this state, to perpetuate the principles of free government, insure justice to all, preserve peace, promote the interest and happiness of the citizen and of the family, and transmit to posterity the enjoyment of liberty, provided that the right of the people to keep and bear arms shall not be infringed but that the General Assembly shall have power to prescribe the manner in which arms may be borne.”

Law reviews.

For article, “SB 319: Chairman John Meadows Act,” see 39 Ga. St. U.L. Rev. 1 (2022).

ARTICLE 11

MISCELLANEOUS PROVISIONS

40-6-241. Distracted driving; restrictions on operation of wireless telecommunications devices and stand-alone electronic devices; penalty; exceptions.

JUDICIAL DECISIONS

Award of punitive damages based on cell phone use in auto accident. —

Given uncontroverted evidence that a teen driver was not using the driver’s cell phone at the time of the accident, the driver’s earlier phone-related conduct was not the proximate cause of the driver accidentally striking a pedestrian and the pedestrian’s dog, and punitive damages were not available. *Head v. de Souse*, 353 Ga. App. 309, 836 S.E.2d 227, 2019 Ga. App. LEXIS 685 (2019).

Evidence sufficient to support conviction. —

Evidence that the defendant failed to yield the right of way and used a mobile device to the point that the defendant was distracted supported the convictions for homicide by vehicle, reckless driving, failure to exercise due care, and failure to stop at a stop sign. *Holley v. State*, 363 Ga. App. 107, 871 S.E.2d 13, 2022 Ga. App. LEXIS 129 (2022).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 40-6-241 do not, at this time, appear to

be offenses for which fingerprinting is required. 2018 Op. Att’y Gen. No. 18-3.

RESEARCH REFERENCES

ALR.

Civil Liability Arising from Cell Phone

or Smartphone Use While in Traffic, 53 A.L.R.7th 4.

40-6-241.1. [Repealed] Definitions; prohibition on certain persons operating motor vehicle while engaging in wireless communications; exceptions; penalties.

Law reviews.

For article on the 2018 repeal of this

Code section, see 35 Ga. St. U.L. Rev. 139 (2018).

40-6-241.2. [Repealed] Writing, sending, or reading text based communication while operating motor vehicle prohibited; prohibited uses of wireless telecommunications devices by drivers of commercial vehicles; exceptions; penalties for violation.

Law reviews.

For article on the 2018 repeal of this

Code section, see 35 Ga. St. U.L. Rev. 139 (2018).

40-6-248.1. Securing and covering loads on vehicles.

JUDICIAL DECISIONS

O.C.G.A. § 40-6-248.1(b) imposes a duty on a person assisting the operator of a vehicle with loading merchandise onto the vehicle to securely fasten the load; a person assisting in loading a vehicle may be liable in tort for injuries to a third party resulting from a breach of his or her duty to secure that

load (and any covering thereon), and when serving as the basis for a civil tort suit; a violation of § 40-6-248.1(b)(1) is subject to ordinary tort principles and defenses. *McEntyre v. Sam's East, Inc.*, 313 Ga. 429, 870 S.E.2d 385, 2022 Ga. LEXIS 52 (2022).

40-6-253. Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area.

JUDICIAL DECISIONS

Retrial permissible. — Retrial was not barred by the Double Jeopardy Clause because the jury was authorized to find the defendant guilty beyond a reasonable doubt of violation of the open container law based upon evidence of the odor of alcohol emanating from the vehicle, the officer's testimony that the defendant told the officer that the defendant had just picked up the passengers from a party and that both of them were intoxicated, the presence of two bottles of alcohol, both with their seals broken and the contents partially removed, and another officer's testimony that the bottles were wedged

under the front-passenger seat within arm's reach of the defendant. *Sexton-Johnson v. State*, 354 Ga. App. 646, 839 S.E.2d 713, 2020 Ga. App. LEXIS 98 (2020).

Ineffective assistance required reversal. — Defendant's conviction for possession of an open container of alcohol while operating a vehicle had to be reversed because trial counsel was deficient in failing to move to quash the charge, asserting that it was subject to a general demurrer. *Sexton-Johnson v. State*, 354 Ga. App. 646, 839 S.E.2d 713, 2020 Ga. App. LEXIS 98 (2020).

RESEARCH REFERENCES

ALR.

Open Container Laws, 81 A.L.R.7th 3.

ARTICLE 12
ACCIDENTS

40-6-270. Hit and run; duty of driver to stop at or return to scene of accident.

JUDICIAL DECISIONS

ANALYSIS

PRACTICE AND PROCEDURE
APPLICATION

Practice and Procedure

Sufficiency of indictment. — Indictment charging the defendant with homicide by vehicle in the first degree predicated on a hit-and-run offense and hit and run was improperly dismissed because the defendant could not admit the allegations in the hit-and-run count of the indictment and not be guilty of that crime because, if the defendant admitted that the defendant was involved in an accident which was the proximate cause of the victim’s death and that the defendant knowingly failed to stop the defendant’s vehicle at the scene of the accident or stop the defendant’s vehicle as close thereto as possible and return to the scene as alleged in the indictment, the defendant would be guilty of hit and run. State v. Mondor, 306

Ga. 338, 830 S.E.2d 206, 2019 Ga. LEXIS 449 (2019).

Application

Evidence regarding victim’s use of seatbelt irrelevant and inadmissible. — Trial court properly excluded evidence of seatbelt use because evidence of the victim’s failure to wear a seatbelt was irrelevant to causation and inadmissible in a criminal case as it did not tend to make it either more or less probable that an accident caused by the defendant proximately caused the victim’s death, in violation of the statutes for homicide by vehicle in the first degree predicated on a hit-and-run offense and for hit and run. State v. Mondor, 306 Ga. 338, 830 S.E.2d 206, 2019 Ga. LEXIS 449 (2019).

40-6-274. Exemption from duty to stop at scene or report accident.

JUDICIAL DECISIONS

Statute not applicable. — In an action for hit and run and tampering with evidence, the trial court did not err in declining to give the defendant’s requested charge on O.C.G.A. § 40-6-274,

because that statute did not apply when there was evidence of a fatality. Herrington v. State, 364 Ga. App. 186, 874 S.E.2d 389, 2022 Ga. App. LEXIS 282 (2022).

40-6-275. Duty to remove vehicle from public roads; removal of incapacitated vehicle from state highway.

JUDICIAL DECISIONS

Exclusion prohibited establishing possibility of intoxication of driver who abandoned vehicle. — In a personal injury case, the trial court abused the court’s discretion by granting the defendant’s motion in limine because the excluded evidence was relevant to the most important issue of the case, whether the defendant parked the vehicle in the middle of the road; thus, the trial court’s

exclusion precluded the plaintiff from establishing that the defendant may have been intoxicated at the time the vehicle was left and/or from opportunities to impeach the defendant’s testimony. *Barrett v. Burnette*, 348 Ga. App. 838, 824 S.E.2d 701, 2019 Ga. App. LEXIS 90 (2019), cert. denied, No. S19C0930, 2019 Ga. LEXIS 780 (Ga. Nov. 4, 2019).

ARTICLE 13

SPECIAL PROVISIONS FOR CERTAIN VEHICLES

PART 1

BICYCLES AND PLAY VEHICLES

40-6-294. Riding on roadways and bicycle paths.

(a) As used in this Code section, the term “hazards to safe cycling” includes, but shall not be limited to, surface debris, rough pavement, drain grates which are parallel to the side of the roadway, parked or stopped vehicles, potentially opening car doors, or any other objects which threaten the safety of a person operating a bicycle.

(b) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, except when:

- (1) Turning left;
- (2) Avoiding hazards to safe cycling;
- (3) The lane is too narrow to share safely with a motor vehicle;
- (4) Traveling at the same speed as traffic;
- (5) Exercising due care when passing a standing vehicle or one proceeding in the same direction; or
- (6) There is a right turn only lane and the person operating the bicycle is not turning right;

provided, however, that every person operating a bicycle away from the right side of the roadway shall exercise reasonable care and shall give due consideration to the other applicable rules of the road.

(c) Persons riding bicycles upon a roadway shall not ride more than

two abreast except on bicycle paths, bicycle lanes, parts of roadways set aside for the exclusive use of bicycles, or when a special event permit issued by a local governing authority permits riding more than two abreast.

(d) Whenever a usable bicycle path has been provided adjacent to a roadway and designated for the exclusive use of bicycle riders, then the appropriate governing authority may require that bicycle riders use such bicycle path and not use those sections of the roadway so specified by such local governing authority. The governing authority may be petitioned to remove restrictions upon demonstration that the bicycle path has become inadequate due to capacity, maintenance, or other causes.

(e) Bicycle paths subject to the provisions of subsection (d) of this Code section shall at a minimum be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials, and such bicycle paths shall provide accessibility to destinations equivalent to the use of the roadway.

(f) Any person operating a bicycle in a bicycle lane shall ride in the same direction as traffic on the roadway.

History.

Ga. L. 1973, p. 471, § 6; Code 1933, § 68A-1205, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 1546, §§ 1, 2; Ga. L. 1995, p. 271, § 1; Ga. L. 1996, p. 236, § 2; Ga. L. 2011, p. 426, § 3/HB 101; Ga. L. 2019, p. 264, § 3/HB 454.

Amendments.

The 2019 amendment, effective July 1, 2019, deleted former subsection (g), which read: “Electric assisted bicycles may be operated on bicycle paths.”

40-6-296. Lights and other equipment on bicycles.

JUDICIAL DECISIONS

Statute does not apply to motorized skateboards. — In a suit arising from a college student riding a motorized skateboard colliding with a cyclist, getting hurt, and suing the cyclist, the trial court erred by excluding evidence that the skateboarder was not wearing a helmet at the

time of the collision as the statutes relied upon by the trial court regulated only bicycles and electric bicycles and did not apply in any way to motorized skateboards. *Stockert v. Rogers*, 361 Ga. App. 276, 864 S.E.2d 116, 2021 Ga. App. LEXIS 472 (2021).

PART 1A

ELECTRIC ASSISTED BICYCLES

Effective date.

This part became effective July 1, 2019.

40-6-300. Definitions.

For purposes of this part, the term:

(1) “Class I electric assisted bicycle” means an electric assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the device reaches a speed of 20 miles per hour.

(2) “Class II electric assisted bicycle” means an electric assisted bicycle equipped with a motor that may be used exclusively to propel the vehicle but is not capable of reaching a speed of 20 miles per hour.

(3) “Class III electric assisted bicycle” means an electric assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the device reaches a speed of 28 miles per hour.

History.

Code 1981, § 40-6-300, enacted by Ga.
L. 2019, p. 264, § 4/HB 454.

40-6-301. Rights and duties of electric assisted bicycle operators.

Every person operating an electric assisted bicycle shall be granted all the rights and shall be subject to all the duties applicable to the operator of a bicycle under this title except as otherwise provided in this part.

History.

Code 1981, § 40-6-301, enacted by Ga.
L. 2019, p. 264, § 4/HB 454.

40-6-302. Labeling of bicycles; required equipment.

(a) Any electric assisted bicycle manufactured on and after January 1, 2020, shall be equipped with a permanently affixed label in a prominent location which identifies such device as a class I, II, or III electric assisted bicycle along with the motor wattage and top assisted speed capability. Such label shall be printed in at least 9 point Arial font.

(b) The requirements set forth in subsection (a) of this Code section shall apply to a manufacturer, distributor, and any person who alters an

electric assisted bicycle in a manner that changes the class by which the electric assisted bicycle is identified.

(c) Any electric assisted bicycle shall have the same equipment required for bicycles as set forth in Part 1 of this article; provided however, that such devices shall be capable of disengaging the motor when the operator stops pedaling or applies the brakes.

(d) Any class III electric assisted bicycle shall be equipped with a speedometer that is capable of displaying the speed the device is traveling measured in miles per hour.

History.

Code 1981, § 40-6-302, enacted by Ga.
L. 2019, p. 264, § 4/HB 454.

40-6-303. Location of operation; age limitations; required safety equipment.

(a)(1) Any class I electric assisted bicycle or class II electric assisted bicycle shall be authorized to be operated on any bicycle path or shared use path where bicycles are permitted to be operated; provided, however, that a local authority or state agency may prohibit the operation of a class I electric assisted bicycle or class II electric assisted bicycle on any bicycle path or shared use path within its jurisdiction.

(2) No class III electric assisted bicycle shall be operated on a bicycle path or shared use path unless such path is within or adjacent to a highway or unless operation of such device is permitted on such path by the local authority or state agency having jurisdiction over such path.

(3) This subsection shall not apply to a bicycle path or shared use path designated for nonmotorized vehicles if such path has a natural surface tread made by clearing and grading the native soil with no added surface materials. The types of devices which may be used upon such trails may be regulated by the local authority or state agency having jurisdiction over such path.

(b) No person under the age of 15 shall operate a class III electric assisted bicycle; provided, however, that such person shall be authorized to ride as a passenger upon a class III electric assisted bicycle designed to accommodate passengers.

(c)(1) No person shall operate or be a passenger on a class III electric assisted bicycle without wearing a bicycle helmet.

(2) No class III electric assisted bicycle without an accompanying protective bicycle helmet shall be rented to or leased to any person for

use unless such person is in possession of a bicycle helmet at the time of the rental or lease.

(3) For the purposes of this subsection, the term “bicycle helmet” means a piece of protective headgear which meets or exceeds the impact standards for bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(4) For the purposes of this subsection, a person shall be deemed to wear a bicycle helmet only if a bicycle helmet of good fit is fastened securely upon such person’s head with the straps of such bicycle helmet.

(5) Violation of any provision of this subsection shall not constitute negligence per se nor contributory negligence per se or be considered evidence of negligence or liability.

History.

Code 1981, § 40-6-303, enacted by Ga. L. 2019, p. 264, § 4/HB 454; Ga. L. 2021, p. 922, § 40/HB 497.

Amendments.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modern-

ize, and correct the Code, deleted “years of age” following “age of 15” in subsection (b).

JUDICIAL DECISIONS

Statute does not apply to motorized skateboards. — In a suit arising from a college student riding a motorized skateboard colliding with a cyclist, getting hurt, and suing the cyclist, the trial court erred by excluding evidence that the skateboarder was not wearing a helmet at the

time of the collision as the statutes relied upon by the trial court regulated only bicycles and electric bicycles and did not apply in any way to motorized skateboards. *Stockert v. Rogers*, 361 Ga. App. 276, 864 S.E.2d 116, 2021 Ga. App. LEXIS 472 (2021).

PART 1B

OPERATION OF FARM USE VEHICLE

Editor’s notes.

Former Part 1A, which consisted of Code Sections 40-6-305, 40-6-306, and

40-6-307, was redesignated as Part 1B by Ga. L. 2019, p. 264, § 4/HB 454, effective July 1, 2019.

40-6-308. Operation of farm tractors and implements of husbandry upon certain highways; yielding of right of way.

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

(1) “Farm tractor” means every motor vehicle designed and used primarily as a farm implement, for drawing plows, mowing machines, and other implements of husbandry.

(2) “Implement of husbandry” means every device, whether it is self-propelled or not, designed and adapted so as to be used primarily for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and, in either case, not subject to registration if operated upon the highways.

(3) “Operator” means any individual lawfully operating a farm tractor or implement of husbandry.

(b) Farm tractors, except trailers and semitrailers operated in accordance with statutory limits or provisions of Code Sections 32-6-24 and 40-8-50, shall not be permitted to travel upon any highway in this state which is a part of The Dwight D. Eisenhower System of Interstate and Defense Highways, provided that the Department of Public Safety shall have the authority to permit such travel in certain geographic areas of the state as deemed necessary. Farm tractors or implements of husbandry may be operated on any highway in this state if the operator complies with Code Section 40-8-4 and has taken reasonable steps to reduce the width of the farm tractor or implement of husbandry as provided for by the manufacturer. Whenever the width of a farm tractor or implement of husbandry exceeds the width of that portion of a roadway on which the farm tractor or implement of husbandry is driven, which is marked as a single lane of traffic, or, if the roadway has not been marked for lanes of traffic and the width of the farm tractor or implement of husbandry exceeds more than 50 percent of the width of the roadway, the operator shall move the farm tractor or implement of husbandry, as soon as possible, as far to the right-hand side of the roadway as is practicable and safe upon approach of any oncoming or following vehicle and upon approaching the crest of a hill.

(c) Upon the immediate approach of a farm tractor or implement of husbandry which cannot be moved by the operator thereof to the far right-hand side of the roadway in compliance with subsection (b) of this Code section, due to the existence of any bridge or guardrail, sign, or any other physical impediment which would not safely allow such tractor or implement of husbandry to travel on the far right-hand side of the road, the driver of every other vehicle shall yield the right-of-way and shall immediately pull over to the far right-hand side of the road and remain in such position until the farm tractor or implement of husbandry has passed.

(d) This Code section shall not operate to relieve any operator of a farm tractor or implement of husbandry from the duty to drive with due regard for the safety of all persons using the roadway.

History.

Code 1981, § 40-6-308, enacted by Ga. L. 2021, p. 78, § 1/HB 693; Ga. L. 2024, p. 478, § 1/SB 436, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2021.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted “primarily” for “exclu-

sively” in the middle of paragraph (a)(2); added paragraph (a)(3); added “of husbandry” five times in subsection (b) and twice in subsection (c); and substituted “highway” for “state or local roadway” in the second sentence in subsection (b).

PART 2A

ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES AND PERSONAL DELIVERY DEVICES

40-6-320. Operation on highways and sidewalks; direction of travel.

(a) Electric personal assistive mobility devices and personal delivery devices may be operated on highways and on sidewalks where a 48 inch clear path is maintained for access for persons with disabilities, provided that any person operating such devices shall have the same rights and duties as prescribed for pedestrians in Article 5 of this chapter when operating upon a sidewalk and as prescribed for motor vehicles in this chapter when operating upon a highway except as otherwise provided in this part to the contrary. When either an electric personal assistive mobility device or personal delivery device encounters a pedestrian or individual in a wheelchair upon a sidewalk, the operator of such device shall yield the right of way to the pedestrian or individual in a wheelchair.

(b)(1) No person shall operate any electric personal assistive mobility device on the roadway of any highway unless:

(A) The maximum speed limit of the roadway is 35 miles per hour or less; or

(B) The roadway has a separately striped bicycle lane and the device is operated within the bicycle lane.

(2) Operation of a personal delivery device upon any highway shall be with due regard to safety and traffic considerations and limited to:

(A) Highways which are not limited-access highways with a maximum speed limit of 45 miles per hour or less; and

(B) The bicycle lane, bicycle path, shared use path, shoulder, or as close as practicable to the extreme right of the roadway unless crossing a roadway at a crosswalk or intersection or avoiding an object or a parked vehicle.

(c) When traveling on any roadway of a highway other than a crosswalk, a person operating an electric personal assistive mobility device or a personal delivery device shall travel in the same direction authorized for motor vehicle traffic on such roadway.

History.

Code 1981, § 40-6-320, enacted by Ga. L. 2003, p. 308, § 4; Ga. L. 2022, p. 543, § 2/HB 1009.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote subsection (a); redesignated former subsection (b) as paragraph

(b)(1) and added paragraph (b)(2); and, in subsection (c), inserted “other than a crosswalk” and “or a personal delivery device”.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-321. Avoiding collisions; yielding the right of way; warning of approach.

Any person operating an electric personal assistive mobility device or a personal delivery device on a sidewalk or roadway shall comply with the requirements of this part or any local ordinance regulating the use of such devices pursuant to Code Section 40-6-371 and shall exercise due care to avoid colliding with, and shall yield the right of way to, persons traveling on foot. A personal delivery device shall emit a sound when approaching and within six feet of a vehicle, person on foot, or individual in a wheelchair.

History.

Code 1981, § 40-6-321, enacted by Ga. L. 2003, p. 308, § 4; Ga. L. 2022, p. 543, § 2/HB 1009.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted “or a personal delivery

device” in the first sentence and added the second sentence.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-322. Speed of travel restricted.

(a) No person shall operate an electric personal assistive mobility device at a speed greater than seven miles per hour when traveling on any sidewalk or 15 miles per hour elsewhere; provided, however, that a county or municipal governing authority or the commissioner of transportation may further restrict the speed of such devices in locations where pedestrian traffic is congested and there is a significant speed differential between pedestrians and operators of such devices.

(b) Operation of a personal delivery device shall be limited to:

- (1) A speed of no greater than 20 miles per hour when upon a bicycle lane, shoulder, or roadway;
- (2) A speed of no greater than four miles per hour when upon a sidewalk or within a shared use path or safety zone; and
- (3) A speed of no less than 3.5 feet per second and no more than four miles per hour when within a crosswalk.

History.

Code 1981, § 40-6-322, enacted by Ga. L. 2003, p. 308, § 4; Ga. L. 2022, p. 543, § 2/HB 1009.

Amendments.

The 2022 amendment, effective July 1, 2022, designated the existing provi-

sions of this Code section as subsection (a) and added subsection (b).

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-323. Parking.

(a) An electric personal assistive mobility device or a personal delivery device may be parked on a sidewalk unless otherwise prohibited or restricted by an official traffic control device or local ordinance; provided, however, that in no case shall an electric personal assistive mobility device be parked on any sidewalk in such a manner as to prevent the movement of a wheelchair.

(b) An electric personal assistive mobility device or a personal delivery device shall not be parked on any roadway in such a manner as to prevent the movement of a legally parked motor vehicle.

(c) Except as otherwise provided in this Code section, a personal delivery device operator or any person operating an electric personal assistive mobility device shall be subject to the same parking restrictions as provided for motor vehicles under Part 1 of Article 10 of this chapter. All violations of parking restrictions shall be the responsibility of a personal delivery device owner or the owner of an electric personal assistive mobility device; and, for purposes of parking restrictions, the owner of an electric personal assistive mobility device and a personal delivery device owner shall be deemed to be in control of the device at the time of a parking violation involving such device, and no evidence of actual control by such owner need be proven as an element of the offense.

History.

Code 1981, § 40-6-323, enacted by Ga. L. 2003, p. 308, § 4; Ga. L. 2022, p. 543, § 2/HB 1009.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted “or a personal delivery device” in subsections (a) and (b); and, in

subsection (c), inserted “a personal delivery device operator or” in the first sentence and rewrote the second sentence.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-324. Transportation of hazardous materials; medical oxygen excluded.

No person shall carry or transport any hazardous materials on an electric personal assistive mobility device or a personal delivery device. Oxygen carried for personal medical reasons shall not be deemed a hazardous material for purposes of this Code section.

History.

Code 1981, § 40-6-324, enacted by Ga. L. 2003, p. 308, § 4; Ga. L. 2022, p. 543, § 2/HB 1009.

Amendments.

The 2022 amendment, effective July 1, 2022, added “or a personal delivery device” at the end of the first sentence.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-325. Required equipment; minimum age for operation; exception to age requirement.

