

## Keeping up with Georgia DUI Laws

There is a lot to DUI defense. As you read on the cover of this newsletter, the laws are constantly changing and evolving. A DUI lawyer has to keep on top of all the laws governing DUI in Georgia including: the Constitution of the United States, the Constitution of the State of Georgia, the Georgia Code (O.C.G.A.), the Georgia Administrative Code, and appellate decisions on DUI and criminal procedure by the Georgia Court of Appeals and the Supreme Court of Georgia. No lawyer should ever take on a DUI case without being familiar with all of the laws governing DUI.

You've heard of the US Constitution and probably know that each state has its own version as well. But you probably aren't familiar with the Georgia codes and courts.

The *Georgia Code* contains the actual laws against DUI, the criminal procedure rules applicable to DUI trials, the license suspen-

sion and scholarship disqualification rules triggered by a DUI plea or conviction, the mandatory punishment and alternative incarceration rules, and the rules of evidence applicable to all criminal trials. These are the laws enacted by the Georgia state legislature.

The *Georgia Administrative Code* contains rules and regulations pertaining to the methods of scientific testing of breath, blood and urine in DUI cases, the certification of qualified police officers to operate breath screening devices, and license suspension regulations. These rules are enacted by the executive branch of

our state government, subject to structured public debate under the Administrative Procedure Act.

Decisions from the *Georgia Court of Appeals* and the *Supreme Court of Georgia* interpret all of the above laws and contain rulings on individual DUI cases that have been appealed. The Supreme Court can also declare a law or rule unconstitutional and strike it down.

Whew! That's legalese for "the law of DUI is complex and ever changing - that is what makes it a specialized, difficult area of legal practice."

### Do you need a referral?

Chances are we can refer you to an excellent local attorney outside our area of practice. Call us at 770.338.2338 or email [jtowne@clarktowne.com](mailto:jtowne@clarktowne.com).

[WWW.CLARKTOWNE.COM](http://WWW.CLARKTOWNE.COM)

## Volunteer Spotlight

### Dunwoody Nature Center

On the grounds of Dunwoody Park  
5343 Roberts Drive  
Dunwoody, GA 30338  
394-3322  
[www.dunwoodynature.org](http://www.dunwoodynature.org)

Dunwoody Nature Center inspires the love of nature and cultivates environmental understanding and stewardship by conserving and enhancing Dunwoody Park, educating children, families and adults of all ages about the natural world and our place in it, and motivating environmental awareness and responsible action.

They have many volunteer opportunities involving gardening, composting, trail maintenance, and handy-person projects.

### Additional Charities

Click "Law Links & Resources" on the DUI Information page of the [clarktowne.com](http://clarktowne.com) website for a detailed listing of charity web addresses and contact information.

### Let Me Know

If you've worked with any non-profit in the area, let me know what you think of the organization and if I should continue to suggest it as a worthy place to volunteer. I'd also like suggestions of other local non-profits to add to this list.

Email: [jtowne@clarktowne.com](mailto:jtowne@clarktowne.com)

## Clark & Towne Believes...

We strongly believe that education is the first step in the prevention of any type of legal crisis. We've proudly worked to resolve our clients' dilemmas since 1990. We are in your community, have the experience and resources required to work toward your goals, and we're here to help.

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on to a friend or recycle



AUGUST 2011

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"Happy is he who forgets  
(ignores?) what cannot be  
changed."

—Mark Twain

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# CLARK & TOWNE ATTORNEYS

WE'RE HERE TO GUIDE YOU THROUGH ANY  
UNEXPECTED LEGAL CRISIS

## Georgia Supreme Court Rules in DUI Breath Tests

Two very important rulings by the Georgia Supreme Court that will affect Georgia DUI cases with breath tests were handed down recently. The defense attorneys in each case wanted access to the source code used by the Intoxilyzer 5000, the breath machine used in Georgia. A source code is a set of instructions that tells a computing device how to process information.

In both of these cases the driver sent a subpoena to the Intoxilyzer manufacturer, a company named CMI in Owensboro, KY, to produce source code documents when they sent a witness to testify in a Georgia court. The lower courts said the driver couldn't have that information, no matter what.

The drivers' attorneys appealed the decisions, and the Georgia Supreme Court essentially ruled

that since a defendant has a right to cross-examine witnesses against him or her, "[We will] permit a party to request that a corporation, rather than its human agent, be found to be a material witness... and leave the issue of designation of its human agent to the corporation."

The court then spelled out the lengthy procedure a defense attorney must follow to actually obtain the source code. The ruling is many, many pages long.

So, although it is now possible to obtain the source code, the driver's attorney *first* must get a Georgia judge to conduct a hearing and issue a certificate of materiality. *Then*, the attorney has to get a Kentucky court (because remember, CMI is a



Kentucky company) to agree on the certificate of materiality and *then* figure out which person should gather the information and bring it to Georgia.

*Finally*, once a defense attorney has access to the source code, he or she can use an expert witness to look at the code to determine if it's calculating blood alcohol content properly. Complicated? You bet. This is why you need an experienced DUI defense attorney on your side.

