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Red-light Cameras in Texas: A Status Report

RÉPORT

Accidents caused by Texas drivers who run red lights are extremely costly in human and economic terms. The Texas Department of Public Safety (DPS) crash database shows injuries and fatalities stemming from red-light crashes grew from 10,000 annually in 1975 to 24,000 per year in 2001, and a recent Federal Highway Administration study identified Texas as one of the worst states for redlight running. The financial costs of these accidents in Texas have been estimated at between \$1.4 billion and \$3 billion annually in medical, insurance, and related expenses. Red-light accidents often are among the worst because they generally involve vehicles crashing directly into the driver or passenger side of another car at high speeds.

The use of photographic traffic signal enforcement systems – or "red-light cameras" – by Texas municipalities has exploded since the 78th Legislature enacted SB 1184 by Deuell, which included a provision granting cities additional powers to regulate traffic on their roads and issue civil citations for violations that previously had been punishable only as criminal offenses. Since 2003, at least a dozen Texas cities have contracted with vendors to catch and fine red-light runners, and a number of others are considering establishing programs of their own.

Although several municipalities have interpreted the language in SB 1184 to mean that Texas law permits the use of red-light cameras, the Legislature has not enacted legislation that specifically allows or prohibits their use.

This report reviews current law, examines state and national data, and explores some of the legal and ethical questions raised by the use of red-light cameras.

not enacted legislation that specifically allows or prohibits their use. A recent attorney general opinion provides clear guidance for the use of cameras on state roads, allowing municipalities to install red-

light cameras under a partnership with the Texas Department of Transportation (TxDOT). But Texas has not explicitly addressed the use of cameras on non-state roads.

Red-light cameras have been controversial since they first were installed in New York City in 1993, and their use has sparked debate for many years in Texas and around the country. Some states have banned the cameras outright while others have granted complete approval for the use of cameras. Still others allow the cameras but limit their use, and a few states

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 including Texas – have not codified the use of redlight cameras even as cities create and operate their own programs.

The fact that different states have adopted diverse redlight camera policies is a reflection on the mixed findings that have emerged from research into the effectiveness of these cameras. A recent federal study found economic benefits associated with red-light camera use, and many cities in Texas and nationally that use cameras have seen reductions in crashes and violations. But a number of studies suggest that the use of red-light cameras may actually increase the number of car accidents.

This report summarizes current law and reviews the legislative history concerning the use of red-light cameras in Texas. It examines state and national data on red-light camera efficacy, describes how the cameras work, and reports which Texas cities are operating or planning red-light programs. Finally, the report explores some of the legal and ethical questions raised by the use of red-light cameras.

Red-light camera legislation in Texas

Current law. Texas has no law that explicitly addresses the use of red-light cameras, but several Texas cities have taken their cues from recent legislative action and guidance from the Attorney General's Office.

In February 2002, then-Atty. Gen. John Cornyn issued an opinion on red-light cameras at the request of the city of Richardson and Rep. Tony Goolsby of Dallas. Richardson had inquired about whether state law would allow the city to use the cameras and issue civil violations in lieu of criminal citations for red-light runners caught on film. In Opinion No. JC-0460, the attorney general determined that cities were allowed to use the cameras but could not issue civil citations for red-light violations.

Cities have home-rule authority to enact traffic regulations unless they conflict with state law. Atty. Gen. Cornyn found that an ordinance creating a civil penalty against the owner of a vehicle running a red light, as evidenced by a photo taken by a red-light camera, conflicted with state law imposing a criminal penalty for running a red light in three ways:

1) the penalty would be imposed on the owner of the vehicle rather than the driver;

- 2) it would be a civil rather than a criminal offense; and
- 3) the penalty would be \$75 rather than a criminal fine ranging from \$1 to \$200.

Atty. Gen. Cornyn did leave the door open for future use of the cameras to issue civil citations by pointing out that an "ordinance could be adopted by the city if the legislature amended state law so as to expressly permit it or otherwise eliminate the conflict" between civil and criminal punishment for the same violation.

Red-light camera advocates believe the enactment of SB 1184 by Deuell in 2003 eliminated this conflict. A House amendment to SB 1184 added the following language to Transportation Code, sec. 542.202, which covers the powers of local authorities over roads in their jurisdictions:

"Regulating' means criminal, civil, and administrative enforcement against a person, including the owner or operator of a motor vehicle, in accordance with a state law or a municipal ordinance."

