

The Senate Committee on Public Safety offered the following substitute to HB 348:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to use
2 of speed detection devices and red light cameras, so as to provide for standards for signs
3 warning of the use of automated traffic enforcement safety devices; to revise a definition; to
4 provide standards for warning signs; to revise provisions relative to application and issuance
5 of speed detection device permits; to provide for investigations by the commissioner of
6 public safety relating to unauthorized use of automated traffic enforcement safety devices;
7 to provide for penalties; to provide for inclusion of civil monetary penalties issued by
8 automated traffic enforcement safety devices in the permissible ratio of speeding fines for
9 a law enforcement agency's budget; to provide for times when a school zone speed limit may
10 be enforced through the use of an automated traffic enforcement safety device; to authorize
11 a local governing body to apply for a permit to operate automated traffic enforcement safety
12 devices; to provide for admissible evidence for proof of a violation of speed limit through
13 the use of speed detection devices; to provide for procedures, conditions, and limitations for
14 issuing citations for the violation of speed limit through the use of automated traffic
15 enforcement safety devices; to provide for procedures for contesting such citations; to amend
16 Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to authorize
17 district attorneys, solicitors-general, and prosecuting attorneys to enforce civil monetary
18 penalties relative to the enforcement of laws regarding speeding in a school zone using

19 recorded images; to provide for related matters; to repeal conflicting laws; and for other
20 purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to use of speed
24 detection devices and red light cameras, is amended in Code Section 40-14-1.1, relating to
25 definitions, by revising paragraph (5) as follows:

26 "(5) 'School zone' means the area ~~within 1,000 feet of the boundary of~~ defined in an
27 existing master state order or local ordinance as a school zone area for any public or
28 private elementary or secondary school."

29 **SECTION 2.**

30 Said chapter is further amended by revising Code Section 40-14-2, relating to permit required
31 for use, use not authorized where officers paid on fee system, and operation by registered or
32 certified peace officers, as follows:

33 "40-14-2.

34 (a) The law enforcement officers of the various counties, municipalities, colleges, and
35 universities may use speed detection devices only if the sheriffs of such counties, or the
36 governing authorities of such counties, or the governing authorities of such municipalities,
37 or the president of such college or university shall approve of and desire the use of such
38 devices and shall apply to the Department of Public Safety for a permit to use such devices
39 in accordance with this chapter.

40 (b) No county sheriff, county or municipal governing authority, college, or university shall
41 be authorized to use speed detection devices where any arresting officer or official of the

42 court having jurisdiction of traffic cases is paid on a fee system. This subsection shall not
43 apply to any official receiving a recording fee.

44 (c) A permit shall not be issued by the Department of Public Safety to an applicant under
45 this Code section unless the applicant provides law enforcement services by certified peace
46 officers 24 hours a day, seven days a week on call or on duty or allows only peace officers
47 employed full time by the applicant to operate speed detection devices. Speed detection
48 devices ~~can~~ shall only be operated by registered or certified peace officers of the county
49 sheriff, county, municipality, college, or university to which the permit is applicable;
50 provided, however, that an automated traffic enforcement safety device may be operated
51 by an agent or registered or certified peace officers of the county sheriff, county, or
52 municipality to which the permit issued pursuant to Code Section 40-14-18 is applicable.
53 Persons operating the speed detection devices ~~must~~ shall be registered or certified by the
54 Georgia Peace Officer Standards and Training Council as peace officers and certified by
55 the Georgia Peace Officer Standards and Training Council as operators of speed detection
56 devices; provided, however, that agents may operate automated traffic enforcement safety
57 devices without such registrations or certifications."

58 SECTION 3.

59 Said chapter is further amended by revising Code Section 40-14-3, relating to application for
60 permit and use of device while application pending, as follows:

61 "40-14-3.

