

THE NEW UPDATED AND REVISED MANUAL

How to **LEGALLY** get off your Speeding Fine!



Speed Fine Solutions



***Anything and everything you ever wanted to know about
Speed Trapping in South Africa!***

Nothing illegal. -

Nothing unethical. -

Nothing ridiculous.

Written and compiled by former Chief Provincial Traffic Officer
Dennis Jackson

A Via-Con Publication

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**Before you continue reading this manual,
Please read and take note of the following...**

1. The following text contains in depth information on the laws of the police and of the legal scenario surrounding the legitimacy of speed timing. The sections on law are quoted verbatim. The information given in this book will enable you to contest most speed prosecutions. However, it is recommended that if your case is complex and you feel that you cannot deal with it on your own, then it is advised that you consult a reputable attorney as soon as possible so as to enable him to construct an effective defence.

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An Introduction To “Speeding” Offences

In recent years, much of the traffic authorities' behaviour has become questionable and it is apparent that speeding fines are now widely regarded as a lucrative stream of revenue, and not as a means of encouraging road users to change their mindsets and driving habits. There are also many instances where speed limits are set up simply as speed traps and serve no purpose whatsoever as a traffic safety measure, but as an effortless method of collecting revenue.

When accused of a speeding violation, **it is your absolute right** to ensure that the prosecution against you is legal and correct and all requirements pertaining to the speed trap were correctly in place. Your best chance of success in defending yourself is knowing your rights and more importantly, to be aware of the laws governing traffic enforcement and speed timing. This puts you in a far better position to contest that ticket.

It is your constitutional right to do so!

The primary reason for prosecution in any form is to deter people from committing offences. Whether our justice system achieves the goal of deterrence or not is a debatable point.

Speeding is a 'soft' offence, easy to prosecute. The authorities have very little to do in the way of investigation or assembling a case. The fines go out, the money comes in. It would be exciting if every single South African who got a speeding fine were to contest it in court. The resulting chaos would send a loud and clear message to the government that speeding fines are neither deterrent nor punishment.

If the location of the speed traps was pointed out in court and made it clear that the sole aim had to have been revenue generation, it would only be a question of time before an astute magistrate, tired of watching his or her courtroom turned into a circus, served notice on the authorities that their law enforcement tactics are at best ineffective and at worst, circumstances of entrapment. Besides, with officers being forced to testify in every case, the amount of speed trapping which got done would dry up to a fraction of its current levels.

This would not make much difference to the carnage on our roads, virtually none of which is speed-related. The traffic authorities will no doubt reply that being forced to pay a fine is a deterrent. But catching motorists on wide, safe down hills and

dual carriageways where a moment's inattention can cause one to creep slightly over the speed limit is a poor alternative to managing traffic and is clearly tantamount to entrapment to the ultimate aim of effortless revenue collection. Most of the authorities in South Africa are well aware of the fact that about 80% of speeding fines will be paid without question. The other 20% fight the charge in court and usually win or the case is thrown out because the state could not effectively prove its case.

This new updated and revised manual was compiled by VIA-CON to provide additional intensive and technical information to assist you in your defence against illegal or inequitable speeding fines. Although based on legal precedent, it was written for normal people like you and me. People who want to fight their ticket and are tired of being victimized by speed cameras and who haven't got 8 years of university law behind them. In this manual you will find the applicable laws governing the implementation of speed traps that must be complied with in all areas of jurisdiction in SA. Also included is a section on Court procedure and SA Criminal Law to enable a better understanding of your rights and recourse

Study and familiarize yourself with the section on prosecution guidelines pertaining to speeding violations and you will have the confidence of understanding the strategy you are able to use and knowing how to defend a case against you for allegedly exceeding the speed limit. In most cases this can be done on your own without the expense of hiring an attorney to defend you. Among the subjects in this book is detailed information on what your rights are and what to do if you face arrest at a roadblock for alleged non payment of a speeding or other fine.

The contents of this manual will assist you to ensure that the prosecution against you is conducted according to all the procedures required by law. If not, you will know how to dispute the speed allegation and get your case dismissed. **Legally!**

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Foreword

By Gavin Foster (Mail & Guardian)

Remember the old maxim, "Innocent until proven guilty"? *It still applies!*

The reason this book was written, is that the public in general don't understand how things are supposed to work. Traffic authorities feed them half-truths, and the media unquestioningly run mindless stories about the "millions" owed to the authorities in "outstanding fines".