(a)(1) Any electric personal assistive mobility device, when operated on any highway or sidewalk, shall be equipped with:

(A) Front, rear, and side reflectors which shall be visible from a distance of 300 feet when directly in front of lawful upper beams of headlights on a motor vehicle;

(B) A system that when employed will enable the operator to bring the device to a controlled stop; and

(C) A lamp emitting a white light which, while the device is in motion, illuminates the area in front of the operator for a distance of 300 feet, if the device is operated between one-half hour after sunset and one-half hour before sunrise.

(2) Any personal delivery device, when operated on any highway or sidewalk, shall be equipped with:

(A) A braking system that enables the device to come to a controlled stop;

(B) Lights upon the front and rear of the device that are visible under normal atmospheric conditions from at least 500 feet on all sides of the device, if the device is operated between one-half hour after sunset and one-half hour before sunrise; and

(C) A prominently displayed unique identification number and a contact phone number for the personal delivery device owner which shall be answered by an individual located within this state at any time when the device is in operation; provided, however, that nothing in this subparagraph shall subject a personal delivery device to motor vehicle registration requirements of Chapter 2 of this title or any local ordinance or regulation requiring registration of such devices.

(b) No person under the age of 16 years shall operate an electric assistive personal mobility device on any highway; provided, however, that a person under the age of 16 years may operate an electric assistive personal mobility device on any sidewalk if such person is wearing

protective headgear which meets or exceeds the impact standards for bicycle helmets required by Code Section 40-6-296.

History.

Code 1981, § 40-6-325, enacted by Ga. L. 2003, p. 308, § 4; Ga. L. 2022, p. 543, § 2/HB 1009.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote subsection (a), which read: “Any electric personal assistive mobility device, when operated on any highway or sidewalk, shall be equipped with front, rear, and side reflectors which shall be visible from a distance of 300 feet when directly in front of lawful upper beams of

headlights on a motor vehicle; a system that when employed will enable the operator to bring the device to a controlled stop; and, if the device is operated between one-half hour after sunset and one-half hour before sunrise, a lamp emitting a white light which, while the device is in motion, illuminates the area in front of the operator for a distance of 300 feet.”.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-326. Operation while intoxicated.

History.

Code 1981, § 40-6-326, enacted by Ga. L. 2003, p. 308, § 4; Ga. L. 2022, p. 543, § 2/HB 1009.

Editor’s notes.

Ga. L. 2022, p. 543, § 2/HB 1009, effective July 1, 2022, reenacted this Code

section without change. Refer to bound volume for text of this Code section.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-327. Monitoring of personal delivery devices; general liability coverage.

(a) A personal delivery device shall be monitored by an individual who is capable of exercising control over the navigation and operation of the personal delivery device at any point in time such device is operating upon highways or sidewalks.

(b) A personal delivery device owner shall maintain general liability coverage for any personal delivery device operated upon a highway or sidewalk of this state of at least \$250,000.00 for damages arising from the operation of the personal delivery device.

History.

Code 1981, § 40-6-327, enacted by Ga. L. 2022, p. 543, § 2/HB 1009.

Effective date.

This Code section became effective July 1, 2022.

Editor’s notes.

Ga. L. 2022, p. 543, § 2/HB 1009,

effective July 1, 2022, redesignated former Code Section 40-6-327 as present Code Section 40-6-329.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-328. Requirement in the event of an accident.

When an accident involves a personal delivery device, the requirements

of Code Sections 40-6-270, 40-6-271, 40-6-272, 40-6-273, and 40-6-273.1 shall be satisfied if such personal delivery device remains on the scene of such accident as required by law and the personal delivery device operator promptly contacts a local law enforcement agency and communicates the information required by this chapter.

History.

Code 1981, § 40-6-328, enacted by Ga. L. 2022, p. 543, § 2/HB 1009.

Effective date.

This Code section became effective July 1, 2022.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-329. Penalty for violations; judicial jurisdiction.

(a) Any person who violates any provision of this part relating to an electric personal assistive mobility device other than Code Section 40-6-326 shall not be guilty of a criminal offense or a moving traffic violation for purposes of Code Section 40-5-57 but shall be subject to a civil monetary penalty not to exceed \$500.00.

(b) Any violation of this part by a personal delivery device shall not be a criminal offense or a moving traffic violation for purposes of Code Section 40-5-57 but shall be subject to a civil monetary penalty not to exceed \$500.00. Any citation for a violation of this part or any other laws or ordinances relating to the operation of a personal delivery device shall be issued to the personal delivery device owner by use of the information displayed on the unique identification marker on the device.

(c) Any court having jurisdiction over violations relating to the operation of a motor vehicle shall have jurisdiction over cases arising under this part and shall be authorized to impose the civil monetary penalty provided by this Code section. Except as otherwise provided in this Code section, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations relating to the operation of a motor vehicle shall apply to enforcement under this Code section; provided, however, that any appeal from a superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

History.

Code 1981, § 40-6-327, enacted by Ga. L. 2003, p. 308, § 4; Code 1981, § 40-6-329, Ga. L. 2022, p. 543, § 2/HB 1009.

Amendments.

The 2022 amendment, effective July 1, 2022, redesignated former Code Section 40-6-327 as present Code Section 40-6-329; designated the existing provisions of

this Code section as subsection (a), and, in subsection (a), inserted “relating to an electric personal assistive mobility device” and “monetary”; and added subsection (b).

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-329.1. Local ordinances or resolutions; limitations; authority; requirements.

(a) Except as otherwise provided for in this article and subsections (b) and (c) of this Code section, local authorities shall not enact or enforce an ordinance or resolution relating to:

(1) Design, manufacture, or maintenance of a personal delivery device;

(2) Licensing, registration, or certification of a personal delivery device;

(3) Any additional taxation upon a personal delivery device other than any property tax charges, business license fees, or occupation tax surcharges otherwise authorized by law;

(4) Insuring a personal delivery device beyond the requirements set forth in Code Section 40-6-327;

(5) Types of cargo that may be transported by a personal delivery device;

(6) Operations of personal delivery devices; or

(7) Use of or restricted access to any sidewalk, crosswalk, or public highway.

(b) For the purpose of assuring the safety of individuals using highways, sidewalks, bicycle lanes, bicycle paths, and shared use paths a local authority shall be authorized to enact ordinances prohibiting hours of operation of personal delivery devices upon sidewalks, bicycle lanes, bicycle paths, and shared use paths under their jurisdiction, provided that restrictions do not prohibit the operation of personal delivery devices between sunrise and sunset. A local authority shall be further authorized to enact ordinances prohibiting the operation of personal delivery devices upon the property of schools, hospitals, and sidewalks immediately adjacent to stadiums, coliseums, or buildings owned, operated or leased by the federal government, the State of Georgia or its agencies or authorities, or any political subdivision of the state, provided that such property or sidewalk is owned or maintained by the local authority.

(c) Any local authority shall be authorized to enact an ordinance or resolution which designates a geographically limited area within the jurisdiction of such authority and which regulates the operation of personal delivery devices upon highways, sidewalks, bicycle lanes, bicycle paths, and shared use paths within such geographically limited

area, provided that such regulations are no more restrictive than those imposed by this part and the geographically limited area is no greater than seven linear miles.

(d) A local authority shall provide for public hearing prior to passage of any ordinance pursuant to subsection (b) or (c) of this Code section.

(e) For purposes of this Code section, a highway shall be considered under the jurisdiction of a local authority when it is part of the county or municipal road system of such local authority designated pursuant to Chapter 4 of Title 32.

History.

Code 1981, § 40-6-329.1, enacted by Ga. L. 2022, p. 543, § 2/HB 1009.

Effective date.

This Code section became effective July 1, 2022.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

40-6-329.2. Operation of personal delivery device within surface transportation project prohibited.

No personal delivery device shall be operated within a surface transportation project as such term is defined in Code Section 36-61-2.

History.

Code 1981, § 40-6-329.2, enacted by Ga. L. 2022, p. 543, § 2/HB 1009.

Effective date.

This Code section became effective July 1, 2022.

Law reviews.

For article, “HB 1009: Remote Operation of Personal Delivery Devices,” see 39 Georgia St. U.L. Rev. 211 (2022).

PART 4

MOPEDS

40-6-351. Driver’s license or permit required for certain operators.

No person under 15 years of age shall operate a moped upon the highways in this state. No person shall operate a moped upon the highways in this state unless he or she has in his or her possession a valid driver’s license, instruction permit, or limited permit issued to him or her pursuant to Chapter 5 of this title; provided, however, that all classes of licenses, instruction permits, or limited permits issued pursuant to Chapter 5 of this title shall be valid for the purposes of operating mopeds upon the highways in this state.

History.

Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048,

§ 5; Ga. L. 1996, p. 236, § 3; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2019, p. 264, § 5/HB 454.

Amendments.

The 2019 amendment, effective July 1, 2019, substituted “upon the highways in” for “or an electric assisted bicycle upon the public roads and highways of” in the middle of the first sentence; in the second sentence, substituted “highways in this state unless he or she has” for “public

roads and highways of this state unless he or she shall have” near the middle and substituted “highways in” for “public roads and highways of” near the end; and deleted the former third sentence, which read: “No license or permit shall be required for the operation of an electric assisted bicycle.”

40-6-352. Protective headgear.

(a) No person shall operate or ride as a passenger upon a moped unless he or she is wearing protective headgear which complies with standards established by the commissioner of public safety. The commissioner in determining such standards shall consider the size, speed, and operational characteristics of the moped. Such standards need not necessarily be the same as for motorcyclists; however, any moped operator wearing an approved motorcycle helmet shall be deemed in compliance with this subsection.

(b) The commissioner of public safety is authorized to approve or disapprove protective headgear for moped operators and to issue and enforce regulations establishing standards and specifications for the approval thereof. He or she shall publish in print or electronically lists by name and type of all protective headgear which have been approved by him or her.

History.

Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 236, § 4; Ga. L. 2000, p. 951, § 5A-10; Ga. L. 2005, p. 334, § 18-14/HB 501; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2019, p. 264, § 6/HB 454.

Amendments.

The 2019 amendment, effective July 1, 2019, deleted the former last sentence

in subsection (a), which read: “Operators of electric assisted bicycles may wear a properly fitted and fastened bicycle helmet which meets the standards of the American National Standards Institute or the Snell Memorial Foundation’s Standards for Protective Headgear for Use in Bicycling, rather than a motorcycle helmet.”

PART 5**LOW-SPEED OR MULTIPURPOSE OFF-HIGHWAY VEHICLES****40-6-359. Required equipment for multipurpose off-highway vehicles.**

Multipurpose off-highway vehicles shall be equipped with:

- (1) Headlights;
- (2) Brake lights;
- (3) Taillights;

- (4) A rearview mirror; and
- (5) Safety belts.

History.
Code 1981, § 40-6-359, enacted by Ga. L. 2023, p. 352, § 2-7/HB 121, effective July 1, 2023.

Effective date.
This Code section became effective July 1, 2023.

40-6-360. Rights of persons operating low-speed or multipurpose off-highway vehicles.

Every person operating a low-speed vehicle or multipurpose off-highway vehicle shall be granted all the rights and shall be subject to all the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application.

History.
Code 1981, § 40-6-360, enacted by Ga. L. 2002, p. 512, § 12; Ga. L. 2023, p. 352, § 2-7/HB 121, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, inserted “or multipurpose off-highway vehicle” near the beginning.

40-6-361. Traffic laws applicable to low-speed or multipurpose off-highway vehicles.

- (a) All low-speed vehicles and multipurpose off-highway vehicles are entitled to full use of a lane, and no motor vehicle shall be driven in such a manner as to deprive any such vehicles of the full use of a lane.
- (b) The operator of a low-speed vehicle or multipurpose off-highway vehicle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.
- (c) No person shall operate a low-speed vehicle or multipurpose off-highway vehicle between lanes of traffic or between adjacent lines or rows of vehicles.
- (d) Low-speed vehicles and multipurpose off-highway vehicles shall not be operated two or more abreast in a single lane.

History.
Code 1981, § 40-6-361, enacted by Ga. L. 2002, p. 512, § 12; Ga. L. 2023, p. 352, § 2-7/HB 121, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, inserted “and multipurpose off-highway vehicles” in subsections (a) and (d), substituted “such vehicles” for “low-speed vehicle” near the end of subsection (a), and inserted “or multipurpose off-highway vehicle” in subsections (b) and (c).

40-6-362. Operating low-speed and multipurpose off-highway vehicles on highways.

(a) Low-speed vehicles shall be operated only on any highway where the posted speed limit does not exceed 35 miles per hour. The operator of a low-speed vehicle shall not operate such vehicle on any highway where the posted speed limit exceeds 35 miles per hour.

(b) Multipurpose off-highway vehicles shall be operated only on highways that are part of a county road system and shall be authorized to cross highways that are part of a municipal street system or are part of the state highway system.

History.

Code 1981, § 40-6-362, enacted by Ga. L. 2002, p. 512, § 12; Ga. L. 2023, p. 352, § 2-7/HB 121, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, designated the existing provi-

sions of this Code section as subsection (a) and added subsection (b).

ARTICLE 15

SERIOUS TRAFFIC OFFENSES

40-6-390. Reckless driving.

JUDICIAL DECISIONS

ANALYSIS

PROCEDURE APPLICATION

Procedure

Language of indictment. — Indictment charging the defendant with serious injury by vehicle based on both reckless driving and driving under the influence was defective and, therefore, counsel was ineffective for failing to file a general demurrer because the indictment failed to include the language that the defendant drove with reckless disregard for the safety of persons or property and it neither recited the language that the defendant was under the influence of alcohol to the extent that it was less safe for the defendant to drive or that the defendant's alcohol concentration was 0.08 or more nor alleged the facts necessary to establish violation of the driving under the influence statute. *Heath v. State*, 349 Ga.

App. 84, 825 S.E.2d 474, 2019 Ga. App. LEXIS 110 (2019), *aff'd*, 308 Ga. 836, 843 S.E.2d 801, 2020 Ga. LEXIS 362 (2020).

Indictment charging the defendant with first degree vehicular homicide based on reckless driving was defective and, therefore, counsel was ineffective for failing to file a general demurrer because it failed to include the language that the defendant drove with reckless disregard for the safety of persons or property, an essential element of the predicate offense. *Heath v. State*, 349 Ga. App. 84, 825 S.E.2d 474, 2019 Ga. App. LEXIS 110 (2019), *aff'd*, 308 Ga. 836, 843 S.E.2d 801, 2020 Ga. LEXIS 362 (2020).

Trial counsel was not ineffective for failing to file a general demurrer where the indictment was not fatally defective

Procedure (Cont'd)

for not including the language of O.C.G.A. § 40-6-390, the predicate offense for the vehicular homicide charges in question, in Counts 3 and 4, as that language was included fully in three other counts in the indictment. *Phillips v. State*, 367 Ga. App. 499, 887 S.E.2d 366, 2023 Ga. App. LEXIS 181 (2023).

Application

Sufficient evidence to find defendant guilty. — There was sufficient evidence to establish that the defendant drove a vehicle in a manner exhibiting a reckless disregard for the safety of persons or property as there was evidence from which the jury could conclude that the defendant was driving in excess of the posted speed limit during school dismissal in an area where students were present, and evidence that the defendant drove past a moving school bus with students aboard, causing the bus driver to suddenly brake to avoid hitting the defendant's vehicle. *Mule v. State*, 355 Ga. App. 239, 843 S.E.2d 894, 2020 Ga. App. LEXIS 296 (2020).

Evidence that the defendant failed to yield the right of way and used a mobile device to the point that the defendant was distracted supported the convictions for homicide by vehicle, reckless driving, failure to exercise due care, and failure to

stop at a stop sign. *Holley v. State*, 363 Ga. App. 107, 871 S.E.2d 13, 2022 Ga. App. LEXIS 129 (2022).

Alcohol impairment not essential element of reckless driving crime. — Trial court erred by granting the defendant a new trial on the charges of homicide by vehicle and reckless driving because, even absent any consideration of alcohol impairment, the overwhelming evidence showed that the defendant drove the car in a manner that exhibited reckless disregard for the victim's safety and caused the victim's death. The evidence showed that the defendant knew the victim was near the defendant's vehicle and knew that the defendant's vision was impaired, but drove the defendant's vehicle forward and backward anyway at a high rate of speed. *State v. Robertson*, 369 Ga. App. 707, 894 S.E.2d 431, 2023 Ga. App. LEXIS 519 (2023).

Stop not justified as defendant did not drive recklessly. — Defendant's motion to suppress was properly granted as the officer lacked reasonable articulable suspicion to justify the stop of the defendant's vehicle because the defendant did not drive in a reckless manner as the video showed that, rather than the defendant almost striking the officer's vehicle, it was the officer who came close to the defendant's vehicle; and the defendant safely passed the officer on the right. *State v. Shaw*, 353 Ga. App. 102, 836 S.E.2d 208, 2019 Ga. App. LEXIS 668 (2019).

40-6-390.1. Reckless stunt driving.

(a) Any person who operates any vehicle while drag racing, in violation of Code Section 40-6-186, or laying drags, in violation of Code Section 40-6-251, in reckless disregard for the safety of persons on a highway or upon private property without express authorization from the owner of such property commits the offense of reckless stunt driving and, upon conviction thereof, shall be guilty of:

(1) For the first conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, a misdemeanor of a high and aggravated nature to be punished by:

(A) A fine of not less than \$500.00 and not more than \$1,000.00; and

(B) A period of imprisonment of not fewer than ten days nor more than six months;

(2) For the second conviction in a ten-year period of time, a misdemeanor of a high and aggravated nature to be punished by:

(A) A fine of not less than \$750.00 and not more than \$1,500.00; and

(B) A period of imprisonment of not fewer than 90 days and not more than 12 months;

(3) For the third conviction in a ten-year period of time, a misdemeanor of a high and aggravated nature to be punished by:

(A) A fine of not less than \$2,500.00 and not more than \$5,000.00; and

(B) A period of imprisonment of not fewer than 120 days and not more than 12 months; and

(4) For a fourth or subsequent conviction in a ten-year period of time, a felony to be punished by:

(A) A fine of not less than \$5,000.00 and not more than \$7,500.00; and

(B) A period of imprisonment of not fewer than one year and not more than five years; provided, however, that when a violation of this paragraph results in an injury to another or damage to property over \$1,000.00, the first 12 months of such sentence shall not be suspended, probated, deferred, or withheld by a sentencing court.

(b) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section.

(c)(1) Any motor vehicle operated by a person who has been previously convicted of a violation of this Code section and who is arrested and charged with a violation of this Code section is declared to be contraband and subject to forfeiture in accordance with the procedures set forth in Chapter 16 of Title 9.

(2) In any case where a vehicle which is the only family vehicle is determined to be subject to forfeiture, the court may, if it determines that the financial hardship to the family as a result of the forfeiture and sale outweighs the benefit to the state from such forfeiture, order the title to the vehicle transferred to such other family member who

is a duly licensed operator and who requires the use of such vehicle for employment or family transportation purposes. Such transfer shall be subject to any valid liens and shall be granted only once.

(d) For purposes of this Code section, the occurrence of a previous conviction shall be measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted.

History.

Code 1981, § 40-6-390.1, enacted by Ga. L. 2021, p. 228, § 6/HB 534; Ga. L. 2024, p. 532, § 3/SB 10, effective July 1, 2024.

Effective date.

This Code section became effective May 3, 2021. See Editor’s notes for applicability.

Amendments.

The 2024 amendment, effective July 1, 2024, in subparagraph (a)(1)(A), substituted “\$500.00 and not more than \$1,000.00” for “\$300.00 but not more than \$750.00”; in subparagraph (a)(2)(A), substituted “\$750.00” for “\$600.00” and “\$1,500.00” for “\$1,000.00”; in subparagraph (a)(3)(A), substituted “\$2,500.00” for “\$1,000.00”; in subparagraph (a)(4)(A), substituted “\$5,000.00” for “\$1,000.00” and “\$7,500.00” for “\$5,000.00”; added the proviso at the end of subparagraph (a)(4)(B); designated former paragraph (b)(1) as subsection (b); deleted former paragraph (b)(2), which read: “Notwithstanding any provision of this Code sec-

tion to the contrary, any court authorized to hear misdemeanor or high and aggravated misdemeanor cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed.”; and substituted “previously convicted of a violation of this Code section” for “declared a habitual violator for three violations of this Code section, whose license has been revoked,” in paragraph (c)(1).

Cross references.

License suspension and other conditions for offense of reckless stunt driving, § 40-5-57.2.

Editor’s notes.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date.” This Act was approved by the Governor on May 3, 2021.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. Misdemeanor offenses arising under O.C.G.A. § 40-6-390.1 are offenses for which those

charged are to be fingerprinted. 2021 Op. Att’y Gen. No. 21-1.

40-6-391. Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child.

Law reviews.

For article “Crimes of Suspicion” see 72 Emory L.J. 1429 (2023).

For comment, “Death of the DUI:

Should Autonomous Vehicles Be Considered Synonymous to Designated Drivers Under Georgia Law?,” see 70 Mercer L. Rev. 1113 (2019).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

NOTICE

TESTING

EVIDENCE

SENTENCE AND PUNISHMENT

General Consideration

Warrant terms control.

Warrant only authorized testing for alcohol, so testing for drugs exceeded the scope and the police could not use a lawful blood draw to then test for anything without limitation as the privacy interest in blood requires a warrant specifically authorizing drug testing. *State v. De La Paz*, 370 Ga. App. 853, 899 S.E.2d 447, 2024 Ga. App. LEXIS 98 (2024).

Two warrants were held not required when law enforcement wishes to test a DUI suspect's blood. One warrant will suffice, but that warrant's terms and limitations must be honored by law enforcement and will be enforced by the courts. *State v. De La Paz*, 370 Ga. App. 853, 899 S.E.2d 447, 2024 Ga. App. LEXIS 98 (2024).

Language of indictment. — Indictment charging the defendant with first degree vehicular homicide based on driving under the influence of alcohol was defective and, therefore, counsel was ineffective for failing to file a general demurrer because the indictment neither recited the language that the defendant was under the influence of alcohol to the extent that it was less safe for the defendant to drive or that the defendant's alcohol concentration was 0.08 or more nor alleged the facts necessary to establish a violation of the driving under the influence statute. *Heath v. State*, 349 Ga. App. 84, 825 S.E.2d 474, 2019 Ga. App. LEXIS 110 (2019), *aff'd*, 308 Ga. 836, 843 S.E.2d 801, 2020 Ga. LEXIS 362 (2020).

Probable cause for arrest. — Trial court did not err in denying the defendant's motion to suppress as the officer did not lack probable cause to place the defendant under arrest for driving under the influence (DUI) per se because the officer noted the defendant's red and watery eyes

and the smell of alcohol on the defendant's breath; and, although the specific reading on the portable breath test was not admitted into evidence at the suppression hearing, the officer's characterization of the reading on the test, in conjunction with the other evidence in the record, including two field tests showing clues of impairment, established a reasonable probability that, at that time, the defendant was in violation of the DUI per se statute. *Oh v. State*, 345 Ga. App. 729, 815 S.E.2d 95, 2018 Ga. App. LEXIS 263 (2018).

