



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

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ALAN G. DAVIS
CHIEF MAGISTRATE

POLICY DIRECTIVE 22-268

**TO: ALL JUSTICES OF THE PEACE
ALL NON-JUDICIAL COURT EMPLOYEES**

**FROM: ALAN G. DAVIS *AED*
CHIEF MAGISTRATE**

DATE: APRIL 25, 2022

**RE: PENALTIES & COSTS FOR SCHOOL BUS SAFETY CAMERA
VIOLATIONS APPEALED IN JUSTICE OF THE PEACE COURT (RED
CLAY CONSOLIDATED SCHOOL DISTRICT SCHOOL BUS SAFETY
CAMERA PILOT PROGRAM)**

Scope:

This Policy Directive explains the statutory penalties and costs the Court may assess against motorists who overtake or pass a school bus that is stopped and displaying flashing lamps to take on or discharge school children if such violation is evidenced by information obtained from camera monitoring systems operated by the Red Clay Consolidated School District's (hereinafter, "the District") Bus Safety Camera Pilot Program.

Justice of the Peace Court Policy:

School bus safety camera civil violations evidenced by information from District-operated camera monitoring systems shall proceed under Ch. 80 of Title 14 of the Delaware Code.¹

¹ Title 14 of the Delaware Code, Ch. 80 authorizes the Red Clay Consolidated School District to participate in a pilot program with the intended purpose of improving safety for its students and the public by reducing the number

School bus safety camera civil violations shall be heard in Justice of the Peace Court 20, which is the Court location that serves the geographical area in which the District is located.² The Court shall schedule trials with the District and its Vendor (Gateway, the camera servicer) for all defendants requesting an appeal. The Vendor shall process and forward untimely-filed appeals to the Court in the same manner as they process and forward timely-filed appeal requests. In addition, if a defendant comes directly to the Court, before or after receiving a late notice from the vendor, the judge or court clerk shall instruct the defendant to file a motion with the Vendor requesting an appeal.

The civil penalty for school bus camera civil violations is \$100 for a first offense which shall increase to \$500 for each subsequent offense that occurs within 10 years of a prior offense.³ These cases are not permitted to be transferred to the Court of Common Pleas.⁴ Although the statute provides for a right of appeal to the Court of Common Pleas, as set forth in the discussion below, there is no circumstance that will trigger that right to appeal.

In addition to the fine, the Court may assess court and administrative costs not to exceed \$35 when the owner or operator requests a hearing to contest the violation and is ultimately found or pleads responsible for the violation.⁵ In order to not exceed that cap, the Court may order regular court costs up to \$25 and shall order a \$10 assessment for the Court Security Fund as part of total court costs of the permitted maximum of \$35.⁶ No additional fees are authorized.

Appeals of school bus camera violations shall be prosecuted by authorized District personnel.⁷ The District has appointed an employee who will attend all appeal hearings to testify and present evidence supporting its claim that a violation occurred. The District employee will serve the same function that a police officer does in the Police Prosecution Process. The Department of Justice has authorized the District to perform this function on its behalf.

Policy Directives/Legal Memoranda Affected

This Directive affects no other Justice of the Peace Court Policy Directives.

Effective Date:

This policy shall take effect immediately and shall continue until further notice.

of motorists who overtake or pass a school bus that is stopped and displaying flashing lamps to take on or discharge school children.

² See 14 Del. C. §8003(f).

³ See 14 Del.C. § 8003(c).

⁴ See 14 Del.C. § 8003(f).

⁵ *Id.*

⁶ J.P. Court Crim. R. 58 (c) as permitted by 14 Del.C. § 8003(c).

⁷ See 14 Del. C. § 8001 (2) and 14 Del. C. § 8003 (h) "...by a technician that is Red Clay Consolidated School District personnel authorized to impose assessments pursuant to this section."

Discussion:

Although the School Bus Safety Camera Pilot Program was designed to mirror the civil violation process for Red Light Camera civil violations, there are some important distinctions. First, the School Bus Safety Camera Pilot Program exists in Title 14. Accordingly, no fees assessed for violations of Title 21 are applicable. Additionally, the School Bus Camera Safety Pilot Program expressly prohibited any fees above and beyond court costs of \$35 in the plain language of 14 *Del. C.* § 8003(c), “No assessments and court costs other than those specified in this subsection may be imposed.” As this law was enacted by the Legislature and signed by the Governor on June 30, 2021, it was enacted with full knowledge of the panoply of potentially applicable fees it waived.

Another distinctive feature of the Red Clay Consolidated District School Bus Safety Camera Pilot Program is that appeals of civil violations will be prosecuted by Red Clay Consolidated District employees. The Legislature was clear that such personnel does not include “a law enforcement officer” or “an employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services Facility”.⁸ The District must appoint an employee to prosecute these claims on its behalf. Although the District’s employee is unlikely to be a licensed Delaware attorney, the Department of Justice has authorized District personnel to prosecute these cases as part of its executive authority.

