



# The Trooper Legal Update

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## Speeding: When may speeders go directly to jail?

A typical speeder shows their driver's license and is on their way with a citation/warning. Some speeding offenses, however, give officers the discretion to require a trip to the jail to post bond. Here are a few:

- **Drivers under 21 going 24 MPH or more over the speed limit.** (The license is suspended on the first offense, so the license may not be shown as bail.) OCGA § 40-5-57.1 & 17-6-11.
- **Any speeder with an invalid, expired, or suspended license.** OCGA § 17-6-11.
- **Drivers speeding so as to exhibit disregard for the safety of others may be charged with reckless driving & may not show license as bond.** OCGA § 40-6-390. [*Fraser*, 263 Ga.Ap. 764 (24 MPH over limit near pedestrians), *Pinch*, 265 Ga.Ap. 593 (faster than surrounding traffic & whipping in/out of cars), *Wilkes*, 254 Ga.Ap. 447 (speeding in construction zone), *In re J.C.*, 257 Ga.Ap. 657 (going 42 MPH over limit).]
- **A speeder going high rates of speed with children in the vehicle** may be charged with "Reckless Conduct" because the driver "endangers the bodily safety of another person." OCGA § 16-5-60(b).

Thank you Trooper Nease & Trooper Crozier for your suggestions.

**MONTHLY MINDER:** Weaving within the lanes is a good basis for a traffic stop where the weaving is erratic enough to form a reasonable concern that the driver may be DUI or unsafe.

*Hanson*, 243 Ga.Ap. 532 (2000).

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## Legal Quickies:

**Tag Light Out:** provides probable cause to stop a vehicle. *Draper v. Reynolds*, 369 F.3d 1270 (2004). OCGA 40-8-23 (some type of white light must illuminate the tag for a distance of 50 feet).

**\*GSP Calls:** Where concerned citizens clearly identify themselves, report erratic or dangerous drivers, and specifically describe the vehicle & location, this provides a basis for a stop. No further evidence/corroboration of the report is needed before stopping. *Riding*, A04A1780 (8/26/4). Note that if the caller is anonymous, the officer may have to corroborate the story by witnessing suspicious activity supporting the report.

**Officer Safety:** Officers at roadblock justified in asking driver/passenger to exit the vehicle when they were seen reaching down between the seats. Concern for officer safety justifies requiring occupants to exit vehicle & permits officer to look in vehicle for weapons that might be in plain view. *McMillan*, A04A1003 (8/31/04). Also *Mich. v. Long*, 463 U.S. 1032 (1983) (officer safety concerns justifies pat down of vehicle – must have reasonable suspicion vehicle contains weapons).

**Unsafe Backing:** is a good charge even if there is no accident caused or the driver did not pull out directly in front of someone. *Roberson*, 230 Ga.Ap. 179 (1998); OCGA 40-6-240.

**ON THE CIVIL SIDE OFFICER NOT LIABLE FOR USING TASER** on suspect prior to giving him a chance to be placed under arrest voluntarily where suspect kept swearing at officer, refused 5 requests to get insurance/documents from the vehicle & was highly agitated so that the officer had a genuine fear that the suspect would become violent & resist arrest. Officer did NOT have to risk physical confrontation before using

**HUMOR WORKS:** What do you get when you cross the Godfather with a lawyer?  
-- An offer you can't understand.

the taser. *Draper*, 369 F3d 1270 (2004).