A bill that would have repealed that language and another that would have banned the cameras outright both failed during the regular session of the 79th Legislature. Supporters of the cameras point to those developments as a tacit endorsement by the Legislature of red-light camera use.

On June 23, 2006, following a request from TxDOT for legal guidance, Atty. Gen. Greg Abbott issued an opinion that use of red-light cameras is allowed on state roads. In Opinion No. GA-0440, noting TxDOT's broad authority over the state highway system and its current use of cameras for traffic and emergency purposes, the attorney general affirmed that the department can install the cameras and allow municipalities to do the same "for the purpose of enforcing traffic laws on state highways" and for the promotion of public safety. Atty. Gen. Abbott also cited Transportation Code, sec. 221.002, to show that municipalities and the Texas Transportation Commission currently are authorized to reach agreements that share the responsibility and liability associated with performing various duties on state roads. The opinion did not address whether local governments have the authority to use redlight cameras on non-state roads because this subject fell outside the scope of TxDOT's request.

To date, TxDOT has received requests from 14 cities regarding the installation of red-light cameras on state roads. By August, the agency expects to have drafted an agreement

that will allow TxDOT to authorize municipalities to place cameras on state highways and rights of way. The agency does not plan to turn down requests to install cameras but will review all applications to ensure that municipalities first have explored engineering options to reduce red-light running accidents. TxDOT will not charge municipalities to install the cameras and will not seek any revenue raised through their use. In addition, the agency will turn over all responsibility regarding the funding and operation of the cameras to the municipalities.

Legislative history. The Texas Legislature has considered legislation addressing red-light cameras in all but one of the last six regular sessions.

In 1995, SB 876 by Cain, which would have authorized municipalities to use red-light cameras, passed the Senate but failed in the House on second reading during the 74th Legislature.

The 76th Legislature in 1999 did not enact HB 1152 by Driver, which would have allowed a municipality in a county with a population of at least 150,000 or next to a county with a population of at least 150,000 to issue civil citations to traffic offenders caught by red-light cameras. The House tabled the bill after passing a number of floor amendments, including one that would have required a notice accompanying the cameras to read: "Big Brother is watching you!"

In 2001, HB 1115 by Driver died after two separate votes in the House ended in a tie. The bill would have allowed municipalities to impose civil penalties under the use of a "photographic traffic signal enforcement system."

Two bills that would have authorized red-light cameras failed to pass in the 78th Legislature during the 2003 regular session. HB 200 by Berman died in House committee, and HB 901 by P. King was defeated in the full House after two amendments restricted camera use to municipalities in counties with populations of 50,000 or less and then to counties with populations of 50 or less.

In enacting SB 1184 by Deuell, which deals with enforcing commercial motor vehicle standards, the 78th Legislature in 2003 approved an amendment by Rep. Harper-Brown of Irving that grants local authorities the power to regulate roads using "criminal, civil, and administrative enforcement" (Transportation Code, sec. 542.202(b)(3)). Red-light camera advocates point to SB 1184 as the legal justification for the municipal operation of red-light camera programs that issue civil citations to offenders. Opponents, however, believe that SB 1184 does not authorize cities to use red-light cameras and argue that Texas lacks a law specifically adressing this subject.

During its 2005 regular session, the 79th Legislature considered HB 259 by Elkins, which would have repealed Transportation Code, sec. 542.202(b)(3). It passed the House but died in the Senate after failing to get the two-thirds support needed to bring the bill to the floor. HB 1347 by Isett also passed the House but died in Senate committee. In addition to repealing sec. 542.202(b)(3), it would have prohibited local authorities from operating red-light cameras on their roads.

National red-light camera programs and data

A variety of state actions have mirrored the disparity in studies focused on red-light cameras. Some states and municipalities have banned their use outright or canceled programs based on evidence that the cameras are ineffective in enhancing safety. Other states and cities have cited different studies showing improvement in safety at intersections using red-light cameras.