When a motor vehicle passes a stopped school bus that is displaying flashing red lamps, the registered owner of the vehicle will receive in the mail a notice from the Vendor advising them of the matter, time, and place by which liability as alleged in the notice may be contested, as well as the consequences for failure to timely pay or failure to timely contest the allegations. The owner may then pay the charged fine by voluntary assessment (an option provided by the Vendor), contest the civil violation in the Justice of the Peace Court, file an affidavit stating that they were not the operator of the vehicle at the time of the alleged offense, or provide a police report alleging that the vehicle was reported stolen at the time of the offense. Failure to timely perform any of those options will result in the owner being “non-compliant”. The Vendor will then forward the owner’s information to the Delaware Division of Motor Vehicles (“DMV”) resulting in the inability of the owner to re-register the vehicle until the fines are paid and possibly the loss of their driver’s license.

Cited vehicle owners are presumed to be in violation of Title 14, Chapter 80 of the Delaware Code in the same manner as provided for in § 7003 of Title 21 (vehicles discovered in a Fire Lane). In other words, the violation is presumed to attach to the registered owner of the vehicle unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The presumption⁹ shall be rebutted if the owner/operator:

⁸ See 14 *Del. C.* § 8001(2).

⁹ Presumption set forth in 14 *Del. C.* § 8003(i)

1. Timely provides either:
 - a. An affidavit stating that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle; or
 - b. Attaches a certified copy of a police report showing that the vehicle or license plate(s) thereof had been reported to the police as stolen prior to the time of the alleged violation; or
2. Provides proof in Court that the registered owner was not the operator of the vehicle at the time of the alleged violation.¹⁰

If the vehicle owner does not timely respond to the summons in one of the prescribed ways set forth above, the Vendor will submit a report to the DMV. The DMV has statutory authority to refuse to renew the registration of the owner's vehicle cited in the violation.¹¹ Furthermore, the DMV has the statutory authority to suspend the license of an owner/operator if they fail to pay as ordered by the Court, after receiving notice from DELJIS that:

- 1) the Court has found the owner/operator responsible;
- 2) the owner/operator has pled responsible at the time of trial; or
- 3) the Court has ordered a default judgment against the owner/operator for a failure to appear at the scheduled trial.¹²

Any owner/operator receiving a summons from the Vendor may request a hearing to contest the civil violation in the Justice of the Peace Court by notifying, in writing, the School District, within twenty (20) days of the date on the summons. Proof of a civil violation shall be evidenced by information obtained from a school bus signal violation monitoring system which is submitted by District personnel and attested to by an employee of the Vendor. The allegation must be proved based upon inspection of photographs, videotape, or other recorded images produced by a school bus signal violation monitoring system.

14 *Del.C.* Sec. 8003(k) provides a right of appeal from a finding of responsible by the Justice of the Peace Court "only in those cases in which the civil penalty imposed exceeds \$500..." The statute further provides that late fees shall be included in the calculation.¹³ However, the highest fine available is \$500, and late fees are reset upon an owner's request to

¹⁰ See 21 *Del.C.* § 7003(b).

¹¹ 21 *Del. C.* § 4101(d)(8).

¹² *Id.* "If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator."

¹³ 21 *Del. C.* § 4101(d)(12). "Additional penalty assessments for late payment/response pursuant to paragraph (d)(3) of this section shall be included in determining the amount of the civil penalty for purposes of determining the right to an appeal.

contest the civil violation. Accordingly, there is no practical right of appeal as the penalty will never exceed \$500 after a hearing.

This violation is equivalent to the crime of overtaking or passing a school bus set forth in 21 *Del. C.* §4166(d)(i). Please note, however, that this violation should not be confused with criminal charges issued by a police officer under 21 *Del. C.* §4166. Only violations issued by the District under Title 14 are within the purview of the Justice of the Peace Court. The crime of overtaking or passing a school bus may be plead to in the Justice of the Peace Court, but is tried in the Court of Common Pleas.¹⁴

Conclusion:

For school bus camera civil violations, the Court hears contests under 14 *Del.C.* Ch. 80. On a finding or an admission of responsibility, the Court shall assess a civil penalty of \$100 for a first violation and \$500 for each subsequent violation within 10 years of a prior violation. The court costs and assessments permitted following a finding or admission of responsibility are up to \$35 court costs, which will typically include \$25 court costs and a \$10 assessment for the Court Security Fund.

The amounts that a judge may assess for school bus safety camera civil violations are summarized in the chart below:

State:

Civil Penalty	\$100 first violation; \$500 for each subsequent violation within 10 years of a prior violation
Court Costs	Up to \$25
Court Security Fund	\$10
No fee may be charged for the following: Transportation Trust Fund VCF DELJIS Videophone Fund to Combat Violent Crime Ambulance Fee	

- cc: Honorable Collins J. Seitz, Jr.
 Honorable Kathaleen S. McCormick
 Honorable Jan R. Jurden
 Honorable Carl C. Danberg
 Honorable Michael K. Newell
 Gayle P. Lafferty, State Court Administrator

¹⁴ See LM 81-73.

Mark Hitch, Justice of the Peace Court Administrator
Elizabeth Petrick, Justice of the Peace Court Deputy Administrator
Rebecca Trifillis, Justice of the Peace Court Staff Attorney
Regina Elliott, Operations Manager
Stephanie Parker, Operations Manager
Kevin Jackson, Chief of Uniformed Services
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