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Areas of Interest: IA Planning and Administration; IC Transportation Law; IIA Highway and Facility Design; IVA Highway Operations, Capacity, and Traffic Control; VI Public Transit; VII Rail

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Photographic Traffic Law Enforcement

A report prepared under NCHRP Project 20-6, "Legal Problems Arising Out of Highway Programs," for which the Transportation Research Board is the agency coordinating the research. The report was prepared by Daniel T. Gilbert, Nina J. Stnes, and Brandon E. Bell. James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.

THE PROBLEM AND ITS SOLUTION

State highway departments and transportation agencies have a continuing need to keep abreast of operating practices and legal elements of specific problems in highway law. This report is a new paper, which continues NCHRP's policy of keeping departments up-to-date on laws that will affect their operations.

This paper will be published in a future addendum to *Selected Studies in Highway Law* (SSHL). Volumes 1 and 2 deal primarily with the law of eminent domain and the planning and regulation of land use. Volume 3 covers government contracts. Volume 4 covers environmental and tort law, inter-governmental relations, and motor carrier law. An expandable format permits the incorporation of both new topics as well as supplements to published topics. Updates to the bound volumes are issued by addenda. The 5th Addendum was published in November 1991. The next addendum is scheduled for mid 1997. Between addenda, legal research digests are issued to report completed research. Presently the text of SSHL totals over 4,000 pages comprising 75 papers.

Copies of SSHL have been sent, without charge, to NCHRP sponsors, certain other agencies, and selected university and state law libraries. The officials receiving complimentary copies in each state are the Attorney General and the Chief Counsel and Right-of-Way Director of the highway agency.

APPLICATIONS

The purpose of this research is to examine evidentiary rules in the states governing the admissibility of photographs and video tapes for traffic enforcement, and to develop model laws and rules that can be used by those states or local jurisdictions when adopting photographic traffic enforcement laws and regulations.

This report will be useful to attorneys, administrators, legislators, and policy analysts who are planning, adopting, revising, or implementing such a program.

CONTENTS

I. INTRODUCTION AND SCOPE OF REPORT 3

II. BACKGROUND OF PHOTOGRAPHIC ENFORCEMENT 3
- A. Equipment Descriptions 3
- B. Equipment Applications 3
  - 1. Speed Enforcement 3
  - 2. Signal Light Violations 4

III. COMPARATIVE ANALYSIS: ADMISSIBILITY OF PHOTOGRAPHIC EVIDENCE 4
- A. General Admissibility 4
- B. Revising Existing State Laws to Meet Evidentiary Requirements 5
  - 1. Uniform Vehicle Code 7
- C. Legal Issues 8
  - 1. Pictorial Testimony Theory versus the Silent Witness Theory 8
  - 2. Advance Notice 9
  - 3. Service of Process 9
  - 4. Right to Privacy 9

IV. MODEL RULES AND STATUTES 10
- A. Legal and Policy Implications 10
- B. Model Laws—Drafting Suggestions 10
- C. Enabling Statutes 11

V. SUMMARY: PRACTICAL STRATEGIES 12

ENDNOTES 12

APPENDIX A: SYNOPSIS OF STATE LAWS ON PHOTOGRAPHIC ENFORCEMENT OF TRAFFIC LAWS

APPENDIX B: SYNOPSIS OF STATE LAWS RELEVANT TO PHOTO ENFORCEMENT ENABLING LEGISLATION

APPENDIX C: SUMMARY OF STATE ATTORNEY GENERAL OPINIONS REGARDING PHOTO TRAFFIC ENFORCEMENT EQUIPMENT

APPENDIX D: SUMMARY OF OTHER STATE ATTORNEY GENERAL OPINIONS RELEVANT TO THE IMPLEMENTATION OF PHOTO TRAFFIC ENFORCEMENT

APPENDIX E: EXAMPLES OF ENACTED AND PROPOSED PHOTO TRAFFIC ENFORCEMENT LEGISLATION

APPENDIX F: UNIFORM VEHICLE CODE SECTIONS

APPENDIX G: MODEL LAW

Photographic Traffic Law Enforcement

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I. INTRODUCTION AND SCOPE OF REPORT

Automated enforcement of traffic laws and rules using photographs and videotapes can be especially effective in monitoring highway-railroad grade crossings, enforcing speed limits, and ticketing red light violators.[1] With numerous law enforcement responsibilities, police are finding it more and more difficult to provide the manpower to enforce traffic laws, especially at such places as railroad grade crossings.[2]

This report will provide a background description of photographic traffic enforcement equipment and a discussion of its application for traffic law enforcement. In addition, the report will serve as a legal reference for legislators, policymakers, and lawyers. Specifically, the report will address the use of manned and unmanned devices to monitor speeding and highway-railroad crossings within the context of the law. The report will also discuss the policies underlying the admissibility of such evidence in court proceedings. Furthermore, the report will provide a comparative analysis of the significant photographic traffic enforcement laws in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. It will examine proposed model rules, statutes, and amendments to maximize the use of photographic and videotape evidence. Appendices A and B contain a research guide for the drafter considering photographic enforcement legislation in his or her state. Appendix F provides representative legislation that a drafter can use as a guide for developing a statute or ordinance within his or her state or local community.

This study also examines those legal issues that are likely to be encountered as photographic enforcement technology is increasingly used in the detection, enforcement, and prosecution of the traffic offender. The legal issues surrounding the use of photographic traffic enforcement devices in the United States are multifaceted and complex. The following analysis will begin by focusing on the significant evidentiary concerns likely to be encountered in seeking admission of evidence produced by these devices. This study will examine the following: (1) the admissibility of photographic traffic evidence, (2) the existing state laws or ordinances permitting photographic enforcement devices, (3) the specific statutory or regulatory revisions that will be necessary in those states currently without enabling mechanism, (4) the states that prohibit photographic enforcement, and (5) the responses to the constitutional and legal challenges that are likely for those states seeking to implement a photographic traffic enforcement program.

II. BACKGROUND OF PHOTOGRAPHIC ENFORCEMENT

Photo-radar devices use familiar pieces of equipment, such as a camera, radar, and electronic controls, in a new fashion. Although relatively new in the United States, photo-radar equipment has been used throughout Western Europe, Scandinavia, and Australia for over 30 years.[3] For speed enforcement, most photo-radar devices employ the same technology that police use to detect speeding violations. The technology is known as the Doppler effect, which essentially measures the change in frequency of sound waves, transmitted by a radar unit, bounce off the moving vehicle and are received by the radar unit. The speed is calculated by measuring the change in frequency over a specific time period and the distance traveled.[4]

A. Equipment Descriptions

There are various manufacturers of automated speed enforcement devices (also referred to as automated photographic speed enforcement) that have already been demonstrated and discussed at length in other studies.[5] The four main manufacturers, who are all based in Europe, are Gatsometer, Multanova, Traffipax, and Trafikanalys. Another manufacturer, AWA Defence Industries, is located in Australia. American Traffic Systems (ATS), formerly known as Traffic Monitoring Technologies, is the only company in the United States that makes its own equipment. ATS equipment is used by Paradise Valley, Arizona, as well as Pasadena, California.[6] The other United States–based companies have licenses to import equipment; for example, U.S. Public Technologies imports the Gatsometer device, which is used for railroad grade crossing enforcement along the light rail transit (LRT) system in Southern California, as well as for speed enforcement in National City, California.[7] Pilot projects in different states have employed various devices in conducting their own field demonstrations. For example, the Automated Speed Enforcement Pilot Project for the Capital Beltway around Washington D.C., tested five photo-radar devices in preparing its evaluation.[8] The Los Angeles County Metropolitan Transportation Authority (MTA) conducted several demonstration projects of different equipment prior to selecting U.S. Public Technologies as its vendor.[9]

B. Equipment Applications

1. Speed Enforcement

Depending on the enforcement application, a photo-radar unit or videotape camera can be mounted on a tripod, in a cabinet, on a pole, on an overhead structure, or in the back of a vehicle. Some devices can be mounted directly on a vehicle's dashboard. Most devices are operated from a stationary position, but some can be operated while the vehicle is moving. In addition, some devices have the ability to simultaneously monitor approaching and departing traffic. This can be a valuable feature in instances where a vehicle may have only a rear license plate. The automated photo-radar equipment generates a photograph of the vehicle, its driver, and either the front or rear license plate. The camera is hooked up to the radar unit, which triggers the camera to take a picture once the radar detects a speeding vehicle.

Paradise Valley, Arizona, became the first town in the United States to use photo-radar as an enforcement tool. Implemented in 1987, the system combines a camera, a microcomputer, and a radar system that is triggered when a car exceeds a designated speed limit. Warning signs are posted to advise motorists that photo-radar is in use. The system unit is mounted in a marked utility vehicle at the side of the road. Police conduct the initial unit setup, during which the date, time, weather conditions, and the posted speed limit are recorded, and then conduct a calibration. They also set the threshold speed, which determines at what speed vehicles will be photographed. A vendor representative is responsible for remov-

ing the film, processing it, and returning it to Paradise Valley within 2 days. Paradise Valley mails a citation to the vehicle owner within 2 weeks of the violation. A photograph is not included with the citation, but is available in the event the citation is challenged. If the vehicle owner identifies another driver as being behind the wheel at the time of the violation, a citation is issued to that person within 30 days.

Pasadena, California, used the ATS system in its initial pilot test program and with its subsequent enforcement program, which began in 1988. The system unit was originally operated out of an unmarked van. After dismissing almost 800 speeding citations based on photos taken from the van, a Pasadena judge said that photo radar should be operated from a clearly marked vehicle.[10] Although all the legal issues were resolved, the program received low-level acceptance by police and was not taken seriously by citizens. Both enforcement officials and judges viewed the largest threat to be the lack of recourse for ignored citations.[11] The word on the street was that a driver could get away with not paying the photo-radar speed citation.

National City, California, decided to learn from Pasadena's experience and used another system to avoid the perception that traffic law enforcement would be delegated to a private company. They contracted with U.S. Public Technologies and started a mass media campaign to prevent a negative public reaction. The photo-radar system is operated from a marked police vehicle. A sign posted at the entrance to the city warns that speed limits are enforced by photo-radar. In addition, once a vehicle is clocked traveling in excess of the speed limit, a variable message sign instantly notifies the driver of his or her speed. National City processes its own citations, which are mailed to the registered owner of the vehicle. As in Paradise Valley, the owner can contest the citation and identify someone else as the driver.

2. Signal Light Violations

Automated traffic enforcement equipment can also be used to detect signal-light violations at highway-railroad grade crossings, signalized intersections, and metered freeway ramps. The detection methods and systems used in the automated enforcement of these violations are discussed below.

In the Los Angeles Metro's Blue Line Grade Crossing Improvement Program (Metro Blue Line), high-resolution cameras are employed to photograph motorists who drive under or around gates at railroad-highway grade crossings. The camera is mounted in a bullet-resistant cabinet on a 12-foot-high pole. The cameras are triggered when a vehicle crosses over inductive loop detectors in the pavement after the gates have been lowered. Two photographs of the vehicle, showing its front license plate and the driver, are taken. The photographs record the date and time of the violation in addition to the speed and the time elapsed (in seconds) since activation of the red flashing lights at the crossing. Signs posted at all street approaches to the crossing warn motorists that photo citations will be issued to violators.[12]

During the demonstration phase of the Metro Blue Line project, a group of Harvey Mudd graduate students developed a system that used a digital video camera based on a charge-coupled device. The camera recorded left-turn violations and transmitted the images using a cellphone modem. The need for better camera resolution and effective image enhancement software, however, made this system impractical for the entire project. The Metropolitan Transit Authority then hired U.S. Public Technologies to install camera systems at the remaining 17 crossings along the Blue Line.[13]

In addition, Metrolink (a commuter rail line) and the Union Pacific and Southern Pacific railroads conducted an automated enforcement system demonstration program in the city of Pomona, California. Several years ago, the Burlington Northern Railroad installed an automated enforcement system to monitor a state highway route through Jonesboro, Arkansas. This railroad-funded system, which relied on Polaroid-type photographs, was in use for about 3 years. It was discontinued because of the sparse number of citations issued. Charlotte, North Carolina, has been working with the state highway department on a research and development project that uses video equipment to study driver behavior at railroad crossings. The project goal is to change driver behavior rather than to act as an enforcement tool.[14]

No commercially available equipment has been found in use for automatic enforcement of violations on metered freeway ramps or on bypass lanes for metered freeway ramps. Several vendors of automated speed enforcement equipment indicated that such detection systems could be assembled with existing technology. For example, the systems would use roadway sensors (inductive loops, cables, or tubes) for vehicle detection and 35-mm or videotape cameras to record the evidence of the violation. This technology is likely to be developed in response to growing traffic enforcement needs and safety concerns.

Several manufacturers produce red-light violation detection equipment. These manufacturers also produce automated speed enforcement equipment. There are approximately six red-light violation systems (more than six if the various models of each manufacturer are counted) that use roadway sensors (inductive loops, cables, or tubes) for detecting vehicles and 35-mm cameras for recording photographic evidence of the violation. Several cities are currently considering or testing different traffic light photo-monitoring systems. For example, the Arizona cities of Tempe and Paradise Valley are considering adding this to their existing speed enforcement programs. Los Angeles and other municipalities in California have the statutory authorization to use photo-monitoring at traffic control signals. Two Florida municipalities are testing traffic light photo-monitoring systems. Virginia recently passed a statute authorizing demonstration projects for photo-monitoring at traffic lights.

III. COMPARATIVE ANALYSIS: ADMISSIBILITY OF PHOTOGRAPHIC EVIDENCE

A. General Admissibility

In assessing the admissibility of the photographic or videotape traffic enforcement evidence, the courts must evaluate the scientific principles underlying the use of the specific traffic enforcement device sought to be admitted. Some courts will restrict their review to the traditional evidentiary test for relevancy. Under this approach, scientific evidence is admissible if the chosen expert is qualified and the expert's opinion is relevant, if the evidence will help the fact finder, and if the evidence is not so unduly prejudicial as to outweigh its probative value.[15]

Other courts will apply the more stringent *Frye* standard when assessing the admissibility of evidence derived from a new or novel scientific technique or device. Based on *Frye v. United States*,[16] this standard requires that the theory underlying the technique or device, as well as the technique or device, be "sufficiently established to have gained general acceptance in the particular field in which it belongs."

In *Frye*, the U.S. Court of Appeals for the District of Columbia Circuit evaluated the admissibility of a primitive polygraph technique and held as follows:

> Just when a scientific principle or discovery crosses the line between experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while the court will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.[17]

Employing this test, the court found that this polygraph technique had not yet attained the appropriate scientific acceptance to justify its admission as evidence. Therefore, in many states that continue to follow the *Frye* test, the specific photographic or videotape traffic enforcement device and the principles underlying its use must be generally accepted in the relevant scientific community. In determining the relevant scientific community, the courts only consider those scientists "whose scientific background and training are sufficient to allow them to comprehend and understand the [specific scientific] process and form a judgment about it."[18] The scientists must at least "be expected to be familiar with its [theories and techniques] use."[19]

After the specific scientific community has been determined, the court must decide if the procedure, technique, and principles are generally accepted within the appropriate community of scientists. For the principle, technique, or procedure to be generally accepted, "the test is not whether a particular procedure is unanimously endorsed by the scientific community, but whether it is generally accepted as reliable."[20] Generally, the courts require that the agreement must be by a "substantial section of the scientific community."[21]

Although the automated traffic enforcement technology is novel in the United States, the underlying principles of physics and electronics used in the equipment are not new and have been well accepted by the courts. For example, the courts have long accepted radar as a reliable device to measure speed with a tolerable accuracy.[22] Photographic evidence and videotape evidence is generally admissible upon the tendering party establishing to the court that the picture or videotape is a fair and accurate representation of the scene or object that it depicts. The automated enforcement technology, however, registers the date and time while simultaneously visually capturing the violator and vehicle without the presence of an operator who can later testify in court. Many courts, within their discretion, have admitted such evidence under the "silent witness theory," which is discussed later in this report. Under this theory, the visual evidence is admitted upon establishment of the following : (1) testimony establishing that the videotape had not been altered or manipulated; (2) testimony establishing the date and place the videotape was taken; and (3) testimony establishing the identity of the relevant participants depicted.[23]

Under the *Frye* test it is likely that automated traffic enforcement equipment will be allowed into evidence because of the general acceptance of the underlying technology. The courts will, however, examine each of the devices and their underlying principles in evaluating their admissibility and weight. If, on the other hand, the court follows the traditional relevancy test mentioned earlier, a less stringent standard will be applied.

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[24] the Supreme Court was guided by this view and the liberal premise of Federal Rule of Evidence 402, which states, "[a]ll relevant evidence is admissible...."[25] In *Daubert*, two minor children and their parents sued Merrell Dow Pharmaceuticals, claiming that the children's birth defects were caused by the mother's ingestion of Benedectin, an anti-nausea drug marketed by Merrel, during pregnancy.[26] Expert testimony established that in more than 30 published studies involving over 130,000 patients, maternal use of Benedectin during the first trimester of pregnancy was not shown to be a risk factor for human birth defects.[27] In spite of these studies, plaintiffs used other expert witness testimony to sustain their contention that Benedectin produced the children's birth defects.[28] The plaintiffs' experts based their testimony on one unpublished study that found a link between Benedectin and birth defects. The United States District Court granted summary judgment for the defendant, finding that the study was unpublished, was not subject to peer review, and could not meet the *Frye* test of "general acceptance." The Supreme Court, however, vacated the ruling and unanimously held (Parts I and IIA of the Court's opinion) that Federal Rule of Evidence 702 superseded the Frye test for cases in federal court.[29] Nothing in Rule 702 requires "general acceptance" of the "scientific, technical, or specialized knowledge" sought to be admitted as evidence, so the Court reasoned that "general acceptance" is an inappropriate requirement to admission under Federal Rule 702.[30] The Court stated, "general acceptance is not a necessary precondition to the admissibility of scientific evidence."[31] The Court takes the position that the trier of fact, not a specialized community, should determine evidentiary soundness. The Court reasoned, "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."[32]

Although the *Daubert* decision is not binding on state courts, in light of modern criticism of the Frye test,[33] several states have already abandoned use of Frye, and it is likely others will follow.[34] The trier of fact, rather than the relevant expert community, will ultimately decide the place of novel scientific or technical knowledge in the court.

The photo-radar unit, or similar photographic or videotape speed enforcement equipment, combines two devices, whose products have separately been well accepted as evidence by the courts—the photograph or videotape and the speed measurement.[35] The admissibility by the courts of computer simulation and computer animation certainly adds credence to the likelihood that the use of similar technology in traffic enforcement will become acceptable evidence.[36]

The use of videotape evidence for traffic enforcement purposes may encounter the same arguments presented against motion pictures when they were first introduced. In early cases, the attorney argued that there was a possibility for fabrication or distortion[37]. Older decisions therefore required an elaborate foundation testimony, detailing the methods of filming, processing, and displaying the film.[38] It is likely, however, that the validity of the evidence will rest on testimony or whether it can be established that the picture or videotape fairly and accurately depicts the face, car, or other things actually observed at the time.[39] Whether a theory or device provides an accurate account of reality is a factual determination for the trier of fact.

B. Revising Existing State Laws to Meet Evidentiary Requirements

For automated speed, railroad grade crossing, or similar photographic traffic enforcement equipment to be acceptable in state courts, several requirements must be met:

(1) The driver's face will need to be identifiable unless the state has developed a statutory scheme that creates a presumption of liability on the owner by identification of the vehicle and registration or license plates;

(2) The license plate number and state need to be readable from the photograph;

(3) Vehicle speed or image of the offense (e.g., railroad grade crossing or control signal violation), as well as other enforcement data (e.g., the date, time, and location of the offense), must be clearly visible on the photograph or videotape;

(4) A police officer, monitoring the equipment, will possibly need to testify that the photograph was a fair and accurate depiction of the vehicle;

(5) Expert testimony may be required to establish the scientific reliability and trustworthiness of the evidence;

(6) An enabling statute that meets the legal and constitutional standards (or a carefully drafted ordinance in states where an enabling statute is unnecessary) must exist;

(7) The instrument must be periodically certified in accordance with any performance specifications/test protocols set forth by the appropriate state agency;

(8) Evidence will need to be recorded that the instrument was working properly at the time of the offense; and

(9) The officer operating and monitoring the instrument will need to be well-trained and experienced.[40]

Each of these requirements is discussed at length below.

