

School bus camera legislation

An analysis of SB 21

SB 21 establishes a Civil Penalty process – based on photographic evidence captured from private cameras mounted on school buses – for levying a monetary penalty against those who pass stopped school buses. The bill uses the term “civil fine” throughout; although it is not a “fine” but simply a civil judgment and must be enforced as such.

Criminal penalties, enforced by law enforcement officers who observe the behavior, are currently imposed against drivers who pass stopped school buses. These penalties include an enforcement process that tracts all other “moving” violations and is consistent with other similar violations. This legislation would enable schools to set in motion a civil process that would be cumbersome, inefficient, costly and ineffective. Once established, the provisions of the legislation outline the following steps:

- Law enforcement officers review the video and, should they be able to identify the vehicle, send a civil notice to the registered owner (or owners) of the vehicle.
- The owner or owners willingly pay the fine; contest the fine in district court; or claim that an unauthorized person was driving their car at the time.
- Should the owner or owners identify the unauthorized driver, a new notice is provided to the driver, who can submit to the penalty; contest it in district court; or deny that he or she was driving the vehicle. Should the unauthorized driver deny that he or she was driving the vehicle, the ball is kicked back to the owner, who receives a repeat notice and, again, has the same three options outlined above.
- Once the question reaches district court, a hearing is held to determine the driver of the car and whether or not the civil penalty will be applied. Because the case will be focused on the video evidence, law enforcement officers will be required to attend court and the governing body will be required to provide counsel.
- Should the owner or the unauthorized driver be unhappy with the outcome in district court, he or she may appeal to circuit court, where the process will begin again.
- The amount of the civil penalty is to be set by the court, not to exceed \$250. As a practical matter, this language means the fine, after all the expense and time, may be anything between \$1 and \$250.
- As a civil penalty, the money may only be collected through small claims court. Therefore, once the contesting process has concluded the county governing body will have to decide whether to pursue through district court the enforcement of a judgment against the owner or unauthorized driver. This also requires the filing of legal documents and additional expense on the part of the county.
- During this process, vehicle tags cannot be renewed for the vehicle, the owner or unauthorized driver cannot renew his or her driver’s license and the vehicle title cannot be transferred to another owner (meaning the vehicle cannot be sold or traded in).

Obviously, this process generates a myriad of problems for local government.

First, the legislation provides no real deterrent for those who pass school buses. The process is “civil” in nature; provides for no ultimate enforcement of the civil judgment; and is so time-consuming and complex

that it will be almost impossible to enforce. It could, in practice, reduce the willingness of law enforcement to actively seek those who are passing school buses – by relying on this process that will ultimately only enforce penalties against those who willingly pay.

Second, the process will be extremely costly to local law enforcement. Law enforcement officers will be required to review video, approve the civil notices and then appear in court – resulting in a diversion of resources away from active law enforcement (**including a diversion away from actually writing tickets to those observed passing school buses**) as well as overtime compensation for law enforcement officers forced into district or circuit court to testify on these matters.

Third, the process for withholding driver's licenses, automobile tags and titles would involve such an interlocking process of several agencies and departments that it cannot be enforced. For example, to withhold the driver's license, the records on non-paid civil penalties must be provided to the Alabama Department of Public Safety, which must retain and update the records until the renewal date of the driver's license of the owner. The manpower and expense of this one single element of the process will be enormous.

Fourth, the process will be extremely costly to local governments. The constant mailing back and forth of notices, tracking the offenses into district court, retaining of the video evidence and communication with the other agencies involved in the process will be prohibitive. The county is required to destroy certain videos and retain others, producing liability for the local governments as well. *"All photographic evidence regardless of whether it is a still photograph or video shall remain the sole property of the county or municipal law enforcement agency which reviews" it (page 7).*

Fifth, the bill provides for the private company that owns and operates the video cameras to receive its *"costs to administer, operate and maintain the program"* off the top of the civil penalty money paid by the owner or unauthorized driver. This provision effectively means the county will be using its time, resources and manpower to collect a debt owed a private vendor who does not appear to have any role in this process beyond providing the video.

Sixth, there is no review or process for the establishment of the amount of the costs to *"administer, operate and maintain"* the program. We are unsure how the costs will be established, reviewed, or adjusted. This seems extremely unfair to the taxpayers.

Seventh, the process outlined in the bill for the establishment of the program begins with the school board approving *"the use of automated devices"* on school buses. From that point, the school system is not involved in the process at all. Local law enforcement and county government will be operating the program and investing time and resources. Shouldn't such a program be school-administered?

Eighth, it is unclear who contracts with the camera company:

(b) If approved by a county, municipal, or other school district governing board and authorized by ordinance or resolution enacted by the governing body of a local political subdivision, a law enforcement agency or a political subdivision in consultation with a school system, as the case may be, may enter into an agreement with a private vendor for the installation, operation, notice processing, and administration and maintenance of school bus automated devices on buses within the school system's fleet whether owned or leased. (Page 4)

Ninth, the fine is unenforceable. The bill says, *"The county or municipality may collect the civil fine in the same manner as any other debt owed to the county or municipality"* (page 8). This will require the local government to file for garnishment or other court processes for enforcement of judgments. The concept of utilizing this costly court process to collect a fine of \$250 or less (most of which will be retained by a private company) is counterintuitive.

Tenth, the process sets up a circle of blame with the owner of the car claiming someone else was driving; the unauthorized driver claiming he or she was not driving; and the district court being called on to sort out the competing claims in a hearing held for the purpose of establishing a "debt" against the county that can only then be enforced by another hearing in small claims court.

Eleventh, the bill provides for an ultimate appeal to circuit court, usually reserved for criminal trials and substantial civil disputes. It also provides for the court fees collected in these cases to be distributed directly and solely to circuit court, in violation of other general and local laws that provide for the distribution of court fees.

Twelfth, the bill provides for an additional fee of \$10 to the Alabama Criminal Justice Information Center to be used for "record keeping and transaction processing" even though ACJIC has no role in the process at all.

Thirteenth, the bill includes a disclaimer that a violation cannot be *"criminal in nature"* (Page 14) but requires the involvement of law enforcement personnel at every step of the process. It also provides that the penalties cannot be used *"by any insurance company to determine or affect premiums or rates"* (Page 14). Without applying the violation to someone's driving record or allowing it to be used by his or her insurance company to increase premiums, what is the real enforcement mechanism in the bill?

Fourteenth, the bill allows for the video to be used as evidence in other civil matters, which will only give rise to additional court appearances by law enforcement and additional liability for the local government. *"The fact that a person is held liable or responsible for a civil fine for a violation shall not be used as evidence that the person was guilty of negligence or other culpable conduct, but this fact shall not preclude evidence generated by a device from being used as evidence in other proceedings."* (Page 15)

Fifteenth, the bill sets up a cause of action between the owner of the car and the unauthorized driver , (Section 13), further clogging the court system with matters related to this bill.