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Session 5

**Discouraging Reckless
Driving: Opportunities &
Legal Limitations for
Communities**

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About the Presenters...

Rachel Maes is an Assistant City Attorney for the City of Green Bay. She fills the Municipal Prosecutor role, as well as being involved in nuisance abatement proceedings and municipal licensing actions, among other municipal legal responsibilities. Atty. Maes received her undergraduate education from the University of Wisconsin – Madison, where she graduated with honors with majors in Political Science and Russian Language and Civilization, and her law degree from Hamline University School of Law. Prior to her role with the City of Green Bay, Atty. Maes was an Assistant District Attorney and Assistant Corporation Counsel in Superior, WI. Atty. Maes is the current representative for Brown County on the State Bar of Wisconsin's Board of Governors, and she serves as a member of the Executive Committee, the liaison between the BOG and the Administrative and Local Government Section, and as a member of the Strategic Planning Committee.

Alex Mueller received his undergraduate degree from Marquette University in International Affairs, Political Science, and Spanish Language and Literature. Alex received his J.D. degree from the University of Wisconsin Law School in December, 2013. Alex worked as a prosecutor in the Milwaukee County District Attorney's Office between 2014 and 2021. During that time, Alex supervised a team of attorneys and prosecuted a range of felony offenses, including felony OWIs, Recklessly Endangering Safety, Take/Drive Vehicle Without Consent, and Fleeing. In 2021, Alex joined the Milwaukee City Attorney's Office—where he currently works in the Ordinance Enforcement Division. Alex's current duties include prosecution of reckless driving cases. Alex has two small children and, consequently, has no hobbies of his own. Alex can be reached at amuelle@milwaukee.gov

Alexander "Sandie" Pendleton, is a business lawyer and business litigator, and is the founder and owner of Pendleton Legal, S.C. (Milwaukee). He received his undergraduate degree from the University of Wisconsin-Madison in History and Political Science, and his J.D. degree *cum laude* from the University of Minnesota Law School (where he was an editor of the University of Minnesota Law Review). He has been rated AV-Preeminent™ by Martindale-Hubbell since first being eligible to be rated. In his spare time, he is an advocate for better streets, and safer streets, particularly for vulnerable users such as pedestrians and bike riders. He is the president of Greater Shorewood Bikers, Inc., one of the founders of the Shorewood Complete Streets Coalition, and blogs about street issues at shorewoodbikers.blogspot.com. One of the focuses of his practice is advising recreational-opportunity providers, recreational-product manufacturers, and insurers about waiver-of-liability agreements (and many other aspects of legal-liability risk management). He is the author of numerous articles relating to waivers and legal-liability risk management, and is a frequent speaker nationwide on those issues. Sandie is the co-author (with Doyice Cotton) of the forthcoming 11th Edition of *Waivers & Releases of Liability*. Sandie is a prior member of the State Bar Board of Governors, and over the course of his career has served on numerous State Bar committees. He currently serves on the Board of the State Bar's Solo, Small Firm and General Practice Section. Sandie can be reached at pendleton@pendletonlegal.com.

Police Chief **Glenn Theriault** has spent over 25 years in law enforcement working with residents to create safer, healthier communities. In the early days of his police career in Elgin, Illinois, he volunteered to live and work as a Resident Police Officer in a struggling neighborhood riddled with gangs and drugs. By collaborating with grassroots community organizers, they were able to achieve substantial reductions in crime, blight, and local nuisances (such as dangerous driving and loud music) and helped to turn the neighborhood around.

These internationally recognized enforcement strategies taught Glenn the value of fair and efficient handling of municipal violations, which can help to disrupt a culture of lawlessness, replacing that with a culture of compliance that has broad endorsement from the community. Throughout his career in law enforcement and city management, Glenn worked to bring together all city departments—from police to public works to code enforcement—to establish a fair and efficient administrative adjudication court system from the ground up. Retired from active police service, Glenn now serves as the Chief Business Development Officer for Dacra Tech, a leading North American provider of Municipal Enforcement Software. Dacra Tech's mission is to improve communities by providing violators with due process while also holding them accountable for detrimental community activities. Glenn also regularly provides consulting services to municipalities large and small, on how communities can use automated traffic enforcement technology and strategies, to create better and safer streets for all, and to transfer the cost of enforcement and engineering solutions onto the law violators, from the law-abiding residents of a community.

Detering Reckless Driving: Opportunities and Legal Limitations for Communities

Presenters: Alexander “Sandie” Pendleton, Alex Mueller, Rachel Maes, Glenn Theriault¹

State Bar Annual Convention and Meeting; June 20, 2025

Part One: The Problem of Reckless Driving, and Impounding Vehicles as One Way to Address the Problem (Milwaukee Assistant City Attorney, Alex Mueller)

I. The Problem of Reckless Driving

A. Wisconsin.

- a. According to WisDOT, each year in Wisconsin about 3000 people are injured or killed due to reckless driving (with about 100 of those being fatalities).
- b. The majority of those fatalities are in Milwaukee.

B. City of Milwaukee.

1. Fatalities:

- a. 2019: 51
- b. 2020: 78
- c. 2021: 66
- d. 2022: 77
- e. 2023: 74
- f. 2024: 56

2. MPD Analysis of 2021 Fatalities:

- a. 45% involved speeding
- b. 13% involved inattentive driving
- c. 11% involved disregard of traffic controls

II. Detering Reckless Driving

A. State Law:

1. Reckless driving is prohibited by Wis. Stat. § 346.62(2): “No person may endanger the safety of any person or property by the negligent operation of a vehicle.”
2. A person violating the above section may be “fined not less than \$100 nor more than \$1,000 or imprisoned for not more than one year in the county jail or both for a 2nd or subsequent violation.” Wis. Stat. § 346.65(1)(b).
3. A local authority may enact and enforce any traffic regulation which is in strict conformity with the Wisconsin Traffic Code. Wis. Stat. § 349.06.
4. Wis. Stat. § 341.65(2) and § 349.115 allow for the immediate impounding of certain vehicles.

B. Historically, Why Deterrence Has Been Failing in Milwaukee.

1. Why is there so much reckless driving in Milwaukee?

¹ The views expressed in this outline and presentation are the views of the speakers, and should not be attributed to any of their clients.

2. The multiple methods by which a community can deter reckless driving.
3. Why traffic citations tend to be an ineffective method in Milwaukee.
4. One method to deter reckless driving is to create immediate consequences for the reckless driver, such as by the immediate temporary impounding of the recklessly driven vehicle.

III. Impounding Recklessly Driven *Unregistered* Vehicles.

- A. Wis. Stat. § 341.65(2) enables municipalities to enact ordinances to remove unregistered vehicles from roadways.
- B. This is a useful statute in Milwaukee, because Milwaukee's recklessly operated vehicles also happen to be unregistered.
- C. In 2022, Milwaukee adopted an impound ordinance in accord with § 341.65(2), and the MPD adopted SOP 610.20, which directs police officers to order unregistered vehicles to be towed if the officer has conducted a traffic stop (or responded to a crash) AND:
 - a. The vehicle is unregistered; and
 - b. The officer issues a citation for one of a specified list of offenses (reckless driving, exceeding the speed limit by more than 25 mph, fleeing an officer, or racing).
- D. Since 2022, Milwaukee has impounded 608 unregistered vehicles under the above ordinance.

