

Case No. S202483

**IN THE SUPREME COURT
OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff/Respondent,

vs.

STEVEN EDWARD GRAY,
Defendant/Appellant

**SUPREME COURT
FILED**

NOV 14 2012

Frank A. McGuire Clerk

Deputy

After a Decision by the Court of Appeal
Second Appellate District, Division Three
2nd Civ. No. B236337; App. Div. No. BR048502;
Trial Court Case No. C165383 – Hon. Lawrence H. Cho

REQUEST FOR JUDICIAL NOTICE

William Litvak, Esq. (SBN 90533)
Caroline K. Castillo, Esq. (SBN 236987)
DAPEER, ROSENBLIT & LITVAK, LLP
11500 W. Olympic Boulevard, Suite 550
Los Angeles, California 90064
Phone #: (310) 477-5575
Fax #: (310) 477-7090

Attorneys for Plaintiff/Respondent
PEOPLE OF THE STATE OF CALIFORNIA

Case No. S202483

**IN THE SUPREME COURT
OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff/Respondent,

vs.

STEVEN EDWARD GRAY,

Defendant/Appellant

After a Decision by the Court of Appeal
Second Appellate District, Division Three
2nd Civ. No. B236337; App. Div. No. BR048502;
Trial Court Case No. C165383 – Hon. Lawrence H. Cho

REQUEST FOR JUDICIAL NOTICE

William Litvak, Esq. (SBN 90533)
Caroline K. Castillo, Esq. (SBN 236987)
DAPEER, ROSENBLIT & LITVAK, LLP
11500 W. Olympic Boulevard, Suite 550
Los Angeles, California 90064
Phone #: (310) 477-5575
Fax #: (310) 477-7090

Attorneys for Plaintiff/Respondent
PEOPLE OF THE STATE OF CALIFORNIA

Pursuant to Evidence Code § 452, subd.(c) and Evidence Code, § 459, and in connection with its concurrently-filed Answer Brief on the Merits, THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent herein, respectfully requests that this Court take judicial notice of the following “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States”:

1. Assembly Third Reading, California Assembly Bill No. 1022 (2003) a true and correct copy of which is attached hereto as Exhibit A. This document may also be found at ftp://leginfo.public.ca.gov/pub/03-04/bill/asm/ab_1001-1050/ab__cfa_20030527_173653_asm_floor.html;
2. Bill Analysis, Senate Bill No. 833 (Statutes of 1995, Chapter 922, §§ 4, 8) , a true and correct copy of which is attached hereto as Exhibit B. This document may also be found at [http://legix.info/us-ca/measures;1995-96;sb0833/analysis@1995-09-12;senate](http://legix.info/us-ca/measures;1995-96;sb0833/analysis@1995-09-12;senate;);
3. Complete Bill History, Senate Bill No. 780, a true and correct copy of which is attached hereto as Exhibit C. This document may also be found at ftp://leginfo.public.ca.gov/pub/03-04/bill/asm/ab_1001-1050/ab_1022_cfa_20030527_173653_asm_floor.html;
4. Bill History of Senate Bill No. 1303, a true and correct copy of which is attached hereto as Exhibit D. This document may also be found at <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>.

Further, pursuant to Evidence Code, §452, subd.(b), the People request that this Court take judicial notice of the following “[r]egulations and legislative enactments issued by ... any public entity in the United States ...” (Evidence Code, § 452, subd. (b)):

1. Senate Bill No. 1303, Chapter 735 (2011-2012 Regular Session),, a true and correct copy of which is attached hereto as Exhibit E. This document may also be found at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1303.

Pursuant to California Rules of Court (“CRC”) 8.252(2)(A), as more fully detailed below, each of the documents submitted is relevant to the question of the legislative intent underlying the enactment of Vehicle Code, § 21455.5-- the Automated Traffic Enforcement System (“ATES”) legislation -- at issue in this appeal. The matters to be noticed were not presented to the trial court. (CRC Rule 8.252(2)(B). Exhibit E and D of the matters to be noticed occurred after the judgment that is the subject of this appeal. (CRC Rule 8.525(2)(C).

Dated: November 7, 2012

Respectfully submitted,

DAPEER, ROSENBLIT & LITVAK, LLP

By: _____

William Litvak, Esq.

Attorney for Respondent

People of the State of California

MEMORANDUM OF POINTS AND AUTHORITIES

I.

EVIDENCE CODE, § 452, subd.(c). GIVES THIS COURT AUTHORITY TO TAKE JUDICIAL NOTICE OF BILL ANALYSES, BILL HISTORIES AND ASSEMBLY BILL READINGS RELEVANT TO THE LEGISLATIVE HISTORY OF VEHICLE CODE, SECTION 21455.5

A. This Court May Take Judicial Notice Of Senate Bill Analyses, Bill Histories And Bill Readings As Official Acts Of The California Legislature

Evidence Code, § 452, subd.(c) provides that the Court may take notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (*In re S.B.* (2004) 32 Cal.4th 1287, 196, fn. 3). Evidence Code, § 459, subd.(a) provides “[t]he reviewing court may take judicial notice of any matter specified in Section 452.”

