



Ohio Legislative Service Commission

Bill Analysis

Amanda M. Ferguson

Sub. S.B. 342

130th General Assembly
(As Passed by the Senate)

Sens. Seitz, Eklund, Faber, Jones, Jordan, Kearney, Patton, Schaffer, Tavares, Uecker

BILL SUMMARY

Authorization to use a traffic law photo-monitoring device

- Establishes procedures by which municipal corporations, counties, and townships (local authorities) may deploy traffic law photo-monitoring devices and issue tickets for traffic law violations detected by those devices.
- Defines "traffic law photo-monitoring device" to mean an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.
- Defines a "traffic law violation" addressed by the bill to mean a speeding or red light violation.
- Requires a law enforcement officer to be present at the location of a traffic law photo-monitoring device at all times during the operation of the device.
- Authorizes the issuance of a ticket for a traffic law violation at a location where a traffic law photo-monitoring device is present as follows:
 - A law enforcement officer who is present at the location of the device may issue a ticket for a criminal violation if the officer personally witnesses the violation; or
 - A local authority may issue a ticket for a civil violation if the violation was recorded by the traffic law photo-monitoring device and the law enforcement officer present at the device location did not issue a ticket.

Signage requirements for all traffic law photo-monitoring devices

- Requires a local authority that uses traffic law photo-monitoring devices to erect signs at each fixed device location to inform motorists that a traffic law photo-monitoring device is present at the location.
- Requires the signs to be erected within 300 feet of the fixed system or, if the signs cannot be so erected, as close to that distance as possible.
- Provides that a ticket that is based upon evidence produced by a traffic law photo-monitoring device at a fixed location generally is invalid if the ticket is issued before the required signs have been erected.
- Requires mobile traffic law photo-monitoring devices to be housed in a trailer or vehicle that is conspicuously marked.

Procedural requirements for new traffic law photo-monitoring devices

- Requires a local authority to take all of the following actions prior to deploying a traffic law photo-monitoring device that was not being utilized prior to the effective date of the bill:
 - Conduct a safety study of each location that is being considered for a traffic law photo-monitoring device;
 - Conduct a public information campaign;
 - Publish notice of the intent to utilize a traffic law photo-monitoring device, the locations at which the devices will be utilized, and the date on which the devices will become operational;
 - Refrain from imposing fines for violations detected by a traffic law photo-monitoring device for at least 30 days after deployment of the device and send warning notices instead.

Procedures for civil traffic law violations

Requirements governing tickets for civil violations

- Specifies that any traffic law violation for which a ticket is issued by a local authority is a civil violation if the violation was recorded by a traffic law photo-monitoring device and the law enforcement officer who was present at the location of the device did not issue a ticket for a criminal violation.



- Specifies that the fine for a civil violation cannot exceed the amount that may be imposed for a substantially equivalent criminal traffic violation.
- Specifies that all of the following apply to civil traffic law violations:
 - The violation is not a moving violation and no points may be assessed against the violator's driver's license or recorded on the violator's driving record;
 - The violation cannot be reported to the Bureau of Motor Vehicles or a similar agency of another state;
 - Insurers are prohibited from considering the violation as a basis for refusing to issue an insurance policy, increasing the premium rate of a policy, or canceling or failing to renew a policy; and
 - A written decision of liability by a hearing officer, or an admission of liability by a person who has been issued a ticket, for a civil violation is not admissible as evidence in any other judicial proceeding in Ohio.
- Requires a law enforcement officer employed by a local authority that utilizes a traffic law photo-monitoring device to examine evidence of an alleged traffic law violation produced by a traffic law photo-monitoring device for purposes of issuing tickets for civil violations.
- Specifies that the registered owner of a motor vehicle is prima facie liable for a traffic law violation detected by a traffic law photo-monitoring device.
- Authorizes a law enforcement officer to use any lawful means to identify the owner of a vehicle if the officer determines that evidence produced by the traffic law photo-monitoring device shows a violation.
- Prohibits the issuance of a ticket for a civil traffic law violation under any of the following circumstances:
 - The device was used to detect speeding violations in a school zone or within the boundaries of a state or local park or recreation area and the vehicle involved was traveling at a speed that exceeded the posted speed limit by less than six miles per hour;
 - The device was used to detect speeding violations at any location other than specified above and the vehicle involved in the violation was traveling at a speed that exceeded the posted speed limit by less than ten miles per hour; or

--The device was used to detect red-light violations and the vehicle involved in the violation made a legal right or left turn during a red light, the vehicle made the turn safely, the vehicle came to a complete stop at any point prior to completing the turn, and no pedestrians were in the crosswalk of the intersection or about to enter the crosswalk.

