

State DUI Laws: Georgia

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

Official Code of Georgia Annotated

§ 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

(a) A person shall not drive or be in actual physical control of any moving vehicle while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

(2) Under the influence of any drug to the extent that it is less safe for the person to drive;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to drive;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor and, upon a third or subsequent conviction thereof, be guilty of a high and aggravated misdemeanor and shall be punished as follows:

(1) First conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous 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 is accepted:

(A) A fine of not less than \$300.00 nor more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not less than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not less than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources. The sponsor of any such program shall provide written notice of such approval to the person upon enrollment in the program; and

(E) If the defendant is sentenced to a period of imprisonment for less than 12 months, a period of probation of 12 months less any days during which the defendant is actually incarcerated;

(2) For the second conviction within a five-year period of time, 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 is accepted:

(A) A fine of not less than \$600.00 nor more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than 90 days nor more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not less than 72 hours of actual incarceration;

(C) Not less than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources. The sponsor of any such program shall provide written notice of such approval to the person upon enrollment in the program;

(E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if indicated by such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the defendant is actually incarcerated; or

(3) For the third or subsequent conviction within a five-year period of time, 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 is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not less than 120 days nor more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not less than 15 days of actual incarceration;

(C) Not less than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources. The sponsor of any such program shall provide written notice of such approval to the person upon enrollment in the program;

(E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if indicated by such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the defendant is actually incarcerated.

For the purpose of imposing a sentence under this subsection, a plea of nolo contendere or an adjudication of delinquency based on a violation of this Code section shall constitute a conviction.

(d)(1) 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 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.

(2) Notwithstanding any provision of this Code section to the contrary, any court authorized to hear cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed. Such power shall, however, be limited to the conditions and limitations imposed by subsection (c) of this Code section.

(e) The foregoing limitations on punishment also shall apply when a defendant has been convicted of violating, by a single transaction, more than one of the four provisions of subsection (a) of this Code section.

(f) The provisions of Code Section 17-10-3, relating to general punishment for misdemeanors including traffic offenses, and the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, shall not apply to any person convicted of violating any provision of this Code section.

(g)(1) If the payment of the fine required under subsection (c) of this Code section 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 Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under paragraph (2) or (3) of subsection (c) of this Code section for a second or subsequent conviction conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(h) For purposes of determining under this chapter prior convictions of or pleas of nolo contendere to violating this Code section, in addition to the offense prohibited by this Code section, a conviction of or plea of nolo contendere to any of the following offenses shall be deemed to be a violation of this Code section:

(1) Any federal law substantially conforming to or parallel with the offense covered under this Code section;

(2) Any local ordinance adopted pursuant to Article 14 of this chapter, which ordinance adopts the provisions of this Code section; or

(3) Any previously or currently existing law of this or any other state, which law was or is substantially conforming to or parallel with this Code section.

(i) A person shall not drive or be in actual physical control of any moving commercial motor vehicle while there is 0.04 percent or more by weight of alcohol in such person's blood, breath, or urine. Every person convicted of violating this subsection shall be guilty of a misdemeanor and, in addition to any disqualification resulting under Article 7 of Chapter 5 of this title, the "Uniform Commercial Driver's License Act," shall be fined as provided in subsection (c) of this Code section.

(j)(1) The clerk of the court in which a person is convicted a second or subsequent time under subsection (c) of this Code section 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 is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, name and address of the convicted person, and the date, time, place of arrest, and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed \$25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

(k)(1) A person under the age of 21 shall not drive or be in actual physical control of any moving vehicle while the person's alcohol concentration is 0.02 grams or more at any time within three hours after such driving or being in physical control from alcohol consumed before such driving or being in actual physical control ended.

(2) Every person convicted of violating this subsection shall be guilty of a misdemeanor for the first and second convictions and upon a third or subsequent conviction thereof be guilty of a high and aggravated misdemeanor and shall be punished and fined as provided in subsection (c) of this Code section, provided that any term of imprisonment served shall be subject to the provisions of Code Section 17-10-3.1, and any period of community service imposed on such person shall be required to be completed within 60 days of the date of sentencing.

(3) No plea of nolo contendere shall be accepted for any person under the age of 21 charged with a violation of this Code section.

(l) A person who violates this Code section while transporting in a motor vehicle a child under the age of 14 years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. The offense of endangering a child by driving under the influence of alcohol or drugs shall not be merged with the offense of driving under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child.

§ 40-6-391.1. Entry of plea of nolo contendere; order to attend alcohol and drug course

(a) The decision to accept a plea of nolo contendere to a charge of violating Code Section 40-6-391 shall be at the sole discretion of the judge but, if such plea is accepted, the penalties provided for in subsection (c) of Code Section 40-6-391 shall be imposed; provided, however, that no such plea of nolo contendere shall be accepted if the person charged with violating Code Section 40-6-391 had an alcohol concentration of more than 0.15 at any time within three hours after driving or being in control of any moving vehicle from alcohol consumed before such driving or being in control ended.

(b) If the defendant has not been convicted of or had a plea of nolo contendere accepted to a charge of violating Code Section 40-6-391 within the previous five years and if the plea of nolo contendere shall be used as provided in paragraph (1) of subsection (a) of Code Section 40-5-63, no such plea shall be accepted unless, at a minimum, the following conditions are met:

(1) The defendant has filed a verified petition with the court requesting that such plea be accepted and setting forth the facts and special circumstances necessary to enable the judge to determine that accepting such plea is in the best interest of justice; and

(2) The judge has reviewed the defendant's driving records that are on file with the Department of Motor Vehicle Safety.

(c) The judge, as part of the record of the disposition of the charge, shall set forth, under seal of the court, his or her reasons for accepting the plea of nolo contendere.

(d) The record of the disposition of the case, including the ruling required in subsection (c) of this Code section, shall be forwarded to the Department of Motor Vehicle Safety within ten days after disposition.