IV. Impounding Recklessly Driven *Registered* Vehicles.

- A. Wis. Stat. § 349.115
 1. Adopted in 2023
 2. Provides communities greater authority to impound vehicles used in reckless driving.
 3. Allows the impounding of *registered* vehicles.
 4. Four elements must be established before impounding under this statute is permitted:
 - a. Vehicle must have been operated recklessly.
 - b. Driver must own the vehicle.
 - c. Driver must have previously been convicted of reckless driving.
 - d. The forfeiture/fine must not have been paid.
 5. Milwaukee adopted a local ordinance mirroring § 349.115 shortly after the new statute was adopted.
- B. Milwaukee ordinance has been used sparingly.
 1. Only 11 vehicles have been towed/impounded since the new ordinance went into effect.
 2. All four elements rarely exist (especially the "driver owned the vehicle" element).

V. Efforts to get § 349.115 amended/expanded.

- A. Bill currently working way through legislature (passed in the Assembly in March).
- B. Would modify 349.115, so as to permit a wider class of recklessly driven vehicles to be impounded.

- C. If the bill passes, towing could occur even in situations where the operator did not own the vehicle, and even if this was the first time the driver had been cited or arrested for reckless driving.
- D. Outcome of the proposed legislation currently unknown.

Part Two: Automated Enforcement Systems, and Their Legality in Wisconsin (Alexander “Sandie” Pendleton, with Pendleton Legal, S.C. in Milwaukee)

- I. Automated Enforcement Systems, or Automation Enhanced Enforcement Systems (hereinafter, “AE Systems”).
 - A. Almost all repetitive police work uses some types of automation.
 - B. Traffic related AE Systems are not just cameras.
 - 1. Hardware, software, data storage, personnel, policies, contracts with third-party vendors, etc.
 - 2. Key component that makes modern systems possible: automated license plate reader (“ALPR or “LPR”) technology, and the more advanced vehicle identification technology (a/k/a “Vehicle Fingerprint[®]” technology).
 - C. “Parking and Traffic Related” Types of AE Systems:
 - 1. Parking regulation related systems.
 - 2. Speed regulation related systems (a/k/a “speed safety cameras” or “speed cameras”).
 - 3. Traffic signal regulation related systems (a/k/a “intersection safety cameras” or “red light safety cameras” or “red light cameras”).
 - 4. Noise Regulation related systems (a/k/a “excess vehicle noise cameras”).
 - D. Street surveillance and crime deterrence camera systems (a/k/a “CCTV cameras” or “vehicle identification cameras”).
 - 1. Example: “Flock Safety Cameras” (used in more than 700 communities, including many Wisconsin communities, especially in the Milwaukee area).
 - 2. While the use of Flock Safety Cameras and their ilk raise many legal issues of note, such cameras and systems are not the subject of this presentation.
- II. Traffic Law Enforcement in Wisconsin
 - A. “It is the duty of the police, sheriff’s and traffic departments of every unit of government and each authorized department of the state to enforce chs. 346 to 348 and 350 [*i.e.*, the “Wisconsin Traffic Code].”
 - B. As explained below, State law prohibits the use of *only one type of AE System (specifically, radar-based speed safety camera systems)*.
 - C. However, using other types of AE Systems (*i.e.*, ones that are not prohibited) to enforce traffic regulations in Wisconsin currently is difficult because most state traffic regulations are worded in such a way that the prosecution *must prove the identity* of the driver who violated the statute. For example:
 - 1. If a police department were to issue a *speeding citation* to an owner (or lessee) of a vehicle based on evidence gathered by a speed safety camera, given the way Wis.

- Stat. § 346.57 currently reads, it would be the burden of the prosecutor at trial to prove that the person to whom the citation was issued *was the operator of the vehicle at the time of the alleged speeding violation*.
2. Likewise, if a police department were to issue a *citation for running a red light* to an owner (or lessee) of a vehicle based on evidence gathered by a red light safety camera, given the way Wis. Stat. §§ 346.37 and 346.43 currently read, it would be the burden of the prosecutor at trial to prove that the person to whom the citation was issued *was the operator of the vehicle at the time of the alleged red light violation*.
- D. Given the current camera technology used in AE Systems (which tend to capture an image of the license plate, and the vehicle, but may or may not capture a clear picture of the operator), identifying the operator solely based on the images captured by the cameras, would make operator identification at trial a possibly less than “sure thing” (perhaps not impossible, but at least challenging).
- E. There are some traffic regulations in Wisconsin that permit the police to issue citations to *the owner (or lessee) of the vehicle*, and *do not require* the prosecution to prove the identity of the driver. For example:
- a. **Fleeing an Officer.** Wis. Stat. § 346.175 indicates that (subject to a few limited exceptions) *the owner (or lessee) of a vehicle* that flees a traffic officer attempting to make a traffic stop, is liable for a violation of the statute (Wis. Stat. § 346.04(2t) and (3)) that requires vehicle operators to not flee. As such, under § 346.175 AE Systems could be used to issue citations to owners (or lessees) of vehicles, which vehicles flee (an all too common of occurrence in cities like Milwaukee).
 - b. **Crossing Guard Violations.** Wis. Stat. § 346.465 indicates that (subject to a few limited exceptions) *the owner (or lessee) of a vehicle* that illegally fails to obey a school crossing guard’s direction to stop, is liable for a violation of the statute (Wis. Stat. § 346.46(2m)) that requires vehicle operators to obey school crossing guards. As such, under § 346.465 AE Systems could be used to issue citations to owners (or lessees) of vehicles, which vehicles fail to obey school crossing guards.
 - c. **Illegally Passing a Stopped School Bus.** Similarly, Wis. Stat. § 346.485 indicates that (subject to a few limited exceptions) *the owner (or lessee) of a vehicle* that illegally passes a school bus, is liable for a violation of the statute (Wis. Stat. § 346.48) that requires vehicle operators to stop for school buses displaying a flashing red light.
 - d. **Hit and Run Violations.** Wis. Stat. § 346.675 indicates that (subject to a few limited exceptions) *the owner (or lessee) of a vehicle* that is involved in a hit and run incident (“failing to stop at the scene of an accident”), is liable for a violation of the statutes that require the operator of a vehicle involved in an accident to stop at the scene (Wis. Stat. §§ 346.67 (1), 346.68, and/or 346.69). As such, evidence gathered from AE Systems could be used to issue citations to owners (or lessees) of vehicles, which vehicles were involved in hit and run crashes.

- e. The above sections generally have provisions that enable an owner to avoid liability, if the owner reports the vehicle stolen, or identifies the person who was operating the vehicle at the time of the violation (to which alleged operator an officer can issue a citation).

III. Wis. Stat. § 349.02(3) (a/k/a, the “Wisconsin Speed Camera Prohibition Law”).

A. Subsection “(a)” definition:

In this subsection, “photo radar speed detection” means the detection of a vehicle’s speed by use of a radar device combined with photographic identification of the vehicle.

B. Subsection “(b)” prohibition:

[S]tate and local authorities may not use photo radar speed detection to determine compliance with any speed restriction imposed by [the Wisconsin Traffic Code] or a local ordinance in conformity therewith.

C. Wis. Stat. § 349.02(3) does not prohibit the use of any other type of AE Systems.

1. Wis. Stat. § 349.02(3) *does not prohibit the use of:*

- a. Any *lidar-based* speed safety camera systems (such as those systems offered by TrafficLogic); or
- b. Any “photo only” systems (such as new “point-to-point” speed camera systems).
- c. Section 349.02(3) does not prohibit the use of any type of red light safety camera system, or any excess vehicle noise camera system.