Police officer was entitled to qualified immunity in an excessive-use-of-force case because tackling an arrestee is not categorically unconstitutional and cases of gratuitous use of force on a non-resisting suspect were inapposite, given evidence the arrestee resisted handcuffing; reasonable force could be used to effectuate arrest because probable cause existed to believe the arrestee committed misdemeanors by driving without headlights, running a stop sign, and driving under the influence. *Turner v. Ochoa*, No. 24-10707, 2024 U.S. App. LEXIS 24632 (11th Cir. Sept. 30, 2024).

Notice

Failure to give notice of implied consent rights. — Trial court's judgment denying the defendant's motion to suppress was reversed and the case remanded for the court to further consider the totality of the circumstances surrounding the defendant's breath test as, although the trial court did consider some of the circumstances surrounding the defendant's consent, the court did not consider whether the officer's misleading statement affected the defendant's decision to take the breath test, having already determined that specific issues as to the defendant's consent were moot.

Notice (Cont'd)

Holland v. State, 347 Ga. App. 601, 820 S.E.2d 442, 2018 Ga. App. LEXIS 570 (2018).

Testing

Argument that blood sample fermented rejected. — Defendant's claim that the evidence was insufficient to support the DUI per se conviction failed because the argument that the blood sample could have fermented prior to testing, which would render the forensic toxicologist's test inaccurate, was rebutted by the toxicologist's testimony that fermentation of a person's blood was rare and only occurred if an organic substance contaminated the blood sample and the jury was entitled to credit the expert's testimony over the defendant's speculation that such an anomaly occurred with the defendant's blood sample. Webb v. State, 359 Ga. App. 453, 858 S.E.2d 546, 2021 Ga. App. LEXIS 218 (2021).

Prior refusal to take state-administered breath test. — Trial court did not err by denying the state's request to introduce evidence of the defendant's prior refusal to take a state-administered breath test during the defendant's DUI trial because the Supreme Court of Georgia has previously held that a defendant's refusal to submit to a breath test may not be admitted into evidence at a subsequent criminal trial. State v. Voyles, 355 Ga. App. 903, 846 S.E.2d 170, 2020 Ga. App. LEXIS 409 (2020).

Miranda warnings before administering field sobriety tests. — Police officers were not required to give the defendant a Miranda warning before asking the defendant to submit to the breath test; thus, the trial court did not err in that regard but because the trial court did not consider the deficiency in the implied consent notice as a factor in the court's totality of the circumstances analysis, the denial of the defendant's motion to suppress was reversed. Fofanah v. State, 351 Ga. App. 632, 832 S.E.2d 449, 2019 Ga. App. LEXIS 460 (2019).

Evidence of the defendant's refusal to submit to voluntary field sobriety tests was admissible, etc. In a driving under the influence per se case, the defen-

dant's motion to suppress was properly denied as no Miranda warning was required because the defendant was not in custody when the defendant took the portable breath test and told the officer that the defendant had consumed four beers that evening; the officer indicated to the defendant that the officer believed that the defendant was impaired, but the officer never indicated to the defendant that the defendant would be under arrest regardless of the outcome of the breath test or whether the defendant agreed to submit to the test at all; and nothing in the officer's statements would have given the defendant the impression that the defendant's detention was more than temporary. Oh v. State, 345 Ga. App. 729, 815 S.E.2d 95, 2018 Ga. App. LEXIS 263 (2018).

Given the strong independent evidence that the defendant was under the influence of alcohol, including the defendant's admission of recently drinking, and the defendant's failure to offer an explanation for the physical manifestations of being under the influence of alcohol, the defendant failed to affirmatively show that evidence that the defendant refused a breath test and a corresponding charge allowing the jury to infer the presence of alcohol probably affected the jury's decision that the defendant was under the influence of alcohol while driving. Liggett v. State, 353 Ga. App. 522, 838 S.E.2d 608, 2020 Ga. App. LEXIS 35 (2020).

Evidence

Admission of BAC results harmless error. — Trial court erred by granting the defendant a new trial on the charges of committing homicide by vehicle and driving under the influence because any error in admitting the defendant's blood-alcohol content (BAC) evidence was harmless as before the jurors heard any evidence regarding the BAC results, the jurors heard testimony about the defendant's alcohol consumption and changed behavior, including the defendant's own admission that the defendant was drinking, the jurors viewed the videos and screenshots of defendant's behavior at the party, and the jurors heard eyewitness testimony about the defendant hitting one victim with the

defendant's car and running over another victim. *State v. Robertson*, 369 Ga. App. 707, 894 S.E.2d 431, 2023 Ga. App. LEXIS 519 (2023).

Excluded evidence relevant to whether defendant parked car in middle of road while intoxicated. —

In a personal injury case, the trial court abused the court's discretion by granting the defendant's motion in limine because the excluded evidence was relevant to the most important issue of the case, whether the defendant parked the vehicle in the middle of the road; thus, the trial court's exclusion precluded the plaintiff from establishing that the defendant may have been intoxicated at the time the vehicle was left and/or from opportunities to impeach the defendant's testimony. *Barrett v. Burnette*, 348 Ga. App. 838, 824 S.E.2d 701, 2019 Ga. App. LEXIS 90 (2019), cert. denied, No. S19C0930, 2019 Ga. LEXIS 780 (Ga. Nov. 4, 2019).

Use of roadblock. — Prior to the defendant's trial for DUI, O.C.G.A. § 40-6-391(a)(5), the defendant's motion to suppress tests performed during a roadblock was properly denied because the decision to implement the checkpoint was made by a supervisory officer, all vehicles had been stopped, and the screening officer was qualified to make an initial determination to detain the defendant. *Turner v. State*, 352 Ga. App. 122, 833 S.E.2d 299, 2019 Ga. App. LEXIS 500 (2019), cert. denied, No. S20C0368, 2020 Ga. LEXIS 301 (Ga. Apr. 20, 2020).

Roadblock approval form introduced into evidence at the hearing on a motion to suppress sobriety tests performed at a roadblock, which was signed by a state patrol corporal and which stated that the corporal served in a supervisory capacity and was authorized to direct and establish lawful roadblocks, along with the arresting trooper's testimony to the same effect, was sufficient to authorize the trial court to conclude that the corporal was authorized to set up the roadblock. *Turner v. State*, 352 Ga. App. 122, 833 S.E.2d 299, 2019 Ga. App. LEXIS 500 (2019), cert. denied, No. S20C0368, 2020 Ga. LEXIS 301 (Ga. Apr. 20, 2020).

Sufficient evidence to withstand motion for directed verdict. Trial court did not err in denying the defendant's

motion for a directed verdict as the evidence was sufficient for a rational trier of fact to conclude that the defendant was guilty of driving under the influence, as it showed that the trooper observed the defendant swerving all over the roadway and crossing the lane multiple times, and the defendant pulled over on the left shoulder rather than the right shoulder, spoke fast and appeared discombobulated, and showed constant jumpy movement and exaggerated reflexes. *King v. State*, 364 Ga. App. 263, 874 S.E.2d 439, 2022 Ga. App. LEXIS 291 (2022).

Evidence sufficient to establish that the defendant was a less safe driver. —

Evidence was sufficient to convict the defendant of driving under the influence of alcohol to the extent that it was less safe for the defendant to drive as the defendant had a blood-alcohol concentration level of 0.084 grams, had a strong odor of alcohol on the defendant's breath and extremely bloodshot and glassy eyes, demonstrated all six clues for impairment in a field sobriety test, and struck a pedestrian walking across a road in dry, well-lit conditions. *Butler v. State*, 363 Ga. App. 753, 871 S.E.2d 902, 2022 Ga. App. LEXIS 189 (2022).

Evidence sufficient to support conviction of driving under influence.

Evidence that the defendant tested positive for marijuana shortly after being forcibly removed from the car, the defendant's girlfriend told officers that the defendant had smoked five "blunts" that day, and that the defendant led officers on a low-speed chase was sufficient to support the conviction for DUI (drugs). *Christian v. State*, 347 Ga. App. 391, 19 S.E.2d 682 (2018).

Evidence was sufficient to convict the defendant of driving under the influence of alcohol per se as the jury could infer that the defendant last consumed alcohol before the collision and that the defendant's blood-alcohol concentration (BAC) level was 0.084 or higher at the time of the collision; and O.C.G.A. § 40-6-391 did not require that a person's BAC be tested within three hours after driving. *Butler v. State*, 363 Ga. App. 753, 871 S.E.2d 902, 2022 Ga. App. LEXIS 189 (2022).

Defendant's claim that the evidence was insufficient to support the convictions for

Evidence (Cont'd)

DUI and improper parking lacked merit where the evidence showed that the defendant had bloodshot eyes, slurred speech, an odor of alcohol on the defendant's breath and person, failed all of the field sobriety tests, and registered positive on the alco-sensor. *Ghant v. State*, 368 Ga. App. 472, 890 S.E.2d 379, 2023 Ga. App. LEXIS 344 (2023).

Admissibility of field sobriety tests.

Georgia Supreme Court held defendant had right to refuse to perform preliminary breath test and field sobriety tests under Georgia Constitution, and evidence of defendant's refusals could not be introduced at trial. *Ammons v. State*, 315 Ga. 149, 880 S.E.2d 544, 2022 Ga. LEXIS 295 (2022).

Georgia Supreme Court held that the Georgia Constitution's privileges and immunities clause did not bar the admission of evidence that defendant refused to consent to a blood test. *Ammons v. State*, 315 Ga. 149, 880 S.E.2d 544, 2022 Ga. LEXIS 295 (2022).

No coercion by requiring consent or refusal of breath test before allowing phone call.

— Trial court's grant of the appellee's motion in limine to suppress the results of a breath test was reversed because refusing to allow the appellee to make a phone call did not constitute coercion as there was no evidence to support the trial court's finding that the appellee's consent to the breath test was obtained after a DUI officer told the appellee that the call to the appellee's daughter could not be made unless the appellee took a

breath test, so that finding was clearly erroneous. *State v. Council*, 348 Ga. App. 497, 823 S.E.2d 817, 2019 Ga. App. LEXIS 32 (2019).

Sentence and Punishment

Sentence improper. — Following the defendant's conviction of misdemeanor offenses of driving under the influence — less safe (O.C.G.A. § 40-6-391(a)(1)) and operating a motor vehicle with defective or no headlights (O.C.G.A. § 40-8-22), the defendant's sentence of consecutive terms of 12 months' imprisonment, for a total sentence of 24 months, to be served day-for-day, and to be served on probation if the defendant was released before the end of the term, was error because it usurped the authority of the custodian of a county inmate under O.C.G.A. § 42-4-7(b) to grant earned-time allowances. *Evans v. State*, 349 Ga. App. 712, 824 S.E.2d 708, 2019 Ga. App. LEXIS 113 (2019), cert. denied, No. S19C1084, 2019 Ga. LEXIS 746 (Ga. Nov. 4, 2019).

Dismissal of juvenile's DUI case authorized.

— Plain language of O.C.G.A. §§ 15-11-600(a)(1), (d) and 15-11-630(i), authorized a juvenile court's decision to dismiss a juvenile's DUI case after finding that the juvenile had attended a substance abuse treatment program; had passed drug and alcohol tests; was receiving counseling; and had complied with court-ordered driving restrictions. The juvenile court was not required to comply with O.C.G.A. § 40-6-391(c). In the *Interest of R. M.*, 354 Ga. App. 36, 840 S.E.2d 144, 2020 Ga. App. LEXIS 111 (2020).

RESEARCH REFERENCES

ALR.

Driving While Intoxicated: Duty of Law Enforcement Officer to Advise Suspect of Their Rights Under Implied Consent Law, Including Offers of Test Alternatives, 51 A.L.R.7th 2.

Charging, Trying, and Sentencing Individuals as Adults for Driving Under Influence as Juveniles, 86 A.L.R.7th 5.

40-6-392. Chemical tests for alcohol or drugs.

Law reviews.

For annual survey on criminal law, see 71 Mercer L. Rev. 69 (2019).

For comment, “Is There a Georgia Supreme Court, Problem? Analyzing the

Georgia Supreme Court’s New Peculiar Approach Towards Breathalyzers and Implied Consent Law,” see 71 Mercer L. Rev. 393 (2019).

JUDICIAL DECISIONS

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PERFORMANCE OF TESTS

ADMISSIBILITY OF RESULTS

General Consideration

Constitutionality of admitting evidence of breath test refusal. — Georgia Supreme Court concluded that Ga. Const. 1983, Art. I, Sec. I, Para. XVI precluded admission of evidence that the suspect refused to consent to a breath test; thus, O.C.G.A. §§ 40-5-67.1(b) and 40-6-392(d) were unconstitutional to the extent that the statutes allow the defendant’s refusal to submit to a breath test to be admitted into evidence at a criminal trial. *Elliott v. State*, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019).

Constitutionality

Evidence suspect refused consent to breath test inadmissible. — Trial court’s denial of defendant’s motion to suppress was reversed because Georgia Supreme Court concluded that Ga. Const. Art. I, Sec. I, Para. XVI precluded admission of evidence that suspect refused to consent to breath test, thus, O.C.G.A. §§ 40-5-67.1(b) and 40-6-392(d) were unconstitutional to the extent that they allow defendant’s refusal to submit to a breath test to be admitted into evidence at criminal trial. *Elliott v. State*, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019) (decided under former version of Code Section 40-6-392).

Georgia Supreme Court concluded that Ga. Const. art. I, Sec. I, Para. XVI precluded admission of evidence that suspect refused to consent to a breath test, thus, O.C.G.A. §§ 40-5-67.1(b) and

40-6-392(d) were unconstitutional to extent that they allow defendant’s refusal to submit to breath test to be admitted into evidence at criminal trial. *Elliott v. State*, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019) (decided under former version of Code Section 40-6-392).

Performance of Tests

“Qualified person” requirement, etc.

Trial court’s denial of defendant’s motion to suppress the results of the blood draw was upheld because the plain language of O.C.G.A. § 40-6-392(a)(2) does not exclude arresting officers who are also “other qualified persons” from conducting blood draws. Since the trooper was a certified phlebotomist, the trooper qualified as an “other qualified person” under the statute. *Snyder v. State*, 374 Ga. App. 417, 913 S.E.2d 62, 2025 Ga. App. LEXIS 64 (2025).

Admissibility of Results

Admissibility of refusal. Georgia Supreme Court held defendant had right to refuse to perform preliminary breath test and field sobriety tests under Georgia Constitution, and evidence of defendant’s refusals could not be introduced at trial. *Ammons v. State*, 315 Ga. 149, 880 S.E.2d 544, 2022 Ga. LEXIS 295 (2022).

Georgia Supreme Court held that the Georgia Constitution’s privileges and immunities clause did not bar the admission of evidence that defendant refused to con-

Admissibility of Results (Cont'd)

sent to a blood test. *Ammons v. State*, 315 Ga. 149, 880 S.E.2d 544, 2022 Ga. LEXIS 295 (2022).

Trial court did not err by denying defendant's motion to suppress defendant's refusal to consent to the state-administered blood test because the record showed that defendant had been arrested when the officer read defendant the implied-consent notice, as while being treated by the EMT at the scene of the accident, defendant repeatedly asked to be taken home and was told by the police officers that defendant could either go to the hospital or be taken to jail. In addition, the record explicitly showed one of the officers informing defendant that defendant was being placed under arrest for driving under the influence of alcohol. *Quint v. State*, 367 Ga. App. 339, 886 S.E.2d 1, 2023 Ga. App. LEXIS 154 (2023).

No coercion by requiring consent or refusal of breath test before allowing phone call. — Trial court's grant of the appellee's motion in limine to suppress the results of a breath test was reversed because refusing to allow the appellee to make a phone call did not constitute coercion as there was no evidence to support the trial court's finding that the appellee's consent to the breath test was obtained

after the DUI officer told the appellee that the call to the appellee's daughter could not be made unless the appellee took a breath test, so that finding was clearly erroneous. *State v. Council*, 348 Ga. App. 497, 823 S.E.2d 817, 2019 Ga. App. LEXIS 32 (2019).

Proof of qualifications of person conducting test. In a DUI case, the trial court did not err by admitting the results of a blood test because the trial court did not abuse the court's discretion by finding that the state met its burden of showing through the testimony of the blood drawer's supervisor or medical records custodian that the blood drawer was properly trained and authorized to draw blood as an employee of the medical facility or employer; the owner of the company hired to draw defendant's blood testified that the person who drew it was one of her best and renewed her certification annually. *Ussery v. State*, 366 Ga. App. 379, 883 S.E.2d 60, 2023 Ga. App. LEXIS 8 (2023).

State permitted to request two sequential breath samples. — Trial court erred in suppressing the defendant's second breath sample from the third breath test conducted because under O.C.G.A. § 40-6-392(a)(1)(B), the state was permitted to request two sequential series of two adequate breath samples each. *State v. Youn*, 371 Ga. App. 574, 901 S.E.2d 623, 2024 Ga. App. LEXIS 187 (2024).

RESEARCH REFERENCES

ALR.

Driving While Intoxicated: Duty of Law Enforcement Officer to Advise Suspect of

Their Rights Under Implied Consent Law, Including Offers of Test Alternatives, 51 A.L.R.7th 2.

40-6-393. Homicide by vehicle.

(a) Any person who, without malice aforethought, causes the death of another person through the violation of subsection (a) of Code Section 40-6-163, Code Sections 40-6-390 through 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(b) Any driver of a motor vehicle who, without malice aforethought, causes an accident which causes the death of another person and leaves the scene of the accident in violation of subsection (b) of Code Section 40-6-270 commits the offense of homicide by vehicle in the first degree

and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(c) Any person who causes the death of another person, without an intention to do so, by violating any provision of this title other than subsection (a) of Code Section 40-6-163, subsection (b) of Code Section 40-6-270, Code Sections 40-6-390 through 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the second degree when such violation is the cause of said death and, upon conviction thereof, shall be punished as provided in Code Section 17-10-3.

(d) Any person who, after being declared a habitual violator as determined under Code Section 40-5-58 and while such person's license is in revocation, causes the death of another person, without malice aforethought, by operation of a motor vehicle, commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years, and adjudication of guilt or imposition of such sentence for a person so convicted may be suspended, probated, deferred, or withheld but only after such person shall have served at least one year in the penitentiary.

History.

Code 1933, § 68A-903, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1976, p. 977, § 1; Ga. L. 1982, p. 1694, §§ 1, 3; Ga. L. 1983, p. 1000, § 15; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2093, § 1; Ga. L. 1999, p. 391, § 9; Ga. L. 2008, p. 1164, § 2/SB 529; Ga. L. 2021, p. 228, § 7/HB 534.

Amendments.

The 2021 amendment, effective May 3, 2021, substituted "Code Sections 40-6-390 through 40-6-391" for "Code Section 40-6-390 or 40-6-391" in subsections (a)

and (c). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date." This Act was approved by the Governor on May 3, 2021.

JUDICIAL DECISIONS

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SENTENCING

General Consideration

Classification did not violate equal protection. — Trial court erred by concluding that O.C.G.A. § 40-6-393(b) was

unconstitutional on equal protection grounds because the defendant's equal protection claim failed for essentially the same reason the substantive due process claim failed; the defendant failed to show

General Consideration (Cont'd)

that the different approach taken in § 40-6-393(b) lacked a rational basis when compared to the approaches taken to the other types of vehicular homicide. *State v. Holland*, 308 Ga. 412, 841 S.E.2d 723, 2020 Ga. LEXIS 236 (2020).

No substantive due process violation. — Trial court erred in concluding that O.C.G.A. § 40-6-393(b) was unconstitutional on substantive due process grounds because the requirement that drivers stay on the scene and provide identification can simplify resolution of any related civil claims and conserves law enforcement resources and is a reasonable, and not arbitrary or discriminatory, explanation for subjecting hit-and-run drivers who cause a fatal accident to prosecution for first-degree vehicular homicide. *State v. Holland*, 308 Ga. 412, 841 S.E.2d 723, 2020 Ga. LEXIS 236 (2020).

No ambiguity between definitions of felony murder and homicide by vehicle. — No ambiguity existed between the statutory definitions of felony murder and homicide by vehicle in the first degree predicated on a violation of O.C.G.A. § 40-6-395(a) because, as a matter of statutory interpretation, felony murder predicated on felony fleeing and attempting to elude was a different offense than homicide by vehicle in the first degree. *Sosebee v. State*, 317 Ga. 424, 893 S.E.2d 653, 2023 Ga. LEXIS 214 (2023).

Admission of blood alcohol content results harmless error. — Trial court erred by granting the defendant a new trial on the charges of committing homicide by vehicle and driving under the influence because any error in admitting the defendant's blood-alcohol content (BAC) evidence was harmless, as before the jurors heard any evidence regarding the BAC results, the jurors heard testimony about the defendant's alcohol consumption and changed behavior, including the defendant's own admission that the defendant was drinking, the jurors viewed the videos and screenshots of the defendant's behavior at the party, and the jurors heard eyewitness testimony about

the defendant hitting one victim with defendant's car and running over another victim. *State v. Robertson*, 369 Ga. App. 707, 894 S.E.2d 431, 2023 Ga. App. LEXIS 519 (2023).

Verdict not inconsistent with felony murder verdict.

Verdicts finding the defendant guilty of felony murder and homicide by vehicle in the first degree could not be classified as inconsistent or repugnant verdicts because the felony murder and homicide by vehicle verdicts consisted only of guilty verdicts, rather than a guilty verdict and a not guilty verdict. *Rutland v. State*, 315 Ga. 521, 883 S.E.2d 730, 2023 Ga. LEXIS 20 (2023).

Because the guilty verdicts on felony murder and homicide by vehicle in the first degree involved levels of mental culpability that were different in degree but not ones that could not legally exist simultaneously, the verdicts were neither inconsistent nor mutually exclusive. *Rutland v. State*, 315 Ga. 521, 883 S.E.2d 730, 2023 Ga. LEXIS 20 (2023).

Because the guilty verdicts for felony murder and homicide by vehicle in the first degree were not inconsistent, repugnant, or mutually exclusive, there was no error, plain or otherwise, in the trial court's failure to instruct the jury that it could not find the defendant guilty of both felony murder and homicide by vehicle in the first degree. *Rutland v. State*, 315 Ga. 521, 883 S.E.2d 730, 2023 Ga. LEXIS 20 (2023).

New trial should have been denied.

— Trial court erred by granting the defendant a new trial on the charges of homicide by vehicle and reckless driving because, even absent any consideration of alcohol impairment, the overwhelming evidence showed that the defendant drove the car in a manner that exhibited reckless disregard for the victim's safety and caused the victim's death. The evidence showed that the defendant knew the victim was near the defendant's vehicle and knew that the defendant's vision was impaired due to alcohol, but drove the defendant's vehicle forward and backward anyway at a high rate of speed. *State v. Robertson*, 369 Ga. App. 707, 894 S.E.2d 431, 2023 Ga. App. LEXIS 519 (2023).