62 (a) A county sheriff, county or municipal governing authority, or the president of a college
63 or university may apply to the Department of Public Safety for a permit to authorize the use
64 of speed detection devices for purposes of traffic control within such counties,
65 municipalities, colleges, or universities on ~~streets, roads, and~~ highways, provided that such
66 application shall name the ~~street or road~~ highway on which the device is to be used and the
67 speed limits on such ~~street or road~~ highway shall have been approved by the Office of

Traffic Operations of the Department of Transportation. Law enforcement agencies are authorized to use speed detection devices ~~on streets and roads~~ other than automated traffic enforcement safety devices on highways for which an application is pending as long as all other requirements for the use of speed detection devices are met. Nothing in this subsection shall be construed to affect the provisions of Code Section 40-14-9.

(b) The Department of Public Safety is authorized to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for ~~such~~ permits to operate speed detection devices and to prescribe the required information to be submitted by the applicants. The Department of Public Safety may deny the application or suspend the speed detection device permit for failure to provide information or documentation at the department's request."

SECTION 4.

Said chapter is further amended in Code Section 40-14-6, relating to warning signs required and signage requirements, by revising subsection (c) as follows:

"(c) In addition to the signs required under subsections (a) and (b) of this Code section, each law enforcement agency using an automated traffic enforcement safety device as provided for in Code Section 40-14-18 shall erect signs warning of the use of a stationary speed detection device within the approaching school zone. Such signs shall be at least 24 by 30 inches in area, shall be visible plainly from every lane of traffic, shall be viewable in all traffic conditions, and shall not be placed in such a manner that the view of such sign is subject to being obstructed by any other vehicle on such highway. An automated traffic enforcement safety device warning sign ~~Such signs~~ shall be placed within 500 feet prior to the warning sign announcing the reduction of the speed limit for the school ~~speed~~ zone and shall include lights that flash yellow during the time when the automated traffic enforcement safety device is authorized to issue citations pursuant to Code Section 40-14-18 and in accordance with any rule or regulation established by the

94 Department of Transportation. There shall be a rebuttable presumption that such signs are
95 properly installed pursuant to this subsection at the time of any alleged violation under this
96 article."

97 **SECTION 5.**

98 Said chapter is further amended by revising Code Section 40-14-8, relating to when case may
99 be made and conviction had, as follows:

100 "40-14-8.

101 (a) No county, city, or campus officer shall be allowed to make a case based on the use of
102 any speed detection device, unless the speed of the vehicle exceeds the posted speed limit
103 by more than ten miles per hour and no conviction shall be had thereon unless such speed
104 is more than ten miles per hour above the posted speed limit.

105 (b) The limitations contained in subsection (a) of this Code section shall not apply in
106 ~~properly marked school zones one hour before, during, and one hour after the normal hours~~
107 ~~of school operation or programs for care and supervision of students before school, after~~
108 ~~school, or during vacation periods as provided for under Code Section 20-2-65, in properly:~~

109 (1) School zones properly marked with warning signs while the reduction of the speed
110 limit for the school zone is in effect, when the speed detection device is one other than
111 an automated traffic enforcement safety device and is operated by an on-site law
112 enforcement officer;

113 (2) Properly marked historic districts;~~in properly;~~ and

114 (3) Properly marked residential zones.

115 (c) For purposes of this chapter, thoroughfares with speed limits of 35 miles per hour or
116 more shall not be considered residential ~~districts~~ zones. For purposes of this Code section
117 the term 'historic district' means a historic district as defined in ~~paragraph (5) of~~ Code
118 Section 44-10-22 and which is listed on the Georgia Register of Historic Places or as
119 defined by ordinance adopted pursuant to a local constitutional amendment."

SECTION 6.

Said chapter is further amended by revising Code Section 40-14-11, relating to investigations by commissioner of public safety, issuance of order suspending or revoking permit, and ratio of speeding fines to agency's budget, as follows:

"40-14-11.

(a) Upon a complaint being made to the commissioner of public safety that any county, municipality, college, or university is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety or in a manner which violates this chapter or violates its speed detection device permit, the commissioner or the commissioner's designee is authorized and empowered to conduct an investigation into the acts and practices of such county, municipality, college, ~~or~~ university with respect to speed detection devices. If, as a result of ~~this~~ such investigation, the commissioner or the commissioner's designee finds that there is probable cause to suspend or revoke the speed detection device permit of such county, municipality, college, or university, he or she shall issue an order to that effect.