Proponents of red-light cameras often point to the increased popularity of the devices as evidence of their success - cities would not use them unless they worked. Twelve states and the District of Columbia have enacted legislation allowing the use of red-light cameras. Many apply conditions to their use, such as posting signs to alert drivers that they could be photographed and cited if they run a red light. New York allows cameras to be used only in cities with populations of at least 1 million and caps at 100 the number of intersections at which any jurisdiction can employ the cameras. Certain cities in North Carolina and those with populations greater than 30,000 in Oregon can operate red-light cameras. California, Colorado, Delaware, Georgia, Illinois, Maryland, Pennsylvania, Rhode Island, and Washington also have laws allowing for photo enforcement at intersections (see Table 1: Red-light camera programs in other states, page 5).

In nine other states, including Texas, cameras are in use in the absence of any specific state statute authorizing or prohibiting them. Arizona, Iowa, Missouri, New Mexico, Ohio, Rhode Island, South Dakota, and Tennessee are silent on the legality of cameras, but red-light camera programs are operating in cities such as Phoenix, Toledo, and Knoxville. In total, more than 110 cities across the country employ red-light cameras.

Success stories and studies. Supporters of redlight cameras cite a number of government and private studies as demonstrating the benefits of employing the cameras. The federal Transportation Research Board found in its "Impact of Red Light Camera Enforcement on Crash Experience" survey conducted in 2003 that a majority of red-light camera jurisdictions reported decreases in accidents and violations as a result of the crashes, including:

- Charlotte, NC, where all crash types dropped by 19 percent and crash severity fell by 16 percent during a three-year period;
- Sacramento, CA, where red-light crashes decreased 39 percent during a one-year period; and
- Baltimore County, MD, where red-light crashes fell 30 percent during a one-year period.

The Federal Highway Administration in April 2005 reported "a modest to moderate economic benefit" to jurisdictions that installed the cameras, which yielded an average of \$39,000 to \$50,000 annually at each intersection where they were in use. Using data collected around the country at 132 intersections, the study found the cameras caused a reduction in right-angle crashes but an increase in rear-end collisions. Although the data for intersections with and without the cameras were nearly identical in terms of the total number of crashes, the study concluded that cameras can reduce costs because broadside crashes are more dangerous and cause greater damage than rear-end collisions.

The Insurance Institute for Highway Safety has conducted several studies across the nation, finding that cameras have reduced red-light running and crashes at intersections. Its 2002 study, which compared crash data from Oxnard, CA, with data from three similar cities where red-light cameras are not employed, showed an overall crash rate 7 percent lower in Oxnard and a rate of injury accidents 29 percent lower there than in the other cities. The study examined all intersections in Oxnard and concluded that the presence of cameras at some intersections creates a "halo effect" that prompts drivers to be more cautious at every intersection. **Rejected programs and opposing data.** While studies and statistics have touted the success of red-light cameras, several states and municipalities have reached different conclusions.

In 2005, the Virginia Legislature opted not to continue that state's red-light program after the conclusion of a 10-year pilot project in several communities around Washington, D.C., and in Virginia Beach. Along with general concerns about civil liberties, legislators reached the decision after commissioning a study conducted by the Virginia Transportation Research Council – a group jointly sponsored by the Virginia Department of Transportation and the University of Virginia. Based on data from the Northern Virginia cameras, it concluded that the number of injury-causing crashes actually had increased while the intersections were under surveillance. Although the cameras reduced the number of accidents in which one or more of the drivers was charged with failing to obey the stop light, the analysis found an increase in rear-end crashes while revealing a possible decrease in crashes at an angle. While allowing that the severity of injuries incurred in these angled crashes could be greater than those resulting from rear-end collisions, researchers did not have data detailed enough to prove that hypothesis.

In 2002, Hawaii lawmakers canceled a traffic camera enforcement program that used cameras mounted in vans and radar to target speeders and red-light runners. Critics claimed that the program invaded the privacy of drivers and

Data from Garland

Of all the Texas cities using red-light cameras, only Garland has been operating a system long enough to have collected annual data on violations and citations. Since installing the cameras at the end of 2003, Garland has seen violations and citations drop in each successive calendar year.

The city launched its program with three cameras, added one a few months later, and installed a fifth camera in 2005. (The fifth camera has been excluded from the analysis because it malfunctioned during the final three months of 2005.) Program data show that average monthly violations per camera decreased 27 percent from 2004 to 2005, and average monthly citiations fell 14 percent over the same period.