2. Nothing in Wisconsin law prohibits the use of any “warnings only” use of speed cameras or red light cameras, to issue warnings to the owners of vehicles.

D. There is a widespread misunderstanding as to the limited scope of § 349.02(3), and on the issue of speed cameras in general (by elected officials, members of the media, and members of the public), and a good deal of misinformation regarding this issue on the Internet generally.

E. Apparently, no community in Wisconsin is currently using speed safety cameras. This may be due to several reasons.

F. There have been some efforts in Wisconsin in the last few years (and again this year), to pass legislation that would expressly allow the use of some speed safety cameras in the City of Milwaukee (or at least permit a certain limited number of those cameras). See 2023 A.B. 85 and 2023 S.B. 107; see proposed 2025 legislation announced by State Senator Dora Drake. Under the proposed bill, Milwaukee would have discretion as to the type of speed camera technology it would use (*i.e.*, if passed Milwaukee could use radar-based, lidar-based, or “photo only” speed cameras). But the efforts to pass those bills in prior years were unsuccessful.

G. Currently:

- 1. Only **six** states by statute prohibit the use of speed safety cameras generally (Maine, Mississippi, New Hampshire, South Carolina, Texas and West Virginia, none of which are Midwest states), plus Wisconsin, which (as indicated) above only prohibits the use of *radar-based* speed safety cameras.

2. Approximately **nineteen** states and the District of Columbia have enacted statutes that expressly permit the use of speed safety cameras.
3. For additional details regarding speed camera laws on a state-by-state basis, see [*Traffic Safety Review: State Speed and Red-Light Camera Laws and Programs*](#), by the National Conference of State Legislatures.

IV. Red Light Safety Cameras.

- A. There is no statute in Wisconsin that prohibits the use of red light safety camera systems to enforce traffic signal laws.
- B. Some might argue that the use of red light safety cameras is prohibited in Wisconsin, because the use of such systems is not expressly permitted by the Wisconsin Statutes; such an argument would probably be based on the pre-emption provisions in the Wisconsin Traffic Code (see Wis. Stat. § 349.03 and § 349.06). That argument is one not supported by the actual text of those statutes, or the pre-emption case law interpreting those statutes. *See, e.g., City of Janesville v. Garthwaite*, 83 Wis. 2d 866, 266 N.W.2d 418 (1978) (because the Wisconsin legislature has not acted to prohibit excessive noise made by squealing tires or acceleration of automobile engines, a city ordinance that prohibited such does not interfere with uniform application of the noise provisions in Motor Vehicle Code, and was therefore not invalid as not meeting the Code’s “strict conformity test”). The above decision raises an interesting hypothetical question. If a community were to adopt an AE System ordinance that indicated that both the owner or operator of a vehicle is liable for an AE System generated citation, would that local ordinance be pre-empted by state law? Arguably, because the Wisconsin legislature has not acted expressly to prohibit the use of lidar-based speed cameras, or any type of red light camera, such a city ordinance would not interfere with the “uniform application of the Motor Vehicle Code,” and would thus not be invalid as meeting the Code’s “strict conformity test.”²
- C. There is a widespread misunderstanding in general (by elected officials, members of the media, and members of the public), regarding red light safety cameras, and their current status under Wisconsin law. It is also easy to find articles on the Internet aimed at members of the public generally, that provide incorrect information on this topic.
- D. There have been some efforts in Wisconsin in the last few years (and again this year), to pass legislation that would expressly allow the use of some red light cameras in the City of Milwaukee (or at least permit a certain limited number of those cameras). See 2023 A.B. 85 and 2023 S.B. 107; see proposed 2025 legislation announced by State Senator Dora Drake. But the efforts to pass those bills in prior years were unsuccessful.
- E. Apparently, no community in Wisconsin is currently using red light safety cameras.
- F. Currently:

² It is assumed for purposes of this hypothetical that any such local ordinance would be patterned after the Wisconsin statutes relating to “crossing guard violations” and “stopped school bus violations,” including the provisions in those statutes that would enable owners who receive an AE System generated citation, to avoid having to pay the citation if the owner reported the vehicle stolen, or if the owner promptly notified the local agency of the identity of the person who was the operator at the time of the violation. *See* Wis. Stat. § 346.465 and § 346.485.

1. The use of red light cameras are prohibited in only **seven** or **eight** states (Maine, Mississippi, Montana, New Hampshire, South Carolina, South Dakota, Texas and West Virginia), and none of those states are Midwest states.
2. The use of red light cameras are expressly permitted by statutes in approximately **twenty-two** or **twenty-three** states and the District of Columbia (including Illinois and Iowa).
3. For additional details regarding red light cameras on a state-by-state basis, see [*Traffic Safety Review: State Speed and Red-Light Camera Laws and Programs*](#), by the National Conference of State Legislatures.

V. The Legality of “Noise-Deterrence Cameras” in Wisconsin.

- A. Wis. Stat. § 347.39(1) requires all motor vehicles to have an adequate muffler in constant operation and properly maintained to prevent any excessive noise; see also Wis. Reg. Trans. 305.39 (relating to motorcycle mufflers).
- B. What constitutes “excessive noise” under § 347.39(1) is not defined by an objective, measurable standard.
- C. Courts have held the section is not unconstitutionally vague. *Cnty. of Jefferson v. Renz*, 222 Wis. 2d 424, 437 (Ct. App. 1998) (rejecting defendant’s argument that the term “excessive noise” in § 347.39(1) was unconstitutionally vague, and thus violated his 4th Amendment right to due process; further holding that while the officer had the right per § 347.39(1) to pull over the excessively noisy vehicle, the officer *did not* have the right to require the driver to take a breathalyzer test); *rev’d on other grounds*, 231 Wis. 2d 293 (1999) (while not addressing the portion of the court of appeal’s decision finding the noise statute constitutional, the court reversed the court of appeals’ decision on the issue of probable cause to administer breathalyzer test); *see also City of Madison v. Baumann*, 162 Wis. 2d 660, 681, 470 N.W.2d 296, 304 (1991)(in the context of a citation issued for “loud music,” city ordinance prohibiting a person from making a noise “tending to disturb the peace” not unconstitutionally vague, in the abstract, or in the context of the citation issued).
- D. Many communities also have excessive noise ordinances, some of which relate to “night time” excessive noise. *Id.*
- E. No Wisconsin state statute prohibits the use of noise-deterrence camera systems, to enforce noise ordinances. However, like with speed and red light traffic regulations, if a prosecutor wants to prove an excess noise violation, the prosecutor would have the burden to prove the citation was issued to *the operator* of the vehicle. This requirement of current law would make it (while not necessarily impossible) challenging to use noise deterrence cameras (which generally only capture an image of the vehicle and the vehicle’s license plate, but not necessarily a clear image of the operator) to enforce state noise ordinances.
- F. It appears that because of the above “challenge,” no Wisconsin community is currently using AE Systems to enforce noise laws.
- G. Such systems are used to enforce noise ordinances in other communities.

