

Text of O.C.G.A. § 40-5-58(c)
(applies to HVs with no probationary license)

(1) Except as provided in paragraph (2) of this subsection or in subsection (d) of this Code section [pertaining to drivers with a probationary license], it shall be unlawful for any person to operate any motor vehicle in this state after such person has received notice that his or her driver's license has been revoked [as a habitual violator], if such person has not thereafter obtained a valid driver's license. Any person declared to be a habitual violator and whose driver's license has been revoked under this Code section and who is thereafter convicted of operating a motor vehicle before the department has issued such person a driver's license or before the expiration of five years from such revocation, whichever occurs first, shall be punished by a fine of not less than \$750.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both. Any person declared to be a habitual violator and whose driver's license has been revoked and who is convicted of operating a motor vehicle after the expiration of five years from such revocation but before the department has issued such person a driver's license shall be guilty of a misdemeanor.

(2) Any person declared to be a habitual violator as a result of three or more convictions of violations of Code Section 40-6-391 within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, and who is thereafter convicted of operating a motor vehicle during such period of revocation, prior to the issuance of a probationary license under subsection (d) of this Code section or before the expiration of five years, shall be guilty of the felony of habitual impaired driving and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

Additional Provisional License Restriction Codes

- 2—Pursuant to court order 7—To/from school only
- 5—Business purpose only 8—Ignition interlock req'd
- 6—To/from medical only H—Employer vehicle only

Full list available at www.dds.ga.gov (search "restriction codes")

Text of O.C.G.A. § 40-5-58(d)(6)(A)
(applies to HV probationary licensees)

(i) Any probationary licensee violating the provisions of paragraph (4) of this subsection or operating a vehicle in violation of any conditions specified in this subsection shall be guilty of a misdemeanor.

(ii) Except as provided in division (iii) of this subparagraph, any probationary licensee violating any state law or local ordinance involving an offense listed in Code Section 40-5-54¹, 40-6-390.1², or 40-6-391³ shall be guilty of a felony and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(iii) Any probationary licensee violating any state law or local ordinance involving a felony offense listed in Code Section 40-5-54 shall be guilty of a felony and shall be punished as is provided for conviction of such felony.

Felony Suspended License

A driver's fourth and subsequent convictions within a five-year period for driving without a license or driving while the privilege to drive has been suspended, disqualified, or revoked, is sentenced as a felony pursuant to O.C.G.A. § 40-5-121. A "nolo" (no contest) plea is considered a conviction for the purposes of this code section. Drivers subject to this rule are charged/cited under the same code section as those subject to misdemeanor charges. **This rule does not apply to persons whose license has been revoked as a habitual violator. charge/cite HV driver as indicated in the habitual violator statute.**

Felony DUI

A driver's fourth DUI conviction within a ten-year period is sentenced as a felony pursuant to O.C.G.A. § 40-6-391(c)(4). However, felony DUI is not charged any differently than any other DUI charge. For the purposes of this determination, a "nolo" plea to a DUI charge are considered to be a conviction.

¹ Includes homicide by vehicle as defined by O.C.G.A. § 40-6-393, any felony in the commission of which a motor vehicle is used, hit and run or leaving the scene of an accident in violation of O.C.G.A. § 40-6-270, racing on highways and streets, using a motor vehicle in fleeing or attempting to elude an officer, or operating a motor vehicle with a revoked, cancelled, or suspended registration in violation of O.C.G.A. § 40-6-15.

² Reckless Stunt Driving including Drag Racing (40-6-186) and Laying Drags (40-6-251).

³ Includes all forms of DUI.

Colonel Christopher C. Wright
Commissioner

Charging Habitual Violators, Felony Suspended License, and Felony DUI



Guidelines for Law Enforcement

2022

Habitual Violator Defined

A “habitual violator” is anyone who has been arrested and convicted within the United States under a state or federal law or local ordinance THREE or more times within a five-year period for:

- DUI
- Homicide/feticide by vehicle;
- Serious injury by vehicle;
- Any felony in the commission of which a motor vehicle is used;
- Hit and run / leaving the scene;
- Reckless Stunt Driving or Racing;
- Using a motor vehicle to flee/attempt to elude;
- Impersonation of a law enforcement officer by use of motor vehicle or to stop/direct traffic;
- Driving with a revoked/suspended/cancelled registration; or
- Any combination of the above offenses.

