

LEGISLATIVE RESEARCH UNIT

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TOLL ENFORCEMENT BY PICTURE

asked on your behalf whether toll violation enforcement systems in some states have a way to issue tickets to drivers who may not be the registered owner of the vehicle by photographing drivers' faces.

We searched a computer database of all states' laws,¹ but found none related to photographing drivers' faces for toll violations. We then searched for states that use cameras to photograph vehicles and/or drivers for any type of traffic violation, including toll violations, speeding, or running red lights, to see if they have provisions for cases in which the driver is not the owner of the vehicle. Using a computer search² and a report by the Insurance Institute of Highway Safety,³ we found 12 states that have such provisions.

We also spoke with a representative of RedSpeed USA, a provider of red light and speed camera technology headquartered in Lombard, Illinois. He is unaware of any states that use cameras to photograph drivers' faces on tollways. He said that on Illinois tollways, the cameras are designed to photograph a vehicle's rear license plate. He thinks new cameras would need to be installed to photograph drivers' faces. The existing cameras could be reoriented to face the driver, but he said the ideal scenario is to have two cameras—one to photograph the rear license plate and the other to photograph the driver. He said that his company has the technology to capture a clear picture of a driver, but it is often difficult to identify such photographs because drivers may be wearing sunglasses or have their faces otherwise obscured.

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He said another potential problem would be what to do after a clear image is obtained. The police could determine the registered owner from the license plate, and they could then see whether the driver's photograph matched the photograph on the registered owner's driver's license. If it did not, or if the image was unclear, a violation notice would have to be sent to the owner because there would be no way of determining who the driver is merely from the picture. The owner would have to identify the driver in the picture, and that driver would then need to be given an opportunity to prove that he or she is not the person in the picture.⁴ The other states' laws that we found largely follow this procedure.

We describe below relevant Illinois laws and other states' laws.

Illinois

The Toll Highway Act has some provisions concerning drivers who are operating a vehicle owned by someone else when a toll violation occurs. Three other laws have such provisions for violations of red light, speeding, or railroad crossing laws.

Toll Violations

The Toll Highway Act says that the Illinois State Toll Highway Authority has the power to fix, assess, and collect civil fines for the operation of a vehicle on a toll highway without payment of the required toll. The Authority may establish a system of civil administrative adjudication for alleged instances of such violations as detected by the Authority's video or photo surveillance system. In cases where the operator of a vehicle is not the registered vehicle owner, the establishment of ownership of the vehicle creates a rebuttable presumption that the vehicle was being operated by an agent of the registered owner. If the registered owner who is liable for a violation was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator in circuit court. Rules establishing a system of civil administrative adjudication must provide for written notice of the alleged violation to the registered owner or lessee, and the opportunity for a hearing. The notice must inform the owner that failure to contest is deemed an admission of liability. A notice of violation, based on an inspection of photographs, microphotographs, videotape, or other recorded images produced by a video or photo surveillance system must be admitted as *prima facie* evidence of the correctness of the facts contained in the notice. Only civil fines, along with the outstanding toll, and costs may be imposed by administrative adjudication. A fine may be imposed only if a violation is established by a preponderance of the evidence.⁵

A spokeswoman for the Authority said that the Authority's photo surveillance system does not take pictures of drivers' faces, only of license plates. The registered owner of a vehicle who receives a citation for a toll violation may request an administrative hearing. However, the registered owner is liable for the fine even if someone else was driving when the violation occurred (unless the vehicle was stolen or leased). The registered owner may contest the outcome of the hearing in a circuit court.⁶

Red Light Violations

In Cook, Madison, St. Clair, and the collar counties, law enforcement officials may use "automated traffic law enforcement systems" to photograph a vehicle as the driver runs a red light. Such systems must be designed to obtain a clear image of the vehicle, its license plate, and the time, date, and location of the violation. When a vehicle is photographed, a citation is sent to the registered owner. The owner may challenge the citation in court or by administrative hearing. The court or hearing officer may consider in defense of a violation (1) that the vehicle or license plates were stolen before the violation occurred; (2) that the driver ran the red light to yield to an emergency vehicle or as part of a funeral procession; or (3) any other evidence or issues provided by municipal or county ordinance.⁷