(1) We cannot overemphasize that identification of the driver's face and the vehicle will need to be made unless the state has developed a statutory scheme that creates a presumption of liability on the owner by identification of the vehicle and license plates. Many states' laws provide that the driver must be identified in speeding and related traffic prosecutions. For example, most states have speed laws similar to the *Uniform Vehicle Code*, which provides that "no person shall drive at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing," or similar provisions providing that "no person shall drive...at a speed in excess of such maximum limits."[41] Several states have now created "owner liability" statutes, which place the burden on the owner to establish that he or she was not driving the vehicle at the time of the alleged offense. These "owner liability" statutes[42] create the "inference,"[43] "rebuttable presumption,"[44] or "prima facie evidence"[45] that the driver was the owner of the vehicle. Examples of each type of statute follow.

Arkansas.—Arkansas law creates the inference that the driver is the owner of the vehicle involved in a speeding prosecution. It states, "...proof that the particular vehicle described in the citation...was in violation of this subchapter, together with proof that the defendant named in the citation...was at the time of the violation, a registered owner of the vehicle, shall constitute, in evidence, a justifiable inference that the registered owner of the vehicle was the driver of the vehicle at the time of the violation."[46]

Delaware.—Delaware creates a rebuttable presumption that the owner of a vehicle that passes a stopped school bus is liable for the violation.[47] The burden of persuasion is then placed on the owner to establish that he or she was not the operator of the vehicle at the time of the offense.

Connecticut.—Connecticut law also creates a rebuttable presumption for speeding offenses. Under Section 14-107, whenever there is a speeding violation, proof of the violating vehicle's registration number is prima facie evidence in a subsequent prosecution that the owner was the operator at the time of the infraction. This owner liability provision also applies to the state's parking and stop-for-school bus statutes, among others.

Colorado.—Some states have an "owner liability" parking statute that, if applied to speeding violations, would solve the driver identification hurdle to photographic speed enforcement. An example is Colorado, which does not have similar laws in speeding, railroad grade crossing, and other traffic violations. Colorado's parking statute, Section 42-4-1209, creates a rebuttable presumption that the owner of a violating vehicle is liable for the parking violation.

(2) Identification of the driver registration or license plate and the issuing state needs to be made from the photograph. For example, California law requires that the "automated rail crossing enforcement system" be designed to obtain a "clear photograph" of a vehicle's "license plate and the driver of the vehicle." The issue of whether a photograph or videotape is "clear" will largely be decided by the courts on a case-by-case basis. This analysis will essentially determine whether the image in the photograph provides a reasonably clear or accurate depiction of the motorist and his vehicle. A photograph, such as one depicting an accident scene or the condition of a person, object, or place, must first be shown to be an accurate portrayal of the subject matter reproduced in the photograph.

(3) Vehicle speed or image of the offense (e.g., railroad grade crossing or control signal violation), as well as other enforcement data (e.g., the date, time, and location of the offense), must be clearly visible on the photograph or videotape. Many courts provide that if the videotape is a "fair and accurate representation" of events that occurred, that all voices on the videotape were recognizable, and that the tape has not been changed, altered, or deleted in any way, it may be admitted into evidence.[48]

Most photographic equipment will digitally display the time, date, and location of the equipment. Some states, such as California, do not statutorily require that the date, time, and place be electronically displayed, although as foundation for the admissibility of such evidence it is clear that some testimony would be required.

(4) A police officer monitoring the equipment will need to testify or attest by affidavit that the photograph was a fair and accurate depiction of the vehicle. In Connecticut, the legislature has made the police officer's testimony a requirement by state statute. Specifically, Section 14-219c of the Connecticut code establishes a prima facie presumption of accuracy sufficient to support a speeding conviction for any "speed-monitoring device approved by the commissioner of public safety" upon testimony by a competent police officer that

- The operating officer has adequate training and experience using the device;
- The device was in proper working condition at the time of arrest, established by proof that suggested methods of testing the device were followed;
- The device was used in an area where road conditions provide a minimum possibility of distortion;
- If moving radar was used, the speed of the patrol car was verified; and
- The device was expertly tested within a reasonable time following the arrest, and such testing was done by means that do not rely on the internal calibrations of the device.

A unique feature of New York traffic law is its traffic control signal monitoring provision. New York Vehicle Traffic Law statute, Section 1111-a, permits cities with a population of one million or more to adopt a program imposing liability on the owner of a vehicle for failure to comply with traffic control signals. The statute authorizes the use of a vehicle sensor device that works simultaneously with a traffic control signal to automatically produce two or more "photographs... microphotographs...images" of each vehicle at the time the vehicle commits a violation.[49] A sworn certificate by a city technician based upon inspection of the pho-

tographs, microphotographs, videotape, or other recorded images produced by a monitoring system is prima facie evidence of the facts contained therein.[50]

(5) Expert testimony may be required to establish the scientific reliability and trustworthiness of the photographic or videotape evidence until it becomes a generally accepted method of establishing railroad crossing or speed limit violations, or other traffic offenses. Some courts may require the testimony of an expert witness who can establish the scientific reliability of the instrument, while others may apply the law of the *Daubert* decision.

(6) An enabling statute must meet the legal and constitutional standards. In states where an enabling statute is unnecessary, a carefully drafted ordinance will be needed. The New York law is an excellent example of a statute that meets these tests. Furthermore, the need for an officer to monitor the instrument was eliminated under New York law.

The owner has an affirmative defense if the vehicle was reported stolen prior to the time of the violation.[51] Lessors are exempt from liability if they prove that the violating vehicle was leased at the time of the violation and if they identify the lessee.[52] Under Section 1111-a(b), there is no owner liability if a driver who is not the owner is convicted of the violation.

Liability as an owner shall not be deemed a conviction-as-operator for an owner's driving record or for insurance purposes.[53] An owner found liable under this section who was not the driver of the violating vehicle can bring an action for indemnification against the driver.[54]

When a violation occurs, the city having jurisdiction or its designee sends a notice of liability to the violating vehicle's owner by first-class mail. The notice must contain the vehicle's registration number, the location, date, and time of the violation, and the identification number of the camera that recorded the violation. The notice must provide information about how the owner can contest the citation and must warn the owner that failure to contest results in a default judgment against the owner.[55] This experimental program, which was effective until December 1, 1996, could be an excellent model for the drafting of an enabling statute for photographic traffic enforcement.

(7) Periodic certification of the instrument will need to be made in accordance with any performance specifications/test protocols set forth by the appropriate state agency. As has long been the case with radar, the reliability of the photographic technology will be a critical factor in the court's admission of it as evidence.[56] Sound performance protocols that meet engineering and scientific standards of accuracy will help to ensure this objective will be met.

(8) Evidence must be provided that the instrument was working properly at the time of the offense. For example, Section 14-219c of the Connecticut statute requires evidence that the device was expertly tested within a reasonable time following the arrest, and that this testing was done by means that do not rely on the internal calibrations of the device, in order to support a "prima facie presumption of accuracy sufficient to support a speeding conviction."

(9) The officer operating/monitoring the instrument will need to be well-trained and experienced.[57] As mentioned, acceptability by the courts will require that law enforcement officers are adequately trained to operate the equipment. To ensure their acceptance, "certification procedures and training programs will need to be developed for law enforcement agencies."[58]

To be effective, the authors believe that automated traffic enforcement will require an inference or presumption legislatively conferred that the owner of the vehicle was the driver at the time of the alleged infraction. This presumption would be rebuttable in that the driver would be given an opportunity by affidavit, testimony, or other evidentiary means to disprove that he was the driver at the time of the offense. The notice of the violation must be served promptly after the violation, with notice of his evidentiary hearing.

The legislation most likely to meet the constitutional considerations are those that maintain civil sanctions, such as fines, for violations of minor traffic offenses, such as speeding.[59] In unmanned photographic traffic enforcement, the presumption that the owner was the driver of the vehicle becomes a significant factor in the analysis of the feasibility of photographic enforcement of railroad crossings, stop lights, toll booths, and speed. In devising a presumption,[60] the drafter must incorporate a variety of factors, which will be discussed below.

> [I]n criminal cases, the ultimate test of any (presumption's) constitutional validity in a given case remains constant: the (presumption) must not undermine the fact-finder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.[61]

The everyday use of motor vehicles and the recognized difficulties in enforcing traffic regulations has produced many presumptions of law applicable to them.[62] Thus, it is generally provided by statute that the registered owner of a motor vehicle was the person who parked it illegally at the time and place of the violation.[63]

In *City of Chicago v. Hertz,*[64] the Supreme Court of Illinois upheld a city ordinance that stated that when any vehicle is parked illegally, the registered owner shall be prima facie liable for such offense. The ordinance, in effect, imposed vicarious liability on the registered owner. The court in this case refused to hold that the ordinance created an irrebuttable presumption that the registered owner parked the vehicle. As the court stated:

> In its statutory context, the words "prima facie" mean that the City has established its case against the registered owner by proving (1) the existence of an illegally parked vehicle and (2) registration of that vehicle in the name of the defendant. Such proof constitutes a prima facie case against the defendant owner. There is no indication in the ordinance that the owner, to be presumed responsible for the violation, must be presumed to have been the person who parked the vehicle.[65]

1. Uniform Vehicle Code

The language of the 1992 *Uniform Vehicle Code,* Section 16-214, as it applies to parking violations could be used in drafting a similar statute for speeding violations detected by photo-radar. That part of the code states:

> Presumption in reference to illegal parking states in Section (a): In any prosecution charging a violation of any law or regulation governing the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the complaint was in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

The Paradise Valley Ordinance provides that the owner or person in whose name the vehicle is registered pursuant to Arizona state law shall be held prima facie responsible for any speeding violation. The District of Columbia, Maryland, Michigan, Oregon, California, Virginia, and Utah have similar statutes.[66]

In essence, legislation that would make the registered owner vicariously liable for traffic offenses, though by means of a presumption, will undergo intense court scrutiny but is likely to be upheld based on recent trends in court decisions. This would relax the requirement for a frontal photograph of the speeding vehicle so that the driver's face could be identified from the photograph. Model statutory provisions permitting photographic enforcement of traffic laws have been recommended in Appendix G.

C. Legal Issues

1. Pictorial Testimony Theory versus the Silent Witness Theory

Photographic evidence is generally considered acceptable under two theories: the "pictorial testimony" theory and the "silent witness" theory.

The pictorial testimony theory is based on the same underlying grounds used for the admission of drawings, maps, and other illustrations. This doctrine depends on the testimony of a witness who testifies that the picture is a reasonably fair and accurate depiction or representation of the object, scene, or person. According to this theory, pictorial evidence is merely demonstrative evidence—"a graphic portrayal or static expression of what a qualified and competent witness sensed at the time in question."[67] The witness must be able to testify to this representation from his or her own personal observation. The success of photographic documentation as admissible evidence is greatly dependent on in-court testimony of a witness who observed the object.

In contrast, the silent witness theory allows photographic evidence to be admitted for its substantive value. Under this theory, photographic evidence is admissible even in the absence of a verifying witness if there is an "adequate foundation assuring the accuracy of the process producing the photo."[68] Under the silent witness theory, the properly authenticated photograph is not merely an explanation of the testimony of a witness, but a substitute for such oral testimony. The photograph is substantive evidence of the person, object, or scene that it portrays without requiring in-court testimony.[69]

Under the silent witness theory, a photograph constitutes independent probative evidence of what it shows.[70] This theory has been adopted in many jurisdictions and has been applied in the case of videotapes as well.[71] Authentication of the subject videotape is always required. Although the admission of evidence is within the discretion of the trial court, under the silent witness theory the following three elements must be established: (1) expert testimony establishing that the videotape had not been altered or manipulated; (2) testimony establishing the date and place the videotape was taken; and (3) testimony establishing the identity of the relevant participants depicted.

The silent witness theory is recognized in "an overwhelming majority of jurisdictions."[72] However, the principle is not uniformly applied. The prerequisites for creating an "adequate foundation" of accuracy vary from state to state. Some states only mandate a general showing that the process that created the photograph is reliable.[73] Other states require that certain specific reliability factors be proven. For example, in *Freeman v. State*,[74] the Georgia Court of Appeals held that under the silent witness theory the party offering the videotape must: (1) provide expert testimony that the videotape had not been altered, (2) testify as to the date and place the videotape was taken, and (3) testify as to the identity of the relevant persons in the videotape.[75]

Still other states require the offering party to prove many different aspects of the photograph's reliability. In Alabama, for example, the party offering a photograph for admission into evidence under the silent witness theory must: (1) show that the device or process or mechanism that produced the item being offered as evidence was capable of recording what a witness would have seen or heard had a witness been present at the scene; (2) show that the operator of the device or process or mechanism was competent; (3) establish the authenticity and correctness of the resulting photograph; (4) show that no changes, additions, or deletions have been made; (5) show the manner in which the photograph was preserved; and (6) identify the persons pictured.[76]

For a photographic traffic enforcement plan to be effective, the photograhic evidence must be admissible in traffic law prosecutions. The most direct way to establish the admissibility of photographic traffic evidence is to expressly provide for its admissibility in an enabling statute.[77] If the statutory approach is not taken, then photographic traffic evidence will be admissible only to the extent that general photographic evidence is admissible under either of the two theories discussed above.

Success of photographic traffic enforcement devices in the courtroom will eventually depend on the court's willingness to accept the scientific reliability of this evidence. In *Ferguson v. Commonwealth*,[78] the Supreme Court of Virginia adopted the silent witness theory by use of the "regiscope camera" in the conviction of forgery and passing a forged instrument at a drugstore. The court reasoned that a photograph may be admissible under this theory assuming that the evidence is sufficient to adequately assure its accuracy. In this case the photograph identified the check casher, identification presented, and check being cashed. Like the regiscope, photo-radar can provide the following identification: the driver; the driver's license plate; the make, model, and color of the vehicle driven; and the date, time, and location of the alleged speeding incident. Under this framework, the courts typically require evidence of authenticity, which includes identification of the defendant as the same person shown in the photograph, and a showing of the proper functioning of the camera and processing of the film.[79]

In *Bergner v. State*,[80] the Appellate Court for Indiana upheld the use of photographic evidence for substantive purposes without requiring in-court witness testimony and stated:

> The "silent witness theory" for the admission of photographic evidence permits the use of photographs at trial as substantive evidence, as opposed to merely demonstrative evidence. Thus, under the silent witness theory, there is no need for a witness to testify a photograph accurately represents what he or she observed; the photograph "speaks for itself."[81]

However, the court clearly required that there must be a "strong showing" that the photograph's competency and authenticity was established. The court pointed out that photography is an inexact science and stated:

> The image a camera produces on film can be affected by a variety of things that may lead to distortion and misrepresentation. The quality of the camera and lens, type of film, available light, focal length of the lens, lens filter, or even perspective from which the photograph is taken can play a part in producing a truly representative photograph.[82]

Shortcomings of the photograph may not prevent its use in court, but will be a factor in determining how much weight the fact finder gives to that evidence. The opposing party is generally allowed to argue that the photo was not clear or had some apparent defects.

So, under the pictorial testimony or the silent witness theory, photographic evidence from a manned photographic enforcement device is potentially admis-

sible. However, the pictorial testimony theory's requirement that a witness validate a photograph's contents precludes the admissibility of photographic traffic evidence from an unmanned enforcement device in the absence of such a witness. Such evidence would be admissible under the silent witness theory if the given state's specific foundation requirements are met.

2. Advance Notice

Several state statutes and legislative bills require that signs warning of automated traffic enforcement be located along highways where the devices are being used.[83] In states where radar zone notice is mandated by statute, sufficient governmental compliance with the notice requirements is an essential element of radar-based speeding prosecutions. Sufficient compliance "requires only that permanent signs be erected at reasonable intervals so as to give motorists notice that radar may be in use at some point along the highway."[84] In addition, some state vehicle codes require traffic enforcement vehicles to be well marked and visible.[85] These radar notice requirements were developed in an effort to encourage public acceptance of this system and to avoid any contention by violators of "entrapment."[86]

3. Service of Process

Service of process by mail is generally controlled by state statute. The following discussion summarizes the issues with regard to adequately providing notice to the traffic violator identified through the use of videotape or photograph.

In civil proceedings, "each state may determine for itself what manner of service shall be sufficient to bring a person into its courts" so long as the method selected is "reasonably calculated to give [the defendant] actual notice of the proceeding and an opportunity to be heard and defend."[87] Personal service is required though, if substitute process methods are not established by statute.[88] Therefore, mail will constitute adequate service of process only when expressly authorized by statute.[89]

In criminal proceedings, service of process may also be achieved through the mail if authorized by statute. In Wisconsin, Illinois, and several other states, for example, a summons may be served either personally or "by mailing a copy to the defendant's last-known address."[90]

By definition, it appears that service by warrant would always have to be personal. However, most traffic offenses, even if criminal, may not be regarded as serious enough to require service by warrant. In Wisconsin, a district attorney has discretion in every case to issue a summons in lieu of requesting a warrant.[91] In fact, the issuance of a summons is mandatory in any misdemeanor action that exposes the defendant to imprisonment.[92]

4. Right to Privacy

Photographic traffic enforcement raises two relevant potential privacy issues: (1) whether photographic enforcement violates the Fourth Amendment as an illegal seizure; and (2) whether photographic traffic enforcement is a tortious invasion of one's common law or statutory right to privacy.

The Supreme Court has held that driving in open view on a public highway does not afford Fourth Amendment protection of an individual's privacy. Courts have long confined protection to a right of privacy in matters relating to marriage, family, and sex.[93] It would be unreasonable to suggest that driving falls within a protected zone of privacy.[94]

Furthermore, the Supreme Court in *Katz v. United States*[95] stated that the Fourth Amendment protects an individual from unreasonable search and seizure where there is a reasonable expectation of privacy. The Court stated:

> The Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. [citations omitted] But what he seeks to preserve as private, even in an area accessible to the public may be constitutionally protected.[96]

Similarly, when a person is driving in open view, with one's image clearly visible to the general public, it cannot be seriously argued that he or she has a reasonable expectation of privacy protected by the Fourth Amendment. The driver's appearance and actions remain open to the state's observations. In *People v. Rhoades,*[97] the Court followed the majority view in holding that a defendant parked in a retail lot did not have a reasonable expectation of privacy in the face of observations of his actions by an Illinois state trooper.

In the case of a driver who is photographed in open view by an automated traffic enforcement instrument, he or she will face serious difficulty in arguing that the driver has a reasonable expectation of privacy protected under the Fourth Amendment. Since the U.S. Supreme Court has held that "a person has a lowered expectation of privacy in an auto," and that the Fourth Amendment does not protect "what a person knowingly exposes to the public,"[98] photographing the driver's face, vehicle, or license or registration plate does not pose a serious Fourth Amendment question.

The second privacy issue is whether photographic traffic enforcement is an invasion of one's common law or statutory right to privacy. The vast majority of states recognize a common law privacy right, "the invasion of which is a tort which gives rise to a cause of action."[99] In these states, there are four distinct invasion of privacy claims available: (1) unreasonable intrusion upon the seclusion of another, (2) appropriation of another's name or likeness, (3) unreasonable publicity given to another's private life, and (4) publicity that unreasonably places another in a false light before the public.[100] Of these four, only the first three seem potentially relevant to photographic traffic enforcement.

The act of photographing a traffic violation could give rise to a claim that photographic traffic enforcement unreasonably intrudes upon the seclusion of the violating driver. However, the potential for success of this assertion is tenuous for the following reasons:

- "[T]he mere taking of someone's photograph without his or her consent has not ordinarily been considered by the courts as an invasion of privacy."[101]
- The restatement view is that public photographs, even if they are unauthorized, do not invade one's privacy.[102]
- State courts have unanimously held that no reasonable expectation of privacy exists when an automobile is driven in public.[103]

Finally, even in the unlikely event that a court finds that one's privacy rights are affected to some extent by photographic traffic enforcement, that court still might not find an impermissible invasion of privacy since "it is generally held that the right of privacy must bow to a reasonable exercise of the police powers."[104] Therefore, it would be very difficult to prove that photographic traffic enforcement is an unreasonable exercise of police power given its minimal intrusiveness and its legitimate public safety purpose.

Two other invasion of privacy claims might arise if traffic photographs are handled improperly after they are taken: a claim that the photographs misappropriate one's likeness and/or a claim that the photographs give unreasonable publicity to one's private life. The potential for such claims suggests that provisions should be included in any photographic enforcement program or in the enabling statute limiting the use of traffic photos to driver identification for purposes of prosecution and holding them as strictly confidential.

IV. MODEL RULES AND STATUTES

A. Legal and Policy Implications

This segment of the report focuses on avoiding legal impediments to the strict imposition of criminal or civil sanctions against the owners of vehicles observed in violation of speed laws by photo radar enforcement. Many of the potential impediments can be eliminated or lessened by enacting changes to existing laws and regulations. In using the automated speed detection devices, the vehicle owner can be identified as the offender by the license plate, but may not be the driver at the time of the offense. A suggested solution to this legal issue was the creation of civil vicarious liability statutes for traffic offenses, including speed violations. Civil statutes designed to impose vicarious liability on the owners of vehicles observed in violation of traffic laws would eliminate many of the objections imposed by criminal statutes.

