**Outline for Georgia Probate Court Traffic Jurisdiction**

**I.** **State Highway Patrol Act of 1937**

1. Vested the Court of the Ordinary with Jurisdiction over Misdemeanor Traffic Cases in Counties Where There Was No City or County Courts Provided the Defendant Waived Right to a Jury Trial

2. 87 of 159 Georgia Probate Courts Have Traffic Jurisdiction

**II.** **Misdemeanor Criminal Jurisdiction**

1. Traffic

O.C.G.A. § 15-9-30(b)(8); O.C.G.A. § 40-13-21

2. Game and Fish Code

O.C.G.A. § 15-9-30(b)(9); 15-9-30.3

3. State Parks and Historic Sites

O.C.G.A. § 15-9-30.4

4. Georgia Boat Safety Act

O.C.G.A. § 15-9-30.5

5. Possession of Marijuana Less Than 1 Ounce;

Furnishing Alcoholic Beverages to Persons Under 21;

Purchase or Possession of Alcoholic Beverages Under 21

O.C.G.A. § 15-9-30.6

6. Littering and Related Environmental Offenses

O.C.G.A. § 15-9-30.5

7. Off-Road Vehicles

O.C.G.A. § 15-9-30.8

8. Responsible Dog Ownership Law

O.C.G.A. § 15-9-30.9

**III. Limitations of Traffic Jurisdiction**

1. Misdemeanor and Civil Traffic Violations Only

O.C.G.A. § 40-13-21

2. Unincorporated Areas of the County

O.C.G.A. § 40-13-29

3. No Traffic Jurisdiction if County Has a State Court

O.C.G.A. § 40-13-21

4. Defendant Must Waive Right to a Jury Trial in Writing

O.C.G.A. § 40-13-23

5. Request for Jury Trial Transfers Case to Superior Court

O.C.G.A. § 40-13-23

6. Defendant Must Be at Least 17 Years Old

O.C.G.A. § 15-11-630

**IV. Charging Instruments**

1. All Misdemeanors: Accusations

O.C.G.A. § 17-7-71(a)

2. Traffic: Uniform Traffic Citations (UTC’s)

O.C.G.A. § 17-7-71(b)(1)

3. Game, Fish, or Boating: Summons/Citation

O.C.G.A. § 17-7-71(b)(2); O.C.G.A. § 27-1-35

**V. Prosecutors & Public Defenders**

1. District Attorney

O.C.G.A. § 40-13-21(c)

2. Probate Court Solicitor

O.C.G.A. § 15-9-150

3. Public Defender

O.C.G.A. § 17-12-23

**VI. Sentencing**

1. Up to $1,000 Base Fine (Plus Surcharges if Allowed); and/or

Up to 12 Months in the County Jail (Unless Only Fine Allowed)

O.C.G.A. § 17-10-3

2. Up to $5,000 Base Fine for High & Aggravated Misdemeanors

O.C.G.A. § 17-10-4

**VII. Post-Judgment Relief**

1. Appeals to Superior Court within 30 Days

O.C.G.A. § 40-13-28; O.C.G.A. § 5-3-20

On the Certified Record of Probate Court Trial/ **Not** de novo

Verbatim Audio & Paper Record for 2 Years- UPCR 15.6.11

Must Inform Defendant of Right to Appeal

*Collier v. State*, 307 Ga. 363 (2019)

2. Modify Sentence or Judgment

O.C.G.A. § 40-13-32

Strict compliance with all of the following requirements:

(1) A motion to change or modify the sentence or judgment is made by the defendant to the court rendering the judgment;

(2) Notice, including a copy of the motion and rule nisi, is given to the prosecuting official who brought the original charge at least ten days prior to the motion hearing; and

(3) A hearing is held with opportunity for the state to be heard.

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

Probate Court terms begin on the first Monday in January, April, July, and October  
O.C.G.A. § 15-9-82

3. Habeas Corpus

O.C.G.A. § 40-13-33; O.C.G.A. § 9-14-1

Must Be Filed within 180 Days Conviction Becomes Final

4. Motion for New Trial (Maybe)

O.C.G.A. § 5-5-1(a): Does Not Include Probate Courts for All Matters

O.C.G.A. § 5-5-1(b): Limits Probate Courts to Civil Cases

Ga. Const. art. VI, § 1, ¶ IV- Courts of Record May Grant

Probate Courts Are Courts of Record

*Greene v. Woodard*, 198 Ga. App. 427, 428 (1991)

**VIII. Miscellaneous Issues & Common Questions**

1. Double Jeopardy

Crimes arising out of same conduct known by prosecutor at time of commencing prosecution and within jurisdiction of a single court must be prosecuted in a single prosecution.