Speeding in Construction Zones

The Automated Traffic Control Systems in Highway Construction or Maintenance Zones Act says that the Illinois Department of State Police may establish an automated traffic control system in any construction or maintenance zone established by the Illinois Department of Transportation or the Illinois State Toll Highway Authority. The system may operate only when workers are present.⁸ Such a system is defined as a photographic, radar, laser, or other electrical or mechanical device designed to record the speed of a vehicle and obtain a clear photograph or other recorded image of the vehicle, the driver, and the license plate. The image must also display the time, date, and location of the violation.⁹

In order for a citation to be issued, the vehicle, driver, license plate, speed, date, time, and location must be clearly visible on the photograph of the violation. A citation must be delivered to the registered owner of the vehicle.¹⁰ If the driver cannot be identified through the photograph, the owner is not liable for the fine, and the citation may not be counted against the owner's driving record. If the driver can be identified, the driver is liable for the fine, and the violation is counted against his or her driving record.¹¹

A spokesman for the Illinois Department of State Police said that when a photograph is taken, the police find the record of the registered owner's driver's license to see if it matches the photograph. If it does not (meaning that someone other than the registered owner was driving the car at the time of the violation), the police send a letter to the registered owner asking who was driving. If the registered owner does not respond, nothing happens. If the registered owner provides the name of the driver, then that person is cited.¹²

Railroad Crossing Violations

The Illinois Commerce Commission and the Illinois Department of Transportation may, in cooperation with a local law enforcement agency, establish in any county or municipality an automated system at any railroad crossing designated by local authorities.¹³ The system must be able to record a driver's response to railroad signal devices and crossing gates, and must be designed to obtain a clear photograph or other recorded image of the vehicle, driver, and license plate. The image must also display the time, date, and location of the violation.¹⁴ For each violation, a citation is to be issued to the registered owner as the alleged violator.¹⁵

If the registered owner was not driving at the time of the violation, the owner must notify the local law enforcement agency of the name and address of the person who was driving. A citation must then be issued to the alleged driver.¹⁶ A person who receives a citation may challenge it in court.¹⁷

Other States

The laws described below are ones which allow for some type of camera recording of traffic violations *and* which have provisions for cases in which the registered owner of a vehicle claims not to have been driving when a violation occurred. Colorado and Oregon are the only states described below that have laws specifically allowing for cameras to photograph drivers' faces, but those laws only apply to cameras designed to catch people speeding or running red lights. The rest of the states allow for photographs of a vehicle, but either do not allow photographs of faces or do not state whether it is allowed.

The laws described below provide for largely the same procedure for cases in which the owner of a vehicle cited for a traffic violation that was captured on film claims not to be the driver—the owner must identify the driver, and then an administrative panel or a judge must decide who is liable.

Cameras for Toll Violations

In South Carolina, when a driver fails to pay a toll, the owner and operator of the vehicle are jointly and severally liable. The owner or operator may be cited for failure to pay the toll based on photographs or other recorded images provided by a photo-monitoring system. An adjudication of liability must be made by a court based on a preponderance of evidence. If an owner pays the required tolls and fees, but was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.¹⁸

In Florida, Virginia, and Washington, cameras may be used on toll highways to detect toll violators (but only the vehicle and license plate may be photographed in Washington¹⁹). The registered owner of a vehicle is presumed to be liable for a toll violation, unless the owner provides to an administrative panel or a court the identity of the person who was driving the vehicle at the time of the violation. The person so identified may contest the allegation.²⁰

Cameras for Speeding or Running Red Lights

Colorado

Colorado allows the state and municipalities to use automated systems that detect red light and speeding violations and simultaneously record a photograph of the vehicle, driver, and license plate. A citation is sent to the registered owner of the vehicle.²¹ If the owner was not the driver at the time the violation occurred, the owner may not be required to identify the driver; however, the owner may be required to submit evidence that he or she was not driving at the time of the violation.²²

