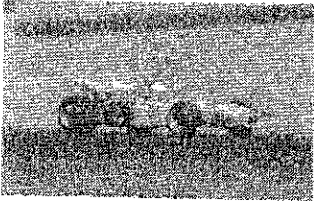
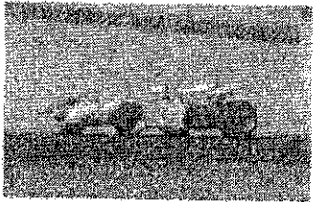


# **SPEED ENFORCEMENT**

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**A Review  
of  
Statutes  
and  
Case Law**



*By:*

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*(Materials revised: March, 2008)*

# A SPEED TRAP IS:

A particular section of highway measured as to distance with marked or designated boundaries which can be used to calculate speed by means of the time it takes a vehicle to travel the known distance.

CVC § 40802 (a)(1)

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- ☞ **People v. Echols** (1975) 46 Cal.App.3d Supp.1  
(Helicopter)
  
- ☞ **People v. Darby** (1979) 95 Cal.App.3d 707  
(Airplane) "The use of measured miles to correlate air speed to ground speed is not a speed trap," pg. 710.  
  
*Using adjusted air speed to pace the speeder is permitted.*
  
- ☞ **In Re Beamer** (1955) 133 Cal.App.2d 63  
Radar does not fall within Section 40802(a)(1) CVC.
  
- ☞ **People v. Goulet** (1992) 13 Cal.App.4th Supp.1  
"Speed trap rules are not applicable to evidence of speed based on use of a speedometer without any use of radar." Supp. Pg. 3

# **USE OF RADAR AND LASER (LIDAR) ARE IMPLICITLY AUTHORIZED BY STATUTE**

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## **RADAR**

CVC Section 40802(a)(2)

*"...enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects..."*



## **LASER**


CVC Section 40802(c)(1)(B)

*"When laser or any other electronic device is used to measure the speed of moving objects..."*

**“WE HAVE CONCLUDED THAT  
THE VALIDITY AND ACCURACY  
OF RADAR DEVICES IS A  
PROPOSITION OF SUCH COMMON  
AND UNIVERSAL KNOWLEDGE  
THAT IT MUST BE JUDICIALLY  
NOTICED AND THERE IS NO  
NECESSITY TO CALL AN EXPERT  
WITNESS TO ESTABLISH THIS  
COMMONLY KNOWN AND  
ACCEPTED PROPOSITION.”**

**Pg.975**

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 People v. MacLaird (1968) 264 Cal.App.2d 972

# A SPEED TRAP IS:

A particular section of highway with a PRIMA FACIE speed limit which is not justified by an engineering and traffic survey and involves the use of radar or any other electronic device that measures the speed of moving objects.

CVC § 40802(a)(2)

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- ☞ **People v. Goulet** (1992) 13 Cal.App.4th Supp.1  
*"The speed trap laws required the prosecution to establish that the posted speed was justified by a valid engineering and traffic survey." Pg. Supp.5 (Posted 35 mph but 85<sup>th</sup> percentile was 48 mph)*
- ☞ **People v. Halopoff** (1976) 60 Cal.App.3d Supp.1 (No Survey)
- ☞ **People v. Sterritt** (1976) 65 Cal.App.3d Supp.1 (No Survey Produced at Trial)

# **THE PROSECUTION HAS THE BURDEN AS PART OF ITS PRIMA FACIE CASE OF ESTABLISHING THAT THE EVIDENCE IS NOT BASED UPON A SPEED-TRAP.**

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☞ Section 40803(b) CVC

☞ *People v. Halopoff* (1976) 60 Cal.App.3d Supp.1  
“...it is incumbent upon the People, without request from the defendant, to disclose to the Court and to the defendant that radar is involved and further, where such is the case, to demonstrate the existence of the engineering and traffic survey required by Section 40802, subdivision (b), in order to remove the case from the sanctions of 40801, 40803, 40804 and 40805.” Pg.Supp.5

☞ *People v. Sterritt* (1976) 65 Cal.App.3d Supp.1

☞ *People v. Cooper* (2002) 101 Cal.App.4th Supp.1  
“Appellant’s argument that the judgment must be reversed because of the failure to produce a current traffic and engineering survey is without merit because evidence of appellant’s speed was not obtained through radar.”  
Pg.Supp.7 (Vehicle Pace)