- Imposes requirements for the content of a ticket for a civil traffic law violation based on evidence produced by a traffic law photo-monitoring device, including that the ticket must provide information on how to initiate an administrative appeal and the procedure for disclaiming liability.
- Requires a law enforcement officer to send a ticket not later than 30 days after the alleged violation and allows the officer to send a notice of violation in lieu of a ticket.

Options available to a person who receives a ticket

- Specifies that a person who receives a ticket issued for a civil traffic law violation detected by a traffic law photo-monitoring device under the bill may do any of the following:
 - Pay a civil penalty, thereby waiving the opportunity to contest the violation;
 - Contest the ticket by filing a written request for an administrative hearing to review the ticket;
 - Provide the local authority with an affidavit stating that the person was not the person driving the vehicle at the time of the violation and identifying the person who was driving the vehicle at the time of the violation;
 - Provide the local authority with an affidavit stating that the vehicle involved in the violation was stolen;
 - If the registered owner of the vehicle involved in the violation is a motor vehicle leasing dealer, notify the local authority of the name and address of the lessee or renter of the motor vehicle; or
 - If the vehicle involved in the violation is a commercial vehicle, provide the local authority with an affidavit that provides the name and address of the employee who was operating the vehicle at the time of the violation.

Administrative hearings regarding contested tickets

Jurisdiction over civil traffic law violations

- Revokes the jurisdiction of the municipal courts over civil traffic law violations that are based on evidence produced by a traffic law photo-monitoring device and issued by a local authority pursuant to the civil violation ticketing process.
- Requires a hearing officer appointed by a local authority to hear appeals of civil traffic law violations and establishes procedures for conducting such a hearing.
- Establishes the jurisdiction of the municipal and county courts over appeals of written decisions rendered by a hearing officer for a civil traffic law violation.

General hearing provisions

- Requires an administrative hearing to take place not sooner than 21 but not later than 45 days after the request for the hearing and requires the hearing to be open to the public.
- Requires the person requesting the hearing to appear at the hearing and authorizes the person to present evidence at the hearing.
- Requires a hearing officer to determine, by a preponderance of the evidence, if an alleged traffic law violation occurred and if the person named in a ticket is the person who was operating the vehicle at the time of the violation and is liable for the violation.
- Allows a person to assert the spousal testimonial privilege at a hearing.
- Authorizes a hearing officer to consider as an affirmative defense that the vehicle was yielding the right-of-way to a public safety vehicle, coroner's vehicle, or funeral procession; that the motor vehicle was stolen; that the person named in the ticket was not operating the vehicle at the time of the violation; or that the traffic control signal or traffic law photo-monitoring device was not operating properly.
- Authorizes the hearing officer also to consider the totality of the circumstances surrounding the alleged traffic law violation.
- Requires a hearing officer to issue a written decision regarding a ticket and to inform the local authority of its decision.



- Provides that if a hearing officer cannot determine the identity of the operator of the vehicle at the time of the violation, the hearing officer must issue a written decision imposing liability for the violation on the registered owner of the vehicle.
- When a hearing officer determines that the person named in the ticket was not operating the vehicle at the time of the violation, establishes procedures for submitting a ticket to the person who was allegedly operating the vehicle at the time of the violation.

Maintenance of traffic law photo-monitoring devices

- Requires each manufacturer of a traffic law photo-monitoring device to provide to the applicable local authority the maintenance record of each device used in that local authority, and, annually, a certificate of proper operation for each device.
- Establishes testing protocols for mobile traffic law photo-monitoring devices.