Otherwise, it could negate a more serious offense if Probate Court acts first.

O.C.G.A. § 16-1-7(b); *Dean v. State*, 309 Ga. App. 459

2. Nolo Contendere Pleas

Generally, for moving violations one can plead Nolo once every 5 years and the Department of Driver Services (“DDS”) will not apply points.

DDS shall suspend the driver’s license of any person who accumulates 15 or more points in any consectutive 24-month period

O.C.G.A. § 40-5-57(c)(1)(B)

Will not avoid a mandatory suspension of anyone under 21 years of age

Some offenses like DUI’s, do not have any benefits with a Nolo plea. Review the respective offense statutes and the DDS manual to confirm.

A Nolo plea does not avoid the Super Speeder fine applied by the State of Georgia or CDL Disqualifications.

Certain other common traffic offenses have more complicated rules for Nolo pleas:

Driving While License Suspended or Revoked- O.C.G.A. § 40-5-121

One can use a Nolo plea once every 5 years regardless of whether it is the first, second, third, etc. to avoid the 6-month additional suspension that comes with a conviction or guilty plea.

Note that a 4th offense in 5 years is a felony.

Driving Without/Proof of Insurance- O.C.G.A. § 40-6-10

One must use a Nolo on the 1st offense in 5 years to avoid the initial 60-day driver’s license suspension for a 1st offense in 5 years.

DDS will suspend a driver’s license on a second or third offense in 5 years even if one pleads Nolo.

Note the suspension goes up to 90 days for a 2nd or subsequent conviction.

Suspended/Revoked/Cancelled Registration O.C.G.A. § 40-6-15

DDS will only recognize a Nolo plea to save the 120-day DL suspension if the person has not had another mandatory suspendable offense within the prior 5 years.

3. Some Offenses Only Allow Fines without Jail Time

The code section of the offense itself or another code section referencing the offense must specifically state it is punishable as a misdemeanor that allows confinement.

Examples: Open Container O.C.G.A. § 40-6-253; No License on Person O.C.G.A. § 40-5-29; Move over law O.C.G.A. § 40-6-16

4. Some Offenses Do Not Allows Additional Surcharges

Generally, the code section of the offense itself will note this

Example: Driving w/o seatbelt O.C.G.A. § 40-8-76.1: $15 adult/ $25 8yrs or older; O.C.G.A. § 40-6-76 Under 8yrs old: $50 first offense/ $100 second offense

5. Super Speeder- O.C.G.A. § 40-6-189

In addition to any other fines or penalties imposed by any local jurisdiction or the DDS, the DDS shall administer and collect a fee of $200.00 from any driver who is convicted of driving at a speed of 85 miles per hour or more on any road or highway or 75 miles per hour or more on any two-lane road or highway, as defined in Code Section 40-6-187.

6. Zero Point Orders- O.C.G.A. § 40-5-57(c)(1)(C)

A court may order a person to attend a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 for any violation for which points are assessed against a driver's license under this subsection or may accept the attendance by a person at a driver improvement clinic approved by the commissioner pursuant to Code Section 40-5-83 after the issuance of a citation for such offense and prior to such person's appearance before the court, in which event the court shall reduce the fine assessed against such person by 20 percent, and no points shall be assessed by the department against such driver.

The disposition and court order shall be reported to the department and shall be placed on the motor vehicle record with a zero point count. This plea may be accepted by the court once every five years as measured from date of arrest to date of arrest.

7. Failure to Appear

30 Day notice- O.C.G.A. § 17-6-11(b)(1)

Court is required to send if the accused fails to appear for all violations of Title 40 except those:

(A) For which a driver's license may be suspended for a first offense by the commissioner of driver services;

(B) Covered under Code Section 40-5-54; or

(C) Covered under Article 15 of Chapter 6 of Title 40.

Such notice shall be dated and allow the accused 30 days from such date to dispose of his or her charges or waive arraignment and plead not guilty.

If the accused does not respond to the court by that 30th day, then within 5 days after that the Court then informs DDS. DDS then begins the process to suspend the accused person’s driver’s license.

For those accused of suspendable offenses not covered by the 30-day letter requirement, DDS allows 28 days from date of the notice sent.

O.C.G.A. § 40-5-56; Ga. Comp. R. & Regs. 375-3-3-.12