Here, the People request judicial notice be taken of certain official acts of the California Legislature pertinent to this appeal. Each of the documents submitted is relevant to the question of the legislative intent underlying the enactment of Vehicle Code, § 21455.5-- the Automated Traffic Enforcement System (“ATES”) legislation -- at issue in this appeal. Each of the documents presented establishes that the Legislature intended that the warning notices and public announcement provision of section 21455.5(b) be given one time only, *i.e.*,

when the overall ATES program is first initiated in a locality and not each time an intersection is added to a city's ATES program.

1. This Court Has The Authority To Take Judicial Notice Of The California Assembly's Third Reading Of Assembly Bill No. 1022

In California, the material generated by a third reading of an assembly or senate legislative bill is appropriate for the taking of judicial notice under Evidence Code, § 452, subd.(c) because such a reading is an official act of the legislature, having been constitutionally compelled under Cal. Const. art. IV, § 8, subd.(b), which states that “[n]o bill may be passed unless it is read by title on 3 days in each house...” Further, the reading of such bills constitutes legislative history that “shed[s] light on the collegial view of the Legislature...” (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30).

Here, the Assembly Third Reading of Assembly Bill 1022 is relevant because in providing for amendment of Vehicle Code, § 21455.5, it establishes the Legislature's awareness of the decrease in accidents at ATES intersections throughout the state, as discussed in the statewide audit report ordered by the Legislature and furnished to it by the California State Bureau of Audits. (Assembly Third Reading, Assembly Bill No. 1022, p. 3, attached hereto as Exhibit A).

2. This Court Has The Authority To Take Judicial Notice Of The Legislative Bill Analysis Of Senate Bill 833

Appellate courts will take judicial notice of reports of the Senate Rules Committee as well as reports of the legislative analyst. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30). Senate Bill No. 833 (Statutes of 1995, Chapter 922, §§ 4, 8) is relevant here to establish that Vehicle Code, § 21455.5(b) requires “a 30-day public education program and 30-day warning period”, thus establishing the intent of the Legislature to provide advance general notice – rather than intersection-specific notice—of the arrival of an ATEs program in a locality. (Senate Bill No. 833, Bill Analysis, p. 2, attached hereto as Exhibit B).

**3. This Court Has Authority To Take Judicial Notice Of The
Senate Bill History For Senate Bills No. 780 And No. 1303**

This Court has the authority to take judicial notice of the Senate Bill History for Senate Bill No. 780 (attached hereto as Exhibit C) and the Senate Bill History for Senate Bill No. 1303 (attached hereto as Exhibit E) because those document record all action taken on each bill, thus shedding light “on the collegial view of the Legislature...” (*Kaufman & Broad Communities, Inc, supra*, 133 Cal.App.4th at 30; see also, *Citizens For Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, rehearing denied [judicial notice taken of bill history]).

II.

**EVIDENCE CODE, § 452,subd.(b) GRANTS THIS COURT AUTHORITY
TO TAKE JUDICIAL NOTICE OF SENATE BILL NO. 1303**

Evidence Code, § 452, subd.(b) provides for judicial notice of “[r]egulations and legislative enactments issued by ... any public entity in the United States ...” (Evidence Code, § 452, subd. (b)). Here, the People request that judicial notice be taken of Senate Bill 1303, Chapter 735 (attached hereto as Exhibit D), a legislative enactment addressing Vehicle Code, § 21455.5. The relevance of Senate Bill 1303 to these proceedings is that it shows that the Legislature did not alter the requirement of section 21455.5(b) to provide programmatic warning notices and public announcements rather than providing that a City undertake notices and public announcements on an intersection-specific basis. That fact goes to the central – indeed, sole – issue in this case, *i.e.*, construction of the warning notices and public announcement requirement.

CONCLUSION

Each of the documents presented with this Request is appropriate for the taking of judicial notice and the People respectfully ask that this Court grant such Request.

Dated: November 11, 2012

Respectfully submitted,

DAPEER, ROSENBLIT & LITVAK, LLP

By: 

William Litvak, Esq.
Attorney for Respondent
People of the State of California

ASSEMBLY THIRD READING

AB 1022 (Oropeza)

As Amended April 8, 2003

Majority vote

TRANSPORTATION 20-0

Ayes: Dutra, Houston, Bates, Benoit, Berg,
Chan, Chu, Kehoe, La Suer, Leslie,
Liu, Longville, Mountjoy, Nakano,
Oropeza, Parra, Pavley, Salinas,
Simitian, Spitzer

SUMMARY: Implements the recommendations provided by the California Bureau of State Audits (BSA) regarding the operation and implementation of red light cameras at intersections. Specifically, this bill:

- 1) Specifies that an automated enforcement system may only be equipped at a limit line, intersection, or other authorized location if the government agency utilizing the system meets the following requirements:
 - a) Uses signs to identify the presence of the system;
 - b) Ensures that the system, if located at an intersection, is at a location where the minimum yellow light change interval is in accordance with the Traffic Manual of the Department of Transportation.(Caltrans);
 - c) Considers and evaluates, prior to installing a system at an intersection, alternative traffic safety strategies, which should include:
 - i) Use of traditional traffic enforcement measures;
 - ii) Improvement of the physical environment at the proposed location, such as improved signal placement;
 - iii) Changes in the operating parameters of the proposed location and its equipment; and,
 - d) Ensures that its location selection guidelines for installation of a system include a demonstrated traffic safety need that is based on vehicle accident rates.
- 2) Defines "operate" as developing uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establishing procedures to ensure compliance with those guidelines, as well as performing administrative functions that include:
 - a) Establishing guidelines for selection of a location;
 - b) Ensuring that the equipment is regularly inspected;

- c) Certifying that the equipment is properly installed and functions properly;
 - d) Regularly inspecting and maintaining the warning signs;
 - e) Overseeing the establishment of the signal phases and timing; and,
 - f) Ensuring that only those citations that have been reviewed and approved by the enforcing agency are delivered to the violators.
- 3) Specifies that the photographs taken by the red light cameras and any information obtained by the Department of Motor Vehicles (DMV) for enforcement of the violation shall be destroyed after six months or immediately after the citation is disposed, whichever comes last.
 - 4) Prohibits government agencies from establishing contracts with red light camera vendors that include a payment provision that is based on either the number of citations generated or a percentage of the revenue generated.
 - 5) Specifies that the provisions of this bill do not apply to contracts established before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.

EXISTING LAW:

- 1) Authorizes the limit line, intersection, or other places where a driver is required to stop to be equipped with an automated enforcement system (red light cameras) if the system meets certain requirements.
- 2) Limits the authority to operate red light cameras to governmental agencies, in cooperation with law enforcement agencies.

FISCAL EFFECT: Unknown

COMMENTS: SB 1802 (Rosenthal), Chapter 1216, Statutes of 1994, authorizes the use of automated rail crossing enforcement systems to record violations occurring at rail crossing signals and gates. SB 833 (Kopp), Chapter 922, Statutes of 1995, authorizes a three-year demonstration period to test the use and effectiveness of such systems in reducing the incidence of drivers running red lights at roadway intersections and in identifying the drivers committing such violations and the vehicles involved. After reviewing the operations and effectiveness of the pilot program, the Legislature enacted SB 1136 (Kopp), Chapter 54, Statutes of 1998, to indefinitely authorize the use of red light cameras at intersections.

According to the National Highway Transportation Safety Administration (NHTSA), the objective of red light cameras is to improve enforcement and safety at "high crash or other high-risk locations where on-site traffic enforcement personnel cannot be utilized, either because of insufficient manpower or inherent on-site safety problems that make traditional law enforcement difficult."

Since the introduction of red light cameras in California, advocates have cited numerous studies and statistics showing a reduction in red light violations and accidents at intersections equipped

with such cameras. The Insurance Institute for Highway Safety (IIHS) conducted a study in Oxnard, California, a city that recently installed red light cameras at various intersections. In 2001, IIHS announced significant citywide crash reductions since the city's use of red light cameras. They noted a 29% reduction of injury crashes at intersections with red light cameras, with front-into-side collisions reduced by 32% overall and front-into-side crashes involving injuries reduced by 68%.

However, in a report, "The Red Light Running Crisis: Is it intentional," House Majority Leader Richard Arney claims that the statistics produced in Oxnard were flawed. His report states that "the 2001 IIHS Oxnard study did not actually study any accidents caused by red light running. Nor did it even study accidents at intersections that have red light cameras. Instead, the study's author (Richard Retting) merely looked at accident codes from a database over a 2 ½ year period to claim that accidents throughout the Oxnard area dropped by about 30% as a result of the red light cameras. The connection between area accidents and red light cameras is only an implied connection." Additionally, Arney contends that the IIHS study "did nothing to document whether signal times, including yellow light times, were held constant throughout the study."

Over the past several years, more controversy over the validity and integrity of the red light cameras has surfaced. Currently, a fine for running a red light in California can equal as much as \$270 (\$100 for the base fine and up to \$170 for penalty assessments). Thirty percent of the total fine amount is allocated to the city or county general fund. With such fines, local governments began facing accusations that the red light cameras were being used as revenue generators, rather than as safety tools. Concerns were expressed that some cameras were being placed in areas not where there were high rates of accidents, as initially intended, but where more tickets and subsequent fines could be produced. Additionally, when it was learned that some vendors, who were hired to install the cameras, received a portion of the fine revenue, citizen groups and legislators began to question whether or not the vendors' role in operating the system was too broad. Accusations were made that the cameras were being positioned in ways to guarantee a sufficient amount of fines, despite whether or not the fines were warranted.