3. NYC recognizes excess vehicle noise as a health threat, and a detriment to property values. NYC first started deploying noise cameras in 2021. Erin Nolan, *Quiet Please, New York's Noise Cameras Are Listening*, N.Y. Times (Dec. 5, 2023, updated Dec. 7, 2023), <https://www.nytimes.com/2023/12/05/nyregion/nyc-noise-cameras.html> (noting that NYC is expanding its use of noise cameras so that there will be at least five in each borough by September 30, 2025).
 4. For additional information, see the websites of the companies SoundVue, and Not-A-Loud, both leading providers of vehicle noise camera technology, and the website for the non-profit organization quietcommunities.org.
- H. For several reasons, if a community wants to address excess noise in its community, it should consider adopting an objective, measurable standard in its noise ordinance, or if not there, in a community approved standard operating procedure for its police department. Having such a standard makes prosecution easier, and decreases the chances that a noise ordinance will be enforced in a discriminatory way.
- VI. Constitutional Challenges to the Use of AE Systems to Enforce Traffic Regulations.
- A. The use of such systems by local communities in other states to enforce traffic ordinances have been challenged on multiple federal constitutional grounds. In federal court, those challenges have been unsuccessful. For example, see *Idris v. City of Chicago, Ill.*, 552 F.3d 564, 565 (7th Cir. 2009)(Easterbrook, J.). The court held that Chicago's using red light cameras and fining a car's owner, no matter who was driving the vehicle at the time of the offense, was rationally related to the city's goals of raising revenue, increasing the proportion of all traffic offenses that were detected, and improving compliance with traffic laws, and thus did not violate 14th Amendment. *Id.*, at 566-67. "[N]o one has a fundamental right to run a red light or avoid being seen by a camera on a public street." *Id.*, at 566. "The interest at stake is a \$90 fine for a traffic infraction, and the Supreme Court has never held that a property interest so modest is a fundamental right." *Id.*, at 566. "It is enough to say that photographs [taken by red light cameras] are at least as reliable as live testimony, that the due process clause allows administrative decisions to be made on paper (or photographic) records without regard to the hearsay rule, see *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971), and that the procedures Chicago uses are functionally identical to those it uses to adjudicate parking tickets, a system sustained in *Van Harken v. Chicago*, 103 F.3d 1346 (7th Cir.1997)." *Idris*, 552 F.3d at 567-68.
- B. As to similar decisions from outside of the Seventh Circuit, see the following decisions:
1. Second Circuit: *Leder v. Am. Traffic Sols., Inc.*, 81 F. Supp. 3d 211, 223 (E.D.N.Y.)(red light violation citation based on AE System evidence did not violate the plaintiff's substantive due process rights, as such rights do "not protect plaintiffs from modest [traffic-related] fines"), *aff'd*, 630 F. App'x 61 (2d Cir. 2015)(summary order); *accord Buttaro v. Affiliated Computer Servs., Inc.*, No. CV14353LDWSIL, 2016 WL 8711058, at *2 (E.D.N.Y. Dec. 2, 2016)(class action challenge to red light camera systems dismissed based on a finding that no substantive due process claim was made).

2. Fifth Circuit: *Bevis v. City of New Orleans*, 686 F.3d 277, 280 (5th Cir. 2012)(applying a seven factor test that differentiates between ordinances that establish a “criminal” penalty as opposed to a “civil” penalty, and finding city’s procedures relating to AE traffic enforcement system did not violate procedural due process; affirming a district court decision that also found that the ordinance in question did violate the Interstate Commerce Clause, nor the 8th Amendment’s prohibition of cruel and unusual punishments). *See also Ware v. Lafayette City-Par. Consol. Gov’t*, No. CIV.A. 08-0218, 2009 WL 5876275, at *1 (W.D. La. Jan. 6, 2009)(city’s use of automated traffic enforcement system did not violate procedural or substantive due process); *Mestayer v. City of New Orleans*, No. CV 19-14432, 2020 WL 3429826, at *6 (E.D. La. June 23, 2020)(no due process violation).
 3. Sixth Circuit: *Mendenhall v. City of Akron*, 374 F. App’x 598, 600 (6th Cir. 2010)(Akron’s use of speed cameras did not violate due process).
 4. Eighth Circuit: *Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016)(city’s use of AE System to enforce speed and traffic signal regulations did not violate procedural due process, right to travel, the Equal Protection Clause; further, the city’s ordinance did not lack a rational basis).
 5. *See also Agomo v. Fenty*, 916 A.2d 181, 183 (D.C. 2007)(District of Columbia’s automated traffic enforcement program did not violate due process rights); *Shavitz v. City of High Point*, 270 F. Supp. 2d 702 (M.D.N.C. 2003)(city’s use of automated traffic enforcement did not violate due process or equal protection).
- C. At least one state supreme court has come to a different conclusion. In *City of Moline Acres v. Brennan*, 470 S.W.3d 367, 382–83 (Mo. 2015), the Missouri Supreme Court found that a St. Louis ordinance relating to red light AE Systems, and how that ordinance was enforced violated a suspect’s due process rights. But the decision did not ban the use of such systems; the decision can be understood as providing a roadmap for cities to develop ordinances that comply with constitutional requirements. The ongoing fights in Missouri relating to AE Systems may also be seen largely as a fight between “liberal” elected officials in St. Louis, and “conservatives” on the Missouri Supreme Court and in the Missouri State House.

VI. Constitutional Law Issues Relating to Impounding Vehicles.

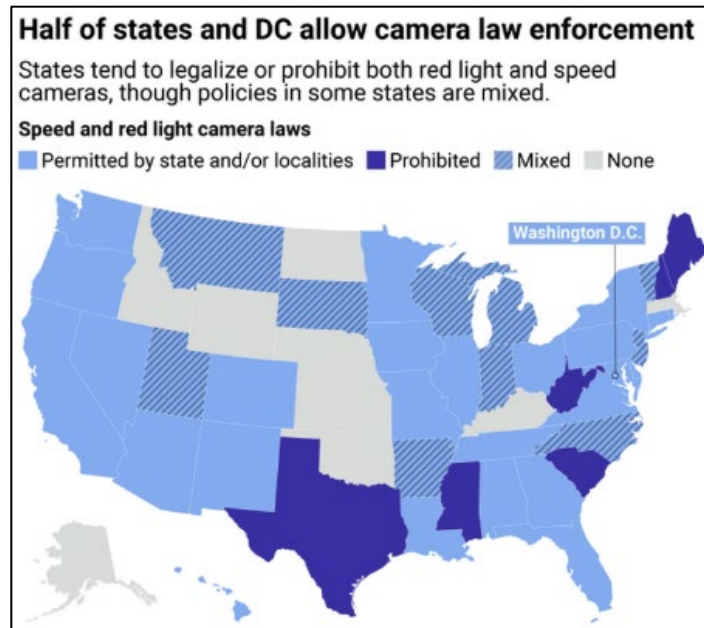
- A. The 4th Amendment provides that the “right of the people to be secure in their . . . effects, against unreasonable . . . seizures, shall not be violated, [and] no person shall be deprived of his property, without due process of law” *Accord* Wis. Const. Art. I, § 11.
- B. There is no reported decision in which a court has directly addressed the constitutionality of seizures made pursuant to the impound authority created by Wis. Stat. § 349.115.
- C. Who would own the right to not have a recklessly driven vehicle temporarily impounded? Only the owner of the vehicle, or the owner of the vehicle and a person temporarily in possession of the vehicle? A case such as *State v. Brooks*, 2020 WI 60, would suggest that the constitutional right is possessed not just by the vehicle’s owner, but also any person in rightful possession of the vehicle.