(e) If a plea of nolo contendere is accepted under the conditions set forth in subsection (b) of this Code section, the defendant's driver's license shall be forwarded to the Department of Motor Vehicle Safety as provided in subsection (c) of Code Section 40-5-67.

§ 40-6-391.2. Seizure and forfeiture of motor vehicle operated by habitual violator.

(a) Except as provided in this Code section, any motor vehicle operated by a person who has been declared a habitual violator for three violations of Code Section 40-6-391 and whose license has been revoked and who is arrested and charged with a violation of Code Section 40-6-391, is declared to be contraband and subject to forfeiture to the state, as provided in this Code section, provided that said forfeiture shall not be absolute unless the defendant is finally convicted of such offense.

(b) Any motor vehicle subject to forfeiture under subsection (a) of this Code section shall be seized immediately upon discovery by any law enforcement officer, peace officer, or law enforcement agency of this state or any political subdivision thereof who has the power to make arrests and whose duty it is to enforce this article, that said motor vehicle has been declared contraband. Said motor vehicle shall be delivered within 20 days to the district attorney whose circuit includes the county in which a seizure is made or to his duly authorized agent. At any time subsequent to the seizure, the chief officer of the seizing agency, his designee, or the district attorney may release the vehicle upon bond being posted in like manner as authorized in subsection (e) of this Code section.

(c) Within 60 days from the date of the seizure, the district attorney of the judicial circuit, or the director on his behalf, shall cause to be filed in the superior court of the county in which the motor vehicle is seized or detained an action for condemnation of such motor vehicle. The proceedings shall be brought in the name of the state by the district attorney of the circuit in which the motor vehicle was seized, and the action shall be verified by a duly authorized agent of the state in a manner required by the law of this state. The action shall describe the motor vehicle and state its location, present custodian, and the name of the owner, if known, to the duly authorized agent of the state; allege the essential elements of the violation which is claimed to exist; and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such an action, the court shall promptly cause process to issue to the present custodian in possession of the motor vehicle described in the action, commanding him to seize the motor vehicle in the action and to hold that motor vehicle for further order of the court. The owner, lessee, or any person having a duly recorded security interest in or lien on such motor vehicle shall be notified by any means of service provided for in Title 9 or by delivery of a copy of the complaint and summons by certified mail or statutory overnight delivery to said owner or lienholder or a person of suitable age or discretion having charge of said owner's premises. For purposes of this subsection, where forfeiture of a motor vehicle titled or registered in Georgia is sought, notice to the titleholder shall be deemed adequate if a copy of the complaint and summons is mailed by certified mail or statutory overnight delivery to the titleholder at the address set out in the title and an additional copy is mailed by certified mail or statutory overnight delivery to the firm, person, or corporation which holds the current registration for said motor vehicle, who shall be deemed agent for service for said titleholder, and said complaint is advertised once a week for two weeks as set out in this subsection. If the owner, lessee, or person having a duly recorded security interest in or lien on the contraband motor vehicle is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself so as to avoid notice, notice of the proceedings shall be published once a week for two weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and any sale of the motor vehicle resulting therefrom, but shall not constitute notice to any person having a duly recorded security interest in or lien upon such motor vehicle and required to be served under this Code section unless that person is unknown or resides out of the state or departs the state or cannot after due

diligence be found within the state or conceals himself to avoid notice.

(d)(1) Any party at interest may appear, by answer under oath, and file an intervention or defense within 30 days from the date of service on the condemnee of the action for condemnation. The owner, lessee, security interest holder, or lienholder shall be permitted to defend by showing that the motor vehicle seized was not subject to forfeiture under this Code section.

(2) A rented or leased vehicle shall not be subject to forfeiture unless it is established in the forfeiture proceedings that the owner of the rented or leased vehicle knew or should have known of or consented to the operation of such motor vehicle in a manner which would subject the vehicle to forfeiture. Upon learning of the address or phone number of the rental or leasing company which owns such vehicle, the district attorney shall immediately contact the company to inform it that the vehicle is available for the company to take possession.

(e) The court to which any such petition for condemnation may be referred may, in its discretion, allow any party at interest, after making said defense under subsection (d) of this Code section, to give bond and take possession of the motor vehicle seized. Such motor vehicle shall not be sold or leased without prior approval of the court. In the event the court approves such sale or lease, the proceeds arising therefrom shall be deposited in the registry of the court, pending final adjudication of the forfeiture proceeding. The court shall determine whether the bond shall be a forthcoming bond or an eventual condemnation money bond and shall also determine the amount of the bond. The enforcement of any bond so given shall be regulated by the general law applicable to such cases.

(f) If no defense or intervention is filed within 30 days from the date of service on the condemnee of the petition, judgment shall be entered by the court and the motor vehicle shall be sold. The court may direct that such property be sold by:

(1) Judicial sale as provided in Article 7 of Chapter 13 of Title 9; provided, however, that the court may establish a minimum acceptable price for such property; or

(2) Any commercially feasible means.

(g) The proceeds arising from such sale shall be deposited into the general treasury of the state or any other governmental unit whose law enforcement agency it was that originally seized the motor vehicle. It is the intent of the General Assembly that, where possible, proceeds deposited into the state treasury should be used and that proceeds vested in any local governmental unit shall be applied to fund alcohol or drug treatment, rehabilitation, and prevention and education programs, after making the necessary expenditures for:

(1) Any costs incurred in the seizure;

(2) The costs of the court and its officers; and

(3) Any cost incurred in the storage, advertisement, maintenance, or care of the motor vehicle.

(h) The interest of an owner, lessee, security interest holder, or lienholder shall not be subject to forfeiture unless the condemnor shows by a preponderance of evidence that such person knew or reasonably should have known that the operator was a habitual violator as set forth in subsection (a) of this Code section and knew or reasonably should have

known that such person would operate or was operating the vehicle while in violation of Code Section 40-6-391.

(i) 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.