☞ *People v. Earnest* (1995) 33 Cal.App.4th Supp.18  
“...whenever radar is involved in the enforcement of a posted speed limit, (the people) must produce, in the courtroom, either the original traffic and engineering survey for the location of the citation or a certified copy of that survey...” Pg.Supp.20

# VALIDITY OF SURVEY

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## ☞ FIVE YEARS

CVC Section 40802 (a)(2)

*"...engineering and Traffic Survey conducted within five years prior to the date of the alleged violation."*

## ☞ SEVEN YEARS

CVC Section 40802(c)(1)(A)

*"...the arresting officer has successfully completed a radar operator course of not less than 24 hours on the use of police traffic radar and the course was approved and certified by the Commission on Peace Officer Standards and Training."*

## **For lidar, in addition to above:**

CVC Section 40802(c)(1)(D)

*"...when laser... is used to measure the speed of moving objects, the arresting officer has successfully completed... an additional training course of not less than two hours approved and certified by the Commission on Peace Officer Standards and Training."*

CVC Section 40802 (c)(1)(D)

*"The radar, laser or other electronic device used to measure the speed of the accused meets or exceeds*

*the minimal operational standards of the National Traffic Highway Safety Administration and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing facility.”*

**TEN YEARS**

CVC Section 40802(c)(2)(B)(i)(II)

*“If an engineering and traffic survey was conducted more than seven years prior to the date of the alleged violation, and a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume, 10 years.”*



# THE TRAFFIC AND ENGINEERING SURVEY MUST BE “AVAILABLE” AT THE TRIAL

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☞ *People v. Peterson* (1986) 181 Cal.App.3d Supp.7  
“...the prosecution has the burden of producing the survey. However, we hold that the prosecution satisfies this burden if it lodges a certified copy of the survey with the court and the court takes judicial notice of the survey. The defendant then under Evidence Code section 455 would have the right to examine the survey in order to substantiate his/her challenge. Thus, the defendant has the burden of explicitly asking for the survey.”  
Pg.Supp.8

☞ *People v. Ellis* (1995) 33 Cal.App.4th Supp.25  
A summary of the survey is inadequate to meet the prosecution’s burden.

**AN OFFICER IS INCOMPETENT  
TO TESTIFY AS A WITNESS  
WHERE RADAR IS USED AND THE  
POSTED SPEED IS NOT  
JUSTIFIED BY AN ENGINEERING  
AND TRAFFIC SURVEY, EVEN  
THOUGH THE OFFICER HAS  
USED ANOTHER INDEPENDENT  
MEANS OF OBTAINING THE  
DEFENDANT'S SPEED.**

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☞ Section 40803(a) CVC

☞ Section 40804(a) CVC


☞ *People v. Goulet* (1992) 13 Cal.App.4th Supp.1  
(Visual estimate)

☞ *People v. Conzelman* (1994) 33 Cal.App.4th Supp.6  
(Visual estimate)

☞ *People v. Studley* (1996) 44 Cal.App.4th Supp.1  
(Visual estimate)

**“THE SPEED LIMIT SHOULD NORMALLY BE ESTABLISHED AT THE FIRST FIVE MILE-PER-HOUR INCREMENT BELOW THE EIGHTY-FIFTH PERCENTILE SPEED....THE ESTABLISHMENT OF A SPEED LIMIT OF MORE THAN FIVE MILES PER HOUR BELOW THE EIGHTY-FIFTH PERCENTILE (CRITICAL) SPEED SHOULD BE DONE WITH GREAT CARE AS THIS MAY MAKE VIOLATORS OF A DISPROPORTIONATE NUMBER OF THE REASONABLE MAJORITY OF THE DRIVERS.” Pg. Supp.17**

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 *People v. Goulet* (1992) 13 Cal.App.4th Supp.1  
(Appendix to the case)

**ONCE A TRAFFIC AND  
SAFETY ENGINEERING  
SURVEY IS PRODUCED,  
THE BURDEN SHIFTS TO  
THE DEFENDANT TO  
SHOW ITS INADEQUACY.**

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*People v. Smith* (1981) 118 Cal.App.3d  
Supp.7, p.11



*People v. Peterson* (1986)181 Cal.App.3d  
Supp.7

*"...the defendant has the burden of  
proving its (the survey's) inadequacy."  
Pg.Supp.10*

