

**TRAFFIC LAW NEWSLETTER
February, 2008**

TO CHINA AND BACK

I have just returned from a 12 day trip to China. Although I love to travel, I had no desire to go to China, but since my daughter is working in Shanghai for 9 months, my wife and I decided to go. I could write a 1000 page novel about my experience, but since I don't have time or space for that, I will try to "highlight" our trip.



We visited 3 cities in China: Beijing, Xian(pronounced Shee-ahn), and Shanghai. In Beijing we took private tours to the Forbidden City, Tianamen Square, and the Great Wall. Beijing in the winter is colorless, mostly treeless and very cold. It is of course the political capital of China(think Washington, DC) while Shanghai is the business center of China(think New York). The Great Wall is incredible, the vastness of it unexplainable.

We then flew China Eastern to Xian, which was the first capital of China, and the final stop on the old Silk Road, which was the route that merchants from the Middle East took to bring back silk, jade, and other Chinese products; Xian is at least 5,000 years old, and is famous for the Terracotta Warriors. In 2,000 BC, a Chinese Emperor, in preparation of the afterlife, had a life size clay army made and entombed; the sight is unbelievable, and covers at least 3 football fields of standing army men, archers, squatting archers and cavalry! Each man has a different facial expression.

Xian is also an agricultural area known for its apples. We ate lunch at our guide's favorite place where I had the best noodles with fried eggs ever!

We ended up in Shanghai, which is a city of 18 million. (Xian was a "small" city with 7 million people) Shanghai is a combination of Chinese, French, British and American style buildings, and has everything you would want in a modern city.



We did get to interact with some Chinese, especially our private tour guides, who were female and in their twenties. Their view of Americans is mostly derived from television and the movies. One guide wanted to know if Americans tried to speak with a "British" accent, because we thought it made us sound "upper class". She got that impression from watching an episode of Friends!

TO CHINA AND BACK (continued)

I realize that it is impossible to truly understand a country by simply visiting a couple of cities for a few days. However, these are some of my "first" impressions of China:

I didn't know that China has over 500 different ethnic groups and several hundreds of dialects. A person in Beijing may not necessarily understand a person in Shanghai. Because there are so many different groups, the only way China can maintain unity is with a strong central government, whether ruled by an emperor or by the Communist Party.

Because of population control known as the "one child policy" implemented by Mao, you rarely see families with more than one child. Chinese children are referred to as "little emperors". Chinese traditionally are extremely family oriented, with Confucianism ancestor worship being a prime religious aspect; the Communists just about destroyed this tradition, and the one child policy is already creating problems in that Chinese are finding it increasingly difficult balance work with taking care of their parents and grandparents.

The younger generation of Chinese primarily are interested in making money and improving their lifestyle; they are not much interested in politics.

China is still maybe 30 years behind us in most areas of life; for example, most buildings have no central heat; pollution is terrible because of lax controls; water quality is poor; many, many Chinese smoke, and while we found some non smoking areas in restaurants, I saw no "no smoking" signs except in airplanes.

In Shanghai, our hotel was next to a Porsche and Maserati dealership; we also saw the magnetic train that goes over 200 mph; yet I also saw people riding dilapidated bicycles to work, and saw men pulling ox carts loaded with produce.

Someone asked me if I liked China. I cannot say I "liked" China, but I can say I was glad I went, and would encourage everyone who has a chance to go.

PARENTS AND TEENS: READ THIS!!!

When a driver is under 21 years old, they need to be aware that their driving privilege can be suspended very easily. Keep this article as a reminder.



Mandatory Suspensions for Drivers Under 21 Years of Age

O.C.G.A. §40-5-57.1

The offenses covered in this section have a different effect when committed by those defendants who are under 21 years of age at the time of conviction. These offenses are:

- Hit and run or Leaving the scene of an accident, O.C.G.A. §40-6-270 (also HV contributor)
- Racing on highways or streets, O.C.G.A. §40-6-186 (also HV contributor)
- Using a motor vehicle in fleeing or attempting to elude an officer, O.C.G.A. §40-6-395 (also HV Contributor)
- Reckless driving, O.C.G.A. §40-6-390
- Any offense for which four or more points are assessable under O.C.G.A. §40-5-57 (c);
- Improper passing on a hill or a curve, O.C.G.A. §40-6-45 (a) (1)
- Unlawful passing of a school bus, O.C.G.A. §40-6-163
- Exceeding the speed limit by 24 mph or more, O.C.G.A. §40-6-181
- Aggressive driving, O.C.G.A. §40-6-397
- Purchasing an alcoholic beverage, O.C.G.A. §3-3-23 (a) (2)
- Misrepresenting age for purpose of illegally obtaining any alcoholic beverage, O.C.G.A. §3-3-23 (a) (3)
- Misrepresenting identity or using false identification for purpose of purchasing or obtaining any alcoholic beverage, O.C.G.A. §3-3-23 (a) (5)
- Driving Under the Influence, O.C.G.A. §40-6-391
- Accumulation of 4 or more points in any 12 month period by a person under the age of 18

NOTE THAT IF THE DRIVER IS 16 OR 17, THEN AN ACCUMULATION OF 4 OR MORE POINTS IN A 12 MONTHS PERIOD RESULTS IN LICENSE SUSPENSION. THAT MEANS, FOR EXAMPLE, THAT ONE SPEEDING TICKET AND ONE STOP SIGN VIOLATION RESULTS IN A SUSPENSION.

