

SPEED SURVEYS

§ 40801. Speed Traps

No peace officer or other person shall use a speed trap in arresting, or participating or assisting in the arrest of, any person for any alleged violation of this code nor shall any speed trap be used in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under this code.

- In the trail 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 Veh.Code §§40801-40805, pertaining to speed traps. People v. Halopoff (1976, App Dep't Super Ct) 60 Cal App 3d Supp 1, 131 Cal Rptr 531, 1976 Cal App LEXIS 1719.

§ 40802. “Speed trap”; “Local street or road”; Use of radar, laser or other electronic device

(a) A "speed trap" is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, or school zone.

(b) (1) For purposes of this section, a local street or road is one that is functionally classified as “local” on the “California Road System Maps,” that are approved by the Federal Highway Administration and maintained by the Department of Transportation. When a street or road does not appear on the “California Road System Maps,” it may be defined as a “local street or road” if it primarily provides access to abutting residential property and meets the following three conditions:

(A) Roadway width of not more than 40 feet.

(B) Not more than one-half of a mile of uninterrupted length. Interruptions shall include official traffic control signals as defined in Section 445.

(C) Not more than one traffic lane in each direction.

(2) For purposes of this section, “school zone” means that area approaching or passing a school building or the grounds thereof that is contiguous to a highway and on which is posted a standard “SCHOOL” warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. “School zone” also includes the area approaching or passing any school grounds that are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children if that highway is posted with a standard “SCHOOL” warning sign.

(c) (1) When all of the following criteria are met, paragraph (2) of this subdivision shall be applicable and subdivision (a) shall not be applicable:

(A) When radar is used, 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.

(B) When laser or any other electronic device is used to measure the speed of moving objects, the arresting officer has successfully completed the training required in subparagraph (A) and an additional training course of not less than two hours approved and certified by the Commission on Peace Officer Standards and Training.

(C) (i) The prosecution proved that the arresting officer complied with subparagraphs (A) and (B) and that an engineering and traffic survey has been conducted in accordance with subparagraph (B) of paragraph (2). The prosecution proved that, prior to the officer issuing the notice to appear, the arresting officer established that the radar, laser, or other electronic device conformed to the requirements of subparagraph (D).

(ii) The prosecution proved the speed of the accused was unsafe for the conditions present at the time of alleged violation unless the citation was for a violation of Section 22349, 22356, or 22406.

(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 Highway Traffic 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 or calibration facility.

(2) A “speed trap” is either of the following:

(A) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(B) (i) A particular section of a highway or state highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within one of the following time periods, prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects:

(I) Except as specified in subclause (II), seven years.

(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.

(ii) This subparagraph does not apply to a local street, road, or school zone.

- Defendant was improperly found guilty of driving in excess of the state maximum speed limit, where, at trial, a police officer testified that he visually estimated defendant’s speed at 65 miles per hour on a nonlocal road posted at 50 miles per hour, using radar to confirm defendant’s speed, and where no admissible evidence of a traffic and engineering survey was offered at trial. Veh. Code, § 40800 et seq., prohibits traps. Under Veh.Code,§40802, subd. (b), a speed trap is a section of highway with a prima facie speed limit that is not justified by a timely engineering and traffic survey and where enforcement involves the use of radar. The apparent purpose of the speed trap laws is to prevent the local establishment of unreasonably low-speed zones as an adjunct revenue source and, further, to encourage observance of the traffic laws by a visible police presence. Although it may be that no purpose is served by enforcing this statutory scheme where a motorist’s speed exceeds the maximum statewide limit, a close reading of the statutes demonstrates the Legislature’s antipathy is absolute and unequivocal toward “any” radar-based prosecution of “any” speed law violation in “any” posted zone, where the prima facie speed limit is not justified by proof of a timely engineering survey. The statutes provide no exception in the case of a violation of the maximum speed limit. Therefore, the evidence against defendant was inadmissible. Peoplev.Studley(1996,AppDep’tSuperCt)44CalApp4thSupp1,52CalRptr2d 461,1996CalAppLEXIS493.