Table 1: Red-light camera programs in other states

State	Legal status of red-light cameras
Arizona	No state law; city programs include Phoenix and Scottsdale
Arkansas	Cameras banned unless law enforcement officer is present to issue citation
California	Cameras legal statewide; programs in at least 55 cities and two counties
Colorado	Cameras legal statewide; programs in at least six cities
Delaware	Cameras legal statewide; programs in at least five cities
District of Columbia	Cameras legal citywide
Florida	No state law; attorney general ruled camera evidence cannot be used to cite motorists
Georgia	Cameras legal statewide; programs in at least 15 cities and two counties
Hawaii	Program terminated in 2003
Illinois	Cameras legal in eight counties
lowa	No state law; city programs include Council Bluffs and Davenport
Maryland	Cameras legal statewide; programs in at least 17 cities and 6 counties
Missouri	No state law; city programs include Arnold and Florissant
Minnesota	No state law; sole program in Minneapolis overturned by court
New Mexico	No state law; city program in Albuquerque
Nevada	Cameras banned unless operated by law enforcement agency
New York	Cameras legal in cities with at least 1 million residents; program in New York City
North Carolina	Cameras legal in select cities; many city programs suspended due to legal challenges
Ohio	No state law; city programs include Columbus, Dayton, and Toledo
Oregon	Cameras legal in cities with at least 30,000 residents; programs in at least three cities
Pennsylvania	State law authorizes Philadelphia program
Rhode Island	Cameras legal statewide; program in Providence
South Dakota	No state law; program in Sioux Falls
Tennessee	No state law; city programs include Germantown and Knoxville
Utah	Restricts cameras to low-speed roads where a police officer also has witnessed the violation
Virginia	Legislature did not renew program after 10-year pilot expired in July 2005
Washington	Cameras legal statewide; programs in at least three cities
West Virginia	Cameras banned statewide
Wisconsin	Cameras banned statewide

Source: National Conference on State Legislatures and HRO research

was unconstitutional because it assumed that the vehicle's owner was driving the car when the violation occurred. The governor ordered an end to the program during the first year of its three-year pilot phase, and subsequent efforts to revive the program have stalled.

Four other state legislatures, in Arkansas, Nevada, West Virginia, and Wisconsin, have banned automated red-light enforcement systems. Florida's attorney general ruled that evidence gleaned from red-light cameras could not be used to issue tickets, but three cities have engaged in a legal battle with the state by moving forward with red-light camera programs nonetheless.

In response to other studies that had been criticized for their simplicity or small sample sizes, the Urban Transit Institute at North Carolina A&T State University analyzed reported accidents at or near 303 intersections over a 57month period that began more than two years before the introduction of red-light cameras. The October 2003 study, updated the following July, found that red-light cameras did not reduce crashes and that they may have led to increases in rear-end and other types of crashes. Accidents involving cars traveling in different directions did not change with the introduction of the cameras, according to the study. "In many ways," the authors concluded, "the evidence points toward the installation of [red-light cameras] as a detriment to safety."

Based on data from a District of Columbia intersection accident database over a seven-year period, the *Washington Post* in October 2005 determined that the number of crashes at intersections with cameras doubled from 1998 to 2005 and increased by 64 percent at intersections without 24hour monitoring. Even fatal-and-severe-injury crashes and broadside crashes appear to have increased significantly at all intersections, which critics say contradicts the belief among red-light camera advocates that cameras are effective in preventing the deadliest accidents.

Problems with cameras. Technical and legal problems also have mitigated against the use of red-light cameras in several jurisdictions around the country.

In Minnesota, where no law specifically allows or prohibits red-light cameras, a county judge halted the Minneapolis red-light program, the only one in the state. Because state law makes drivers responsible for redlight violations and the city does not have the authority to establish an ordinance directed at the actual drivers, a Hennepin County District Judge in March 2006 struck down the city's ordinance because it conflicts with state law by shifting the burden of proof to vehicle owners instead of requiring ticketing authorities to prove violations.

North Carolina's courts also have effectively undercut red-light programs there. In May 2006, the North Carolina Court of Appeals found the program unconstitutional because it does not give 90 percent of the money collected from every traffic citation to local school systems as mandated by the state constitution. More than two dozen cities and towns operate cameras there, and some have suspended their programs during the appeals process. Because the cost of paying red-light camera vendors is much higher than the 10 percent portion of the ticket that jurisdictions can keep for themselves, cities will have to decide whether to pay for their programs through other means or kill them entirely.