ANATOMY OF A DUI STOP

I am constantly asked what a person should do if stopped after drinking; it is always very difficult to give specific advice because each case is different, but in general a traffic stop will generally go as follows:



The Police (P) will ask for your license, which you should provide to him.

P: Have you been drinking? Answer: Either no, or yes, I had a couple.

P: Where are you coming from? Answer: Am I under arrest? I would prefer not to answer any more of your questions.

P: Please step out of your car. You should comply with this command

P: Would you mind performing some field tests to determine if you are ok to drive? Answer: I would prefer to exercise my rights and not do anything on the side of the road. I am willing to go take a blood test if you really think I am impaired.

This puts the burden on the police to make a decision as to whether he has enough evidence to arrest you for DUI. Currently, case law in Georgia indicates that the smell of alcohol, admission of drinking, bloodshot eyes and slurred speech would be enough to at least justify an arrest.

IF the officer does decide to arrest you, he will handcuff you and place you in the back of the car; **DO NOT RESIST ARREST!**

The officer will then read you the IMPLIED CONSENT WARNING, as follows:

“Ga law requires you to submit to a chemical test of your blood, breath, urine, or other bodily substance for the purpose of determining if you are under the influence of alcohol. If you refuse to submit to this testing, your license will be suspended for one year. A refusal to submit to testing may also be introduced into evidence against you at trial. If you submit to testing and your blood alcohol level is above a .08 grams, your license may be suspended for one year. Once you have submitted to the State Chemical test, you are entitled to an independent tests of your blood, breath, urine or other bodily substance by qualified personnel of your own choosing. Will you submit to a chemical test of your breath under the Ga Implied Consent law?”

At this point in time you have a very important decision to make; If you agree to a breath test, and you register above a .08, you have probably convicted yourself. On the other hand, if you refuse to take the test, the officer could pursue suspending your license for a full year with no limited permit at all! If you truly have had no more than 3 or 4 drinks you probably should agree to take the State's test and then request an independent blood test at a local hospital(you will have to be able to pay for this); alternatively, ask to be taken to another police department for an independent breath test. If you have had more than 4 or 5 drinks you are probably above the legal limit anyway.

While in custody, the officer will ask you certain questions about whether you want someone to pick up your car, your address, etc. These conversations are usually audio taped; as to general information questions, you may want to answer them as this will show you are competent enough to remember certain things; on the other hand, **DO NOT** make comments such as, “If you let me go I will never do this again”, or “I'm sorry officer”, or as I have heard on occasion, “I'm so stupid for doing this, this is not my first DUI”. These

ANATOMY OF A DUI STOP (continued)

are comments that the officer can use against you in court to show an admission of guilt. In borderline DUI cases, it is extremely important that the defendant not give the officer any voluntary evidence of guilt. Field tests on the side of the road are designed to show someone as impaired. Likewise, verbal statements can also be used to show guilt. Other than very brief answers to basic questions, you should limit your conversation with the cop. MAKE him or her come up with evidence to convict, DON'T provide them with the evidence!

The best advice I can give you is to never have more than 2 drinks before driving; that way you can be assured that you will not be above the legal limit.

MY 4 SIMPLE RULES IF YOU ARE STOPPED BY POLICE

1. DON'T ADMIT DRINKING (OR ANYTHING ELSE)
2. DON'T DO ANYTHING ON SIDE OF ROAD
3. DO TAKE BREATH TEST IF YOU'VE REALLY HAD 2 DRINKS
4. DON'T TAKE TEST IF MORE THAN 2 DRINKS*



* Refusing to take the State test (at jail or hospital) could result in losing your license for a full year; the only way of getting the license back earlier is to win the DUI; on the other hand, if the officer does not try to suspend the license because of a refusal, the State does not have a blood alcohol level to use against you!

MY 1 SIMPLE RULE FOR PARENTS OF CHILDREN UNDER AGE 21

If your child gets a traffic ticket, regardless of how minor you may think it is, DO NOT PAY TICKET WITHOUT CALLING ME!!!

WHAT DO I DO IF STOPPED BY THE POLICE??

For the answer, [see my page on "your legal rights"](#) and [print out a copy](#) to keep in your car!



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Practice dedicated exclusively to defense of those accused of DUI, serious traffic offenses, and drug offenses.
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