

# STATE OF NEW YORK

6629

2021-2022 Regular Sessions

## IN SENATE

May 10, 2021

Introduced by Sen. BORRELLO -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to establishing a school speed zone camera demonstration program in the city of Jamestown; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The vehicle and traffic law is amended by adding a new  
2 section 1180-e to read as follows:

3 § 1180-e. Owner liability for failure of operator to comply with  
4 certain posted maximum speed limits; city of Jamestown. (a) Definitions.  
5 For purposes of this section, the following terms shall have the follow-  
6 ing meanings:

7 1. "hearing examiner" shall mean the adjudicator of an administrative  
8 tribunal established to adjudicate the liability of owners of vehicles  
9 captured by a speed camera system violating the speed limit in a school  
10 speed zone during a student activity period or a city court judge adju-  
11 dicating such liability.

12 2. "image" shall mean photographs, microphotographs, videotape, or  
13 other recorded image produced by a speed camera system.

14 3. "manual on uniform traffic control devices" or "MUTCD" shall mean  
15 the manual and specifications for a uniform system of traffic control  
16 devices maintained by the commissioner of transportation pursuant to  
17 section sixteen hundred eighty of this chapter;

18 4. "owner" shall have the meaning provided in article two-B of this  
19 chapter;

20 5. "speed camera system" shall mean a vehicle sensor installed to work  
21 in conjunction with a speed measuring device which automatically produc-  
22 es two or more photographs, two or more microphotographs, a videotape or  
23 other recorded images of each vehicle at the time it is used or operated

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 in a school speed zone in violation of subdivision (b), (c), (d), (f) or  
2 (g) of section eleven hundred eighty of this article in accordance with  
3 the provisions of this section;

4 6. "school speed zone" shall mean a distance not to exceed one thou-  
5 sand three hundred twenty feet on a highway passing a school building,  
6 entrance or exit of a school abutting on the highway;

7 7. "student activity period" shall mean (i) on school days during  
8 school hours and one hour before and one hour after the school day; and  
9 (ii) during periods of student activities at the school and up to thirty  
10 minutes immediately before and up to thirty minutes immediately after  
11 such student activities; and

12 8. "the city" shall mean the city of Jamestown.

13 (b) Speed camera demonstration program. 1. Notwithstanding any other  
14 provision of law, the city is hereby authorized to establish a demon-  
15 stration program imposing monetary liability on the owner of a vehicle  
16 for failure of an operator thereof to comply with posted speed limits in  
17 a school zone within the city during student activity periods. Such  
18 demonstration program shall empower the city to install and operate  
19 speed camera systems within no more than nine school speed zones at any  
20 one time. In selecting a school speed zone in which to install and oper-  
21 ate a speed camera system, the city shall consider criteria including,  
22 but not limited to the speed data, crash history, and the roadway geom-  
23 etry applicable to such school speed zone.

24 (c) Program requirements. 1. No speed camera system shall be used in a  
25 school speed zone unless: (i) on the day it is to be used it has  
26 successfully passed a self-test of its functions; and (ii) it has under-  
27 gone an annual calibration check performed pursuant to paragraph four of  
28 this subdivision.

29 2. Prior to operating the speed camera system, the city shall install  
30 warning signs of the camera use in such school speed zone. Such signs  
31 shall comply with manual on uniform traffic control devices.

32 3. Operators of speed camera systems shall have completed training in  
33 the procedures for setting up, testing, and operating such systems. Each  
34 such operator shall complete and sign a daily set-up log for each such  
35 system that: (i) states the date and time when, and the location where,  
36 the system was set up that day; and (ii) states that such operator  
37 successfully performed, and the system passed, the self-tests of such  
38 system. The city shall retain each such daily log until the later of the  
39 date on which such system has been permanently removed or the final  
40 resolution of all cases involving such system.

41 4. Each speed camera system shall undergo an annual calibration check  
42 performed by an independent calibration laboratory which shall issue a  
43 signed certificate of calibration. The city shall keep each such annual  
44 certificate of calibration on file until the final resolution of all  
45 cases involving such system.