Los Angeles also had difficulty with its program after 20 percent of its photographed violations were dismissed due to lack of clear evidence. The city briefly stopped its program, terminated its vendor, and contracted with a new company to install the cameras at as many as 32 intersections by the end of 2006.

Legal and ethical debates

Red-light cameras bring with them the potential of increased safety and revenue, but they also have generated a number of ethical and legal dilemmas. Opponents of the cameras express concerns about privacy and the rise of a surveillance state, along with other complaints about the unfairness of punishments issued by for-profit companies in lieu of law enforcement agencies. Advocates say that many improvements have been made to the systems since they began operating in dozens of cities around the country, nullifying many of these concerns.

Equality of punishment. A vehicle running a red light in a community with red-light cameras can be subject to unequal punishments, critics say, depending on who catches the violator. A driver caught by a red-light camera faces a civil citation and a fine that in most Texas communities using the cameras is lower than the one issued by a uniformed officer. Also, because an officer-issued ticket is a criminal citation, it can add points to a driver's record and potentially raise that person's insurance rates.

How a red-light camera program works

Several companies operate red-light cameras under contract with municipalities. Most companies use digital cameras mounted above the corners of an intersection pointing in all four directions of traffic. The cameras are connected by computer to both the traffic signal and to underground electrical wires that activate the cameras when a driver runs a red light. The systems utilize a "passive sensor" that switches on the cameras only when a vehicle enters the intersection after the light has turned red; a vehicle already in the intersection, such as one waiting to turn left just as the light turns red, would not trigger the redlight camera.

When a vehicle runs a red light, the computer triggers the camera to take two overhead pictures to document the violation – a shot of the vehicle entering the intersection after the light turns red and another picture of the vehicle moving through the intersection while the light is red. A separate camera takes a photograph of the vehicle's license plate. After taking the pictures, the computer superimposes data on the image to include the time and date of the infraction, the location of the intersection, the speed of the car (calculated by the distance and time documented in the photos), and the elapsed time between when the light turned red and when the car entered the intersection. Some systems also employ a video camera to show a 12-second bloc of time surrounding the infraction. The vendor then weeds out any blurred or otherwise unusable photos before forwarding the completed images to the contracting municipality.

The Garland model. Most Texas cities employ the following model, pioneered by the city of Garland, to issue and adjudicate the citations. Upon receiving the images from the vendor, the city removes any that it believes would not stand up to a challenge based on incomplete or inconclusive data. Images that document a valid reason for a car to run a red light, such as a funeral procession or a police officer manually directing traffic at the intersection, also are discarded. The police department then issues a civil violation - rather than a criminal violation that must be witnessed by a police officer – to the vehicle's registered owner. As a civil violation, the offense is not included on the owner's driving record. In Garland and many Texas cities, the fine for the offense is \$75 but can increase to \$200 for a driver who has received at least two red-light camera citations in the previous 12 months.

Upon receiving a citation, the owner of the vehicle has three options: pay the fine, request an administrative hearing, or provide evidence to show that someone else was driving the vehicle at the time of the infraction. Such evidence may include, for example, a police report showing that the vehicle had been stolen prior to the red-light offense or a bill of sale demonstrating that the car had been sold prior to the infraction but had not yet been registered by the new owner. In such cases, the police department dismisses the original ticket and, when possible, reissues it in the name of the actual driver.

A person challenging the ticket before an administrative hearing officer also may introduce mitigating evidence that an officer on the scene might have taken into account, such as weather conditions that would have made a sudden stop unsafe. In addition, if a driver received for the same offense a civil citation in the mail and a ticket from an officer on the scene, the city would dismiss the civil citation.

When motorists fail to respond to civil citations by the deadline printed on the back of the ticket, some cities have begun turning over delinquent payments to collections agencies. Indefinite failure to pay the fine could result in the inclusion of outstanding debt on the driver's credit report, as opposed to failure to respond to a criminal citation for which penalties include denial of a driver's license renewal, denial of a vehicle registration renewal, and/or an additional criminal charge of failure to appear accompanied by a warrant for the driver's arrest.

