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MOTOR VEHICLES AND TRAFFIC

Use of Radar Speed Detection Devices: Allow Speed Detection Devices to Be Operated by Part-Time Peace Officers; Allow Law Enforcement Agencies to Use Speed Detection Devices on Streets and Roads for Which an Application is Pending; Provide a Rebuttable Presumption Regarding the Use of Speed Detection Devices for Purposes Other Than the Promotion of Public Health, Welfare, and Safety

CODE SECTIONS:	O.C.G.A. §§ 40-14-2 to -3, -11 (amended)
BILL NUMBER:	HB 289
ACT NUMBER:	445
GEORGIA LAWS:	1999 Ga. Laws 1227
SUMMARY:	The Act allows law enforcement agencies to apply for certificates to use speed detection devices so long as the applicant provides continuous law enforcement services or allows only full-time officers to operate such devices. The Act defines what is commonly known as a "speed trap." It provides a rebuttable presumption that a law enforcement agency is utilizing its speed detection devices for revenue purposes when the fines levied based upon the use of such devices are equal to or more than forty percent of the agency's budget. However, in calculating the total speeding revenue for the agency, fines levied for violations exceeding seventeen miles per hour over the speed limit are excluded.
EFFECTIVE DATE:	May 3, 1999[1]

1. *See* 1999 Ga. Laws 1227, § 4, at 229. The Act took effect upon approval by the Governor. *See id.*

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History

Georgia law has prohibited the use of speed detection devices to generate revenue for law enforcement agencies since 1968.[2] However, determining whether a law enforcement agency is using its speed detection devices for an illegal purpose has not been easy for the Department of Public Safety and the State Patrol, which issue permits to use such devices and investigate complaints of speed traps from motorists.[3] When the State Patrol determines that a law enforcement agency is using its speed detection devices for purposes other than the promotion of public health and safety, it may suspend or revoke the agency's permit.[4]

Law enforcement agencies that choose to use speed detection devices to enforce speed laws in Georgia must apply for a permit from the Department of Public Safety.[5] Georgia law prohibits agencies from using speed detection devices without a permit or with a suspended or revoked permit.[6]

Representative Jeanette Jamieson of the 22nd District sponsored HB 289 in part to provide the Department of Public Safety with a threshold for determining when a law enforcement agency was operating an illegal speed trap.[7]

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2. *See* 1968 Ga. Laws 425, § 8, at 427 (formerly found at O.C.G.A. § 40-14-11 (1997)).

3. *See* Telephone Interview with Rep. Jeanette Jamieson, House District No. 22 (Apr. 21, 1999) [hereinafter Jamieson Interview]. In 1998, the State Patrol investigated 15 law enforcement agencies for improper use of radar guns. *See* Charles Walston, *Speed Traps: Bill Would Slow Cops* ATLANTA J. & CONST., Mar. 1, 1999, at A1. Ten of the agencies received warnings for violations yet the State Patrol did not revoke any permits. *See id.*

4. *See* 1968 Ga. Laws 425, § 8, at 427 (formerly found at O.C.G.A. § 40-14-11 (1997)); *see also* Interview with Wayne Yancey, Director of Legal Services for the Department of Public Safety at time of interview (June 10, 1999) [hereinafter Yancey Interview]; Interview with Sen. Van Streat, Senate District No. 19, (May 21, 1999) [hereinafter Streat Interview]. Mr. Yancey is now the Assistant General Counsel at the Georgia Department of Corrections. Senator Streat noted that a city in Dodge County, Georgia, which is in his district, had its permit taken away by the State Patrol because it was found to have operated a speed trap. *See id.*

5. *See* 1968 Ga. Laws 425 §§ 2, 4, at 426-27 (formerly found at O.C.G.A. § 40-14-3 (1997)).

6. *See* 1977 Ga. Laws 800, § 4, at 802 (formerly found at O.C.G.A. § 40-14-10 (1997)).

7. *See* O.C.G.A. § 40-14-11(d) (Supp. 1999); Jamieson Interview, *supra* note 3.