The most common vehicular offense for which vicarious liability has been imposed is a parking violation. In those states where minor traffic offenses have been decriminalized, a legal environment exists for enacting vicarious liability (civil) statutes for other traffic offenses including speed, red light, and railroad grade crossing violations. Over the past several years, a number of states have revised their traffic laws to permit the use of photographic radar. Correspondingly, many attorneys general have issued opinions supporting the use of photo-radar from a legal perspective.[105]

With unmanned photographic enforcement, there are additional legal issues that present a much greater risk to admissibility of the photographs than to those taken by manned photographic enforcement programs. This is because unmanned photographic enforcement evidence is not admissible under the pictorial testimony theory. Obviously, unmanned photographic evidence can be made admissible by express statutory language. In the absence of direct statutory authorization, a state must, through judicial decisions, recognize the silent witness theory for unmanned evidence to be admissible. If the silent witness theory has been accepted in a state, the admissibility of unmanned photographic evidence can be enhanced by drafting appropriate statutory provisions.

In addition, there are a number of practical considerations associated with the implementation of unmanned photographic enforcement. The primary advantage of the unmanned approach is that it saves law enforcement resources in terms of real hours worked. Unmanned devices, as their name suggests, do not require the constant accompaniment of a police officer for their operation. That means that police officers are free to undertake other law enforcement tasks. A related benefit of unmanned enforcement is that it spares police officers the monotonous task of operating the device. Furthermore, more traffic law enforcement can be achieved through the use of unmanned devices than with manned devices. The largely self-functioning unmanned devices can be operated virtually continuously. In contrast, manned devices' operations are limited by police staffing constraints.

Finally, a key consideration is the availability of federal funding to encourage states to develop enforcement programs using photographic equipment. Specifically, in the area of highway grade crossing safety, legislation at the national level could require that states meet certain conditions to be eligible for funds from the Surface Transportation Program for implementing a crossing safety improvement program.[106] Given the number of highway-railroad grade crossing crashes nationwide, it is entirely appropriate that the federal government participate in funding a state's enforcement efforts. This approach is consistent with the underlying policies of Section 402 funds, which are currently available to states for the promotion of public education, engineering, and law enforcement strategies in response to comprehensive highway safety problems.

An additional change in the highway-railroad crossing arena will also need to be addressed to eliminate the current exclusion of private crossings for selection of highway safety improvements. By consolidating both public and private crossings for funding eligibility, states can be assured of reducing the risk of highway-railroad grade crossing crashes. With the growing interest in high-speed trains and the continued development of the Federal Railroad Administration's Rail Network, it is critical for the federal government to provide objective and uniform standards for crossing safety improvements.[107]

B. Model Laws—Drafting Suggestions

In the development of a model photographic traffic enforcement statute, the drafter should consider incorporating the following elements: (1) definitions of the photographic traffic enforcement device; (2) any restrictive uses; (3) description of the photographic evidence; (4) description of the admissibility of such evidence; (5) an owner liability section, including a provision for a rebuttable presumption; (6) provisions for summons by mail; and (7) penalty provisions.[108] The author recommends that a separate statute be drafted for each device. Each instrument has a separate function, quite distinct from the other. The following are some model statutory provisions; the drafter should refer to the appendices for further useful resource information.

Utah Photographic Traffic Enforcement Law[109] furnishes an illustration of the specific elements necessary for a photo-radar enabling statute. It also provides a technical definition of "photo-radar" so that it can be clearly distinguished from other speed enforcement methods. Photo-radar is defined as any device used primarily for highway speed limit enforcement that substantially consists of a low-power Doppler radar unit and camera mounted in or on a vehicle, which automatically produces a photograph of a vehicle traveling in excess of the legal speed limit. The vehicle's speed, the date, the time of day, and the location of the violation are printed on the photograph. States should consider revising this definition to add language that would *incorporate* laser detectors or electromagnetic detectors, similar to the language of the *Uniform Vehicle Code*, Section 12-416.

The Photographic Radar Statute of Utah restricted its use to school zones or to other areas approved by a local authority's governing body upon evidence of a demonstrated public safety requirement. This provincial approach grants the local community an opportunity to evaluate a need before implementing such a program. Utah, however, rejected unmanned enforcement and required the presence of an officer with the photo-radar unit. If the statute being drafted adopts the silent witness theory, the drafters need not require that a police officer be present at the time of the offense, although a monitoring agent must periodically check the device to ensure that it is maintained, calibrated, and functioning properly.

The Utah statute provides that signs must be posted on the highway giving notice to a motorist that photo-radar may be used. Some states have decided to give advance warning to the public so that motorists will have an opportunity to comply with the warning, although advance warning of the photographic enforcement in the area of the offense is not required by the Fourth Amendment.

The Utah statute also permits unmanned photographic enforcement of non-school zones when the use of photo-radar, without warning signs, is for highway safety research purposes, or when warning citations are issued that do not involve a fine, court appearance, or a person's driving record. This provision was not included in the model law provided in Appendix G, although it might be a consideration for some states considering passage of such legislation.

The model statute should provide for a description of the photographic evidence. For example, a provision should state that the photograph or videotape must provide a sufficiently clear image of the vehicle's license plate and of the driver of the vehicle such that the driver can be identified. The drafter should also include language that such photographs or videotape shall be accepted as prima facie evidence of the violation. To ensure that the photograph or videotape is clear, New York law, Section 1111-a(c), requires a sworn statement by a city technician after inspection of the photographs, microphotographs, videotape, or other recorded images produced by a monitoring system.

Many states have long provided an inference or presumption that the vehicle owner is the driver when the vehicle passes a stopped bus or violates parking laws. To ensure that the violator is properly identified, the statute should provide a rebuttable presumption that the owner was the driver of the vehicle. It should be clear that the owner is only required to produce an affidavit, testify, or otherwise prove that he or she was not the driver of the vehicle when the traffic offense was committed. New York, for example, has a statute that permits cities with a population of one million or more to adopt a program imposing liability on the owner of a vehicle for failure to comply with traffic control signals (Section 1111-a).

To ensure that the owner has an opportunity to contest the citation, notice must be given within a reasonable time after the offense. To provide for summons or notice by mail, the drafter should include a provision which provides:

> Whenever a [summons/notice] for (specified traffic violation such as operating a vehicle in excess of the posted speed limit, etc.), is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department. If [summoned/notified] person fails to appear on the date of return set out in the [summons/notice] mailed pursuant to this section, the [summons/notice] shall be executed in the manner set out in (appropriate section) of the state law. No proceedings for contempt or arrest of a person [summoned/notified] by mailing shall be instituted for his failing to appear on the return date of the [summons/notice].

This generally meets the due process requirement that the alleged offender be given notice and an opportunity to respond to the complaint.

Finally, the statute should include a penalty provision specifying the amount of the fine or penalty.

C. Enabling Statutes

An enabling statute that meets legal and constitutional standards should be enacted. For example, many states provide an "owner liability" provision similar to that of Arkansas in speeding cases. The Arkansas speed restriction statute provides that proof that the defendant was, at the time of the violation, a registered owner of the vehicle described in the citation "shall constitute, in evidence, a justifiable inference that the registered owner of the vehicle was the driver of the vehicle at the time of the violation."[110]

Similarly, under Connecticut law,[111] when there is a speeding infraction, proof of the violating offender's vehicle registration number is prima facie evidence in a subsequent prosecution that the owner was the operator at the time of the offense.

An owner liability parking statute exists that, if applied to speeding violations, would solve the driver identification hurdle to photographic speed enforcement in Colorado. This parking statute, Section 42-4-1209, creates a rebuttable presumption that the owner of a violating vehicle is liable for the parking violation. (See Section IIB of this report and Appendix B.) This owner liability provision also applies to the state's parking and stop-for-school bus statutes, among others.

New York law, previously discussed under the Model Law section of this report, permits cities with a population of one million or more to adopt a program imposing liability on the owner of a vehicle for failure to comply with traffic control signals. The statute authorizes the use of a vehicle sensor device installed to work in conjunction with a traffic control signal. A sworn certificate by a city technician based on inspection of the photographs, microphotographs, videotape, or other recorded images produced by a monitoring system is prima facie evidence of the facts contained therein.

Virginia law authorizes traffic light monitoring demonstration programs in certain localities. This statute enables the local governments to impose civil monetary sanctions on motorists for failure to obey the traffic control signals.

Evidence has to be recorded that the instrument was working properly at the time of the offense. Virginia law requires that a sworn statement be made by a photograph technician based on inspection of the recorded images. This statement is statutorily prima facia evidence that the vehicle was used in the violation and that the defendant was the registered owner of the vehicle at the time of the violation. This creates a rebuttable presumption that the owner committed the violation. The owner must furnish testimony or an affidavit establishing that he/she was not the violator at the time of the infraction. Lessors of rental vehicles are excluded from the definition of "owner" under this statute (VA Code § 46.2 - 833.01).

Illinois recently passed a statute that will dramatically alter the Tollway Authority's prosecution of toll booth offenders. Section 605-ILCS 10/10 gives the authority the power to "fix, assess and collect civil fines" for toll violations, and to create its own adjudicatory procedures for the prosecution of toll violators. Under the terms of Section 10/10, the authority's adjudication system "must provide for written notice of the alleged violation and an opportunity to be heard on the question of the violation." A fine may only be imposed "if a violation is established by a preponderance of the evidence." The statute also provides for judicial review "in accordance with the Administrative Review Law."

Thus far, the authority's policy has been to only prosecute repeat offenders. Once a vehicle commits its third or fourth violation, a letter is sent to the owner of the violating vehicle informing him or her of the time and date of the violation and demanding a $20 payment for administrative costs. If there is no response after 30 days, a warning letter is sent telling the violator that legal action will commence if payment is not made. If this fails to elicit payment, then the authority brings suit for the outstanding sum.

Local governments using photographic technology for enforcement of traffic laws generally pass their own ordinances and use procedures that follow the state's treatment of similar violations.

V. SUMMARY: PRACTICAL STRATEGIES

Improving safety on highways, at highway-railroad grade crossings, and at traffic signals requires a multifaceted and multiagency approach. An effective photo-radar program will incorporate aspects of enforcement, engineering, education and research, as well as promotional and legislative initiatives. Most important, however, law enforcement officials will need an effective tool for prosecuting offenders. They must find the most effective way of using the photographic evidence.

Once a photographic enforcement program is implemented, the admissibility of such evidence will require incorporating the following elements:

- Identification of the driver's face and the vehicle.
- Identification of the driver registration or license plate.
- Identification of the date, time, and location of the violation.
- For a manned photographic traffic enforcement device, a police officer must be present at the time of the violation to testify that the photograph is a fair and accurate depiction of the offender and vehicle.
- For unmanned devices, the photograph must accurately depict the offender, license plate, and vehicle.
- Testimony of an expert witness who can establish the scientific reliability of the instrument until it becomes a generally acceptable method of detecting the traffic violation.
- An enabling statute that meets the legal and constitutional standards of the courts.
- Periodic certification of the instrument in accordance with any performance specifications or test protocols set forth by National Highway Traffic Safety Administration and the appropriate state agency.
- Evidence that the instrument was working properly at the time of the offense.
- A well-trained and experienced person operating and monitoring the device.

An effective photographic enforcement program—whether for railroad grade crossings, red light violations, or speed—may require using available federal funds at the state level.

Jurisdictions considering drafting legislation to implement photo-radar enforcement of traffic laws should find the compilation of state laws and the model provision in the appendices of this report useful.

ENDNOTES

[1] INSURANCE INSTITUTE FOR HIGHWAY SAFETY, News Release, *Red Light Cameras are Proven to Help Police Deter People Who Run Red Lights; Public Supports Cameras*, Aug. 22, 1995; Joen Pritchard Kinnan, *Grade Crossing Safety*, TRAFFIC SAFETY MAGAZINE, National Safety Council, Vol. 93, No.2, March/April 1993, at 10-13.

[2] Don Hatch, *There's Help for You at the Highway-Rail Crossing*, THE POLICE CHIEF, April 1996, at 61.

[3] R.R. BLACKBURN ET AL, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. UPDATE OF ENFORCEMENT TECHNOLOGY AND SPEED MEASUREMENT DEVICES, Report No. DOT-HS-807584 (1989).

[4] C.W. LYNN ET AL, A STUDY OF THE FEASIBILITY OF USING PHOTO-RADAR FOR TRAFFIC SPEED ENFORCEMENT IN VIRGINIA, EXECUTIVE SUMMARY 2 (1993).

[5] *supra* note 3.

[6] CHERYL W. LYNN, Va. TRANSP. COUNCIL, CAPITAL BELTWAY PHOTO-RADAR DEMONSTRATION PROJECT: SITE VISIT REPORT, (1992).

[7] Interview with James Curry, P.E., Project Manager and Principal Investigator, Metro Blue Line Grade Crossing Improvement Program in Los Angeles, Cal. (June 14, 1995). Telephone interview with Attorney Linda Harter (Aug. 4, 1995).

[8] Lynn, *supra*, note 6 at pp. 1 and 28.

[9] *See* James Curry, Automated Traffic Enforcement System Notes, 11/2/94.

[10] Telephone interview with Lieutenant William A. Osburn, Program Manager, National City Photo Radar Speed Enforcement Program (Aug. 1995).

[11] Lynn. *supra*, note 6 at 6.

[12] *See* L. Meadow & J. Curry, *Light Rail Traffic Safety Issues, Compendium of Technical Papers*, INST. OF TRANSP. ENG'RS, 47th Dist. 6 Annual Meeting, July 10-13, 1994.

[13] James Curry, Automated Traffic Enforcement System Notes, *supra*, note 9. Interview with James Curry, *supra* note 7.

[14] Telephone interview with Sergeant Don Hatch, Fed. R.R. Admin. RRS-23, (Apr. 28, 1995).

[15] *See* United States v. Downing, 753 F.2d 1224 (3d Cir. 1985); United States v. Brown, 557 F.2d 541 (6th Cir. 1977); State v. Brown, 687 P.2d 751 (Or. Sup. Ct. 1984); State v. Clark, 655 N.E.2d 795 (Ohio 8th Dist. 1995); DiRosario v. Havens, 196 CA3d 1224, 1232 (1987).

[16] 54 App. D.C. 46, 47, 293 F. 1013, 1014 (1923).

[17] *Id.* at 1014.

[18] Reed v. State, 391 A.2d 364 at 368 (Md. Ct. App. 1978).

[19] People v. Williams, 331 P.2d 251, 254 (Cal. Ct. App. 1981).

[20] *See* People v. Middleton, 429 N.E.2d 100, 103 (N.Y. Ct. App. 1981).

[21] United States v. Williams, 443 F. Supp. 269, 273 (S.D.N.Y. 1977).

[22] Annot. 47 A.L.R.3d 822, 835-37. Louisiana v. Spence 418 So.2d 583, 587 (La. 1982).

[23] *See* extensive discussion of "silent witness theory" *infra* and cases cited at note 71.

[24] 113 S. Ct. 2786, 509 U.S. 579 (1993).

[25] FRE Rule 402.

[26] 113 S. Ct. at 2791, 509 U.S. at 582.

[27] *Id.*

[28] 113 S. Ct. at 2791-92, 509 U.S. at 583.

[29] FRE Rule 702 states, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

[30] 113 S. Ct. at 2792, 509 U.S. at 583.

[31] 113 S. Ct. at 2799, 509 U.S. at 597.

[32] 113 S. Ct. at 2798, 509 U.S. at 595.

[33] C. McCormick, McCormick on Evidence, 3rd Ed., Sec. 203, 607-608 (1984).

[34] *See* Bryant v. Tidy Building Services, 678 So.2d 48 (La. 1996), State v. Williams, 446 N.E.2d 444 (Ohio 1983); Montana v. Cline, 909 P.2d 1171 (Mont. 1996), Kelly v. State, 824 S.W.2d 568, 571-73 (Tex.Crim. App. 1992).

[35] *See* Borelli, *The Computer as an Advocate: An Approach to Computer-Generated Displays in the Courtroom,* 71 Ind. L.J. 439 (1996), State v. Newton, 421 A.2d 920, 922 (Del. Super. 1980), State v. Shimon., 243 N.W.2d 571, 573 (Iowa, 1976). *Also see* Cunningham, *Videotape Evidence: Technological Innovation in the Trial Process,* 36 Ala. Law. 228 (1975).

[36] Clancy, *Computer Generated Accident Re-enactments: The Case for their Admissibility and Use*, 15 Rev. Litig. 203 (1996).

[37] McCormick, *supra*, Sec. 214 at 673.

[38] *Id.*

[39] *See* Pierce v. State, 671 So.2d 186 (Fla. App. 4th Dist, 1996), State v. Clark, 655 N.E.2d 795 (Ohio App. 8th Dist., 1995), and Annot. 62 A.L.R.2d 686.

[40] R.R. Blackburn & D. Gilbert, Photographic Enforcement of Traffic Laws, NCHRP Synthesis 219, at 17 (1995).

[41] UVC Sec. 11-801, UVC Sec. 11-802.

[42] *See* Appendix B.

[43] *For e.g.* Ark. Code Ann. sec. 27-51-1001(b). *See* Appendix B.

[44] *For e.g.* Colo. Rev. Stat. sec. 42-4-1209 (1994) and Del. Code Ann. tit. 21, sec. 4166 (1994). *Also see* Appendix B.

[45] *For e.g.* Ala. Stat. sec. 32-5-152, Alaska Stat. sec. 28.35.145, and CONN. STAT. sec. 14-107. *Also see* Appendix B.

[46] Alaska Stat. sec. 27-51-102, *Also see* Appendix B.

[47] Del. Code. Ann. tit. 21 sec. 4166.

[48] Hall v. State, 829 S.W.2d 407, 409 (Tex. App. Waco 1992).

[49] N.Y. Vehicle and Traffic Laws, Sec. 1111-a(c) (1996 Suppl.).

[50] N.Y. Vehicle and Traffic Laws, Sec. 1111-a(d).

[51] *See* Sec. 1111-a(i).

[52] *See* Sec. 1111-a(j).

[53] N.Y. Vehicle and Traffic Laws, Sec. 1111-a(f).

[54] *Id.*, Sec. 1111-a(k).

[55] *Id.*, Sec. 1111-a(g).

[56] R.R. Blackburn & D. Gilbert, Photographic Enforcement of Traffic Laws, NCHRP Synthesis 219, at 17-20 (1995).

[57] *Id.*, 17.

[58] *Id.*, 40.

[59] *Id.*,footnote 24, citing Road Traffic Law Review Report, HMSO, London, 1988.

[60] In 1987, Arizona changed its statutes regarding speeding penalties. Drivers caught speeding more than 20 mph over the posted speed limit are charged with a criminal misdemeanor. Drivers caught speeding 20 mph or less over the posted speed limit are charged with a civil infraction. In August 1987, the City Council of Paradise Valley, Arizona, passed an ordinance stating that registered owners of vehicles are presumed responsible for certain violations involving the vehicle, including speeding. This legal environment set the stage for what has proven to be a relatively successful use of manned automated speed enforcement (ASE) equipment in that community since October 1987.

In Precinct 8 of Galveston County, Texas, the use of manned ASE equipment was stopped after about 1 year because of public opinion. At that time, there was no provision in the law to permit vehicle owners to be charged for speed violations committed by any driver of the vehicle. In fact, a bill was introduced in early 1987 in the Texas Legislature to provide the proper legal environment in the state for use of ASE equipment. However, the bill was never released from the subcommittee of the House Transportation Committee. This defeat fueled the legal and public opposition to any further use of the ASE equipment in Texas.

The use of manned ASE equipment in Pasadena, California, was preceded by news media coverage, public information and education, instructions for city prosecutors and local judges, and consultations with various attorneys to encourage state legislators to consider a modification to the state statutes concerning speeding offenses. A bill was placed before the California Assembly in 1992 to amend the California Vehicle Code to permit the use of photo radar for enforcement of speed limits. The bill was passed in committee meetings but failed in the assembly.

On July 7, 1989, the New York Legislature passed a bill that would authorize New York City to photograph vehicles committing red light violations at up to 25 intersections, and to mail summonses to the registered owners of the identified vehicles. The act took effect on July 20, 1989, and was to remain in full force for three years. The amendments and provisions were then to be repealed unless extended by the legislature, which subsequently occurred. The law could, with little modification, apply equally well to speed violations detected by automated systems. Equipment manufacturers consider New York to be the pilot state in the United States as far as passing (model) enabling legislation.