TABLE OF CONTENTS

Authorization to use a traffic law photo-monitoring device	7
Presence of a law enforcement officer required	7
Signage requirements for all traffic law photo-monitoring devices	8
Fixed system requirements	8
Mobile system requirements.....	9
Procedural requirements for new traffic law photo-monitoring devices	9
Procedures for civil traffic law violations	11
Civil enforcement scheme and limitations.....	11
Tickets for civil violations	12
Review of evidence	12
Issuance of a ticket and limitations on such issuance	12
Contents of a ticket issued for a civil violation.....	13
Options available to a person who receives a ticket	14
Overview	14
Provisions governing submission of an affidavit disclaiming liability	15
Administrative hearings of contested tickets.....	16
Jurisdiction over civil traffic law violations.....	16
General hearing provisions	16
Administrative determination of liability.....	17
Issuance of written administrative decisions.....	18
Appeals.....	19
Maintenance of traffic law photo-monitoring devices	19

CONTENT AND OPERATION

Authorization to use a traffic law photo-monitoring device

The bill generally authorizes a local authority, meaning a county, township, or municipal corporation,¹ to utilize traffic law photo-monitoring devices for the purpose of detecting traffic law violations, subject to specified conditions and required procedures (see **COMMENT 1**). Additionally, the bill specifically authorizes a county or township to adopt resolutions for the purpose of enabling the county or township to utilize traffic law photo-monitoring devices. "Traffic law violation" is defined as either a red light violation or a speeding violation. A "traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.²

Presence of a law enforcement officer required

Under the bill, a local authority may use a traffic law photo-monitoring device to detect and enforce traffic law violations only if a law enforcement officer is present at the location of the device at all times during the operation of the device and the local authority complies with signage, traffic safety study, and public awareness requirements established in current law and the bill. For purposes of the bill, "law enforcement officer" means a sheriff, deputy sheriff, marshal, deputy marshal, police officer of a police department of any municipal corporation, police constable of any township, or police officer of a township or joint police district who is employed on a permanent full-time basis by the law enforcement agency of a local authority that assigns the person to the location of a traffic law photo-monitoring device.

If a law enforcement officer who is present at the location of any traffic law photo-monitoring device personally witnesses a violation, the officer may issue a minor misdemeanor citation to the offender. In such a circumstance, the law enforcement officer is not required to comply with the procedural requirements in the bill that govern a ticket issued based on evidence produced by a traffic law photo-monitoring device (discussed below). However, if a traffic law photo-monitoring device records a traffic law violation and the law enforcement officer who was present at the location of

¹ R.C. 4511.092(D).

² R.C. 4511.092(K) and (L) and 4511.093.



the device does not issue a ticket, the local authority may only issue a ticket for a civil violation in accordance with the procedural requirements in the bill.³

Signage requirements for all traffic law photo-monitoring devices

Fixed system requirements

The bill prohibits a local authority from using a traffic law photo-monitoring device to detect or enforce any traffic law violation until it has posted signs at each fixed system location informing motorists that a traffic law photo-monitoring device is present at the location. A "system location" means the approach to an intersection or area of roadway toward which a traffic law photo-monitoring device is directed and is in operation. Under the bill, the local authority must erect the signs within 300 feet of the fixed system location or, if the signs cannot be located within 300 feet of the fixed system location, as close to that distance as possible.⁴

Current law, unchanged by the bill, prohibits the use of a traffic law photo-monitoring device by a local authority to enforce traffic law violations until the local authority has erected signs on every highway that is not a freeway that is part of the state highway system and that enters that local authority informing inbound traffic that the local authority utilizes traffic law photo-monitoring devices to enforce traffic laws. Under current law, the local authority must erect the signs within the first 300 feet of the boundary of the local authority or, if the signs cannot be located within the first 300 feet of the boundary of the local authority, as close to that distance as possible. However, if a particular highway enters and exits the territory of a local authority multiple times, the local authority must erect signs at the locations in each direction of travel where inbound traffic on the highway first enters the territory of the local authority and is not required to erect additional signs along such highway each time the highway reenters the territory of the local authority. The local authority also must ensure that all signs conform in size, color, location, and content to standards contained in the manual for a uniform system of traffic control devices adopted by the Department of Transportation and that the signs remain in place for as long as the local authority utilizes traffic law photo-monitoring devices.⁵

The bill specifies that a ticket issued by or on behalf of the local authority for any traffic law violation based upon evidence recorded by a traffic law photo-monitoring device is invalid if the ticket was issued after the effective date of the bill but before a

³ R.C. 4511.092 and 4511.093.