(b) Upon the suspension or revocation of any speed detection device permit for the reasons set forth in this Code section, the commissioner of public safety shall notify the executive director of the Georgia Peace Officer Standards and Training Council of the action taken. When the speed detection device is an automated traffic enforcement safety device, the commissioner shall send a copy of such order to the Department of Transportation.

(c) Upon receipt from the executive director of the Georgia Peace Officer Standards and Training Council that an officer's certification to operate speed detection devices has been withdrawn or suspended pursuant to Code Section 35-8-12, the commissioner of public safety or the commissioner's designee shall suspend the speed detection device permit for the employing agency. The period of suspension or revocation shall be consistent with the action taken by the Georgia Peace Officer Standards and Training Council.

(d) Upon the conclusion of an investigation pursuant to subsection (a) of this Code section, any agent, law enforcement agency, or governing body found to have intentionally violated any provision of this chapter relating to automated traffic enforcement safety devices, including, but not limited to, the unauthorized issuance of a civil monetary penalty for a violation of this title other than as provided for in this chapter, shall be assessed a fine by the commissioner of public safety of \$2,500.00 for the first violation and \$5,000.00 for a second violation. The commissioner of public safety shall be further authorized to suspend all speed detection device permits relating to the operation of an automated traffic enforcement safety device for a jurisdiction upon a third or subsequent finding of a violation of this chapter. The commissioner of public safety shall notify the Department of Transportation of any such suspension and the Department of Transportation shall suspend the operating permit for an automated traffic enforcement safety device for such jurisdiction upon receipt of such notice.

~~(d)~~(e) There shall be a rebuttable presumption that a law enforcement agency is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety if the fines or civil penalties levied based on the use of speed detection devices for speeding offenses are equal to or greater than ~~35~~ 30 percent of a municipal or county law enforcement agency's budget. For purposes of this Code section, fines collected for citations issued for violations of Code Section 40-6-180 shall be included when calculating ~~total speeding fine~~ such speeding offenses revenue for the agency; provided, however, that fines for speeding violations exceeding 20 miles per hour over the established speed limit ~~and civil monetary penalties for speeding violations issued pursuant to Code Section 40-14-18~~ shall not be considered when calculating total speeding ~~fine~~ offenses revenue for the agency."

SECTION 7.

Said chapter is further amended by revising Code Section 40-14-18, relating to enforcement of speed limit in school zones with recorded images, civil monetary penalty, and vehicle registration and transfer of title restrictions for failure to pay penalty, as follows:

"40-14-18.

(a)(1) The speed limit within any school zone ~~as provided for in Code Section 40-14-8~~ and marked pursuant to Code Section 40-14-6 may be enforced by using ~~photographically~~ recorded images for violations which occurred only one hour prior to and one hour after the school's official starting time and one hour prior to and two hours after the school's official dismissal time and when such violations are in excess of ten miles per hour over the speed limit; provided, however, that, when any portion of a school's property is bisected by a highway, such enforcement may occur on a school day during the time in which instructional classes are taking place and one hour before such classes are scheduled to begin and for one hour after such classes have concluded when such violations are in excess of ten miles per hour over the speed limit.

(2) Prior to the placement of ~~a~~ an automated traffic enforcement safety device within a school zone, ~~each school within whose school zone such~~ the governing body of the county or municipality law enforcement agency authorized to enforce the speed limit where such automated traffic enforcement safety device is to be placed and which holds a valid permit for the operation of speed detection devices issued by the Department of Public Safety pursuant to Code Section 40-14-2 shall first apply for and secure a permit from the Department of Transportation for the use of such automated traffic enforcement safety device. Such permit shall be awarded based upon need. The Department of Transportation shall promulgate rules and regulations for the implementation of this paragraph.