The photographic evidence collected by automated enforcement equipment in many U.S. locations has one thing in common-either frontal or a combination of frontal and rear photographs of the offending vehicles are taken or are planned to be taken. Currently, the frontal photography does not have the perceived opposition it had in the early 1980s. It provides the prosecution a means to positively identify the driver in those cases in which the driver or owner wants to challenge the citation in court. Blackburn, R.R. and Gilbert, D.T., Photographic Enforcement of Traffic Laws, 85-88 (1995).

[61] County Court of Ulster Cty. v. Allen, 99 S. Ct. 2213, 2224; 442 U.S. 140 (1979).

[62] Fisher & Reeder, Northwestern University Traffic Institute, Vehicle Traffic Law, 1974 Edition. Northwestern University Traffic Institute, Chapter 20, Part 5. *See* Uniform Vehicle Code, (1992), sec. 16-214(a) for a parking violation under UVC Sec. 16-212. *See also* City of Chicago v. Hertz Commercial Leasing Corp., 375 N.E.2d 1285 (Ill.1978), *cert. den.* 99 S.Ct. 315 (1978).

[63] *Id.*

[64] 375 N.E.2d 1285 (Ill. 1978).

[65] 375 N.E.2d 1288.

[66] *See* appendix B.

[67] Ex Parte Fuller, 620 So.2d 675, 678 (Ala. 1993).

[68] State v. Berky, 214 Ga. App. 174, 447 S.E.2d. 147 (1994); vacated on other grounds 463 S.E.2d. 891 (Ga 1995).

[69] McCormick, *supra*, Sec. 214., 671.

[70] People v. Byrnes, 33 N.Y.2d 343, 352 N.Y.S.2d 913, 308 N.E.2d 435, 437 (1974).

[71] *See* United States v. Stearns, 550 F.2d 1167 (9th Cir.1977) (allowed contents of photograph itself to authenticate); United States v. Taylor, 530 F.2d 639 (5th Cir.), *cert. denied*, 429 U.S. 845, 97 S.Ct. 127, 50 L. Ed. 2d 117 (1976) (bank camera tripped by robbers after everyone present locked into bank vault); State v. Holderness, 293 N.W.2d. 226 (Iowa 1980) (photograph of defendant holding stolen objects allowed); Litton v. Commonwealth, 597 S.W.2d 616 (Ky. 1980) (photographs of defendant in empty pharmacy building taken by an automatic camera); People v. Byrnes, 352 N.Y.S. 2d. 913, 308 N.E.2d.

435 (1974) (photograph of defendant and his 11-year-old daughter engaging in sexual acts); Ferguson v. Commonwealth, 212 Va. 745, 187 S.E.2d 189, *cert. denied*, 409 U.S. 861, 93 S.Ct. 150, 34 L. Ed. 2d 108, *reh'g denied*, 409 U.S. 1050, 93 S. Ct. 533, 34 L. Ed. 2d 504 (1972) (admission of Regiscope photograph in forgery case); State v. Bunting, 455 A.2d 531 (N.J. 1983) (armed robbery photographed by hidden camera); Fisher v. State, 7 Ark. App. 1, 643 S.W.2d 571 (1982) (videotape of defendant removing groceries from back door of store); Bergner v. State, 397 N.E.2d 1012 (Ind. App. 1979) (photograph of defendant sodomizing his 4-year-old daughter); Sisk v. State, 236 Md. 589, 204 A.2d 684 (1964) (admission of Regiscope photograph). In the Fisher case, cited above, the court stated that in adopting the silent witness theory it joined an overwhelming majority of other jurisdictions, citing United States v. Gordon, 548 F.2d 743 (8th Cir.1977); United States v. Gray, 531 F.2d 933 (8th Cir.), *cert. denied*, 429 U.S. 841, 97 S. Ct. 117, 50 L. Ed. 2d 110 (1976); Stearns, *supra*; Taylor, *supra*; United States v. Pageau, 526 F.Supp. 1221 (N.D.N.Y.1981); Watkins v. Reinhart, 243 Ala. 243, 9 So.2d 113 (1942); State v. Kasold, 110 Ariz. 558, 521 P.2d 990 (1974); South Santa Clara Valley Water Conservation Dist. v. Johnson, 231 Cal. App. 2d 388, 41 Cal. Rptr. 846 (1965); People v. Bowley, 59 Cal. 2d 855, 31 Cal. Rptr. 471, 382 P.2d 591 (1963); People v. Doggett, 83 Cal. App. 2d 405, 188 P.2d 792 (1948); Oja v. State, 292 So.2d 71 (Fla. App. 1974); Bergner, *supra*; Holderness, *supra*; Cook v. Clark, 186 N.W.2d 645 (Iowa 1971); State v. Thompson, 254 Iowa 331, 117 N.W.2d 514 (1962); Franzen v. Dimock Gould & Co., 251 Iowa 742, 101 N.W.2d 4 (1960); Perry v. Eblen, 250 Iowa 1338, 98 N.W.2d 832 (1959); Foreman v. Heinz, 185 Kan. 715, 347 P.2d 451 (1959); Litton, *supra*; State v. Young, 303 A.2d 113 (Me. 1973); Sisk, *supra*; Hartley v. A.I. Rodd Lumber Co., 282 Mich. 652, 276 N.W. 712 (1937); Hancock v. State, 209 Miss. 523, 47 So.2d 833 (1950); State v. Withers, 347 S.W.2d 146 (Mo. 1961); Vaca v. State, 150 Neb. 516, 34 N.W.2d 873 (1948); King v. State, 187 N.W. 934 (Neb. 1922); Byrnes, *supra*; State v. Hunt, 297 N.C. 447, 255 S.E.2d 182 (1979); Dunford v. State, 614 P.2d 1115 (Okla. App. 1980); State v. Brown, 4 Or. App. 219, 475 P.2d 973 (1970); State v. Goyet, 120 Vt. 12, 132 A.2d 623 (1957); Ferguson, *supra*; State v. Dunn, 162 W.Va. 63, 246 S.E.2d 245 (1978).

[72] Fisher v. State, 7 Ark. App. 1, 643 S.W. 2d. 571 (1982); *Uniform Laws Annotated, Uniform Rules of Evidence*, Rule 402, 180 n.40.

[73] *See* Midland Steel Prods. Co. v. U.A.W. Local 486, 573 N.E.2d 98 (Ohio 1991). & State v. Henderson, 669 P 2d 736 (N.M. App. 1983).

[74] 454 S.E. 2d. 196, 197 (Ga. 1995).

[75] *See also* Midland Steel Products Co. v. International Union, 573 N.E.2d 98, 61 Ohio St.3d 121, *rehearing denied* 575 N.E.2d 219, 61 Ohio St.3d 1432 (Ohio 1991) and Kindred v. Indiana, 524 N.E.2d 279 (Ind. 1988).

[76] Ex Parte Fuller, at 678. *See also* State v. Pulphus, 465 A.2d 153 (R.I. 1983).

[77] For example, see the proposed Illinois railroad crossing bill in appendix A.

[78] 212 Va. 745, 187 S.E.2d 189 (1972).

[79] United States v. Gray, 531 F.2d 933 (8th Cir 1976); Barker v. People, 158 Colo. 381, 407 P.2d 34 (1965); Sisk v. State, 236 Md. 589, 204 A.2d 684 (1964); Bergner v. State, 397 N.E.2d 1012 (1979); State v. Tatum, 58 Wash. 2d 73, 360 P.2d 754 (1961); Ferguson v. Commonwealth, 212 Va. 745, 187 S.E.2d 189 (1972).

[80] 397 N.E.2d 1012 (1979).

[81] *Id.*, at 1015.

[82] *Id.*, at 1017.

[83] Georgia law, for example, requires that warning signs be erected to alert motorists that speed detection devices are being employed. 40-14-6. Speed detection devices must be visible to approaching motorists from a distance of at least 500 feet. 40-14-7. Whenever a county, municipal, or campus law enforcement officer uses a radar device to catch a speeder, that officer must notify the violator that he/she has a right to request the officer to test the device for accuracy. 40-14-5. Georgia Rev. Stat., Sec. 40-14-5, -6, and -7. (1995). *Also see* Montana Rev. Stat., Sec. 61-8-704 (1995), and Virginia Rev. Stat. Sec. 46.2-882 (1995). House Bill 2587, enacted 3/24/95, adds Sec. 46.2-833.01 to the Virginia Code. N.Y. Rev. Stat., Sec. 1111-a(c) (1995). Utah Rev. Stat., Sec. 41-6-52.5. New Jersey Assembly Bill 150, introduced 1/11/94, permits the use of photo radar on highways and toll roads with a 65 mph speed limit (Matter in committee as of present date.)

[84] 47 A.L.R. 3d. 822 Sec. 11b and 4.

[85] Hundreds of speeding tickets were dismissed by a Pasadena Municipal Judge who "ruled that the police car containing the photo radar device was painted the wrong color. The judge said the state Vehicle Code requires traffic enforcement vehicles to be white or white and a sharply contrasting color, such as black." *Photo Radar Gets Its 1st Conviction*, L.A. TIMES, Nov. 17, 1988. *See also Court Blinks Off New Photo Radar*, CAMPBELL WEEKLY, Oct. 5, 1988, where a judge dismissed a speeding ticket generated by an unmarked police vehicle.

[86] Royals v. Commonwealth, 96 S.E.2d. 812 (VA 1957); Darden v. Rapkin, 251 S.E. 2d. 94 (Ga. 1978).

[87] 62B Am. Jur. 2d Process Secs. 139 & 142 (1990).

[88] *Id.*, Sec. 141.

[89] Section 40518 of the California Vehicle Code, Section 1111 of New York's traffic code, and Section 46.2-833.01 of the Virginia Code are examples of statutes that explicitly permit mail service in civil proceedings.

[90] Sec. 968.04(3) Wis. Stats. Illinois and several other states have similar provisions. *Also see* appendices of this report.

[91] Sec. 968.04(2) WIS. STATS.

[92] *Id.*

[93] California v. Belous, 80 CA. RPTR. 354, 458 P.2d 194 at 199 (1969); Griswold v. Connecticut, 381 U.S. 479 (1965).

[94] Furthermore, in Paul v. Davis, 98 S. Ct. 1155, 424 US 693, 713 (1976), the U.S. Supreme Court held that an individual's constitutionally protected zone of privacy only includes rights "which are fundamental or implicit in the concept of ordered liberty." The U.S. Supreme Court's definition of fundamental rights worthy of privacy protection does not include driving an automobile. Paul v. Davis defines "zone of privacy" as "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education." Davis, at 713. Subsequent U.S. Supreme Court case law has not placed driving within the protected zone of privacy. Moreover, such an expansion of the privacy zone is not likely to occur in the future since, as the Virginia report notes, the Supreme Court considers a person's expectation of privacy in an automobile to be quite limited. N.Y. v. Class, 106 S.Ct. 960, 965, 475 U.S. 106, 113 (1986). *See* VA. TRANSP. RESEARCH COUNCIL, AUTOMATED SPEED ENFORCEMENT PILOT PROJECT FOR THE CAPITAL BELTWAY: FEASIBILITY OF PHOTO-RADAR 10 (1992).

[95] 88 S. Ct. 507, 389 U.S. 347 (1967).

[96] 88 S. Ct. at 511, 289 U.S. at 351 (1967).

[97] 74 Ill. App. 3d 247, 392 N.E.2d 923 (1979).

[98] Katz v. U.S., supra note 99.

[99] 62A Am. Jur. 2nd Privacy Sec. 5 (1990).

[100] *Id.*, Sec. 38.

[101] 86 A.L.R. 3d 375, Sec. 2 (1978).

[102] Restatement (Second) of Torts, Sec. 652B cmt. c.

[103] Va. Transp. Research Council, *supra* 24 n.94.

[104] 62A AM JUR. 2d Privacy, Sec. 205 (1990).

[105] *See* Appendix C.

[106] U.S. Dept. of Transp., Fed. R.R. Admin., Action Plan Support Proposals, June 13, 1994 at note 9. *See also* Title 23 U.S.C.A. Section 130(c) (1995).

[107] *Id.*, 5-7.

[108] *See* Appendix G.

[109] § 41-6-52.5 Photo radar—Restrictions on use.

(1) "Photo radar" means a device used primarily for highway speed limit enforcement substantially consisting of a low power doppler radar unit and camera mounted in or on a vehicle, which automatically produces a photograph of a vehicle traveling in excess of the legal speed limit, with the vehicle's speed, the date, time of day, and location of the violation printed on the photograph.

(2) Photo radar may not be used except: (a) (i) in school zones; or (ii) in other areas approved by a local authority's governing body based on a demonstrated public safety need; (b) when a peace officer is present with the photo radar unit; (c) when signs are posted on the highway providing notice to a motorist that photo radar may be used; and (d) when use of photo radar by a local authority is approved by the local authority's governing body.

(3) The restrictions under Subsection (2) on the use of photo radar do not apply when the information gathered is used for highway safety research or to issue warning citations not involving a fine, court appearance, or a person's driving record.

(4) A contract or agreement regarding the purchase, lease, rental, or use of photo radar by the department or by a local authority may not specify any condition for issuing a citation.

(5) The department and any local authority using photo radar, upon request, shall make the following information available for public inspection during regular office hours: (a) the terms of any contract regarding the purchase, lease, rental, or use of photo radar; (b) the total fine revenue generated by using photo radar; (c) the number of citations issued by the use of photo radar; and (d) the amount paid to the person providing the photo radar unit.

[110] ARK., Sec. 27-51-1001.

[111] CONN. GEN. STAT. Sec. 14-107.

APPENDIX A

SYNOPSIS OF STATE LAWS ON PHOTOGRAPHIC ENFORCEMENT OF TRAFFIC LAWS

CALIFORNIA

Secs. 21362.5 and 21455.5. Automated enforcement systems.

The California Vehicle Code authorizes governmental and law enforcement agencies to operate "automated enforcement systems" at railroad grade crossings (sec. 21362.5) and traffic light intersections (sec. 21455.5). Cal. Veh. Code secs. 21362.5 & 21455.5 (West 1994).

Sec. 210 of the Vehicle Code defines an "automated enforcement system" as "...any system...that photographically records a driver's responses to a rail or rail transit signal or crossing gate, or both, or to an official traffic control signal...and is designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle." Automated enforcement systems are authorized for permanent use at railroad crossings. However, under sec. 21455.5, the devices may only be used at traffic light intersections until 1/1/99.

Both sec. 21362.5 and sec. 21455.5 require that signs be posted giving notice to drivers of the presence of automated enforcement systems. Both statutes also provide that photographic records made by automated enforcement systems are confidential. These records may only be accessed by relevant governmental and law enforcement agencies, the registered owner of the violating vehicle, and any individual identified by the violating vehicle's owner as the driver at the time of the alleged violation. if signs are posted to notify drivers of the systems' presence.

Sec. 22451 states that violations detected by an automated enforcement system are subject to the procedures established by sec. 40518. Under sec. 40518, a written notice to appear, issued by a peace officer or a qualified employee of a law enforcement agency and mailed within fifteen days of the alleged violation to the current address of the registered owner of the violating vehicle, constitutes a complaint against the vehicle owner.

DELAWARE

COMMENT: 1995 House Bill 194, which was introduced on 5/3/95, authorizes photo-traffic monitoring at red lights. The bill failed to pass the Delaware House on 6/29/95, but is currently being reconsidered by the House.

FLORIDA

COMMENT: 1995 House Bill 247 authorizes counties and municipalities to use "traffic infraction detectors," and to contract with private providers for traffic infraction detectors. An amended version of this bill passed the Florida House on 4/26/95. (The amended version is not yet available on-line.)

The original version of 1995 House Bill 247 defines a traffic infraction detector as "a traffic control device used to detect traffic infractions through photographic means, which when used in cooperation with a speed calculating device, complies with sec. 316.1905(1). Sec. 316.1905(1) mandates that speed enforcement devices used by police must be of a type approved by the Department of Highway Safety and Motor Vehicles, and must be tested at least every six months by the Department. If a signed and witnessed certificate shows that the device was tested within the specified period and that the device was working properly, the device is presumed to be accurate and reliable.

All deployed traffic infraction detectors must also meet various requirements to be established by the Florida Department of Transportation. Operators of the devices must qualify as traffic infraction officers under sec. 318.141.

As originally drafted, the bill authorizes each county and municipality to adopt an ordinance providing for the imposition of monetary liability on the owner of the violating vehicle detected by a traffic infraction detector. Owner liability is imposed in the same fashion as parking owner liability under sec. 316.1967. Tickets are mailed first class to owners of violating vehicles. The tickets may be processed by the county or municipality with jurisdiction over the street or highway where the violation occurred, or by any other entity authorized by said county or municipality. A ticketed owner may avoid liability by furnishing evidence that at the time of the violation the vehicle was in the care, custody, or control of another person. Counties are authorized to use at least 50% of the net ticket proceeds to create additional law enforcement positions and to raise salaries of law enforcement officers. Drivers with outstanding fines are placed on a list which bars the driver from obtaining a license plate or re-validation license plate sticker.

ILLINOIS

COMMENT: 1995 Senate Bill 1154, introduced 3/4/95, authorizes the Regional Transportation Authority, together with the Illinois Commerce Commission and local law enforcement agencies, to establish a two-year automated railroad crossing enforcement pilot program in DuPage County.

The bill defines an automated railroad crossing system as, "a system operated by a law enforcement agency that records a driver's response to automatic, electrical or mechanical signal devices and crossing gates,...[and is] designed to obtain a clear photograph or other recorded image of the vehicle, vehicle operator and the vehicle registration plate of a [violating] vehicle...[while also] display[ing] the time, date and location of the violation."

Beginning 1/1/96, the Illinois Commerce Commission is to identify the three most dangerous railroad crossings in DuPage County, and, with the approval of local law enforcement, is to equip those crossings with photo enforcement systems. Signs giving fair notice of the system's use must be posted at the three crossings.

Under the plan, local law enforcement agencies send a Uniform Traffic Citation to the registered owner of a violating vehicle within 30 days of the violation. A written explanation of the violator's rights and obligations must accompany the mailed citation. Photographs or recorded images made by an automated enforcement system are admissible in any proceeding resulting from a violation, and are only made available to the defendant and to government and law enforcement agencies.

1995 Senate Bill 1154 was passed by the Illinois Senate on 4/24/95, and was given a favorable report by the House Committee on Transportation and Motor Vehicles on 5/17/95. As of 10/30/95, no further action on this bill had been reported.

MASSACHUSETTS

COMMENT: 1995 House Bill 2433, introduced 2/3/95, permits the use of photo monitoring devices as a means of promoting traffic safety. On 9/18/95, the bill was moved from the Joint Committee on Public Safety without comment.

NEW JERSEY

Sec. 39:4-103.1. Prohibition of photo radar.

This statute bans the use of photo radar in speed enforcement. N.J. Stat. Ann. sec. 39:4-103.1 (West 1994). The act defines "photo radar" as, "...a device used primarily for...speed enforcement substantially consisting of a radar unit linked to a camera, which automatically produces a photograph of a [speeding] vehicle."

COMMENT: 1994 Assembly Bill 150, introduced 1/11/94, permits the use of photo radar on highways and toll roads with a 65 mph speed limit. There has been no further action on this bill since its introduction.

NEW YORK

Sec. 1111-a. Owner liability for traffic-control signal violations.

This statute permits cities with a population of one million or more to adopt a program imposing liability on the owner of a vehicle for failure to comply with traffic-control signals. N.Y. Veh. & Traf. Law sec. 1111-a (McKinney 1994). Sec. 1111-a(c) authorizes the use of a vehicle sensor device installed to work in conjunction with a traffic-control signal which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each vehicle at the time the vehicle commits a violation. A sworn certificate by a city technician based upon inspection of the photographs, microphotographs, videotape or other recorded images produced by a monitoring system is prima facie evidence of the facts contained therein.

The owner has an affirmative defense if the vehicle was reported stolen prior to the time of the violation. (Sec. 1111-a(i).) Lessors are exempt from liability if they prove that the violating vehicle was leased at the time of the violation, and if they identify the lessee. (Sec. 1111-a(j).) Under sec. 1111-a(b), there is no owner liability if the owner was not driving and the driver is convicted of the violation.

Liability as an owner shall not be deemed a conviction-as-operator for an owner's driving record or for insurance purposes. (Sec. 1111-a(f).) An owner found liable under this section who was not the driver of the violating vehicle can bring an action for indemnification against the driver. (Sec. 1111-a(k).)

When a violation occurs, a notice of liability is sent by the city having jurisdiction or its designee to the violating vehicle's owner by first class mail. The notice must contain the vehicle's registration number, the location, date and time of the violation, and the identification number of the camera which recorded the violation. The notice must provide information about how the owner may contest the citation, and must warn the owner that failure to contest results in a default judgment against the owner. (Sec. 1111-a(g).)