In an effort to review these concerns and allegations, the Senate Committee on Privacy held a hearing in 2001 which examined red light cameras and related issues, such as privacy, the handling of photographic evidence, processing of traffic citations, and reliability. One of the requests from the chair of the committee was for BSA to conduct a report on the efficiency of the red light camera programs statewide.

In July 2002, BSA completed its statewide audit of red light cameras. In terms of the effectiveness of the red light cameras, the auditor noted that "for five local governments (they visited, the number of accidents decreased between 3% and 21% after the implementation of the red light cameras." And what was even more telling, according to the auditor, was that after San Diego suspended the use of its program in June 2001, accidents caused by red light violations "increased citywide by 14%, based on four months of data."

However, while the audit recognized the contribution that the red light camera has to a reduction in accidents, it concluded that operational weaknesses at the local level did exist. Specifically, the audit determined that local governments:

- 1) Need to maintain control of their programs.

- 2) Generally select intersections based on traffic safety concerns, but do not always follow the best practice of reviewing intersections for engineering problems before installing cameras.
- 3) Have allowed the retention of the photographs longer than necessary and with the exception of one city; have used them, as evidence in criminal proceedings not associated with the red light violation.

However, the audit also points out that the fines from the violations have not generated much revenue for local governments and that most local governments have complied with the new yellow light time interval law, established by SB 667 (Peace), Chapter 496, Statutes of 2001.

In response to the audit, the author of this bill states that "paying red light camera vendors based on the number of tickets issued undermines the public's trust and raises concern that these systems can be manipulated for profit." She also points out that existing law regarding the responsibility of local governments and vendors in operating the red light cameras is vague leaving the program "susceptible to public criticisms and legal challenges."

Using the findings in this report, the author introduced this bill to codify many of the auditor's recommendations, which as the sponsors claim would "restore the public's confidence in (the red light camera) programs."

Analysis Prepared by: Ryan Spencer / TRANS. / (916) 319-2093

FN: 0000495

BILL ANALYSIS

SENATE RULES COMMITTEE
 Office of Senate Floor Analyses
 1020 N Street, Suite 524
 (916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 833
 Author: Kopp (I)
 Amended: 9/12/95
 Vote: 21

SENATE TRANSPORTATION COMMITTEE: 6-1, 5/2/95
 AYES: Ayala, Boatwright, Johnston, Monteith, Russell, Kopp
 NOES: Kelley
 NOT VOTING: Hayden, Polanco

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 22-14, 5/30/95
 AYES: Alquist, Ayala, Beverly, Boatwright, Calderon,
 Campbell, Costa, Craven, Dills, Hayden, Johnston, Killea,
 Kopp, Marks, Mello, O'Connell, Peace, Petris, Rosenthal,
 Russell, Solis, Watson
 NOES: Haynes, Hurr, Johannessen, Johnson, Kelley,
 Leonard, Leslie, Lewis, Lockyer, Maddy, Monteith,
 Mountjoy, Rogers, Wright
 NOT VOTING: Greene, Hughes, Polanco, Thompson

ASSEMBLY FLOOR: 43-30, 9/15/95 - See last page for vote

SUBJECT: Vehicles: crimes: enforcement

SOURCE: City of Santa Rosa Police Chief

DIGEST: This bill (1) authorizes the Department of Motor
 Vehicles, for three years, to withhold the registration of
 a vehicle owned by a person cited for running a red light

CONTINUED

SB 833
 Page

2

when a camera was used to record the violation and the
 subsequent citation was ignored, and (2) clarify conditions
 and procedures for the release of a vehicle impounded
 because the driver's license was suspended or revoked.

Assembly Amendments:

1.Reduce from 30 to 15 days in which a mailed notice to
 appear must be mailed from the violation date.

2.Make technical/clarifying changes.

Senate Floor Amendments of 5/18/95 removed the urgency
 clause.

Senate Floor Amendments of 5/25/95 added a three-year
 sunset to the red light enforcement provision.

ANALYSIS: SB 1802 (Rosenthal, 1994) authorized the use
 of automated rail crossing enforcement systems (red light
 cameras) to record violations occurring at rail crossing
 signals and gates. The bill required signs to be posted
 indicating the system's presence and to be visible to
 approaching traffic. Use of such equipment is limited to
 governmental agencies in cooperation with law enforcement
 agencies.

Persons failing to stop at activated rail crossing signals or gates and whose actions are recorded by the automatic enforcement systems may subsequently be cited by mail for the violations.

This bill extends the authorization for DMV to withhold a vehicle's registration renewal for red light offenses recorded by automated enforcement equipment to all areas where a driver is required to obey traffic signals. The use of such photographic equipment would:

1. Require the system to be visible to approaching traffic and be identified by signs.
2. Be limited to governmental and law enforcement agencies' use.

CONTINUED

SB 833
Page

3

3. Require photographic records to be confidential and used only for traffic control device enforcement.
4. Require a 30-day public education program and 30-day warning period.
5. The above provision would sunset on January 1, 1999. At that time, the current law would be reinstated.