⁴ R.C. 4511.092(I) and 4511.094(A).

⁵ R.C. 4511.094(A).



sign was erected at the fixed system location to inform motorists that a traffic law photo-monitoring device is present at the location. The bill does not change a provision of current law that specifies that such a ticket is invalid if the ticket was issued after March 12, 2009, but before signs were erected to inform inbound traffic that the local authority utilizes traffic law photo-monitoring devices to enforce traffic laws.⁶

The bill also retains, and expands to apply to the additional signage requirement, a provision of current law specifying that if a local authority is in "substantial compliance" with the aforementioned signage requirements, a ticket issued by the local authority is not invalid due to failure to comply with the signage requirements. A local authority is deemed to be in substantial compliance with the signage requirements if the local authority does both of the following:

(1) First erects all signs as required, and subsequently maintains and replaces the signs as needed so that at all times at least 90% of the required signs are in place and functional; and

(2) Annually documents and, upon request, certifies its compliance with the signage requirements.⁷

Mobile system requirements

A mobile traffic law photo-monitoring device is any traffic law photo-monitoring device that is attached to a trailer, vehicle, or other wheeled apparatus so that it is easily moved to different system locations. On the outside of the trailer, vehicle, or wheeled apparatus that contains a mobile traffic law photo-monitoring device, the local authority must clearly and conspicuously mark that the device is contained therein and that the trailer, vehicle, or wheeled apparatus is the property of the local authority.⁸

Procedural requirements for new traffic law photo-monitoring devices

The bill requires that, prior to deploying any traffic law photo-monitoring device that was not being operated prior to the effective date of the bill, a local authority must do all of the following:

(1) Conduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices, which must include an

⁶ R.C. 4511.094(B).

⁷ R.C. 4511.094(C).

⁸ R.C. 4511.0911(B)(2)(b).



accounting of incidents that have occurred in the designated area over the previous three-year period;

(2) Make the safety study available to the public upon request;

(3) Conduct a public information campaign to inform motor vehicle operators about the use of traffic law photo-monitoring devices at system locations prior to establishing any of those locations;

(4) Publish at least one notice in a local newspaper of general circulation that announces the local authority's intent to utilize traffic law photo-monitoring devices, the locations of those devices, if known, and the date on which the first traffic law photo-monitoring device will be operational;

(5) Refrain from levying any civil fines on any person found to have committed a traffic law violation based upon evidence gathered by a fixed location traffic law photo-monitoring device until the local authority observes a public awareness warning period of not less than 30 days prior to the first issuance of any ticket based upon images recorded by the device; and

(6) During the warning period, take reasonable measures to inform the public of the location of the device and the date on which tickets will be issued for traffic law violations based upon evidence gathered by the device. A warning notice may be sent to violators during the public awareness warning period.⁹

The bill specifies that a local authority that is operating, or has operated on its behalf, a traffic law photo-monitoring device on the effective date of the bill may continue to operate the device after that date without the need to comply with the new procedural requirements. However, if such a local authority wishes to deploy an additional traffic law photo-monitoring device after the effective date of the bill, or if a local authority deploys its first traffic law photo-monitoring device after the effective date of the bill, the local authority must comply with the new procedural requirements outlined above prior to deploying any additional device.¹⁰

⁹ R.C. 4511.095(A).

¹⁰ R.C. 4511.095(B)(1).



