

Date of Hearing: April 8, 2019

**ASSEMBLY COMMITTEE ON TRANSPORTATION**

Jim Frazier, Chair

AB 1407 (Friedman) – As Amended March 27, 2019

**SUBJECT:** Reckless driving: speed contests: vehicle impoundment

**SUMMARY:** Authorizes law enforcement to impound a vehicle for 30 days if the vehicle's registered owner is convicted of reckless driving or engaging in a speed contest while operating the vehicle, as specified. Specifically, **this bill:**

- 1) Provides that for a first offense, law enforcement may impound a vehicle for 30 days if the vehicle's registered owner is convicted of reckless driving or engaging in a speed contest.
- 2) Provides that for a second and every other subsequent offense, a vehicle will be impounded for 30 days, at the owner's expense, if the vehicle's registered owner is convicted of reckless driving and speed contests.
- 3) Authorizes the court to waive the 30-day impoundment requirements if the court determines that impoundment of the vehicle would impose an undue hardship on the registered owner's family.
- 4) Provides that impounded vehicles may be released before the 30th day if the legal owner is a motor vehicle dealer, bank, or other financial institution that holds an interest in the vehicle and the legal owner pays the storage and towing fees.
- 5) Waives the requirement for paying the towing and storage fees if the owner is a motor vehicle dealer, bank, or other financial institution if the vehicle is collected by the 15<sup>th</sup> day.
- 6) Relative to speed contests, authorizes an officer to issue a notice to correct for a violation of a mechanical or safety requirement and require that the correction be made within 30 days after the date the vehicle is released from impound.

**EXISTING LAW:**

- 1) Provides that any person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.
- 2) Prohibits a person from engaging in any motor vehicle speed contest which includes a motor vehicle race against another vehicle, a clock, or other timing device.
- 3) Prohibits a person from aiding or abetting in a speed contest.
- 4) Specifies the penalty for a speed contest or the exhibition of speed is a misdemeanor.
- 5) Provides that when a person is arrested for street racing or a speed contest, an officer may impound the vehicle for not more than 30 days and that the registered and legal owner of the vehicle is required to be provided a hearing regarding the storage of the vehicle.

- 6) Provides that when a person is convicted of a speed contest the court may impound the vehicle for not less than one day nor more than 30 days.

**FISCAL EFFECT:** Unknown

**COMMENTS:** In 1994 California implemented a new tool to enforce vehicle code violations: impounding vehicles. SB 1758 (Kopp) Chapter 1221, Statutes of 1994 gave law enforcement 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 Driver's in California* (DeYoung, 1997), found that first time offenders who had their vehicles impounded for DWU or DWS saw a 23.8 percent drop in subsequent convictions for DWU or DWS. For repeat offenders, subsequent violations dropped 34.2 percent. Those drivers who had their vehicles impounded also saw an 18 percent drop in total traffic convictions, and a 22.3 percent drop in traffic violations for repeat offenders.

After SB 1758 the Legislature began expanding the violations for which a vehicle could be impounded. AB 2288 (Aguiar) 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.

This bill expands on the authority to impound vehicles for reckless driving and speed contests in several ways. Under existing law, impoundment for both speed contests and for reckless driving occurs upon arrest. This bill would allow law enforcement to impound a vehicle after a conviction of reckless driving or speed contests for up to 30 days on a first offense, and require a 30 day impoundment on a second offense (reduced by the number of days the vehicle was impounded upon arrest). In addition, for speed contests, if the impounded vehicle was found to be in violation of a mechanical violation of the Vehicle Code, an officer can also issue a correction ticket. However, the ability to do this is already allowed under existing law.

Under this bill a court is also given flexibility to not impound the vehicle if the vehicle is the only means of transportation for other members of the defendant's family and impounding the vehicle would result in undue hardship. Further, the court must release the vehicle if the vehicle used in the offense was not owned by the defendant but by a motor vehicle dealer, bank, credit union, Acceptance Corporation or other financial institution. Those entities must pay all of the towing and storage fees, but may have the lien sale processing fees waived if collected before the 15<sup>th</sup> day of impoundment.

Governor Brown vetoed similar bills in 2017 and 2015. In his 2017 veto message, the Governor argued:

“This bill requires courts to impose a mandatory 30-day vehicle impoundment for a second or subsequent case of reckless driving or engaging in an illegal speed contest.

