

Date of Hearing: April 22, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

AB 2186 (Vince Fong) – As Amended April 15, 2024

SUBJECT: Vehicles: impoundment

SUMMARY: Authorizes a peace officer to removal and seize a motor vehicle used in an exhibition of speed in an offstreet parking facility for no more than 30 days and provides that a peace officer may not remove and seize a vehicle of a person who aided and abetted a person engaged in an 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 motor vehicle exhibition of speed on highway, 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:

One of the common charges brought against individuals participating in a sideshow is engaging in a motor vehicle exhibition of speed on a highway. This section has been interpreted by the courts to include the act of burning or squealing tires allowing them to lose traction, or performing a "wheelie" on a motorcycle. A motor vehicle exhibition of speed could be as minor as revving an engine or hitting the gas too quickly after running a light.

In 2021, the Legislature passed AB 3 (Fong), Chapter 611 which provided the ability 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. The bill defined in statute a sideshow as an event in which two or more persons block or impede traffic on a highway, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.

In 2022, the Legislature passed AB 2000 (Gabriel) Chapter 436, which expanded the crime of motor vehicle exhibition of speed to include offstreet parking facilities. This bill makes conforming changes to similarly permit law enforcement to remove a vehicle without a warrant if it was engaged in a motor vehicle exhibition of speed on a highway.

According to the author, "Sideshows continue to pose a threat to public safety. These reckless illegal activities draw crowds and often result in serious injuries and fatalities. AB 2186 will ensure that law enforcement has the same tools to impound vehicles involved in sideshows on roadways as well as in parking lots. AB 2186 will expand upon AB 3 (Fong, 2021) and AB 2000 (Gabriel, 2022) to make clear that vehicles involved in exhibitions of speed or other sideshow contests in parking lots are subject to the same impoundment laws as those that take place on roadways. Through strengthening the law, law enforcement are better equipped to keep our streets and communities 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.

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 statute 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 1978 (Fong) of 2024 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.

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 Association of Highway Patrolmen
California State Sheriffs' Association
Peace Officers Research Association of California
Street Racing Kills

Opposition

None on file

Analysis Prepared by: David Sforza / TRANS. / (916) 319-2093