Procedures for civil traffic law violations

Civil enforcement scheme and limitations

The bill specifies that any traffic law violation for which a ticket is issued by a local authority is a civil violation if the violation was recorded by a traffic law photo-monitoring device and the law enforcement officer who was present at the location of the device did not issue a ticket for a criminal violation. The fine for the violation cannot exceed the amount that may be imposed for a substantially equivalent criminal traffic violation. If a local authority issues a ticket for such a violation, the ticket must comply with the ticket requirements set forth below.¹¹ Further, the bill specifies that all of the following apply to civil traffic law violations:

(1) The violation is not a moving violation and no points may be assessed against the violator's driver's license or recorded on the violator's driving record;

(2) The violation cannot be reported to the Bureau of Motor Vehicles or a similar agency of another state;

(3) Insurers are prohibited from considering the violation as a basis for refusing to issue an insurance policy, increasing the premium rate of a policy, or canceling or failing to renew a policy; and

(4) A written decision of liability by a hearing officer, or an admission of liability by a person who has been issued a ticket, for a civil violation is not admissible as evidence in any other judicial proceeding.¹²

Under the bill, a number of procedural requirements, detailed below, are imposed upon any local authority that issues a ticket for a civil traffic law violation based upon evidence recorded by a traffic law photo-monitoring device on or after the effective date of the bill. These procedures do not apply to any ticket that results from evidence recorded by a traffic law photo-monitoring device that was issued prior to the effective date of the bill or to any ticket issued after the effective date of the bill that was issued by a law enforcement officer who was present at the location of the traffic law photo-monitoring device, if the officer personally witnessed a violation and issued a minor misdemeanor citation to the offender.¹³

¹¹ R.C. 4511.097(A).

¹² R.C. 3937.411, 4511.099(H), and 4511.0910.

¹³ R.C. 4511.093 to 4511.095.



Tickets for civil violations

Review of evidence

Under the bill, a law enforcement officer employed by a local authority utilizing a traffic law photo-monitoring device must examine evidence of alleged traffic law violations recorded by the device to determine whether such a violation occurred. If the image recorded by the traffic law photo-monitoring device shows such a violation, contains the date and time of the violation, and shows the letter and numerals on the license plate of the vehicle involved as well as the state that issued the license plate, the officer is authorized to use any lawful means to identify the registered owner. The fact that a person or entity is the registered owner of a motor vehicle is prima facie evidence that that person or entity is the person who was operating the vehicle at the time of the traffic law violation.¹⁴

Issuance of a ticket and limitations on such issuance

Within 30 days of the traffic law violation, the local authority or its designee may issue and send by regular mail either a ticket charging the registered owner with the violation or a warning notice in lieu of a ticket. However, under the bill, a local authority is prohibited from issuing a ticket for a civil traffic law violation in any of the following circumstances:

(1) The system was used to detect speeding violations in a school zone or within the boundaries of a state or local park or recreation area and the vehicle involved was traveling at a speed that exceeded the posted speed limit by less than six miles per hour;

(2) The system was used to detect speeding violations at any location other than specified in (1) above and the vehicle involved in the violation was traveling at a speed that exceeded the posted speed limit by less than ten miles per hour; or

(3) The system was used to detect red light violations and the vehicle involved in the violation made a legal right or left turn during a red light, the vehicle made the turn safely, the vehicle came to a complete stop at any point prior to completing the turn, and no pedestrians were in the crosswalk of the intersection or about to enter the crosswalk.¹⁵

¹⁴ R.C. 4511.096(A) and (B).

¹⁵ R.C. 4511.096(C), 4511.097(D), 4511.0911(C), and 4511.0912.



Contents of a ticket issued for a civil violation

Any ticket issued by a local authority or its designee must contain all of the following:

- (1) The name and address of the registered owner;
- (2) The letters and numerals appearing on the license plate issued to the motor vehicle;
- (3) The traffic law violation charged;
- (4) The system location;
- (5) The date and time of the violation;
- (6) A copy of the recorded images;
- (7) The name and badge number of the law enforcement officer who was present at the system location at the time of the violation;
- (8) The amount of the civil penalty imposed, the date by which the civil penalty is required to be paid, and the address to which the payment is to be sent;
- (9) A statement signed by a law enforcement officer employed by the local authority indicating that, based on an inspection of recorded images, the motor vehicle was involved in a traffic law violation and that the recorded images are prima facie evidence of that traffic law violation;
- (10) Information advising the person or entity alleged to be liable of the person's options, specifically including the time, place, and manner in which an administrative appeal may be initiated and the procedure for disclaiming liability by submitting an affidavit (see below); and
- (11) A warning that failure to exercise one of the prescribed options is deemed to be an admission of liability and waiver of the opportunity to contest the violation.¹⁶