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HB 289

Introduction

Representative Jamieson originally offered the bill to make it easier for small law enforcement agencies to qualify for a permit to use speed detection devices.[8] Under the previous law, smaller law enforcement agencies often could not qualify for permits to use speed detection devices because they employed only part-time officers.[9] Representative Jamieson introduced HB 289 to "open the door" to smaller law enforcement agencies by allowing part-time officers to operate speed detection devices.[10] Although the final language of the Act differed from the original version of the bill,[11] the Act fulfills the bill's purpose of making it easier for law enforcement agencies to qualify for a permit.[12] On the other hand, the most significant change to the bill was the addition of the definition of a speed trap.[13]

Consideration by the House Public Safety Committee

The modifications to the original wording of the bill did not significantly alter the effect of the Act.[14] For example, the House Public Safety Committee removed the requirement that a permit applicant employ either a full-time or part-time officer and added a requirement that the law enforcement agency provide continuous—twenty-four hours a day, seven days a week—law enforcement services in order to qualify for a permit to use speed detection devices.[15] The

8. *See* Jamieson Interview, *supra* note 3; *see also* Interview with Susan Pruett, Associate General Counsel for the Georgia Municipal Association (June 14, 1999) [hereinafter Pruett Interview]. Ms. Pruett drafted the original bill on behalf of the Georgia Municipal Association and asked Rep. Jamieson to sponsor it in the House. *See id.*

9. *See* 1997 Ga. Laws 956, § 1, at 956 (formerly found at O.C.G.A. § 40-14-2(c) (1997)); Pruett Interview, *supra* note 8.

10. *See* HB 289, as introduced, 1999 Ga. Gen. Assem.; Jamieson Interview, *supra* note 3.

11. *Compare* HB 289, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. § 40-14-2(c) (Supp. 1999).

12. *See* Jamieson Interview, *supra* note 3; Pruett Interview, *supra* note 8.

13. *See infra* notes 19-26 and accompanying text.

14. *Compare* HB 289, as introduced, 1999 Ga. Gen. Assem., *with* HB 289 (HCS), 1999 Ga. Gen. Assem.

15. *Compare* HB 289, as introduced, 1999 Ga. Gen. Assem., *with* HB 289 (HCS), 1999 Ga. Gen. Assem.; O.C.G.A. § 40-14-2(c) (Supp. 1999).

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Committee also added language that would allow county sheriffs to apply for a permit.[16]

However, because the Committee knew that the bill would make it easier for law enforcement agencies to qualify for permits to use speed detection devices, it added two safeguards to prevent possible abuses by law enforcement agencies.[17] First, the Committee added a requirement that persons operating a speed detection device be registered or certified by the Georgia Peace Officer Standards and Training Council as peace officers and as operators of such devices.[18] Second, the Committee added a provision that established a threshold for determining when a law enforcement agency could be presumed to be using its speed detection devices for revenue purposes.[19] This provision would create a rebuttable presumption that a law enforcement agency was operating a speed trap if that agency generated forty percent or more of its budget from fines levied based upon the use of its speed detection devices.[20] The threshold number represented a compromise between the Association of County Commissioners, the Department of Public Safety, the Georgia Municipal Association, and the Georgia Sheriff's Association.[21]

Representative Jamieson stated that all of the agencies agreed to the compromise number of forty percent with the understanding that if forty percent is later determined to be unfair, the General Assembly would address the issue again.[22] The Committee used the term "rebuttable presumption" to allow law enforcement agencies an opportunity to rebut a determination by the Department of Public Safety that it was operating a speed trap.[23] However, Senator Van

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16. *Compare* HB 289, as introduced, 1999 Ga. Gen. Assem., *with* HB 289 (HCS), 1999 Ga. Gen. Assem.

17. *See* HB 289 (HCS), 1999 Ga. Gen. Assem.; Jamieson Interview, *supra* note 3.

18. *See* HB 289 (HCS), 1999 Ga. Gen. Assem.

19. *See id.*

20. *See id.*

21. *See* Jamieson Interview, *supra* note 3; Pruett Interview, *supra* note 8; Yancey Interview, *supra* note 4. Mr. Yancey stated that he could not recall who came up with the forty percent threshold, but he agreed that it was a good number. *See id.* Although the Department of Public Safety (State Patrol) was not a sponsor of the Bill, the agency approved of it. *See id.*

22. *See* Jamieson Interview, *supra* note 3; Pruett Interview, *supra* note 8.

