

**TRAFFIC LAW NEWSLETTER**  
**June, 2007**

**THE U.S. CONSTITUTION:**

**THE COURTS**

Article III of the Constitution establishes the Supreme Court, and authorizes Congress to establish all the other lower courts.



Under the Constitution, all federal judges serve life terms, and can only be removed by death, self retirement, or impeachment. The States have different ways of appointing judges. For instance, most judges in Georgia are elected in non partisan races, although there have been attempts recently (by conservative republicans) to make judicial races in Georgia partisan.

These "Life terms" for Federal judges have been a subject of debate from the very beginning of the country. How are judges to apply the law in a way that is consistent with democratic self government? How do they interpret and not MAKE the law?

One group of legal scholars follows the theory of Judicial Restraint. Under this philosophy, judges must show deference to popularly elected officials and previous court decisions, and thus be slow to make drastic changes in public policy.

The other group advocates Judicial Activism which believes judges play an important role in public policy and are less reluctant to overturn laws and prior court decisions. It is important to note that judicial activism and restraint are not linked to any political philosophy. Judges, both liberal and conservative, can exercise both judicial restraint and can issue activist decisions.

Linked to the questions of judicial activism are theories about how judges should interpret the Constitution. Some advocate a "strict construction" theory, meaning judges should limit themselves to a narrow interpretation and avoid enlarging the powers of government. Others, however, are proponents of "loose construction", which maintains the Constitution gives general guidance about basic principals but allows flexibility for government to adapt to specific crises. Thomas Jefferson was an advocate for strict construction, and John Marshall was a proponent of loose construction. And as we surely see when new justices are up for appointment, the debate goes on to this day.

**"CAN I GET MY RECORD EXPUNGED?"**

At least once a month I will get a call from someone who wants to know if their record can be "expunged."



The word "expungement" legally means that an arrest record is either modified or deleted.

The importance of expungement usually occurs when someone is denied a job because a criminal background check reveals an arrest of some sort or another.

So to set the record straight, here is the truth about "expungements" in Georgia:

First, you need to understand that we are talking about arrest records. Any time you are arrested and fingerprinted, that arrest goes into both a State and federal computer information system. We are NOT talking about driving records, which are records held by the Department of Driver's Services, and mainly deal with moving traffic violations or in some cases drug cases that result in license suspension. Once a case is on your driving record, it generally stays on there for life.

There are only two grounds in Georgia which call for expungement and those grounds are found in Code 35-3-37; Expungement is available for:

(d)(1) An individual who was:

(A) Arrested for an offense under the laws of this state but subsequent to such arrest is released by the arresting agency without such offense being referred to the prosecuting attorney for prosecution; or

(B) After such offense referred to the proper prosecuting attorney, and the prosecuting attorney dismisses the charges without seeking an indictment or filing an accusation may request the original agency in writing to expunge the records of such arrest, including any fingerprints or photographs of the individual taken in conjunction with such arrest, from the agency files. Such request shall be in such form as the center shall prescribe. Reasonable fees shall be charged by the original agency and the center for the actual costs of the purging of such records, provided that such fees shall not exceed \$50.00.

(continued....)

“CAN I GET MY RECORD EXPUNGED?” (continued)

Under 35-3-37 (7E), an expungement may occur after indictment or accusation after the Defendant has successfully completed a pretrial diversion program, and the program specifically provides for expungement of the arrest record.

It is also important to know that a “not guilty” verdict is not a sufficient cause for expungement. So, in many cases such as drug cases or shoplifting cases, it may behoove the Defendant to enter into a pretrial program just to get the arrest deleted.

Expungement is not available for so called “first offender” or “conditional discharge” pleas. Expungement is not available for DUI cases either. So the bottom line is that deletion of a person’s arrest record is extremely rare in Georgia.

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**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!!!**

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**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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