Most companies sign multi-year agreements to run red-light cameras at selected intersections. The companies maintain and own the cameras themselves and generally charge a monthly fee per camera in service. Some companies still receive a certain percentage of each ticket assessed but this practice has declined due to the perception that companies and cities have an incentive to issue as many tickets as possible. Although terms vary, each contract allows the city to terminate the program if the Legislature or the courts deem the use of red-light cameras illegal. Most contracts allow municipalities to opt out if they do not make enough money to recoup their costs, although there generally are expenses associated with dismantling a redlight camera operation. Supporters of red-light cameras point out that repeat offenders would eventually face more severe punishment under the program that Garland and most Texas cities have established because those receiving more than two tickets in a 12-month period face larger fines. The cameras are not installed at every intersection, and police officers monitoring those stop lights likely would catch drivers who consistently run afoul of the law. Moreover, supporters say, the fee for a civil penalty is equivalent to that paid by people who take defensive driving or deferred adjudication to dispose of criminal citations.

Equality of enforcement. Opponents of the cameras believe they violate a citizen's Sixth Amendment right to confront his or her accuser. Unlike an officer on the scene, a camera cannot testify as to what happened, and an accused motorist cannot offer a defense against a machine that may have malfunctioned and snapped a picture when the light was not red. Further, opponents say, cameras cannot exercise the discretion an officer on the scene might use in choosing not to cite a motorist running a red light due to bad weather or participation in a funeral procession, for example.

Supporters argue that the use of red-light cameras does not violate the Constitution because the municipality itself becomes the accuser. A person who receives a ticket via camera also has the opportunity to explain the case to an administrative hearing officer, who can exercise the same discretion to dismiss a ticket that a police officer might.

Safety. Many police departments in Texas are strong supporters of red-light cameras because they say the technology allows them to allocate manpower more efficiently. Assuming a police officer takes about 15 minutes to pull over and ticket a motorist, the officer could cite no more than four offenders per hour. In addition, these supporters say, a lone officer monitoring red-light runners at a given intersection can only watch traffic moving in one direction and would miss a majority of that traffic while citing offenders. Red-light cameras have no such limitations, supporters say. In fact, some cameras can photograph up to four violators moving in one direction at the same time.

Opponents, however, point to what cameras cannot do – remove reckless or drunk drivers from the road. They also fear that the cameras simply will evolve into a replacement for uniformed traffic officers who will either be reallocated or reduced in force as a result of downsizing. Red-light camera advocates are skeptical of such claims, citing several examples of cities with cameras that are using proceeds to hire additional officers. Although drunk and reckless drivers are a safety concern, so is a police officer who places other drivers in danger by running a red light to apprehend a car that ran a red light. Besides, supporters say, the cameras would actually free more officers to remove habitually dangerous drivers from the road.

Camera supporters also argue that drivers in areas without cameras know there are only so many officers on the road and would drive more carefully if they knew intersections were monitored around the clock. Further, they say, cameras are valuable in helping police departments document the causes of accidents, especially those that occur without witnesses, and preventing traffic problems such as gridlock caused by cars that block intersections.

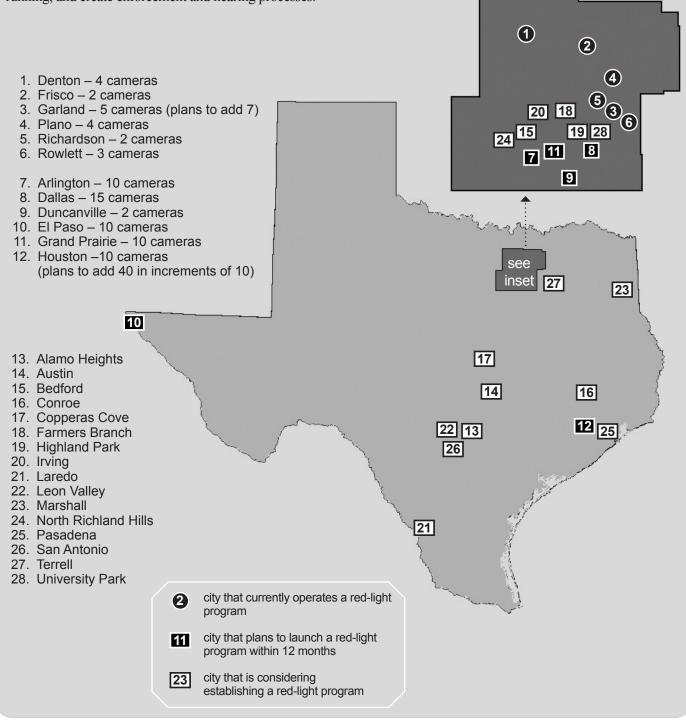
Revenue. Some opponents of red-light cameras worry that cities with red-light camera programs may be more interested in raising revenue than in promoting public saftety. They point to San Diego as "exhibit A" of a system run amok. The city contracted with Lockheed Martin Co. to operate a red-light camera program, giving the company \$70 for each \$271 citation it issued. But according to the Red Light Camera Defense Team, a group of area attorneys, the city and Lockheed chose to monitor not the most dangerous intersections but those with short yellow-light times and heavy traffic volumes. Three months after the city suspended the program in June 2001, a California judge dismissed almost 300 citations because he found Lockheed had too much discretion over the program's implementation.