Pleadings

Indictment insufficient for first degree vehicular homicide conviction.

— Indictment charging defendant with first degree vehicular homicide based on reckless driving was defective and, therefore, counsel was ineffective for failing to file a general demurrer because it failed to include the language that the defendant drove with reckless disregard for the safety of persons or property, an essential element of the predicate offense. *Heath v. State*, 349 Ga. App. 84, 825 S.E.2d 474, 2019 Ga. App. LEXIS 110 (2019), *aff'd*, 308 Ga. 836, 843 S.E.2d 801, 2020 Ga. LEXIS 362 (2020).

Indictment sufficient. — Because one count of first-degree vehicular homicide of the indictment tracked the statutory language of O.C.G.A. § 40-6-393(b), with a cite to the underlying hit-and-run statute of O.C.G.A. § 40-6-270(b) and description of the circumstances surrounding the vehicular homicide incident, the indictment was sufficient to set forth the first-degree vehicular homicide offense. *Mitchell v. State*, 355 Ga. App. 7, 842 S.E.2d 322, 2020 Ga. App. LEXIS 246 (2020), *cert. denied*, No. S20C1166, 2020 Ga. LEXIS 783 (Ga. Oct. 19, 2020).

Indictment charging the defendant with homicide by vehicle in the first degree predicated on a hit-and-run offense and hit and run was improperly dismissed because the defendant could not admit the allegations in the hit-and-run count of the indictment and not be guilty of that crime because, if the defendant admitted that the defendant was involved in an accident which was the proximate cause of the victim's death and that the defendant knowingly failed to stop the defendant's vehicle at the scene of the accident or stop the defendant's vehicle as close thereto as possible and return to the scene as alleged in the indictment, the defendant would be guilty of hit and run. *State v. Mondor*, 306 Ga. 338, 830 S.E.2d 206, 2019 Ga. LEXIS 449 (2019).

Evidence

Evidence regarding victim's use of seatbelt irrelevant and inadmissible.

— Trial court properly excluded evidence of seatbelt use because evidence of the

victim's failure to wear a seatbelt was irrelevant to causation and inadmissible in a criminal case as it did not tend to make it either more or less probable that an accident caused by the defendant proximately caused the victim's death, in violation of the statutes for homicide by vehicle in the first degree predicated on a hit-and-run offense and for hit and run. *State v. Mondor*, 306 Ga. 338, 830 S.E.2d 206, 2019 Ga. LEXIS 449 (2019).

Evidence sufficient for conviction.

— Evidence that the defendant failed to yield the right of way and used a mobile device to the point that the defendant was distracted supported the convictions for homicide by vehicle, reckless driving, failure to exercise due care, and failure to stop at a stop sign. *Holley v. State*, 363 Ga. App. 107, 871 S.E.2d 13, 2022 Ga. App. LEXIS 129 (2022).

Evidence was sufficient to convict the defendant of first-degree vehicular homicide as a strong odor of alcohol was detected on the defendant's breath, the defendant's eyes were glassy and bloodshot, and field sobriety testing indicated alcohol impairment; and the state presented evidence that a blood-alcohol concentration level of 0.084 slowed a driver's reaction time. *Butler v. State*, 363 Ga. App. 753, 871 S.E.2d 902, 2022 Ga. App. LEXIS 189 (2022).

Jury Instructions

Refusal to grant the defendant's requested charge, etc.

Defendant's convictions on two counts of homicide by vehicle in the first degree were reversed because the trial court erred in failing to give the requested instruction on the lesser included offense of the vehicular homicide charge since there was evidence of other traffic offenses that the jury could have found to have been the cause of the accident. *O'Shields v. State*, 351 Ga. App. 800, 833 S.E.2d 290, 2019 Ga. App. LEXIS 495 (2019).

Sentencing

Sentence not cruel and unusual. —

Defendant's sentence did not violate the Eighth Amendment as the sentence of seven years in prison, and eight years on probation, was within the statutory range

Sentencing (Cont'd)

available for a vehicular-homicide conviction; there was no binding precedent supporting the defendant's claim that a sentence within the statutory limits could violate the Eighth Amendment's prohibition on cruel and unusual punishment based solely on a defendant's medical conditions or health issues; and the defendant identified no legal authority indicating that the defendant's medical conditions rendered the defendant's prison sentence grossly disproportionate

to the severity of the defendant's crimes or to prison sentences imposed on other defendants with health issues. *Butler v. State*, 363 Ga. App. 753, 871 S.E.2d 902, 2022 Ga. App. LEXIS 189 (2022).

Suspension of driver's license. — Trial court did not err by suspending defendant's driver's license after the defendant pled guilty as a first offender to homicide by vehicle because the defendant's guilty plea constituted a "conviction" under O.C.G.A. § 40-6-393. *Smith v. State*, 372 Ga. App. 535, 905 S.E.2d 189, 2024 Ga. App. LEXIS 323 (2024).

40-6-393.1. Feticide by vehicle.

(a) For the purposes of this Code section, the term "unborn child" means a member of the species *homo sapiens* at any stage of development who is carried in the womb.

(b)(1) A person commits the offense of feticide by vehicle in the first degree if he or she causes the death of an unborn child by any injury to the mother of such child which would be homicide by vehicle in the first degree as provided in subsection (a), (b), or (d) of Code Section 40-6-393 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vehicle in the first degree shall be punished by imprisonment for not less than three years nor more than 15 years.

(c)(1) A person commits the offense of feticide by vehicle in the second degree if he or she causes the death of an unborn child by any injury to the mother of such child by violating any provision of this title other than Code Sections 40-6-390 through 40-6-391, which would be homicide by vehicle in the second degree as provided in subsection (c) of Code Section 40-6-393 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vehicle in the second degree shall be punished as provided in Code Section 17-10-3.

History.

Code 1981, § 40-6-393.1, enacted by Ga. L. 1991, p. 1109, § 1; Ga. L. 2006, p. 643, § 3/SB 77; Ga. L. 2008, p. 1164, § 3/SB 529; Ga. L. 2021, p. 228, § 8/HB 534.

Amendments.

The 2021 amendment, effective May 3, 2021, substituted "Code Sections 40-6-390 through 40-6-391" for "Code Section 40-6-390 or 40-6-391" in the middle of paragraph (c)(1). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date." This Act was approved by the Governor on May 3, 2021.

40-6-394. Serious injury by vehicle.

(a) As used in this Code section, the term “bodily harm” means an injury to another person which deprives him or her of a member of his or her body, renders a member of his or her body useless, seriously disfigures his or her body or a member thereof, or causes organic brain damage which renders his or her body or any member thereof useless.

(b) Any person who, without malice aforethought, causes an accident that results in bodily harm while violating Code Sections 40-6-390 through 40-6-391 commits the crime of serious injury by vehicle. A person convicted of violating this subsection shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than 15 years.

(c) Any person who, without malice aforethought, proximately causes an accident that the person knew resulted in bodily harm and leaves the scene of the accident in violation of subsection (b) of Code Section 40-6-270 commits the crime of serious injury by vehicle; provided, however, that there shall be no violation of this subsection if the parties involved in the accident exchange motor vehicle insurance information prior to leaving the scene of the accident. A person convicted of violating this subsection shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than ten years.

History.

Code 1933, § 68A-903.1, enacted by Ga. L. 1979, p. 768, § 1; Ga. L. 1985, p. 758, § 18; Ga. L. 1989, p. 232, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 391, § 10; Ga. L. 2019, p. 491, § 3/SB 1; Ga. L. 2021, p. 228, § 9/HB 534.

Amendments.

The 2019 amendment, effective July 1, 2019, rewrote this Code section, which read: “Whoever, without malice, shall cause bodily harm to another by depriving him of a member of his body, by rendering a member of his body useless, by seriously disfiguring his body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless through the violation of Code Section 40-6-390 or 40-6-391 shall be guilty of the crime of serious injury by vehicle. A person convicted under this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than 15 years.”

The 2021 amendment, effective May 3, 2021, substituted “Code Sections 40-6-390 through 40-6-391” for “Code Section 40-6-390 or 40-6-391” in the first sentence of subsection (b). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2019, p. 491, § 1/SB 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘C.J.’s Law.’”

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date.” This Act was approved by the Governor on May 3, 2021.

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Georgia St. U.L. Rev. 145 (2019).

JUDICIAL DECISIONS

Indictment insufficient. — Indictment charging the defendant with serious injury by vehicle based on both reckless driving and driving under the influence was defective and, therefore, counsel was ineffective for failing to file a general demurrer because the indictment failed to include the language that the defendant drove with reckless disregard for the safety of persons or property and it neither recited the language that the defendant was under the influence of alcohol to the extent that it was less safe for the defendant to drive or that the defendant’s alcohol concentration was 0.08 or more nor alleged the facts necessary to estab-

lish violation of the driving under the influence statute. *Heath v. State*, 349 Ga. App. 84, 825 S.E.2d 474, 2019 Ga. App. LEXIS 110 (2019), *aff’d*, 308 Ga. 836, 843 S.E.2d 801, 2020 Ga. LEXIS 362 (2020).
Evidence sufficient to support conviction.
Evidence was sufficient to support defendant’s conviction for serious injury by vehicle because the evidence showed that the victim suffered a traumatic brain injury from the accident that resulted in a loss of consciousness and that he was still receiving medical care for seizures. *Sowell v. State*, 373 Ga. App. 192, 908 S.E.2d 34, 2024 Ga. App. LEXIS 406 (2024).

40-6-395. Fleeing or attempting to elude police officer; impersonating law enforcement officer.

(a) It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform prominently displaying his or her badge of office, and his or her vehicle shall be appropriately marked showing it to be an official police vehicle.

(b)(1) Any person convicted of violating the provisions of subsection (a) of this Code section upon a first, second, or third conviction thereof shall be guilty of a high and aggravated misdemeanor and upon a fourth or subsequent conviction thereof shall be guilty of a felony and shall be punished as follows:

(A) Upon the first conviction shall be fined not less than \$1,000.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 30 days nor more than 12 months. Any period of such imprisonment in excess of 30 days may, in the sole discretion of the judge, be suspended, stayed, or probated;

(B) Upon the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$2,500.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 90 days nor more than 12 months. Any period of such imprisonment in

excess of 90 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions;

(C) Upon the third conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$4,000.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 180 days nor more than 12 months. Any period of such imprisonment in excess of 180 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions; and

(D) Upon the fourth or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$5,000.00 nor more than \$10,000.00 and imprisoned for not less than 12 months nor more than ten years.

(2) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction.

(3) If the payment of the fine required under subparagraphs (A) through (C) of paragraph (1) of this subsection will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this subsection.

(4) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in subparagraphs (A) through (C) of paragraph (1) of this subsection upon a conviction of violating such subparagraphs or upon conviction of violating any ordinance adopting the provisions of such subparagraphs.

(c) Any person violating the provisions of subsection (a) of this Code section who, while fleeing or attempting to elude a pursuing police vehicle or police officer:

(1) Operates his or her vehicle in excess of 20 miles an hour above the posted speed limit;

(2) Strikes or collides with another vehicle or a pedestrian;

(3) Is the proximate cause of an accident;

(4) Flees in traffic conditions which place the general public at risk of receiving serious injuries;

(5) Commits a violation of:

(A) Code Section 40-6-144;

(B) Subsection (a) of Code Section 40-6-163;

(C) Subsection (a) of Code Section 40-6-251;

(D) Subsection (a) of Code Section 40-6-390;

(E) Subsection (a) of Code Section 40-6-390.1; or

(F) Subsection (a) of Code Section 40-6-391; or

(6) Leaves the state

shall be guilty of a felony punishable by a fine of not less than \$5,000.00 nor more than \$10,000.00 and imprisonment for not less than 12 months nor more than ten years.

(d) Following adjudication of guilt or imposition of sentence for a violation of subparagraph (b)(1)(D) or subsection (c) of this Code section, the sentence shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced to a lesser offense, merged with any other offense, or served concurrently with any other offense.

(e) It shall be unlawful for a person:

(1) To impersonate a sheriff, deputy sheriff, state trooper, agent of the Georgia Bureau of Investigation, agent of the Federal Bureau of Investigation, police officer, or any other authorized law enforcement officer by using a motor vehicle, motorcycle, or blue light designed, equipped, or marked so as to resemble a motor vehicle, motorcycle, or blue light belonging to any federal, state, or local law enforcement agency; or

(2) Otherwise to impersonate any such law enforcement officer in order to direct, stop, or otherwise control traffic.

History.

Code 1933, § 68A-904, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 2; Ga. L. 1983, p. 836, § 1; Ga. L. 1985, p. 758, § 19; Ga. L. 1987, p. 3, § 40; Ga. L. 1990, p. 585, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 6, § 40; Ga. L. 1994, p. 831, § 3; Ga. L. 1995, p. 855, § 2; Ga. L. 2004, p. 450, § 1; Ga. L. 2010, p. 256, § 2/HB 1231; Ga. L. 2012, p. 729, § 1/HB 827; Ga. L. 2022, p. 100, § 1/HB 1216.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote subsection (b) and redesignated former subparagraphs (b)(5)(A) and (b)(5)(B) as present subsections (c) and (d), respectively; redesignated former subsection (c) as present subsection (e); and substituted “vehicle, motorcycle, or blue light” for “vehicle or motorcycle” twice in paragraph (e)(1). See Editor’s notes for applicability.

Editor's notes.

Ga. L. 2022, p. 100, § 2/HB 1216, not codified by the General Assembly, makes

this Code section applicable to offenses committed on or after July 1, 2022.

JUDICIAL DECISIONS

Construction. — In order for the state to establish a violation of O.C.G.A. § 40-6-395 when a driver flees or attempts to elude an officer who is in a police vehicle, the state must prove that the officer was in uniform prominently displaying his or her badge of office and that his or her vehicle was appropriately marked showing the vehicle to be an official police vehicle. *Chambers v. State*, 320 Ga. 770, 911 S.E.2d 616, 2025 Ga. LEXIS 17 (2025).

No ambiguity between definitions of felony murder and homicide by vehicle. — No ambiguity existed between the statutory definitions of felony murder and homicide by vehicle in the first degree predicated on a violation of O.C.G.A. § 40-6-395(a) because, as a matter of statutory interpretation, felony murder predicated on felony fleeing and attempting to elude was a different offense than homicide by vehicle in the first degree. *Sosebee v. State*, 317 Ga. 424, 893 S.E.2d 653, 2023 Ga. LEXIS 214 (2023).

Counts did not merge.

Appellant's convictions for felony murder and homicide by vehicle caused when fleeing police were upheld because felony murder and homicide by vehicle did not criminalize the same conduct as felony murder requires causing a death during the commission of a felony, while homicide by vehicle requires causing a death through a traffic violation. *Thomas v. State*, 317 Ga. 700, 895 S.E.2d 306, 2023 Ga. LEXIS 243 (2023).

"Visual" and "audible" terms in statute not material elements. — Defendant's conviction for felony fleeing and eluding a police officer was upheld as there was overwhelming evidence that the defendant willfully fled a signal to stop from a pursuing police officer after driving at 117 mph and only stopping due to crashing, and the state's failure to prove an audible signal was given was not a fatal variance from the indictment as

words "visual" or "audible" in O.C.G.A. § 40-6-395 are merely descriptive of the type of signal given and not material elements of the offense. *Awui v. State*, 375 Ga. App. 79, 914 S.E.2d 648, 2025 Ga. App. LEXIS 147 (2025).

Flight, or attempted flight, after command to halt. — Sufficient evidence supported the defendant's conviction for obstruction and fleeing because the evidence showed that both deputies were in uniform and driving marked patrol vehicles when they ordered the defendant to stop and the defendant ignored those commands while they were attempting to conduct, with justification, at the very least a second-tier detention of the defendant. *Miller v. State*, 351 Ga. App. 757, 833 S.E.2d 142, 2019 Ga. App. LEXIS 497 (2019).

Sufficiency of accusation. — Indictment charging defendant with with fleeing or attempting to elude a police officer was sufficient, even though it omitted the word "pursuit," because it was sufficient to put defendant on notice of the charge against defendant and defendant could not admit the allegations in the indictment and be innocent of a crime. *Holtzclaw v. State*, 367 Ga. App. 687, 888 S.E.2d 214, 2023 Ga. App. LEXIS 207 (2023).

Accusation alleging that the defendant, while driving, willfully failed and refused to stop while fleeing and attempting to elude police pursuit after being given audible and visual signals to stop by officers in uniform and marked vehicles, was sufficient to withstand the demurrer. *State v. Simpson*, 373 Ga. App. 793, 909 S.E.2d 667, 2024 Ga. App. LEXIS 481 (2024).

Probation order violated this Code section. — In an action for fleeing or attempting to elude a police officer, failure to stop at a stop sign, and reckless driving, the disposition signed by the trial court imposing a sentence for the fleeing count of five years with the first two years in confinement and the remainder on proba-

tion violated O.C.G.A. § 40-6-395(b)(5)(A), which required that such a sentence not be probated. *Massengille v. State*, 358 Ga. App. 89, 853 S.E.2d 675, 2021 Ga. App. LEXIS 6 (2021).

Conviction upheld. — Evidence was sufficient to sustain the defendant's conviction for felony fleeing because the officer testified that the defendant drove 70 miles per hour in a 30 mile per hour zone, ignored stop signs, and landed in a ravine, and that the officer passed at least one car while attempting to catch up to the defendant's vehicle. The video from the officer's dashcam showed the car the officer passed while trying to catch up with the defendant's vehicle and that the chase occurred in a residential area. *Alexander v. State*, 355 Ga. App. 234, 843 S.E.2d 907, 2020 Ga. App. LEXIS 294 (2020).

Defendant's steering of vehicle during chase. — In view of the circumstances of the chase, in which the codefendant leaned the codefendant's upper body out the window of the moving vehicle while shooting at the trooper, the jury could have concluded that the defendant assisted the codefendant by steering the vehicle and the jury was free to reject as unreasonable the hypotheses that the defendant was a mere passenger who did not assist the codefendant. *Best v. State*, 355 Ga. App. 881, 846 S.E.2d 157, 2020 Ga. App. LEXIS 400 (2020).

Evidence sufficient. — Evidence that an officer began to pursue the defendant after hearing a shot, the officer was in a patrol car, the officer activated the officer's blue lights and siren, and two other patrol cars joined in the pursuit with lights and sirens activated was sufficient to support the defendant's conviction for fleeing or attempting to elude. *Thelusma v. State*, 356 Ga. App. 495, 847 S.E.2d 852, 2020 Ga. App. LEXIS 470 (2020).

Premitting whether the evidence at trial authorized the jury to find that the defendant drove in conditions that placed the general public at risk, the defendant's claim that the evidence was insufficient to support the conviction for fleeing or attempting to elude a police officer failed because, even if the state had failed to prove that the defendant drove in conditions that placed the general public at

risk, the defendant was still guilty because the state established that the defendant fled from the pursuing officers by driving in excess of 20 miles per hour over the posted speed limits. *Thompson v. State*, 358 Ga. App. 553, 855 S.E.2d 756, 2021 Ga. App. LEXIS 94 (2021).

Defendant's conviction for fleeing or attempting to elude a police officer was supported by evidence that defendant fled from several police officers, despite at least one of the officers illuminating the officer's blue lights, and driving at high speeds through heavy traffic on a crowded state highway and interstate. *Shine v. State*, 362 Ga. App. 269, 868 S.E.2d 236, 2022 Ga. App. LEXIS 18 (2022).

Evidence insufficient for conviction.

Evidence was insufficient to support the guilty verdict as to felony fleeing or attempting to elude a police officer because the officer's testimony did not describe the conduct alleged in the indictment. *Beckett v. State*, 372 Ga. App. 139, 903 S.E.2d 824, 2024 Ga. App. LEXIS 263 (2024).

Evidence was insufficient to prove that the officers were in uniform with badges prominently displayed because the circumstantial evidence presented at trial, including that the officers were wearing body cameras and carrying handguns, was insufficient for the jury to reasonably infer beyond a reasonable doubt that the officers were in uniform with badges prominently displayed. *Chambers v. State*, 320 Ga. 770, 911 S.E.2d 616, 2025 Ga. LEXIS 17 (2025).

Resentencing within parameters of statute. — Trial court did not abuse the court's discretion when it corrected the defendant's partially void sentence for felony fleeing by vacating that sentence in its entirety and imposing a new sentence on that count within the parameters of O.C.G.A. § 40-6-395(b)(5). Additionally, because the trial court was authorized to resentence the defendant, the Supreme Court could not say that the defendant had a legitimate expectation of finality in the original sentence, and so the double-jeopardy claim failed. *Parrott v. State*, 312 Ga. 580, 864 S.E.2d 80, 2021 Ga. LEXIS 637 (2021).

Mandatory sentence. — Defendant's sentence for felony fleeing and attempting

to elude was vacated because the trial court incorrectly determined that the recidivist punishment statute did not apply since the defendant had been confined in a prior case to a penal institution as the

recidivist punishment statute did not mandate that the defendant's entire sentence be served in confinement. *State v. Yohman*, 348 Ga. App. 378, 823 S.E.2d 57, 2019 Ga. App. LEXIS 12 (2019).

40-6-397. Aggressive driving.

(a) A person commits the offense of aggressive driving when he or she operates any motor vehicle with the intent to annoy, harass, molest, intimidate, injure, or obstruct another person, including without limitation violating Code Section 40-6-42, 40-6-48, 40-6-49, 40-6-123, 40-6-184, 40-6-312, 40-6-390, or 40-6-390.1 with such intent.

(b) Any person convicted of aggressive driving shall be guilty of a misdemeanor of a high and aggravated nature.

History.

Code 1981, § 40-6-397, enacted by Ga. L. 2001, p. 208, § 1-7; Ga. L. 2021, p. 228, § 10/HB 534.

Amendments.

The 2021 amendment, effective May 3, 2021, substituted “40-6-312, 40-6-390, or 40-6-390.1” for “40-6-312, or 40-6-390” near the end of subsection (a). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date.” This Act was approved by the Governor on May 3, 2021.

CHAPTER 8

EQUIPMENT AND INSPECTION OF MOTOR VEHICLES

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40-8-91.	Marking and equipment of		

ARTICLE 1

EQUIPMENT GENERALLY

PART 1

GENERAL PROVISIONS

40-8-1. Application of article.

- (a) This article shall not apply to implements of husbandry, road machinery, road rollers, farm tractors, or three-wheeled motorcycles used only for agricultural purposes, except when expressly made applicable. This article shall not apply to personal transportation vehicles.
- (b) Unless otherwise required by federal law, rule, or regulation, a fully autonomous vehicle that is designed to be operated exclusively by the automated driving system for all trips shall not be subject to any provisions of this article that relate to or support motor vehicle operation by a human driver and are not relevant to the operation of an automated driving system.
- (c) Nothing in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle, which use is not inconsistent with the provisions of this article.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102; Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-101, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-1, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 3; Ga. L. 1992, p. 6, § 40; Ga. L. 2014, p.

