

Date of Hearing: April 22, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

AB 1978 (Vince Fong) – As Amended April 15, 2024

SUBJECT: Vehicles: speed contests

SUMMARY: Authorizes a peace officer to impound a vehicle without taking the driver into custody for obstructing or placing a barricade upon a highway or an offstreet parking facility for the purpose of facilitating or aiding a speed contest or exhibition of speed.

EXISTING LAW:

- 1) Provides that a person shall not engage in an exhibition of speed on a highway or in an offstreet parking facility. (Vehicle Code Section (VEH) 23109)
- 2) Defines “exhibition of speed” as accelerating or driving at a rate of speed that is dangerous and unsafe in order to show off or make an impression on someone else. (*People v. Grier* (1964) 226 Cal.App.2d 360, 364.)
- 3) Defines “speed contest” as a motor vehicle race against another vehicle, a clock, or other timing device. (VEH 23109)
- 4) Provides that a person shall not engage in a speed contest on a highway or in an offstreet parking facility. (VEH 23109)
- 5) Allows a peace officer to immediately arrest and take into custody a person engaged in a speed contest, and to remove and impound the vehicle used in the offense for up to 30 days. (VEH 23109.2)
- 6) Authorizes a peace officer to impound a vehicle for a period not to exceed 30 days upon the order of a magistrate for fleeing a peace officer or for reckless driving. (VEH 14602.7)
- 7) Requires the impounding agency to notify the legal owner of the vehicle within two working days of the impoundment by certified mail at the address provided by the Department of Motor Vehicles. (VEH 14602.7)
- 8) Provides that failure to notify the legal owner of the impoundment shall result in the impounding agency from charging for more than 15 days of the impoundment when the legal owner redeems the impounded vehicle. (VEH 14602.7)
- 9) Requires the impounding agency to release the vehicle to the registered owner if the vehicle was stolen, the vehicle was subject to bailment and was driven by an employee of the business, or the peace officer reasonably believes that the registered owner was not the driver who fled the police. (VEH 14602.7)

- 10) Provides that a vehicle shall not be released without a currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of the court. (VEH 14602.7)
- 11) Provides the opportunity for the owner of the vehicle to contest the impoundment in a poststorage hearing to determine the validity of the storage. (VEH 14602.7)
- 12) Authorizes the magistrate to release the vehicle if the continued impoundment will cause undue hardship to persons dependent upon the vehicle for employment or to a person with a community property interest in the vehicle. (VEH 14602.7)
- 13) Authorizes a vehicle to be released before the impoundment period is over if the legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation or other licensed financial institution if they pay the costs of the towing and storage. (VEH 14602.7)

FISCAL EFFECT: Unknown

COMMENTS: SB 1758 (Kopp) Chapter 1221, Statutes of 1994 gave law enforcement a new tool to enforce vehicle code violations—the ability to impound someone's vehicle for driving while unlicensed (DWU) or driving with a suspended license (DWS).

As a result of that law, the Department of Motor Vehicles (DMV), in conjunction with the National Highway Traffic Safety Administration commissioned a series of studies to evaluate the deterrence effect of impounding a vehicle. While a study on the general deterrent effect of the law “did not find compelling evidence of a general deterrent impact of vehicle impoundment and forfeiture on crashes for one of the main groups it targets,” another study on the specific deterrent effect found the law had a great impact on future traffic offenses.

The DMV report, *An Evaluation of the Specific Deterrent Effect of Vehicle Impoundment on Suspended, Revoked and Unlicensed Drivers in California* (DeYoung, 1997), found that first-time offenders who had their vehicles impounded for DWU or DWS saw a 23.8% drop in subsequent convictions for DWU or DWS. For repeat offenders, subsequent violations dropped 34.2%.

After SB 1758, the Legislature began expanding the violations for which a vehicle could be impounded. AB 2288 (Aguilar), Chapter 884, Statutes of 1996 expanded vehicle impoundments to include speed contests. SB 1489 (Perata) Chapter 411, Statutes of 2002, also known as the U'kendra K. Johnson Memorial Act, granted law enforcement the ability to impound a vehicle for reckless driving after Ms. Johnson was killed by a vehicle fleeing a sideshow. While existing law permits law enforcement to go to a magistrate to seek a 30-day impoundment for reckless driving or fleeing the police, the code section does not explicitly permit law enforcement to go to a judge to ask for an impoundment for a vehicle where the person is being charged with engaging in a speed contest or a motor vehicle exhibition of speed.

