

Photo Traffic Enforcement: How to Keep the Focus on Improving Driver Behavior

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MODERN LAW ENFORCEMENT EXECUTIVES WANT THEIR DEPARTMENTS to “work smarter, not just harder,” often in a problem-solving framework. Traffic safety—specifically, the reduction of death, injury, and property loss from preventable collisions at repeat locations—is an area that is especially suitable for such a problem-solving approach.

The application of photo enforcement to traffic safety has demonstrated a clear relationship between technology and a reduction of traffic collisions and hazardous driving violations. So successful is photo enforcement in its various permutations (fixed-site red-light only, speed only, speed-on-green along with red-light, and mobile speed vans) that more than 75 countries rely on cameras, making it the most widely used form of automated enforcement in the world. In the United States, some 27 states plus the District of Columbia use the technology in one form or another.

A key issue in photo enforcement of traffic violations is “Who is the responsible party—the owner of the vehicle, or the driver?” Generally, the answer to this question is dictated by state law; given the desire of states to have motor vehicle laws uniformly enforced, state laws preempt the ability of local jurisdictions to decide the issue on their own. Most jurisdictions using photo enforcement are in *owner-responsibility* states, where the registered owner receives at least the initial citation for the violation. Four states, all in the West (Arizona, California, Colorado, and Oregon), are *driver-responsibility* states, where the driver must be identified before a citation is issued.

Each of these approaches has attractive aspects; and in the end, which approach to use is a decision for the citizens and legislatures of the individual states. But by looking critically at each, we may find that this is more than an either/or situation, and that perhaps a better strategy would be to incorporate the best features of each approach.

RATIONALE FOR OWNER RESPONSIBILITY

In owner-responsibility jurisdictions, the registered owner of a vehicle is assumed to have committed the violation, much in the same way that registered owners are initially assumed to be responsible for parking violations. The governing statutes provide for a procedure for the registered owner to “nominate” the actual driver as a means to transfer liability to that driver. The major benefit of owner-responsibility is that a higher percentage of captured violations result in a citation being issued, so owner-responsibility states presumably will have an impact on the driving habits of a greater percentage of errant drivers. And because failure to respond to citations in owner-responsibility states creates a liability against the renewal of the license plates, there is a “hammer” to encourage owners to take care of the citations according to the options offered them. Another significant benefit

of owner-responsibility is that it is easier to process and file citations; in the large majority of cases (80 to 95 percent, by one estimate), a citation will be issued, with no investigation other than an inquiry into the motor vehicle registration records of the state issuing the license plates. Subject to limitations of state law, even vehicles registered to corporations, limited-liability companies, and parents and spouses (all common ploys to avoid responsibility in driver-responsibility states) will result in citations being issued.

Owner-responsibility laws also have an advantage in jurisdictions that are under consent decrees regarding racial profiling or that otherwise have a history of negative relations with their minority communities. Because the cameras normally do not record a “face shot,” advocates of owner-responsibility claim it is immune from charges of discrimination. Owner-responsibility laws also address another common problem: owners who frequently loan their vehicles to individuals with no driver’s license or whose driver’s licenses are suspended, revoked, or cancelled.

But owner-responsibility laws can create problems. Treating photo enforcement violations as glorified parking tickets, with no points accruing to the driver’s record, as some states do, raises equity issues. A flat-rate penalty for photo violations hits the poor the hardest, while those with financial means can just pay the penalty and continue their poor driving habits. This is an issue that does not seem to have been seriously considered by those using the equity argument in favor of owner-responsibility.

RATIONALE FOR DRIVER RESPONSIBILITY

The philosophy in driver-responsibility states is that the actual driver of the vehicle, rather than the vehicle’s owner, should be held accountable for his or her driving violations. With driver-responsibility, convictions result in points on the record of the driver, along with graduated fines, depending upon the seriousness of the violation. Penalties may include suspension or revocation of repeat violators’ licenses, and even impoundment or seizure of their vehicles. Thus, driver-responsibility systems arguably have the greater potential for altering driver behavior.

One downside for driver-responsibility systems is the critical importance of the quality of the photos. Because there is no assumption that the driver is the registered owner of the vehicle, the quality of the violation photo “face shot” becomes a key prerequisite in determining whether a citation will be issued. The picture must be compared with the owner’s driver’s license photo (when the jurisdiction has the capability to directly access the photo), or at least the physical description of the owner from the vehicle registration and, if cross-referenced, the owner’s driver’s license record.