- D. It may be that the reasonableness or constitutionality of each seizure may need to be considered on a case-by-case basis.
1. Some seizures may be found constitutional pursuant to the “community caretaking doctrine.” In general, the police only have a limited ability to search a vehicle they impound, absent consent, or a warrant. *See, e.g., State v. Asboth*, 2017 WI 76, ¶ 13 (officers possessed bona fide community caretaker justification to impound and then search defendant’s car, when the stopped car was in a travel lane, as opposed to a parking lane; the court defines a three step-test, to determine whether the impounding of a vehicle was justified); *accord State v. Rogers*, 2023 WI App 6, ¶ 28, 985 N.W.2d 456 (unpublished decision, see Rule 809.23(3)); *cf. State v. Brooks*, 2020 WI 60 (a warrantless seizure of a vehicle is presumptively unconstitutional, which places the burden on the State to prove their reasonableness). But note that “[w]hen police impound a vehicle, they ‘need not demonstrate the same extraordinary public interest necessary to justify a warrantless community caretaker entry into the home.’” *Asboth*, at ¶ 31.
 2. Some temporary seizures and impoundment may be found reasonable and constitutional pursuant to what might be referred to as an “evidence preservation doctrine,” especially if aspects of the car would be evidence of the crime alleged. For instance, to prove that a vehicle was travelling at a high rate of speed, it might be reasonable for a community to have the vehicle towed to an impound lot, so that any damage to the vehicle could be photographed, or the car examined, to determine whether data recorders or “dash cams” in the vehicle, recorded the speeding, and (if such devices were found to exist), a decision can be made whether to try to access and preserve the data, with or without a warrant. Accessing and preserving such data may be outside of most ordinary officer’s experience, and trying to determine whether such data exists on the side of the road, might put the officer’s safety in jeopardy. *See, e.g., State v. Floyd*, 2017 WI 78 (when determining whether the length of time an officer kept “seized” a driver during a traffic stop was reasonable for Fourth Amendment purposes, courts may take into account “officer safety,” which allows an officer to “take certain negligibly burdensome precautions” during a traffic stop to perform the officer’s duties). Leaving the vehicle on the street and not impounding it, could result in such evidence being missed, lost or erased, thus creating “exigent circumstances,” that justify an immediate temporary seizure and impoundment.
 3. Note, it would need to be “one of the other, but not both.” When a police officer attempts to justify an impoundment based on a “community caretaker” basis, the impoundment must serve a legitimate purpose related to public safety or the welfare of the community, not just for investigative purposes. If the sole purpose of the impoundment is to search the vehicle for evidence of a crime, and there are no exigent circumstances requiring an immediate impoundment, then the courts may find the impoundment as unconstitutional. *See, e.g., Asboth*, at ¶ 31.
 4. Communities may want to have their police departments create standard operating procedures and policies relating to impounding vehicles, and documenting why an officer (or supervisor) makes the decision to tow and impound a vehicle.

- E. There is some case law in other states challenging state laws that authorized the immediate impounding of vehicles operated by drunk drivers. *See, e.g., State v. Villela*, 194 Wash. 2d 451, 454, 450 P.3d 170, 172 (2019).
 - 1. In *Villela*, the court ruled that the seizure of a vehicle driven by an intoxicated person was prohibited by the Washington Constitution. This despite Washington passing “Hailey’s Law,” a law requiring the impoundment of any vehicle operated by an intoxicated person, and prohibiting that operator from regaining possession of the vehicle for at least 12 hours (although a co-owner might redeem the vehicle, before then).
 - 2. In response to the *Villela* decision, in 2020, Washington amended Hailey’s Law. As amended, it appears that before an officer may impound a vehicle, the officer must determine that impoundment is reasonable, and that there are no reasonable alternatives to impoundment.
- F. There exists a recognized means by which police misconduct (or alleged misconduct) as to impounding recklessly driven vehicles can be deterred (and wronged persons compensated). If the person deprived of the property believes that there was no legitimate basis for the officer’s decision to impound the vehicle (that is, the vehicle wasn’t being driven recklessly, etc.), the person has a remedy, in that the person could commence a civil rights claim against the officer and the officer’s employer, and recover damages for the temporary wrongful deprivation. 42 U.S.C. § 1983. In such an action, a successful plaintiff can recover compensatory damages (*e.g.*, the property’s value, lost wages, etc.), plus punitive damages (designed to deter wrongful behavior in the future), plus costs and attorneys’ fees. *Id.*

Part Three: Use of Automated Enforcement Systems in Other States (Glenn Theriault, with Dacra Tech’s Speed Enforcement Collaborative)

- I. The History of Automated Enforcement Systems Across the U.S.
 - A. In 1901 Connecticut became the first state to regulate the speed of motor vehicles.
 - 1. Limited to 12 mph in cities and 15 on country roads
 - B. In 1987 Paradise Valley AZ was the first to install an automated speed camera system.
 - 1. When studied, they realized a 40% reduction in motor vehicle crashes.
 - C. The use of AE Systems has grown substantially over the last ten years, with the most explosive growth being throughout the past 3 years.
 - D. According to the Insurance Institute for Highway Safety, currently:
 - 1. Approximately 340 U.S. communities use red light safety cameras; and
 - 2. Approximately 278 U.S. communities use speed safety cameras.



Data Source: Insurance Institute for Highway Safety - 2024

II. Why The Significant Growth in Use of AE Systems?

A. Deprioritization of Proactive Traffic Enforcement

1. Reduced public trust in the police, and concerns regarding economic and racial disparities in traffic enforcement
2. Police departments have limited resources (current officers being asked to do more, and departments have difficulty hiring new officers)
3. Violent crimes and property crimes seen as a higher priority
4. New philosophy in police departments regarding dangerous driving and traffic enforcement:
 - a. Lower confidence in the ability of officer traffic stops, and officer issued citations, to change behaviors
 - b. Higher confidence in other methods to change driver behaviors (*e.g.*, through AE Systems, and/or through improved street designs)

B. Increased Need for Enforcement

1. Traffic fatalities are spiking nationwide
2. Limited self-funding alternatives to behavior change

III. Different state regulatory approaches to AE Systems.

- A. Require Permits with Review Process (deter money grabs and speed traps)
- B. Defined Deployment Locations (schools/safety zones/census tracts)
- C. Citation Speed Limitations (*e.g.*, not issued for less than 10 mph over)
- D. Employ Escalating Fines (warning/first offense/second offense)
- E. Provide Scofflaw Enforcement Tools (plate denials/tax intercept)
- F. Define How Violator Data is Used/Stored (privacy protections, street improvement studies, outreach to repeat offenders)

- G. Restrict Vendor Involvement (vendor fees based on cost of service provided, rather than on a contingent fee basis)

IV. Do They Work? YES!

- A. NHTSA research has identified that SSC's (Speed Safety Cameras) can reduce roadway fatalities and injuries by 20-37% (Montella *et al.*, 2015; Li *et al.*, 2015)
- B. SSC's are an FHWA Proven Safety Countermeasure (Office of Safety 2021)
- C. BUT—Traffic Safety Solutions like SSC's are not a one size fits all, but a combination of:
1. Education: Teach and Encourage the Behavior Change Desired
 2. Engineering: Redesign the Roadway for Optimal Safety
 3. Enforcement: Use Patrol and Enforcement as the Option of Last Resort

V. Costs and fiscal considerations relating to AE Systems.

- A. AE programs are self-funding, though be sure to monitor for overreach.
- B. Does the solution apply only enough penalty to change the behavior?
- C. Does the municipality have a traffic safety related plan for potential fine revenue?
- D. Does the solution shift any program costs / expenses to the violator?
- E. Does it provide a program audit to ensure the solution leads to a safety resolution?

