IN THE STATE COURT OF CLAYTON COUNTY

STATE OF GEORGIA

ORDER CLARIFYING TRAFFIC VIOLATIONS BUREAU

AND PROCESSES AND PROCEDURES THEREFORE

WHEREAS, it is the desire of the Judges of this Court and the Solicitor General to provide for the prompt disposition of traffic cases, and that the law regulating Traffic Violations Bureaus provides that if a Defendant fails to appear without posting a cash bond, the TBV loses jurisdiction over the offense, and the Court having executed an Order allowing those cases to be resolved by pleas in absentia,

WHEREAS, it is the desire of the Judges of this Court and the Solicitor General to provide for the prompt disposition of certain other offenses that are routinely charged on citations,

IT IS THE ORDER OF THIS COURT that there is established a Traffic Violations Bureau pursuant to O.C.G.A. Sec. 40-13-50, for the handling and disposition of certain traffic cases. The “Traffic Division” of the State Court established by Order dated December 28, 1998 shall be replaced by the Traffic Violations Bureau established herein.

**Section 1. ASSIGNMENT OF CASES TO TRAFFIC VIOLATIONS BUREAU**

All violations of Title 40 of the Official Code of Georgia Annotated shall be assigned to the Traffic Violations Bureau of this Court, except for the following offenses, which shall be assigned to the Criminal Division:

1. O.C.G.A. Sec. 40-6-391, Driving Under the Influence of Alcohol or Drugs
2. O.C.G.A. Sec. 40-6-390, Reckless Driving
3. O.C.G.A. Sec. 40-6-393, Homicide by Vehicle 2nd Degree
4. O.C.G.A. Sec. 40-6-395, Fleeing or Attempting to Elude a Police Officer
5. O.C.G.A. Sec. 40-6-270, 40-6-271, 40-6-272 and any other violation of Title 40, Chapter 6, Article 12 relating to duty to remain at the scene of or report an accident
6. O.C.G.A. Sec. 40-6-186, Racing on Streets or Highways
7. O.C.G.A. Sec. 40-5-120, Unlawful Use of License or I.D. Card
8. O.C.G.A. Sec. 40-5-121, Driving While License Suspended or Revoked
9. O.C.G.A. Sec. 40-5-122, Permitting Unlicensed Person to Drive
10. O.C.G.A. Sec. 40-5-125, Fraudulent Driver’s License or I.D. Card
11. O.C.G.A. Sec. 40-5-20, Driving While Unlicensed
12. Speeding in excess of 30 miles per hour over the posted speed limit
13. O.C.G.A. Sec. 40-6-10 (b), Operating a Motor Vehicle Without Effective Insurance
14. Any motor vehicle registration violation
15. O.C.G.A. Sec. 40-6-397, Aggressive Driving
16. In addition to the above-listed offense, any of the following offenses committed by a person who is under the age of 21 at the time of the offense shall *not* be filed in the Traffic Violations Bureau:
17. O.C.G.A. Sec. 40-6-163, Unlawful Passing School Bus
18. O.C.G.A. Sec. 40-6-45 (a) (1), Unlawful Passing on Hill or Curve
19. Speeding 24 mph or more over the posted speed limit
20. Any citation arising out of the same occurrence in which a citation is also issued for any of the offenses listed hereinabove.

**Section 2. RELEASE ON COPY OF CITATION**

Pursuant to O.C.G.A. Sec. 40-13-53, any officer who arrests any person for the violation of a traffic law which shall be assigned to the Traffic Violations Bureau pursuant to this Order, shall permit such person to be released upon being served with a citation and complaint and agreeing to appear. If the officer has reasonable grounds to believe that the person will not obey such citation and agreement to appear (for example, the person is wanted for other offenses for which the offender is to be incarcerated), the officer may require such person to surrender his or her driver’s license in accordance with O.C.G.A. Sec. 17-6-11, or may arrest the person and transport them to be incarcerated in the county jail.

If the person is arrested and *not* released on a copy of the citation, the case shall be bound over to the Criminal Division of this Court, even if for an offense that would otherwise be assigned to the Traffic Violations Bureau.

