

American Traffic Solutions **Passage of the Mark Wandall Traffic Safety Act** **Frequently Asked Questions**

As counties and municipalities have prepared to move forward with intersection safety camera programs following the passage of the Mark Wandall Traffic Safety Act, various ATS personnel have received several common questions from our customers regarding how existing programs will operate under specific provisions of the new law. We are providing these FAQs to share ATS' assessment of these issues. **NOTE:** These responses explain how ATS' Florida operations shall proceed pursuant to the Act, based on substantial statutory analysis, and first-hand experiences during the legislative process. However, we advise our clients to seek their own independent legal advice. We will be happy to provide our reasoning for any of these positions upon request. ATS has made a conscious decision to proceed conservatively under the new law.

Q: Do we need an ordinance at all?

A: Yes. ATS believes that an ordinance is required in order to implement an Intersection Safety Camera Program under the Act. Under the law, the decision to enforce red light violations using traffic infraction detectors rests within the discretion of the local government. The statute provides that a "county or municipality may use traffic infraction detectors" to enforce red light violations. Accordingly, we believe an affirmative action by a local government (i.e., an ordinance) should be taken in order to authorize appropriate officers to implement the provisions of the state law. Additionally, although the statute does not explicitly require an ordinance, it frequently contemplates that one will be used. The word "ordinance" is mentioned in HB 325 a total of five times. For instance, the statutory provision dealing with allocation of the penalty provides that "\$75 shall be retained by the county or municipality enforcing the ordinance enacted pursuant to this section."

Q: What happens if we cannot pass an ordinance by July 1?

A: In our view, it is important that there be some action authorizing enforcement under the new law by July 1. If passage of an ordinance is not possible within that time frame, at minimum, there should be a resolution authorizing enforcement, to be followed by an ordinance as soon as possible. This approach is not recommended. In the absence of an ordinance or resolution, ATS will be forced to suspend processing of **newly captured** violations at 11:59 p.m. on June 30 until such time as an ordinance or resolution is adopted. ATS will not mail uniform traffic citations until an ordinance is adopted.

Q: What happens if we cannot approve a contract amendment by July 1?

A: We will not suspend processing of **old** violations immediately if the contract amendment is not approved by July 1, but getting these amendments finalized and approved is very important to maintain service and support of your program. However, we must suspend processing violations where a contract amendment has not been approved on or before July 9.



Q: Do we need a warning period?

A: No. The new law does not require the issuance of warning notices for any program, whether existing or new. The new law **does require** that new programs, those not already active, implement a public announcement and public awareness campaign at least 30 days in advance of the start of the program. We recommend that local governments start this process now.

Q: What is the process for enforcing violations?

A: The new law provides a two-step process for enforcing red light violations with intersection safety cameras. The first step is sending the registered owner notification of the violation. This must occur within 30 days of the violation. The owner then has 30 days following the date of the notification to take one of two actions:

(a) pay the statutory penalty; or

(b) submit an affidavit establishing an exemption from liability.

If the owner does neither within that 30-day period, then a uniform traffic citation is issued. Uniform traffic citations are enforced in the county court.

ATS has provided a draft notice of violation and affidavit for your comment and use.

Q: Can we wait more than 30 days from the date of the initial notification to issue the uniform traffic citation?

A: The uniform traffic citation needs to be issued as soon as the 30-day period to pay or submit an affidavit has expired. This means that the payment **must be received** on or before the thirtieth day following the date printed on the notice of violation.

We understand that this is the more conservative interpretation of the new law. However, it is also the safest way to approach the question at present. We expect that there will be more guidance on this question in the near-term.

Q: Do notices of violation need to be provided by certified mail?

A: No. Initial notices of violation are provided by first class mail. Only the uniform traffic citation is required to be sent by certified mail. No return receipt is required.

Q: Can owners request a hearing on the notice of violation?

A: No. Under the new law, an owner's options in responding to a notice of violation are to pay the statutory penalty or provide an affidavit. If a violator desires a hearing, they must wait for a uniform traffic citation to issue. If a violator seeks a hearing on a uniform traffic citation, the owner may be responsible for court costs in addition to the statutory penalty.



Q: How should affidavits identifying another person as the driver of the vehicle be handled?

A: Assuming such an affidavit complies with the requirements of the new law, we believe that a uniform traffic citation should be issued to the person identified as the driver. The new law contemplates this procedure by providing that “upon receipt of an affidavit, the person designated as having care, custody, and control of the motor vehicle at the time of the violation may be issued a traffic citation ... when the driver failed to stop at a traffic signal.” This procedure also helps avoid potential issues with the 60-day time limit for issuing a uniform traffic citation. We understand that this is the more conservative approach. However, for the time being, it is the safest way to approach the question. We expect that there will be more guidance on this question in the near-term.

Q: How much of the statutory penalty does the local government retain?

A: The statute provides when a local government issues a notice of violation or uniform traffic citation, it retains \$75 of the \$158 statutory penalty. The same can be said for the issuance of a uniform traffic citation under the Act. However, in such a circumstance, the court may assess court costs in addition to the statutorily defined allocation.

Q: Will ATS collect and account for payments?

A: If provided for in your customer agreement, ATS will collect and account for payments made on *notices of violation*. The court will collect and account for payments made on *uniform traffic citations*. ATS will not accept payment on a notice of violation once a uniform traffic citation has been issued and we will disable the e-payment function once a uniform traffic citation has been issued; payments made by check will need to be returned by the local government to the violator.

Q: Who makes the required payments to the state?

A: All of the fine revenue will go to the local government, either from the ATS lockbox or the court, depending on whether payment is made on a notice of violation or uniform traffic citation. The local government will make the required payment to the state. The new law requires that the payment come with a “summary detail of penalties remitted,” which ATS will assist with providing with respect to payments made on notices of violation.

Q: What is the effect of enforcement on points against drivers’ licenses and insurance rates?

A: None.