Part Four: Policy Arguments for and Against the Use of AE Systems (Green Bay Assistant City Attorney Rachel Maes)

I. Concerns with AE Systems use by political ideology³:

- A. Communitarian arguments against AE Systems.
- While communitarians tend to be more accepting of the use of AE Systems than others, communitarians are concerned that technological errors lead to inaccurate or erroneous citations, which is a burden on both private citizens and the local justice systems
- B. Libertarian arguments against AE Systems.
- Privacy concerns about surveillance state: license plate readers can read as many as 1800 plates per minute
- C. Conservative arguments against AE Systems
- Expensive equipment and contract deals for data processing and revenue sharing drain municipal resources
 - More forfeitures, fines, and fees are collected from private citizens to fund government operations (which can lead to a more robustly funded government,

³ Sonia M. Gipson Rankin, et al., *Automated Statecraft: Electronic Enforcement Technology and the Economic Predation of Black Communities*, 2 Wis. L. Rev. 665 (2024), <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2024/05/2024-Wis.-L.-Rev.-665.pdf>; Maya Fegan, *Speeding into the Future: The Pitfalls of Automated Traffic Enforcement*, Berkeley Journal of Criminal Law Blog, (April 15, 2021), <https://www.bjcl.org/blog/speeding-into-the-future-the-pitfalls-of-automated-traffic-enforcement>

than conservatives—who generally favor “smaller government”—would like to see)

D. Liberal/progressive arguments against AE Systems.

- Disparate impact when the location of AE Systems are too often placed in low-income communities
- Due process concerns and burden shifting onto defendants cited for violations

E. Public opinion regarding the use of AE Systems, and political considerations relating to deciding to deploy AE Systems in a community for local elected officials.

- Public Opinion regarding the use of AE Systems impacted by bias, fairness, discriminatory impact, and privacy
- Use of AE Systems to fill holes in municipal budgets: Illinois collected more than \$1 billion from 2008 to 2018 through red light cameras
- Costs: estimates of smart traffic enforcement systems may surge to \$18.6 billion in United States over the next 5 years
- Effectiveness: impact on crash reduction?

II. Additional methods or alternatives (other than the use of AE Systems) to deter reckless driving.

- More/Better Drivers' Ed
- Stiffer Penalties
- Hiring More Police
- Reassigning Existing Police to Traffic Enforcement
- “Smart Cars”
- Redesigning Streets (“Traffic Calming”)
 - Radar Speed Trailer
 - Increased traffic officer presence
 - Traffic signing and street markings
 - Speed humps
 - Speed tables
 - Traffic circles
 - Curb extensions, chokers, chicanes
 - Median entry/exit islands
 - Mid-block raised medians
 - Forced turn islands and barriers
 - Diagonal diverters
 - One-way streets
 - Street closures and cul-de-sacs
 - Synchronized traffic signals

Detering Reckless Driving

Opportunities,
and Legal
Limitations, for
Communities

1

Part One

2

The Problem of Reckless Driving



3

Tackling Reckless Driving

- ◆ Variety of ways to address problem:
- ◆ Education
- ◆ Enforcement
- ◆ Technology
- ◆ Design/Engineering

4

The Problem of Deterrence

- ◆ "Just a ticket"
- ◆ Deterrence of repeat violators



5

Reckless Driving Under State Law

- ◆ Wis. Stat. § 346.62(2)
 - ◆ No person may endanger the safety of any person or property by the negligent operation of a vehicle.
- ◆ Wis. Stat. § 346.65 Penalty for violating sections 346.62 to 346.64
 - ◆ (1)(b) May be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than one year in the county jail or both for a 2nd or subsequent violation.

6

Cooperative Enforcement



7

Vehicle Impound Law

- ◆ Traffic=area of statewide concern
 - ◆ Wis. Stat. §349.06: Local authority may enact and enforce any traffic regulation which is in *strict conformity* with one or more provisions of chs. 341 to 348 and 350 for which the penalty for violation thereof is a forfeiture." Enabling Statutes
- ◆ Enabling Statutes
 - ◆ Wis. Stat. § 341.65(2) Unregistered motor vehicles prohibited; immobilization; removal; disposal.
 - ◆ Wis. Stat. § 349.115 Authority to Impound Certain Recklessly-Operated Vehicles

8

Impounding Unregistered Recklessly Driven Vehicles

- ◆ Wis. Stat. § 341.65(2) Unregistered motor vehicles prohibited; immobilization; removal; disposal.
- ◆ "Any municipality or county may enact ordinances prohibiting any unregistered motor vehicle from being located upon a highway and governing the immobilization, removal and disposal of unregistered motor vehicles "
- ◆ "Any municipal or university police officer, sheriff's deputy, county traffic patrolman, state traffic officer, conservation warden, parking enforcer, or other person authorized under par. (c) who discovers any unregistered motor vehicle located upon any highway may cause the motor vehicle to be immobilized with an immobilization device or removed to a suitable place of impoundment."

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Impounding Recklessly Driven Registered Vehicles

- ◆ Wis. Stat. § 349.115 Authority to impound vehicles
- ◆ Prerequisites to Impound:
 1. Vehicle used in violation of reckless driving statute
 2. Driver=owner of vehicle
 3. Driver has prior conviction for reckless driving
 4. Driver has not fully paid the forfeiture imposed for the prior reckless driving conviction

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The Results

- ◆ 608 Unregistered Recklessly Driven Vehicles Towed (Since 2022)
- ◆ 11 Registered Recklessly Driven Vehicles Towed (Since June 2023)
 - ◆ Why only 11?
 - ◆ Current efforts to expand § 346.62

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Part Two

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Automated Enforcement (“AE”)

- ◇ Parking Regulation AE
- ◇ Speed Regulation AE
- ◇ Traffic Signal Regulation AE
- ◇ Excess Noise Regulation AE
- ◇ *Flock Safety Cameras*

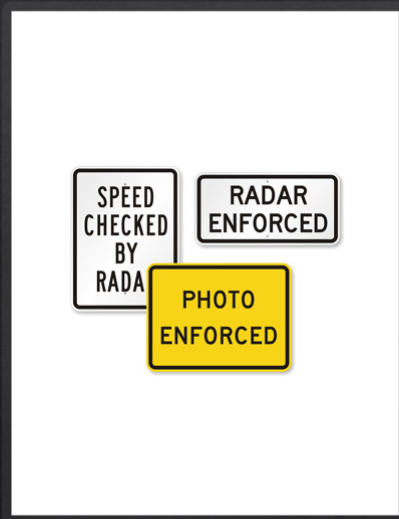


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Legality of AE in Wisconsin

- Speed Safety AE
- Intersection Safety AE
- Noise-Deterrence AE

14



Wis Law Expressly Prohibits **Only** Radar-with- Photo Speed Enforcement

Wis. Stat. § 349.02(3): "law enforcement officers may not use any **radar** device combined with photographic identification of a vehicle to determine compliance with motor vehicle **speed limits**."