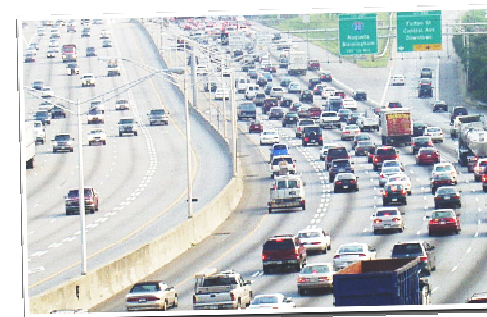
## Monthly Traffic Report

Have you noticed more police cars on the sides of the roads

enforcing traffic laws over the past few months? I have. These Gwinnett-area courts reported their traffic tickets to the DDS in May 2011:

Gwinnett County Courts:  
Juvenile Court 52  
Superior Court 133  
Recorder's Court 3983  
State Court 362

Suwanee 915  
Lilburn 369  
Lawrenceville 659  
Duluth 1163  
Norcross 489



**Set the Example**

Speeding isn't a good idea for any driver—experienced or new. But teen drivers will pick up their parents' bad habits.

Community Resources

Summer is here which means teens are pouring out of the classroom and into their cars. The 2011 Liberty Mutual/SADD teen driving study reveals an alarmingly high number of young drivers who have had "near misses" while driving and provides some insight into what may be chief contributors to those events.

According to the study, 68 percent of teens admit to having narrowly avoided a crash — with more than half of those (56 percent) reporting multiple

instances — yet young drivers are more apt to blame external causes such as other drivers or the weather rather than owning up to any personal responsibility in the near-miss.

But when teens were asked what they were doing right before the "near miss" their responses were: texting, changing music or talking to other passengers in the car.

Parents can play an important role in teaching their teens about safe driving by setting good examples, providing

Kelley Foley

driving test study guides, and taking defensive driving courses with their teen.

For more information on teen driving or for a competitive quote on your auto insurance contact:

Kelley Foley  
Liberty Mutual Insurance Co.  
Home, Auto & Life Insurance  
310 Town Center Ave STE A2  
Suwanee, GA 30024  
Tel: 678-546-0499 Ext 57800  
Fax: 678-401-0316

Kelley.Foley @LibertyMutual.com.

From Our Blog

**You might be an aggressive driver if you:**

- take out your frustrations on other drivers
- read, eat, drink or talk on the phone while driving
- tailgate the car in front of you
- make lane changes, only to

- speed up when the light turns yellow or run red lights
- speed more than 14 miles above the speed limit

**What should you do?**

- concentrate on driving and leave the eating, etc. for when you're not driving
- relax by playing calming music or listening to a podcast while driving
- choose less congested routes for your commute
- use public transportation
- plan ahead & leave early so that you can drive the posted speed limit
- just be late

**If you see an aggressive driver on the road:**

- stay out of the way
- put aside your pride, don't try to increase your speed or keep up with that driver

Aggressive Drivers

- avoid eye contact; ignore rude or obscene gestures and don't return them
- report serious or life-threatening aggressive driving (from a safe distance and safe spot)

**If you're the recipient of an aggressive driving ticket hire an attorney to:**

- attend court for you so you won't miss work
- increase the chance the case will be thrown out or the charge reduced
- increase the chance of avoiding jail, large fines and points on your driver's license

An aggressive driving ticket is a serious moving violation. Take it seriously.

Source: NHTSA

Ask Jessica

**Question:** I am on probation. My elderly mother is mentally unstable and is claiming that I am stealing her money. I don't know what happened to her money, or even if any is missing. But I suspect her caregiver could be the culprit. When I try to look at her finances, she gets very upset. What happens if she calls 911 on me while I'm on probation?

**Answer:** I've seen this before where an elderly mother in the beginning stages of Alzheimer's hid her money from her daughter and then forgot where she put it. Like that woman, your predicament hinges upon how well your mother is able to present herself to the police. Believe me, the police are not well-equipped to handle this type of situation.

Ideally, you should sit down

with any of your siblings and your mother and go through her financial records and question any unusual transactions. You might want to include the care-giver, if appropriate. If your mother is uncooperative, guardianship may be the only way to resolve it. With guardianship, a child controls a parent's financial and legal decisions. In Georgia, county probate courts handle this.

Once you are your mother's guardian, you will be able to see if someone actually is stealing from her, if she is simply unable to read her bank statement or is squirreling away money.

Guardianship is not a process to be entered into lightly. An elderly parent can become extremely upset that her own children don't think she can

Guardianship

take care of herself anymore— or think an adult child is trying to steal from her. I've seen cases where this turns parent against child. If you choose guardianship, your mother may have an attorney appointed for her and you might end up in a court battle. If her lawyer claims you are stealing, this could be a violation of your probation.

I hate to bring the court into people's lives, but sometimes it's necessary. The Division of Family and Children Services is another option but can also backfire badly. When you call DFCS, a case worker will visit your mother. If the case worker arrives on a day when she presents well, you may find yourself being accused by the caseworker of stealing.

There's no easy answer for you.



With guardianship, a child controls a parent's financial and legal decisions.

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We're *everywhere* online. Read our articles or ask us questions. We'd love to hear from you.

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**You Tube:** www.youtube.com/user/ClarkTowneAttorneys

Come join a group of clients who learn about how the law affects them.

**WWW.CLARKTOWNE.COM**

Thank You!

You all know that I'm not known as a "smiley" person, but I recently smiled a big smile: I heard from Tom T., a client of mine from 1997! He called to thank me for everything I did for him back then (and it was *way* back then). I love hearing your success stories, so stay in touch.

I also want to send out a big welcome to the new clients who've joined the Clark & Towne family this past month and give my personal thanks to all who have referred friends and family to us in ever-growing numbers.



end up directly in front of that car you just passed when traffic clogs up again