

Lights, Cameras, Action: Do Speed Cameras Save Lives?

By Alyssa Jordan Pantzer

Last July I took my usual route to New York County Supreme Court, exiting the Brooklyn Bridge subway station at the beautiful, arched municipal building located on the corner of Chambers and Centre streets. When I ascended from the subway station, I was met by a crowd—not particularly unusual in New York City. This crowd was different, however, because it included people holding television cameras as well as onlookers forming a nearly perfect semi-circle around a woman who was speaking. My curiosity was peaked. The woman was Lieutenant Governor Kathy Hochul, a fellow Hamburg, New York native (a/k/a Hamburgian), and the topic was speed-camera legislation affecting areas around New York City schools.

This article addresses and summarizes the state of the law and discusses last summer's debate surrounding the sunset provision that nearly brought an end to the school zone speed cameras this past August. Additionally, this article will discuss the case law involving speed cameras, as well as the also controversial red-light cameras.

The Controversy Surrounding the Use of Speed Enforcement Cameras in School Zones

On July 19, 2018, the Governor's office released an article stating that a New York State Department of Transportation (DOT) analysis "confirm[s]" that speed cameras save lives.¹ The DOT analysis states that "speed enforcement cameras have proven to be a highly effective tool for reducing pedestrian fatalities and injuries in New York City and throughout the country."² As of that July 19, 2018 date, there remained only six days left until the speed-camera legislation was set to expire on July 25, 2018.

That legislation was initially enacted in 2013 with Vehicle and Traffic Law Section 1180-b, which granted New York City the authority to pilot an automated speed enforcement program in 20 school speed zones.³ Per this program, the first speed-camera violation was issued in January 2014, and in June 2014 the pilot program was expanded to a total of 140 school speed zones.⁴

Section 1180-b, titled "Owner Liability for Failure of Operator to Comply with Certain Posted Maximum Speed Limits," empowers the City of New York to implement "a demonstration program imposing monetary liability on the owner of a vehicle for the failure of an operator thereof to comply with posted maximum speed limits in a school speed zone within the city." In order to do so, the city was authorized "to install photo speed violation monitoring systems within no more than one

hundred forty school speed zones within the city at any one time." In selecting the school speed zones where cameras were to be installed, the City was directed to consider "criteria including, but not limited to the speed data, crash history, and the roadway geometry applicable to such school speed zone." Violations may be issued only: "(A) on school days during school hours and one hour before and one hour after the school day, and (B) a period during student activities at the school and up to thirty minutes immediately before and up to thirty minutes immediately after such student activities."

A 2017 study found that the daily rate of violations issued for excessive speeding in school zones at the typical camera declined by over 60 percent in the program's first 18 months of Section 1180-b's implementation.⁵ Additionally, total "crashes"⁶ in school zones diminished by 15%, and the overall number of people killed or severely injured in crashes in school speed zones with speed-camera monitoring declined by over 21% in the period after the cameras were activated.⁷

On the day that the law was set to expire—July 25, 2018—the governor discussed the speed-camera legislation during a press conference.⁸ He stated that the issue had been the subject of debate in Albany for months and warned that "when the law expires, the speed cameras go away," which would increase "speeding and recklessness" and "put lives in jeopardy." The bill, which called for the extension of the speed-camera pilot program law, passed in the State Assembly, but was unable to pass the Senate's muster.

On June 22, 2018, during the course of the debate as to whether 1180-b should expire as scheduled, Senate Republicans Andrew Lanza (24th District) and Martin Golden (22nd District) and Senate Democrat Simcha Felder (17th District) proposed their own speed-camera bill extending the use of speed cameras in school zones for six months past the July 25, 2018 expiration. During those six months, the revenue collected from traffic infractions issued was to be used to fund the installation of school zone stop signs and stop lights.

Essentially, this bill advocated for transitioning away from the use of speed cameras to the use of stop lights and traffic signals. In support of that transition, the proponents of the bill argued that "reducing the speed of motorists traveling through school zones is the most certain method to protect the safety and welfare of our children. Allowing for the extension of NYC's school

zone speed-camera program for six months provides time for such safety measures to be adopted[.]”⁹ The bill additionally required the installation of signs warning motorists of the cameras and doubled fines for infractions in these areas.

A day after the bill was proposed, Speaker of the Assembly Carl Heastie (D, 83rd District) took to Twitter writing, “There is a simple solution: pass Assembly bill supported by advocates, Mayor & Governor & continue program that is a proven success.” One commentator who disagreed with Speaker Heastie voiced his opposition with the hashtag “#Stop4Kids.” The majority of the commentary on Speaker Heastie’s tweet, however, was supportive of the continued use of the speed cameras, as opposed to stop signs and lights. One commentator who wrote in support of the use of speed cameras questioned, “[h]ow is it possible our senate couldn’t agree on a simple bill that says ‘keep kids safe with more speed cameras?’”¹⁰

An agreement was not reached, and the legislation expired on July 25, 2018. Political colloquy was exchanged on Twitter and elsewhere. Following the expiration of the law, the City kept the cameras running, but was stripped of its authority to issue tickets for violations.