23. *See* Jamieson Interview, *supra* note 3. Representative Jamieson explained that there might be a situation when an agency derives more than 40% of its budget from its use of radar guns, while promoting health, welfare, and safety. In such a situation, the presumption may be rebutted, and the agency would not face remedial action. For example, if a law enforcement agency was compelled to aggressively enforce speed

Streat of the 19th District, Chairman of the Senate Transportation Committee and Vice-Chairman of the Public Safety Committee, doubted whether any law enforcement agency could derive such a high percentage of its budget from speeding tickets without operating a speed trap.[24]

When a person suspects that a law enforcement agency is using its speed detection devices to operate a speed trap, he or she may make a complaint to the Department of Public Safety (State Patrol).[25] The Department of Public Safety will then forward the complaint to its Director of Investigative Services who will assign the matter to an investigator.[26]

The Committee also added language that would allow law enforcement agencies to use speed detection devices while their application for a permit is pending, as long as the agency meets all of the other requirements to use speed detection devices.[27] As Ms. Pruett of the Georgia Municipal Association explained, this provision makes it easier for law enforcement agencies to use speed detection devices during the long and sometimes complicated application period.[28]

From House Committee Substitute to House Floor Amendments

The House added an amendment to HB 289 stating that the provisions in Code section 40-14-9 are not affected whenever an agency operates speed detection devices while its permit application is pending.[29] Code section 40-14-9 limits the use of speed detection

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limits in a school zone to promote safety and the fines generated from this use of radar caused the agency to exceed the threshold limit, the statutory presumption could be rebutted. Representative Jamieson insisted that any rebuttal would be considered based upon the individual circumstances in each case. *See id.* Mr. Yancey agreed that a situation could arise where the presumption could be rebutted, but insisted that the presumption would be difficult to overcome. *See* Yancey Interview, *supra* note 4.

24. *See* Streat Interview, *supra* note 4. Senator Streat believes the 40% threshold is more than fair for law enforcement agencies. *See id.* If a town's law enforcement budget reaches the 40% mark, "there is no question in my mind that they are operating a speed trap. It is ridiculous to generate that much revenue from speeding tickets." *Id.*

25. *See* Yancey Interview, *supra* note 4.

26. *See id.*

27. *See* HB 289 (HCS), 1999 Ga. Gen. Assem.; O.C.G.A. § 40-14-3(a) (Supp. 1999).

28. *See* Pruett Interview, *supra* note 8. Ms. Pruett explained that the provision allowing pending applicants to use speed detection devices will be a huge benefit to faster growing communities because the application process can sometimes take up to two years. The Act will allow these communities to immediately start using speed detection devices to control speed and protect public safety. *See id.*

29. *See* HB 289 (HCSFA), 1999 Ga. Gen. Assem.; O.C.G.A. § 40-14-3(a) (Supp. 1999).

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devices within certain distances of a reduction in the posted speed limit, on hills in excess of a seven percent grade, and within areas where the speed limit has recently been reduced.[30] The House passed HB 289 on March 1, 1999.[31]

From House Floor Amendments to Senate Substitute

The Senate offered a substitute to HB 289 that altered the wording of the bill, but did not significantly change the bill's meaning.[32] For example, the Senate added the phrase "on call or on duty" to the requirement that a law enforcement agency provide twenty-four hour a day, seven days a week law enforcement service.[33] The "on call or on duty" language was designed to make it even easier for smaller police agencies to qualify for permits to operate speed detection devices.[34]

The Senate also limited the type of fines that would be included in calculating speeding ticket revenue for purposes of determining whether a speed trap exists.[35] The Senate added a provision that would exclude all fines collected for speeding violations exceeding seventeen miles per hour over the established speed limit from the calculation of total speeding fine revenue.[36] Representative Jamieson explained that when a court fines a driver for exceeding the speed limit by seventeen miles per hour or more, the fine serves a legitimate purpose; she is therefore not concerned that the motorist is the victim of a speed trap.[37]

The Senate passed HB 289 by substitute on March 22, 1999.[38] The Senate sent the bill back to the House for approval of its changes, and the House approved the Senate substitute on March 24, 1999.[39]

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30. *See* 1989 Ga. Laws 586, § 1, at 589 (formerly codified at O.C.G.A. § 40-14-9 (1997)).

31. *See* State of Georgia Final Composite Status Sheet, May 3, 1999. The bill passed with 159 in favor, three opposed, and 18 abstentions. *See* Georgia House of Representatives Voting Record, HB 289 (Mar. 1, 1999).

32. *See* HB 289 (SCSFA), 1999 Ga. Gen. Assem.

