

Date of Hearing: April 15, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

AB 3085 (Gipson) – As Amended April 8, 2024

SUBJECT: Vehicles: street takeovers, sideshows, and racing

SUMMARY: 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.

Specifically, **this bill:**

- 1) Authorizes a notice of the impoundment to be sent by electronic means with the consent of the defendant.
- 2) Requires the person or agency who executed the warrant or court order to receive notice of the post storage hearing within 48 hours of impoundment, excluding weekends and holidays.

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.

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.

Various bills have been introduced over the years to permit a 30-day impoundment of a vehicle after a person is convicted. SB 510 (Hall) of 2015 and AB 1393 (Friedman) of 2017 were vetoed by Governor Brown, and AB 1407 (Friedman) of 2019 was vetoed by Governor Newsom. In Governor Newsom's veto message of AB 1407, he argued: *"This bill would impose a mandatory 30-day impound penalty for a vehicle used in connection with reckless driving or street racing on a second or subsequent conviction."*

Under current law, a conviction for reckless driving is punishable by a total fine of between \$684 and \$4,175 and possible jail time of between 5 and 90 days. A conviction for engaging in a first-offense speed contest is punishable by a total fine of between \$1,551 and \$4,175, jail time between 1 and 90 days, 40 hours of community service, and potential driver's license suspension between 90 days and 6 months. Subsequent convictions have even stronger penalties.

Courts currently have the authority to impound vehicles based on the totality of facts and circumstances of each case. This bill reduces the courts' discretion in deciding to impound a vehicle, as well as the length of time the vehicle is impounded.

I am not persuaded that limiting judicial discretion for these cases is warranted."

Unlike previous bills vetoed by Governor Brown and Governor Newsom, this bill provides judicial discretion on whether or not to permit an impoundment and is not a mandatory 30-day impoundment. Further, unlike previous bills, this bill permits a magistrate closer in time to the event of the speed contest or motor vehicle exhibition of speed to impound the vehicle, instead of doing so months or years later upon a conviction.

Further, unlike AB 2186 (V. Fong) of 2024, which permits law enforcement to impound a vehicle engaged in a motor vehicle exhibition of speed on a parking lot without judicial review, this bill requires judicial review.

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.)

Double referral: This bill is double referred to the Assembly Committee on Public Safety.

Related legislation: AB 1978 (V. Fong) of 2024 would authorize a peace officer to impound a vehicle without taking the driver into custody for aiding and abetting speed contests and exhibitions of speed. That bill passed out of Assembly Public Safety Committee and is pending before this 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.

AB 353 (Cedillo), Chapter 653, Statutes of 2011, requires law enforcement officers conducting a sobriety checkpoint to make reasonable attempts to identify the registered owner of a vehicle being driven by a person under the influence, and to release the vehicle to the owner or to obtain the owner's consent to release the vehicle to a licensed driver by the end of the checkpoint.

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 Association of Highway Patrolmen
California Contract Cities Association
California District Attorneys Association
City of Pico Rivera
Los Angeles City Attorney's Office

Opposition

None on file

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