On August 27, 2018, with just over a week before New York City’s public schools were back in session, Governor Cuomo signed an Executive Order, declaring a public safety emergency, overriding the sunset clause in the speed-camera legislation.¹¹ The Executive Order states that “it is unacceptable to place school children at risk of serious physical harm and death in the very same place where they are to be educated, cared for, and protected, and that such school children have the right to safely access schools for the purpose of education and enrichment,” and that “the New York State Police and the New York State Department of Transportation believe that the termination of New York City’s speed-camera program results in an eminent disaster emergency that places at risk the health and safety of school children[.]”

The governor’s August 27, 2018 Executive Order temporarily suspended the sunset provision on the law, and directed the Department of Motor Vehicles to share information with the City so it could match the license plates of speeding vehicles to their owners and assess fines—all without the need for a new state law.

Then, New York City’s City Council led by Speaker Corey Johnson and Transportation Committee Chair Ydannis Rodriguez, worked to pass legislation that not only extends the city’s camera program but also allows the city to operate more speed cameras at more schools for longer hours.¹² Mayor de Blasio signed the bill into law on September 4, 2018.¹³

New York City’s Administrative Code, Title 19,

Chapter 9 was titled “Photo Speed Violation Monitoring Program.” The law is modeled after what was Vehicle and Traffic Law Section 1180-b. Now, as before, vehicles monitored speeding in school zones during certain times of the day and certain times of the year will be imposed a \$50 fine recoverable before New York City’s Office of Administrative Trials and Hearings.

Then, on Tuesday, March 19, 2019, the Democratic-led State Legislature voted to renew and significantly expand the speed camera program, in a nearly fivefold increase that city officials say will cover every elementary, middle and high school in the city. The *New York Times* reported on that date that Senator Andrew Gounardes of Brooklyn, the bill’s sponsor, stated about the new law, “We are depoliticizing the issue of pedestrian safety.”¹⁴

Red-Light Cameras

Living on Long Island, in Nassau County, you would be hard pressed to find a person who tends to be in a rush who has not been issued a red-light camera ticket. Pursuant to New York Vehicle and Traffic Law Section 1111, certain jurisdictions are empowered to install and operate traffic-control signal photo violation monitoring devices at a restricted number of intersections.¹⁵ The subsections of Section 1111 pertain to the specific jurisdictions, which are empowered by the law to implement the red-light camera monitoring programs, and are titled “[o]wner liability for failure of operator to comply with traffic-control indications.” Fines for red-light camera violations are limited to \$50. All of the red-light camera programs empowered by Section 1111 have sunset provisions requiring repeal in late 2019.¹⁶

The legislation provides for ticketing of vehicle owners if such vehicle was “used or operated with the permission of the owner, express or implied” in violation of the red-light laws. The owner is not liable for the penalty imposed if the vehicle’s operator already has been ticketed, and subsequently convicted.¹⁷ The cameras are not permitted to capture images that identify the driver, passengers, or content of the vehicle.¹⁸

Several individuals and organizations have expressed criticism with regard to red-light cameras. Case Western Reserve University’s November 17, 2017 analysis is research-based criticism of the red-light cameras, and that study concluded that “cameras changed the composition of accidents, but [there is] no evidence of a reduction in total accidents or injuries.”¹⁹ The study concedes that “there is clear evidence that installing a camera reduces the number of vehicles running a red light,” but finds that “the predicted relationship between the number of vehicles running red lights and the total number of accidents is ambiguous.” In other words, “[s]ome drivers who typically ran a red light before a camera program will choose to stop at the intersection and, in turn, fewer vehicles will be in the intersection when the cross-road light turns

green,” thereby, decreasing “right-angle crashes between two vehicles.” While “right angle crashes” may decrease with the implementation of red-light surveillance, the Case Western analysis finds that rear-end accidents may increase due to the presence of cameras. This is because “driver awareness of the cameras will lead some drivers to attempt to stop and accept a higher accident risk from stopping at the intersection, in order to avoid the expected fine from continuing to drive through the intersection.”

In sum, the Case Western study implies that red-light camera implementation does not have the intended effect of decreasing the number of intersection accidents. Instead, rear-end accidents are more likely to occur at intersections where a red-light camera has been installed due to heightened driver awareness of the need to stop quickly to avoid a red-light ticket; whereas, right-angle accidents, or “T-Bone” accidents, may occur less frequently because drivers are less likely to disobey a red light and proceed through an intersection in oncoming traffic.