33. *See id.*; O.C.G.A. § 40-14-2(c) (Supp. 1999).

34. *See* Jamieson Interview, *supra* note 3.

35. *Compare* HB 289 (HCSFA), 1999 Ga. Gen. Assem., *with* HB 289 (SCSFA), 1999 Ga. Gen. Assem.; O.C.G.A. § 40-14-11(d) (Supp. 1999).

36. *Compare* HB 289 (SCSFA), 1999 Ga. Gen. Assem., *with* HB 289 (HCSFA), 1999 Ga. Gen. Assem.; O.C.G.A. § 40-14-11(d) (Supp. 1999).

37. *See* Jamieson Interview, *supra* note 3. *But see* Yancey Interview, *supra* note 4 (stating that the Department of Public Safety was opposed to this provision in the bill because it might create a way for law enforcement agencies to get around the law by disproportionately writing tickets over the 17 miles per hour limit).

38. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.

39. *See id.*

The Act

The Act amends Code sections 40-14-2 to -3, and -11, relating to the use of speed detection devices.[40] The Act modifies subsection (c) of Code section 40-14-2 by deleting the former requirement that a law enforcement agency employ at least one full-time peace officer in order to apply for certification to use speed detective devices.[41] It also deletes the requirement that only full-time registered or certified peace officers operate speed detection devices.[42] The Act replaces these former provisions with one requiring the law enforcement agency to provide services by certified peace officers twenty-four hours a day, seven days a week while on call or on duty, or allow only full-time peace officers to operate speed detection devices to qualify to receive a permit to use speed detection devices.[43] The General Assembly modified these Code sections to make it easier for smaller law enforcement agencies to qualify for permits to operate speed detection devices.[44]

The Act also authorizes qualifying county sheriff departments to use speed detection devices.[45] Further, the Act requires that persons operating a speed detection device be registered or certified by the Georgia Peace Officer Standards and Training Council as peace officers as well as operators of speed detection devices in an effort to keep officers from using speed detection devices in violation of the Code.[46]

The Act modifies subsection (a) of Code section 40-14-3 by providing for the use of speed detection devices by agencies who have applied for certification and who have an application pending, as long as the agency meets all of the other requirements to use speed detection devices.[47] Finally, the Act establishes that the use of a speed detection

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40. *See* O.C.G.A. §§ 40-14-2 to -3, -11 (Supp. 1999).
41. *Compare* 1997 Ga. Laws 956, § 1, at 956 (formerly found at O.C.G.A. § 40-14-2(c) (1997)), *with* O.C.G.A. § 40-14-2(c) (Supp. 1999).
42. *Compare* 1997 Ga. Laws 956, § 1, at 956 (formerly found at O.C.G.A. § 40-14-2(c) (1997)), *with* O.C.G.A. § 40-14-2(c) (Supp. 1999).
43. *Compare* 1997 Ga. Laws 956, § 1, at 956 (formerly found at O.C.G.A. § 40-14-2(c) (1997)), *with* O.C.G.A. § 40-14-2(c) (Supp. 1999).
44. *See* Jamieson Interview, *supra* note 3; Streat Interview, *supra* note 4.
45. *Compare* 1997 Ga. Laws 956, § 1, at 956 (formerly found at O.C.G.A. § 40-14-2(c) (1997)), *with* O.C.G.A. § 40-14-2(c) (Supp. 1999).
46. *Compare* 1997 Ga. Laws 956, § 1, at 956 (formerly found at O.C.G.A. § 40-14-2(c) (1997)), *with* O.C.G.A. § 40-14-2(c) (Supp. 1999).
47. *Compare* 1997 Ga. Laws 956, § 1, at 956 (formerly found at O.C.G.A. § 40-14-2(c) (1997)), *with* O.C.G.A. § 40-14-2(c) (Supp. 1999).

device may be presumed to be for revenue purposes, rather than to promote public safety and welfare, when the fines levied based on the use of speed detection devices for speeding offenses equal forty percent or more of that law enforcement agency's budget.[48]

The Act easily passed both the House and the Senate because so many law enforcement agencies supported it.[49] Senator Streat explained that the Act was well received because it allows smaller cities to have access to speed detection devices permits, yet it provides increased protection for citizens from the abuses of speed traps.[50]

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48. *See* O.C.G.A. § 40-14-11(d) (Supp. 1999).
49. *See* Streat Interview, *supra* note 4.
50. *See id.*

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