What is happening now has nothing to do with road safety, and every-thing to do with raising revenue to fill municipal budgets' shortfalls. The truth is that, in their rush to the trough, the law enforcers are counting their chickens very much before they're hatched.

A fine is outstanding only once a court of law has secured a conviction, or the accused has signed an admission of guilt and agreed to pay the stipulated fine. Until then, all that exists is an untested allegation of wrongdoing, and, of those that have been tested, many have failed because of errors and non compliance with speed-trapping laws.

The procedure — as it should be — is actually very simple. Traffic cops catch motorists breaking the law. They issue the wrongdoer with a summons, requiring that he appear in court on a certain date to defend himself against the charge and the accused signs an acknowledgment that he has received the summons and is aware of the implications of ignoring it. If he wants to save time and pay an admission of guilt fine before the court date he can do so.

Until he is convicted or signs the admission of guilt, he is, as our politicians love to remind us, every fime one of them is caught with his fingers in the till, "Innocent until proven guilty". He owes the traffic department *nothing* before that time.

If a summons has been properly served, however, and the culprit fails to either pay an admission of guilt fine or pitch up for the court case on the appointed date, the magistrate will issue a warrant for his arrest on an additional charge of contempt of court. This does not, incidentally, mean that he's automatically presumed guilty of committing the original offence — he's still entitled to defend himself against that charge. He also has the right to offer

an explanation for his previous non-appearance in court.

That's the way things should be, but that all seems to be too much like hard work for our custodians of the law. Policing today consists mostly of sitting under a tree while a camera does the job. Photographs are downloaded after the event, and begging letters disguised as summonses are sent to the accused through the post. If he pays up the problem goes away for him *and the spoils are richer for them.*

The problem for our traffic departments, however, arises when the transgressor doesn't meekly pay. In that case the police are supposed to visit his home or workplace to serve a proper summons on him or his representative and he can then decide whether to pay the admission of guilt fine or defend himself against the charges.

The supposed "summons" ("NOTICE OF **INTENDED** PROSECUTION UNDER SECTION 341 OF THE CRIMINAL PROCEDURE ACT 1977"), delivered through the post, has **no** legal standing, yet traffic departments around the country insist on sending out these bogus documents in the hopes of intimidating motorists into coughing up. They know they're doing wrong, but persist because most people simply pay.

So what happens if you do receive a pseudo summons in your post-box and decide to defend yourself? Actually nothing, except your time being wasted, because the system is purposely designed to frustrate you!

When you arrive at the appointed court on the due date you'll be disappointed to find that your case isn't even on the roll — it can't be, *because a legal summons has not yet been served.* Instead you'll be directed to a grubby office in the bowels of the municipal traffic court where a traffic officer will hold out his hand in the hopes that you'll pay the fine.

If you inform him that you want to defend yourself he'll act surprised and tell you to go home and wait for a properly delivered summons. At this point most people decide that they've wasted enough time and hand over the ransom money.

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Foreword

By Gavin Foster (Mail & Guardian)

Most of the traffic authorities' resources these days are directed at money-gathering rather than road safety.

In fact, the cops are kept so busy harvesting their loot that they've contracted out many traffic policing functions to private companies who operate camera traps for profit —

And you thought law enforcement was about road safety!!

Motorists are bombarded with news reports about roadblocks being set up to catch people with "outstanding fines" and telling them that various structures have been put in place to make payment more convenient.

Of course, no action is ever taken to make it easier for an accused to *defend* himself in court. Websites have even been set up to allow motorists to log on and check if they have any outstanding "fines" and then pay them electronically to avoid arrest. Ever heard of hijackers and burglars being asked to contact the cops to see if they're wanted?!?

The media has been remiss here, running their stories straight from the authorities' press releases, *without* telling their readers that they CANNOT legally be detained unless a warrant has been issued, and a warrant cannot be issued unless a proper summons has been delivered and signed for. Thousands of South Africans read these stories and live in dread of being thrown into some dark dank cell for the weekend because the traffic authorities never did their job properly.

Sometimes the authorities' "debt collecting efforts" are not without humour, albeit unintentional. In announcing the rollout of Durban's "Easy Pay" system in 2003, acting Deputy Head of the Metro Police, Amanda Clark, stated that the system was the first step in "offering our customers convenience".

"We are committed to continuous improvement in our customer service levels and the benefits of the fully implemented common system will be enjoyed by year-end." - What about implementing a more convenient process for the contesting of fines? - *Things are steadily getting worse!*

Johannesburg Metro Police announced recently that they're equipping vans and trailers with mobile summons-printing and warrant-faxing equipment for use at roadblocks. The vans and trailers are also equipped with an online payment system, which will allow motorists to swipe their debit or credit cards and clear the books immediately.