SB 1758 (Kopp, 1994) enacted provisions authorizing the impoundment for 30 days of vehicles driven by persons with suspended or revoked drivers' licenses or who were never licensed. The legislation also made it unlawful to provide a vehicle to such a driver if the nonlicensed status is known and also enacted related enforcement provisions.

This bill clarifies the application of the vehicle impoundment provisions and specify conditions and procedures for the release of a vehicle prior to 30 days. It would:

1. Authorize the impoundment for 30 days of a vehicle involved in an accident and driven by a suspended or revoked driver, without the necessity of arresting the driver. Any lien sale shall be conducted on or after the 15th day after the end of the 30-day impoundment period.
2. Allow the impounding agency to consider any mitigating circumstances during a hearing to determine the validity of a 30-day impoundment.
3. Require an impounding agency to release a vehicle prior to the end of the 30-day period:
 - a. when the vehicle was stolen.
 - b. when the vehicle was driven by an unlicensed employee of a business (e.g., parking service or repair facility).
 - c. when the driver's license was suspended or revoked for minor or nondriving-related violations.
 - d. all towing and storage fees and charges are paid.

CONTINUED

SB 833
Page

4

4. Require the release of an impounded vehicle to the legal owner before 30 days if:
 - a. the legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other financial institution, or a rental car agency, or is another person, not the registered owner, holding a security

interest in the vehicle.

b.all towing and storage fees and charges are paid.

c.the legal owner presents foreclosure or repossession documents to the impounding agency.

5.Prohibit vehicles released early to legal owners from subsequently being returned to the original or registered driver and prohibit rental agencies from renting another vehicle to the cited driver before the 30 days expired.

6.Restore to misdemeanor status, rather than an infraction, the crime of driving with a suspended or revoked license, in order to correct a technical drafting error in SB 1758.

7.Specify that the registered owner and not the legal owner is responsible to charges related to impoundment.

Existing law, Section 40518 of the Vehicle Code requires a written notice to appear issued by a peace officer to be delivered by mail within 30 days of specified violations.

This bill reduces that timeframe requirement from 30 days to 15 days.

Existing law authorizes the Department of Motor Vehicles to issue regular series license plates for certain motor vehicles that are owned by the state.

This bill allows a justice of the California Supreme Court who is regularly issued a state-owned vehicle to apply to the department for regular series license plates for that vehicle.

CONTINUED

SB 833
Page

5

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT: (Verified 5/26/95)(Unable to reverify Support and Opposition at time of this writing)

City of Santa Rosa Police Chief (source)
Independent Auto Dealers of California
California Association of Licensed Repossessors
California Peace Officers Association
California Peace Chiefs Association

ARGUMENTS IN SUPPORT: Sponsors of the red light photographic enforcement equipment provisions cite the use of such equipment in reducing the rate of violations as well as the number of accidents and fatalities at intersections. Various studies and tests of the equipment have concluded that a substantial portion of urban vehicle crashes occur at intersections involving drivers running through red lights. Such violators, as a group, are younger, less likely to wear seatbelts, and have poorer driving records. Reports from Victoria, Canada showed a 72 percent drop in red light violations while Melbourne, Australia reported a 30 percent reduction in traffic fatalities, both cases attributable to use of the automated enforcement units.

ASSEMBLY FLOOR:

AYES: Alpert, Archie-Hudson, Baca, Bates, Bowen, Bowler, V. Brown, Burton, Bustamante, Caldera, Campbell, Cannella, Cortese, Cunneen, Davis, Escutia, Figueroa, Friedman, Goldsmith, Granlund, Hannigan, House, Isenberg, Katz, Knox, Kuehl, Kuykendall, Lee, Machado, Martinez, Mazzoni, McDonald, McPherson, K. Murray, W. Murray, Napolitano, Rainey, Sher, Speier, Sweeney, Tucker, Villaraigosa, Setencich

NOES: Ackerman, Aguiar, Alby, Baldwin, Battin, Boland, Bordonaro, Brewer, Brulte, Conroy, Ducheny, Firestone, Gallegos, Harvey, Hauser, Hawkins, Hoge, Knight, Knowles, Margett, Miller, Morrissey, Morrow, Olberg, Poochigian, Rogan, Takasugi, Thompson, Weggeland, Woods