745, § 13/HB 877; Ga. L. 2021, p. 456, § 2/SB 165.
Amendments.
The 2021 amendment, effective July 1, 2021, added subsection (b) and redesignated former subsection (b) as subsection (c).

Law reviews.

For annual survey on commercial transportation, see 73 Mercer L. Rev. 47 (2021).

For article, “Commercial Transportation,” see 74 Mercer L. Rev. 51 (2022).

40-8-4. Emblem or amber strobe light to be displayed on certain slow-moving vehicles or equipment operating on public roads.

(a) It shall be unlawful for any person to operate upon the public roads of this state any slow-moving vehicle or equipment, any farm trailer or semitrailer which is used for agricultural purposes and which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1, any animal drawn vehicle, or any machinery designed for use and generally operated at speeds less than 25 miles per hour, including all road construction or maintenance equipment and machinery except when engaged in actual construction or maintenance procedures and all other construction equipment and machinery, unless there is displayed on the rear thereof an emblem which shall comply with subsection (b) of this Code section or an amber strobe light operated in compliance with Code Section 40-8-35. It shall also be unlawful to operate upon the public roads of this state without such an emblem any three-wheeled motorcycle used only for agricultural purposes unless such three-wheeled motorcycle is licensed as required by Chapter 2 of this title and is in compliance with all other requirements of this chapter.

(b) The emblem required by subsection (a) of this Code section shall conform with those standards and specifications adopted for slow-moving vehicles by the American Society of Agricultural Engineers in December, 1966, and contained within such society’s standard ASAE S276.1, or shall be an emblem of the same shape and size painted on such vehicle in a bright and conspicuous retroreflective red orange paint. Such emblem shall be mounted on the rear of such vehicles, in the approximate horizontal geometric center of the vehicle, at a height of three to five feet above the roadway, and shall be maintained at all times in a clean and reflective condition.

(c) Any person violating this Code section shall be guilty of a misdemeanor.

(d) Nothing in this Code section shall apply to any self-propelled, two-wheeled vehicle.

History.

Ga. L. 1970, p. 229, §§ 1-4; Code 1933, § 68E-104, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-4, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329,

§ 4; Ga. L. 1989, p. 298, § 1; Ga. L. 2021, p. 456, § 3/SB 165.

Amendments.

The 2021 amendment, effective July 1, 2021, added “or an amber strobe light

operated in compliance with Code Section 40-8-35” at the end of the first sentence of subsection (a).

40-8-6. Vehicles with altered suspension systems.

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

(1) “Frame” means the main longitudinal structural members of the chassis of a motor vehicle.

(2) “Frame height” means the vertical distance between a level surface and the lowest point on the frame of a motor vehicle, measured when the vehicle is upon such level surface without a load.

(3) “Gross vehicle weight rating” means the manufacturer’s gross vehicle weight rating whether or not the vehicle is modified by use of parts not originally installed by the manufacturer.

(b) It shall be unlawful to alter the suspension system of any motor vehicle with a gross vehicle weight rating of 4,500 pounds or less, which may be operated on any highway, so as to exceed 27 inches as measured from the surface of the street to the lowest point on the frame of the vehicle.

(c) It shall be unlawful to alter the suspension system of any motor vehicle with a gross vehicle weight rating of not less than 4,501 pounds and not more than 7,500 pounds, which may be operated on any highway, so as to exceed 30 inches as measured from the surface of the street to the lowest point on the frame of the vehicle.

(d) It shall be unlawful to alter the suspension system of any motor vehicle with a gross vehicle weight rating of not less than 7,501 pounds and not more than 14,000 pounds, which may be operated on any highway, so as to exceed 31 inches as measured from the surface of the street to the lowest point on the frame of the vehicle.

(e) It shall be unlawful to alter the suspension of any motor vehicle with a gross vehicle rating of not less than 4,000 pounds and not more than 7,000 pounds, which may be operated on any highway in a manner that results in the frame height of the front of such vehicle being more than four inches above or below the frame height of the rear of the vehicle. It shall be unlawful to operate any motor vehicle upon any highway if the springs relative to the suspension system are broken or the suspension system has been altered in excess of the limitations provided for in this Code section.

(f) This Code section shall not apply to any motor vehicle with an electronic stability control system which complies with standard number 126 of 49 C.F.R. 571.126 in effect on January 1, 2024.

(g) Any person violating this Code section shall be guilty of a misdemeanor.

History.

Code 1981, § 40-8-6.1, enacted by Ga. L. 1986, p. 1210, § 1; Ga. L. 1992, p. 6, § 40; Code 1981, § 40-8-6, Ga. L. 2024, p. 937, § 1/SB 352, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, redesignated former Code Section 40-8-6.1 as present Code Section 40-8-6, substituted “a motor vehicle” for “a truck” in paragraphs (a)(1) and (a)(2); in subsections (b), (c), and (d), substituted “any motor vehicle” for “any truck” and deleted “public street or” preceding “highway”; substituted “the vehicle” for “the truck” in paragraph (a)(2) and subsection (b); in subsection (e), added the first sentence and substituted the current provisions of the second sentence for the former provisions,

which read: “It shall be unlawful to operate any truck upon any highway, roadway, or street if the suspension system has been altered in excess of the limitations provided for in this Code section”; added subsection (f); and redesignated former subsection (f) as subsection (g).

Editor’s notes.

Former Code Section 40-8-6 pertained to alteration of suspension system and operation of vehicle with broken springs. The former Code section was based on Ga. L. 1973, p. 458, §§ 1, 2; Ga. L. 1975, p. 763, § 1; Code 1933, § 68E-106, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-6, enacted by Ga. L. 1982, p. 165, § 10, and was repealed by Ga. L. 2024, p. 937, § 1/SB 352.

40-8-11. Operational rules for autonomous vehicles; state consumer laws applicable.

Law reviews.

For annual survey on commercial transportation: a two-year survey, see 71 Mercer L. Rev. 39 (2019).

For comment, “Death of the DUI:

Should Autonomous Vehicles Be Considered Synonymous to Designated Drivers Under Georgia Law?,” see 70 Mercer L. Rev. 1113 (2019).

PART 2

LIGHTING EQUIPMENT

40-8-20. When lighted headlights and other lights required.

JUDICIAL DECISIONS

Violation as basis for traffic stop and search. — Defendant failed to meet burden on appeal of proving that the trial court erred in denying the motion to suppress on the ground that the stop was unlawful as the corporal testified at the suppression hearing that when the corporal

caught up with defendant’s vehicle, the corporal observed that the car was being driven in the rain without the headlights on, and the body cam footage confirmed the weather conditions. *Rush v. State*, 368 Ga. App. 827, 890 S.E.2d 883, 2023 Ga. App. LEXIS 371 (2023).

40-8-22. Headlights.

JUDICIAL DECISIONS

Probable cause for arrest for violation. — Police officer was entitled to qualified immunity in an excessive use of force case because tackling an arrestee is

not categorically unconstitutional and cases of gratuitous use of force on a non-resisting suspect were inapposite, given evidence the arrestee resisted handcuff-

ing; reasonable force could be used to effectuate arrest because probable cause existed to believe the arrestee committed misdemeanors by driving without headlights, running a stop sign, and driving under the influence. *Turner v. Ochoa*, No. 24-10707, 2024 U.S. App. LEXIS 24632 (11th Cir. Sept. 30, 2024).

Sentence improper for violation. — Following the defendant’s conviction of misdemeanor offenses of driving under the influence — less safe (O.C.G.A. § 40-6-391(a)(1)) and operating a motor vehicle with defective or no headlights

(O.C.G.A. § 40-8-22), the defendant’s sentence of consecutive terms of 12 months’ imprisonment, for a total sentence of 24 months, to be served day-for-day, and to be served on probation if the defendant was released before the end of the term, was error because it usurped the authority of the custodian of a county inmate under O.C.G.A. § 42-4-7(b) to grant earned-time allowances. *Evans v. State*, 349 Ga. App. 712, 824 S.E.2d 708, 2019 Ga. App. LEXIS 113 (2019), cert. denied, No. S19C1084, 2019 Ga. LEXIS 746 (Ga. Nov. 4, 2019).

40-8-26. Standards for brake lights and signal devices.

JUDICIAL DECISIONS

Rapidly blinking turn signal as basis for stop. — Rapidly blinking turn signal provided an officer with reasonable suspicion to believe that defendant’s car violated O.C.G.A § 40-8-26, and, on that

basis, initiation of a stop was lawful. *United States v. Campbell*, 26 F.4th 860, 2022 U.S. App. LEXIS 4317 (11th Cir.), cert. denied, 143 S. Ct. 95, 214 L. Ed. 2d 19, 2022 U.S. LEXIS 4006 (2022).

40-8-32. [Reserved] Lights on vehicles of rural mail carriers.

History.

Ga. L. 1961, p. 202, § 1; Code 1933, § 68E-213, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-32, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1997, p. 143, § 40; repealed by Ga. L. 2024, p. 518, § 3/HB 1193, effective July 1, 2024.

Editor’s notes.

Ga. L. 2024, p. 518, § 4/HB 1193, reserved the designation of this Code section, effective July 1, 2024.

40-8-33. Farm tractors, three-wheeled motorcycles used for agricultural purposes, and trailers and semitrailers that qualify as implements of husbandry.

(a) Every farm tractor and every three-wheeled motorcycle used only for agricultural purposes equipped with an electric lighting system shall at all times mentioned in Code Section 40-8-20 display a red taillight and either multiple-beam or single-beam road lighting equipment meeting the requirements of Code Sections 40-8-23 and 40-8-30, respectively.

(b) When operated or towed upon a highway at any time from a half-hour after sunset to a half-hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the highway at a distance of 500 feet to the rear, every trailer and semitrailer which would otherwise be exempt from this

article as an implement of husbandry under Code Section 40-8-1 either shall:

(1) Comply with the requirements for taillights set forth in Code Section 40-8-23;

(2) Be equipped with an operating amber flashing or revolving light which is plainly visible from a distance of 500 feet to the rear and which is either permanently or temporarily fixed to the rear of such trailer or semitrailer; or

(3) Be accompanied by an escort vehicle which is equipped with one or more operating amber flashing or revolving lights that are visible from a distance of 500 feet and which shall follow such trailer or semitrailer.

(c) Nothing in this Code section shall be construed to impose a duty on a manufacturer of an implement of husbandry under Code Section 40-8-1 to install an electric lighting system, taillights, or amber flashing or revolving lights or otherwise equip implements of husbandry to be in compliance with the provisions of this Code section at the time of manufacture or sale; it being the intent of this Code section to place a duty on operators of the equipment only under specified circumstances and conditions, and not on manufacturers.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102; Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-214, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-33, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 5; Ga. L. 1989, p. 298, § 3; Ga. L. 2024, p. 518, § 4/HB 1193, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted the current provisions of subsection (b) for the former provisions, which read: “When operated or towed upon a highway, roadway, or street at any time from a half-hour after sunset to a half-hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the high-

way, roadway, or street at a distance of 500 feet to the rear, every trailer and semitrailer which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1 either shall comply with Code Section 40-8-23, relating to taillights, or shall be equipped with an operating red flashing light which is plainly visible from a distance of 500 feet to the rear and which is either permanently or temporarily fixed to the rear of such trailer or semitrailer or shall be accompanied by an escort vehicle which is equipped with one or more operating red or amber flashing lights that are visible from a distance of 500 feet and which shall follow such trailer or semitrailer.” and in subsection (c), substituted “amber flashing or revolving” for “red flashing”.

40-8-35. Vehicles with flashing or revolving amber lights.

(a) For purposes of this Code section, the term “vehicle” means a motor vehicle, trailer, load, or equipment.

(b) Any of the following shall utilize flashing or revolving amber

lights when operating upon highways and during the conditions set forth:

(1) A wrecker or tow truck or motor vehicle used for the provision of emergency road services when:

(A) At the scene of a motor vehicle accident or disablement;

(B) Towing a motor vehicle in a manner in which any wheel of the vehicle in tow remains in contact with the pavement; or

(C) Operating with objects protruding from the vehicle in a manner that creates a hazard;

(2) A utility service vehicle when such vehicle is involved in the provision of utility services as such terms are defined in Code Section 40-6-16;

(3) A vehicle or equipment when in use for road construction or maintenance operations authorized by the Department of Transportation or a local government pursuant to Title 32 or 36;

(4) A motor vehicle with active sanitation workers as such term is defined in Code Section 40-6-16.1;

(5) A motor vehicle operated by a rural mail carrier when delivering mail;

(6) A motor vehicle or trailer transporting a projecting load as set forth in subsections (b) and (b.1) of Code Section 40-8-27;

(7) A motor vehicle or combination of vehicles and loads whose weight, width, length, or height, or combination thereof, exceeds the maximum limit specified by law, for which a permit has been issued pursuant to Code Section 32-6-28;

(8) An extendable semitrailer or load operated pursuant to subparagraph (b)(1)(C) of Code Section 32-6-24;

(9) An escort vehicle operated pursuant to Code Section 32-6-25.1;

(10) A low-speed vehicle when operated without an emblem affixed in accordance with the requirements of Code Section 40-8-4;

(11) A trailer, semitrailer, or escort vehicle when operated under the conditions set forth in Code Section 40-8-33;

(12) A school bus when such vehicle is required to comply with the identification and equipment requirements set forth in Code Section 40-8-115;

(13) A vehicle operated in the course of business by a person licensed or registered as a private detective business or private security business under Chapter 38 of Title 43;

(14) A vehicle operated by a neighborhood watch program provided that such vehicle is clearly identified as in operation by such program and such program has been established in accordance with local law enforcement standards for such programs; or

(15) The lead vehicle in a funeral procession when such vehicle complies with the requirements of Code Section 40-6-76.

(c) Any vehicle owned or leased by the federal government may utilize flashing or revolving amber lights when operating upon highways provided that such vehicle is being operated for an authorized federal purpose.

(d) Equipment capable of producing flashing or revolving amber lights shall be mounted upon a vehicle in a manner so as to be visible under normal atmospheric conditions from a distance of 500 feet from the front and rear of the vehicle.

(e) Unless authorized by this Code section or Code Section 40-6-6, 40-8-91, or 40-8-92, it shall be unlawful to operate any vehicle with flashing or revolving amber lights on a highway.

(f) A violation of this Code section shall be punished as a misdemeanor; provided, however, that a violation of this Code section during the commission of a felony shall be punished as a felony.

(g) Nothing in this Code section shall prohibit the use of blinking or flashing parking or brake lights or directional signals on a motor vehicle.

History.

Code 1981, § 40-8-35, enacted by Ga. L. 2002, p. 512, § 13; Ga. L. 2021, p. 456, § 4/SB 165; Ga. L. 2022, p. 282, § 1/HB 1011; Ga. L. 2024, p. 518, § 5/HB 1193, effective July 1, 2024.

Amendments.

The 2021 amendment, effective July 1, 2021, designated the existing provisions of this Code section as subsection (a), and, in subsection (a), inserted “without a properly affixed emblem conforming to the requirements of Code Section 40-8-4” in the first sentence; and added subsection (b).

The 2022 amendment, effective July 1, 2022, deleted the subsection (a) designation and deleted former subsection (b), which read: “Any permit required for com-

pliance with this Code section shall be issued by a county tag agent upon registration of such vehicle.”.

The 2024 amendment, effective July 1, 2024, substituted the current provisions of this Code section for the former provisions, which read: “Any low-speed vehicle operated on the highways of this state without a properly affixed emblem conforming to the requirements of Code Section 40-8-4 shall display an amber strobe light so as to warn approaching travelers to decrease their speed because of the danger of colliding with such vehicle. Such amber strobe light shall be mounted in a manner so as to be visible under normal atmospheric conditions from a distance of 500 feet from the front and rear of such vehicle.”

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — Offenses arising for which fingerprinting is required. 2024 from violations of subsection (e) of Op. Att’y Gen. No. 24-3. O.C.G.A. § 40-8-35 appear to be offenses

PART 4

HORNS, EXHAUST SYSTEMS, MIRRORS, WINDSHIELDS, TIRES, SAFETY BELTS, ENERGY ABSORPTION SYSTEMS

40-8-73. Windshields, windows, and windshield wipers.

(a) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side windows, or rear windows of such vehicle which obstructs the driver’s clear view of the highway or any intersecting highway; provided, however, that, except as prohibited by federal law, rules, or regulations in the operation of a commercial motor vehicle, a person may drive a motor vehicle with a mount for the support of a wireless telecommunications device or stand-alone electronic device, as such terms are defined in Code Section 40-6-241, upon the front windshield, provided that such mount is located on the windshield in a manner which minimizes obstruction of the driver’s view.

(b) The windshield of every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture therefrom, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

(d) No opaque or solid material including, but not limited to, cardboard, plastic, and taped glass shall be employed in lieu of a glass windshield or window.

(e) No motor vehicle shall be operated with a windshield or rear window having a starburst or spider webbing effect greater than three inches by three inches.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 119; Code 1933, § 68E-404, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-73, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2021, p. 346, § 1/HB 165.

Amendments.

The 2021 amendment, effective July 1, 2021, added the proviso in subsection (a).

40-8-73.1. Tinting of windows or windshields.**Law reviews.**

For article, “Crimes of Suspicion,” see 72 Emory L.J. 1429 (2023).

JUDICIAL DECISIONS

No predetermination of whether windows were tinted before factory delivery necessary. — Exception in O.C.G.A. § 40-8-73.1(c)(6)(D) did not require that police determine whether the windows were darkened before factory delivery or as permitted by federal law before stopping a vehicle for a window tint violation, nor did it mean that an officer’s failure to do so required suppression of evidence found during a search subsequent to such a stop based on a lack of probable cause. *State v. Williams*, 354 Ga. App. 418, 841 S.E.2d 66, 2020 Ga.

App. LEXIS 182 (2020), cert. denied, No. S20C1022, 2020 Ga. LEXIS 692 (Ga. Aug. 24, 2020), cert. denied, No. S20C1023, 2020 Ga. LEXIS 713 (Ga. Aug. 24, 2020).

Officer had a reasonable suspicion to stop the vehicle based on a belief of a window tint violation as the officer could see the officer’s reflection in the window. *State v. Williams*, 354 Ga. App. 418, 841 S.E.2d 66, 2020 Ga. App. LEXIS 182 (2020), cert. denied, No. S20C1022, 2020 Ga. LEXIS 692 (Ga. Aug. 24, 2020), cert. denied, No. S20C1023, 2020 Ga. LEXIS 713 (Ga. Aug. 24, 2020).

40-8-76.1. Use of safety belts in passenger vehicles.

(a) As used in this Code section, the term “passenger vehicle” means every motor vehicle, including, but not limited to, pickup trucks, vans, and sport utility vehicles, designed to carry 15 passengers or fewer and used for the transportation of persons; provided, however, that such term shall not include motorcycles; motor driven cycles; or off-road vehicles or pickup trucks being used by an owner, driver, or occupant 18 years of age or older in connection with agricultural pursuits that are usual and normal to the user’s farming operation; and provided, further, that such term shall not include motor vehicles designed to carry 11 to 15 passengers which were manufactured prior to July 1, 2015, and which, as of such date, did not have manufacturer installed seat safety belts.

(b) Each occupant of the front seat of a passenger vehicle shall, while such passenger vehicle is being operated on a public road, street, or highway of this state, be restrained by a seat safety belt approved under Federal Motor Vehicle Safety Standard 208.

(c) The requirement of subsection (b) of this Code section shall not apply to:

(1) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle, if the speed of the vehicle between stops does not exceed 15 miles per hour;

(2) A driver or passenger possessing a written statement from a

physician that such person is unable, for medical or physical reasons, to wear a seat safety belt;

(3) A driver or passenger possessing an official certificate or license endorsement issued by the appropriate agency in another state or country indicating that the driver is unable for medical, physical, or other valid reasons to wear a seat safety belt;

(4) A driver operating a passenger vehicle in reverse;

(5) A passenger vehicle with a model year prior to 1965;

(6) A passenger vehicle which is not required to be equipped with seat safety belts under federal law;

(7) A passenger vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier;

(8) A passenger vehicle from which a person is delivering newspapers; or

(9) A passenger vehicle performing an emergency service.

(d)(1) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts may be considered in any civil action as evidence admissible on the issues of negligence, comparative negligence, causation, assumption of risk, or apportionment of fault or for any other purpose and may be evidence used to diminish any recovery for damages arising out of the ownership, maintenance, occupancy, or operation of a motor vehicle; provided, however, that this paragraph shall not prevent a court from determining the admissibility of such evidence pursuant to Code Section 24-4-403 or any other statutory or common law rule of evidence.

(2) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts shall not be any basis for a cancellation of insurance coverage or an increase in insurance rate.

(e)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, a person failing to comply with the requirements of subsection (b) of this Code section shall not be guilty of any criminal act and shall not be guilty of violating any ordinance. A violation of this Code section shall not be a moving traffic violation for purposes of Code Section 40-5-57.

(2) A person failing to comply with the requirements of subsection (b) of this Code section shall be guilty of the offense of failure to wear a seat safety belt and, upon conviction thereof, may be fined not more

than \$15.00; but, the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. The court imposing such fine shall forward a record of the disposition of the case of failure to wear a seat safety belt to the Department of Driver Services.

(3) Each minor eight years of age or older who is an occupant of a passenger vehicle shall, while such passenger vehicle is being operated on a public road, street, or highway of this state, be restrained by a seat safety belt approved under Federal Motor Vehicle Safety Standard 208. In any case where a minor passenger eight years of age or older fails to comply with the requirements of this paragraph, the driver of the passenger vehicle shall be guilty of the offense of failure to secure a seat safety belt on a minor and, upon conviction thereof, may be fined not more than \$25.00. The court imposing such a fine shall forward a record of the court disposition of the case of failure to secure a seat safety belt on a minor to the Department of Driver Services.

(f) Probable cause for violation of this Code section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person not restrained as required by this Code section. Noncompliance with the restraint requirements of this Code section shall not constitute probable cause for violation of any other Code section.

History.

Code 1981, § 40-8-76.1, enacted by Ga. L. 1988, p. 31, § 1; Ga. L. 1990, p. 588, § 1; Ga. L. 1993, p. 516, § 1; Ga. L. 1994, p. 1005, § 1; Ga. L. 1996, p. 469, § 3; Ga. L. 1997, p. 143, § 40; Ga. L. 1998, p. 1579, § 1; Ga. L. 1999, p. 276, § 1; Ga. L. 2000, p. 862, § 1; Ga. L. 2000, p. 951, § 5B-4; Ga. L. 2004, p. 716, § 2; Ga. L. 2005, p. 334, § 19-4/HB 501; Ga. L. 2010, p. 817, § 1/SB 458; Ga. L. 2011, p. 253, § 2/SB 88; Ga. L. 2015, p. 940, § 1/HB 325; Ga. L. 2025, p. 19, § 5/SB 68, effective April 21, 2025; Ga. L. 2025, p. 31, § 4/SB 69, effective April 21, 2025.