46 5. (i) Images from a speed camera system shall be for the exclusive  
47 purpose of the adjudication of liability imposed pursuant to this  
48 section and shall be destroyed by the city upon the final resolution of  
49 liability to which such images relate, or one year following the date of  
50 issuance of a notice of liability, whichever is later.

51 (ii) Notwithstanding the provisions of any other law, rule or regu-  
52 lation to the contrary, images from a speed camera system shall not be  
53 available to the public, subject to civil or criminal process or discov-  
54 ery, used in any judicial or administrative action or proceeding other  
55 than in accordance with this section, subject to freedom of information  
56 laws, provided that the city shall disclose such images:

1 (A) to the defendant in any speed zone violation proceeding;

2 (B) in response to a search warrant issued pursuant to the criminal  
3 procedure law or federal law that states that there is reasonable cause  
4 to believe such images constitute evidence of a misdemeanor or felony  
5 offense; and

6 (C) in response to a subpoena duces tecum signed by a judge pursuant  
7 the criminal procedure law or federal law where there is reasonable  
8 cause to believe such information is relevant and material to the prose-  
9 cution, or the defense, or the investigation by an authorized law  
10 enforcement official, of the alleged commission of a misdemeanor.

11 (d) Fines for violations. (i) An owner or operator who violates the  
12 speed limit in a school speed zone during a student activity period and  
13 such violation is captured by a speed camera system shall be liable for  
14 a fine pursuant to a schedule promulgated by the city, not to exceed  
15 fifty dollars for each violation and an additional penalty not to exceed  
16 twenty-five dollars for each failure to respond timely to a notice of  
17 liability.

18 (ii) No owner shall be liable for such fine where:

19 (A) the operator of such vehicle has been convicted of the underlying  
20 violation;

21 (B) the vehicle or the license plate of such vehicle was stolen at the  
22 time of the violation;

23 (C) the owner of such vehicle establishes by a preponderance of the  
24 evidence that such owner was not driving the vehicle at the time of the  
25 violation;

26 (D) the owner of such vehicle leases such vehicle to a third party,  
27 provided that such owner notifies the city, within thirty-seven days  
28 after receiving notice of liability, of the name and address of the  
29 lessee of such vehicle. Thereafter, the lessee of such vehicle shall be  
30 deemed to be the owner of such vehicle for the purposes of this section;  
31 or

32 (E) the owner establishes that such camera system was malfunctioning  
33 at the time of the alleged violation. The city shall upon request make  
34 such camera available to the owner for a calibration analysis  
35 performed by an independent entity. The reasonable cost of complying  
36 with such a request, not to exceed the actual cost thereof, shall be  
37 paid by the owner.

38 (iii) A fine imposed based on the speed camera system shall not be  
39 deemed a speeding conviction, made part of the operating record of such  
40 person, or considered in determining motor vehicle insurance premiums.

41 (iv) Notwithstanding section eighteen hundred nine of this chapter,  
42 there shall be no surcharge levied for an adjudication of liability  
43 under this section.

44 (e) Procedure for enforcement; tribunal. 1. The city, or an entity  
45 authorized by the city, shall prepare and send by first class mail a  
46 notice of liability to each owner of a vehicle captured by a speed  
47 camera system violating the speed limit in a school speed zone during a  
48 student activity period, within fourteen business days if such owner is  
49 a resident of this state and within forty-five business days if such  
50 owner is a non-resident. Personal delivery on the owner shall not be  
51 required. A manual or automatic record of mailing prepared in the ordi-  
52 nary course of business shall be prima facie evidence of such mailing.

53 The notice of liability shall:

54 (i) contain the name and address of the owner, the registration number  
55 of the vehicle, the location of the violation, the date and time of such  
56 violation, the identification number of the camera or other document

1 locator number, at least two date and time stamped images of the vehicle  
2 that include the same stationary object;

3 (ii) include a certificate sworn to or affirmed by a technician  
4 employed by the city, based upon inspection of images produced by the  
5 speed camera system, documenting the alleged violation. Such certificate  
6 shall be prima facie evidence of the facts contained therein;

7 (iii) advise the owner of the manner and the time in which he or she  
8 may contest liability; and

9 (iv) contain a prominent warning that failure to contest liability  
10 shall be deemed an admission of liability and that a default judgment  
11 may be entered thereon.