(b) For the purpose of enforcement pursuant to this Code section:

(1) The owner of a motor vehicle shall be liable for a civil monetary penalty to the governing body of the law enforcement agency provided for in paragraph (2) of this subsection if such vehicle is found, as evidenced by ~~photographically~~ recorded images, to have been operated in disregard or disobedience of the speed limit within ~~any~~ a school zone and such disregard or disobedience was not otherwise authorized by law. The amount of such civil monetary penalty shall be \$75.00 for a first violation and \$125.00 for a second or any subsequent violation, in addition to fees associated with the electronic processing of such civil monetary penalty which shall not exceed \$25.00; provided, however, that for a period of 30 days after the first automated traffic enforcement safety device is introduced by a law enforcement agency within a school zone, the ~~driver~~ owner of a motor vehicle shall not be liable for a civil monetary penalty but shall be issued a civil warning for disregard or disobedience of the speed limit within the school zone;

(2) A law enforcement agency authorized to enforce the speed limit of a school zone, or an agent working on behalf of a law enforcement agency or governing body, shall send by ~~first-class~~ first-class mail addressed to the owner of the motor vehicle within 30 days after obtaining the name and address of the owner of the motor vehicle from the Department of Revenue but no later than 60 days after the date of the alleged violation:

(A) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the maximum speed at which such motor vehicle was traveling ~~in-photographically~~ as evidenced by recorded images, the maximum speed applicable within such school zone, the civil warning or the amount of the civil monetary penalty imposed, ~~and~~ the date by which a civil monetary penalty shall be paid, and a statement that informs the recipient of the consequences for failure to pay the civil monetary penalty;

(B) An image taken from ~~the-photographically~~ recorded images showing the vehicle involved in the infraction;

(C) A website address where ~~photographically~~ recorded images showing the vehicle involved in the infraction and a duplicate of the information provided for in this paragraph may be viewed;

(D) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce the speed limit of the school zone and stating that, based upon inspection of ~~photographically~~ recorded images, the owner's motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law;

(E) A statement of the inference provided by paragraph (4) of this subsection and of the means specified therein by which such inference may be rebutted;

(F) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested ~~through an administrative hearing~~ which shall include an assigned hearing date to contest liability that shall be no later than 60 days from the date of issuance of the citation; and

(G) A warning that failure to pay the civil monetary penalty or to contest liability ~~in a timely manner~~ on the hearing date as provided for in subsection (d) of this Code section shall waive any right to contest liability;

(3) Proof that a motor vehicle was operated in disregard or disobedience of the speed limit of the marked school zone shall be evidenced by ~~photographically~~ recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of ~~photographically~~ recorded images, a motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(4) Liability under this Code section shall be determined based upon a preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this Code section was operated in violation of the speed limit of the school zone, together with proof that the defendant was, at the time of such violation, the registered owner of the vehicle, shall permit the trier of fact ~~in its discretion~~ to infer that such owner of the vehicle was the ~~driver~~ operator of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(A) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation; or

(B) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(c) A violation for which a civil warning or a civil monetary penalty is imposed pursuant to this Code section shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this Code section shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage. A civil monetary penalty imposed pursuant to this Code section shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine be assessed.

(d) If a person issued and mailed a citation pursuant to subsection (b) of this Code section fails to pay the civil monetary penalty for the violation, ~~or~~ has not filed a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section in no less than ~~30~~ 60 nor more than ~~60~~ 90 days after such mailing as determined and noticed by the law enforcement agency, or failed to appear on the assigned hearing date to contest liability, the agent or law enforcement agency shall send to such person by ~~first class~~

275 ~~first-class~~ mail a second notice of any unpaid civil monetary penalty, except in cases where
276 there is an adjudication that no violation occurred or there is otherwise a lawful
277 determination that no civil monetary penalty shall be imposed. No more than a \$5.00 late
278 fee shall be imposed for any unpaid civil monetary penalty imposed under this Code
279 section. The second notice shall include all information required in paragraph (2) of
280 subsection (b) of this Code section other than an assigned hearing date and shall include
281 a new date ~~of return~~ by which the civil monetary penalty shall be paid which shall be no
282 less than 30 days after such mailing as determined and noticed by the law enforcement
283 agency. If such person notified by second notice again fails to pay the civil monetary
284 penalty or file a police report or notarized statement pursuant to paragraph (4) of
285 subsection (b) of this Code section by the new date of return, such person shall have
286 waived the right to contest the violation and shall be liable for the civil monetary penalty
287 provided for under this Code section, except in cases where there is an adjudication that no
288 violation occurred or there is otherwise a lawful determination that no civil monetary
289 penalty shall be imposed.