# TABLE OF CASES

## Air Enforcement Cases

People v. Darby (1979) 95 Cal.App.3d 707, 157 Cal.Rptr. 330

People v. Echols (1975) 46 Cal.App.3d Supp.1, 120 Cal.Rptr. 375 (Los Angeles County)

## Radar Cases

In Re Beamer (1955) 133 Cal.App.2d 63; 283 p.2d 356

People v. Conzelman (1994) 33 Cal.App.4th Supp.6, 39 Cal.Rptr.2d 156 (Orange County)

People v. Cooper (2002) 101 Cal.App.4th Supp.1, 125 Cal.Rptr. 188 (Los Angeles County)

People v. DiFiore (1987) 197 Cal.App.3d Supp.26, 243 Cal.Rptr. 359 (Los Angeles County)

People v. Earnest (1995) 33 Cal.App.4th Supp.18, 40 Cal.Rptr.2d 304 (Orange County)

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People v. Flaxman (1977) 74 Cal.App.3d Supp.16, 141 Cal.Rptr. 799 (Los Angeles County)

People v. Goodrich (1994) 33 Cal.App.4th Supp.1, 39 Cal.Rptr.2d 154 (Orange County)

People v. Goulet (1992) 13 Cal.App.4th Supp.1, 17 Cal.Rptr.2d 801 (Ventura County)

People v. Halopoff (1976) 60 Cal.App.3d Supp.1, 131 Cal.Rptr.531 (Los Angeles County)

People v. MacLaird (1968) 264 Cal.App.2d, 972, 71 Cal.Rptr. 191

People v. Miller (1979) 90 Cal.App.3d Supp.35, 153 Cal.Rptr.192 (Los Angeles County)

People v. Peterson (1986) 181 Cal.App.3d Supp.7, 226 Cal.Rptr. 544 (Santa Clara County)

People v. Singh (2001) 92 Cal.App.4th Supp.13, 112 Cal.Rptr.2d 74 (San Joaquin County)

People v. Smith (1981) 118 Cal.App.3d Supp.7, 173 Cal.Rptr. 659 (Los Angeles County)

People v. Sterritt (1976) 65 Cal.App.3d Supp.1, 135 Cal.Rptr. 522 (Los Angeles County)

People v. Stone (1987) 190 Cal.App.3d Supp.1, 236 Cal.Rptr. 140 (Los Angeles County)

People v. Studley (1996) 44 Cal.App.4th Supp.1, 52 Cal.Rptr.2d 461 (Orange County)

## Speedometer Pace

People v. Lowe (2002) 105 Cal.App.4th Supp.1, 130 Cal.Rptr.2d 249 (San Bernardino County)

## Lidar Case

(Hawaii - No California Cases)

State of Hawaii v. STOA (2006) 112 Haw.260, 145 P.3d 803

# **TABLE OF CASES (*Annotated*)**

## **Air Enforcement Cases**

**People v. Darby** (1979) 95 Cal.App.3d 707, 157 Cal Rptr. 330

*Officer verified his speed by the use of measured markers placed on the highway by the state transportation department, and had paced the motorist with the airplane to determine his speed. The motorist's speed was not calculated by use of any "particular section" of the highway or by computing the time it took his vehicle to travel a "known distance" and the method used therefore did not constitute a speed trap as defined in Vehicle Code §40802(a).*

**People v. Echols** (1975) 46 Cal.App.3d Supp.1, 120 Cal.Rptr. 375 (Los Angeles County).

*The use of a helicopter by the police to establish the speed of a defendant in a prosecution for speeding, did not constitute a speed trap where no "particular section" of the highway was used by the helicopter pilot, and where the officer did not calculate the speed of the defendant by computing the time it took him to travel a known distance, but instead, after determining the ground speed of the helicopter, noted that defendant's vehicle was traveling at the same speed as the helicopter.*

## **Radar Cases**

**In Re Beamer** (1955) 133 Cal.App.2d 63; 283 p.2d 356

*Radar does not come within the prohibition of section 40508(a)(1) CVC even though it measures the distance a vehicle travels on the highway and computes the time it takes the vehicle to travel that distance.*

**People v. Conzelman** (1994) 33 Cal.App.4th Supp.6, 39 Cal.Rptr.2d 156 (Orange County)

*Whenever radar is used in conjunction with the enforcement of a posted speed limit on a nonlocal roadway, the speed trap laws are invoked, giving rise to the need for a current engineering and traffic survey that justifies the posted speed (Vehicle Code §40802(b), 40803(b)). Absent the survey, the officer is incompetent to testify as to the speed of the defendant's vehicle, even if the officer's testimony is confined to his or her visual determination of that speed.*