Sec. 1111-a originally provided that the photo-enforcement program would remain in effect until 12/1/96, and that photo-devices could only be installed at up to twenty-five intersections per city. However, the statute was amended on 8/8/95. The plan is now effective until 12/1/99, and devices can be installed at up to fifty intersections per city.

NOTE: Because the New York photo-enforcement plan contains both owner liability and mailed-citation provisions, it would be an excellent model for the drafting of an enabling statute for photo traffic enforcement.

COMMENT: 1995 Assembly Bill 1703, introduced 1/24/95, makes the photo traffic control program permanent in New York City. It requires the installation of at least 100 such devices throughout the city. The bill was sent to the Assembly Committee on Cities on 1/24/95.

1995 Assembly Bill 410 / 1995 Senate Bill 1062, introduced 1/4/95, authorize municipalities to enact local laws providing for photo coverage of traffic signals and establishing owner liability for violations. Assembly Bill 410 was sent to the Assembly Committee on Transportation on 1/4/95.

1995 Assembly Bill 6433 authorizes a 5-year demonstration program of photo traffic-light enforcement in the City of Long Beach establishing owner liability for violations. The bill empowers the city to install photo devices at up to 25 intersections. Introduced 3/27/95, this bill is currently being considered by the Assembly Committee on Transportation.

1995 Assembly Bill 675 / 1995 Senate Bill 461 authorize municipalities to install and operate photo-monitoring devices in school buses to record unlawful passing. The proposed program imposes liability for violations on the owner of the violating vehicle. Introduced 1/11/95 & 1/10/95 respectively, these bills are still in committee.

1995 Assembly Bill 5331 / Senate Bill 4045 establish a photo-monitoring system for railroad crossings that treats railroad crossing violations like parking violations. Liability for crossing violations is imposed on the registered owners of violating vehicles. These two bills were introduced 3/7/95 and 4/5/95, respectively. Both were still in committee as of 10/30/95.

1995 Assembly Bill 6721, introduced 3/28/95, authorizes the County of Nassau to implement a demonstration photo-monitoring program at hazardous railroad crossings. The bill's "traffic-control signal violation monitoring system" is defined as "a vehicle sensor installed to work in conjunction with a traffic-control signal which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each [violating] vehicle."

A sworn certificate from a Nassau County technician based upon inspection of recorded images produced by a photo-monitoring device is prima facie evidence of the facts contained therein. Such evidence is available for the defendant's inspection in any crossing violation prosecution.

The photo enforcement plan imposes liability for crossing violations on the owner of the violating vehicle if the vehicle was driven with the owner's express or implied consent. A notice of liability is sent by mail to the violating vehicle's owner. This notice contains the specifics of the alleged violation, informs the recipient of his/her options, and warns the accused that failure to contest within a specified time period shall result in a default judgment of liability.

Owner liability is not deemed an operator's conviction, and thus, does not go on the owner's driving record and does not impact the owner's insurance coverage. If the owner was not the operator of the violating vehicle he/she may bring an action for indemnification against the actual driver.

There is no owner liability if the owner was not driving and the driver is convicted of the underlying offense. There is also no owner liability if the owner had reported the violating vehicle stolen prior to the violation or if the owner is a lessor of vehicles who sends to the court a copy of the lease agreement, with the name and address of the lessee clearly legible, within 37 days after receiving notice of the violation.

NOTE: This demonstration program expires five years after it takes effect. If the plan is approved, Nassau County must report preliminary program results to the Governor and the heads of the Assembly and Senate before 3/1/97. As of 10/30/95, this bill was still being considered by the Joint Committee on Rules, where it has been since 6/29/95.

OREGON

1995 Senate Bill 382 was signed into law on 7/14/95. This provision authorizes Gresham and Portland to operate manned photo radar demonstration projects. Under these plans, speeding citations are issued to the owner of a violating vehicle by mail, with certain restrictions. The demonstration programs may begin after 1/1/96.

RHODE ISLAND

COMMENT: 1995 Senate Bill 517, introduced 2/9/95, "permits the use of automatic photo detection devices as a means of improving air quality and promoting traffic safety." Similarly, 1995 House Bill 6487, introduced 2/14/95, allows local authorities to employ photo-monitoring devices. After introduction, both bills were immediately referred to the Joint Committee on Highway Safety, where they presently remain.

TEXAS

1995 Senate Bill 1512 was signed into law by the Governor of Texas on 6/14/95. This act authorizes the Texas Department of Transportation to conduct a demonstration project whereby the Department will install and operate an "automated highway-railroad grade crossing enforcement system" at up to ten automatic gate crossing locations in Texas.

The "automated...enforcement system" is "a photographic camera and vehicle sensor installed to work in conjunction with an automatic [railroad crossing] gate, [which]...automatically produces one or more photos of a [violating] vehicle."

NOTE: This demonstration program ends 8/31/97. Before 1/1/98, the Department of Transportation must give a comprehensive report of the project's results, and must make recommendations regarding the plan's continuation, to the Governor and the legislature.

COMMENT: 1995 Senate Bill 317 / 1995 House Bill 916, introduced 1/25/95, authorize municipalities to implement a photo traffic control system. 1995 Senate Bill 317 passed the Senate on 5/9/95 and was reported favorably by the House Committee on State Affairs on 5/16/95.

1995 House Bill 1952, introduced 3/2/95, authorizes municipalities to implement a photo preferential traffic lane enforcement program. This bill was sent to the House Committee on Transportation on 3/6/95.

1995 Senate Bill 876, introduced 3/2/95, authorizes municipalities to implement both a photographic traffic control system and a photo preferential traffic lane enforcement system. This bill was passed by the Senate on 3/18/95, and was reported favorably with substitute by the House Committee of Transportation on 4/26/95.

UTAH

Sec. 41-6-52.5. Photo radar speed enforcment.

This statute expressly authorizes the use of photo radar for speed enforcement in certain circumstances. Photo radar may be used to enforce speed restrictions in school zones or wherever a local authority's governing body determines that there is a public safety need, if approved by a local authority's governing body, if signs are posted to notify motorists, and if a police officer is present with the photo radar unit.

VIRGINIA

Sec. 46.2-833.01. Traffic control demonstration project.

1995 House Bill 2587, enacted 3/24/95, adds sec. 46.2-833.01 to the Virginia Code. This new statute, effective until 7/1/98, authorizes traffic light photo-monitoring demonstration programs in certain localities.

Specified localities may create, by ordinance, plans imposing monetary liability on vehicle operators for failing to comply with traffic light signals. Each locality may install and operate photo monitoring systems at up to 25 intersections at any one time. The statute defines "traffic light signal violation-monitoring system" as, "a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photos, two or more micro-photos, a videotape, or other recorded images of each vehicle at the time [of violation.]"

A sworn statement by a photo technician based upon inspection of recorded images produced by a photo monitoring system is prima facie evidence of the facts contained therein. In prosecutions of traffic light violations, prima facie evidence that the vehicle was involved in a violation, together with proof that the defendant was the registered owner of the vehicle at the time of the violation creates a rebuttable presumption that the owner committed the violation. This presumption can be rebutted if the owner files an affidavit or testifies in court stating that he/she was not the violator. The presumption is also rebutted if a certified copy of a police report shows that the vehicle had been reported stolen prior to the date of the alleged violation. Vehicle lessors are excluded from the statutory definition of "owner."

A summons for a violation may be mailed to the address of the registered owner of the violating vehicle. However, no proceedings for contempt or arrest may be initiated against the owner if he/she fails to appear on the summons's return date.

Penalties imposed under this statute cannot exceed $50. Violations are not deemed a "conviction as operator, do not go on the violator's driving record, and do not affect the violator's insurance coverage.

WASHINGTON

COMMENT: 1995 Senate Bill 5530 authorizes the use of "automated traffic enforcement systems." Introduced 1/26/95, this bill passed the Senate on 3/16/95, and was referred to the House Committee on Transportation on 3/17/95.

WISCONSIN

COMMENT: 1995 Assembly Bill 388 prohibits the use of photo radar speed detection in the enforcement of speed restriction laws. This bill was introduced 5/23/95, and is currently scheduled for a hearing before the Assembly Committee on Highways and Transportation.

APPENDIX B

SYNOPSIS OF STATE LAWS RELEVANT TO PHOTO ENFORCEMENT ENABLING LEGISLATION

ALABAMA

Sec. 32-5A-170. No person shall speed.

Alabama Code sec. 32-5A-170 (1994) specifies that no person shall drive a vehicle at a speed greater than is reasonable and prudent under the circumstances, conditions and actual and potential hazards then existing. This standard type of speed law requires driver identification for the prosecution of speeding offenses.

NOTE: If photo speed enforcement is to be implemented effectively in Alabama, or any other state that currently has a driver identification requirement, an owner liability provision (which would eliminate the need for driver identification) is required. There is no such provision in Alabama relating to speeding violations.

NOTE: Many states have owner liability provisions relating to both the illegal passing of a stopped school bus and to parking violations. These existing owner liability traffic laws could serve as models for comparable legislation imposing liability on owners of vehicles involved in speeding violations. Alabama has such a parking statute, but does not have a school bus owner liability statute.

Sec. 32-5-152. Owner liability for parking.

This statute establishes a prima facie presumption that the registered owner of an illegally parked vehicle committed or authorized the parking violation, and places the burden of proof on the owner to show otherwise. Sec. 32-5-152.1 exempts vehicle lessors from owner liability for parking violations that occur while the violating vehicle is in the lessee's possession, if the lessor provides information about the responsible lessee.

NOTE: Alabama statutes do not address the use of speed-measuring devices.

ALASKA

Sec. 28.05.011. Limited state traffic law.

Alaska has little state traffic law per se. The vast majority of the state's rules of the road are regulations that are promulgated by the Department of Public Safety commissioner under Alaska Stat. sec. 28.05.011 (1994). These regulations are found at 13 Alaska Admin. Code 02.

NOTE: There is no owner liability provision for either speeding or parking violations.

Sec. 28.35.145. Owner liability for passing a school bus.

This "Miscellaneous Motor Vehicle Provision," creates owner or lessee liability for illegally passing a stopped school bus. There is no owner liability if the owner reported the vehicle stolen before the violation, or if the owner is a lessor of automobiles and the vehicle was leased at the time of the violation. There is also no owner liability if a driver other than the owner is prosecuted for the violation. Owner liability under this section does not result in the loss of a driver's license, or in the assessment of any demerit points.

NOTE: There are no statutes regarding the use of speed detection devices.

ARIZONA

Sec. 28-701. No person shall speed.

Ariz. Rev. Stat. Ann. sec. 28-701 (1994).

NOTE: There is no owner liability statute for speeding or other traffic violations. Speed detection device legislation is similarly lacking.

ARKANSAS

Sec. 27-51-201. No person shall speed.

Ark. Code Ann. sec. 27-51-201 (Michie 1994).

Sec. 27-51-1001. Inference that owner of vehicle was driver.

"[P]roof that the particular vehicle described in the citation...was in violation of this subchapter, together with proof that the defendant named in the citation...was, at the time of the violation, a registered owner of the vehicle, shall constitute, in evidence, a justifiable inference that the registered owner of the vehicle was the driver of the vehicle at the time of the violation."

NOTE: Because of sec. 27-51-1001, driver identification is not an obstacle to photo speed enforcement in Arkansas.

NOTE: Arkansas statutes do not discuss the use of speed detection devices.

CALIFORNIA

California Vehicle Code, Sec. 22348. No person shall speed.

Cal. Veh. Code sec. 22348 (West 1994).

NOTE: California does not have an owner liability provision for speeding or parking violations. The state had such a provision for parking violations, but that legislation was recently repealed.

Sec. 22454. Warning to owner for passing school bus.

"If a vehicle was observed overtaking a school bus...and the driver of the school bus witnessed the violation, the driver may, within 24 hours, report the violation and furnish the vehicle license plate number and description and the time and place of the violation to the local law enforcement agency having jurisdiction of the offense. That law enforcement agency shall issue a letter of warning...with respect to the alleged violation to the registered owner of the vehicle."

Sec. 40803. Speed traps prohibited.

Under sec. 40803, no evidence obtained through the use of a speed trap may be used in a speeding prosecution. Hence, to be legal, photo speed enforcement plans for California highways must not constitute speed traps. Sec. 40802 defines a speed trap as either (a) a section of highway that has been measured and marked in order to determine the speed of a vehicle traveling the known distance, or (b) a section of highway with a speed limit that is enforced through the use of radar or other electronic speed-measuring devices when the speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation.

COLORADO

Sec. 42-4-1101. No person shall speed.

Colo. Rev. Stat. sec. 42-4-1101 (1994).

NOTE: Colorado does not have an owner liability provision for either speeding or school bus violations.

Sec. 42-4-1209. Owner liability for parking.

This statute, if applied to other traffic violations, would solve the driver identification hurdle to photo traffic enforcement. Sec. 42-4-1209, creates a rebuttable presumption that the owner of a violating vehicle is liable for the parking violation.

NOTE: Colorado statutes do not address the use of speed detection devices.

CONNECTICUT

Sec. 14-219. No person shall speed.

Conn. Gen. Stat. sec. 14-219 (1994).

Sec. 14-107. Prima facie evidence of owner liability.

Under sec. 14-107, whenever there is a speeding violation, proof of the violating vehicle's registration number is prima facie evidence in a subsequent prosecution that the owner was the operator at the time of the infraction. Hence, driver identification is not an obstacle to photo speed enforcement in Connecticut.

NOTE: Sec. 14-107 also applies to the state's parking and stop-for-school bus statutes.

Sec. 14-219c. Prima facie presumption of speed device accuracy.

This statutory presumption is sufficient to support a speeding conviction for radar, speed-monitoring laser, vascar, or any other speed-monitoring device approved by the commissioner of public safety upon testimony by a competent police officer that:

1) the operating officer has adequate training and experience using the device;
2) the device was in proper working condition at the time of arrest, established by proof that suggested methods of testing the device were followed;
3) the device was used in an area where road conditions provide a minimum possibility of distortion;
4) if moving radar was used, the speed of the patrol car was verified; and
5) the device was expertly tested within a reasonable time following the arrest, and such testing was done by means which do not rely on the internal calibrations of the device.

Sec. 7-294z. Prohibition of hand-held radar.

This statute prohibits the use of hand-held radar, or other speed monitoring devices that emit non-ionizing radiation for traffic law enforcement. As "other speed monitoring devices," photo speed enforcement devices would have to satisfy this provision.

DELAWARE

Sec. 21-4168. No person shall speed.

Del. Code Ann. tit. 21, sec. 4168 (1994).

NOTE: There is no owner liability statute for speeding or parking violations.

Sec. 21-4166(g). Owner liability for passing school bus.

This statute creates a rebuttable presumption that the owner of a vehicle that passes a stopped school bus is liable for the violation.

Sec. 21-701. Speed enforcement.

When there is a speeding violation that is detected by radar or other speed monitoring device, an arrest may be made by an officer other than the officer operating the speed monitoring device, provided that the arresting officer is in a position to observe the violation, is working in conjunction with the operating officer, and is immediately advised of the violation. This statute demonstrates some

flexibility in speed enforcement, but does not permit mailing citations to violators, a prerequisite for an effective photo speed enforcement system.

DISTRICT OF COLUMBIA

Sec. 40-712. No vehicle shall speed.

Unlike the above states' "no person shall" speed statutes, D.C.'s general speed restriction declares that "no vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under authority of this chapter." D.C. Code Ann. sec. 40-712 (1994). Despite this different language, D.C.'s statute imposes initial liability on the driver of the offending vehicle, not the owner of the vehicle. Under the penalty section of sec. 40-712, fines are levied on "any individual violating any provision of this section."

Sec. 40-624. Owner liability.

This statute provides that while the operator of a vehicle that commits a traffic violation is primarily liable for civil penalties imposed pursuant to chapter 40, the owner of the vehicle is also liable unless he/she shows that the vehicle was used without his/her permission or that the violation was committed by a lessee of his/her vehicle.

NOTE: There are no statutes pertaining to the use of speed detection devices.

FLORIDA

Sec. 23-316.181. No person shall speed.

Fla. Stat. Ann. sec. 23-316.181 (West 1994).

NOTE: Florida does not have an owner liability statute for speeding violations or for passing a stopped school bus.

Sec. 23-316.1967. Owner liability for parking violations.

Under this statute, the owner of a vehicle is presumed liable for parking violations involving his/her vehicle. The owner can escape liability only if he/she proves that the vehicle was in the care, custody, or control of another person at the time of the violation.

Secs. 23-316.1905 & 23-316.1906. Speed-measuring devices.

Any photo speed enforcement plan in Florida would have to meet the requirements of secs. 23-316.1905 & 1906. Sec. 23-316.1905 declares that speed-monitoring devices must be of a type approved by the Department of Highway Safety and Motor Vehicles, and must be tested at least every six months by the Department. If a signed and witnessed certificate shows that the device was tested within the specified period and that the device was working properly, the device is presumed accurate and reliable.

Sec. 23-316.1906 defines "radar" as any laser-based or microwave-based speed-measurement system used to detect motorists' speed. Radar evidence is admissible in a speeding prosecution only if such evidence is obtained by an officer who:

a) has satisfactorily completed the radar training course;
b) has made an independent visual determination that the vehicle is speeding;
c) is using radar under conditions that permit the clear assignment of speed to a single vehicle;
d) is using radar without any automatic speed locks or alarms;
e) is operating radar with audio Doppler on; and
f) is using a radar unit which meets the Department of Highway Safety and Motor Vehicles' design criteria.

NOTE: The requirement that an officer must visually verify that a vehicle is speeding precludes the use of unmanned photo radar in Florida at this time.

GEORGIA

Sec. 40-6-180. No person shall speed.

Ga. Code Ann. sec. 40-6-180.

NOTE: Georgia does not have an owner liability statute for speeding or parking violations.

Sec. 40-6-163. Owner liability for passing a school bus.

Although somewhat unclear, this statute seems to provide for owner liability. It does not explicitly state that owners are presumed liable for the illegal passing of stopped school buses, but it does direct school bus drivers to report the license number and a description of any offending vehicles to the Department of Public Safety. The Department must submit these reports to the appropriate local law enforcement agency for prosecution. The citation is then to be sent to the offending vehicle's registered owner. (1985 Op. Atty. Gen. No. 85-56.)

Secs. 40-14-1 to 40-14-9. Speed detection devices.

Sec. 40-14-1(4) defines a "speed detection device" as any "VASCAR" or similar speed-measuring device, and any speed-measuring device based on the principle of radar or the speed timing principle of laser. These devices must meet minimum performance standards established by the Department of Public Safety. The governing authorities of any county, municipality, college or university that seeks to utilize speed timing devices must receive a permit from the Department of Public Safety and a license from the FCC before using the devices. (Secs. 40-14-2 & 4.) The permit application must specify the name of the street or road on which the device is to be used, and the relevant speed limits must have been pre-approved by the Division of Traffic Engineering and Safety of the Department of Transportation. (Sec. 40-14-3(a).) Before use and annually thereafter, each device must be certified for compliance with FCC rules by a Department of Public Safety

technician. (Sec. 40-14-4.) The devices must also be tested by the operating officer at the beginning and end of "each duty tour." (Sec. 40-14-5.)

Warning signs must be erected to alert motorists that speed detection devices are being employed. (Sec. 40-14-6.) Speed detection devices must be visible to approaching motorists from a distance of at least 500 feet. (Sec. 40-14-7.) Whenever a county, municipal or campus law enforcement officer uses a radar device to catch a speeder, that officer must notify the violator that he/she has a right to request the officer to test the device for accuracy. (Sec. 40-14-5.)

The devices may not be used in close proximity to a reduction in speed limit, or to enforce a speed limit that was reduced less than thirty days ago, or on a portion of a highway that has a grade in excess of 7%. (Sec. 40-14-9.) Nor may the devices be used to prosecute a speeding violation of less than ten m.p.h. over the limit, unless in school zones or marked residential districts. (Sec. 40-14-8.) The devices are also forbidden in locales where arresting officers are paid on a fee system. (Sec. 40-14-2.)

COMMENT: 1995 House Bill 722, introduced 2/14/95, "relates to the application for a permit to use speed detection devices." There has been no action on this bill since it was sent to the House Committee on Transportation on 2/14/95.

1995 Senate Resolution 294 creates the Joint Public Safety Radar Enforcement Regulatory Study. Introduced 3/7/95, this resolution was given a favorable report by the Senate Committee on Rules on 3/13/95. Further details about the status and content of this resolution are presently unavailable.

HAWAII

Sec. 291C-101. No person shall speed.

Hawaii Rev. Stat. sec. 291C-101 (1991).