NOT VOTING: Allen, W. Brown, Frusetta, Kaloogian, Pringle, Richter, Vasconcellos

CONTINUED

SB 833
Page

6

CONTINUED

RJG:em 9/28/95 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 780
AUTHOR : Torlakson
TOPIC : Vehicles: violations: automated enforcement systems.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2004
Feb. 2 Returned to Secretary of Senate pursuant to Joint Rule 56.
2003
May 29 Hearing postponed by committee.
May 22 Set for hearing May 29.
May 19 Placed on APPR. suspense file.
May 13 From committee with author's amendments. Read second time.
Amended. Re-referred to committee.
May 8 Set for hearing May 19.
May 7 From committee: Do pass, but first be re-referred to Com. on APPR.
(Ayes 7. Noes 4. Page 850.) Re-referred to Com. on APPR.
May 1 Joint Rule 61(a) suspended.
Apr. 30 Set for hearing May 6 pending suspension of rules.
Apr. 28 Read second time. Amended. Re-referred to Com. on TRANS.
Apr. 24 From committee: Do pass as amended, but first amend, and re-refer
to Com. on TRANS. (Ayes 4. Noes 1. Page 630.)
Apr. 22 Set for hearing April 29 in TRANS. pending receipt.
Mar. 27 Set, first hearing. Hearing canceled at the request of author. Set
for hearing April 22.
Mar. 24 From committee with author's amendments. Read second time.
Amended. Re-referred to committee.
Mar. 18 Set for hearing April 1.
Mar. 13 To Coms. on JUD. and TRANS.
Feb. 24 Read first time.
Feb. 22 From print. May be acted upon on or after March 24.
Feb. 21 Introduced. To Com. on RLS. for assignment. To print.



California

LEGISLATIVE INFORMATION

SB-1303 Vehicles: automated traffic enforcement systems. (2011-2012)

Date	Action
09/28/12	Chaptered by Secretary of State. Chapter 735, Statutes of 2012.
09/28/12	Approved by the Governor.
08/31/12	Enrolled and presented to the Governor at 11:15 p.m.
08/27/12	Assembly amendments concurred in. (Ayes 35. Noes 0. Page 4851.) Ordered to engrossing and enrolling.
08/24/12	In Senate. Concurrence in Assembly amendments pending.
08/23/12	Read third time. Passed. (Ayes 62. Noes 13. Page 6184.) Ordered to the Senate.
08/20/12	Read second time. Ordered to third reading.
08/16/12	From committee: Do pass. (Ayes 16. Noes 1.) (August 16).
08/13/12	(Corrected August 13.)
08/13/12	From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.
08/07/12	(Corrected August 8.)
08/07/12	From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.
08/06/12	Read second time and amended. Re-referred to Com. on APPR.
07/05/12	From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (July 3).
06/26/12	From committee with author's amendments. Read second time and amended. Re-referred to Com. on JUD.
06/26/12	From committee: Do pass and re-refer to Com. on JUD. (Ayes 11. Noes 1.) (June 25). Re-referred to Com. on JUD.
06/14/12	Referred to Coms. on TRANS. and JUD.
05/31/12	In Assembly. Read first time. Held at Desk.
05/31/12	Read third time. Passed. (Ayes 38. Noes 0. Page 3739.) Ordered to the Assembly.
05/30/12	Read second time. Ordered to third reading.
05/29/12	(Corrected May 31.)
05/29/12	(Corrected May 30.)
05/29/12	Ordered to second reading.
05/29/12	Read third time and amended.
05/14/12	Ordered to third reading.
05/14/12	From special consent calendar.
05/09/12	Ordered to special consent calendar.
05/02/12	Read second time. Ordered to third reading.
05/01/12	From committee: Do pass. (Ayes 7. Noes 0. Page 3388.) (April 30).
04/20/12	Set for hearing April 30.
03/28/12	From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0. Page 3035.) (March 27). Re-referred to Com. on APPR.
03/09/12	Set for hearing March 27.
03/08/12	Referred to Com. on T. & H.
02/24/12	From printer. May be acted upon on or after March 25.
02/23/12	Introduced. Read first time. To Com. on RLS. for assignment. To print.



A handwritten signature in blue ink, likely of the Governor of California.

LEGISLATIVE INFORMATION

SB-1303 Vehicles: automated traffic enforcement systems. (2011-2012)**Senate Bill No. 1303****CHAPTER 735****An act to amend Sections 1552 and 1553 of the Evidence Code, and to amend Sections 21455.5 and 40518 of the Vehicle Code, relating to vehicles.**

[Approved by Governor September 28, 2012. Filed Secretary of State September 28, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1303, Simitian. Vehicles: automated traffic enforcement systems.

(1) Existing law authorizes the limit line, intersection, or other places where a driver is required to stop to be equipped with an automated enforcement system, as defined, if the system meets certain requirements. Existing law authorizes a governmental agency to contract out the operation of the system under certain circumstances, except for specified activities, that include, among other things, establishing guidelines for selection of location. A violation of the Vehicle Code is a crime.

This bill would require that those requirements include identifying the system by signs posted within 200 feet of an intersection where a system is operating. The bill would require that automated traffic enforcement systems installed as of January 1, 2013, be identified no later than January 1, 2014. The bill would require the governmental agency that operates an automated traffic enforcement system to develop uniform guidelines for specified purposes and to establish procedures to ensure compliance with those guidelines. The bill would require, for systems installed as of January 1, 2013, that a governmental agency that operates an automated traffic enforcement system establish those guidelines by January 1, 2014. The bill would require the governmental agency to adopt a finding of fact establishing the need for the system at a specific location for reasons related to safety for those systems installed after January 1, 2013.