- The phrase “speed limit,” as used in VehC§40802(a)(2), referring to speed traps when “enforcement of the speed limit involves the use of radar,” did not mean any speed limit for which a citation was issued, but rather only those speed limits referenced in the antecedent portion of § 40802 (a) (2), namely prima facie speed limits. Accordingly, if an officer testified only that he clocked a defendant on radar at a specified speed in excess of the maximum speed limit, no speed trap was involved, and the anti-speed trap laws did not apply. If however, the officer relied on a prima facie or posted speed limit, that officer was incompetent as a witness and any evidence concerning the vehicle’s speed was inadmissible unless an adequate survey was introduced. Peoplev.Singh (2001,CalAppDivSuperCt)92CalApp4thSupp13,112CalRptr2d74,2001Cal AppLEXIS752.
- Speedometer reading may be introduced into evidence even without proof of the instrument’s accuracy. The fact finder is then free to consider the lack of such proof in determining how much weight to afford the reading. Peoplev.Lowe(2002,App1stDist) 105CalApp4thSupp1,130CalRptr2d249,2002CalAppLEXIS5315.
- General accuracy of speedometers is a matter of general knowledge and although speedometers like other machines, may get out of order, speedometers may be relied upon with reasonable certainty to determine accurately the speed at which a vehicle is driven. Peoplev.Lowe(2002,App1stDist)105CalApp4thSupp1,130CalRptr2d 249,2002CalAppLEXIS5315.
- In a trial on a speeding charge, it was within the province of the jury to rely on the officer’s testimony that a speedometer read 85 mph to establish the defendant’s speed. No proof the instrument’s accuracy was required. Peoplev.Lowe(2002,App1stDist) 105CalApp4thSupp1,130CalRptr2d249,2002CalAppLEXIS5315.

Manual on Uniform Traffic Devices – 2003 Draft California Supplement

The language below was not included in the final publication but according, to Cal Trans, it reflects their intention in rewriting the procedure for conducting surveys, as mandated by Federal Regulations.

- An Engineering and Traffic Survey (E&TS) performed on April 6, 1999 due for renewal on April 6, 2001 (5 years) would be performed per Chapter 8 of the 1996 Caltrans Traffic Manual, which was the applicable guidance at the time. This would then be due for renewal on April 6, 2009 using the California MUTCD criteria.
- However, if conditions of the E&TS and the applicable enforcement agency, its personnel and equipment meet provisions of CVC 40802.c.2.B.1, the E&TS could have been extended two additional years (for a total of 7 years). In this case, the posed speed limit(s) remain(s) enforceable for the seven-year period and would then be due for renewal on April 6, 2006 and would be renewed using California MUTCD criteria.

- Further, if at the end of the seven years, a registered engineer evaluates the highway section and determines that no significant changes in roadway or traffic conditions have occurred (see CVC 40802.c.2.B.11), the engineer could extend the E&TS for three additional years (for a total of 10 years). Renewal of the extended E&TS would then be deferred to April 6, 2009 and at that time performed with California MUTCD criteria.

LIFESPAN OF SURVEYS

(a) BASIC 5-YEAR LIFESPAN:

If otherwise valid, and if the speed is unreasonable, engineering and traffic surveys are good for 5 years from the date they are certified.

(b) TO EXTEND SURVEY TO 7 YEARS:

1. Arresting officer successfully completed a 24-hour POST-approved radar course,
AND
2. If LASER (LIDAR) was used, an additional 2 hours of POST training on the device,
AND
3. The device is one approved by the National Traffic Highway Safety Administration,
AND
4. The device was calibrated within the previous 3 years by independent certified laser or radar repair and testing or calibration facility.

(c) TO EXTEND SURVEY TO 10 YEARS:

All of the above for 7-year survey 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.

(d) IF THE SURVEY WAS CERTIFIED ON OR AFTER MAY 20, 2004:

Confirm that the speed justified was either the closest 5-mph increment to the 85th percentile, or no more than 5 mph lower AND justified by sufficient grounds.

For surveys certified prior to May 20, 2004, the initial 5-mph increment was designated as the 5-mph increment below the 85th percentile.

If otherwise valid, surveys certified prior to May 20, 2004, remain valid so long as the requirements of (b) and (c) above are met.

SURVEY ISSUES

PO: I have attached and completed the POST 24 hour radar course, including visual speed estimations in 2002, and am recertified every year by my department. The radar device was Stocker Dual radar number 32332, mounted in patrol vehicle #102. It was calibrated in January of 2001 by San Diego State University. I check the calibration before and after my shift with it's assigned tuning forks and found it to be functioning correctly that day. Further, the vehicle's speedometer was calibrated on March 21st and found to be off -2 MPH at all speeds.

There is a survey on file with this court, dated December 5th, 1999, showing the safe speed to be the posted speed, 45 MPH.

ATTY: Your honor, I move for directed verdict under Penal Code 1118 on the grounds that the survey was conducted in December of 1999 and it expired after 5 years. In any event, it is more than 7 years old now, and all testimony related to the speed of the vehicle must be stricken.

NOTES:

CALIBRATION RECORD

ATTY: Your honor, I move to strike all evidence from the pace of the defendant's vehicle, because the officer has not presented the record of calibration of the vehicle. I make a "best evidence" objection.

NOTES