



MAKING A **SAFER** WORLD.

To: Redflex Traffic Systems Inc. Customers
From: California Account Management Team
Re: SB 1303's Impact on Existing Law Regarding Automatic Traffic Enforcement Systems ("ATES") and Evidence Generated by ATES

This memo discusses the impact of the industry's successful efforts to support Senate Bill No. 1303, which was enacted on September 28, 2012. SB 1303 has two primary impacts: (1) it resolves in favor of the admissibility of ATES-generated evidence the conflicting judicial decisions in *People v. Borzakian* (2012) 203 Cal.App.4th 525 and *People v. Goldsmith* (2012) 203 Cal.App.4th 1515; and (2) it adds certain requirements regarding the adoption of ATES, notices of non-liability, signage, and reporting on the effectiveness of ATES.

Impact on Admissibility of Photo Enforcement Evidence

(a) Presumptions of Authenticity Apply to Photo Enforcement Evidence

Existing Evidence Code §1552 creates a presumption of authenticity for "a printed representation of computer information or a computer program." Similarly, Evidence Code §1553 creates a presumption of authenticity for "a printed representation of images stored on a video or digital medium."

In *Goldsmith*, the Court of Appeal upheld an ATES-conviction, holding that that the admission of ATES-generated evidence was not hearsay, officer testimony was sufficient to authenticate the evidence, and Sections 1552 and 1553 did not require the prosecution to provide first-hand testimony on the accuracy and reliability of the ATES. A month earlier, a different panel from the same Court of Appeal had ruled in *Borzakian* that a police officer was not qualified to lay a proper foundation for ATES-generated evidence and that the statutory presumptions of authenticity (Sections 1552 and 1553) required first-hand testimony demonstrating the reliability of the ATES.

SB 1303 essentially legislatively overrules *Borzakian*, and in so doing also negates the *People v. Khaled* decision and other judicial decisions that found ATES evidence inadmissible. In fact, the Bill Analysis discusses both *Borzakian* and *Goldsmith*, and states that SB 1303 "embraces the *Goldsmith* reasoning." Specifically, SB 1303 amends Evidence Code Sections 1552 and 1553 to state that their presumptions of authenticity expressly apply "to the printed representation of computer-generated information stored by an automated traffic enforcement system." These amendments should undermine arguments that the admission of ATES-generated evidence requires an initial showing that the system is reliable.

(b) *Photo Enforcement Evidence is Not Hearsay*

SB 1303 also sides with *Goldsmith* in clarifying that ATES-generated evidence is not hearsay. *Borzakian* had ruled that ATES evidence was hearsay and that the official records and business records exceptions to the hearsay rule were inapplicable. SB 1303 agrees with *Goldsmith* that ATES-generated evidence is not hearsay and amends Vehicle Code §21455.5 to state: “the printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does not constitute an out-of-court hearsay statement by a declarant.” This amendment should not only eliminate hearsay challenges, but should also undermine Confrontation Clause challenges because the Confrontation Clause only applies to testimonial hearsay evidence.

SB 1303’s Operational Requirements

(a) *Notice of Non-Liability*

SB 1303 amends Vehicle Code §40518 by creating a standard form “notice of non-liability” to be sent to the registered owner of a vehicle when the driver appears different from the registered owner. The new form expressly encourages owners to respond to the notice and supply the name of the driver at the time of the citation. SB 1303 requires that the notice be “substantively identical” to the standard form, except that it may be translated into other languages.

(b) *Additional Requirements for Operation of an ATES*

Existing Vehicle Code §21455.5 authorizes the use of an ATES if the system meets certain requirements. SB 1303 adds the following requirements: (i) the agency must create uniform guidelines for operation and establish procedures to ensure compliance with those guidelines; (ii) the agency must post signs within 200 feet of an intersection where an ATES is operating; (iii) the agency considering where to install an ATES must not consider revenue generation beyond that sufficient to covering operating costs.

(c) *Reporting by Vendor*

SB 1303 also amends Vehicle Code §21455.5 to require ATES vendors to submit an annual report to the Judicial Council that includes information that is readily available regarding the number of alleged violations captured, the number of citations issued (and how many were for traveling straight, turning right, and turning left), the number and percentage of citations dismissed by the court, and the number of traffic collisions at each intersection that occurred prior to and after the installation of the ATES.

Conclusion

SB 1303 is a vote by the California Legislature in favor of ATES. The changes enacted by this legislation overrule *Borzakian* and expressly reject the most commonly used (and commonly litigated) challenges to the admission of ATES-generated evidence. SB 1303 also expressly allows, for the first time, notices encouraging registered owners to identify the driver who committed the infraction.