Justin Gallagher, one of the authors of the Case Western study, is quoted as stating that the “the predicted relationship between the number of vehicles running red lights and the total number of accidents is ambiguous—and certainly not compelling enough to justify some claims of proponents of these devices,” and that “[d]ata on the types of injuries incurring in these traffic accidents (fatalities, incapacitating and non-incapacitat-

ing, and more minor) failed to provide a case the cameras increased the safety of intersections where they’re installed.”²⁰

Traffic Surveillance and the Case Law

Both the red-light camera provision and the speed-camera provision contain statements that the surveillance recorded will be “prima facie evidence of the facts contained therein.” Accordingly, during a nonjury trial in *People v. Davidowitz*, the court found prima facie evidence of defendant’s liability based on the People’s evidence consisting of: (1) photographs of defendant’s vehicle at the scene; (2) a video; and (3) a certificate by a technician certifying that she had reviewed the video and photographs and had determined that defendant’s vehicle had not stopped at a red light.²¹ A finding of liability shall not be deemed a conviction; rather, red-light camera enforcement is a civil mechanism, not a criminal one.²² The issuance of red-light camera violations has withstood constitutional due process challenges.²³

A violation of the Vehicle and Traffic Law, if unexcused, constitutes negligence per se so that the violating party must be found negligent if the violation is proved. Negligence per se is not liability per se, however, because the plaintiff still must establish that the statutory violation was the proximate cause of the occurrence.²⁴ Whether a traffic camera violation qualifies under the negligence-per-se doctrine appears to remain undecided by the courts of the State of New York.

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Even so, red-light cameras as well as speed cameras contain evidence that should be considered in defending or prosecuting a motor-vehicle negligence case. It has been held that attorneys must obtain traffic-camera surveillance directly from the vendor, rather than through a Freedom of Information Law (“FOIL”) demand to the municipality.²⁵ Namely, a Nassau County Supreme Court identified that Public Officers Law Section 86 (i.e., the FOIL statute) was specifically amended to state that a municipality may deny FOIL access to “photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law.” Therefore, the Court held that the party seeking red-light camera footage was not permitted to access it through a FOIL demand, and was required to subpoena the red-light camera vendor instead.

Whatever your opinion of the use of traffic cameras to monitor speeding and red-light violations, it looks like the cameras may be here to stay, and the programs implementing their use may be expanding.

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14. Vivian Wang, *Speed Cameras Will Surround Every New York City Public School*, N.Y. Times, March 19, 2019, available at <https://www.nytimes.com/2019/03/19/nyregion/speed-cameras-schools-nyc.html>.
15. Section 1111-a (cities with a population of one million or more-150 intersections); Section 1111-b (Nassau-100 intersections and Suffolk-100 intersections, Yonkers-25 intersections, Rochester-50 intersections); Section 1111-d (Albany-20 intersections, New Rochelle-12 intersections, Mt. Vernon-12 intersections); Section 1111-e (White Plains-12 intersections)
16. New York State Automated Traffic Enforcement Systems Biennial Survey, https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/new_york_ae2018_survey_.pdf.
17. See e.g., Section 1111-A(b).
18. Section 1111-b(a)(2).
19. Justin Gallagher & Paul J. Fisher, *Criminal Deterrence when Offsetting the Risk: Traffic Cameras, Vehicular Accidents, and Public Safety*, SSRN (2017).
20. Red-light cameras don’t reduce traffic accidents or improve public safety, analysis, <https://phys.org/news/2018-07-red-light-cameras-dont-traffic-accidents.html> (June 19, 2018).
21. *People v. Davidowitz*, 51 Misc. 3d 59, 60, 31 N.Y.S.3d 387 (2d Dep’t 2016).
22. *Krieger v. City of Rochester*, 42 Misc. 3d 753, 978 N.Y.S.2d 588 (Sup. Ct. Monroe Co. Nov. 1, 2013).
23. *Id.*
24. *Dance v. Southampton*, 95 A.D.2d 442, 467 N.Y.S.2d 203 (2d Dep’t 1983); PJI 2:26
25. *Matter of Travelers Prop. Cas. Co. of Am. v. Nassau County Traffic & Parking Violations Agency*, 34 Misc. 3d 844, 937 N.Y.S.2d 436 (Sup. Ct. Nassau Co. Dec. 2, 2011).

Endnotes

1. Governor Andrew Cuomo, Press Room, <https://www.governor.ny.gov/news/6-days-until-law-set-expire-governor-cuomo-issues-analysis-speed-cameras-save-lives> (July 19, 2018).
2. Mitigating Pedestrian Crashes Through the Use of Automated Speed Enforcement Systems, https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Speed_Camera_Analysis_Final.pdf.
3. Automated Speed Enforcement Program Report 2014-2017, <http://www.nyc.gov/html/dot/downloads/pdf/speed-camera-report-june2018.pdf>
4. *Id.*
5. *Id.*
6. Per the study, “crashes” are counted via collision paper reports compiled at the scene of the accident by New York City police officers, so of course unreported accidents are not included in this analysis.
7. *Id.*
8. YouTube available here: <https://www.youtube.com/watch?v=IoKK2ipR-xo&feature=youtu.be>.
9. See S.B. S9123, 2017-2018 Leg. Sess. (N.Y. 2018) at Justification Section.
10. Tweet available at <https://twitter.com/CarlHeastie/status/1010534089181495296> (June 23, 2018).
11. Exec. Order No. 188 (Aug. 27, 2018).
12. The New York City Council, Legislative Research Center, available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3643040&GUID=6B3864E4-0CE3-4F10-813E-B71E9227312E&Options=&Search=>
13. *Id.*