NOTE: There is no owner liability statute for either speeding, school bus passing, or parking violations.

COMMENT: 1995 House Bill 193, introduced 1/19/95, establishes guidelines allowing school bus drivers to report violations of the school bus passing provisions. Presumably, this bill would also create some degree of owner liability for violations of the school bus law. The bill was sent to the House Committee on Judiciary on 1/19/95.

IDAHO

Sec. 49-654. No person shall speed.

Idaho Code sec. 49-654 (1994).

NOTE: There is no owner liability provision for speeding or parking violations.

Sec. 49-1423. Owner liability for passing a school bus.

This complex statute establishes owner liability for illegally passing a school bus. However, there is no owner liability if the owner identifies the offending driver.

NOTE: Idaho statutes are silent on the use of radar devices for speed enforcement.

ILLINOIS

625 ILCS 5/11-601. (a) No vehicle may be driven...at a speed greater than reasonable, (b) no person may speed.

Ill. Compiled Stat. ch. 625 para 5/11-601 (1994).

NOTE: There is no owner liability provision for speeding violations.

625 ILCS 5/11-1414. Owner liability for passing a school bus.

This statute states that when the identity of a violator of the "overtaking a school bus" statute is not known, the owner of the vehicle must identify the offending driver. If the owner refuses, liability is imposed on the owner.

625 ILCS 5/11-1306. Owner liability for parking violations.

This statute exempts lessors from owner liability for parking violations. This suggests that owners are presumed liable for parking violations even though no statute was found that specifically establishes that principle.

625 ILCS 5/11-602. Speed-measuring devices.

The state's only statute addressing electronic speed-measuring devices provides that such devices may not be used within 500 feet of a speed limit sign unless used in a school zone.

INDIANA

Sec. 9-21-5-1. No person shall speed.

Indiana Code sec. 9-21-5-1 (1991).

NOTE: Indiana does not have an owner liability provision for speeding violations.

Sec. 9-21-12-1 (1995 Suppl.). Owner liability for passing school bus.

There is a rebuttable presumption that the owner of a vehicle that violates the school bus law committed the violation. The presumption does not apply if the owner is a lessor of vehicles.

Sec. 9-30-11-8. Owner liability for parking violations.

An owner liability presumption also exists for parking violations. Again, there is a defense for owners who are in the business of leasing vehicles.

NOTE: Indiana has no speed detection device legislation.

IOWA

Sec. 321.285. No person shall speed.

Iowa Code sec. 321.285 (1994).

NOTE: There is no owner liability law for speeding violations.

Sec. 321.372A. Owner liability for school bus violations.

This statute provides that school bus drivers may report violations to police officers up to seventy-two hours after the violation occurred. Such reports must include the time and location of the violation and the registration plate number and a description of the vehicle involved in the violation.

Upon receipt of a report of a violation, the recipient police officer shall initiate an investigation of the reported violation, contact the owner of the violating vehicle, and ask the owner to supply information identifying the person who was the driver during the violation. The owner shall identify the driver to the best of the owner's ability, but need not supply information if the owner believes such information would be self-incriminating. (Sec. 321.484).

If from the investigation, the police officer has reasonable cause to believe that a violation has occurred, the officer shall serve the driver with a citation either personally or by certified mail.

Sec. 321.484. Owner liability for parking violations.

This statute provides that the owner of a vehicle is responsible for traffic violations involving his/her vehicle unless the owner establishes that, at the time of the violation, the vehicle was in the custody of an identified person other than the owner pursuant to a lease.

NOTE: Iowa has no speed detection device legislation.

KANSAS

Sec. 8-1557. No person shall speed.

Kan. Stat. Ann. sec. 8-1557 (1991).

NOTE: Kansas has no owner liability provision for speeding, school bus, or parking violations. The state also has no radar legislation.

KENTUCKY

Sec. 189.390. No person shall speed.

Ky. Rev. Stat. Ann. sec. 189.390 (1994).

NOTE: There is no owner liability statute for speeding or parking violations.

Sec. 189.370. Owner liability for passing a school bus.

Under this statute, there is a rebuttable presumption that the owner or lessee of the offending vehicle is liable for the violation.

NOTE: No statute relates to speed detection devices.

LOUISIANA

Sec. 32:64. No person shall speed.

La. Rev. Stat. Ann. sec. 32:64 (West 1994).

NOTE: Louisiana does not have an owner liability statute for speeding or parking violations.

Sec. 32:80(A)(3). Owner liability for school bus violations.

This statute provides that upon receiving a report of a violation, the appropriate authority may issue a citation to the owner or lessee of the vehicle involved, unless the vehicle is stolen, or unless another driver is cited.

MAINE

Sec. 29-A-2073(3). No person shall speed.

Me. Rev. Stat. Ann. tit. 29-A, sec. 2073 (1994).

NOTE: There is no owner liability statute for speeding, school bus, or parking violations. Maine had an owner liability statute for school bus passing violations, Sec. 29-2019, but that statute was repealed on January 1, 1995.

Sec. 29-A-2075(4). Prima facie evidence of speed detection devices.

This statute provides that the results of speed measuring devices must be accepted as prima facie evidence of the speed of a motor vehicle in a criminal or traffic infraction proceeding. Acceptable speed measuring instruments are radar, electronic devices that measure speed by radio-microwaves, laser or otherwise, and devices that compute speed by measuring a selected distance travelled by a police vehicle and the time required by another vehicle to traverse that same distance.

COMMENT: 1995 House Bill 266, introduced 1/31/95, holds both the owner and the operator of a vehicle involved in a high-speed chase liable for resulting damages. The bill further provides that such an owner commits a traffic infraction, although specific defenses are available. House Bill 266 passed the House on 4/12/95. However, on 5/11/95, the Joint Committee on Criminal Justice recommended that the Senate ought not to pass the bill.

MARYLAND

Sec. 21-801. No person shall speed.

Md. Transp. Code Ann. sec. 21-801 (1994).

NOTE: The state does not have an owner liability speeding statute.

Sec. 21-706.1. Owner liability for passing a school bus.

Maryland's school bus passing law provides that if the identity of the driver of a violating vehicle cannot be established, the police shall issue a written warning to the vehicle's owner. Without the driver's identity, though, there is insufficient evidence for the issuance of a citation.

Under sec. 21-706.1, school bus drivers may report violations to police. These reports are to include information about the identity of the alleged violator, the license plate number and color of the violating vehicle, the time and location of the violation, and a description of the vehicle's type.

Sec. 26-302. Owner liability for parking violations.

When a citation is attached to an unattended violating vehicle, the owner is presumed to be the recipient of the citation.

MD C. & J.P. Code Ann. Sec. 10-301. Radar speed enforcement.

The speed of a violating vehicle may be proven by evidence "from a device designed to measure and indicate the speed of a moving object by means of radiomicrowaves."

MASSACHUSETTS

Sec. 90-17. No person shall speed.

Mass. Ann. Laws ch. 90, sec. 17 (West 1989).

NOTE: There is no owner liability statute for speed violations or for passing a stopped school bus.

Sec. 90-20A. Owner liability for parking violations.

Under this section, penalties for failing to pay parking citations are directed at the owner of the offending vehicle. Sec. 90-20E absolves lessors of responsibility if they identify the lessee who was operating the vehicle at the time of the violation.

NOTE: If a traffic officer is unable to affix a parking citation to the offending vehicle, sec. 90-20A permits the mailing of the notice to the owner of the vehicle within a specified time frame. This provision could perhaps serve as a model for a similar statute permitting speeding citations to be mailed to owners of offending vehicles. Such a statute would be essential to the effective implementation of any photo speed enforcement plan.

NOTE: No statutes address the use of speed detection devices.

MICHIGAN

Sec. 257.627. No person shall speed.

Mich. Comp. Laws Ann. sec. 257.627 (1994).

NOTE: There is no owner liability speeding provision.

Sec. 257.682. Owner liability for passing a school bus.

Michigan's passing a school bus law also creates a presumption of owner liability for violations.

Sec. 257.675a. Owner liability for parking violations.

This section creates a presumption of owner liability for parking violations. However, if the parking violation is a civil infraction, the owner of the vehicle may assert as an affirmative defense that, at the time of the violation, the driver did not have the owner's consent to operate the vehicle. (Sec. 257.675c(2).) In addition, if the owner is found liable for a civil parking infraction, he has the right to recover in a civil action against the driver. (Sec. 275.675c(3).) Also, if the violating vehicle was leased at the time of the violation, the lessee, not the lessor, is presumed guilty. (Sec. 275.675b.)

NOTE: The use of radar devices is not covered by statute.

MINNESOTA

Sec. 169.14. No person shall speed.

Minn. Stat. Ann. sec. 169.14 (1994).

NOTE: There is no owner liability speeding or parking provision.

Sec. 169.44. Owner liability for school bus violations.

This statute provides that the owner or lessee of a vehicle that violates the school bus stopping law is guilty of a petty misdemeanor. The owner or lessee may not be fined, though, if another person is subsequently convicted for that violation or if the vehicle was stolen at the time of the violation.

Secs. 169.14(10) & (11). Speed detection devices.

Section 169.14(10) addresses the use of radar or other speed-measuring-device evidence in speeding prosecutions. Such evidence is admissible if:

a) the officer operating the device has sufficient training;

b) the officer testifies as to the manner in which the device was set up and operated;
c) the device was operated with minimal distortion or interference; and
d) the device was tested by an accurate and reliable external mechanism, method, or system at the time it was set up.

Sec. 169.14(11) sets minimum safety requirements for operating procedures for the use of hand-held radar units.

MISSISSIPPI

Sec. 63-3-501. No person shall speed.

Miss. Code Ann. sec. 63-3-501 (1994).

NOTE: There is no owner liability provision for speeding, school bus passing, or parking violations.

Sec. 63-3-519. Restrictions on use of radar.

Under this statute, only the Mississippi Highway Safety Patrol may use radar enforcement, with three specified exceptions. Municipal police may use radar on the public streets of municipalities with a population of over 2,000, or on federal highways within municipalities with a population of 15,000+. In addition, college or university campus police may use radar on any campus with 2,000 or more students enrolled. The Mississippi Highway Patrol may not use radar on highways within municipalities with a population of in excess of 15,000.

COMMENT: A number of bills suggest provisions that would expand the scope of Mississippi's radar device statute, sec. 63-3-519, to allow more usage of radar devices. 1995 House Bills 462, 1124, 1238, and 580, and 1995 Senate Bills 2122, 2351, and 3221 are all examples of this type of bill. As of 10/16/95, all of these bills were stalled in various committees.

MISSOURI

Sec. 304.010. No person shall speed.

Mo. Rev. Stat. sec. 304.010 (1994).

NOTE: There is no owner liability provision for speeding or parking violations.

Sec. 304.050. Owner liability for passing a stopped school bus.

If the identity of the driver of the violating vehicle is not otherwise apparent, it is presumed that the registered owner of the vehicle committed the violation. Lessors can rebut this presumption with proof that the car was leased to another person at the time of the violation.

NOTE: Missouri statutes do not address the use of speed enforcement devices.

MONTANA

Sec. 61-8-303. No person shall speed.

Mont. Code Ann. sec. 61-8-303 (1994).

NOTE: There is no owner liability provision for speeding or parking violations.

Sec. 61-8-351. Owner liability for passing a school bus.

Under this statute, the owner is prima facie the driver of a vehicle that illegally passes a stopped school bus.

Sec. 61-8-702. Speed detection devices.

Radar and other electrical devices may be used for speed measurement. Evidence from these devices is admissible in speeding prosecutions.

Sec. 61-8-703. Radar-based arrests.

An arrest may be made without a warrant in radar cases if the arresting officer is in uniform, displays his badge, and has either observed the recording of the vehicle's speed by operating the speed-measuring device, or been promptly alerted by the operating officer that the vehicle was speeding.

Sec. 61-8-704. Notice of radar speed enforcement

Signs giving notice that radar is being used must be posted in various specified locations.

NEBRASKA

Sec. 60-6,185. No person shall speed.

Neb. Rev Stat. sec. 60-6,185 (1995).

NOTE: There is no owner liability provision for speeding, school bus passing, or parking violations.

Sec. 60-6,192. Speed detection devices.

A police officer's visual observations regarding the speed of a vehicle must be corroborated by the use of a radar, mechanical, or electronic speed measurement device.

Speed device evidence is admissible in a speeding prosecution if the state proves that:

a) the device was in proper working order at the time of the alleged violation;

b) the device was being operated in such a manner so as to allow a minimum possibility of distortion or outside interference;
c) the operator of the device was qualified by training and experience to properly test and operate the device; and
d) the operator conducted accuracy tests upon the device within a reasonable time both prior to and subsequent to an arrest being made, and the device was found to be in working order. Sec. 60-6,192(1).

A speeder detected by a speed-measuring device may be arrested without a warrant if certain standard preconditions are met.

NEVADA

Sec. 484.361. No person shall speed.

Nev. Rev. Stat. sec. 484.361 (1994).

NOTE: There is no owner liability law for speeding or school bus violations.

Sec. 484.810. Owner liability for parking violations.

This statute, which provides that a warrant be issued for the failure to obey a parking citation, presumes owner liability for parking violations.

NEW HAMPSHIRE

Sec. 265:60. No person shall speed.

N.H. Rev. Stat. Ann. sec. 265:60 (1994).

NOTE: There is no owner liability speeding or parking provision.

Sec. 265:54. Owner liability for passing a stopped school bus.

This statute establishes that testimony under oath from a school bus driver or other witness that a vehicle violated the school bus provision is sufficient evidence to prove that the owner of the vehicle was driving at the time of the violation. This presumption can be rebutted by the owner.

NEW JERSEY

Sec. 39:4-98. No person shall speed.

N.J. Stat. Ann. sec. 39:4-98 (West 1994).

NOTE: There is no owner liability provision for speeding violations.

Sec. 39:4-128.1. Owner liability for passing stopped school bus.

This statute creates a presumption of owner liability for school bus violations.

Sec. 39:4-139.5. Joint liability for parking violations.

This section provides that vehicle owners and operators are jointly liable for parking offenses. However, a vehicle owner has a right to recover the amount of any fine or penalty imposed from the actual operator of the violating vehicle. In addition, an owner is not liable if he/she proves that the vehicle was operated without his/her consent or that the vehicle was being leased at the time of the violation.

NEW MEXICO

Sec. 66-7-301. No person shall speed.

N.M. Stat. Ann. sec. 66-7-301 (Michie 1994).

NOTE: There is no owner liability statute for speeding, overtaking-a-school bus, or parking violations. There is also no speed detection device legislation.

NEW YORK

Sec. 1180. No person shall speed.

N.Y. Veh. & Traf. Law sec. 1180 (McKinney 1994).

NOTE: There is no owner liability provision for speeding, school bus or parking violations. Nor is there a speed detection device statute.

COMMENT: 1995 Assembly Bill 4909 provides for school bus driver reporting of violations and for owner liability for citations issued after such reports of the unlawful passing of a school bus. Introduced and sent to the Assembly Committee on Transportation on 3/6/95.

NORTH CAROLINA

Sec. 20-141. No person shall speed.

N.C. Gen. Stat. sec. 20-141 (1994).

NOTE: North Carolina has no owner liability law for speeding or school bus violations.

Sec. 20-162.1. Owner liability for parking violations.

This statute declares that evidence of a parking violation shall be prima facie evidence that the violating vehicle's owner committed the violation. Lessors of vehicles are exempt from this rule if they can prove that the violating vehicle was leased to another at the time of the violation and if they provide information about the identity of the lessee to the courts.

Sec. 8-50.2. Radar speed devices.

Radar evidence is admissible for corroborating an officer's visual observation of a speeding violation if the operator of the speed device was authorized to operate that device, the operator operated the device in accordance with standard operating procedures, the device was officially sanctioned, and the speed device had been calibrated and tested for accuracy. Such testing must be done at least every six months by a federally licensed technician.

NOTE: Sec. 8-50.2 precludes the implementation of unmanned photo traffic enforcement in North Carolina. Under this law, evidence from a speed-measuring device must be corroborated by eyewitness police testimony.

1995 House Bill 534 provides that evidence that a vehicle passed a stopped school bus is prima facie evidence that the owner of the vehicle was operating the vehicle at the time of the violation. Introduced 3/23/95, this bill passed the House on 5/10/95 and was sent to the Senate Committee on Judiciary I on 5/25/95.

NORTH DAKOTA

Sec. 39-09-01. No person shall speed.

N.D. Cent. Code sec. 39-09-01 (1994).

NOTE: There is no owner liability provision for speeding violations.

Sec. 39-10-46.1. Owner liability for passing stopped school bus.

When a vehicle passes a stopped school bus, there is a rebuttable presumption that the owner of the vehicle permitted the violation. Two defenses are available to the owner of a violating vehicle: 1) The owner is not liable if he/she proves that the driver did not have the owner's permission. 2) If the driver did have permission to drive the vehicle, the owner may escape liability if he/she identifies the violating driver.

Sec. 39-10-51.1. Owner liability for parking violations.

Under this section, an owner is liable for parking violations unless the owner proves that at the time of the violation the offending vehicle was leased. The lessor must also disclose the identity of the lessee.

Sec. 39-03-15. Speed detection devices.

This statute permits the use of radar or other electrical device to monitor speed. Evidence from speed-monitoring devices is accepted as prima facie evidence of the vehicle's speed in a speeding prosecution. Speeders may be arrested without a warrant if the arresting officer is in uniform or displays a badge, and the arresting officer has either observed the vehicle's speed through the use of a speed-monitoring device, or has been informed by another officer operating the speed-monitoring device of the speeding violation.

OHIO

Sec. 4511.21. No person shall speed.

Ohio Rev. Code Ann. sec. 4511.21 (Baldwin 1994).

NOTE: There is no owner liability provision for speeding violations.

Sec. 4511.751. Warning to owner for school bus violation.

Under this statute, school bus drivers are authorized to report violations to police. If the investigating officer is able to determine the identity of the offending driver, a citation may be issued to that driver. However, if the identity of the offending driver cannot be determined, the police must issue a warning to the owner of the vehicle. Lessor-owners are exempted from this statute's provisions.

Sec. 4521.03. Owner liability for parking violations.

When the identity of an offending driver is not known the owner of an offending vehicle is held liable for the parking violation. However, if the offending driver is not the owner, the two parties are jointly liable for the infraction. Once again, an exception is made for lessor-owners of offending vehicles.

Sec. 4511.091. Speed detection devices.

This section allows police officers using radar or other speed-monitoring devices to arrest speeders, provided that the arresting officer observed the results of the speed-monitoring device, or was working in tandem with another officer who operated the speed-monitoring device.

COMMENT: 1995 House Bill 410 authorizes the use of laser timing devices for speed enforcement. Introduced 6/19/95, this bill was sent to the House Committee on Transportation and Public Safety on 6/20/95.

OKLAHOMA

Sec. 11-801. No person shall speed.

Okla. Stat. Ann. tit. 47 sec. 11-801 (West 1994).

NOTE: There is no owner liability statute for speeding violations.

Sec. 11-705. Warning for school bus violations.

This section mandates the issuance of a warning letter to owners of vehicles that are reported for failing to stop for a stopped school bus. School bus drivers are authorized to report these violations. The warning letter does not appear on the owner's driving record. However, the issuance of the warning letter does not preclude prosecution for the violation if the identity of the violator can be determined.

Sec. 11-1009. Implicit owner liability for parking violations.

Although not explicitly provided for, owner liability is implicit in this statute. Under sec. 11-1009, the state can impound any car that has outstanding parking fines against it. The state also has a possessory lien against such vehicles. This provision effectively imposes liability for parking violations on vehicle owners since these owners suffer the consequences of state confiscation of violating vehicles.

OREGON

Sec. 811.100. No person shall speed.

Or. Rev. Stat. Ann. sec. 811.100 (1994).

NOTE: There is no provision for owner liability for speeding or school bus violations.

Secs. 811.555, 811.570, 811.575 & 811.585. Owner liability for parking.

Oregon's parking laws provide for owner liability when the identity of the violator is unknown. However, the owner has an affirmative defense if the driver's use of the vehicle was not authorized by the owner either expressly or by implication.

Sec. 810.420. Speed detection devices.

Oregon's statute on the use of radar or other speed-monitoring devices provides that speeding citations can be issued when such devices are used if the detaining officer is in uniform and either operated the speed-monitoring device that registered the speeding violation, or received information from a different operating officer about the violation.

COMMENT: 1995 Senate Bill 892 became law on 7/7/95. This new law applies to any city with a population exceeding 300,000. It establishes an offense for being the registered owner of a motor vehicle parked in violation of city parking ordinances. Lessors are allowed to recover the cost of the citation from responsible lessees. Notice is sent by mail. There are affirmative defenses for owners whose vehicles were used without their permission, and for owners who are lessors of vehicles.