Amendments.

The first 2025 amendment, effective April 21, 2025, rewrote subsection (d). See Editor's notes for applicability.

The second 2025 amendment, effective April 21, 2025, made identical changes as the first 2025 amendment.

Editor's notes.

Ga. L. 2025, p. 31, § 1/SB 69, not codified by the General Assembly,

provides "This Act shall be known and may be cited as the 'Georgia Courts Access and Consumer Protection Act.'"

This Code section was amended by Ga. L. 2025, p. 19, § 5/SB 68 and Ga. L. 2025, p. 31, § 4/SB 69, both of which became effective April 21, 2025. Ga. L. 2025, p. 19, § 9(b)/SB 68, not codified by the General Assembly, provides: "Sections 6 and 7 of this Act shall apply only with respect to causes of action arising on or after the effective date of this Act, and any prior causes of action shall be governed by prior law. It is the intention of the General Assembly that all other provisions of this Act shall apply to causes of action pending on the effective date of this Act, unless such application would be unconstitutional." Ga. L. 2025, p. 31, § 5(c)(2)/SB 69, not codified by the General Assembly, provides: "Section 4 of this Act shall not apply to causes of action pending on the effective date of this Act. Section 4 of this Act shall apply only to causes of

action commenced on or after the effective date of this Act, and any causes of action commenced prior to the effective date of this Act shall be governed by prior law.” Ga. L. 2025, p. 31, SB 69 was signed last, and, therefore, the applicability language relating to pending causes of action shall be governed by the applicability provisions contained in Ga. L. 2025, p. 31, SB 69.

JUDICIAL DECISIONS

Evidence admissible on whether seatbelts were being worn wrong way. — Trial court erred by excluding evidence that the decedents allegedly tucked the shoulder straps of their seat belts under their arms instead of wearing them across their chests and shoulders because such evidence was not barred by O.C.G.A. § 40-8-76.1(d) and the jury should be able to consider whether they were wearing their seatbelts the wrong way. *Ford Motor Company v. Hill*, 373 Ga. App. 480, 908 S.E.2d 748, 2024 Ga. App. LEXIS 466 (2024).

Exclusion of evidence. Georgia Supreme Court concluded that O.C.G.A. § 40-8-76.1(d) did not preclude a defendant in an action alleging defective restraint-system design or negligent restraint-system manufacture from producing evidence related to the existence of seatbelts in a vehicle as part of the vehicle’s passenger restraint system. *Domingue v. Ford Motor Co.*, 314 Ga. 59, 875 S.E.2d 720, 2022 Ga. LEXIS 172 (2022).

PART 5

EQUIPMENT OF LAW ENFORCEMENT AND EMERGENCY VEHICLES

40-8-91. Marking and equipment of law enforcement vehicles; motorist allowed to continue to safe location before stopping for law enforcement officer vehicles.

(a) Except as provided in subsection (b) of this Code section, any motor vehicle which is used on official business by any person authorized to make arrests for traffic violations in this state, or any municipality or county thereof, shall be distinctly marked on each side and the back with the name of the agency responsible therefor, in letters not less than four inches in height.

(b) Any motor vehicle, except as hereinafter provided in this subsection, used by any employee of the Georgia State Patrol for the purpose of enforcing the traffic laws of this state shall be distinctly painted, marked, and equipped in such manner as shall be prescribed by the commissioner of public safety pursuant to this Code section. The commissioner in prescribing the manner in which such vehicles shall be painted, marked, or equipped shall:

- (1) Require that all such motor vehicles be painted in a two toned uniform color or a solid color. For vehicles painted in a two toned uniform color, the hood, top, and the top area not to exceed 12 inches below the bottom of the window opening thereof shall be a light gray color and the remaining portion of said motor vehicle shall be painted a dark blue color;

(2) Require that any such motor vehicle be equipped with at least one lamp which when lighted shall display a flashing or revolving light, primarily blue in color, visible under normal atmospheric conditions for a distance of 500 feet from the front and rear of such vehicle; and

(3) Require that any such motor vehicle shall be distinctly marked on each side and the back thereof with the wording “State Patrol” in letters not less than six inches in height of a contrasting color from the background color of the motor vehicle.

(c) It shall be unlawful for any person, except persons lawfully entitled to own vehicles for law enforcement purposes, to paint, mark, or equip any motor vehicle in the same manner prescribed by this Code section or by the commissioner for law enforcement vehicles.

(d) When a law enforcement vehicle is disposed of, or is not in use for law enforcement, the lettering and colored lights must be removed. Any person using such vehicle for personal use prior to removing colored lights and lettering shall be guilty of a misdemeanor.

(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.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A; Ga. L. 1966, p. 166, § 1; Ga. L. 1976, p. 208, § 1; Ga. L. 1986, p. 802, §§ 1-3; Ga. L. 1987, p. 3, § 405; Ga. L. 2006, p. 231, § 3/SB 64; Ga. L. 2006, p. 255, § 1/SB 454; Ga. L. 2010, p. 105, § 1-1/HB 981; Ga. L. 2014, p. 866,

§ 40/SB 340; Ga. L. 2018, p. 232, § 1/HB 809; Ga. L. 2022, p. 295, § 2/HB 1146.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted “two toned” for “two-toned” twice in paragraph (b)(1), and substituted “light, primarily blue in color,” for “colored light” in paragraph (b)(2).

40-8-91.1. Marking and equipment of all-terrain vehicles used as law enforcement vehicles.

(a) As used in this Code section, the term “all-terrain vehicle” shall have the same meaning as provided for in paragraph (3) of Code Section 40-1-1.

(b) Every all-terrain vehicle must comply with the equipment and marking specifications set forth in this article before such vehicle can be

used by law enforcement agencies and officers upon the public roads of this state. All provisions of law relating to safe operation of law enforcement or emergency vehicles shall be applied to the operation of such all-terrain vehicles.

(c) Any all-terrain vehicle which is operated by law enforcement agencies and officers upon the public roads of this state shall be registered and licensed in accordance with the provisions of Code Section 40-2-37.

History.

Code 1981, § 40-8-91.1, enacted by Ga. L. 2006, p. 675, § 1/HB 1216; Ga. L. 2012, p. 726, § 5/HB 795; Ga. L. 2019, p. 277, § 2/HB 101.

Amendments.

The 2019 amendment, effective July 1, 2019, substituted “shall have the same

meaning as provided for in paragraph (3) of Code Section 40-1-1” for “means any motorized vehicle designed for off-road use which is equipped with four or more nonhighway tires and which is 50 inches or less in width” in subsection (a).

40-8-92. Designation of emergency vehicles; flashing or revolving lights; permits; fee; use of flashing or revolving green lights on public property.

(a) The commissioner of public safety shall be authorized to designate certain motor vehicles as emergency vehicles. The commissioner of public safety shall so designate each vehicle by issuing to such vehicle a permit to operate flashing or revolving emergency lights of the appropriate color. Such permit shall be valid for five years from the date of issuance. Any and all officially marked law enforcement vehicles as specified in Code Section 40-8-91 shall not be required to have a permit for the use of a blue light. Any and all fire department vehicles which are distinctly marked on each side shall not be required to have a permit for the use of a red light. Any and all motor vehicles which are operated for ambulance services, as defined in Code Section 31-11-2, under a valid license from the Emergency Health Section of the Department of Public Health shall not be required to have a permit for the use of a red light.

(b) The commissioner shall authorize the use of red flashing or revolving lights only when the person or governmental agency shall demonstrate to the commissioner a proven need for equipping a vehicle with emergency lights. The fee for such lights shall be \$2.00, provided that no federal, state, county, or municipal governmental agency or an ambulance provider, as defined in Code Section 31-11-2, shall be required to pay such fee.

(c) Nothing contained in this Code section shall prohibit the commissioner from issuing a single special use permit to cover more than one vehicle, provided each vehicle covered under such special use permit shall pay the fee specified in subsection (b) of this Code section.

(d) Except as provided in this subsection, it shall be unlawful for any person, firm, or corporation to operate any motor vehicle or to park any motor vehicle on public property with flashing or revolving green lights. This subsection shall not apply to any motor vehicle being used by any law enforcement agency, fire department, emergency management agency, or other governmental entity to designate the location of the command post for such agency, department, or entity at the site of an emergency.

History.

Ga. L. 1971, p. 781, § 2; Ga. L. 1972, p. 1092, §§ 3, 4; Ga. L. 1977, p. 1012, § 4; Ga. L. 1983, p. 447, § 1; Ga. L. 1988, p. 582, § 1; Ga. L. 1991, p. 1145, § 3; Ga. L. 2000, p. 951, § 5B-6; Ga. L. 2005, p. 334, § 19-6/HB 501; Ga. L. 2010, p. 95, § 1/SB 410; Ga. L. 2022, p. 282, § 2/HB 1011; Ga. L. 2024, p. 518, § 6/HB 1193, effective July 1, 2024; Ga. L. 2025, p. 286, § 10/SB 58, effective July 1, 2025.

Amendments.

The 2022 amendment, effective July 1, 2022, in subsection (a), deleted “one year from the date of issuance; provided, however, that permits for vehicles belonging to federal, state, county, or municipal governmental agencies shall be valid for” preceding “five years” in the second sentence and added the last sentence.

The 2024 amendment, effective July 1, 2024, deleted the former last sentence in subsection (a), which read: “Any low-speed vehicle shall not be required to have a permit for the use of an amber strobe light”; and deleted “or amber” following “red” in subsection (b).

The 2025 amendment, effective July 1, 2025, in subsection (a), rewrote the first sentence, inserted “of public safety” in the second sentence, and rewrote the last sentence.

Editor’s notes.

Ga. L. 2025, p. 286, § 1/SB 58, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Transporting Life-Saving Organs and Personnel Act.’”

ARTICLE 3

INSPECTIONS BY OFFICERS OF DEPARTMENT OF PUBLIC SAFETY

40-8-200. Inspection of vehicles by officers of the Department of Public Safety; certificate of inspection; procedure for noncompliant vehicle.

RESEARCH REFERENCES

ALR.

Liability for Negligence in Carrying Out

Governmentally Required Inspection of Motor Vehicle, 67 A.L.R. 7th 5.

CHAPTER 9

REPORTING ACCIDENTS; GIVING PROOF OF
FINANCIAL RESPONSIBILITY

ARTICLE 5

ASSIGNED RISK PLANS, “SPOT” INSURANCE, AND
COOPERATION BY INSURED

40-9-102. Insurance for person renting U-drive-it vehicle.

JUDICIAL DECISIONS

Effect of rental agency’s failure to offer insurance. — Trial court erred by denying the rental car owner’s motion to dismiss the complaint because the alleged failure to provide spot insurance to the driver had no causal connection to any of the driver’s injuries; thus, the driver was

prevented from pursuing a negligence action against the rental car owner for the owner’s failure to comply with O.C.G.A. § 40-9-102. *PV Holding Co. v. Poe*, 360 Ga. App. 381, 861 S.E.2d 265, 2021 Ga. App. LEXIS 363 (2021).

CHAPTER 11

ABANDONED, DERELICT, AND CIVIL FORFEITURE OF
MOTOR VEHICLES

Article 1		Sec.	
Abandoned and Derelict Vehicles		40-11-4.	[Reserved] Creation of lien; courts authorized to foreclose lien.
Sec.		40-11-5.	[Reserved] Lien foreclosure procedure.
40-11-2.	[Reserved] Duty of person removing or storing motor vehicle.	40-11-6.	[Reserved] Sale of vehicle pursuant to foreclosure.
40-11-3.	[Reserved] Removal of vehicles from public property by peace officer; notification requirements.	40-11-7.	[Reserved] How purchaser at foreclosure sale may obtain certificate of title.
40-11-3.1.	[Reserved] Unattended vehicle checks.	40-11-8.	[Reserved] Disposition of proceeds of foreclosure sale.
40-11-3.2.	[Reserved] Limited prohibition on towing vehicles within paid parking facility located within 500 feet of an establishment serving alcohol.	40-11-10.	[Reserved] Disposition of certain contents of abandoned vehicles.
		Article 1A	
		Abandoned Motor Vehicles	
		40-11-11.	Short title.
		40-11-12.	Legislative intent.

Sec.		Sec.	
40-11-13.	Definitions.		upon vehicle; recoverable fees; form disclaiming ownership; demand letter.
40-11-14.	Unattended vehicle checks; completion and attachment of check card; determination if vehicle stolen.	40-11-19.1.	Petition to foreclose a lien on motor vehicle; answer; motion for judgment; timing; fees.
40-11-15.	Removal of vehicle; liability; duty of towing and storage firm when removal at request of law enforcement.	40-11-19.2.	Public sale authorized upon court order; procedure following satisfaction of lien; disposition of excess proceeds.
40-11-16.	Duty of towing and storage firm when removal at request of property owners; obligations of repair facility or salvage dealer in possession of vehicle.	40-11-19.3.	Certified copy of court order; obtaining certificate of title.
40-11-17.	Removal from private parking lot; fees; penalty.	40-11-19.4.	Development and publication of forms by the Council of Magistrate Court Judges; requirements.
40-11-18.	Retrieval of personal property.	40-11-19.5.	Form for disclaimer of motor vehicle ownership interest.
40-11-19.	Notification letter to owners; advertisement; lien		

ARTICLE 1

ABANDONED AND DERELICT VEHICLES

40-11-2. [Reserved] Duty of person removing or storing motor vehicle.

History.

Ga. L. 1972, p. 342, § 2; Ga. L. 1977, p. 253, § 2; Ga. L. 1980, p. 995, § 2; Ga. L. 1981, p. 469, § 2; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 1265, § 2; Ga. L. 1988, p. 1750, § 1; Ga. L. 1990, p. 1657, § 6; Ga. L. 1992, p. 2978, § 10; Ga. L. 1993, p. 772, § 1; Ga. L. 1995, p. 663, § 1; Ga. L. 1996, p. 6, § 40; Ga. L. 1998, p. 1305, § 1; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589,

§ 4; Ga. L. 2002, p. 563, § 2; Ga. L. 2005, p. 334, § 21-2/HB 501; Ga. L. 2008, p. 803, § 3/HB 945; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(1)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-3. [Reserved] Removal of vehicles from public property by peace officer; notification requirements.

History.

Ga. L. 1972, p. 342, § 3; Ga. L. 1980, p. 995, § 3; Ga. L. 1984, p. 548, § 2; Ga. L. 1988, p. 1750, § 2; Ga. L. 1990, p. 1657, § 7; Ga. L. 1993, p. 370, § 4; Ga. L. 1995, p. 663, § 2; Ga. L. 1996, p. 6, § 40; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2002, p. 415, § 40; Ga. L.

2005, p. 334, § 21-3/HB 501; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(2)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-3.1. [Reserved] Unattended vehicle checks.**History.**

Ga. L. 1988, p. 688, § 1; Ga. L. 2000, p. 951, § 7-1; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(3)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-3.2. [Reserved] Limited prohibition on towing vehicles within paid parking facility located within 500 feet of an establishment serving alcohol.**History.**

Ga. L. 2002, p. 563, § 3; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(4)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-4. [Reserved] Creation of lien; courts authorized to foreclose lien.**History.**

Ga. L. 1972, p. 342, § 3; Ga. L. 1980, p. 995, § 4; Ga. L. 1981, p. 469, § 3; Ga. L. 1983, p. 884, § 3-28; Ga. L. 1984, p. 22, § 40; Ga. L. 1998, p. 1305, § 2; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2014, p. 807, § 4/HB 753; repealed by Ga. L. 2019, p.

872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(5)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-5. [Reserved] Lien foreclosure procedure.**History.**

Ga. L. 1980, p. 995, § 5; Ga. L. 1982, p. 1650, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 1265, § 3; Ga. L. 1988, p. 1750, § 3; Ga. L. 1998, p. 1305, § 3; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589, §§ 3, 4; Ga. L. 2002, p. 563, § 4; Ga. L. 2005, p. 334, § 21-4/HB

501; Ga. L. 2011, p. 777, § 2/HB 114; Ga. L. 2014, p. 807, § 5/HB 753; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(6)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-6. [Reserved] Sale of vehicle pursuant to foreclosure.**History.**

Ga. L. 1980, p. 995, § 6; Ga. L. 1998, p. 1305, § 4; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2015, p. 996, § 3C-5/SB 65; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(7)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-7. [Reserved] How purchaser at foreclosure sale may obtain certificate of title.

History.

Ga. L. 1972, p. 342, § 4; Ga. L. 1975, p. 913, § 1; Ga. L. 1977, p. 253, § 3; Ga. L. 1980, p. 995, § 7; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2005, p. 334, § 21-5/HB 501; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(8)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-8. [Reserved] Disposition of proceeds of foreclosure sale.

History.

Ga. L. 1972, p. 342, § 8; Ga. L. 1977, p. 253, § 5; Ga. L. 1980, p. 995, § 8; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2014, p. 807, § 6/HB 753; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(9)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

40-11-10. [Reserved] Disposition of certain contents of abandoned vehicles.

History.

Ga. L. 2011, p. 777, § 3/HB 114; repealed by Ga. L. 2019, p. 872, § 4/HB 307, effective September 1, 2019.

Editor's notes.

Ga. L. 2019, p. 872, § 4(10)/HB 307 repealed and reserved this Code section, effective September 1, 2019.

ARTICLE 1A

ABANDONED MOTOR VEHICLES

Effective date.

This article became effective May 7, 2019, for purposes of developing the required forms and effective September 1, 2019, for all other purposes.

Cross references.

Motor Vehicle Chop Shop and Stolen

and Altered Property Act, § 16-8-80 et seq.

Affidavit that insured's motor vehicle stolen, § 33-1-15.

Transfer of certificate to person, firm, or corporation paying total loss claim on stolen vehicle, § 40-3-43.

40-11-11. Short title.

The article shall be known and may be cited as the "Abandoned Motor Vehicle Act."

History.

Code 1981, § 40-11-11, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

OPINIONS OF THE ATTORNEY GENERAL

Construction with O.C.G.A. § 44-1-13. — The Department of Public Safety is not authorized to establish maximum rates for the removal and storage of motor vehicles pursuant to the Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-11 et seq., beyond the department’s regulatory authority as set forth in O.C.G.A. § 44-1-13. 2019 Op. Att’y Gen. No. 19-1.

Purpose. — The Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-11 et seq., was enacted during the 2019 legislative session to create a comprehensive and streamlined process for the removal of abandoned and unclaimed vehicles from public rights of way and private or public property. 2019 Op. Att’y Gen. No. 19-1.

40-11-12. Legislative intent.

The intent of the General Assembly is to provide a comprehensive and streamlined process for businesses removing motor vehicles from public rights of way and private or public property to recover the costs associated with this work while balancing the rights of a motor vehicle owner, when a motor vehicle has been abandoned or unclaimed. Businesses removing motor vehicles from public rights of way and private property without the consent of an owner are regulated by the Department of Public Safety pursuant to Code Section 44-1-13 and, as such, the recoverable fees for these businesses are limited. When executed at the request of law enforcement, these businesses perform an essential public function of keeping highways in this state free from obstructions that could cause a threat to public health or safety or cause traffic congestion. As a result of licensure, these businesses often incur great costs in performing this service but are unable to recover the full amounts expended. The intent of the General Assembly is to allow such businesses to continue to remove abandoned vehicles at the request of law enforcement and private property owners, by providing a method for obtaining excess funds from the sale of abandoned and unclaimed vehicles and applying those funds as reimbursements for unrecovered expenses of such businesses, which will allow them to remain viable and to minimize any financial loss in performing this important public safety function.

History.

Code 1981, § 40-11-12, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

OPINIONS OF THE ATTORNEY GENERAL

Purpose. — The Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-11 et seq., was enacted during the 2019 legislative session to create a comprehensive and

streamlined process for the removal of abandoned and unclaimed vehicles from public rights of way and private or public property. 2019 Op. Att’y Gen. No. 19-1.

40-11-13. Definitions.

As used in this article, the term:

(1) “Day” means a business day unless otherwise stated and shall not include Saturdays, Sundays, and legal holidays recognized by the state.

(2) “Department” means the Department of Revenue or any entity that has an agreement with such department to serve as an authorized entity to access information relating to motor vehicle ownership and disseminate such information upon request and which is identified as such an authorized entity on the website of the Department of Revenue.

(3) “Motor vehicle” means every trailer and vehicle which is self-propelled.

(4) “Owner” means any secured interest holder with a current interest in a motor vehicle and person listed on the registration of a motor vehicle found in the records of the department or in the records of the state where the vehicle is registered.

(5) “Paid private parking lot” means private property where the owner or operator of a motor vehicle pays a valuable consideration for the right to park in such location.

(6) “Repair facility” means any person maintaining physical custody of a motor vehicle for repairs that have been requested or authorized by an owner or by an insurance company acting on behalf of an owner.

(7) “Salvage dealer” means any person taking possession of a motor vehicle from or upon request from an insurance company which is damaged to the extent that its restoration to an operable condition would require the replacement of two or more major component parts or for which the insurance company has paid a total loss claim and has been unable to obtain a certificate of title.

(8) “Secured interest holder” means a secured party within the meaning of Code Section 11-9-102 or a person with a perfected encumbrance pertaining to an interest in a motor vehicle.

(9) “Towing and storage firm” means any person regulated by the Department of Public Safety and in compliance with requirements set forth in Code Section 44-1-13 who removes a motor vehicle from private or public property with or without the consent of the motor vehicle owner or authorized user and provides storage for such motor vehicle after removal.

(10) “Trailer” means a vehicle with or without motive power designed to be drawn by a motor vehicle; provided, however, that such

term shall not include a mobile home as such term is set forth in Code Section 8-2-160 unless such vehicle was left unattended on public property and its removal was requested by a peace officer.

History.

Code 1981, § 40-11-13, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

40-11-14. Unattended vehicle checks; completion and attachment of check card; determination if vehicle stolen.

(a) Any peace officer, or any entity authorized by such peace officer or the Department of Public Safety, who discovers a motor vehicle which has been left unattended on a highway or other public property shall immediately perform an unattended vehicle check on such motor vehicle, unless an unattended vehicle check card is displayed on such motor vehicle, indicating that an unattended vehicle check has been previously performed. For purposes of this Code section, an unattended vehicle check shall consist of such actions as are reasonably necessary to determine that the unattended vehicle does not contain an injured or incapacitated person and to determine that the unattended vehicle does not pose a threat to public health or safety or traffic congestion.

(b) A peace officer, or any entity authorized by such peace officer or the Department of Public Safety, who completes an unattended motor vehicle check shall attach the completed check card to the vehicle. Unattended vehicle check cards shall be in such form and shall be attached to vehicles in such manner as may be specified by rule or regulation of the Department of Public Safety. Unattended vehicle check cards shall be serially numbered; shall be of a distinctive color and shape, so as to be readily visible to passing motorists; and shall contain spaces for the investigating individual to set forth the location of the vehicle, the date and time of the completion of the unattended vehicle check, and the name of his or her law enforcement or other authorized agency. Detachable stubs shall be included upon such unattended vehicle check cards and shall bear the same serial number and provide for the same information as the portion of the unattended vehicle check card to be left on the vehicle, shall include a space to identify the investigating individual, and shall include a space for the officer to set forth the license plate number and other pertinent identifying information relating to the unattended vehicle. Completed detachable stubs shall be filed with the investigating individual's law enforcement or other authorized agency. The Department of Public Safety may provide unattended vehicle check cards free of charge if sufficient funds for such purpose are available to the Department of Public Safety.