290 (e) Notices mailed by ~~first-class~~ first-class mail pursuant to this Code section shall be
291 adequate notification of the fees and penalties imposed by this Code section. No other
292 notice shall be required for the purposes of this Code section.

293 (f) Any court having jurisdiction over violations of subsection (a) of this Code section
294 shall have jurisdiction over cases arising under this subsection and shall be authorized to
295 impose the civil monetary penalty provided by this subsection. Except as otherwise
296 provided in this subsection, the provisions of law governing jurisdiction, procedure,
297 defenses, adjudication, appeal, and payment and distribution of penalties otherwise
298 applicable to violations of subsection (a) of this Code section shall apply to enforcement
299 under this Code section except as provided in subsection (b) of this Code section; provided,
300 however, that any appeal from superior or state court shall be by application in the same
301 manner as that provided by Code Section 5-6-35.

(g) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty is not paid within 30 days after the final notice was mailed and of the consequences for failure to pay such penalty and any late fee.

(h) The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under subsection (g) was mailed if a violation has not been contested and the assessed penalty has not been paid, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The referral to the Department of Revenue shall include the following:

(1) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;

(2) The date on which the violation occurred;

(3) The citation number issued for the violation; and

(4) The date when the notice required under this Code section was mailed.

(i) If the Department of Revenue receives a referral under subsection (h) of this Code section, such referral shall be entered into the motor vehicle data base within five days of receipt and the Department of Revenue shall refuse to renew the registration of the motor vehicle unless and until the civil monetary penalty plus any late fee is paid to the agent or governing body.

(j) The Department of Revenue shall remove the penalty on a vehicle registration if any person presents the Department of Revenue with adequate proof from the agent or governing body that the penalty and any late fee, if applicable, has been paid.

(k) Recorded images made for purposes of this Code section shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(l) A civil warning or civil monetary penalty under this Code section on the owner of a motor vehicle shall not be imposed if the operator of the vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

(m) The money collected and remitted to the governing body pursuant to paragraph (1) of subsection (b) of this Code section shall only be used by such governing body to fund local law enforcement or public safety initiatives. This subsection shall not preclude the appropriation of a greater amount than collected and remitted under this subsection."

SECTION 8.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Code Section 15-9-155, relating to prosecuting attorney's duties and authority in probate courts in counties in which there are no state courts, by revising subparagraph (a)(1)(A) as follows:

"(A) In the prosecution of any violation of the laws or ordinances of such county which is within the jurisdiction of such probate court and punishable by confinement or a fine or both or by a civil penalty authorized by Code Section 40-6-163 or 40-14-18;"

SECTION 9.

Said title is further amended in Code Section 15-18-6, relating to duties of district attorney, by revising paragraph (6) as follows:

"(6) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 or 40-14-18 and to prosecute or defend any other civil action in the

352 prosecution or defense of which the state is interested, unless otherwise specially
353 provided for;"

354 **SECTION 10.**

355 Said title is further amended in Code Section 15-18-66, relating to duties and authority of
356 solicitors-general of state courts, by revising paragraph (4) of subsection (b) as follows:

357 "(4) To prosecute civil actions to enforce any civil penalty set forth in Code
358 Section 40-6-163 or 40-14-18 and when authorized by law to prosecute or defend any
359 civil action in the state court in the prosecution or defense of which the state is interested,
360 unless otherwise specially provided for;"

361 **SECTION 11.**

362 Said title is further amended in Code Section 15-18-96, relating to authority of prosecuting
363 attorney of municipal courts, by revising subparagraph (a)(1)(A) as follows:

364 "(A) In the prosecution of any violation of the laws or ordinances of such municipality
365 which is within the jurisdiction of such municipal court and punishable by confinement
366 or a fine or both or by a civil penalty authorized by Code Section 40-6-163 or 40-14-18;
367 and"

368 **SECTION 12.**

369 All laws and parts of laws in conflict with this Act are repealed.