PENNSYLVANIA

Sec. 75-3361. No person shall speed.

75 Pa. Cons. Stat. Ann. sec. 3361 (1994).

NOTE: There is no specific owner liability provision for speeding violations. However, Pennsylvania has a general owner liability statute.

Sec. 42-6143. Owner liability for traffic violations.

According to this statute, a violating vehicle's owner is presumed to be the offending driver in any traffic violation action or proceeding for the recovery of a civil penalty.

NOTE: This suggests that driver identification is not a prerequisite for traffic law prosecutions in Pennsylvania. Hence, if Pennsylvania law permitted the mailing of citations to speeding offenders, the preferred photo speed enforcement model could be implemented in this state.

Sec. 75-3368. Speed-measuring devices.

Radar devices can only be used by the Pennsylvania State Police. Other electronic devices can be used by any police officer. Except for school zones, speed-device evidence cannot sustain a speeding conviction where the speed limit is less that 55 m.p.h. and the speed recorded is less than 10 m.p.h. over the limit. Nor may such evidence sustain a conviction when the limit is 55 m.p.h. or above unless the speed recorded is six or more m.p.h. above the limit.

Speed-measuring devices cannot be used within 500 feet of a speed limit sign indicating a decrease in speed, except for speed limit signs indicating school zones, bridges, hazardous grades, and work zones. (Sec. 75-3368(e).) All speed measuring devices must be of a type approved by the Department of Transportation and must have been tested for accuracy within a period of 60 days prior to the alleged violation. (Sec. 75-3368(d).)

COMMENT: 1995 Senate Bills 337 and 849, and 1995 House Bills 1203 and 1833 all allow a wider range of police officers to use "certain electronic speed timing devices" than is currently permitted. These bills were introduced 1/31/95, 4/12/95, 3/15/95, and 6/19/95 respectively. All currently remain in committee.

PUERTO RICO

Sec. 9-13-841. No person shall speed.

P.R. Laws Ann. tit. 9 sec. 13-841 (1994).

NOTE: There is no owner liability provision for either speeding, school bus, or parking violations.

Sec. 9-13-1152. Speed detection devices.

This act authorizes police use of "any electronic or mechanical device of recognized accuracy" for speed enforcement purposes.

RHODE ISLAND

Sec. 31-14-1. No person shall speed.

R.I. Gen. Laws sec. 31-14-1 (1994).

NOTE: No owner liability provision for speeding or school bus violations exists.

Sec. 31-43-10. Implicit owner liability for parking violations.

Although no provision explicitly provides for owner liability for parking violations, such liability seems to exist because sec. 31-43-10 provides lessors with the standard lessor defense to owner liability.

NOTE: No statutes address the use of speed devices in Rhode Island.

SOUTH CAROLINA

Sec. 56-5-1520. No person shall speed.

S.C. Code Ann. sec. 56-5-1520 (Law. Co-op. 1994).

NOTE: There are no owner liability provisions. In addition, no statute addresses the use of speed detection devices.

SOUTH DAKOTA

Sec. 32-25-3. No person shall speed.

S.D. Codified Laws Ann. sec. 32-25-3 (1994).

NOTE: There is no owner liability statute for speeding or parking violations.

Sec. 32-32-10. Owner (vehicle) liability for school bus violations.

Under this section, when the driver of a violating vehicle is unknown and it is established by a preponderance of the evidence in a civil in rem proceeding that the charged vehicle did unlawfully pass a stopped school bus, a civil penalty of $250 is assessed against the vehicle and acts as a lien on the vehicle until the penalty is paid. This lien does not apply if the owner can prove that the violating vehicle was leased at the time of the violation, or that the vehicle was used without the owner's permission. (Sec. 32-32-11.)

NOTE: There is no speed detection device legislation.

TENNESSEE

Sec. 55-8-152. Speed restriction statute.

Tenn. Code Ann. sec. 55-8-152 (1994). Although the wording of this statute differs slightly from typical speed statutes, its effect is the same. In the absence of an owner liability speeding statute, driver identification is still required for a speeding conviction.

NOTE: No owner liability statute for speeding, or any other type of traffic violation exists. There is also no radar legislation in Tennessee.

TEXAS

Article 6701d-166. No person shall speed.

Tex. Rev. Civil Stat. Ann. art. 6701d-166 (West 1994).

NOTE: There are no owner liability traffic provisions. Radar legislation is similarly lacking.

UTAH

Sec. 41-6-46. No person shall speed.

Utah Code Ann. sec. 41-6-46 (1994).

NOTE: There are no owner liability provisions for speeding or other traffic violations.

COMMENT: 1995 House Bill 456, introduced 2/7/95, authorizes school bus drivers to issue certain citations. Presumably, this bill would also create a presumption of owner liability for school bus-passing violations.

VERMONT

Sec. 23-13-1081. No person shall speed.

Vt. Stat. Ann. tit. 23 sec. 13-1081 (1994).

NOTE: There are no owner liability provisions. There are also no speed device statutes.

VIRGINIA

Sec. 46.2-870. Speed restriction statute.

Va. Code Ann. sec. 46.2-870 (Michie 1994) sets maximum speed limits that drivers may not lawfully exceed.

NOTE: There is no owner liability provision for speeding or parking violations.

Sec. 46.2-844. Owner liability for passing a stopped school bus.

This statute creates a rebuttable presumption that the registered owner of a violating vehicle was the driver at the time of the violation and is subsequently liable for the violation. If the owner was not the driver, either the actual driver or the owner may be prosecuted, but not both.

Sec. 46.2-882. Speed detection devices.

This section permits the use of laser speed detection devices, radar, and microcomputer devices for speed enforcement if signs are posted at state lines notifying drivers that these devices are being utilized. However, counties, cities and towns may not use laser speed detection devices.

When speed-measuring devices are used, police may arrest speeders without a

warrant if the arresting officer is in uniform and displays his badge, and has either operated the speed detection device, or received word from another officer who manned the device.

The results of speed-monitoring devices are accepted as prima facie evidence of the violating vehicle's speed in a speeding prosecution. This evidence is admissible if the calibration and accuracy of the devices were successfully tested during the six months prior to the violation.

COMMENT: 1994 House Bill 804, introduced 1/25/94, "relates to speed-checking devices." 1995 House Bill 1613, introduced 1/12/95, allows the use of laser speed detection devices by law enforcement officers in specified cities, counties, and towns within specified counties. Both bills are presently being considered by the House Committee on Roads and Internal Navigation.

VIRGIN ISLANDS

Sec. 20-43-494. No person shall speed.

V.I. Code Ann. tit. 20, sec. 43-494 (1994).

NOTE: There is no owner liability provision for either speeding or school bus violations.

Sec. 20-43-497. Owner liability for parking violations.

This statute creates a rebuttable presumption that the registered owner is liable for parking violations involving his/her vehicle.

NOTE: There are statutes about speed detection devices.

WASHINGTON

Sec. 46.61.400. No person shall speed.

Wash. Rev. Code sec. 46.61.400 (1994).

NOTE: There is no owner liability provision for speeding violations.

Sec. 44.61.371. Owner's duty to disclose identity of driver who unlawfully passed school bus.

This statute permits private reports of violations of the state's stopped school bus law. If the investigating police officer has reasonable cause to believe that a violation has occurred, the officer may ask the owner of the offending vehicle to identify the driver of the vehicle at the time of the violation. The owner must supply this information to the best of his/her ability unless the owner believes that the information is self-incriminating. The identity of the driver is required for the issuance of a citation for the school bus offense.

Sec. 46.63.140. Owner liability for parking violations.

There is a prima facie presumption that the registered owner of a violating vehicle committed the parking violation.

Sec. 46.61.470. Prohibition of speed traps.

This section prohibits the use of evidence obtained from a speed trap in speeding prosecutions except when the speed trap utilizes a mechanical, electrical, or other device capable of measuring or recording the speed of a vehicle passing within such limits, or when a timing device is operated from an aircraft.

NOTE: A photo speed enforcement plan would presumably fall under the first exception to this speed trap prohibition.

WEST VIRGINIA

Sec. 17C-6-1. No person shall speed.

W.Va. Code sec. 17C-6-1 (1994).

NOTE: There is no owner liability statute for speeding or parking violations.

Sec. 17C-12-7. Owner/Lessee liability for school bus violations.

This act provides for owner or lessee liability for violations of the state's "no passing a stopped school bus" law whenever the identity of the offending driver cannot be determined.

Sec. 17C-6-7. Speed detection devices.

This statute states that evidence from speed-measuring devices is accepted as prima facie evidence of speed in a speeding prosecution when the device was operated by members of the department of public safety, municipal police officers, or by county sheriffs or deputies.

WISCONSIN

Wis. Stat. Ann. sec. 346.57 (1994).

Sec. 346.57. No person shall speed.

NOTE: There is no owner liability statute for speeding or parking violations.

Sec. 346.485. Owner liability for school bus violations.

This statute provides that school bus drivers may report violations to traffic officers. A citation may then be issued to the owner of the offending vehicle if the report contains the time and approximate location of the violation, the license number and color of the vehicle involved in the violation, and the type of vehicle involved. As a defense, the owner may identify the actual driver if the owner was not the driver at the time of the violation.

Sec. 349.02(3). Photo radar illegal.

NOTE: No statute addresses the use of speed detection devices.

COMMENT: 1995 Assembly Bill 61, introduced 1/26/95, imposes liability on the owner of vehicle that fails to yield for an authorized emergency vehicle. This bill passed the Assembly on 5/18/95 and was recommended for passage by the Senate Committee on Transportation, Agriculture, and Local Affairs on 6/15/95. Nothing further is known about its current status.

1995 Assembly Bill 438, introduced 6/14/95, makes vehicle owners liable for the improper use of a horn, radio, or other sound amplification device. This bill's status has not changed since its introduction.

WYOMING

Sec. 31-5-301. No person shall speed.

Wyo. Stat. sec. 31-5-301 (1994).

NOTE: There are no owner liability provisions. Nor are there any radar-related statutes.

APPENDIX C

SUMMARY OF STATE ATTORNEY GENERAL OPINIONS REGARDING PHOTO TRAFFIC ENFORCEMENT EQUIPMENT

DISTRICT OF COLUMBIA

In an October 1989 legal opinion regarding photo radar, the corporation counsel found that District of Columbia regulations establish a rebuttable presumption of owner liability for traffic violations. This opinion also stated that public notice should be given in advance of the use of photo radar, and that specific procedures should be followed to satisfy due process protections.

MICHIGAN

In a 1971 opinion, Attorney General Frank J. Kelley stated that Orbis III, an unmanned photo radar device at that time, if used for speed enforcement purposes or traffic surveying, would not impose an actionable invasion of an individual's right of privacy. Furthermore, he stated that Orbis III would be admissible in evidence as proof of identification and speed, provided it met the rules of the evidence for scientific reliability to establish its trustworthiness.

MINNESOTA

In a 1989 opinion, Assistant Attorney General Nancy Bode discussed the use of photo radar, identifying several issues that would require review prior to its admissibility. These were to conduct sufficient testing to meet the requirements of state law; to create a statutory presumption holding the registered owner liable; to ensure the presence of a police officer; and to immediately arrest or promptly issue a ticket in lieu of arrest.

MONTANA

A recent Montana Attorney General opinion concluded that the City of Billings, Montana may enact a photo-radar ordinance providing for either accountability on the part of the registered owner for speeding violations by any person operating the vehicle with the owner's permission, or for a permissive inference that the registered owner was the speeding violator. 1993 WL 372782 (Mont.A.G.).

NEVADA

In a 1972 attorney general opinion, the chief criminal deputy indicated that an automated speed enforcement instrument's results may be legally admissible in Nevada.

TEXAS

In a letter dated September 14, 1970, Texas Attorney General Crawford C. Martin responded to several issues related to the use of photo radar in Texas. His opinions were:

- There is no actionable invasion of the right of privacy for a person whose photo is taken on a public highway. The individual's right of privacy must give way to the state's reasonable exercise of police power.
- The photo radar instrument must be properly set up and recently tested for accuracy in order to be accepted as proof in a court.
- The unattended photo radar instrument poses a more difficult question. Yet, assuming the photo radar meets the requirements of the rules of evidence, it should be admissible as proof of identification of the defendant and the speed of the vehicle. 1970 Tx. Op. Atty. Gen. M-692.

APPENDIX D

SUMMARY OF OTHER STATE ATTORNEY GENERAL OPINIONS RELEVANT TO THE IMPLEMENTATION OF PHOTO TRAFFIC ENFORCEMENT

ALASKA

In a 1987 letter to the Governor, the Alaska Attorney General considered whether a proposed amendment to the state's "overtaking a stopped school bus" statute, sec. 28.35.145, would survive constitutional challenge. Under sec. 28.35.145, the owner or lessee of an offending vehicle was held liable for a civil fine unless the owner or lessee proved that the vehicle was stolen at the time of the violation or that the driver of the vehicle had already been convicted of the offense. Instead of simply imposing a civil fine, the proposed amendment would have held the owner or lessee guilty of a traffic infraction punishable by a fine of up to $100.

The Attorney General concluded that the proposed amendment was most likely constitutional. Under sec. 28.40.050(d), a traffic infraction is not considered a criminal offense in Alaska. Hence, the Attorney General reasoned, constitutional safeguards associated with criminal offenses would not be triggered by the proposed statutory scheme. 1987 WL 121136 (Alaska A.G.).

GEORGIA

Georgia's restrictions on the use of radar devices do not apply to use by the Department of Public Safety. 1975 Ga. Op. Atty. Gen. No. 75-10.

Sec. 40-6-163(c), effective July 1, 1985, does not require the Department of Public Safety to attempt to determine the actual driver of a vehicle owned by a governmental or business entity. The required notice should be sent to the registered owner. 1985 Ga. Op. Atty. Gen. No. 85-56.

Citations for the illegal passing of a stopped school bus are to be sent to the registered owner of the offending vehicle. 1985 Ga. Op. Atty. Gen. 85-86.

KENTUCKY

In the absence of a statute presuming owner liability for violations of Kentucky's "passing a stopped school bus" statute, proof of the driver's identity is an essential precondition for the successful prosecution of violations reported by school bus drivers. 1979 WL 32969 (Ky. A.G.). OAG 79-263.

If a police officer is not trained in the use of radar equipment, his/her testimony about radar evidence is inadmissible at trial. 1983 WL 166431 (Ky. A.G.).

LOUISIANA

Louisiana statutes do not discuss radar, but radar training and certification is effectively mandated for municipal police officers since proof of police training and certification is required to sustain a speeding conviction based on radar evidence. 1990 WL 544538 (La.A.G.).

MARYLAND

For a general discussion of the legality of owner liability for parking violations see 1979 WL 41786 (Md. A.G.). 64 Op. Atty. Gen. 314 (1979).

MISSISSIPPI

According to a recent Mississippi Attorney General opinion, Sec. 63-3-519's restrictions on radar speed detection devices apply to all types of speed detection devices, including VASCAR and laser devices. 1994 WL 117294 (Miss. A.G.). Chison, AG Op. II 94-0013, Mar. 9, 1994.

APPENDIX E

EXAMPLES OF ENACTED AND PROPOSED PHOTO TRAFFIC ENFORCEMENT LEGISLATION

CALIFORNIA: Proposed Statute

Definition:

SECTION 1. Section 471 is added to the Vehicle Code, to read:

§ 471. "Photo radar" is a device used to enforce any speed limit which utilizes radar or any other electronic device which measures the speed of a moving vehicle, takes a photograph of the vehicle, and has superimposed upon the photograph the speed of the photographed vehicle in miles per hour, as determined by the radar or other electronic device.

Amendments would be made to Section 40802 of the Vehicle Code, as amended by Section 1 of Chapter 833 of the Statutes of 1986.

MARYLAND: Proposed Statute

AN ACT concerning

Vehicle Laws—Photo-Radar Devices—Speeding Citations

For the purpose of requiring a police officer who, based on evidence obtained by means of a photo-radar device, has probable cause to believe that the driver of a vehicle has exceeded the posted speed limit, to mail a citation to the registered owner of the vehicle and to keep a copy of the citation; charging the registered owner, lessee, or identified driver of the vehicle with violation of this Act; providing that certain requirements relating to the signing of a citation by the person charged do not apply to a citation issued under this Act; defining a certain term; making stylistic changes; and generally relating to the issuance of citations for speeding based on evidence obtained by photo-radar devices.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

§ 21-807

In each charge of a violation of any speed regulation under the Maryland Vehicle Law, the charging document shall specify:

(1) The speed at which the defendant is alleged to have driven;

(2) If the charge is for exceeding a maximum lawful speed, the maximum speed limit applicable at the location; and

(3) If the charge is for driving below a minimum lawful speed, the minimum speed limit applicable at the location.

§ 26-201

(a) A police officer may charge a person with a violation of any of the following, if the officer has probable cause to believe that the person has committed or is committing the violation:

(1) The Maryland Vehicle Law, including any rule or regulation adopted under any of its provisions;

(2) A traffic law or ordinance of any local authority;

(3) Title 9, Subtitle w of the Tax—General Article;

(4) Title 9, Subtitle 3 of the Tax—General Article

(b) A police officer who charges a person under this section, except for a violation of Title 21, Subtitle 8 of this article detected by a "photo-radar device," shall issue a written traffic citation to the person charged. A written traffic citation shall be issued by the police officer or authorized representative of any other state agency or contractor designated by the State for any violation of Title 21, Subtitle 8 of this article detected by a "photo-radar device" as described in this section.

(c) A traffic citation issued to a person under this section shall contain:

(1) A notice to appear in court;

(2) The name and address of the person;

(3) The number of the person's license to drive, if applicable;

(4) The State registration number of the vehicle, if applicable;

(5) The violation charged;

(6) Unless otherwise to be determined by the court, the time when and place where the person is required to appear in court;

(7) A statement acknowledging receipt of the citation, to be signed by the person;

(8) On the side of the citation to be signed by the person a clear and conspicuous statement that;

(i) The signing of the citation by the person does not constitute an admission of guilt; and

(ii) The failure to sign may subject the person to arrest; and

(9) Any other necessary information.

(d) Unless the person charged demands an earlier hearing,, a time specified in the notice to appear shall be at least 5 days after the alleged violation.

(e) A place specified in the notice to appear shall be before a judge of the District Court, as specified in Sec. 26-401 of this title.

(f) An officer who discovers a vehicle stopped, standing, or parked in violation of Sec. 21-1003 of this article shall:

(1) Deliver a citation to the driver or, if the vehicle is unattended, attach a citation to the vehicle in a conspicuous place; and

(2) Keep a copy of the citation, bearing [his] the officer's certification under penalty of perjury that the facts stated in the citation are true.

(g) (1) A law enforcement officer who discovers a motor vehicle parked in violation of Sec. 13-402 of this article shall:

(i) Deliver a citation to the driver or, if the motor vehicle is unattended, attach a citation to the motor vehicle in a conspicuous place; and

(ii) Keep a copy of the citation, bearing the law enforcement officer's certification under penalty of perjury that the facts stated in the citation are true.

(2) In the absence of the driver, the owner of the motor vehicle is presumed to be the person receiving the citation or warning.

(h) (1) The Maryland state Police are authorized to use "photo-radar" technology on the Maryland portion of the Capital Beltway (I-495) and I-95 for the purpose of detecting speeding violations. The authorization will expire July 1, 1994, unless re-enacted prior to that date.

(2) In this subsection, "Photo-Radar device" means a device that:

(i) Uses radio-micro waves to measure and indicate the speed of a moving object; and

(ii) Photographs the moving object for which speed is being measured.

(3) Photographs by a photo-radar device must be of the vehicle's registration plate and of the driver of the vehicle and must be of sufficient quality to identify the driver of the vehicle.

(4) Such photographs shall be accepted as prima facie evidence of the speed of the motor vehicle in any court or legal proceeding under this section where the speed of the motor vehicle is at issue provided that the police officer or authorized representative of any other state agency or contractor designated by the State who activated the equipment shall testify as to the placement of the camera and the accuracy of the scene depicted.

(5) A person is in violation of Title 21, Subtitle 8, of this article if the person is the registered owner of the lessee of the vehicle driven in excess of the posted speed limit. In the case of leased or rented vehicles, the companies holding title to such vehicles shall inform the police, under authority of Sec. 18-103(d), as to the identity of the lessee.

(6) It shall be an affirmative defense to a violation of Title 21, Subtitle 8 of this article if the registered owner or the lessee of the photographed vehicle identifies another person who drove the vehicle at the time of the violation or that the vehicle was stolen or used by an unauthorized person at the time of the violation.

