

# Policing the Future: Law Enforcement and Automated Vehicles



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## In Brief

As more auto manufacturers work to develop autonomous vehicle (AV) technology, both excitement and a sense tremendous uncertainty loom over the transportation industry. The challenges to implementation that AV tech companies face are prolific, but one of the most pressing concerns for law and policy makers is the intersection of self-driving vehicles with law enforcement officers. How will police interact with an “operator” of an AV that is not physically present in the vehicle?

At least one state has attempted to proactively address issues that can arise for law enforcement when attempting to interact with an AV. Arizona only permits an AV to operate on public roads without a human driver if “a person submits a law enforcement interaction plan to the department of transportation and the department of public safety.”<sup>i</sup> The law enforcement interaction plan must address all of the elements in the law enforcement protocol issued by the department of public safety.<sup>ii</sup> Among the items included in the law enforcement protocol are procedures for traffic collisions and disabled vehicles and what the vehicle owner’s obligations are in those scenarios.<sup>iii</sup> In addition, the person operating the AV must include instructions to first responders detailing how to interact with the fully autonomous vehicle in emergency and traffic enforcement situations.<sup>iv</sup>

Beyond updating protocol for law enforcement officers and emergency responders, other criminal and traffic law complications arise under the AV technology umbrella. The National Highway Traffic Safety Administration (NHTSA) states that the purpose of a traffic stop includes: 1) to stop a violation of a traffic law, 2) to deter other drivers from committing the same violation, and 3) to change future driving behavior of the driver.<sup>v</sup> But these purposes become more difficult to pursue when there is not a classic “driver” in the offending vehicle.

Most traffic violations are also considered strict liability offenses, which means that the driver’s culpability is irrelevant.<sup>vi</sup> Some states have even begun applying a strict liability standard to more serious traffic crimes, like vehicular manslaughter and DUI-related deaths.<sup>vii</sup> These types of crimes will make it

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<sup>i</sup> A.R.S. § 28-9602(C)(1).

<sup>ii</sup> *Id.*

<sup>iii</sup> Law Enforcement Protocol for Fully Autonomous Vehicles, <https://azdot.gov/sites/default/files/2019/07/law-enforcement-protocol.pdf>, (2018).

<sup>iv</sup> *Id.*

<sup>v</sup> See Jeffrey Gurney, *Driving into the Unknown: Examining the Crossroads of Criminal Law and Autonomous Vehicles*, 5 Wake Forest J.L. & Pol’y 393 (2015).

<sup>vi</sup> See Alan Michaels, *Constitutional Innocence*, 112 Harv. L. Rev. 828, 830 (1999).

<sup>vii</sup> See e.g., Del Code Ann. tit. 21, § 417A(a) (2013) (“A person is guilty of operation of a vehicle causing death when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than §

easier to prosecute AV offenses, but states that apply traditional culpability requirements may see a sharp downturn in vehicular manslaughter convictions.<sup>viii</sup> At the very least, there will likely be a need for statutory language to clarify what it means to “drive recklessly” while riding in an AV.

These and other principles of criminal law will be inevitably stretched and challenged by the introduction of AV technology on public roads. One problem may be simply locating the party responsible for an AV’s traffic infraction. Will it be the manufacturer? The owner? The passenger? Furthermore, how will intoxicated passengers be treated if they are inside of an AV which has a manual override feature? For example, in Nevada, there is no exemption for AVs under the state’s drinking and driving prohibition.<sup>ix</sup> Some have argued that so long as an AV has an override feature, intoxicated passengers can be held criminally liable for traffic accidents, even if an automated driving system (ADS) was in control of the vehicle at the time of the incident.<sup>x</sup>

Other issues naturally follow these watershed complications. In time, states will need to develop criminal penalties in regards to physical and virtual interference with the operation of AVs (i.e., “hacking”).<sup>xi</sup> Location and possession offenses are likely to become problematic as well. For instance, many states have heightened criminal penalties for certain prohibited acts that occur within the vicinity of a specific area, whether in relation to an individual (protection orders) or a place (school zones).<sup>xii</sup> If an AV diverts a traffic path automatically and consequently brings a passenger who is in possession of a controlled substance or firearm or a passenger who is a convicted sex offender within a restricted area, there may be unintended legal consequences.<sup>xiii</sup>

These and other issues remain largely unresolved in the public sphere as AV manufacturers race toward producing higher and higher levels of self-driving capability. The struggle for law and policy to keep up as advancing technology becomes available on public roadways may be the greatest challenge the auto-making industry has yet to face. In the meantime, some pioneer states have begun to bridge the gaps in transportation regulation, but the pros, cons, and unintended outcomes of these policies are yet to be fully realized.

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4177 of this title, the person's driving or operation of the vehicle or OHV causes the death of another person.”); Mich. Comp. Laws § 257.601c(2) (2010) (“A person who commits a moving violation that has criminal penalties and as a result

causes death to a person operating an implement of husbandry on a highway in compliance with this act is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$ 7,500.00, or both.”); 625 Ill. Comp. Stat. 5/11-501(d) (2014); Colo. Rev. Stat. § 18-3-106(1)(b)(1) (2014) (“If a person operates or drives a motor vehicle while under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, and such conduct is the proximate cause of the death of another, such person commits vehicular homicide. This is a strict liability crime.”).

<sup>viii</sup> See Gurney supra n. 5 at 426.

<sup>ix</sup> Sarah Jacobsson Purewal, *Nevada Approves Self-Driving Cars After Google Lobbying Push*, PC WORLD (Feb. 17, 2012),

[http://www.techhive.com/article/250179/nevada\\_approves\\_self\\_driving\\_cars\\_after\\_google\\_lobbying\\_push.html](http://www.techhive.com/article/250179/nevada_approves_self_driving_cars_after_google_lobbying_push.html).

<sup>x</sup> See Gurney, *Driving into the Unknown* supra n. 5 at 420.

<sup>xi</sup> See Susan W. Brenner, *State Cybercrime Legislation in the United States of America: A Survey*, 7 RICH. J.L. & TECH. 28 P 15 (2001).

<sup>xii</sup> See *Drug-Free Zone Laws: An Overview of State Policies*, THE SENTENCING PROJECT, [http://sentencingproject.org/doc/publications/sen\\_Drug-Free%20Zone%20Laws.pdf](http://sentencingproject.org/doc/publications/sen_Drug-Free%20Zone%20Laws.pdf).

<sup>xiii</sup> See Gurney supra n. 5 at 430–32.