**People v. Cooper** (2002) 101 Cal.App.4th Supp.1, 125 Cal.Rptr. 188 (Los Angeles County)

*A certified copy of the engineering and traffic survey taken within the past five years, justifying the speed limit imposed on the section of the highway, must be lodged with the court, or judicial notice of the survey must be taken, or a copy of the survey must be produced in open court. Whenever radar is used in conjunction with the enforcement of a posted*

speed limit on a nonlocal roadway, the speed trap laws are invoked, giving rise to the need for a current engineering and traffic survey that justifies the posted speed. Absent the survey, the officer is incompetent to testify as to the speed of the defendant's vehicle, even if his or her testimony is confined to a visual determination of that speed.

**People v. DiFiore** (1987) 197 Cal.App.3d Supp.26, 243 Cal.Rptr. 359 (Los Angeles County)

A person who drives in excess of the maximum lawful speed has not been subjected to a speed trap even if his speed has been detected by radar on a posted road unless the officer relies on the posted or prima facie speed limit. The officer who does rely on the posted speed limit improperly benefits from the anti-speed-trap laws, if that officer is permitted to testify to a speed that is both unlawful and excessive, but the posted speed is not justified by a traffic survey.

**People v. Earnest** (1995) 33 Cal.App.4th Supp.18, 40 Cal.Rptr.2d 304 (Orange County)

It is the People's burden, as part of their prima facie case in any Vehicle Code §22350, prosecution where radar is used, to demonstrate the absence of a speed trap. Unless the offense occurred on a "local road" (Vehicle Code, §40802(b)), the People must produce a traffic and engineering survey, that justifies the posted speed.

**People v. Ellis** (1995) 33 Cal.App.4th Supp.25, 40 Cal.Rptr.2d 111 (Orange County)

A "summary" of an engineering and traffic survey justifying the posted speed limit is not sufficient for this purpose; either the original survey or a certified copy is required.

**People v. Flaxman** (1977) 74 Cal.App.3d Supp.16, 141 Cal.Rptr. 799 (Los Angeles County)

1) A certified copy of an engineering and traffic survey is admissible under the official records hearsay exception (Evidence Code, §1280), without requiring a witness to testify as to its identity and mode of preparation, where the trial judge is persuaded of its identity and trustworthiness as evidenced by its mode of preparation as described in the survey and thus takes judicial notice of these facts under Evidence Code, §452(h).

2) Testimony by the police officer that he had calibrated the radar machine in accordance with the instructions he had received but that he could not explain the functioning of the machine was sufficient to establish the accuracy of the radar reading.

**People v. Goodrich** (1994) 33 Cal.App.4th Supp.1, 39 Cal.Rptr.2d 154 (Orange County)

The rules and procedures governing speed traps and the use of radar are inapplicable to those cases where the state Legislature has mandated a maximum speed of a vehicle - in this case, 25 mph at a school when children are present. (Vehicle Code § 22352 (b) (2)).

**People v. Goulet** (1992) 13 Cal.App.4th Supp.1, 17 Cal.Rptr.2d 801 (Ventura County)

*The prosecution is required to establish, under the speed trap rules, that the speed limit was justified by an engineering and traffic study performed within five years of the alleged violation (Vehicle Code § 40802(b), 40803 (b)). The study that had been performed on the street did not justify the speed limit.*

**People v. Halopoff** (1976) 60 Cal.App.3d Supp.1, 131 Cal.Rptr. 531 (Los Angeles County)

*In the trial of any speeding case where radar is used to measure vehicle speed, it is incumbent on the People, without request from the defendant, to disclose to the court and to the defendant that radar is involved, and to demonstrate the existence of an engineering and traffic survey to justify the speed limit, in order to remove the case from the sanctions of Vehicle Code §§ 40801 - 40805, pertaining to speed traps.*

**People v. MacLaird** (1968) 264 Cal.App.2d 972, 71 Cal.Rptr.191

*The validity and accuracy of radar devices is a proposition of such common and universal knowledge that it must be judicially noticed and there is no necessity to call an expert witness to establish this commonly known and accepted proposition.*