(7) In the event that the registered owner or lessee of the photographed vehicle identifies the person who drove the vehicle at the time of the violation of Title 21, Subtitle 8 of this article, that person will be charged with driving the vehicle in excess of the posted speed limit.

(8) If a police officer or authorized representative of any other state agency or contractor designated by the State, based on photographic evidence obtained by means of Photo-Radar Device, has probable cause to believe that a vehicle has been driven in violation of Title 21, Subtitle 8 of this article by being driven in excess of the posted speed limit, the police officer or any other state agency or contractor designated by the State shall:

(i) Promptly send a citation by certified mail to the registered owner or lessee of the vehicle charging the registered owner or lessee with the violation or promptly send a citation by certified mail to the identified driver of the vehicle charging the identified driver with the violation in the event that the registered owner or lessee of the vehicle identifies the person who was driving the vehicle at the time of the violation; and

(ii) Keep a copy of the citation, bearing the police officer's certification under penalty of perjury that the facts stated in the citation are true.

(9) A person charged with violation of this section who does not elect to contest the charge must sign the citation and return it along with any fines that the State assesses for violation of Title 21, Subtitle 8 of this article. If a person wishes to contest a charge for violation of Title 21, Subtitle 8 of this article, that person must sign the citation and appear in court at the time and place designated in the citation.

(10) Signs to indicate the use of photo-radar devices for measuring speed shall be clearly posted along the Capitol Beltway at locations selected by the Department of Transportation Commissioner.

(11) The penalties for violations under this section shall be as prescribed under the Schedule of Pre-set Fines and/or Penalty Deposits set out in Sec. 21, Subsect. 801.1.

§ 26-203

(a) This section applies to all traffic citations issued under this subtitle, unless:

(1) The person otherwise is being arrested under Sec. 26-202 (a) (1), (2), (3) or (4) of this subtitle;

(2) The person is incapacitated or otherwise unable to comply with the provisions of this sections;

(3) The citation is being issued to an unattended vehicle in violation of Sec. 21-1003 of this article; or

(4) The citation is being issued to an unattended motor vehicle in violation of Sec. 13-402 of this article; or

(5) The citation is being issued by certified mail to the registered owner, lessee, or identified driver of a vehicle in accordance with Sec. 26-201(h) of this subtitle.

(b) On issuing a traffic citation, except a traffic citation issued by certified mail to the registered owner, lessor, or identified driver of a vehicle in accordance with Sec. 26-201(h) of this subtitle, the police officer shall request the person to sign the statement on the citation acknowledging its receipt. If the person refuses to sign, the police officer shall advise the person that failure to sign may lead to the person's arrest.

(c) On being advised that failure to sign may lead to his arrest, the person may not refuse to sign. If the person continues to refuse to sign, the police officer may arrest the person for violation of this section or, as provided in Sec. 26-202(a)(5) of this subtitle, for the original charge, or both.

(d) If a person acknowledging receipt of a citation through certified mail refuses to sign the citation, the issuing authority shall advise the person that failure to sign may lead to the person's arrest. On being advised that failure to sign may lead to his arrest, the person may not refuse to sign. If the person continues to refuse to sign, the police officer may arrest the person for violation of this section, as provided in Sec. 26-202(a)(5) of this subtitle, for the original charge, or both.

MICHIGAN: Proposed Statute

Section 1. Section 742 of Act No. 300 of the Public Act of 1949, as amended by Act No. 89 of the public Acts of 1989, being section 257.742 of the Michigan Compiled Laws, is amended and section 631a is added to read as follows:

Section 631A. (1) A PHOTOGRAPH IS ADMISSIBLE AS EVIDENCE OF A SPEEDING VIOLATION OCCURRING ON THE MACKINAC BRIDGE OR IN A DESIGNATED WORK AREA IF ALL OF THE FOLLOWING CIRCUMSTANCES EXIST:

(A) THE PHOTOGRAPH SHOWS ON ITS FACE THE SPEED OF THE VEHICLE AND THE TIME, DATE, AND LOCATION OF THE VIOLATION.

(B) THE PHOTOGRAPH IS TAKEN BY AN ELECTRICAL OR MECHANICAL DEVICE OPERATING UNDER STANDARDS SET BY THE DEPARTMENT OF STATE POLICE.

(C) THE OPERATOR OF THE CAMERA ESTABLISHES THAT THE DEVICE WAS OPERATING PROPERLY AT THE TIME THE PHOTOGRAPH WAS TAKEN.

(2) A PHOTOGRAPH THAT DOES NOT SATISFY THE REQUIREMENTS OF SUBSECTION (1) IS ADMISSIBLE AS EVIDENCE OF A VIOLATION OF A LAW OF THIS STATE AS OTHERWISE PROVIDED BY A LAW OF THIS STATE OR BY A RULE OF THE COURT.

(3) IN A PROSECUTION FOR SPEEDING BASED UPON EVIDENCE OBTAINED PURSUANT TO SUBSECTION (1), IT IS A REBUTTABLE PRESUMPTION THAT THE REGISTERED OWNER OF THE MOTOR VEHICLE WAS OPERATING THE MOTOR VEHICLE AT THE TIME AND IN THE PLACE THE VIOLATION OCCURRED.

(4) THE DEPARTMENT OF STATE POLICE SHALL PROMULGATE RULES ESTABLISHING STANDARDS FOR THE USE AND OPERATION OF PHOTOGRAPHIC DEVICES FOR PURPOSES OF SUBSECTION (1)(B).

(5) AS USED IN THIS SECTION, "MACKINAC BRIDGE" MEANS "BRIDGE" AS DEFINED IN SECTION 1 OF ACT NO. 21 OF THE PUBLIC ACTS OF THE EXTRA SESSION OF 1950, BEING SECTION 254.301 OF THE MICHIGAN COMPILED LAWS.

(6) AS USED IN THIS SECTION, DESIGNATED WORK AREA MEANS AN AREA WHERE A NORMAL LANE OR PART OF A LANE HAS BEEN CLOSED DUE TO HIGHWAY CONSTRUCTION, MAINTENANCE, OR SURVEYING ACTIVITIES.

Sec. 742. (1) A police officer who witnesses a person violating this act or a local ordinance substantially corresponding to this act, which violation is a civil infraction, may stop the person, detain the person temporarily for purposes of making a record of vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation, which shall be a notice to appear in court for one or more civil infractions. If a police officer of a village, city, township, or county, or a police officer who is an authorized agent of a county road commission, witnesses a person violating this act or local ordinance substantially corresponding to this act within that village, city township, or county and that violation is a civil infraction, that police officer may pursue, stop, and detain the person outside the village, city, township, or county where the violation occurred for the purpose of exercising that authority and performing the duties prescribed in this section and section 749, as applicable.

(2) A POLICE OFFICER OF THE MACKINAC BRIDGE AUTHORITY WHO WITNESSES A PERSON VIOLATING THIS ACT ON THE BRIDGE, WHICH VIOLATION IS A CIVIL INFRACTION, MAY STOP THE PERSON, DETAIN THE PERSON TEMPORARILY FOR PURPOSES OF MAKING A RECORD OF VEHICLE CHECK, AND PREPARE AND SUBSCRIBE AS SOON AS POSSIBLE AND AS COMPLETELY AS POSSIBLE AN ORIGINAL AND 3 COPIES OF A WRITTEN CITATION, WHICH SHALL BE A NOTICE TO APPEAR IN COURT FOR ONE OR MORE CIVIL INFRACTIONS. IF A POLICE OFFICER OF THE MACKINAC BRIDGE AUTHORITY WITNESSES A PERSON VIOLATING THIS ACT ON THE BRIDGE AND THAT VIOLATION IS A CIVIL INFRACTION, THAT POLICE OFFICER MAY PURSUE, STOP, AND DETAIN THAT PERSON OFF OF THE BRIDGE FOR THE PURPOSE OF EXERCISING THE AUTHORITY AND PERFORMING THE DUTIES PRESCRIBED IN THIS SECTION AND SECTION 749, AS APPLICABLE.

(3) Any police officer, having reason to believe that the load, weight, height, length, or width of a vehicle or load are in violation of section 717, 719, 719a, 722, 724, 725, or 726 which violation is a civil infraction, may investigate, weigh, or measure

the vehicle or load. If, after personally investigating, weighing, or measuring the vehicle or load, the officer determines that the load, weight, height, length, or width of the vehicle or load are in violation of section 717,719, 719a, 722, 724, 725, or 726, the officer may temporarily detain the driver of the vehicle for purposes of making a record or vehicle check and issue a citation to the driver of owner of the vehicle as provided in those sections.

(4) A police officer may issue a citation to a person who is a driver of a motor vehicle involved in an accident when, based upon personal investigation, the officer has reasonable cause to believe that the person is responsible for a civil infraction in connection with the accident. A police officer may issue a citation to a person who is a driver of a motor vehicle when, based on personal investigation by the police officer of a complaint by someone who witnessed the person violating this act or a local ordinance substantially corresponding to this act, which violation is a civil infraction, the officer has reasonable cause to believe that the person is responsible for a civil infraction and if the prosecuting attorney or attorney for the political subdivision approves in writing the issuance of the citation.

(5) A certified police officer may issue a citation to a person by first-class mail for a speeding violation occurring on the bridge or designated work area if evidence of the violation is obtained pursuant to Section 631A. The citation shall be mailed to the person not later that two days after the date of the citation. A citation issued under this subsection shall be processed in the same manner as a citation issued personally to a defendant pursuant to subsection (2).

(6) The form of a citation issued under subsection (1), (2), (3), OR (4) shall be as prescribed in sections 727c and 743.

(7) The officer shall inform the person of the alleged civil infraction or infractions and shall deliver the third copy of the citation to the alleged offender.

(8) In a civil infraction action involving the parking or standing of a motor vehicle, a copy of the citation need not be served personally upon the defendant but may be served upon the registered owner by attaching the copy to the vehicle. A city may authorize personnel other than a police officer to issue and serve a citation for a violation of its ordinance involving the parking or standing of a motor vehicle. A city may authorize a person other than personnel or a police officer to issue and serve a citation for a violation of an ordinance pertaining to handicapped parking if the city has complied with the requirements of section 675d. State security personnel receiving authorization under section 6c of Act No. 59 of the Public Acts of 1935, being section 28.6c of the Michigan Compiled Laws, may issue and serve citations for violations involving the parking of standing of vehicles on land owned by the state or land of which the state is the lessee when authorized to do so by the director of the department of state police.

(9) If a parking violation notice other than a citation is attached to a motor vehicle, and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the parking violations bureau, a citation may be filed with the court described in section 741(4) and a copy of the citation may be served by first-class mail upon the registered owner of the vehicle at the owner's last known address. A parking violation notice may be issued by a police officer, including a limited duty officer, or other personnel duly authorized by the city, village, township, college, or university to issue such a notice under its ordinance. The citation filed with the court pursuant to this subsection need not comply in all particulars with sections 727c and 743 but shall consist of a sworn complaint containing the allegations stated in the parking violation notice and shall fairly inform the defendant how to respond to the citation.

(10) A citation issued under the subsection (6) or (7) for a parking or standing violation shall be processed in the same manner as a citation issued personally to a defendant pursuant to subsection (1) or (3).

(11) As used in THIS SECTION:

(A) "BRIDGE" MEANS THAT TERM AS DEFINED IN SECTION ONE OF ACT NO. 21 OF THE PUBLIC ACTS OF THE EXTRA SESSION OF 1950, BEING SECTION 254.301 OF THE MICHIGAN COMPILED LAWS.

(B) "Parking violation notice" means a notice, other than citation, directing a person to appear at a parking violations bureau in the city, village, or township in which, or of the college or university for which, the notice is issued and to pay the fine and costs, if any, prescribed by ordinance for the parking or standing of a motor vehicle in violation of the ordinance.

(C) "Parking violations bureau" means a parking violations bureau established pursuant to section 8395 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being section 600.8395 of the Michigan Complied Laws, the violations bureau established within the traffic and ordinance division of the recorder's court of the city of Detroit, or a comparable parking violations bureau established in a city or village served by a municipal court or established pursuant to law by the governing board of a state university or college.

Section 2. This amendatory act shall not take effect unless Senate Bill No. ___ or House Bill No. 6287 (Request No. 04987'90) of the 85th Legislature is enacted into law.

VIRGINIA: Proposed Statute

Sec. 46.2-882.1 Presumption that registered owner is driver; summons by mail—

A. In the prosecution of an offense of exceeding the posted speed limit, or of reckless driving in violation of Sec. 46.2-862, proof that the vehicle described in the summons was operated in excess of the posted speed limit, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

B. Notwithstanding the provisions of Sec. 19.2-76, whenever a summons for operating a motor vehicle in excess of the posted speed limit, or for reckless driving in violation of Sec. 46.2-862, is served in any county, city, or town, it may be executed

by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in Sec. 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failing to appear on the return date of the summons.

APPENDIX F

UNIFORM VEHICLE CODE SECTIONS

The Uniform Vehicle Code Does Not Currently Have Specific Legislation Which Would Permit The Use Of Photo Traffic Enforcement.

§ 16-214—Presumption in reference to illegal parking [AN EXAMPLE OF A PRESUMPTION IN REFERENCE TO A PARKING VIOLATION]

(a) In any prosecution charging a violation of any law or regulation governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint was in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(b) The foregoing stated presumption shall apply only when the procedure as prescribed in §§ 16-212 and 16-213 has been followed. (FORMER MTO § 19-9; NEW, 1971.)

§ 16-212—Citation on illegally parked vehicle

Whenever any motor vehicle without driver is found parked, standing or stopped in violation of this code or any ordinance, the officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a traffic citation. (FORMER MTO § 19-7; NEW, 1971; revised, 1992.)

§ 16-213—Failure to comply with traffic citation attached to parked vehicle

If a violator of state or local restrictions on stopping, standing or parking does not appear in response to a traffic citation affixed to such motor vehicle within a period of five days (the clerk of the traffic court) (or) (the traffic violations bureau) shall send to the owner of the motor vehicle to which the traffic citation was affixed a letter informing offender of the violation and warning such person that in the event such letter is disregarded for a period of five days a warrant of arrest will be issued. (FORMER MTO § 19-8; NEW, 1971; REVISED, 1992.)

ARTICLE VII—SPECIAL STOPS REQUIRED

§ 11-701—Obedience to signal indicating approach of train

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until it is safe to do so. The foregoing requirements shall apply when:

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
2. A crossing gate is lowered or when a human flagger gives or continues to give a signal of the approach or passage of a railroad train; (Revised, 1992.)
3. A railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;
4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

§ 11-702—Certain vehicles must stop at all railroad grade crossings

(a) Except as provided in subsection (b), the driver of any vehicle described in regulations issued pursuant to subsection (c), before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and shall not proceed until it is safe to do so. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver shall not manually shift gears while crossing the track or tracks. (Revised, 1992.)

(b) This section shall not apply at:

1. Any railroad grade crossing at which traffic is controlled by a police officer or human flagger; (Revised, 1992.)
2. Any railroad grade crossing at which traffic is regulated by a traffic-control signal;
3. Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train;
4. Any railroad grade crossing at which an official traffic control device gives notice that the stopping requirement imposed by this section does not apply.

(c) The (commissioner or other appropriate State official or agency) shall adopt such regulations as may be necessary describing the vehicles which must comply with the stopping requirements of this section. In formulating such regulations the (commissioner or other appropriate State official or agency) shall give consideration to the number of passengers carried by the vehicle and the hazardous nature of any substance carried by the vehicle in determining whether such vehicle shall be required to stop. Such regulations shall correlate with and so far as possible conform to the most recent regulation of the United States Department of Transportation. (SECTION REVISED; RENUMBERED, 1986.)

§ 11-703—Moving heavy equipment at railroad grade crossings

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of 10

or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet nor more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagger or otherwise of the immediate approach of a railroad train or car. If a flagger is provided by the railroad, movement over the crossing shall be under the flagger's direction. (SECTION RENUMBERED, 1986; revised, 1992.)

ARTICLE VIII—SPEED RESTRICTIONS

§ 11-801—Basic rule

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions (REVISED, 1968).

§ 11-802—Maximum limits

Except when a special hazard exists that requires lower speed for compliance with § 11-801, the limits hereinafter specified or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of such maximum limits.

1. Thirty miles per hour in any urban district;

2. Fifty-five miles per hour in other locations.

The maximum speed limits set forth in this section may be altered as authorized in §§ 11-803 and 11-804 (SECTION REVISED, 1975; RENUMBERED, 1986).

§ 11-803—Establishment of State speed zones

Whenever the (State highway commission) shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the State highway system, said (commission) may determine and declare a reasonable and safe maximum limit thereat, which shall be effective when appropriate signs giving notice thereof are erected. Such a maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the said signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs (REVISED, 1962; RENUMBERED, 1986).

§ 11-804—When local authorities may and shall alter maximum limits

(a) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under this article is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which:

1. Decreases the limit at intersections; or

2. Increases the limit within an urban district but not to more than 55 miles per hour; or (REVISED, 1975).

3. Decreases the limit outside an urban district, but not to less than 35 miles per hour.

(b) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under this act for an urban district.

(c) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

(d) Any alteration of maximum limits on State highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the (State highway commission).

(e) Not more than six such alterations as hereinabove authorized shall be made per mile along a street or highway, except in the case of reduced limits at intersections, and the difference between adjacent limits shall not be more than 10 miles per hour (SECTION REVISED, 1956; RENUMBERED, 1986).

§ 11-805—Minimum speed regulation

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Whenever the (State highway commission) or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the

normal and reasonable movement of traffic, the (commission) or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law and that limit shall be effective when posted upon appropriate fixed or variable signs (REVISED, 1971; RENUMBERED, 1986).

APPENDIX G

Model Law

This example is provided as a research service. It does not purport to furnish legal advice or assistance. Each enacting state must be careful to assure that any law drafted is consistent with the rules, regulations, and laws of the state. Legal decisions on specific issues may vary from jurisdiction to jurisdiction. This outline provides a general synopsis of a photo traffic law.[1]

A. Definitions

xx "Photo traffic enforcement device [DESCRIBE SPECIFIC DEVICE WHERE APPROPRIATE]" means a device used primarily for [highway speed limit enforcement] [railroad crossing violations] [toll booth violations] [traffic control device violations, etc.] substantially consisting of [DESCRIBE INSTRUMENT. e.g. for speed -- a low Doppler radar unit and camera mounted in or on a vehicle] , which automatically produces a photograph of a vehicle traveling in excess of the legal speed limit, with the vehicle's speed, the date, time of day, and location of the violation printed on the photograph.

B. Any restrictive use should be included within the draft

xx "Photo traffic enforcement device [DESCRIBE SPECIFIC DEVICE WHERE APPROPRIATE]" may not be used except:

(a) (i) in school zones; or
(ii) railroad crossings, etc.

(b) when a police officer is present with the photo photographic traffic enforcement unit [if required within your state]; (Many states do not require the officer to be present.)

(c) when signs are posted on the highway providing notice to a motorist that [phototraffic enforcement device] may be used; and

(d) when use of [phototraffic enforcement device] by a local authority is approved by the local authority's governing body and certifying authority.

(e) etc.

C. Description of photographic evidence

xx Photographs by a photo traffic enforcement device must be of the vehicle's registration plate or license plate and of the driver of the vehicle and must be of sufficient quality to identify the driver of the vehicle.

D. Prima facie evidence of speed

Such photographs shall be accepted as prima facie evidence of the [the violation] in any court or legal proceeding under this section where the speed of the motor vehicle is at issue provided that the police office or authorized representative of any other state agency or contractor designated by the State who activated the equipment shall testify as to the placement of the camera and the accuracy of the scene depicted.

E. Rebuttable presumption that registered owner is driver

xx In the prosecution of [a railroad crossing violation, an offense exceeding the posted speed limit, or of reckless driving or related traffic law violation), proof that the vehicle described in the [summons/notice] was [DESCRIBE VIOLATION, e.g. rail road crossing violation contrary to UVC Sec. 11-1701, 1702, and 1703 operated in excess of the posted speed limit], together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

F. Provisions for summons by mail

Whenever a [summons/notice] for operating a vehicle in excess of the posted speed limit, or for (specified traffic violation), is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department. If [summoned/notified] person fails to appear on the date of return set out in the [summons/notice] mailed pursuant to this section, the [summons/notice] shall be executed in the manner set out in (appropriate section) of the state law. No proceedings for contempt or arrest of a person [summoned/notified] by mailing shall be instituted for his failing to appear on the return date of the [summons/notice].

G. Penalty provisions

[Specific penalty or fine provisions may be included in this section.]

1. Blackburn, R.R. and Gilbert, D.T., *NCHRP Synthesis of Highway Practice 219; Photographic Enforcement of Traffic Laws,* Transportation Research Board, National Research Council; Washington, D.C., 1995.

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