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Key Issue Under Current Law

Does the State Traffic Regulation Allow the Enforcing Agency/Community to Penalize the Vehicle Owner and the Vehicle Operator for a Traffic Code Violation, or Only the Vehicle Operator?

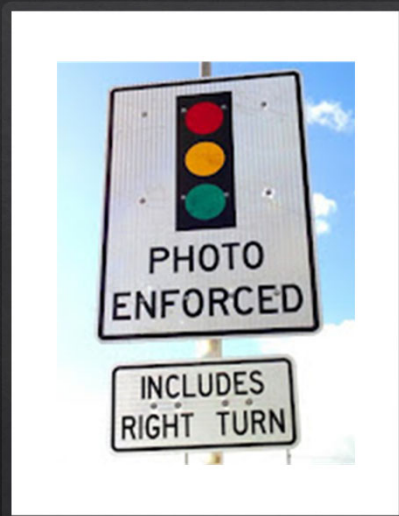
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Wis Law
Does Not Prohibit
the Use of
Intersection Safety
Cameras

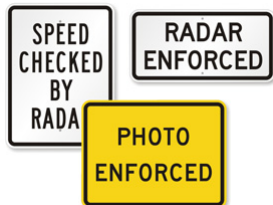
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Wis Law
Does Not Prohibit
the Use of Noise-
Ordinance AE
Camera Systems

20

Home Rule



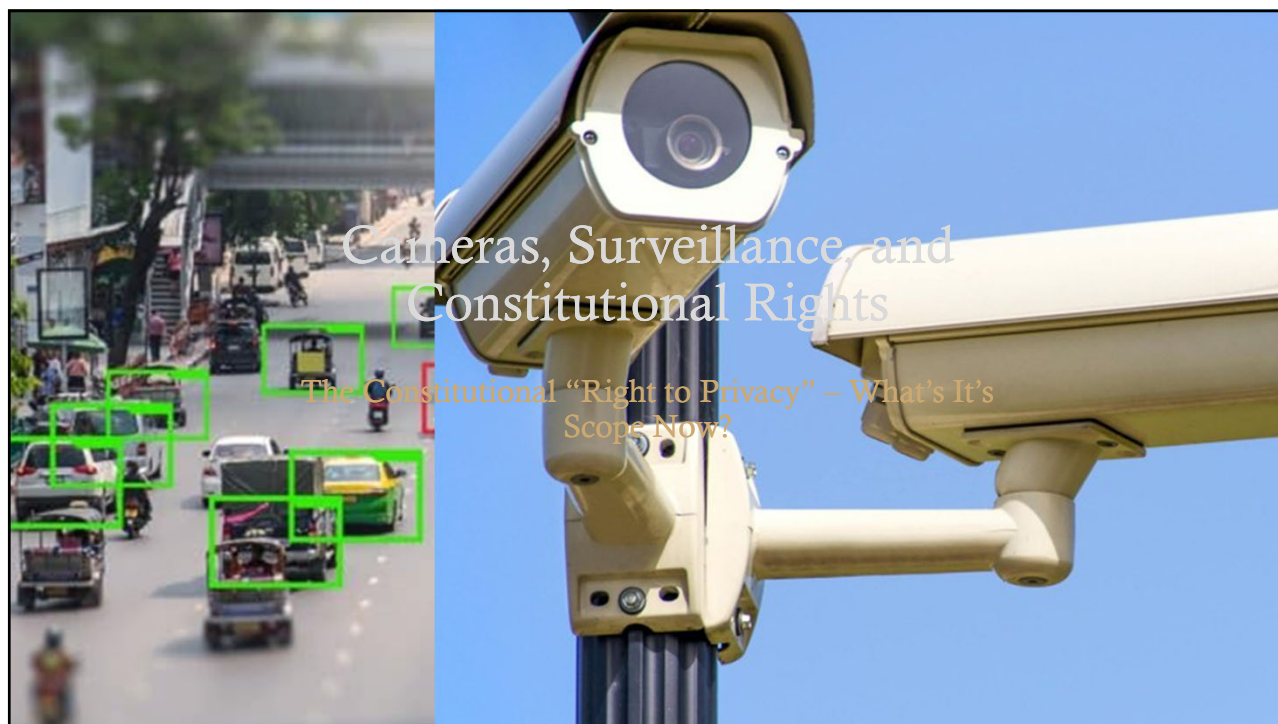
- What if a community were to adopt an ordinance that indicated that both the owner or operator of a vehicle was liable for a speeding camera or red light camera citation?
- Would such an ordinance be **pre-empted** by state law?

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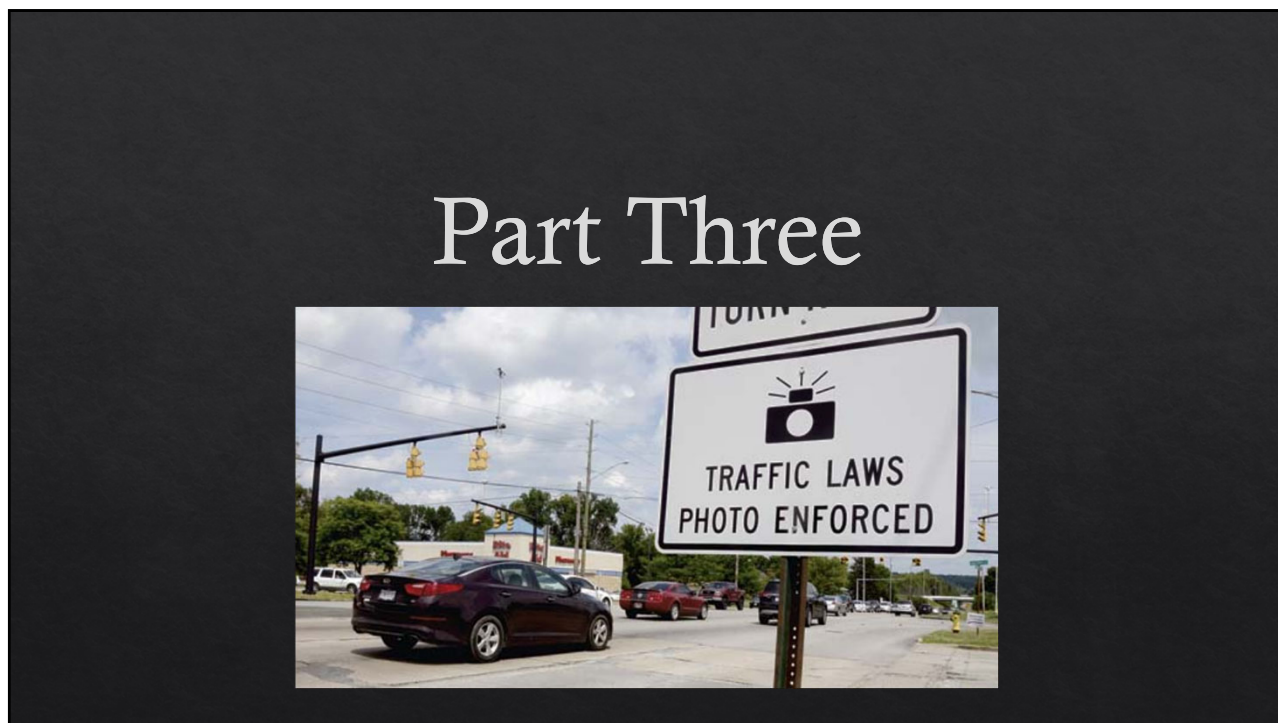