§ 40-6-392. Chemical tests for alcohol or drugs in blood

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance shall be admissible. Where such a chemical test is made, the following provisions shall apply:

(1)(A) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation on a machine which was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia Bureau of Investigation shall approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, along with requirements for properly operating and maintaining any testing instruments, and to issue certificates certifying that instruments have met those requirements, which certificates and permits shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences.

(B) In all cases where the arrest is made on or after January 1, 1995, and the state selects breath testing, two sequential breath samples shall be requested for the testing of alcohol concentration. For either or both of these sequential samples to be admissible in the state's or plaintiff's case-in-chief, the readings shall not differ from each other by an alcohol concentration of greater than 0.020 grams and the lower of the two results shall be determinative for accusation and indictment purposes and administrative license suspension purposes. No more than two sequential series of a total of two adequate breath samples each shall be requested by the state; provided, however, that after an initial test in which the instrument indicates an adequate breath sample was given for analysis, any subsequent refusal to give additional breath samples shall not be construed as a refusal for purposes of suspension of a driver's license under Code Sections 40-5-55 and 40-5-67.1. Notwithstanding the above, a refusal to give an adequate sample or samples on any subsequent breath, blood, urine, or other bodily substance test shall not affect the admissibility of the results of any prior samples. An adequate breath sample shall mean a breath sample sufficient to cause the breath-testing instrument to produce a printed alcohol concentration analysis.

(2) When a person shall undergo a chemical test at the request of a law enforcement officer, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may withdraw blood for the purpose of determining the alcoholic content therein, provided that this limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer;

(3) The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer; and

(4) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. The arresting officer at the time of arrest shall advise the person arrested of his rights to a chemical test or tests according to this Code section.

(b) Except as provided in subsection (c) of this Code section, upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, may give rise to inferences as follows:

(1) If there was at that time an alcohol concentration of 0.05 grams or less, the trier of fact in its discretion may infer therefrom that the person was not under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391; or

(2) If there was at that time an alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any inference that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391, but such fact may be considered by the trier of fact with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391.

(c)(1) In any civil or criminal action or proceeding arising out of acts alleged to have been committed in violation of paragraph (5) of subsection (a) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.08 or more grams in the person's blood, breath, or urine, the person shall be in violation of paragraph (5) of subsection (a) of Code Section 40-6-391.

(2) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (i) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.04 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (i) of Code Section 40-6-391.

(3) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.02 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (k) of Code Section 40-6-391.

(d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be made of his blood, breath, urine, or other bodily substance at the time of his arrest shall be admissible in evidence against him.

(e)(1) A certification by the office of the Secretary of State or by the Department of Human Resources that a person who drew blood was a licensed or certified physician, physician's assistant, registered nurse, practical nurse, medical technologist, medical laboratory technician, or phlebotomist at the time the blood was drawn;

(2) Testimony, under oath, of the blood drawer; or

(3) Testimony, under oath, 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

shall be admissible into evidence for the purpose of establishing that such person was qualified to draw blood as required by this Code section.

(f) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

"This breath-testing instrument (serial no.) was thoroughly inspected, tested, and standardized by the undersigned on (date) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (a) of this Code section and subparagraph (g)(2)(F) of Code Section 40-5-67.1.

§ 15-21-112. Additional penalty for violation of Code Section 40-6-391

(a) In every case in which any state court; probate court; juvenile court; municipal court, whether known as mayor's, recorder's, or police court; or superior court in this state shall impose a fine, which shall be construed to include costs, for a violation of Code Section 40-6-391, relating to driving under the influence of alcohol or drugs, or a violation of an ordinance of a political subdivision of this state which has adopted by reference Code Section 40-6-391 pursuant to Article 14 of Chapter 6 of Title 40, there shall be imposed as an additional penalty a sum equal to the lesser of \$26.00 or 11 percent of the original fine.

(b) Such sums shall be in addition to that amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia.

§ 15-21-140. Authorization of additional penalty assessments for violations involving driving under the influence

This article is enacted pursuant to Article III, Section IX, Paragraph VI(k) of the Constitution, which provision authorizes additional penalty assessments for violations relating to driving under the influence of alcohol or drugs and provides that the proceeds derived therefrom may be used for the purpose of meeting the costs of care and rehabilitative services for certain citizens of this state with brain or spinal cord injuries.

§ 15-21-149. Fines; penalties

(a) In every case in which any court in this state shall impose a fine, which shall be construed to include costs, for any violation of Code Section 40-6-391, relating to driving under the influence of alcohol or drugs, or for violations of ordinances of political subdivisions which have adopted by reference Code Section 40-6-391, there shall be imposed as an additional penalty a sum equal to 10 percent of the original fine.

(b) Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this chapter.

§ 17-10-3.1. Punishment for violations of Code Section 40-6-391

(a) In any case where a person is sentenced to a period of imprisonment under Code Section 40-6-391 upon conviction for violating subsection (k) of said Code section, it is within the authority and discretion of the sentencing judge in cases involving the first such violation to allow the sentence to be served on weekends by weekend confinement or during the nonworking hours of the defendant. A weekend shall commence and shall end in the discretion of the sentencing judge, and the nonworking hours of the defendant shall be determined in the discretion of the sentencing judge; provided, however, that the judge shall retain plenary control of the defendant at all times during the sentence period. Confinement during the nonworking hours of a defendant during any day may be counted as serving a full day of the sentence.

(b) Any confinement of a person pursuant to a sentence to a period of imprisonment under Code Section 40-6-391 upon conviction for violating subsection (k) of said Code section shall be served in a county jail, provided that for the first such violation such person shall be kept segregated from all offenders other than those confined for violating subsection (k) of Code Section 40-6-391.