**People v. Miller** (1979) 90 Cal.App.3d Supp.35, 153 Cal.Rptr.192 (Los Angeles County)

*In a prosecution for driving on a highway in excess of the State maximum speed limit, the trial court properly admitted radar evidence to establish that defendant had been speeding, even though no Traffic and Engineering Survey was introduced.*

**People v. Peterson** (1986) 181 Cal.App.3d Supp.7, 226 Cal.Rptr.544 (Santa Clara County)

*In a prosecution for violation of Vehicle Code, § 22350 (excessive speed), based on radar evidence that defendant had violated the speed limit, the failure of the prosecution to lodge with the court a certified copy of an engineering and traffic survey of the area in which defendant was accused of speeding, the failure of the court to take judicial notice of the survey, and the failure to produce a copy of the survey in open court constituted reversible error.*

**People v. Singh** (2001) 92 Cal.App.4th Supp.13, 112 Cal.Rptr.2d 74 (San Joaquin County)

*If an officer testified only that he or she clocked a defendant on radar at the specified speed in excess of the maximum speed limit, no speed trap is involved, and the anti-speed-trap laws do not apply. If, however, the officer relies on a prima facie or posted speed limit, that officer is incompetent as a witness and any evidence concerning the vehicle's speed is inadmissible unless an adequate survey is introduced.*



**People v. Smith** (1981) 118 Cal.App.3d Supp.7, 173 Cal.Rptr. 659 (Los Angeles County)

*In a prosecution for violation of the basic speed law (Vehicle Code, § 22350), an engineering and traffic survey was properly used to justify the posted speed limit violated by defendant, despite the fact that the name of the person who prepared the survey was not shown on the document. since the survey was initialized by the person who approved its recommendation and was approved within five years of the time defendant was cited for, tried and convicted of a speeding violation.*

**People v. Sterritt** (1976) 65 Cal.App.3d Supp.1, 135 Cal.Rptr.522 (Los Angeles County)

*A conviction for driving at a speed of 45 mph in a section of roadway posted for 25 mph required reversal where, though the arresting officer, who had made his observations by looking at a hand-held radar unit, testified that an engineering and traffic survey had been conducted within the past 18 months, no evidence was presented as to the scope or recommendations of the survey and the People failed to establish that the survey justified the posted speed limit.*

**People v. Stone** (1987) 190 Cal.App.3d Supp.1, 236 Cal.Rptr. 140 (Los Angeles County)

*Defendants, who were arrested by police using radar and cited for violating a municipal ordinance prohibiting speeding in public parks, were improperly convicted, where the ordinance itself was preempted by state law regulating traffic control, and where the People failed to introduce an engineering and traffic survey at trial to justify the posted speed limit.*

**People v. Studley** (1996) 44 Cal.App.4th Supp.1, 52 Cal.Rptr.2d 461 (Orange County)

*Where a motorist is cited, by the use of radar, for speed in excess of the state maximum speed limit on a nonlocal road with a prima facie speed limit of 50 miles per hour, and where a traffic and engineering survey is not proved at trial, California's speed trap laws apply to compel exclusion of all evidence of speed.*

## **Speedometer Pace**

**People v. Don Carlos** (1941) 47 Cal.App.2d 863, 117 p.2d 748

*It is clear that mere speed constitutes a violation of section 510 (22350 CVC), and the absence of an accident, actual or near, neither in law nor logic tends to prove that an excessive rate of speed was reasonable or prudent nor that it did not itself endanger the safety of persons and property.*

**People v. Goulet** (1992) 13 Cal.App.4th Supp.1, 17 Cal.Rptr.2d 801 (Ventura County)

*Speed trap rules are not applicable to evidence of speed based on use of a speedometer without any use of radar. Pg. Supp.3*

**People v. Lowe** (2002) 105 Cal.App.4th Supp.1, 13- Cal.Rptr.2d 249 (San Bernardino County)  
*Speedometer readings may be introduced into evidence even without proof of the instruments' accuracy. The fact finder is then free to consider the lack of such proof in determining how much weight to afford the reading.*

**Lidar Case**  
**(Hawaii - No California Cases)**

**State of Hawaii v. STOA** (2006) 112 Haw.260, 145 P.3d 803  
*The laser speed detection device is technologically premised on well-accepted and reliable scientific principles... We join the other states that have taken judicial notice of the scientific acceptance of the accuracy and reliability of laser speed measuring devices.*

(3/26/08: G.A.M./kpi)