The bill would prohibit a governmental agency that proposes to install or operate an automated traffic enforcement system from considering revenue generation, beyond recovering its actual costs of operating the system, as a factor when considering whether or not to install or operate a system within its local jurisdiction. The bill would require the manufacturer or supplier that operates an automated traffic enforcement system, in cooperation with the governmental agency, to submit an annual report to the Judicial Council that includes specified information.

The bill would prohibit a governmental agency that utilizes an automated traffic enforcement system and that had signs posted on or before January 1, 2013, that met the requirements in effect on January 1, 2012, from removing those signs until the governmental agency posts signs that meet the requirements imposed by the bill.

(2) Existing law provides special written, mailed notice to appear procedures in connection with certain alleged violations recorded by an automated traffic enforcement system. Existing law provides whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged traffic violation recorded by an automated traffic enforcement system, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles, with a certificate of mailing obtained as evidence of service, that an exact and legible duplicate copy of the notice when filed with the magistrate constitutes a complaint to which the defendant may enter a plea.

This bill would expand the information that must be included on a notice to appear. The bill would authorize the mailing of a notice of nonliability by the issuing agency, manufacturer, or supplier of the automated traffic enforcement system to the registered owner or the alleged violator prior to issuing a notice to appear. The bill would require that this notice be substantively identical to the form set forth in the bill. The bill would prohibit a manufacturer or supplier of an automated traffic enforcement system or the governmental agency operating the system from altering the notice to appear or notice of nonliability. If a form is found to have been materially altered, the bill would authorize that the citation, based on the altered form, be dismissed. The bill would also require that the citation be dismissed if a magistrate or judge makes a finding that there are grounds for dismissal, in certain circumstances.

(3) Existing law, known as the hearsay rule, provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible, subject to specified exceptions. Existing law provides that a printed representation of computer information, a computer program, or images stored on a video or digital medium is presumed to be an accurate representation of the computer information, computer program, or images that it purports to represent.

This bill would provide that this presumption applies to the printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system. The bill would expressly state that the printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does not constitute an out-of-court hearsay statement by a declarant.

(4) Because it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of the Vehicle Code, this bill would impose a state-mandated local program by creating a new crime.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1552 of the Evidence Code is amended to read:

1552. (a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) applies to the printed representation of computer-generated information stored by an automated traffic enforcement system.

(c) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530.

SEC. 2. Section 1553 of the Evidence Code is amended to read:

1553. (a) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

(b) Subdivision (a) applies to the printed representation of video or photographic images stored by an automated traffic enforcement system.

SEC. 3. Section 21455.5 of the Vehicle Code is amended to read:

21455.5. (a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated traffic enforcement system if the governmental agency utilizing the system meets all of the following requirements:

(1) Identifies the system by signs posted within 200 feet of an intersection where a system is operating that clearly indicate the system's presence and are visible to traffic approaching from all directions in which the automated traffic enforcement system is being utilized to issue citations. A governmental agency utilizing such a system does not need to post signs visible to traffic approaching the intersection from directions not subject to the automated traffic enforcement system. Automated traffic enforcement systems installed as of January 1, 2013, shall be identified no later than January 1, 2014.

(2) Locates the system at an intersection and ensures that the system meets the criteria specified in Section 21455.7.

(b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

(c) Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated traffic enforcement system. A governmental agency that operates an automated traffic enforcement system shall do all of the following:

(1) Develop uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establish procedures to ensure compliance with those guidelines. For systems installed as of January 1, 2013, a governmental agency that operates an automated traffic enforcement system shall establish those guidelines by January 1, 2014.

(2) Perform administrative functions and day-to-day functions, including, but not limited to, all of the following:

(A) Establishing guidelines for the selection of a location. Prior to installing an automated traffic enforcement system after January 1, 2013, the governmental agency shall make and adopt a finding of fact establishing that the system is needed at a specific location for reasons related to safety.