Red-light camera advocates observe that San Diego's program is up and running again in partnership with Affiliated Computer Services, which had acquired Lockheed's red-light camera division in the interim. Instead of a per-ticket fee, the company charges a monthly rate, and every Texas city operating a red-light program has implemented a similar system. Neither red-light vendors nor police departments can sequence the traffic lights, which are controlled by state or local traffic departments in accordance with state and federal regulations.

In addition, supporters say, many Texas cities have specifically earmarked profits made from the cameras for use in enhancing public safety. Garland, for example, has used red-light money to replace all signal lights with bigger

Figure 1: Red-light camera programs in Texas cities

Although Richardson was the first city in Texas to establish a red-light camera pilot and seek state approval for the program, the city of Garland since has taken the lead in exploring and testing its legal authority to use red-light cameras. In September 2003, Garland became the first city to install and run a permanent red-light camera program following the enactment of SB 1184. Since then, the legal framework used in Garland has been mirrored in at least a dozen Texas communities that have passed ordinances to establish programs, impose civil penalties for red-light running, and create enforcement and hearing processes.



and brighter light-emitting diode (LED) lights, along with replacing all school-crossing signs with high-visibility fluorescent green signs and re-striping all intersections.

Privacy. With a nod to the totalitarian government depicted in George Orwell's futuristic novel *Nineteen Eighty-Four*, some critics believe the municipal use of red-light cameras is akin to Big Brother spying on the drivers of Texas. Already, they say, the proliferation of surveillance equipment in our society is excessive, with public and private cameras installed on many streets and buildings to monitor traffic and guard against break-ins. Red-light camera programs, they argue, violate the Fourth Amendment's protection against unreasonable search and seizure. City governments unreasonably deploy cameras on public roads without probable cause to believe that any particular motorist will violate the law.

Camera supporters contend that privacy claims brought by drivers on public roads have been rejected by courts around the country. The fact that cameras already are used widely in Texas, including at toll booths, with little public complaint proves they are not only effective but also relatively noninvasive, supporters say. This is especially true given that red-light cameras in Texas photograph only the vehicle and license plate but not the driver. In addition, supporters say, the cameras are not constantly running – they are triggered to take photos only after a motorist has run a red light.

Other options

Advocates on both sides of the debate point to several reasons why Texas needs a statute that explicitly allows or prohibits the use of red-light cameras by cities to issue civil citations.

Authorizing red-light cameras. Supporters of red-light camera programs argue that the Legislature should enact legislation explicitly authorizing their use. Based on experiences with red-light cameras in other states as well as concerns about problems that could arise from the patchwork of programs that has emerged in Texas, they urge lawmakers to consider the following ideas as they move forward with such legislation:

Protection from litigation. In Minnesota, the lack of a state law authorizing red-light cameras enabled courts there to invalidate programs on constitutional grounds.

While no legal challenge to a red-light camera program in Texas is underway today, litigation on this front is always a possibility absent a state law expressly authorizing such programs.

Breadth of current authorizing language. The language in the Transportation Code that municipalities have used as legal authority to install the cameras on non-state roads allows local authorities to use criminal, civil, or administrative penalties against a motorist for violating a state law or municipal ordinance. While municipalities thus far have used this language only to operate red-light camera programs, it could be construed to govern a variety of other actions not explicitly covered by state law, such as prohibiting the use of a cell phone while driving. By directly authorizing red-light camera programs in statute, the Legislature could strike sec. 542.202(b)(3) to ensure that cities did not use this language in the future to conduct activities that lawmakers had not intended to allow.