Another downside involves the time expended by the enforcement agency to identify the actual



driver when owners do not cooperate. In cases involving vehicles owned by corporations, government agencies, or the driver's spouse, the jurisdiction normally has to send a notice of the violation to the registered owner, hoping that the owner will provide the identity of the driver, to allow a citation to be issued to the driver. Often, this means that old-fashioned police investigative techniques must come into play to convince owners to cooperate—which can be difficult, because many residents know that the law does not require them to cooperate. Thus, one of the serious problems in driver-responsibility states is that owners feel no legal obligation to cooperate or even to respond to the notice of violation.

“A SYNTHESIS FOR SUCCESS”


The approach a jurisdiction operates under is normally stipulated in state law and is not an option for the jurisdiction to decide on its own. Still, there are procedures that a jurisdiction may have the authority to implement to realize the best of both approaches. I recommend taking the best in driver-responsibility programs and tailoring them for use in owner-responsibility systems. At the same time, some of the suggestions will allow driver-responsibility systems to move to a new level of enforcement capabilities. I also offer some general “lessons learned” to allow any jurisdiction adopting photo enforcement to reap the maximum benefits of such a traffic safety program.

- 1. Take the front (driver) picture, not just a “plate shot.”** Except in states like Washington, where state law specifically prohibits the taking of photos of the driver, driver photos should be taken in *all* photo enforcement incidents so that the local jurisdiction has the option to investigate and file additional traffic infractions and more serious criminal charges, where driver identity is an issue. This practice will also provide an effective investigative lead for non-traffic crimes.
- 2. Cite for whatever you can see or prove by investigation.** The specific violation captured by the photo enforcement cameras (e.g., speed or red-light violations) may not be the only violations being committed. Wherever permitted by state law, agencies should consider citing for other observable violations or violations found when doing vehicle or driver record checks, such as expired or cancelled vehicle registrations, no operator's license, or suspended/revoked/cancelled driver's licenses.
- 3. Where local statute or court rules require proof of service of the photo enforcement citation, employ process-service companies that can serve the citations nationwide.** This is especially important for jurisdictions that attract large numbers of tourists or which are located on major north-south or east-west highways. There should be no “amnesty” for violators just because they do not reside in the local community.
- 4. Be sure that traffic safety is always the purpose of your photo enforcement program.** A desire for additional revenue should never be the reason, explicit or implicit, for employing photo enforcement systems. Contracts between the jurisdiction and its vendor should always aim at a revenue-neutral situation and should stress the preeminence of traffic safety in every decision relating to deployment and enforcement.



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- 5. Only the lead municipal agency (presumably the police) should have final authority for any decision relating to the issuance of a photo enforcement citation.** The vendor should NEVER be granted the authority to determine whether a citation should be issued. This can open the process to accusations that such decisions are financially self-serving for the company. And when non-sworn agents of the police are empowered to approve the citations, make sure they have no relationship to the vendor that could be construed as a conflict of interest.
- 6. Do not enter into flat “per citation” contracts with vendors.** Jurisdictions should beware of contract proposals where payment to the vendor is based upon the total number of citations or any other document mailed out; this is an error of looking at *quantity*, versus *quality*, in the product of the camera system. Instead, base payments on citations that are successfully adjudicated.
- 7. Operate the program as a team effort, not a police program.** Often the very existence of photo enforcement programs was not the idea of the police department, but came about under pressure from the city council or another non-law enforcement entity. Every department or agency affected by, or having a role in the operation of, photo enforcement should be part of the photo enforcement “team.” Specifically, the court is a major stake holder and arguably the most affected by the implementation of photo enforcement programs. Another key partner is the traffic engineering department, for location and deployment considerations, speed limit studies, and current traffic collision data to justify site selections.
- 8. Seek uniformity in approach with neighboring jurisdictions.** Each jurisdiction is a unique entity, with its own priorities, culture, and problems. But where photo enforcement programs are concerned, a modicum of uniformity in approach is desirable, if for no other reason than to prevent confusion by motorists as they pass from one jurisdiction to another.
- 9. Conduct periodic photo enforcement public opinion polls.** Measure the acceptance of the photo enforcement program in your local community and in the surrounding communities whose residents travel your roads. Asking who should be responsible, the driver or the owner, may reveal surprising results. In one driver-responsibility state, a survey surprisingly revealed that most respondents desired an owner-responsibility system.
- 10. Finally, do not fall prey to the temptation to replace sworn officers with photo enforcement technology.** Photo enforcement is a supplement to, not a replacement for, sworn officers,

especially those assigned to traffic enforcement duties. Police labor organizations often fear photo enforcement will cost officers' jobs. But automation's role is to allow better deployment of the jurisdiction's current police resources. 

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