§ 40-5-22.1. Reinstatement of license of child under 16 years convicted of driving under influence of alcohol or drugs

Notwithstanding any other provision of law, if a child under 16 years of age is adjudicated delinquent of driving under the influence of alcohol or drugs or of possession of marijuana or a controlled substance in violation of Code Section 16-13-30 or of the unlawful possession of a dangerous drug in violation of Code Section 16-13-72 or convicted in any other court of such offenses, the court shall order that the privilege of such child to apply for and be issued a driver's license or learner's permit shall be suspended and delayed until such child is 17 years of age for a first conviction and until such child is 18 years of age for a second or subsequent such conviction. Upon reaching the required age, such license privilege shall be reinstated if the child submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources or an assessment and intervention program approved by the juvenile court and pays a fee of \$210.00 to the Department of Motor Vehicle Safety or \$200.00 when such application is processed by mail. The court shall notify the Department of Motor Vehicle Safety of its order delaying the issuance of such child's license within 15 days of the date of such order. The Department of Motor Vehicle Safety shall not issue a driver's license or learner's permit to any person contrary to a court order issued pursuant to this Code section.

§ 40-5-67. Seizure and disposition of driver's license of persons charged with driving under the influence; issuance of temporary driving permit; disposition of cases

(a) Whenever any resident or nonresident person is charged with violating Code Section 40-6-391, the law enforcement officer shall take the driver's license of the person so charged. The driver's license shall be attached to the court's copy of

the uniform traffic citation and complaint form and shall be forwarded to the court having jurisdiction of the offense. A copy of the uniform traffic citation and complaint form shall be forwarded, within ten days of issue, to the department. Taking the driver's license as required in this Code section shall not prohibit any law enforcement officer or agency from requiring any cash bond authorized by Article 1 of Chapter 6 of Title 17.

(b) At the time the law enforcement officer takes the driver's license, the officer shall issue a temporary driving permit to the person as follows:

(1) If the driver refuses to submit to a test or tests to determine the presence of alcohol or drugs as required in Code Section 40-5-55, the officer shall issue a 30 day temporary driving permit;

(2) If the driver's license is required to be suspended under Code Section 40-5-67.1, the officer shall issue a 30 day temporary driving permit; or

(3) If the test or tests administered pursuant to Code Section 40-5-55 indicate an alcohol concentration in violation of Code Section 40-6-391 but less than the level for an administrative suspension of the license under subsection (c) of Code Section 40-5-67.1, the officer shall issue a 180 day temporary driving permit.

This temporary driving permit shall be valid for the stated period or until the person's driving privilege is suspended or revoked under any provision of this title. The department, at its sole discretion, may delay the expiration date of the temporary driving permit, but in no event shall this delay extend beyond the date when such person's driving privilege is suspended or revoked under any provision of this title. The department shall by rules and regulations establish the conditions under which the expiration of the temporary permit may be delayed.

(c)(1) If the person is convicted of violating or enters a plea of nolo contendere to a charge of violating Code Section 40-6-391, the court shall, within ten days, forward the person's driver's license and the record of the disposition of the case to the department. At this time, the court shall also require the person to surrender the temporary driving permit issued pursuant to subsection (b) of this Code section.

(2) If the person is not convicted of violating and does not enter a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the court is in possession of the driver's license, the court shall return the driver's license to the person unless the license is in suspension for any other offense, in which case the court shall forward the license to the department for disposition.

§ 40-5-67.1. Chemical tests; implied consent notices; rights of motorists; test results; refusal to submit; suspension or denial; hearing and review; compensation of officers; inspection and certification of breath-testing instruments

(a) The test or tests required under Code Section 40-5-55 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person has been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 and the officer has arrested such person for a violation of Code Section 40-6-391, any federal law in conformity with Code Section 40-6-391, or any local ordinance which adopts Code Section 40-6-391 by reference or the person has been involved in a traffic accident resulting in serious injuries or fatalities. Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate which test or tests shall be administered initially and may subsequently

require a test or tests of any substances not initially tested.

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent notice from the following:

(1) Implied consent notice for suspects under age 21:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.02 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

(2) Implied consent notice for suspects age 21 or over:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

(3) Implied consent notice for commercial motor vehicle driver suspects:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, you will be disqualified from

operating a commercial motor vehicle for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate the presence of any alcohol, you will be issued an out-of-service order and will be prohibited from operating a motor vehicle for 24 hours. If the results indicate an alcohol concentration of 0.04 grams or more, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

If any such notice is used by a law enforcement officer to advise a person of his or her rights regarding the administration of chemical testing, such person shall be deemed to have been properly advised of his or her rights under this Code section and under Code Section 40-6-392 and the results of any chemical test, or the refusal to submit to a test, shall be admitted into evidence against such person. Such notice shall be read in its entirety but need not be read exactly so long as the substance of the notice remains unchanged.

(c) If a person under arrest or a person who was involved in any traffic accident resulting in serious injuries or fatalities submits to a chemical test upon the request of a law enforcement officer and the test results indicate that a suspension or disqualification is required under this Code section, the results shall be reported to the department. Upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 or that such person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state and was involved in a traffic accident involving serious injuries or fatalities and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of 0.08 grams or more or, for a person under the age of 21, an alcohol concentration of 0.02 grams or more, the department shall suspend the person's driver's license, permit, or nonresident operating privilege pursuant to Code Section 40-5-67.2, subject to review as provided for in this chapter. Upon the receipt of a sworn report of the law enforcement officer that the arrested person had been operating or was in actual physical control of a moving commercial motor vehicle and the test results indicate an alcohol concentration of 0.04 grams or more, the department shall disqualify the person from operating a motor vehicle for a minimum period of one year.

(d) If a person under arrest or a person who was involved in any traffic accident resulting in serious injuries or fatalities refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given; but the law enforcement officer shall report the refusal to the department. Upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 or that such person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state and was involved in a traffic accident which resulted in serious injuries or fatalities and that the person had refused to submit to the test upon the request of the law enforcement officer, the department shall suspend

the person's driver's license, permit, or nonresident operating privilege for a period of one year or if the person was operating or in actual physical control of a commercial motor vehicle, the department shall disqualify the person from operating a commercial motor vehicle and shall suspend the person's driver's license, permit, or nonresident operating privilege, subject to review as provided for in this chapter.