The bill specifies that a certified copy of the ticket alleging a traffic law violation, sworn to or affirmed by a law enforcement officer employed by the local authority, including by electronic means, and the recorded images produced by the traffic law

¹⁶ R.C. 4511.096(C) and 4511.097(B).

photo-monitoring device, is prima facie evidence of the facts contained therein and is admissible in a proceeding for review of the ticket.¹⁷

Options available to a person who receives a ticket

Overview

The bill specifies that a person or entity who receives a ticket for a civil traffic law violation sent in compliance with the previous ticketing procedures may take any of the following actions:

(1) Pay the civil penalty in accordance with the procedures on the ticket, thereby failing to contest liability and waiving the opportunity to contest the violation;

(2) Within 30 days after receipt of the ticket, provide the law enforcement agency of the local authority with an affidavit disclaiming liability (discussed further below);

(3) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the law enforcement agency of the local authority of the name and address of the lessee or renter of the motor vehicle at the time of the traffic law violation, thereby transferring liability to the lessee or renter;

(4) If the vehicle involved in the traffic law violation is a commercial motor vehicle and the ticket is issued to a corporate entity, provide to the law enforcement agency of the local authority an affidavit, sworn to or affirmed by an agent of the corporate entity, that provides the name and address of the employee who was operating the motor vehicle at the time of the alleged violation and who is the designated party;

(5) Within 30 days after receipt of the ticket, contest the ticket by filing a written request for an administrative hearing to review the ticket.¹⁸

The bill also specifies that the failure to request a hearing within 30 days after the receipt of the ticket constitutes a waiver of the right to contest the violation and ticket, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.¹⁹

¹⁷ R.C. 4511.096(D).

¹⁸ R.C. 4511.098(A).

¹⁹ R.C. 4511.098(A)(5).



Provisions governing submission of an affidavit disclaiming liability

As referenced above, the registered owner of a vehicle who receives a ticket may file an affidavit attesting either of the following:

(1) That another person was operating the vehicle of the registered owner at the time of the violation, and designating that person as a designated party who was operating the vehicle at the time of the violation and who may be held liable for the violation by providing at a minimum the name and address of the designated party;²⁰ or

(2) That the motor vehicle or the license plates issued to the motor vehicle were stolen at the time of the violation and therefore were in the care, custody, or control of some person or entity to whom the registered owner did not grant permission to use the motor vehicle. The bill requires the registered owner to submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the violation or within 48 hours after the violation occurred.²¹

Under the bill, if the registered owner submits an affidavit attesting that another person was operating the vehicle at the time of the offense in accordance with the requirements in (1) above, then the registered owner is not liable for the violation if the designated party accepts liability for the violation by paying a civil penalty, fails to request an administrative hearing within 30 days, or is determined liable in an administrative hearing. Further, if the registered owner submits an affidavit attesting that the vehicle or license plates were stolen at the time of the violation and the affidavit is supported by a stolen vehicle or stolen license plate report, then the registered owner is not liable for the violation.²² Additionally, the bill specifies that if a local authority receives an affidavit from a registered owner identifying the person who was driving at the time of the violation, an affidavit from a corporate entity naming an employee who was operating a commercial vehicle at the time of the violation, or notice from a motor vehicle leasing dealer or motor vehicle rental dealer identifying the lessee or renter of the motor vehicle identified in the ticket, the local authority may send to the designated party a ticket that conforms with the ticket requirements provided above. Any such ticket must be sent by ordinary mail not later than 21 days after receipt of the affidavit or notification.²³

²⁰ R.C. 4511.092(A) and 4511.098(A)(2)(a)(i).

²¹ R.C. 4511.098(A)(2)(a)(ii).

²² R.C. 4511.098(A)(2)(b).

²³ R.C. 4511.098(B).