If the person is released upon being served with a citation and complaint, the original and Department of Public Safety copy of said form shall be sent by the officer issuing the summons (or his/her department) within three (3) working days of the offense to the Traffic Violations Bureau of this Court. If the citation is electronically generated, the police department shall forward the appropriate copy or “original” to the Clerk electronically within the same time limit.

The officer issuing the citation shall give a copy of the citation and notice to appear to the offender at the time the citation is issued.

**Section 3. CASH BONDS PERMITTED**

Pursuant to O.C.G.A. Sec. 40-13-55, any person cited for any traffic offense under the jurisdiction of the Traffic Violations Bureau shall be permitted to give a cash bond for his appearance. The cash bond amount shall be set by separate Order of this Court. Said cash bond shall be posted with the Clerk of the State Court (or deputy clerk as designated by the Clerk). No officer giving a citation and complaint to a person for a traffic violation shall accept a cash bond, and the cash bond for any such TVB offense shall not be posted with the Sheriff.

**Section 4. AMOUNT OF CASH BOND**

The cash bond amount for each offense under the jurisdiction of the Traffic Violations Bureau shall be set by separate Order of this Court.

**Section 5. METHOD OF PAYMENT**

Cash bonds on offenses assigned to the Traffic Violations Bureau may be paid to the Traffic Violations Bureau between the hours of 8:30 a.m. and 4:30 p.m. (these times are a minimum, but may be extended by the Clerk in the Clerk’s discretion), Monday through Friday, not earlier than four (4) business days after a citation is issued. The Clerk shall accept payment of cash bonds in the form of cash, certified check, money order, Visa, Mastercard, and debit card, as well as any other form of payment authorized by the Chief Judge of this Court. For online payments, the form of payment may be restricted to those types of payment accepted by the vendor with whom the County has contracted to process the payment of cash bonds on traffic violation bureau offenses.

**Section 6. FORFEITURE OF CASH BONDS**

Pursuant to O.C.G.A. Sec. 40-13-58, where a defendant cited for a traffic violation within the jurisdiction of the Traffic Violations Bureau posts a cash bond according to the schedule set up by court order, and fails to appear in court on the day set in the original citation, or any subsequent date set by the Court, then and in that event, such failure shall be construed as an admission of guilt, and the cash bond may be forfeited without the necessity for the statutory procedure provided for the forfeiture of statutory bail bonds, but is not considered forfeited until an Order is signed by the Court forfeiting said bond. The Clerk may report the forfeiture as a “guilty” disposition or such other designation as required by DDS for cash bond forfeitures, to the Department of Driver Services.

The proceeds of any forfeited cash bond shall be applied and distributed as a fine imposed in any such case by the Court would be, and paid by the Clerk to the appropriate authorities as provided by law.

Nothing herein shall be construed as preventing the Judge from ordering the defendant to appear and stand trial, even if a cash bond is posted.

The cash bond posted by the defendant shall be considered forfeited at the end of the court session for which the defendant failed to appear, upon signature and filing of an Order of this Court forfeiting said cash bond.

The Clerk shall cause an order to be submitted to the presiding Judge within three business days of each Court session, which shall include the name of each defendant who failed to appear and the case number for each of such defendant’s cases. This Order shall recite that each case referred to therein is disposed of and settled, and shall constitute a judgment pursuant to which the forfeited bonds shall be applied in the same manner as a fine. The Presiding Jude may exclude any specific case from the forfeiture order as the Judge deems appropriate.

**Section 7. ARRAIGNMENT CALENDARS AND CASE DOCKETS**

The Clerk shall maintain a numbering system for cases filed in the Traffic Violations Bureau separate from and distinct from the cases filed in the Criminal Division.

The cases in the Traffic Violations Bureau shall be evenly distributed among the Judges of the State Court who preside over Traffic Violation Bureau cases. The Judges shall set traffic arraignment dates and times at least six months in advance so that the Clerk may notify law enforcement agencies of those calendars.