(e) If the person is a resident without a driver's license, commercial driver's license, or permit to operate a motor vehicle in this state, the department shall deny issuance of a license or permit to such person for the same period provided in subsection (c) or (d) of this Code section, whichever is applicable, for suspension of a license or permit or disqualification to operate a commercial motor vehicle subject to review as provided for in this chapter.

(f)(1) The law enforcement officer, acting on behalf of the department, shall personally serve the notice of intention to suspend or disqualify the license of the arrested person or other person refusing such test on such person at the time of the person's refusal to submit to a test or at the time at which such a test indicates that suspension or disqualification is required under this Code section. The law enforcement officer shall take possession of any driver's license or permit held by any person whose license is subject to suspension pursuant to subsection (c) or (d) of this Code section, if any, and shall issue a 30 day temporary permit. The officer shall forward the person's driver's license to the department along with the notice of intent to suspend or disqualify and the sworn report required by subsection (c) or (d) of this Code section within ten calendar days after the date of the arrest of such person. This paragraph shall not apply to any person issued a 180 day temporary permit pursuant to subsection (b) of Code Section 40-5-67. The failure of the officer to transmit the sworn report required by this Code section within ten calendar days shall not prevent the department from accepting such report and utilizing it in the suspension of a driver's license as provided in this Code section.

(2) If notice has not been given by the arresting officer, the department, upon receipt of the sworn report of such officer, shall suspend the person's driver's license, permit, or nonresident operating privilege or disqualify such person from operating a motor vehicle and, by regular mail, at the last known address, notify such person of such suspension or disqualification. The notice shall inform the person of the grounds of suspension or disqualification, the effective date of the suspension or disqualification, and the right to review. The notice shall be deemed received three days after mailing.

(g)(1) A person whose driver's license is suspended or who is disqualified from operating a commercial motor vehicle pursuant to this Code section shall request, in writing, a hearing within ten business days from the date of personal notice or receipt of notice sent by certified mail or statutory overnight delivery, return receipt requested, or the right to said hearing shall be deemed waived. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing shall be recorded.

(2) The scope of the hearing shall be limited to the following issues:

(A) Whether the law enforcement officer had reasonable grounds to believe the person was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 40-6-391; or

(B) Whether the person was involved in a motor vehicle accident or collision resulting in serious injury or fatality; and

(C) Whether at the time of the request for the test or tests the officer informed the person of the person's implied consent rights and the consequence of submitting or refusing to submit to such test; and

(D) Whether the person refused the test; or

(E) Whether a test or tests were administered and the results indicated an alcohol concentration of 0.08 grams or more or, for a person under the age of 21, an alcohol concentration of 0.02 grams or more or, for a person operating or having actual physical control of a commercial motor vehicle, an alcohol concentration of 0.04 grams or more; and

(F) Whether the test or tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, including whether the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order, which shall be required. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report shall satisfy the requirements of this subparagraph.

(3) The hearing officer shall, within five calendar days after such hearing, forward a decision to the department to rescind or sustain the driver's license suspension or disqualification. If no hearing is requested within the ten business days specified above, and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the person, the right to a hearing shall have been waived. The request for a hearing shall not stay the suspension of the driver's license; provided, however, that if the hearing is timely requested and is not held before the expiration of the temporary permit and the delay is not due in whole or in part to the reasonably avoidable fault of the person, the suspension shall be stayed until such time as the hearing is held and the hearing officer's decision is made.

(4) In the event the person is acquitted of a violation of Code Section 40-6-391 or such charge is initially disposed of other than by a conviction or plea of nolo contendere, then the suspension shall be terminated and deleted from the driver's license record. An accepted plea of nolo contendere shall be entered on the driver's license record and shall be considered and counted as a conviction for purposes of any future violations of Code Section 40-6-391. In the event of an acquittal or other disposition other than by a conviction or plea of nolo contendere, the driver's license restoration fee shall be promptly returned by the department to the licensee.

(h) If the suspension is sustained after such a hearing, the person whose license has been suspended under this Code section shall have a right to file for a judicial review of the department's final decision, as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; while such appeal is pending, the order of the department shall not be stayed.

(i) Subject to the limitations of this subsection, any law enforcement officer who attends a hearing provided for by subsection (g) of this Code section for the purpose of giving testimony relative to the subject of such hearing shall be compensated in the amount of \$20.00 for each day's attendance at such hearing. In the event a law enforcement officer gives testimony at two or more different hearings on the same day, such officer shall receive only \$20.00 for attendance at all hearings. The compensation provided for in this subsection shall not be paid to any law enforcement officer who is on regular duty or who is on a lunch or other break from regular duty at the time the officer attends any such hearing. The compensation provided for by this subsection shall be paid to the law enforcement officer by the department from department funds at such time and in such manner as the commissioner shall provide by rules or regulations. The commissioner shall also require verification of a law enforcement officer's qualifying to receive the payment authorized by this subsection by requiring the completion of an appropriate document in substantially the following form:

IMPLIED CONSENT HEARING ATTENDANCE RECORD

OFFICER: S.S. No.

ADDRESS:

Street City State ZIP Code

DATE: TIME: A.M.
P.M.

CASE:

This is to certify that the police officer named above attended an implied consent hearing as a witness or complainant on the date and time shown above.

HEARING OFFICER: TITLE:

I certify that I appeared at the implied consent hearing described above on the date and time shown above and that I was not on regular duty at the time of attending the hearing and that I have not received and will not receive compensation from my regular employer for attending the hearing.

Signature of officer:

APPROVED FOR PAYMENT:

Comptroller

(j) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

"This breath-testing instrument (serial no.) was thoroughly inspected, tested, and standardized by the undersigned on (date) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (a) of Code Section 40-6-392 and subparagraph (g)(2)(F) of this Code section.