The real question here is who is paying for all of this very expensive technology, when good on-road policing would have ensured that miscreants were properly summonsed on the spot? And will the drivers pulled into the net be told that they don't have to pay, but can sign for a summons and defend themselves in court at a later date? - *Judging on past performance, I don't think so!*

The point is not that we should live in a state of anarchy. It's simply that drivers are expected to conform to the law **and we expect the same from the authorities!** We shouldn't allow them to strut into restaurants demanding diners' identity documents so they can check for "outstanding fines", as they recently did in Johannesburg, and we shouldn't let them intimidate us with threats that we'll spend the weekend sitting in jail because we choose to await a lawful summons rather than pay an admission of guilt fine on the strength of a bogus summons delivered via the post.

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An Analysis of Speed and Speed Trapping

It is time that the motoring public took a stand and enforced their constitutional rights to bring a halt to excessive revenue collection, along with reintroducing equanimity and appropriate, equitable law enforcement to the benefit of the population, and not only the Government's coffers. Much modern publicity suggests that perhaps 60km/h is safe and legal, while doing 65 kph in a 70 kph is dangerous and illegal. Many people accept the law at face value and condemn speeding drivers as dangerous. But thinking people all know that reality differs. Sometimes 80km/h in a 70 km/h zone is a perfectly sensible speed. More frequently on other roads at other times 80 km/h is dangerously fast. But speed limits are by their very nature arbitrary. In almost all circumstances the speed limit is not the best speed to drive at.

As local conditions vary the optimum speed varies too. For example on a foggy winters day with on a busy freeway a driver can legally travel at 100km/h, however most drivers are aware that travelling at this speed in that weather is not safe. On the other hand on a clear day on a quiet freeway, 100km/h seems very slow, most drivers can drive can drive comfortably over 110km/h in these conditions without any increased danger. Unfortunately driving at 110km/h on a clear day will get you a speeding ticket and driving at 100km/h on that foggy day will be classed as perfectly fine by the traffic police.

Instead of obsessing over how fast people drive the authorities should focus on things which cause speed to turn from an ally into an agent of death. The definition of a truly safe driver is one who never exceeds the maximum safe speed for the conditions and that is a far more complex mental task than watching the little round signboards with numbers on them. Look at the speeds people use in pouring rain or mist - they drive at the limit (because, nominally, the law says they can) when a safe speed is maybe half of that.

Speed control in this country is driven, in the motorist's mind, by the adherence to legislation rather than improvement of safety. Anyone who's ever accidentally walked into a closed glass patio door will understand that the dangers of speed don't start at the speed limit plus 1km/h.

This concept of a driver being able to know what is a safe speed limit is called the 85th percentile rule. This rule states that 85% of drivers facing no speed limits

will drive at similar speeds due to their judgement on the conditions and road they are travelling on. With approximately 15% of people being unable to judge what speed they should travel at. The fact that 15% of people cannot perceive what the safe limit to drive is a good argument for the enforcement of speed limits, and better driver education / stricter licence testing.

However, the issues arise when incompetent councillors are responsible for setting what speed limits they think are suitable. The limits often tend to be ridiculous and cause frustration for many drivers. What many drivers feel would be beneficial to everyone would be for qualified traffic engineers to set traffic speeds, these people will understand the 85th percentile rule and can set a safe speed limit for a given road. Secondly traffic police need to be taught when they should issue a speeding ticket, for example a car caught doing 110km/h on a clear freeway would be let off however a car caught doing 60 km/h near a school at 1:30 pm should get a ticket. Unfortunately this is unlikely to happen as Metro seems to enjoy frustrating drivers by erecting speed cameras everywhere and anywhere to catch drivers out. This makes it look like the Metro do this as a lucrative form of income and it has been shown that some speed cameras can earn hundreds of thousands of rand for a government. They truly are a cash cow for many governments whilst they scam as much money out of motorists as possible.

The South African public seem to have a submissive acceptance of the blatant double standard which is endemic to camera speed trapping. The covert technical infringements by the various authorities, mostly due to their flexible interpretation of the laws, is purely to gain the most possible legal advantage and in doing so gain the maximum revenue possible. This conduct continues unabated resulting in the increased indifference to traffic regulatory adherence by the majority of road users and to the steady detriment of road safety.

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