The Clerk shall notify the law enforcement agencies who issue citations returnable to this Court of the schedule for arraignment dates, so that a law enforcement officer may provide the appropriate court date to the defendant on the traffic citation at the time the citation is issued. The traffic arraignment date shall be the date set the same week of the month that the citation is issued, two months from the date of the citation. For example, citations issued day one through day seven of January, shall be scheduled for arraignment on the arraignment date in week one of March.)

**Section 8. TRIAL CALENDAR**

All cases in which a plea of “not guilty” is entered at arraignment shall be set for trial on a date designated by the judge assigned to that case, and the defendant shall be notified in writing of the trial date at the arraignment. It shall be the responsibility of a party who wishes to subpoena any witness for trial, and not the Clerk, to serve said subpoenas according to law. The Clerk shall publish the trial calendar.

If a person pleads “not guilty” at arraignment, but wishes to post a cash bond after arraignment and before trial in lieu of appearance at trial, the cash bond amount shall be set by separate Order of this Court. If the defendant then fails to appear at trial, the cash bond shall be forfeited as provided hereinabove.

**Section 9. CONTINUANCES PRIOR TO COURT DATE**

No case shall be continued at the defendant’s request from an arraignment or trial calendar to another court date by the Clerk without the consent of the Judge, unless the defendant has posted a cash bond as provided herein, or upon documentation of good cause shown (for example, illness, school exam conflict, vacation or other planned trip, work travel, death of immediate family member). The request for a continuance must be made prior to the court date from which a continuance is being requested.

If the case has been continued previously at the request of the defendant by the Clerk, and the defendant makes another request to continue the case, the defendant shall be instructed to contact the Solicitor’s office to inquire if the Solicitor will agree to same. If the Solicitor will agree, the Solicitor shall notify the Clerk, and the case shall be continued to the next available date. If the Solicitor will not agree to a continuance, the defendant shall be instructed to file a Motion for Continuance with the Clerk and serve a copy on the Solicitor, for the issue of continuance to be determined by the Judge.

**Section 10. FAILURE TO APPEAR AT FIRST SCHEDULED ARRAIGNMENT DATE, WITH NO PAYMENT OF CASH BOND AMOUNT**

Pursuant to O.C.G.A. Sec. 17-6-11 (b) (1), if a defendant fails to appear in court for a TVB case on the date specified in the citation for arraignment, or at such other date specified by the court for arraignment, and the defendant has not posted a cash bond, the Clerk shall notify the defendant by first-class mail or by postcard at the address listed on the uniform traffic citation of his or her failure to appear. Pursuant to said Code Section, such notice “shall be dated and allow the accused at least 30 days from such date to dispose of his or her charges or waive arraignment and plead not guilty.” The term “dispose of his or her charges” provided by the statute shall be construed to mean that the defendant appears and posts a cash bond, or appears at a subsequent arraignment date and pleads guilty or nolo contendere to the charge(s). If defendant appears at the second arraignment date and pleads not guilty, the case shall be placed on a trial calendar as previously outlined hereinabove.

The process for the Clayton County State Court TVB shall be that the Clerk shall notify the defendant in the letter or postcard required by O.C.G.A. Sec. 17-6-11 (b) (1), of a subsequent arraignment date at least 30 days from the date of the missed arraignment for which defendant may appear, and shall notify them that they may still post a cash bond in lieu of appearance prior to the second arraignment date.

**Section 11. PROCEDURE FOR CASES WITH FAILURE TO APPEAR AFTER SECOND ARRAIGNMENT DATE AFTER NOTICE SENT PURSUANT TO O.C.G.A. SEC. 17-6-11 (b) (1).**

If the defendant appears and posts a cash bond before the second scheduled arraignment after notice is sent pursuant to O.C.G.A. Sec. 17-6-11 (b) (1), and then fails to appear at the second scheduled arraignment date, the cash bond may be forfeited pursuant to the procedures designated hereinabove.

If the defendant fails to appear for the second scheduled arraignment date, and has *not* posted a cash bond before that date, the Clerk shall, within five days of such date, forward to the Department of Driver Services the accused’s driver’s license number as a failure to appear, for which the DDS may suspend the defendant’s license or privilege to drive pursuant to law.