Regulation and oversight. Although most Texas cities with red-light camera programs have followed the Garland model (see *How a red-light camera program works*, page 7), they currently are not bound by any state regulations when establishing their systems. State law mandates that cities must set criminal fines for red-light running that range between \$1 and \$200, but there is no corresponding guideline if the violation is deemed a civil offense. Writing red-light camera programs into law would allow the Legislature to set limits on everything from the number of cameras a city could install to the amount it could fine violators.

Revenue direction. Many Texas cities that operate red-light cameras have dedicated the use of revenue generated from the program for public safety or other police functions. But cities are not required to use redlight violation dollars for any particular purpose, and there is evidence that certain cities, such as San Diego, have implemented red-light camera programs that emphasize revenue generation over public safety. A law that specifically authorizes the use of red-light cameras could require cities to use the revenue generated for the public good.

Eliminating unequal punishment. A Texas driver is subject to different punishment based on whether he or she is cited by an officer or a camera. Issues with unequal punishment do not exist in states such as Arizona and California where all red-light running offenses are criminal violations. In addition to photographing cars and license plates, their camera systems also take pictures of actual drivers, supplying the evidence needed to cite the driver for a criminal offense.

Open records status. No statewide standard exists for the use and sharing of images by municipalities that operate red-light camera programs. Images captured by red-light cameras are considered open records subject to discovery under the Texas Open Records Act and can be subpoenaed by courts and insurance companies in traffic disputes. However, a party requesting the information must have key information such as the time, date, and location of the offense because cities that use red-light cameras do not necessarily file the images under the violators' names.

HB 901 by P. King, which the 78th Legislature did not enact in 2003, would have addressed the open-records status of red-light camera images. Except for a request by the cited motorist, the bill would have exempted the images from discovery under the Open Records Act. It also would have required municipalities to destroy all photos captured by red-light cameras within 30 days of payment of the civil penalty.

Double jeopardy. The Garland ordinance, which many Texas cities with red-light programs use as a model, includes a provision designed to prevent placing redlight violators in double jeopardy; i.e., imposing both a criminal and civil penalty for the same infraction. Under this provision, the city cannot impose a civil penalty on a motorist who has been cited or arrested for the same offense by a police officer.

In practice, Garland's police officers flag each criminal citation written for red-light running at intersections under photo enforcement, which notifies the department that motorists should not receive civil citations for those offenses. But many legal experts believe that a driver who received two citations for a single offense could pay the civil fine immediately and then successfully contest the criminal violation on the basis that the driver already had been punished for the offense.

The potential for placing offenders in double jeopardy likely will increase as more and larger cities begin operating red-light programs, and no statewide standard currently exists to ensure that city ordinances guard against double jeopardy. **Banning red-light cameras.** Opponents of red-light camera programs believe that cities should use measures other than automated enforcement to improve traffic safety. They argue that the Legislature should explicitly prohibit red-light cameras and grant TxDOT and DPS the resources and authority to take the following steps:

Lengthen warning time prior to red lights. A March 2005 Texas Transportation Institute study of 181 Texas intersections during a three-year period found that increasing the length of yellow-light time by one second reduced violations by 53 percent and crashes by 40 percent. In addition, traffic signals in some European countries employ a countdown clock that shows how many seconds remain until the light will turn red. Supporters of this approach contend that drivers often run red lights simply because they misjudge how much time they have before a light turns red, although opponents argue that drivers who misjudge yellow lights today still will likely run red lights after the clock has run down.

Make lights more visible. A variety of technological solutions are available to improve the visibility of traffic lights from afar, including the use of larger signals and brighter lights.

Explore engineering alternatives. The use of cameras reduces incentives to determine the true causes of red-light running accidents, such as poorly designed intersections. Examples of improvements include installing dedicated turn arrows, trimming hedges and reducing other potential vision impairments, and installing traffic circles in addition to or instead of stop lights.

Improve lane markings. Intersections that are poorly marked can lead to accidents, particularly among drivers who are unfamiliar with the area. Restriping the lane markings helps to define clearly the boundaries of intersections, ensure that cars have ample room to execute turns, and reduce confusion among drivers.

by Joel Eskovitz

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