According to the author, “Illegal street racing is on the rise and it is eroding our sense of safety. Street racers take advantage of highways, parking lots, and roads by forcibly blocking other cars from using these roadways. Illegal street racing is not only dangerous, but it often has fatal consequences for participants, pedestrians, commuters, and law enforcement alike. AB 1978 will allow peace officers to seize a vehicle from someone who aids and abets street races without

taking the owner of the vehicle into custody. This will ensure that speed exhibitions will not continue in a different location once a street race has been dispersed and will keep roads, pedestrians, and other drivers safe.”

During the COVID-19 pandemic lockdowns, cities saw an increase in street racing and sideshows, in part because there were fewer vehicles on the road. The California Highway Patrol (CHP) responded to 25,953 calls involving a motor vehicle speed contest or exhibition of speed in 2020, nearly 3,500 more calls than the prior year. In 2020, CHP cited 341 individuals with a violation of motor vehicle exhibition of speed, 141 more than the year before.

Citations and calls reporting speed racing and motor vehicle exhibitions of speed have continued to grow. In 2022, CHP received over 31,000 calls involving a motor vehicle speed contest or motor vehicle exposition of speed. That number dropped to 27,265 in 2023. CHP issued 1,487 citations for the two violations in 2022 and 2023.

Law enforcement has continued to get aggressive on arrests related to motor vehicle sideshows and is making statements that are out of compliance with the California Vehicle Code. For example, On February 5th of this year law, the San Joaquin County Sheriff’s Office detained more than 150 people and seized 88 vehicles present at the scene of a sideshow. The sheriff declared he would not return the vehicles and may crush them (California law only authorizes vehicles to be seized for up to 30 days, not indefinitely. Law enforcement also lacks the authority to crush the vehicles). Law enforcement in this case treated everyone present at the scene of the sideshow as an aider and abettor. One man even had his car impounded even after demonstrating to law enforcement he was simply on his way to work.

This bill would make it even easier for law enforcement to seize vehicles in massive sweeps by authorizing law enforcement officers to seize the vehicle without having to take the person into custody for a misdemeanor charge. Since this bill was heard in the Public Safety Committee the bill has been amended to only apply to aiders and abettors who obstruct or place a barricade upon a highway or an off-street parking facility for the purpose of facilitating or aiding a speed contest or exhibition of speed.

The California Police Chiefs, writing in support of this bill, argue According to the *California Police Chiefs Association (CPCA)*, “Sideshows can be dangerous for pedestrians, other drivers, and law enforcement, and California has seen a dramatic rise in this illegal activity in recent years. Most recently sideshows have escalated from street racing to property damage, violent altercations, and even death on certain occasions, so much so that local law enforcement agencies like those in Sacramento and San Joaquin have taken extra measures to crack down on illegal activity.

One recent sideshow in Stockton saw over 150 people detained and nearly 90 cars towed, but more must be done to curtail this growing problem.

By allowing peace officers to impound vehicles without taking a person into custody, AB 1978 will provide law enforcement with a practical tool for deterring sideshows, curtailing speed exhibitions, and protecting communities.”

According to American Civil Liberties Union California Action, writing in opposition “Assembly Bill (AB) 1978, which would give police officers overbroad and unconstitutional authority to tow vehicles as a de facto punishment for anyone who they believe aided or abetted a sideshow or street race.

“AB 1978 harshly punishes people by towing their vehicle without a formal judicial hearing or determination. For low-income and working households, the towing of a vehicle is often catastrophic. Retrieving a car after it has been towed is time-consuming and costly, and for many people, a tow means total loss of their car. The tow and storage fees are often more than people can afford, and when an individual cannot pay the fees associated with the tow, the vehicle is sold at auction, resulting in the person permanently losing their car. According to a 2018 federal report, 46% of American adults lack the savings necessary to cover an unanticipated expense of \$400 or more.¹ But a report from the following year found that the average towing and storage fees in California for a vehicle that is held for just 3 days is nearly \$500.² When people lose their cars, they often lose their biggest personal asset, their ability to get to work, and their ability to meet their basic needs like grocery shopping, taking children to school, or going to medical appointments. Someone in violation of Cal. Veh. Code sections 23109(b-d) can already be cited and fined \$500 – adding tow costs and the potential loss of their vehicle based solely on the discretion of a police officer is an outsized and unjust punishment.

By establishing a blunt, overbroad tool to seize Californians’ vehicles, AB 1978 is likely unconstitutional. Courts have made it clear that even if cities are following state law if the underlying tow violates the Constitution, cities can be held liable for their unconstitutional actions. Under the Fourth Amendment, a warrant is required to tow a vehicle unless the vehicle falls under a limited number of exceptions to the warrant requirement. As written, AB 1978 allows officers to tow vehicles without a warrant, even though the vehicles they would be towing are not exempted from the warrant requirement. AB 1978 opens cities up to resource-intensive litigation and costly liability while encouraging them to violate the most fundamental rights of their citizens.