§ 40-5-63.1. Clinical evaluation and substance abuse treatment programs for certain offenders

In addition to any and all other conditions of license reinstatement, issuance, or restoration under Code Section 40-5-58, 40-5-62, or 40-5-63, any person with two or more convictions of violation of Code Section 40-6-391 within five years, 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 required to undergo a clinical evaluation and, if indicated by such evaluation, must complete a substance abuse treatment program, provided that such evaluation and treatment shall be at such person's expense except as otherwise provided by Code Section 37-7-120. Acceptable proof of completion of such a program must be submitted to the department prior to license reinstatement, issuance, or restoration. For purposes of this Code section, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere

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 plea of nolo contendere is accepted, shall be considered and counted as convictions.

§ 40-5-80. Purpose of article

The purpose of this article, the "Georgia Driver Improvement Act," is to improve and promote greater safety upon the highways and streets of this state; to improve the attitude and driving habits of drivers who accumulate traffic accident and motor vehicle conviction records; and to provide uniform DUI Alcohol or Drug Use Risk Reduction Programs for the rehabilitation of persons identified as reckless or negligent drivers and frequent violators. In carrying out this purpose, the Department of Motor Vehicle Safety and the Department of Human Resources, as applicable, shall:

(1) Charge a fee for the consideration of applications for approval of driver improvement clinics and instructors. The amount of this fee shall be established by the commissioner of motor vehicle safety and shall, as best as the commissioner shall determine, approximate the expense incurred by the Department of Motor Vehicle Safety in consideration of an application. These licenses and each renewal thereof shall be valid for a period of four years unless suspended or revoked prior to the expiration of that time period; and

(2) Require, in addition to the criteria for approval of driver improvement clinics established by the commissioner of motor vehicle safety and DUI Alcohol or Drug Use Risk Reduction Programs established by the Department of Human Resources, as provided in subsections (a) and (e) of Code Section 40-5-83, respectively, that every driver improvement clinic and DUI Alcohol or Drug Use Risk Reduction Program shall, as a condition of approval, provide a continuous surety company bond for the protection of the contractual rights of students in such form as will meet with the approval of the Department of Motor Vehicle Safety or the Department of Human Resources, as applicable, and written by a company authorized to do business in this state. The principal sum of the bond shall be established by the commissioner of motor vehicle safety or the Board of Human Resources, as applicable; however, in no event shall this amount be less than \$2,500.00 per location, and a single bond at such rate may be submitted for all locations under the same ownership. If at any time said bond is not valid and in force, the license of the clinic or program shall be deemed suspended by operation of law until a valid surety company bond is again in force.

§ 40-5-81. Program optional

(a) Any driver improvement program at which attendance is required by court order shall conform to the requirements of this article.

(b) Whenever any person is authorized or required to attend a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program as a condition of any sentence imposed under this title or any ordinance enacted pursuant to this title or as a condition of the retention or restoration of the person's driving privilege, such person, in complying with such condition, shall be authorized to attend any driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program certified under this article; and no judicial officer, probation officer, law enforcement officer, or other officer or employee of a court or person who owns, operates, or is employed by a private company which has contracted to provide private probation services for misdemeanor cases shall specify, directly or indirectly, a particular driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program which the person may or shall attend. This Code section shall not prohibit any judicial officer, probation officer, law enforcement officer, or other officer or employee of a court or owner, operator, or employee of a private company which has contracted to provide probation services for misdemeanor offenders from furnishing any person, upon request, the names of certified driver improvement clinics or DUI Alcohol or Drug Use Risk

Reduction Programs.

(c) It shall be unlawful for the owner, agent, servant, or employee of any driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program licensed by the Department of Motor Vehicle Safety or the Department of Human Resources to directly or indirectly solicit business by personal solicitation on public property, by phone or mail. A violation of this subsection shall be a misdemeanor. Advertising in any mass media, including, but not limited to, newspapers, radio, television, magazines, or telephone directories by a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program shall not be considered a violation of this subsection.

§ 40-5-85. Reinstatement of licenses suspended for driving under influence of alcohol or drugs; red stripe on licenses of repeat offenders

Notwithstanding any other provision of this chapter, any person convicted within five years of his or her first conviction as measured in paragraph (2) of subsection (c) of Code Section 40-6-391 for a second time of the offense of driving under the influence of alcohol or drugs in violation of Code Section 40-6-391 shall, upon compliance with all other requirements for reinstatement of his or her license as provided for in this chapter, be issued a driver's license which may bear a red stripe thereon. After seven years with no additional convictions for driving under the influence of alcohol or drugs any such person shall be issued a regular driver's license without such red stripe provided that he or she is otherwise entitled to such license under the laws of this state.

§ 15-21-112. Additional penalty for violation of Code Section 40-6-391

(a) In every case in which any state court; probate court; juvenile court; municipal court, whether known as mayor's, recorder's, or police court; or superior court in this state shall impose a fine, which shall be construed to include costs, for a violation of Code Section 40-6-391, relating to **driving** under the **influence** of alcohol or drugs, or a violation of an ordinance of a political subdivision of this state which has adopted by reference Code Section 40-6-391 pursuant to Article 14 of Chapter 6 of Title 40, there shall be imposed as an additional penalty a sum equal to the lesser of \$26.00 or 11 percent of the original fine.

(b) Such sums shall be in addition to that amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia.

§ 17-10-3.1. Punishment for violations of Code Section 40-6-391

(a) In any case where a person is sentenced to a period of imprisonment under Code Section 40-6-391 upon conviction for violating subsection (k) of said Code section, it is within the authority and discretion of the sentencing judge in cases involving the first such violation to allow the sentence to be served on weekends by weekend confinement or during the nonworking hours of the defendant. A weekend shall commence and shall end in the discretion of the sentencing judge, and the nonworking hours of the defendant shall be determined in the discretion of the sentencing judge; provided, however, that the judge shall retain plenary control of the defendant at all times during the sentence period. Confinement during the nonworking hours of a defendant during any day may be counted as serving a full day of the sentence.