The five-year time period is measured from the time of the previous arrests leading to a conviction to the time of the most recent arrest leading to a conviction. O.C.G.A. § 40-5-58.

Effect of “HV” Status

- The Department of Drivers Services determines when a person is a habitual violator.
- Once the Department of Driver Services determines that a driver is a habitual violator, that person’s driver’s license is revoked as a matter of law.
- **However, a driver determined to be a habitual violator cannot be charged as a habitual violator or for driving with a revoked license until they receive notice of their HV status.** A GCIC check of a driver should reveal:
 - ◊ If DDS has revoked a driver’s license because of a determination that the driver is a habitual violator and the date of revocation; and
 - ◊ Whether the habitual violator was provided notice of his status and, if so, the notice date.
- A driver who has not received notice of his/her HV status and license revocation cannot be charged for driving on a revoked license based on their HV status and cannot be charged with respect to any HV violations.

When Can a Habitual Violator Drive?

A person who has received notice that they are a habitual driver can **only** drive if:

- They have a probationary driver’s license under O.C.G.A. § 40-5-58(e); OR
- 5 years have passed since the revocation period began and he or she has applied for and received a new license from DDS.

Probationary Driver’s License

A person deemed to be a habitual violator can apply for and receive a probationary driver’s license only if (1) two years have passed since the revocation of their license, and (2) they meet certain additional conditions. Probationary licenses generally have conditions limiting

- Locations to which a habitual violator can drive;
- At what times a habitual driver can drive;
- The routes used; and
- The vehicle driven.

If a habitual driver presents a PDL, ensure that he or she is in compliance with the PDL’s restrictions.



Habitual violators’ PDL will look like a normal driver’s license but will have restrictions listed in the circled area on the back of the license. **Look for restriction codes 3 (interlock required and driver restrictions in place) or 4 (no interlock required, driver restrictions in place).** Persons with these restrictions may **ONLY** drive to and from work, medical care, school, driver’s ed, court-ordered driver improvement, court, probation, community service, drug and alcohol programs, and scheduled meetings of alcohol/drug abuse/addiction treatment organizations. Other common restriction codes are listed on the back of this pamphlet.

Charging Habitual Violators

The guidelines below offer guidance regarding how to charge a habitual violator who has been stopped for a traffic violation.

- Does a GCIC check or similarly reliable information show that the driver is a habitual violator?
 - ◊ If yes, proceed
 - ◊ If no, cannot charge/cite as an HV
- Does a GCIC check or similarly reliable information show that the driver has received notice of their HV status/license revocation?
 - ◊ If yes, proceed
 - ◊ If no, cannot charge/cite as an HV
- Does the driver have a probationary license?
 - ◊ If yes, proceed
 - ◊ If NO, charge based on Non-PDL Holder guidelines below
- Are you charging/citing the PDL driver with DUI, homicide by vehicle, use of motor vehicle during felony, hit and run, fleeing in a motor vehicle, or driving with revoked/suspended/cancelled registration, or reckless stunt driving?
 - ◊ If no, proceed
 - ◊ If yes, also charge as a felony HV/PDL violation under O.C.G.A. § 40-5-58(d)(6)(A) (if driver is in violation of conditions of PDL, can also charge that separately under same code section)
- Is the PDL driver in compliance with the conditions of his PDL?
 - ◊ If yes, do not charge/cite as habitual violator; charge/cite as any other driver (if PDL is expired, charge as normal expired license)
 - ◊ If no, charge/cite as misdemeanor under O.C.G.A. § 40-5-58(d)(6)(A)

Charging Non-PDL Holders

- Was license revoked LESS than five years ago?
 - ◊ If yes and license was revoked for combination of 3 DUIs, charge as felony under 40-5-58(c)(2)
 - ◊ If yes and license was revoked for any reason **other than** 3 DUIs (or if uncertain), charge as felony under O.C.G.A. § 40-5-58(c)(1)
 - ◊ If no (license revoked 5 years ago or longer), and driver still has no license, charge as misdemeanor under O.C.G.A. § 40-5-58(c)(1)