(c) It shall be unlawful for any person other than a peace officer or

any entity authorized by such peace officer or the Department of Public Safety to attach any type of unattended motor vehicle check card to a motor vehicle. Any person convicted of violating this subsection shall be guilty of a misdemeanor.

(d) Within 24 hours of completing an unattended vehicle check or discovering an unattended motor vehicle with an unattended vehicle check card attached to such vehicle by an authorized individual who is not a peace officer, a peace officer shall query the criminal justice information system to determine if the unattended motor vehicle has been entered into the criminal justice information system as a stolen vehicle. If an unattended vehicle has been reported as stolen, the peace officer shall place a phone call to the law enforcement agency that filed such report, providing the location of the motor vehicle. The law enforcement agency receiving such phone call shall notify the owner of the vehicle of the location of the motor vehicle.

(e) Failure of a peace officer to comply with any provision of this Code section shall not limit the remedies available to any person pursuant to this article.

History.

Code 1981, § 40-11-14, enacted by Ga. L. 2019, p. 872, § 5/HB 307; Ga. L. 2020, p. 493, § 40/SB 429.

Amendments.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modern-

ize, and correct the Code, revised punctuation in the first sentence of subsection (c); and substituted “vehicle check card” for “motor vehicle card” in the first sentence of subsection (d).

40-11-15. Removal of vehicle; liability; duty of towing and storage firm when removal at request of law enforcement.

(a) Any peace officer who finds a motor vehicle which has been left unattended on a highway for more than five days, as evidenced by the date on an unattended vehicle check card, may cause such motor vehicle to be removed to a garage or other place of safety.

(b) Any peace officer who finds a motor vehicle which has been left unattended on a highway and which poses an immediate threat to public health or safety or traffic congestion may cause such motor vehicle to be removed to a garage or other place of safety. Within 24 hours of causing an unattended motor vehicle to be removed pursuant to this subsection, the peace officer shall query the criminal justice information system to determine if the unattended motor vehicle has been entered into the criminal justice information system as a stolen vehicle. If a removed vehicle has been reported as stolen, the peace officer shall place a phone call to the law enforcement agency that filed such report, providing the name and address of the towing and storage firm that removed the motor vehicle. The law enforcement agency

receiving such phone call shall notify the owner of the vehicle of the location of the motor vehicle.

(c) Any peace officer who causes an unattended motor vehicle to be removed pursuant to this Code section shall be liable only for gross negligence.

(d) A towing and storage firm that has removed an unattended motor vehicle from public property at the request of a peace officer shall, within three days of the removal, request from the department the identification and addresses of all owners of such vehicle contained in the records of the department; provided, however, that if such vehicle has an out-of-state license plate, such request shall be made to the state where the vehicle is registered or to an entity with access to such state's vehicle registration information. The department shall furnish the requested owner information no later than five days from the date the request was received. The department may charge a fee of no more than \$2.00 for such owner information. For purposes of this subsection, an unattended motor vehicle shall include a motor vehicle required to be moved due to arrest of the vehicle's operator or any direction of a peace officer.

(e) Failure of a peace officer to comply with any provision of this Code section shall not limit the remedies available to any person pursuant to this article.

History.

Code 1981, § 40-11-15, enacted by Ga. L. 2019, p. 872, § 5/HB 307; Ga. L. 2020, p. 493, § 40/SB 429.

ize, and correct the Code, revised punctuation in the first sentence of subsection (b).

Amendments.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modern-

40-11-16. Duty of towing and storage firm when removal at request of property owners; obligations of repair facility or salvage dealer in possession of vehicle.

(a)(1) Any towing and storage firm which has removed an unattended motor vehicle from private property at the request of the property owner shall, within three days of the removal, request from the department the identification and addresses of all owners of such vehicle contained in the records of the department; provided, however, that if such vehicle has an out-of-state license plate, such request shall be made to the state where the vehicle is registered or to an entity with access to such state's vehicle registration information. The department shall furnish the requested owner information no later than five days from the date the request was received. The department may charge a fee of no more than \$2.00 for such owner information.

(2) The towing and storage firm shall submit notification of the removal by hand delivery, electronic transmission, or telephonic facsimile transmission to the law enforcement agency with jurisdiction over the location from where the motor vehicle was removed no later than one day after submission of the request to the department. Within 24 hours of receipt of the notice of removal, the local law enforcement agency shall query the criminal justice information system to determine if such motor vehicle has been entered into the criminal justice information system as a stolen vehicle. If such vehicle has been reported as stolen, the local law enforcement agency shall place a phone call to the law enforcement agency that filed such report, providing the name and address of the towing and storage firm who submitted a notice of removal. The law enforcement agency receiving such phone call shall notify the owner of the vehicle of the location of the vehicle and contact information for the towing and storage firm and shall inform the towing and storage firm that the vehicle has been reported as stolen.

(3) Failure of a peace officer to comply with any provision of this subsection shall not limit the remedies available to any person pursuant to this article.

(b)(1) Any repair facility or salvage dealer which has been in possession of a motor vehicle for at least 15 days without communication from an owner or insurance company and which desires to file a petition pursuant to Code Section 40-11-19.1 shall request from the department the identification and addresses of all owners of such vehicle contained in the records of the department; provided, however, that if such vehicle has an out-of-state license plate, such request shall be made to the state where the vehicle is registered or to an entity with access to such state's vehicle registration information. For purposes of this paragraph, the term "communication" includes any form of communication which can be verifiably documented.

(2) The department shall furnish the requested owner information no later than five days from the date the request was received. The department may charge a fee of no more than \$2.00 for such owner information.

History.

Code 1981, § 40-11-16, enacted by Ga. L. 2019, p. 872, § 5/HB 307; Ga. L. 2020, p. 493, § 40/SB 429; Ga. L. 2024, p. 1052, § 6(32)/SB 448, effective July 1, 2024.

Amendments.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, revised punctua-

tion in the first sentence of paragraph (b)(1).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "notice of removal" for "copy of the request described in subsection (a) of this Code section" twice in paragraph (a)(2).

40-11-17. Removal from private parking lot; fees; penalty.

(a) It shall be unlawful for any person to remove, tow, or immobilize or cause to be removed, towed, or immobilized a motor vehicle left in a paid private parking lot between midnight and 9 A.M. of the following day. Nothing in this Code section shall prohibit the owner or operator of a paid private parking lot from charging a penalty for vehicles which remain in a paid private parking lot during such period without authorization. Such penalty shall not exceed \$25.00 in excess of normal parking fees. No owner or operator of a paid private parking lot shall be liable for any damages to any motor vehicle remaining in a paid private parking lot during such period without authorization. Nothing in this Code section shall prohibit a resident or a business owner who is not an owner or operator of a paid private parking lot from towing, removing, immobilizing, or causing to be towed, removed, or immobilized a motor vehicle left without authorization on private property.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

History.

Code 1981, § 40-11-17, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 40-11-17 are not offenses for which fingerprinting is required. 2019 Op. Att’y Gen. No. 19-3.

40-11-18. Retrieval of personal property.

(a) A towing and storage firm, repair facility, or salvage dealer shall allow an owner of a vehicle to retrieve any personal property within a stored vehicle for up to 30 days from the date which notice was sent pursuant to Code Section 40-11-19.

(b) Any personal property left in a vehicle after 30 days from the date on which notice was sent pursuant to Code Section 40-11-19 shall be considered abandoned.

(c) For purposes of this Code section, the term “personal property” shall not include any items attached or affixed to the motor vehicle.

History.

Code 1981, § 40-11-18, enacted by Ga. L. 2019, p. 872, § 5/HB 307; Ga. L. 2020, p. 493, § 40/SB 429.

Amendments.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted “on

which” for “which” in subsection (b); and revised capitalization in subsection (c).

40-11-19. Notification letter to owners; advertisement; lien upon vehicle; recoverable fees; form disclaiming ownership; demand letter.

(a)(1) Within 15 calendar days of removal or initial storage of a motor vehicle, a towing and storage firm shall send all owners the notification letter form developed by the Council of Magistrate Court Judges for such purpose. Such notification shall be by certified mail or by hand delivery with acknowledgment of such receipt by signature of the owner and a copy of such owner’s driver’s license. Such notification letter shall include, at a minimum:

(A) The location of the vehicle;

(B) The fees connected with the removal of the vehicle, which shall be the maximum allowable charge for the removal of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs or the rate specified pursuant to an agreement with a local governing authority, except when otherwise exempted or provided for by federal law, rule, or regulation;

(C) The daily fees for storage of the vehicle, which shall be the maximum allowable daily rate for the storage of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs or the rate specified pursuant to an agreement with a local governing authority;

(D) A statement informing the recipient that daily fees will accrue until full payment has been made;

(E) A statement informing the recipient that the fees which are recoverable by a towing and storage firm include costs for obtaining the owner’s information and notifying the owner, court filing costs, attorney’s fees, and interest;

(F) A statement informing the recipient that the towing and storage firm has the right to petition a court to foreclose a lien for all amounts owed after ten calendar days from the date such notice is sent;

(G) A statement informing the recipient that a court may order the sale of the vehicle to satisfy the debt; and

(H) A form to disclaim ownership interest in the motor vehicle by oath or affirmation as set forth in Code Section 40-11-19.5.

(2) If the identity of the owner cannot be ascertained by the department or the department fails to timely furnish the owner information requested pursuant to Code Section 40-11-15 or 40-11-16,

the towing and storage firm shall, within 60 days of such removal, place an advertisement in a newspaper of general circulation or the legal organ in the county where such vehicle was obtained. Any advertisement required by this paragraph shall run in the newspaper once a week for two consecutive weeks. The advertisement shall be in the form provided by the Council of Magistrate Court Judges for such purpose. Such advertisement form shall include a space for describing the motor vehicle's year, make, model, and manufacturer's vehicle identification number, the present location of such vehicle, the fact that such vehicle is subject to a lien which can be foreclosed upon, and the fact that such vehicle may be ordered sold to satisfy such lien.

(3) If the identity of an owner which was previously not ascertained becomes known while an advertisement is run pursuant to paragraph (2) of this subsection, the towing and storage firm shall send a notification letter pursuant to the same requirements set forth in paragraph (1) of this subsection within ten days of obtaining such information.

(b)(1) When a motor vehicle has been left with a repair facility for at least 15 days, and no later than 180 days, without payment of amounts owed, the repair facility desiring to file a petition pursuant to Code Section 40-11-19.1 shall send all owners by certified mail the notification letter form developed by the Council of Magistrate Court Judges for such purpose. Such notification letter shall include, at a minimum:

- (A) The location of the vehicle;
- (B) The fees owed for the repair of the vehicle;
- (C) The daily fees for storage of the vehicle after completion of the repairs, which shall be the maximum allowable daily rate for the storage of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs;
- (D) A statement informing the recipient that daily fees will accrue until full payment has been made;
- (E) A statement informing the recipient that the fees which are recoverable by the repair facility include costs for obtaining the owner's information and notifying the owner, court filing costs, attorney's fees, and interest;
- (F) A statement informing the recipient that the repair facility has the right to petition a court to foreclose a lien for all amounts owed in ten calendar days;
- (G) A statement informing the recipient that a court may order the sale of the vehicle to satisfy the debt; and

(H) A form to disclaim ownership interest in the motor vehicle by oath or affirmation as set forth in Code Section 40-11-19.5.

(2) If the department fails to timely furnish the information regarding additional owners requested pursuant to Code Section 40-11-16, the repair facility shall, within 60 days of such failure, place an advertisement in a newspaper of general circulation or the legal organ in the county where the repair facility is located. Any advertisement required by this paragraph shall run in the newspaper once a week for two consecutive weeks. The advertisement shall be in the form provided by the Council of Magistrate Court Judges for such purpose. Such advertisement form shall include, at a minimum, a space for describing the motor vehicle, its license and manufacturer's vehicle identification numbers, the name of the person who left the vehicle with the repair facility, the present location of such vehicle, any information available relating to an owner, the fact that such vehicle is subject to a lien which can be foreclosed upon, and the fact that such vehicle may be ordered sold to satisfy such lien.

(3) If the identity of an owner which was previously not ascertained becomes known while an advertisement is run pursuant to paragraph (2) of this subsection, the repair facility shall send a notification letter pursuant to the same requirements set forth in paragraph (1) of this subsection within ten days of obtaining such information.

(c)(1) When a motor vehicle has been left with a salvage dealer for at least 15 days, and no later than 60 days, after determination by an insurance company to deny the owner's claim has been communicated to the salvage dealer, the salvage dealer desiring to file a petition to foreclose a lien pursuant to Code Section 40-11-19.1 shall send all owners by certified mail the notification letter form developed by the Council of Magistrate Court Judges for such purpose. Such notification letter shall include, at a minimum:

(A) The location of the vehicle;

(B) The daily fees for storage of the vehicle, which shall be the maximum allowable daily rate for the storage of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs;

(C) A statement informing the recipient that daily fees will accrue until full payment has been made;

(D) A statement informing the recipient that the fees which are recoverable by the salvage dealer include costs for obtaining the owner's information and notifying the owner, court filing costs, attorney's fees, and interest;

(E) A statement informing the recipient that the salvage dealer has the right to petition a court to foreclose a lien for all amounts owed in ten calendar days;

(F) A statement informing the recipient that a court may order the sale of the vehicle to satisfy the debt; and

(G) A form to disclaim ownership interest in the motor vehicle by oath or affirmation as set forth in Code Section 40-11-19.5.

(2) If the department fails to timely furnish the information regarding additional owners requested pursuant to Code Section 40-11-16, the salvage dealer shall, within 60 days of the last communication described in paragraph (1) of this subsection, place an advertisement in a newspaper of general circulation or the legal organ in the county where the salvage dealer is located. Any advertisement required by this paragraph shall run in the newspaper once a week for two consecutive weeks. The advertisement shall be in the form provided by the Council of Magistrate Court Judges for such purpose. Such advertisement form shall include, at a minimum, a space for describing the motor vehicle, its license and manufacturer's vehicle identification numbers, the name of the insurance company from which the vehicle was obtained or which requested the vehicle removal, the present location of such vehicle, any information available relating to an owner, the fact that such vehicle is subject to a lien which can be foreclosed upon, and the fact that such vehicle may be ordered sold to satisfy such lien.

(3) If the identity of an owner which was previously not ascertained becomes known while an advertisement is run pursuant to paragraph (2) of this subsection, the salvage dealer shall send a notification letter pursuant to the same requirements set forth in paragraph (1) of this subsection within ten days of obtaining such information.

(d) Any towing and storage firm, repair facility, or salvage dealer shall have a lien on a motor vehicle located on its property in the amount of any unpaid and incurred fees upon compliance with the notice requirements of this Code section. Fees that have actually been incurred by any towing and storage firm, repair facility, or salvage dealer and which are documented to the court are recoverable under such lien and shall be limited to the following:

(1)(A) For a towing and storage firm, the rate specified pursuant to an agreement with a local governing authority if the removal was upon the request of a peace officer, or the maximum allowable charge for the removal of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs if the removal was not upon the request of a peace

officer, except when otherwise exempted or provided for by federal law, rule, or regulation; or

(B) For a repair facility or salvage dealer, the maximum allowable charge for the removal of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs;

(2)(A) For a towing and storage firm, the daily storage rate specified pursuant to an agreement with a local governing authority if the removal was upon the request of a peace officer, or the maximum allowable daily rate for storage of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs if the removal was not upon the request of a peace officer, multiplied by the number of days such motor vehicle has been stored to the date any judgment is issued plus 25 days; or

(B) For a repair facility or salvage dealer, the maximum allowable daily rate for the storage of the motor vehicle as set forth by rule and regulation of the Department of Public Safety for maximum state-wide rate tariffs multiplied by the number of days such motor vehicle has been stored from the date notification required under this Code section was received to the date any judgment is issued plus 25 days;

(3) For a repair facility, all outstanding charges or fees for repairs;

(4) The cost of obtaining owner information from the department pursuant to this article;

(5) The cost of any notification to owners required by this article, including any costs of advertising;

(6) The cost to file an action pursuant to Code Section 40-11-19.1 and the cost of the certified order;

(7) Attorney's fees, which shall be 15 percent of the total amount of the lien for recoverable fees and shall be awarded for appearance as attorney of record on the matter before the court; and

(8) Any prejudgment interest from the date which notification pursuant to this Code section was deemed received at a rate of 4 percent per annum.

Any fees listed in this subsection which have been paid to a towing and storage firm, repair facility, or salvage dealer by an owner or any third party shall not be included in a lien.

(e) The receipt of a properly notarized form disclaiming ownership in a motor vehicle shall be filed with the action provided for in Code

Section 40-11-19.1, but shall not be deemed to relieve a towing and storage firm, repair facility, or salvage dealer of any obligation to any other owners of such vehicle under this article. Such form shall be evidence to be considered by the court in any action filed pursuant to Code Section 40-11-19.1.

(f) If at any time prior to filing a petition to foreclose a lien pursuant to Code Section 40-11-19.1, a repair facility receives a demand from an owner pursuant to subsection (b) of Code Section 40-3-54, such repair facility shall, within 30 days, institute foreclosure proceedings pursuant to such Code section or to Code Section 40-11-19.1. If upon receipt of such demand a repair facility fails to institute foreclosure proceedings pursuant to either Code section, the lien is forfeited. Receipt of such demand shall relieve the repair facility from the notification requirement set forth in paragraph (1) of subsection (b) of this Code section.

History.

Code 1981, § 40-11-19, enacted by Ga. L. 2019, p. 872, § 5/HB 307; Ga. L. 2020, p. 493, § 40/SB 429.

Amendments.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted

“owner” for “owners” near the beginning of the first sentence of paragraph (a)(2); and revised punctuation in paragraph (c)(1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, “Code Section” was inserted in the middle of the first sentence of paragraph (b)(1).

40-11-19.1. Petition to foreclose a lien on motor vehicle; answer; motion for judgment; timing; fees.

(a) Not sooner than ten calendar days and not later than six months after compliance with the notice requirements set forth in Code Section 40-11-19, a towing and storage firm, repair facility, or salvage dealer may file an action for a petition to foreclose a lien against the motor vehicle in any magistrate court in the county where the motor vehicle is located. An action filed pursuant to this Code section shall be on a form provided by the Council of Magistrate Court Judges for such purpose and shall be accompanied by a filing fee of no more than \$11.00. Any person bringing such action shall include with such form a copy of the owner information obtained pursuant to the request required by Code Section 40-11-15 or 40-11-16 and proof of compliance with the notice requirements set forth in Code Section 40-11-19. The petition to foreclose a lien shall be verified by oath or affirmation by the towing and storage firm, repair facility, or salvage dealer in a manner consistent with Article 5 of Chapter 10 of Title 9.

(b)(1) The party bringing such action shall send a copy of the oath or affirmation page of the filed petition to any person known to be an owner of the motor vehicle by certified mail or statutory overnight delivery, return receipt requested. The court shall accept electronic

documentation as proof that such copy of the filed petition was sent and delivered in accordance with the requirements of this subsection. Included in such mailing shall be a copy of a standardized answer form provided by the Council of Magistrate Court Judges for such purpose. Such form shall require oath or affirmation of the respondent and shall include space to set forth:

- (A) The name of the owner;
- (B) The address at which the owner resides;
- (C) A description of the motor vehicle, including the license plate number and the model, make, and year of the vehicle;
- (D) A description of the date the owner obtained an interest in the motor vehicle;
- (E) A brief statement as to why removal of the vehicle was unauthorized, if applicable;
- (F) Any other brief statement as to why the lien claimed by the towing and storage firm, repair facility, or salvage dealer is invalid;
- (G) A copy of any documentation in the owner's possession supporting his or her answer; and
- (H) Any additional facts supporting the owner's answer or as to why the lien should not be foreclosed upon.

(2) If notice required under Code Section 40-11-19 was satisfied by advertisement, or the signed proof of receipt of a copy of the petition required to be sent under paragraph (1) of this subsection has not been returned after ten days of such mailing or has been returned as unclaimed, the party filing the petition shall, within 60 days, place an advertisement in a newspaper of general circulation or the legal organ where such action has been filed. No such advertisement shall be required if the return receipt required as proof of delivery has been returned with a notation that the notice of the filing of the petition has been refused. Such notice shall run in the newspaper once a week for two consecutive weeks. Such notice shall include instructions for how an owner may obtain the standardized answer form described in this subsection and shall be deemed as notice to any and all persons having an interest in or right affected by such petition and from any sale of the motor vehicle resulting therefrom.

(3) If the identity of an owner which was previously not ascertained becomes known while an advertisement is run pursuant to paragraph (2) of this subsection, the party filing a petition to foreclose shall send a copy of the filed petition pursuant to the same requirements set forth in paragraph (1) of this subsection within ten days of obtaining such information.

(c) An owner may file an answer to the petition no later than ten days after receipt by using the standardized answer form provided. If service is made by advertisement pursuant to paragraph (2) of subsection (b) of this Code section, an owner may file an answer no later than ten days after the expiration of the required two-week advertisement.

(d) If no answer has been filed at the expiration of the period set forth in subsection (c) of this Code section, the towing and storage firm, repair facility, or salvage dealer may seek to foreclose the lien through a judgment as provided in Code Section 15-10-43 by making such request in writing and submitting to the court proof of service as set forth in subsection (b) of this Code section. Unless providentially hindered, it shall be the duty of the judge to decide all motions for judgment submitted pursuant to this subsection no later than 15 days from when such motion has been made. When a judgment is granted, the vehicle shall be considered abandoned and within five days the court shall issue an order for the disposition of the motor vehicle as provided for in Code Section 40-11-19.2. A certified copy of such order shall be issued by the clerk of court. A fee of no more than \$14.00 may be charged for a certified copy of such order, which shall be issued by the clerk of court. If no answer has been filed but the court finds that a petition fails to comply with the requirements of this article, a petition may be refiled for such action once within six months of the issuance of denial of a judgment.

(e)(1) If an answer is returned to the court, a trial shall be held within ten days after receipt of such answer; provided, however, that such trial may be continued by the court for good cause shown by either party.

(2) At the trial, the court shall hear evidence of and determine whether the removal of the vehicle was lawful, whether the lien amount is based upon recoverable fees as set forth in subsection (d) of Code Section 40-11-19, and whether notice to all owners was proper, and shall hear any other facts pertinent to the case to reach a decision on foreclosure of the lien. The court may hear evidence of and make a determination on whether storage fees should accrue after the filing date of the petition. Upon conclusion of the trial, the court shall issue a decision on whether to foreclose the lien for the recoverable fees set forth in subsection (d) of Code Section 40-11-19 and, if foreclosure is granted, the court shall order the disposition of the motor vehicle as provided for in Code Section 40-11-19.2. A fee of no more than \$14.00 may be charged for a certified copy of such order which shall be issued by the clerk of court.