New Jersey

A 2008 law authorizes the state Commissioner of Transportation to establish a 5-year pilot program to determine the effectiveness of automated systems that photograph vehicles when the drivers run red lights.²³ The owner and operator of a vehicle are jointly liable for a violation, unless the owner shows that the vehicle was used without his or her consent. An owner who pays any fine in connection with a violation issued pursuant to an automated system may try to recover that sum from the operator in a court.²⁴

Oregon

Cities may use cameras to capture images of drivers who run red lights. A citation is to be mailed to the registered owner of the vehicle, or to the driver if identifiable from the photograph. A registered owner who receives a citation may submit a certificate of innocence affirming that the owner was not the driver at the time the violation occurred. If the jurisdiction that issued the citation verifies that the registered owner appears to have been the driver at the time of the violation, the citation will stand.²⁵

In Delaware,²⁶ Georgia,²⁷ Maryland,²⁸ North Carolina,²⁹ Tennessee,³⁰ and Virginia,³¹ cameras may be used to catch drivers who speed, run red lights, and/or violate railroad crossing laws. The registered owner of a vehicle is presumed to be the driver, unless the owner testifies in court or submits an affidavit identifying the driver. The driver may contest the allegation.

We hope this information is helpful. Please let us know if you need anything further.

Sincerely,



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Notes

1. We searched a Lexis database of all states' laws for "toll__" in the same section as "photo__" or "video__" or "picture__" or "camera."
2. We searched a Lexis database of all states' laws for ("automat__" or "monitor__" within 5 words of "vehicle" or "traffic") or "photo__" or "image__" within 25 words of "owner" or "operator" within 10 words of "vehicle."
3. Insurance Institute for Highway Safety, "Automated enforcement laws" (Nov. 2008; downloaded from Insurance Institute for Highway Safety Internet site).
4. Telephone conversation with Greg Zito, Company Representative, RedSpeed USA, Lombard, Illinois, Nov. 18, 2008.
5. 605 ILCS 10/10(a-5), first paragraph.
6. Telephone conversation with Colleen Gannon, Legislative Office, Illinois State Toll Highway Authority, Downers Grove, Nov. 17, 2008.

7. 625 ILCS 5/11-208.6.
8. 625 ILCS 7/10.
9. 625 ILCS 7/15(a).
10. 625 ILCS 7/30.
11. 625 ILCS 7/25(e).
12. Telephone conversation with Timothy Becker, Governmental Affairs Chief, Illinois State Police, Nov. 17, 2008.
13. 625 ILCS 5/11-1201.5(b).
14. 625 ILCS 5/11-1201.5(a).
15. 625 ILCS 5/11-1201.5(c).
16. 625 ILCS 5/11-1201.5(f).
17. 625 ILCS 5/11-1201.5(e).
18. S.C. Code, sec. 57-5-1495.
19. Wash. Rev. Code, subsec. 46.63.160(7)(a).
20. Fla. Stat., sec. 316.1001; Va. Code, sec. 46.2-819.1; and Wash. Rev. Code, sec. 46.63.075.
21. Colo. Rev. Stat., subsec. 42-4-110.5(6).
22. Colo. Rev. Stat., subsec. 42-4-110.5(2)(e).
23. N.J. Stat., sec. 39:4-8.14.
24. N.J. Stat., sec. 39:4-8.15, subd. b.
25. Ore. Rev. Stat., sec. 810.436.
26. Del. Code, tit. 21, sec. 4101.
27. Ga. Code, sec. 40-6-20.
28. Md. Transp. Code, secs. 21-202.1 and 21-704.1.
29. N.C. Gen. Stat., sec. 160A-300.1.
30. Tenn. Code, sec. 55-8-198.
31. Va. Code, sec. 15.2-968.1.