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A MEMO:

ALS SUSPENSIONS UNDER GEORGIA LAW

The Department of Driver Services has been receiving notification of suspensions for DUI citations for violations of O.C.G.A. 40-6-392. There are no DUI charges that can be brought pursuant to O.C.G.A. 40-6-392. Courts cannot sentence for a violation of O.C.G.A. 40-6-392 and the Department of Driver Services cannot suspend a driver's license based on a citation submitted under Code Section 392. All DUI charges MUST fit within O.C.G.A. 40-6-391(a)(1)-(a)(6), (i), (k) or (l) and none of those subsections authorize a charge for "DUI-Refusal." Depending on the suspected substance, when a defendant refuses to submit to state-administered chemical testing, he or she must be charged with driving while "less safe" pursuant to the applicable portion of 40-6-391.

If a suspected impaired driver refuses to take the state administered test after the officer has placed them under arrest for DUI and reads the appropriate implied consent warning, the officer can then issue a form DDS-1205. However, this will not result in an additional DUI charge of DUI Refusal.

If the defendant requests an ALS Hearing as instructed on form DDS-1205, the officer's opportunity to withdraw the 1205 expires once the Administrative Law Judge issues the final decision. If the defendant does not request an ALS Hearing, the officer's opportunity to withdraw the 1205 expires ten (10) days from the date of arrest. In either instance, once the ALS suspension for refusing to take the state administered test is final, neither the officer nor the court has the authority to dismiss the suspension because the implied consent suspension is an administrative function of the Department of Driver Services separate from the criminal charge.

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