

VII. TRAFFIC

A. Code Sections: O.C.G.A. §§15-11-73, 15-11-22

B. Uniform Juvenile Court Rule 13

C. Procedure

1. Jurisdiction. O.C.G.A. §15-11-73(a). Juvenile court has jurisdiction for all traffic offenses committed by persons under the age of 17. See also In the Interest of L.J.V., 180 Ga. App. 400 (1986) (holding that juvenile courts have exclusive original jurisdiction over children alleged to have committed a delinquent act involving a traffic offense).

2. Venue. O.C.G.A. §15-11-73(e). The county in which the offense occurred may dispose of the case even if the child is or becomes a resident of another county.

3. Types of cases. O.C.G.A. §15-11-73(c). All traffic offenses are to be heard in traffic court except the following which must be handled as delinquency cases:

1. Homicide by vehicle;
2. Any felony in which a vehicle is used;
3. Manslaughter from the use of a vehicle;
4. Racing;
5. Attempting to elude;
6. Fraudulent use of or application for a license;
7. Hit and run;
8. Driving under the influence;
9. Possession of drugs; or
10. Any other offense for which the license may be suspended for an adult (includes reckless driving, unlawful passing of a school bus, improper passing of school bus, improper passing on a hill or curve, and exceeding the speed limit by 24 or more mph - See O.C.G.A. §40-5-57 and §40-5-57.1)

4. Hearing. O.C.G.A. §15-11-73(e). The summons or citation commences the proceedings. There is no complaint or petition. Juvenile traffic cases must be filed and heard separately from other types of cases. Traffic cases are open to the public. The hearing is informal but the parties have the right to subpoena witnesses, present evidence, cross-examine witnesses, and appear by counsel.

O.C.G.A. §15-11-73(i). If during the informal hearing it becomes apparent to the trial judge that the case should be handled as a delinquency case rather than a traffic case, the court may direct the filing of a petition. Upon objection, the judge is disqualified from hearing the delinquency case.

5. Disposition. O.C.G.A. §15-11-73(g). The juvenile court has the authority to order the Department of Public Safety to suspend a driver's license without regard for the department's point system used for adults. The suspension must be done as a matter of probation and it cannot exceed 12 months. Dispositional options include reprimand, fines, probation, as well as any disposition available for a delinquent or unruly child. If the child is placed on probation, the probation must be limited to those conditions imposed pursuant to Title 40 of the Official Code of Georgia Annotated.

O.C.G.A. §40-5-63. Nolo contendere for persons under the age of 18 years is limited in certain cases.

6. Fines. O.C.G.A. §15-11-73(g)(4) and (6) and O.C.G.A. §15-11-73(h). Fines may not exceed the maximum fine applicable to an adult accused of the same offense. Fines may be required to include the following additions and penalties:

a. Peace Officer's Annuity and Benefit Fund O.C.G.A. §47-17-60 — Requires a certain portion of each traffic and traffic-related delinquency fine to be forwarded to the Peace Officer's Annuity and Benefit Fund. Applies regardless whether peace officers in the county are members of the fund. 1957 Op. Att'y Gen. 229.

b. Superior Court Clerk's Retirement Fund O.C.G.A. §47-14-50 — Requires juvenile courts in counties with populations of less than 600,000 to allocate \$1.75 from each fine collected to the board of the Superior Court Clerk's Retirement Fund if the clerk of the superior court is clerk of the juvenile court, provided that such fine is at least \$5.00.

c. Sheriffs' Retirement Fund O.C.G.A. §47-16-60 — Requires juvenile courts to forward \$2.00 from each fine collected to the board of the Sheriffs' Retirement Fund if a sheriff of the superior court or a duly authorized deputy acts as sheriff to the juvenile court by virtue of his office, provided such fine is at least \$5.00.

d. County Jail Fund O.C.G.A. §15-21-93 — The additional penalties provided for in this Code Section only apply to juvenile courts in counties in which the governing authority has adopted a resolution placing the article into effect.

e. County Drug Abuse Treatment and Education Fund O.C.G.A. §15-21-100 — Requires juvenile courts to impose an additional penalty of 50 percent of the original fine for any fine imposed pursuant to O.C.G.A. §15-11-66(a)(7) for the offense of possession of controlled substances or marijuana.

f. Georgia Crime Victims Emergency Fund O.C.G.A. §15-21-112 — Requires courts to impose an additional penalty equal to the lesser of \$25.00 or 10 percent of the original fine for violation of O.C.G.A. §40-6-391, relating to driving under the influence, to be paid over to the Georgia Crime Victims Compensation Board.