(b) Any confinement of a person pursuant to a sentence to a period of imprisonment under Code Section 40-6-391 upon conviction for violating subsection (k) of said Code section shall be served in a county jail, provided that for the first such

violation such person shall be kept segregated from all offenders other than those confined for violating subsection (k) of Code Section 40-6-391.

§ 40-2-136. Surrender of license plates upon second or subsequent convictions of driving under the influence

(a) Upon any person's second or subsequent conviction of violating Code Section 40-6-391 within five years, 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, the court shall issue an order requiring that the license plates of all motor vehicles registered in such person's name be surrendered to the court. The court shall notify the commissioner within ten days after issuing any such order, and the commissioner shall revoke each such license plate upon receiving such notice. The court shall issue a receipt for the surrendered license plate or plates. The court shall forward the surrendered license plate or plates to the local tag agent immediately upon receipt. For purposes of this subsection, a plea of nolo contendere shall constitute a conviction.

(b) Except as provided in subsection (c) of this Code section, no new license plate or plates may be issued to a person subject to a court order issued pursuant to subsection (a) of this Code section until such person has been issued a limited driving permit or probationary driver's license in accordance with Code Section 42-8-112 or the driver's license of such person has been reissued or reinstated, whichever first occurs; and, except as provided in this subsection or subsection (c) of this Code section, it shall be a misdemeanor for such person to obtain a new license plate or plates.

(c)(1) A person who is subject to a court order issued pursuant to subsection (a) of this Code section may apply to the commissioner for authorization to obtain a new license plate or plates bearing a special series of numbers and letters so as to be identifiable by law enforcement officers. Such license plate shall not, in and of itself, constitute probable cause to authorize a traffic stop, search of a motor vehicle, or seizure. The commissioner shall authorize the issuance of such a special license plate only if he or she determines that there is another member of such person's household who possesses a valid driver's license and that a co-owner of the vehicle or a member of the offender's family, other than the offender, is completely dependent upon the motor vehicle for the necessities of life and would be subjected to undue hardship without such special license plate; in no event shall such decision take more than five business days. A local tag agent shall not issue any plates except on written approval of the commissioner, payment of a \$20.00 fee for each vehicle for which a special plate is issued, and compliance by the applicant with all applicable state laws. The written authorization from the commissioner shall specify the maximum number of license plates a person may obtain.

(2) A motor vehicle owned or leased by a person subject to a court order issued pursuant to subsection (a) of this Code section or for which a license plate has been issued subject to paragraph (1) of this subsection may not be sold or conveyed unless the commissioner determines, upon receipt of proper application, that the proposed sale or conveyance is in good faith, that the person subject to such court order will be deprived of custody or control of the motor vehicle, and that the sale or conveyance is not for the purpose of circumventing the provisions of this Code section. Upon making such determination, the commissioner shall transfer the certificate of title to such vehicle and issue a new certificate of registration and license plate.

(3) If the title to a motor vehicle owned by a person subject to a court order issued pursuant to subsection (a) of this Code section or for which a license plate has been issued pursuant to paragraph (1) of this subsection is transferred by the foreclosure, cancellation of a conditional sales contract, sale upon execution, or order of a court of competent jurisdiction, the commissioner shall transfer the certificate of title as provided in Code Section 40-3-34 and issue a new license plate to the new registered owner.

(4) Upon full restoration of the driving privileges of a person subject to a court order under subsection (a) of this Code section, the commissioner shall authorize the person to apply for a regular issue license plate. The fee for a regular issue license plate shall be as provided by Code Section 40-2-151. As a condition of obtaining any regular issue license plate, the person shall surrender his or her special issue license plate to the local tag agent.

(5) Nothing in this Code section shall be deemed to waive any lawful requirement for the issuance of a license plate including, but not limited to, proof of financial responsibility.

(6) Display of a license plate issued pursuant to paragraph (1) of this subsection shall not constitute probable cause for stopping or detaining a vehicle.

(7) Any person aggrieved by a decision of the commissioner pursuant to paragraph (1) of this subsection may make a request in writing to the Office of State Administrative Hearings for a hearing. Such hearing shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

§ 40-5-55. Implied consent to chemical tests

(a) The State of Georgia considers that any person who drives or is in actual physical control of any moving vehicle in violation of any provision of Code Section 40-6-391 constitutes a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a motor vehicle upon the highways or elsewhere throughout this state shall be deemed to have given consent, subject to Code Section 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug, if arrested for any offense arising out of acts alleged to have been committed in violation of Code Section 40-6-391 or if such person is involved in any traffic accident resulting in serious injuries or fatalities. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe that the person has been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391. The test or tests shall be administered as soon as possible to any person who operates a motor vehicle upon the highways or elsewhere throughout this state who is involved in any traffic accident resulting in serious injuries or fatalities. Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate which of the test or tests shall be administered, provided a blood test with drug screen may be administered to any person operating a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities.

(b) Any person who is dead, unconscious, or otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Code section, and the test or tests may be administered, subject to Code Section 40-6-392.

(c) As used in this Code section, the term "traffic accident resulting in serious injuries or fatalities" means any motor vehicle accident in which a person was killed or in which one or more persons suffered a fractured bone, severe burns, disfigurement, dismemberment, partial or total loss of sight or hearing, or loss of consciousness.