Administrative hearings of contested tickets

Jurisdiction over civil traffic law violations

The bill specifies that if a person or entity receives a ticket for a civil traffic law violation and files a request for an administrative hearing within 30 days of receiving the ticket, a hearing officer appointed by the local authority must hear the case. The local authority may not appoint any person who is employed by a law enforcement agency.²⁴ Further, the bill exempts from the jurisdiction of the municipal courts civil violations based upon evidence recorded by a traffic law photo-monitoring device and issued by a local authority pursuant to the civil violation ticketing process.²⁵

Under current law, a municipal court generally has jurisdiction over:

(1) The violation of any ordinance of a municipal corporation within its territory, unless the violation is required to be handled by a parking violations bureau or joint parking violations bureau;

(2) Misdemeanor violations committed within its territory;

(3) If the court has a housing or environmental division, any criminal action over which the housing or environmental division is given jurisdiction;

(4) Felony violations committed within its jurisdiction;

(5) Any appeal from a judgment or default judgment entered pursuant to the law governing local, noncriminal parking infractions.²⁶

A violation of either the state law governing the failure to stop for a red light or the state law governing speeding is a misdemeanor offense and is within a municipal court's jurisdiction.²⁷ Accordingly, under current law, a municipal court would likely have jurisdiction over the traffic law violations covered by the bill (see **COMMENT 2**).

General hearing provisions

As stated above, when a person receives a ticket, they may request an administrative hearing with a hearing officer. The hearing officer is generally required

²⁴ R.C. 4511.099(A)(1) and 4511.092(B).

²⁵ R.C. 1901.20.

²⁶ R.C. 1901.20.

²⁷ R.C. 4511.12, 4511.21, and 4511.211.



to conduct a hearing not sooner than 21 but not later than 45 days after the request for the hearing is filed; however, the hearing officer may extend the time period upon a request for additional time by the person or entity who requested the hearing. The person who requested the administrative hearing or a representative of the entity that requested the hearing must appear for the hearing and is permitted to present evidence. If the person who requested the hearing is a designated party, the registered owner also must appear.

At the hearing, any person who is named in a ticket for a civil violation may assert a spousal testimonial privilege with regard to any communication made between the person and the person's spouse, or any act done in the presence of the person's spouse, except if the communication was made or act was done within the presence or hearing of a third party.²⁸

Under the bill, the hearing officer is required to do all of the following:

(1) Ensure that the hearing is open to the public;

(2) Post a docket, that includes the hearings scheduled for that day and the time of each hearing, in a conspicuous place near the entrance to the hearing room. The hearing officer must identify on the docket, by respondent, the hearings scheduled for that day and the time of each hearing.

(3) Determine whether a preponderance of the evidence establishes that the violation alleged in the ticket did in fact occur and that the person or entity requesting the review is the person who was operating the vehicle at the time of the violation.

The hearing officer also is authorized to schedule multiple hearings for the same time to allow for occurrences such as nonappearances or admissions of liability.²⁹

Administrative determination of liability

Under the bill, in determining liability for an alleged traffic law violation, the hearing officer may consider the totality of the circumstances. The hearing officer also may consider any of the following as an affirmative defense to the violation:

(1) That the vehicle passed through the intersection in order to yield the right-of-way to a public safety vehicle, coroner's vehicle, or funeral procession in accordance with the right-of-way law or a substantially equivalent municipal ordinance;

²⁸ R.C. 4511.099(A)(1) and (3), (E), and (F) and R.C. 2317.02(D), not in the bill.

²⁹ R.C. 4511.099(A)(2) and (4).



(2) That the motor vehicle or license plates of the motor vehicle were stolen prior to the occurrence of the violation, the vehicle or plates were not under the control or possession of the registered owner at the time of the violation, and the registered owner has proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the traffic law violation or within 48 hours after the traffic law violation occurred;

(3) At the time and place of the alleged traffic law violation, the traffic control signal was not operating properly or was not in proper position and the recorded image is not of sufficient legibility to enable an accurate determination of the information necessary to impose liability; or

(4) That the registered owner or person or entity named in the ticket was not the person operating the motor vehicle at the time of the violation, and the registered owner or person or entity named in the ticket has provided to the hearing officer the identity of the designated party, that person's name and current address, and any other evidence that the hearing officer determines to be pertinent.³⁰

Issuance of written administrative decisions

The bill specifies that the hearing officer who presides over an administrative hearing is required to render a decision on the day of the hearing and issue a written decision to the person or entity named in the ticket and the local authority or its designee in accordance with the following requirements:

(1) If the person who requested the administrative hearing or a representative of the entity that requested the hearing fails to appear at the hearing, or if the hearing officer finds by a preponderance of the evidence that the person or entity named in the ticket committed the alleged traffic law violation, the hearing officer is required to issue a written decision imposing liability for the violation upon the individual or entity.