12 2. (i) Notwithstanding any inconsistent provision of law, the city is  
13 authorized either:

14 (A) to establish an administrative tribunal to adjudicate the liabil-  
15 ity of owners of vehicles captured by a speed camera system violating  
16 the speed limit in a school speed zone during a student activity period;  
17 or

18 (B) to designate such process to a local city court subject to the  
19 rules established by this paragraph.

20 (ii) The city shall not issue any notice of fine or penalty prior to  
21 the date of the hearing where liability is being contested by a person.

22 (iii) Every hearing shall be held before a hearing examiner in accord-  
23 ance with rules and regulations promulgated by the city.

24 (iv) The hearing examiner shall not be bound by the rules of evidence,  
25 except rules relating to privileged communications.

26 (v) No liability may be established except upon proof by substantial  
27 evidence.

28 (vi) The hearing examiner shall, upon a showing of good cause by the  
29 defendant, issue a subpoena compelling the attendance of the speed  
30 camera systems operator who signed the daily set-up log for such system,  
31 and a subpoena duces tecum for any document or record relevant to the  
32 charges.

33 (vii) The hearing examiner shall not consider any record of any prior  
34 violations.

35 (viii) A record shall be made of each hearing; recording devices may  
36 be used for the making of the record.

37 (ix) The hearing examiner shall make a determination on the charges.  
38 Final determinations shall be entered on a roll maintained by the city  
39 together with records showing payment and nonpayment of penalties.

40 (x) A judgment entered pursuant to the provisions of this section  
41 shall remain in full force and effect for eight years.

42 3. Where an owner fails to contest liability or fails to appear on a  
43 designated hearing date or subsequent adjourned date, such failure to  
44 contest or appear shall be deemed, for all purposes, an admission of  
45 liability and shall be grounds for rendering and entering a default  
46 judgment in an amount provided by the rules and regulations of the city.

47 (f) Study and report. If the city adopts a demonstration program  
48 pursuant to subdivision (a) of this section, it shall conduct a study  
49 and submit a report to the governor, the temporary president of the  
50 senate, minority leader of the senate, the speaker of the assembly, and  
51 the minority leader of the assembly on January first of each year. Such  
52 report shall include:

53 1. the locations where and dates when speed camera systems were used;

54 2. a comparison of the aggregate number, type and severity of crashes,  
55 fatalities, injuries and property damage reported within all school  
56 speed zones and within the city and within school speed zones where

1 speed camera systems were used within the city, to the extent the infor-  
2 mation is maintained by the department of motor vehicles of this state;

3 3. a comparison of the number of violations recorded within all school  
4 speed zones within the city and school speed zone where a speed camera  
5 system was used within the city, in the aggregate on a daily, weekly and  
6 monthly basis where the vehicle exceeded the posted speed limit by:

7 (i) less than ten miles per hour;

8 (ii) more than ten but not more than twenty miles per hour;

9 (iii) more than twenty but not more than thirty miles per hour; and

10 (iv) more than thirty miles per hour;

11 4. the total number of notices of liability issued for violations  
12 recorded by such systems;

13 5. the number of fines and total amount of fines paid for violations  
14 recorded by such systems; and

15 6. the total amount of revenue realized by the city in connection with  
16 the program.

17 § 2. This act shall take effect immediately and shall expire 3 years  
18 after such effective date when upon such date the provisions of this act  
19 shall be deemed repealed; provided, however, that the authorization for  
20 the demonstration project shall be suspended immediately in the event  
21 that the report required under subdivision (f) of section 1180-e of the  
22 vehicle and traffic law is not submitted on or before April 1 of each  
23 year, pending the submission of such report; and provided, further, that  
24 the city of Jamestown shall notify the legislative bill drafting commis-  
25 sion upon the occurrence of the submission of such report, in order that  
26 the commission may maintain an accurate and timely effective data base  
27 of the official text of the laws of the state of New York in furtherance  
28 of effectuating the provisions of section 44 of the legislative law and  
29 section 70-b of the public officers law.