§ 40-5-57.1. Suspension of licenses of persons under age 21 for certain offenses; suspension of licenses of persons under age 18 for certain point accumulations; issuance of new license following suspension

(a) Notwithstanding any other provision of this chapter, the driver's license of any person under 21 years of age convicted of hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle in fleeing or attempting to elude an officer, reckless driving, any offense for which four or

more points are assessable under subsection (c) of Code Section 40-5-57, purchasing an alcoholic beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23, or violation of paragraph (3) or (5) of subsection (a) of Code Section 3-3-23, or violation of Code Section 40-6-391 shall be suspended by the department as provided by this Code section; and the driver's license of any person under 18 years of age who has accumulated a violation point count of four or more points under Code Section 40-5-57 in any consecutive 12 month period shall be suspended by the department as provided by this Code section. A plea of nolo contendere shall be considered a conviction for purposes of this subsection. Notice of suspension shall be given by certified mail or statutory overnight delivery, return receipt requested; or, in lieu thereof, notice may be given by personal service upon such person. Such license shall be surrendered within ten days of notification of such suspension. Notice given by certified mail or statutory overnight delivery, return receipt requested, mailed to the person's last known address shall be prima-facie evidence that such person received the required notice.

(b) A person whose driver's license has been suspended under subsection (a) of this Code section shall:

(1) Subject to the requirements of subsection (c) of this Code section and except as otherwise provided by paragraph (2) of this subsection:

(A) Upon a first such suspension, be eligible to apply for license reinstatement and, subject to successful recompletion of the examination requirements of Code Section 40-5-27 and payment of required fees, have his or her driver's license reinstated after six months; and

(B) Upon a second or subsequent such suspension, be eligible to apply for license reinstatement and, subject to successful recompletion of the examination requirements of Code Section 40-5-27 and payment of required fees, have his or her driver's license reinstated after 12 months; or

(2)(A) If the driver's license was suspended upon conviction for violation of Code Section 40-6-391, be subject to the provisions of Code Section 40-5-63.

(B) If such driver was convicted of driving under the influence of alcohol or of having an unlawful alcohol concentration and is otherwise subject to the provisions of paragraph (1) of subsection (a) of Code Section 40-5-63, then such person shall not be eligible for a limited driving permit under Code Section 40-5-64, and:

(i) If the driver's alcohol concentration at the time of the offense was less than 0.08 grams, he or she shall not be eligible for license reinstatement until the end of six months; or

(ii) If the driver's alcohol concentration at the time of the offense was 0.08 grams or more, he or she shall not be eligible for license reinstatement until the end of 12 months.

(C) Any driver subject to the provisions of this paragraph shall, as an additional prerequisite for license reinstatement, be required to successfully recomplete the examination requirements of Code Section 40-5-27.

(b.1) In any case where a person's driver's license was administratively suspended as a result of the offense for which the person's driver's license has been suspended pursuant to this Code section, the administrative license suspension period and the license suspension period provided by this Code section may run concurrently, and any completed portion of such administrative license suspension period shall apply toward completion of the license suspension period provided by this Code section.

(c) Any driver's license suspended under subsection (a) of this Code section for commission of any offense other than

violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a defensive driving program approved by the department and pays a fee equivalent to that required for restoration of a suspended driver's license under paragraph (1) of subsection (a) of Code Section 40-5-63; provided, however, that such fee shall not be required under this subsection if such person's driver's license was administratively suspended as a result of the offense for which the person's driver's license has been suspended pursuant to this Code section and the restoration fee was paid for such administratively suspended driver's license.

§ 40-5-67.2. Terms and conditions for suspension of license under subsection (c) of Code Section 40-5-67.1

(a) Any driver's license required to be suspended under subsection (c) of Code Section 40-5-67.1 shall be suspended subject to the following terms and conditions:

(1) Upon the first suspension pursuant to subsection (c) of Code Section 40-5-67.1 within the previous five years, as measured from the dates of previous arrests for which a suspension was obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for one year. Not sooner than 30 days following the effective date of suspension, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources and pays a restoration fee of \$210.00 or \$200.00 when processed by mail. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources and pays the prescribed restoration fee.

(2) Upon the second suspension pursuant to subsection (c) of Code Section 40-5-67.1 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for three years. The person shall be eligible to apply to the department for license reinstatement not sooner than 18 months following the effective date of suspension. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources and pays a restoration fee of \$210.00 or \$200.00 when processed by mail. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources and pays the prescribed restoration fee.

(3) Upon the third or subsequent suspension pursuant to subsection (c) of Code Section 40-5-67.1 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for five years. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources and pays the prescribed restoration fee. The driver may apply for a probationary license pursuant to Code Section 40-5-58 after the expiration of two years from the effective date of suspension.

(b) An administrative license suspension pursuant to Code Section 40-5-67.1 shall be counted toward fulfillment of any period of suspension subsequently imposed as a result of a conviction of violating Code Section 40-6-391 which arises out of the same violation for which the administrative license suspension was imposed. An administrative license suspension pursuant to Code Section 40-5-67.1 shall run concurrently with any revocation of such driver's license pursuant to a subsequent determination that such person is a habitual violator.

(c) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the driver's past driving record and performance, and the driver shall pay a restoration fee of \$210.00 or \$200.00 when processed by mail.

(d) Any other provision of law to the contrary notwithstanding, a driver with no previous conviction for a violation of Code Section 40-6-391 within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest, during the period of administrative suspension contemplated under this chapter, shall be entitled to a limited driving permit as provided in Code Section 40-5-64.

§ 40-5-85. Reinstatement of licenses suspended for driving under influence of alcohol or drugs; red stripe on licenses of repeat offenders

Notwithstanding any other provision of this chapter, any person convicted within five years of his or her first conviction as measured in paragraph (2) of subsection (c) of Code Section 40-6-391 for a second time of the offense of driving under the influence of alcohol or drugs in violation of Code Section 40-6-391 shall, upon compliance with all other requirements for reinstatement of his or her license as provided for in this chapter, be issued a driver's license which may bear a red stripe thereon. After seven years with no additional convictions for driving under the influence of alcohol or drugs any such person shall be issued a regular driver's license without such red stripe provided that he or she is otherwise entitled to such license under the laws of this state.