Our streets are made safer by implementing human-centered, environmental traffic designs and offering safe, legal places for car shows and racing, not by relying on punitive measures and abrogating people’s constitutional rights.”

Recovering a vehicle after it has been towed is expensive. According to the 2019 Western Center on Law and Poverty report *Towed into Debt, How Towing Practices in California Punish Poor People*, the average tow fee in California is \$189, with a \$53 storage fee per day and a \$150 administrative fee. After three days of storage, a towing fee could come out to \$499. If a vehicle was towed for having five or more unpaid parking violations or for vehicle registration purposes, the individual must also pay the unpaid parking debt and vehicle registration before they can retrieve their vehicle.

AB 3085 (Gipson) of 2024 also permits vehicles involved in a motor vehicle exhibition of speed or a motor vehicle speed contest to be towed. However, AB 3085 amends a statutes that requires a warrant to be issued by a magistrate for the tow. This bill authorizes law enforcement to seize the vehicles without a warrant.

Existing law permits law enforcement to remove vehicles engaged in a motor vehicle speed contest or exhibition of speed on a highway without a warrant. However, the courts have recently questioned warrantless impoundment. The United States Supreme Court in *Cady v. Dombrowski* (1973) 413 U.S. 433, 441, first articulated the vehicular community caretaking exception, which allows police to seize and remove from the streets “vehicles impeding traffic or threatening public safety and convenience”. (*Ibid.*) The exception allows for the impoundment of cars actively posing a problem to the community’s welfare due to their location. The exception does not justify impoundments that do not address a present need under the vehicular community caretaking exception, courts have consistently emphasized the immediate public needs served thereby. (*Miranda, supra*, 429 F.3d at p. 863.) Thus, the impoundment under the community caretaking function does not depend on whether the officer had probable cause to believe that there was a violation, but on whether the impoundment fits within the authority of police to seize and remove from the streets vehicles presently impeding traffic or threatening public safety and convenience. (*Miranda, supra*, at p. 864.)

Related legislation: AB 3085 (Gipson) of 2024 Expands the authority of a peace officer to impound a vehicle involved in a speed contest or exhibition of speed for no more than 30 days upon the order of a magistrate. That bill passed out of this committee and is currently pending in Assembly Public Safety Committee.

AB 2186 (V. Fong) of 2024 would allow a peace officer to arrest a person and impound a vehicle if the person was engaged in an exhibition of speed that occurs in an offstreet parking facility. AB 2186 is pending hearing in this committee.

AB 74 (Muratsuchi) of 2023 would have provided that a vehicle used in a sideshow or street takeover is a public nuisance which may be subject to forfeiture. AB 74 failed passage in Assembly Transportation Committee.

AB 822 (Alanis) of 2023 would include engaging in a motor vehicle speed contest or an exhibition of speed as offenses for which a peace officer may impound a vehicle pursuant to a court warrant. The hearing was cancelled at the request of the author in Assembly Public Safety Committee.

AB 2000 (Gabriel) Chapter 436, Statutes of 2022, made it a crime for a person to engage in a motor vehicle speed contest in an offstreet parking facility or an exhibition of speed in an offstreet parking facility, or to aid or abet therein.

AB 3 (V. Fong) Chapter 611, Statutes of 2021, allows a court to suspend a person’s driver’s license if they were convicted of a motor vehicle exhibition of speed and that charge stemmed from their participation in a motor vehicle sideshow.

AB 1407 (Friedman) of 2019 would have required a vehicle that is determined to have been involved in a speed contest to be impounded for 30 days, as specified. AB 1407 was vetoed.

AB 410 (Nazarian) of 2019 would have allowed a vehicle to be impound based on a declaration submitted by a police officer that a vehicle was involved in a motor vehicle sideshow. AB 410 failed passage in Assembly Public Safety Committee.

AB 2876 (Jones-Sawyer) Chapter 592, Statutes of 2018, clarifies that the protections against unreasonable seizures provided by the Fourth Amendment of the U.S. Constitution apply even when a vehicle is removed pursuant to an authorizing statute.

AB 2175 (Aguiar-Curry) Chapter 314, Statutes of 2018, among other things, allows impoundment of a vessel when an officer has probable cause to believe it was used in the commission of a crime.

SB 67 (Perata), Chapter 727, Statutes of 2007, reenacted provisions that were allowed to sunset that provide for vehicle impoundments when a person is arrested for reckless driving, exhibition of speed, or a speed contest.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Police Chiefs Association
California State Sheriffs' Association
Conor Lynch Foundation
So-Cal Families for Safe Streets
Street Racing Kills

Oppose

ACLU California Action
California Attorneys for Criminal Justice
Ella Baker Center for Human Rights
Initiate Justice
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
Pacific Juvenile Defender Center
Western Center on Law & Poverty

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