History.

Code 1981, § 40-11-19.1, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

40-11-19.2. Public sale authorized upon court order; procedure following satisfaction of lien; disposition of excess proceeds.

(a)(1) As used in this subsection, the term “public sale” means a sale:

(A) Held at a place reasonably available to persons who might desire to attend and submit bids;

(B) At which those attending shall be given the opportunity to bid on a competitive basis; and

(C) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff’s advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour, between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the motor vehicle to be sold.

(2) Upon order of the court issued pursuant to Code Section 40-11-19.1, the towing and storage firm, repair facility, or salvage dealer shall be authorized to sell the motor vehicle to the highest and best bidder at public sale.

(b) After satisfaction of the lien, the towing and storage firm, repair facility, or salvage dealer selling such motor vehicle shall, not later than 15 days after the date of such sale, provide the Department of Revenue by electronic means a copy of the bill of sale as provided to the purchaser and turn the remaining proceeds of such sale, if any, over to the department to be treated as unclaimed property pursuant to Article 5 of Chapter 12 of Title 44, the “Disposition of Unclaimed Property Act.” The towing and storage firm, repair facility, or salvage dealer selling such vehicle may deduct from such proceeds the cost incurred by the advertisement of the public sale, provided that such amount is no greater than \$120.00, and the cost incurred by the holding of the public sale, provided that the cost is no greater than \$200.00. Any deduction so made shall be evidenced by receipts or on a form prescribed by the Department of Revenue for such purpose through rule and regulation. Any person convicted of failing to comply with the requirements of this subsection shall be subject to a civil penalty as provided for in Article 5 of Chapter 12 of Title 44.

History.

Code 1981, § 40-11-19.2, enacted by Ga. L. 2019, p. 872, § 5/HB 307; Ga. L. 2021, p. 358, § 3/HB 207.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted “by electronic means”

for “with” near the middle of the first sentence of subsection (b).

40-11-19.3. Certified copy of court order; obtaining certificate of title.

The purchaser of a motor vehicle at a sale authorized in this article shall receive a certified copy of the court order from the seller of the vehicle authorizing such sale. Any such purchaser may obtain a certificate of title to such motor vehicle by filing the required application, paying the required fees, and filing a certified copy of the order of the court with the Department of Revenue. The Department of Revenue shall then issue a certificate of title, which shall be free and clear of all liens and encumbrances.

History.

Code 1981, § 40-11-19.3, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

40-11-19.4. Development and publication of forms by the Council of Magistrate Court Judges; requirements.

Any forms required to be made available by the Council of Magistrate Court Judges under this article shall be developed and published no later than September 1, 2019. Such forms shall be no longer than one page per form, front and back, and every effort shall be made to consolidate any required notice or mailing to a single page.

History.

Code 1981, § 40-11-19.4, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

40-11-19.5. Form for disclaimer of motor vehicle ownership interest.

DISCLAIMER OF MOTOR VEHICLE OWNERSHIP INTEREST

Georgia, _____ County

I, _____ (name of motor vehicle owner) do hereby swear that I disclaim any and all ownership interest in:

_____ (motor vehicle year, model, and make)

_____ (vehicle identification number (VIN))

_____ (vehicle registration number, if available)

I understand that by signing this form I will no longer hold any rights to the above listed vehicle and such vehicle may be sold at auction to satisfy a debt related to a lien filed against the vehicle.

I further understand that disclaiming an ownership interest in this

vehicle does not relieve me of any other debts related to such vehicle, such as a debt entered into for the purchase of such vehicle.

By signing this form, I understand that I waive all future notices to which I am entitled under Article 1A of Chapter 11 of Title 40 of the Official Code of Georgia Annotated, “The Abandoned Motor Vehicle Act.”

Owner signature

Sworn to and subscribed in _____ County, Georgia,

This ____ (date)

Before me:

(Notary public signature, seal, and commission expiration date).

If you wish to disclaim ownership, return this completed and notarized form to _____ (name and address of party owed fees).

History.

Code 1981, § 40-11-19.5, enacted by Ga. L. 2019, p. 872, § 5/HB 307.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, near the beginning of the Code

section, a parenthesis was added after “(vehicle identification number (VIN)” and, near the middle of the Code section, “of the Official Code of Georgia Annotated” was added following “Title 40”.

CHAPTER 12

ACTIONS AGAINST NONRESIDENT MOTORISTS

40-12-2. How service on nonresident made.

JUDICIAL DECISIONS

Failure to comply with service requirements. — Plaintiff’s negligence suit against the defendant was properly dismissed because the plaintiff did not fully comply with the service requirements of the Georgia Nonresident Motorist Act (NRMA), O.C.G.A. § 40–12–1 et seq., when the plaintiff sent the required notice to the defendant’s attorney as the NRMA provided that the notice had to be sent by registered or certified mail or statutory overnight delivery by the plaintiff to the defendant, which meant that the plaintiff

was required to send the notice directly to the defendant’s address, not solely to the defendant’s agent’s address, if different; and the appellate court could not construe the NRMA to allow for perfected service when the plaintiff did not send the notice to the defendant’s actual address. *Fuller v. Hendsbee*, 367 Ga. App. 624, 887 S.E.2d 683, 2023 Ga. App. LEXIS 192 (2023).

Failure to file notarized affidavit cured by proof of service. — In a personal injury action, the trial court erred in finding that the plaintiff failed to perfect

service under the Georgia Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., as the plaintiff's failure to file a properly notarized affidavit only affected the validity of the proof of service, not the

service itself and the plaintiff cured the defect in proof of service in an affidavit. *Smith v. Sanders*, 360 Ga. App. 286, 861 S.E.2d 123, 2021 Ga. App. LEXIS 333 (2021).

CHAPTER 13

PROSECUTION OF TRAFFIC OFFENSES

Article 1		Sec.	
Uniform Traffic Citation and Complaint Form			state drivers; electronic capture of signature.
Article 2			
Arrests, Trials, and Appeals			
Sec.			
40-13-2.1.	Signature on citations required; effect of failure to sign; exemption for out-of-	40-13-28.	Appeal to superior court; bond.

ARTICLE 1

UNIFORM TRAFFIC CITATION AND COMPLAINT FORM

40-13-1. Form to be developed by commissioner of driver services; function; identifying number.

JUDICIAL DECISIONS

Traffic violation pending, which tolled limitations period. — Summary judgment in favor of the defendant was reversed because the plaintiff met the plaintiff's burden of producing evidence that the two year limitation period applicable to the plaintiff's tort suit had not run because the limiation period was tolled as

the plaintiff established that the prosecution of the defendant for the traffic violation remained pending in municipal court until November 18, 2014, which was less than two years before the lawsuit was filed. *Williams v. Durden*, 347 Ga. App. 363, 819 S.E.2d 524, 2018 Ga. App. LEXIS 569 (2018).

40-13-2.1. Signature on citations required; effect of failure to sign; exemption for out-of-state drivers; electronic capture of signature.

(a) A person who is issued a citation as provided in this chapter or Code Section 17-6-11, relating to display of driver's license in lieu of bail, shall sign the citation to acknowledge receipt of the citation and of his or her obligation to appear for trial. The officer shall advise the person that signing the citation is not an admission of guilt and that failure to sign will result in the person having to post a cash bond. If the person refuses to sign the citation, it shall constitute reasonable cause to believe that the person will not appear at trial and the officer may

bring the person before a judicial officer or traffic violations bureau to post a bond as is otherwise provided by law.

(b) The provisions of subsection (a) of Code Section 17-6-11 shall not apply to a person in possession of a driver's license issued by a state or foreign country or political subdivision of a foreign country that has not entered into a reciprocal agreement regarding the operation of motor vehicles with this state as provided in Chapter 5 of Title 40, which provides for the suspension of a driver's license by the other state or foreign country or political subdivision of a foreign country of a person who fails to appear for trial of a traffic offense committed in this state.

(c) The signature of any person to whom a citation is issued may be captured electronically.

History.

Code 1981, § 40-13-2.1, enacted by Ga. L. 2000, p. 1313, § 5; Ga. L. 2010, p. 932, § 25/HB 396; Ga. L. 2020, p. 199, § 2-5/HB 463.

Amendments.

The 2020 amendment, effective June 30, 2020, inserted "or political subdivision of a foreign country" twice in subsection (b).

ARTICLE 2

ARRESTS, TRIALS, AND APPEALS

40-13-20. "Municipal courts" defined.

RESEARCH REFERENCES

ALR.

Use of medical marijuana as defense to driving offense or challenge to search of

motor vehicle and occupants, 43 A.L.R.7th Art. 4.

40-13-21. General powers and jurisdiction of probate and municipal courts; assistance of the district attorney or solicitor.

JUDICIAL DECISIONS

Probate court judge's authority to issue search warrant. — Defendant's motion to suppress evidence seized pursuant to a warrant issued by a probate court judge was properly denied because the probate court judge was authorized to hold a court of inquiry under O.C.G.A. § 17-7-20 and, therefore, was authorized to issue a search warrant under O.C.G.A. § 17-5-21(a). O.C.G.A. § 40-13-21(b),

assuming the statute required the state court to issue a warrant, pertained to the jurisdiction of probate courts in misdemeanor traffic cases and did not apply in this felony case. *Joyner v. State*, 347 Ga. App. 159, 817 S.E.2d 822, 2018 Ga. App. LEXIS 474 (2018), cert. denied, No. S19C0075, 2019 Ga. LEXIS 246 (Ga. Apr. 15, 2019).

40-13-28. Appeal to superior court; bond.

Any defendant convicted under this article shall have the right of appeal to the superior court. The provisions of subsections (b), (c), and (d) of Code Section 5-3-5 and subsection (e) of Code Section 5-3-9 shall not apply to appeals under this Code section. Otherwise, the appeal shall be entered as appeals are entered from the probate court to the superior court, provided that the defendant shall be entitled to bail and shall be released from custody upon giving the bond as is provided for appearances in criminal cases in the courts of this state. Such bond shall have the same conditions as appearance bonds in criminal cases. The appeal to the superior court shall not be a de novo investigation before a jury but shall be on the record of the hearing as certified by the judge of that court who presided at the hearing below.

History.

Ga. L. 1937-38, Ex. Sess., p. 558, § 10; Ga. L. 1986, p. 982, § 15; Ga. L. 2022, p. 767, § 2-31/HB 916; Ga. L. 2024, p. 201, § 9/SB 450, effective April 22, 2024.

Amendments.

The 2024 amendment, effective April 22, 2024, substituted “subsections (b), (c), and (d)” for “subsections (b) and (c)” in the second sentence.

40-13-30. Authority to make arrests.

JUDICIAL DECISIONS

Conservation officer/ranger engaged in official duties in enforcing traffic. — Sufficient evidence supported the defendant’s convictions of felony and misdemeanor obstruction of an officer and driving without carrying a license because the on-duty and uniformed conservation ranger had authority to arrest and was authorized to enforce traffic offenses and

the state showed that the ranger was acting within the lawful discharge of official duties when the defendant was asked to turn down the music from the vehicle. *Thornton v. State*, 353 Ga. App. 252, 836 S.E.2d 541, 2019 Ga. App. LEXIS 596 (2019), *aff’d*, 310 Ga. 460, 851 S.E.2d 564, 2020 Ga. LEXIS 774 (2020).

ARTICLE 3

TRAFFIC VIOLATIONS BUREAUS

40-13-50. Establishment.

JUDICIAL DECISIONS

Traffic violation pending, which tolled limitations period. — Summary judgment in favor of the defendant was reversed because the plaintiff met the plaintiff’s burden of producing evidence that the two year limitation period applicable to the plaintiff’s tort suit had not run because the statute was tolled as the

plaintiff established that the prosecution of the defendant for the traffic violation remained pending in municipal court until November 18, 2014, which was less than two years before the lawsuit was filed. *Williams v. Durden*, 347 Ga. App. 363, 819 S.E.2d 524, 2018 Ga. App. LEXIS 569 (2018).

CHAPTER 14

USE OF SPEED DETECTION DEVICES AND RED LIGHT CAMERAS

Article 2

Sec.

Speed Detection Devices

Sec.

40-14-18. Enforcement of speed limit

in school zones with recorded images; civil monetary penalty; consequences for failure to pay penalty.

ARTICLE 2

SPEED DETECTION DEVICES

40-14-4. Compliance with rules of Federal Communications Commission; certification of devices.

JUDICIAL DECISIONS

Laser detection evidence properly admitted. — Trial court did not err in admitting the laser detection evidence because the officer's estimate of speed was sufficient to support the conviction on a speeding violation, and the officer testified that the officer observed the vehicle the

defendant was driving going well over 65 miles per hour; therefore, even without the laser detection evidence, that testimony was sufficient to sustain the defendant's conviction. *Brown v. State*, 351 Ga. App. 808, 833 S.E.2d 302, 2019 Ga. App. LEXIS 498 (2019).

40-14-5. Testing of radar devices; removal of inaccurate radar devices from service; maintenance of testing log and independent calibration tests of automated traffic enforcement devices.

JUDICIAL DECISIONS

Laser detection evidence properly admitted. — Trial court did not err in admitting the laser detection evidence because the officer's estimate of speed was sufficient to support the conviction on a speeding violation, and the officer testified that the officer observed the vehicle the

defendant was driving going well over 65 miles per hour; therefore, even without the laser detection evidence, that testimony was sufficient to sustain the defendant's conviction. *Brown v. State*, 351 Ga. App. 808, 833 S.E.2d 302, 2019 Ga. App. LEXIS 498 (2019).

40-14-6. Warning signs required; signage requirements.

JUDICIAL DECISIONS

Laser detection evidence properly admitted. — Trial court did not err in admitting the laser detection evidence because the officer's estimate of speed was

sufficient to support the conviction on a speeding violation, and the officer testified that the officer observed the vehicle the defendant was driving going well over 65

miles per hour; therefore, even without the laser detection evidence, that testimony was sufficient to sustain the defendant's conviction. *Brown v. State*, 351 Ga. App. 808, 833 S.E.2d 302, 2019 Ga. App. LEXIS 498 (2019).

40-14-9. Certain evidence inadmissible; use of device on hill.

JUDICIAL DECISIONS

Laser detection evidence properly admitted. — Trial court did not err in admitting the laser detection evidence because the officer's estimate of speed was sufficient to support the conviction on a speeding violation, and the officer testified that the officer observed the vehicle the defendant was driving going well over 65 miles per hour; therefore, even without the laser detection evidence, that testimony was sufficient to sustain the defendant's conviction. *Brown v. State*, 351 Ga. App. 808, 833 S.E.2d 302, 2019 Ga. App. LEXIS 498 (2019).

40-14-18. Enforcement of speed limit in school zones with recorded images; civil monetary penalty; consequences for failure to pay penalty.

(a)(1) The speed limit within any school zone as provided for in Code Section 40-14-8 and marked pursuant to Code Section 40-14-6 may be enforced by using photographically recorded images for violations which occurred only on a school day during the time in which instructional classes are taking place and one hour before such classes are scheduled to begin and for one hour after such classes have concluded when such violations are in excess of ten miles per hour over the speed limit.

(2) Prior to the placement of a device within a school zone, each school within whose school zone such automated traffic enforcement safety device is to be placed shall first apply for and secure a permit from the Department of Transportation for the use of such automated traffic enforcement safety device. Such permit shall be awarded based upon need. The Department of Transportation shall promulgate rules and regulations for the implementation of this paragraph.

(b) For the purpose of enforcement pursuant to this Code section:

(1) The owner of a motor vehicle shall be liable for a civil monetary penalty to the governing body of the law enforcement agency provided for in paragraph (2) of this subsection if such vehicle is found, as evidenced by photographically recorded images, to have been operated in disregard or disobedience of the speed limit within any school zone and such disregard or disobedience was not otherwise authorized by law. The amount of such civil monetary penalty shall be \$75.00 for a first violation and \$125.00 for a second or any subsequent violation, in addition to fees associated with the electronic processing of such civil monetary penalty which shall not exceed \$25.00; provided, however, that for a period of 30 days after the first automated

traffic enforcement safety device is introduced by a law enforcement agency within a school zone, the driver of a motor vehicle shall not be liable for a civil monetary penalty but shall be issued a civil warning for disregard or disobedience of the speed limit within the school zone;

(2) A law enforcement agency authorized to enforce the speed limit of a school zone, or an agent working on behalf of a law enforcement agency or governing body, shall send by first class mail addressed to the owner of the motor vehicle within 30 days after obtaining the name and address of the owner of the motor vehicle but no later than 60 days after the date of the alleged violation:

(A) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the maximum speed at which such motor vehicle was traveling in photographically recorded images, the maximum speed applicable within such school zone, the civil warning or the amount of the civil monetary penalty imposed, and the date by which a civil monetary penalty shall be paid;

(B) An image taken from the photographically recorded images showing the vehicle involved in the infraction;

(C) A website address where photographically recorded images showing the vehicle involved in the infraction and a duplicate of the information provided for in this paragraph may be viewed;

(D) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce the speed limit of the school zone and stating that, based upon inspection of photographically recorded images, the owner's motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law;

(E) A statement of the inference provided by paragraph (4) of this subsection and of the means specified therein by which such inference may be rebutted;

(F) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested through an administrative hearing; and

(G) A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner as provided for in subsection (d) of this Code section shall waive any right to contest liability;

(3) Proof that a motor vehicle was operated in disregard or disobedience of the speed limit of the marked school zone shall be

evidenced by photographically recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of photographically recorded images, a motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(4) Liability under this Code section shall be determined based upon a preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this Code section was operated in violation of the speed limit of the school zone, together with proof that the defendant was, at the time of such violation, the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(A) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation;

(B) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(c) A violation for which a civil warning or a civil monetary penalty is imposed pursuant to this Code section shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this Code section shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(d) If a person issued and mailed a citation pursuant to subsection (b) of this Code section fails to pay the civil monetary penalty for the violation or has not filed a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section in no less than 30 nor more than 60 days after such mailing as determined and noticed by the law enforcement agency, the agent or law enforcement agency shall send to such person by first class mail a second notice of any unpaid civil monetary penalty, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The second notice shall include all information required in paragraph (2) of

subsection (b) of this Code section and shall include a new date of return which shall be no less than 30 days after such mailing as determined and noticed by the law enforcement agency. If such person notified by second notice again fails to pay the civil monetary penalty or file a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section by the new date of return, such person shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided for under this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed.

(e) Notices mailed by first class mail pursuant to this Code section shall be adequate notification of the fees and penalties imposed by this Code section. No other notice shall be required for the purposes of this Code section.

(f) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this subsection and shall be authorized to impose the civil monetary penalty provided by this subsection. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this Code section except as provided in subsection (b) of this Code section; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(g) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty is not paid within 30 days after the final notice was mailed and of the consequences for failure to pay such penalty and any late fee.

(h) The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under subsection (g) of this Code section was mailed if a violation has not been contested and the assessed penalty has not been paid, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The referral to the Department of Revenue shall include the following:

(1) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;

(2) The date on which the violation occurred;

(3) The citation number issued for the violation; and

(4) The date when the notice required under this Code section was mailed.

(i) If the Department of Revenue receives a referral under subsection (h) of this Code section, such referral shall be entered into the motor vehicle data base within five days of receipt and the Department of Revenue shall refuse to renew the registration of the motor vehicle unless and until the civil monetary penalty plus any late fee is paid to the agent or governing body.

(j) The Department of Revenue shall remove the penalty on a vehicle registration if any person presents the Department of Revenue with adequate proof from the agent or governing body that the penalty and any late fee, if applicable, has been paid.

(k) Recorded images made for purposes of this Code section shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(l) A civil warning or civil monetary penalty under this Code section on the owner of a motor vehicle shall not be imposed if the operator of the vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

(m) The money collected and remitted to the governing body pursuant to paragraph (1) of subsection (b) of this Code section shall only be used by such governing body to fund local law enforcement or public safety initiatives. This subsection shall not preclude the appropriation of a greater amount than collected and remitted under this subsection.

History.

Code 1981, § 40-14-18, enacted by Ga. L. 2018, p. 1057, § 9/HB 978; Ga. L. 2023, p. 554, § 6/HB 183, effective July 1, 2023; Ga. L. 2025, p. 1029, § 40(4)/SB 153, effective July 1, 2025.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted “of the consequences for failure to pay such penalty and any late fee” for “such that such referral shall result in the nonrenewal of the registration of such motor vehicle and shall prohibit the title transfer of such motor vehicle within this state” at the end of subsection (g); in the beginning of subsection

(h), deleted “of an ordinance or resolution adopted under this article” following “if a violation” and inserted “, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed”, added paragraph (h)(3), redesignated former paragraph (h)(3) as present paragraph (h)(4), substituted a period for “; and” at the end of paragraph (h)(4), and deleted former paragraph (h)(4), which read: “The seal, logo, emblem, or electronic seal of the governing body.”; rewrote subsection (i), which read: “(i) If the Department of Revenue receives a referral under subsection

(h) of this Code section, such referral shall be entered into the motor vehicle database within five days of receipt and the Department of Revenue shall refuse to renew the registration of the motor vehicle and shall prohibit the title transfer of such vehicle within this state unless and until the civil monetary penalty plus any late fee is paid to the governing body. The Department of Revenue shall mail a notice to the registered owner:

“(1) That the registration of the vehicle involved in the violation will not be permitted to be renewed;

“(2) That the title of the vehicle involved in the violation will not be permitted to be transferred in this state;

“(3) That the aforementioned penalties are being imposed due to the failure to pay the civil monetary penalty and any late fee for an ordinance violation adopted under the authority of this Code section; and

“(4) Of the procedure that the person may follow to remove the penalties.”; and, in subsection (j), substituted “penalty on a vehicle registration if” for “penalties on a vehicle if” and inserted “from the agent or governing body”.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, inserted “of this Code section” in the first sentence of subsection (h).

CHAPTER 16

DEPARTMENT OF DRIVER SERVICES

Sec.
40-16-8. [Repealed] Governor’s Com-

mercial Transportation Advisory Committee.

40-16-8. [Repealed] Governor’s Commercial Transportation Advisory Committee.

History.

Code 1981, § 40-16-8, enacted by Ga. L. 2005, p. 330, § 1/HB 458; Ga. L. 2006, p. 72, § 40/SB 465; repealed by Ga. L. 2024, p. 337, § 3-2/HB 1046, effective July 1, 2024.

Editor’s notes.

Ga. L. 2024, p. 337, § 3-2/HB 1046,

reserved the designation of this Code section, effective July 1, 2024. Subsequently, Ga. L. 2025, p. 1029, §40(5)/SB 153, part of an Act to revise, modernize, and correct the Code, deleted the reservation of this Code section, effective July 1, 2025.