- (B) Ensuring that the equipment is regularly inspected.
 - (C) Certifying that the equipment is properly installed and calibrated, and is operating properly.
 - (D) Regularly inspecting and maintaining warning signs placed under paragraph (1) of subdivision (a).
 - (E) Overseeing the establishment or change of signal phases and the timing thereof.
 - (F) Maintaining controls necessary to ensure that only those citations that have been reviewed and approved by law enforcement are delivered to violators.
- (d) The activities listed in subdivision (c) that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system. However, the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), and (F) of paragraph (2) of, subdivision (c) shall not be contracted out to the manufacturer or supplier of the automated traffic enforcement system.
- (e) The printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does not constitute an out-of-court hearsay statement by a declarant under Division 10 (commencing with Section 1200) of the Evidence Code.
- (f) (1) Notwithstanding Section 6253 of the Government Code, or any other law, photographic records made by an automated traffic enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies and only for the purposes of this article.
- (2) Confidential information obtained from the Department of Motor Vehicles for the administration or enforcement of this article shall be held confidential, and shall not be used for any other purpose.
- (3) Except for court records described in Section 68152 of the Government Code, the confidential records and information described in paragraphs (1) and (2) may be retained for up to six months from the date the information was first obtained, or until final disposition of the citation, whichever date is later, after which time the information shall be destroyed in a manner that will preserve the confidentiality of any person included in the record or information.
- (g) Notwithstanding subdivision (f), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.
- (h) (1) A contract between a governmental agency and a manufacturer or supplier of automated traffic enforcement equipment shall not include provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the equipment authorized under this section.
- (2) Paragraph (1) does not apply to a contract that was entered into by a governmental agency and a manufacturer or supplier of automated traffic enforcement equipment before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.
- (3) A governmental agency that proposes to install or operate an automated traffic enforcement system shall not consider revenue generation, beyond recovering its actual costs of operating the system, as a factor when considering whether or not to install or operate a system within its local jurisdiction.
- (i) A manufacturer or supplier that operates an automated traffic enforcement system pursuant to this section shall, in cooperation with the governmental agency, submit an annual report to the Judicial Council that includes, but is not limited to, all of the following information if this information is in the possession of, or readily available to, the manufacturer or supplier:
- (1) The number of alleged violations captured by the systems they operate.

- (2) The number of citations issued by a law enforcement agency based on information collected from the automated traffic enforcement system.
- (3) For citations identified in paragraph (2), the number of violations that involved traveling straight through the intersection, turning right, and turning left.
- (4) The number and percentage of citations that are dismissed by the court.
- (5) The number of traffic collisions at each intersection that occurred prior to, and after the installation of, the automated traffic enforcement system.
- (j) If a governmental agency utilizing an automated traffic enforcement system has posted signs on or before January 1, 2013, that met the requirements of paragraph (1) of subdivision (a) of this section, as it read on January 1, 2012, the governmental agency shall not remove those signs until signs are posted that meet the requirements specified in this section, as it reads on January 1, 2013.

SEC. 4. Section 40518 of the Vehicle Code is amended to read:

40518. (a) Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged violation of Section 22451, or, based on an alleged violation of Section 21453, 21455, or 22101 recorded by an automated traffic enforcement system pursuant to Section 21455.5 or 22451, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the department, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea. Preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(b) (1) A notice to appear shall contain the name and address of the person, the license plate number of the person's vehicle, the violation charged, including a description of the offense, and the time and place when, and where, the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered. If, after the notice to appear has been issued, the citing peace officer or qualified employee of a law enforcement agency determines that, in the interest of justice, the citation or notice should be dismissed, the citing agency may recommend, in writing, to the magistrate or the judge that the case be dismissed. The recommendation shall cite the reasons for the recommendation and be filed with the court. If the magistrate or judge makes a finding that there are grounds for dismissal, the finding shall be entered on the record and the infraction dismissed.

(2) A notice to appear shall also contain all of the following information:

(A) The methods by which the registered owner of the vehicle or the alleged violator may view and discuss with the issuing agency, both by telephone and in person, the evidence used to substantiate the violation.

(B) The contact information of the issuing agency.

(c) (1) This section and Section 40520 do not preclude the issuing agency or the manufacturer or supplier of the automated traffic enforcement system from mailing a notice of nonliability to the registered owner of the vehicle or the alleged violator prior to issuing a notice to appear. The notice of nonliability shall be substantively identical to the following form:

PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE INSERTED

(2) The form specified in paragraph (1) may be translated to other languages.

(d) A manufacturer or supplier of an automated traffic enforcement system or the governmental agency operating the system shall not alter the notice to appear or any other form approved by the Judicial Council. If a form is found to have been materially altered, the citation based on the altered form may be dismissed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11500 W. Olympic Blvd., Suite 550, Los Angeles, CA 90064-1524.

On November 13, 2012, I served the foregoing document described as **REQUEST FOR JUDICIAL NOTICE** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon full prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on November 13, 2012 at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Camille Smith, Declarant

SERVICE LIST

Sherman M. Ellison, Esq.
Sherman M. Ellison & Associates
The Sherman Oaks Galleria
15303 Ventura Blvd, 9th Floor
Sherman Oaks, CA 91403

Appellate Division
Los Angeles Superior Court
Attn: Clerk, Dept. 70
111 No. Hill Street
Los Angeles, CA 90012

Honorable Lawrence H. Cho
Los Angeles Superior Court
Santa Monica Courthouse
Attn: Honorable Lawrence H. Cho
1725 Main Street
Santa Monica, CA 90401

Robert Cooper, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
555 S. Flower Street, 29th Floor
Los Angeles, CA 90071

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013

Court of Appeal
Second Appellate District
Attn: Clerk, Division Three
Ronald Reagan State Building
300 S. Spring St., Second Floor
Los Angeles, CA 90013