I vetoed a similar bill in 2015, because I believed that current law already allows judges - who see and evaluate first-hand the facts of each case – to impound cars for up to 30 days when circumstances warrant.

I continue to believe that there is no reason for this law except to supplant sound judicial discretion with robotic and abstract justice – something I don't support.”

According to the author, “In order to combat reckless driving and street racing, law enforcement entities have turned to evidence-based penalties like extended vehicle impoundments that have proven to change driver behavior. The mandatory 30-day impoundment for repeat offenders and the required removal of any illegal modifications to the vehicle within AB 1407 provides a reasonable solution to a growing threat to public safety in communities across the state.”

The California State Sherriff's Association, writing in support, argues “Law enforcement agencies have seen an increase in the number of illegal speed contests, also known as “side shows,” and reckless driving incidents taking place on our roadways. While existing law permits impoundment of such vehicles under specified circumstances, AB 1407 creates a scenario where a vehicle used in a repeat offense must be impounded for a period of time. This bill could deter those who would engage in this dangerous behavior and make our roadways safer.”

According to the Legislative Analyst's Office, the state now has over \$10 billion in unpaid court ordered debt. The Legislature and Governor have made several efforts to collect unpaid debt and to address the negative consequences of unpaid fines. In the 2017 budget, the state removed the court's authority to notify the DMV for the suspension of individuals' driver's licenses for unpaid traffic fines. Last year's budget created a pilot program that would allow a pilot court to issue an ability-to-pay determination prior to a court hearing date. This determination could result in an individual either completing community service in lieu of the total fine amount, or suspend the total amount due in whole or in part. Governor Brown also signed AB 503 (Lackey), Chapter 741, Statutes of 2017, which requires a payment program to be offered to indigent individuals before agencies can use DMV to collect unpaid parking tickets.

While this bill does not increase traffic fines, the cost to recover an impounded vehicle could be substantial. According to a 2019 report from Western Center and Law and Poverty entitled *Towed into Debt: How Towing Practices in California Punish Poor People*, the average towing fee in California is \$189, the cost of storage averages \$53 a day, and the average administrative fee is \$153. A mandatory 30 day towing and storage cost to the defendant, as required by this bill for a second conviction, could result in a \$1,929 towing and storage fee to recover their vehicle.

Nearly 50% of all vehicles in California are valued under \$5,000. With a \$1,925 towing and storage fee, many drivers will likely lose their car upon a second conviction of reckless driving or speed contest because the cost of recovering their vehicle will either be half or all of its total value. The number of vehicles impounded could be substantial, as The California Highway

Patrol alone has issued a total of 5,675 citations for reckless driving and speed contests between 2014 and 2018.

*Committee comments:* There are several provisions of this bill the Legislature may wish to clarify should it pass out of this committee. This bill specifies that on the second conviction the individual has to pay the towing and storage fees but is silent on the first conviction, potentially implying that they do not have to pay the towing and storage costs. Under existing law, an individual has to pay the towing and storage fees if the impoundment was related to a speed contest unless a conviction was not secured. For reckless driving, the individual who pays the towing and storage fees depends on how the vehicle was impounded. If the arresting officers secured an order from a magistrate judge to impound the vehicle, the owner of the vehicle pays the towing and storage fees regardless of a conviction. However, if a magistrate judge was not used, law enforcement is responsible for the towing and storage costs if a conviction cannot be secured.

*Related Legislation:* AB 410 (Nazarian, 2019) Provides that any person who actively participates in, or aids and abets, a motor vehicle sideshow is guilty of a misdemeanor. This bill is currently scheduled to be heard in this committee.

AB 1393 (Friedman, 2017) and SB 510 (Hall, 2015) would have required a vehicle that is determined to have been involved in a speed contest or engaged in reckless driving to be impounded for 30 days, as specified. These bills were vetoed by the Governor.

*Previous Legislation:* 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.

SB 1489 (Perata) Chapter 411, Statutes of 2002 gave law enforcement the authority to seize and impound a vehicle for no more than 30 days when a person was arrested for reckless driving, exhibition of speed, or a speed contest. This bill sunsets on January 1, 2007.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California State Sheriffs' Association

### **Opposition**

None on file

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