(2) If the hearing involves a designated party and the hearing officer cannot determine the identity of the operator of the vehicle at the time of the violation, the hearing officer is required to issue a written decision imposing liability for the violation upon the registered owner. If the designated party also is a registered owner, liability for the violation follows the order of registered owners as listed on the title to the motor vehicle.

(3) If the hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did not occur or did in fact occur but the person or entity named in

³⁰ R.C. 4511.099(C).

the ticket is not the person who was operating the vehicle at the time of the violation, the hearing officer is required to issue a written decision finding that the individual or entity is not liable for the violation.³¹

In addition to the written administrative decision, if the hearing officer finds that the person or entity named in the ticket was not the person who was operating the vehicle at the time of the violation or receives evidence identifying the designated party, the hearing officer must provide to the local authority or its designee, within five days of the hearing, a copy of any evidence substantiating the identity of the designated party. A local authority or its designee that receives such evidence from a hearing officer may issue a ticket to the designated party, in accordance with the ticketing procedures outlined above, not later than 21 days after receipt of the evidence.³²

Appeals

The bill authorizes a person or entity to appeal a written decision rendered by a hearing officer to the municipal or county court with jurisdiction over the location where the violation occurred. Further, the bill grants the municipal and county courts jurisdiction over such a decision if the hearing officer that rendered the decision was appointed by a local authority within the jurisdiction of the court.³³

Maintenance of traffic law photo-monitoring devices

Under the bill, upon request, each manufacturer of a traffic law photo-monitoring device is required to provide the maintenance record for any such device to the local authority utilizing the device. Beginning in January 2015, not later than the last day of January each year, the manufacturer of a traffic law photo-monitoring device is required to provide a certificate of proper operation that attests to the accuracy of each device in recording traffic law violations to the local authority of the jurisdiction in which each device is located.³⁴

For each mobile traffic law photo-monitoring device, meaning a device that is attached to a trailer, vehicle, or other wheeled apparatus so that it is easily moved to different system locations, the local authority that utilizes the device must test the

³¹ R.C. 4511.099(B) and (E).

³² R.C. 4511.099(D).

³³ R.C. 1901.20(C)(2), 1907.02(C), and 4511.099(G).

³⁴ R.C. 4511.0911(A) and (B)(1).



accuracy of the device with an independent, certified speed measuring device or some other commonly accepted method prior to its use at each system location.³⁵

COMMENT

(1) It is unclear if the provisions of the bill infringe upon a municipal corporation's home rule authority under Article XVIII, Section 3 of the Ohio Constitution. See *Canton v. State*, 95 Ohio St.3d 149 (2002).

(2) At least two municipal corporations have enacted a civil enforcement scheme in which red light and speeding violations based on evidence produced by a traffic law photo-monitoring device are required to be appealed through an administrative appeals process rather than the municipal court. Appellate courts for the sixth and eighth appellate districts of Ohio have determined that enforcement scheme divested municipal courts of their statutorily provided jurisdiction in violation of Article IV, Section 1 of the Ohio Constitution. *Walker v. Toledo*, 6th Dist. Lucas No. L-12-1056, 2013-Ohio-2809; *Jodka v. Cleveland*, 8th Dist. Cuyahoga No. 99951, 2014-Ohio-208. The issue is currently pending before the Ohio Supreme Court.

HISTORY

ACTION	DATE
Introduced	05-20-14
Reported, S. State Gov't Oversight & Reform	11-19-14
Passed Senate (24-9)	11-19-14

S0342-PS-130.docx/ks

³⁵ R.C. 4511.0911(B)(2)(a).