g. Victim Assistance Program Fund O.C.G.A. §15-21-131 — Requires courts to impose a five percent additional penalty for fines imposed for any criminal offense or any criminal ordinance violation. This applies to all traffic offenses as defined in Code Section 15-11-73(a). See also O.C.G.A. §15-11-66(a)(7), 1997 Op. Att’y Gen. U97-28.

h. Law Library Fund O.C.G.A. §36-15-9 — The surcharge provided for in this Code Section only applies in counties in which the chief judge of the superior court of the circuit has assessed a library fee.

i. Brain and Spinal Injury Trust Fund O.C.G.A. §15-21-149 — Requires courts to impose an additional penalty of 10 percent of the original fine in every case involving a violation of O.C.G.A. §40-6-391, relating to driving under the influence of drugs or alcohol, or for violations of ordinances of political subdivisions which have adopted by reference O.C.G.A. §40-6-391.

7. Reporting. O.C.G.A. §15-11-73(j). All traffic offenses and delinquent offenses that are traffic charges must be reported to the Department of Public Safety within ten (10) days, except warnings and dismissals.

8. License Suspension. O.C.G.A. §40-5-57.1. The driver's license of any person under 21 found to have committed any of the following offenses shall be suspended by the Department of Public Safety for six months for the first offense and 12 months for the second or subsequent offense: hit and run or leaving the scene of an accident; racing; fleeing or attempting to elude an officer; reckless driving; purchasing an alcoholic beverage; DUI; or any offense for which four or more points are assessable under §40-5-57 (includes unlawful passing of school bus, improper passing of school bus, improper passing on hill or curve, and exceeding speed limit by 24 or more mph). 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. If the license was revoked for a violation of DUI and the alcohol concentration was .08 grams or more, a new license may not be issued for 12 months.

SUGGESTED PROCEDURE

Since traffic cases are open to the public, some courts find it efficient to schedule a number of them at the same time for an arraignment-type hearing. The child must appear with a parent. All persons should be advised of their rights and made aware of the alternatives available to them.

SAMPLE MONOLOGUE:

“Welcome to the juvenile traffic court of Sample County. The Children have been summoned to court because they have received a traffic citation accusing them of a traffic offense in Sample County. This hearing has been scheduled so that the Court can advise you of your rights, tell you what the charges are, and hear your response to the charges.

“If you decide to admit the charges against you, we will probably decide what to do about the case today. If you decide to remain silent, or if you decide to deny the charges against you, we will set the case for a trial where you will be allowed to subpoena witnesses, present evidence, and cross-examine the witnesses against you. That trial will be scheduled for (date and time).

(Editor’s Note: In the Interest of B.G.W. III, 218 Ga. App. 384 (1995), the Georgia Court of Appeals decided that UJCR 4.7 does not apply to juvenile court traffic offenses under O.C.G.A. §15-11-49 and that it is not necessary to advise the child of his right against self incrimination and his right to counsel. The following two paragraphs are included for consideration by those who choose to include them.)

“Each of you has the right to remain silent. You do not have to say anything about the charges against you. If you do make a statement, it may be used against you.

“Each of you has the right to be represented by an attorney in this case. Because this is a traffic case, and not a delinquency charge, you do not have the right to have a lawyer appointed to represent you at public expense. However, you do have the right to hire a lawyer and have that lawyer present with you throughout these proceedings.

“ You should be aware that if you admit the charges against you, or if, after a trial, the Court is convinced beyond a reasonable doubt that you did commit these offenses, the Court must decide an appropriate sentence in each case. The Court may reprimand you, fine you, place you on probation, suspend your license, or impose any other sentence authorized by law. All dispositions will be reported to the Georgia Department of Public Safety as required by law.”

After advising the group of the above rights, the Court may call the cases forward individually. Each child and the child’s parents should approach the bench where a colloquy such as the following may take place on the record:

SAMPLE COLLOQUY:

Court: “Are you (Name) and were you under the age of seventeen on (date of charges in citation).

Child: “Yes.”

Court, reading from Uniform Traffic Citation: “On (date alleged in Citation) you were accused by (Officer who wrote the Citation) of (Offense alleged in Citation) at (location alleged in Citation). Do you understand the charges against you?

Child: “Yes” (If “No” the Court may engage in an appropriate effort to explain, but must be cautious to avoid advocacy or the giving of legal advice.)

Court: “Do you admit or deny the charges against you?”

Child: "I admit the charges."

Court: "Explain what you did that led the officer to make these charges."

Child: (Should give an explanation that convinces the Court that there is a basis in fact to believe that the charges are true.)

It may be appropriate to ask the parent what they have done about the situation, etc. If the child denies the charges or elects to remain silent, the Court Clerk should serve the child and parent with appropriate notice of the trial date and time.