Pursuant to O.C.G.A. Sec. 40-13-62, the TVB loses jurisdiction over the case when a person fails to appear after the “thirty-day notice” without posting a cash bond (at the second scheduled arraignment date).

The Solicitor General consents to the following procedure for those cases:

Pursuant to this Order, all cases that originated in the Traffic Violations Bureau where no cash bond was paid, and that have not been transferred to the Criminal Division at the request of the Solicitor General, may submit pleas in absentia at the Clerk’s office, after the Defendant’s failure to appear, and the fine recommended shall be pursuant to a “fine schedule” for a PIA is set by separate Order of the Court, as agreed upon by the Solicitor General.

When a Defendant wishes to enter a plea in absentia at the Clerk ‘s office on such a case, the Clerk is authorized to present the PIA form to the Defendant, accept the recommended fine pursuant to the fine schedule, and submit the plea for approval to the Court.

If the Solicitor General desires to take jurisdiction away from the TVB of any such case, the Solicitor General may request that the case be transferred to the Criminal Division for handling as any other case in that Division, prior to the defendant entering a PIA at the Clerk’s office pursuant to the agreed upon procedure in this Order.

The Solicitor General further agrees that, if the defendant desires to plead not guilty and schedule such a case for trial, the Clerk shall permit the entry of a not guilty plea or waiver of arraignment, and shall place the case on the next trial calendar for the judge to whom the case is assigned. However, if Defendant’s license is suspended as a result of the failure to appear, the failure to appear shall not be withdrawn until the case is finally disposed of by plea or trial.

If the Defendant’s license was suspended by DDS for failure to appear, the Clerk shall provide notice to DDS of the disposition of the case as required by law when the case is disposed of by PIA, plea or trial, within the time limits prescribed by law.

**SECTION 11. ASSIGNMENT OF TRAFFIC CASES WHEN TRANSFERRED TO CRIMINAL DIVISION**

When a case originates in the Traffic Violations Bureau of this Court and for any reason is transferred to the criminal division of the Court, the case shall be assigned to the same judge to whom the original citation was assigned, unless the rules which govern the assignment of cases in the criminal division would dictate that the case be assigned to a different judge. The assignment of a previous traffic violations bureau (or traffic division) case that was assigned to a different judge shall not, alone, cause the case to be reassigned to the judge who presided over the previous traffic case.

**Section 12. ENFORCEMENT OF SENTENCE**

If the Defendant is sentenced to a suspended jail sentence, conditioned on the payment of fines, fees or restitution, in the Traffic Violations Bureau or in the Criminal Division, or if the defendant is sentenced to pay a fine by a particular due date after the court date, and is not placed on probation, the fines and surcharges shall be paid to the Clerk. A suspended sentence that is conditioned upon any other requirement, such as the completion of community service, shall be supervised by the Clayton County Probation Department, and all sums due pursuant to any such sentence shall be payable through the Probation Department.

The Clerk shall be authorized to accept payments in installments on all sums due pursuant to a “pay only” suspended sentence, prior to the date due under the terms of the sentence.

If a person fails to pay all sums due by the due date under the terms of the sentence, the Clerk shall notify the Solicitor and the Judge to whom the case was assigned that the person has failed to pay all sums due by the due date, and shall include the name, case number, amount due on the sentence, amount paid (if any), and the due date. The defendant shall be sent notice at their last known address to appear to show cause why the suspended sentence should not be revoked or they should not be held in contempt.

If an arrest order is issued after such a hearing is held, the Clerk shall not be authorized to accept payment of the fine without the express permission of the Judge to whom the case was originally assigned. It is then in the discretion of the Judge to accept the funds and recall any arrest order issued. The Clerk shall not recall any arrest order issued by a Judge of this Court.

If a person is placed on probation, the sentence shall be enforced as any other probated sentence in State Court.

So Ordered this \_\_\_\_\_\_\_\_\_\_ day of August, 2019.

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Hon. Linda S. Cowen, Chief Judge Hon. Michael Garrett, Judge

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Hon. Tammi Hayward, Judge Hon. Margaret Spencer, Judge

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Hon. Shalonda Jones-Parker, Judge

Consented to by:

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Tasha Mosley, Solicitor General