Constitutional Challenges to the Use of AE Camera Systems

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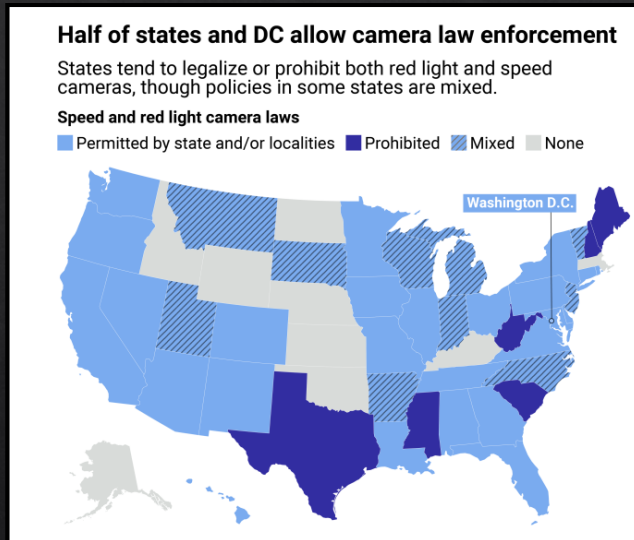
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History of Automated Enforcement

- 1901 – Connecticut
- 1987 – Paradise Valley, AZ
- 2025 – Over 600 U.S. Municipalities Use Automated Enforcement



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Universal Characteristics of Automated Enforcement Programs

- ◆ **Change Dangerous Driver Behavior** on Your Roadways
- ◆ **Hold All** Owners of Speeding Vehicles **Accountable**
- ◆ **Eliminate Time, Effort, and Errors** That Impede Citing Speeders
- ◆ **Improve Safety** While Offsetting Costs of Traffic Enforcement
- ◆ **Reduce Traffic Crash Injuries and Fatalities**



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Are AE Systems Effective?



Yes, According to NHTSA,
Speed Safety Camera Reduce
Roadway Fatalities and
Injuries by 20-37%

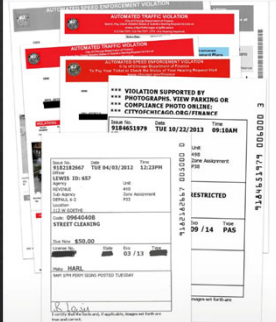
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The Most Effective Traffic Safety Programs Combine...

- **Education:** Teaching and Encouraging the Behavior Change Desired
- **Engineering:** Designing the Roadway for Optimal Safety
- **Enforcement:** When Education and Engineering Fail, Enforce Traffic Regulations
 - However, Regulate Traffic Safety **Education** Components into Violation Enforcement
 - And Regulate That Automated Enforcement Penalty Funds Be Used For Traffic **Engineering**

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Different Approaches to AE



The "Illinois" Approach ("AE 1.0")

- Revenue Based Vendor Compensation
- Focused on Violation Counts
- Vendor Controlled Programs

The "Connecticut" Approach ("AE 2.0")

- Solution Based – Intersection & Speed in Zones
- Focused on Reduction in Traffic Crashes
- State and Community Controlled Programs



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Automated Enforcement 2.0 - Typical Legislation Characteristics

- Define Deployment Location Criteria (schools/safety zones/census tracts)
- Require Permit w/Review Process (Deters Money Grabs and Speed Traps)
- Citation Speed Limitations (Typically not issued for 10+ mph over)
- Employ Escalating Fines To Change Behavior (Warning/First Offense/Second Offense)
- Provide Scofflaw Enforcement Tools (Plate Denials/Tax Intercept)
- Define How Violator Data is Used/Stored (Site Analysis and Repeat Offenses)
- Regulate Vendor Renumeration (Fees Per Service, not Fees Per Citation)

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Automated Enforcement System Considerations

- **AE Systems are typically self-funding. Are guardrails against overreach in place?**
- **Is the ordinance applying an appropriate penalty at the right time to change the behavior?**
- **Does the program shift program costs / expenses to the violator?**
- **Does the municipality have a well thought out plan for the use of anticipated fine revenue?**
- **Are audit practices in place to ensure the enforcement solution leads to a safety resolution?**

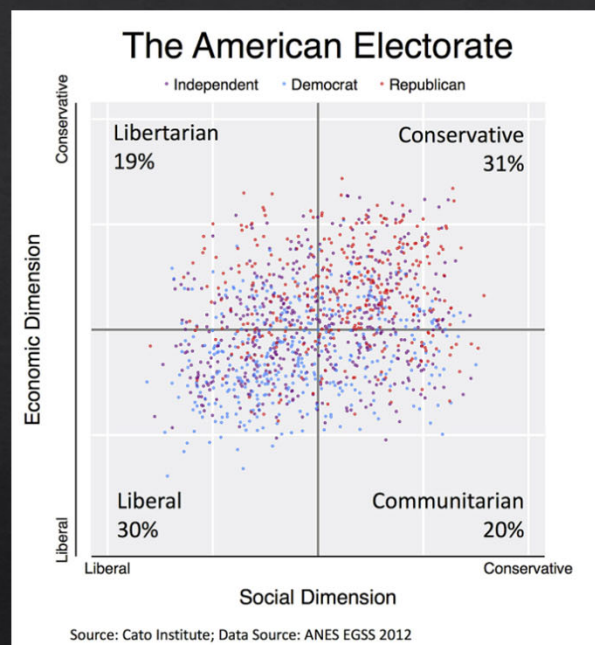
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Part Four

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Policy Arguments Against the Use of AE Camera Systems

33



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Concerns from different political ideologies

- ◆ Communitarian
 - Most supportive of AES use "for the greater good," but technological errors lead to inaccurate or erroneous citations which is a burden on both private citizens and the local justice systems
- ◆ Libertarian
 - Privacy concerns about surveillance state – License plate readers can read as many as 1800 plates per minute
 - Is anyone being harmed?
- ◆ Conservative
 - Expensive equipment and contract deals for data processing and revenue sharing drain municipal resources
 - More forfeitures, fines, and fees are collected from private citizens to fund government operations
- ◆ Liberal
 - Disparate impact when the location of automated systems are often placed in low-income communities
 - Due process concerns and burden shifting onto defendants cited for violations

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Political Considerations for Local Officials

- ◆ Public Opinion regarding the use of Automated Enforcement Systems
- ◆ Use of Automated Enforcement Systems to fill holes in municipal budgets
- ◆ Costs
- ◆ Effectiveness



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Other Deterrence Options

- More/Better Drivers' Ed
- Stiffer Penalties
- Hiring More Police
- Reassigning Existing Police to Traffic Enforcement
- Redesigning Streets ("Traffic Calming")
- "Smart Cars" and/or "Smart Streets"

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Traffic Calming Measures (cont.)

- ◆ Radar Speed Trailer
- ◆ Increased traffic officer presence
- ◆ Traffic signing and street markings
- ◆ Speed humps
- ◆ Speed tables
- ◆ Traffic circles
- ◆ Curb extensions, chokers, chicanes
- ◆ Median entry/exit islands
- ◆ Mid-block raised medians
- ◆ Forced turn islands and barriers
- ◆ Diagonal diverters
- ◆ One-way streets
- ◆ Street closures and cul-de-sacs
- ◆ Synchronized traffic signals

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Questions

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