
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2147 **Hearing Date:** June 21, 2016
Author: Eggman
Version: April 14, 2016
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Vehicles: Impoundment: Prostitution*

HISTORY

Source: Author

Prior Legislation: AB 14 (Fuentes)
AB 1751 (Fuentes) – 2008, Vetoed
AB 1724 (Jones) – 2008, Vetoed

Support: California District Attorneys Association; California Police Chiefs Association;
California State Sheriffs' Association; The San Joaquin County District
Attorney's Office

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 76 - 1

PURPOSE

The purpose of this bill is to specify that vehicle impoundment programs which are related to solicitation of prostitution offenses, currently authorized under existing state law, do not need to be authorized by a local ordinance.

Existing law provides that any person who maintains or commits any public nuisance for which the punishment is not otherwise prescribed, or who willfully omits performing any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor punishable by up to 6 months in the county jail and/or a fine up to \$1000. (Penal Code § 372.)

Existing law authorizes a local county, city or city and county to adopt a five-year pilot program for declaring a motor vehicle used in prostitution and related offenses to be a nuisance. (Vehicle Code § 22659.5.) An ordinance adopted pursuant to Vehicle Code Section 22659.5 shall have the following features:

- Where the defendant is arrested and taken into custody, the arresting officer may remove the vehicle from a public highway or public land. The owner may retrieve the vehicle through proof of registration and payment of applicable fees and costs. (Vehicle Code §§ 22651 and 22850 et seq.)
- The nuisance provisions apply only if the defendant was convicted of a specified offense, or a lesser included offense as part of a plea bargain.

- The defendant can be ordered not to use the vehicle again for purposes of committing prostitution or a related offense. Violation of such an order may result in impoundment of the vehicle for up to 48 hours.

Existing law provides that any person who maintains or commits any public nuisance for which the punishment is not otherwise prescribed or who willfully omits performing any legal duty relating to the removal of a public nuisance is guilty of a misdemeanor punishable by up to six months in the county jail and/or a fine up to \$1000. (Penal Code § 372)

Existing law prohibits any person from dumping or causing to be dumped any waste matter, including rocks or dirt, in or upon any public or private highway or road, without the consent of the owner, or in or upon any public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. The penalty is an infraction with a penalty of \$250-\$1000 plus penalty assessments for a first offense. (Penal Code § 374.3.)

Existing law provides that dumping commercial quantities of waste in violation of Penal Code Section 374.3 is a misdemeanor, punishable by imprisonment in the county jail for up to six months and a mandatory fine of between \$1000 and \$3000 for a first conviction, between \$3000 and \$6000 for a second conviction, and between \$6000 and \$10,000 for a third or subsequent conviction. (Penal Code § 374.3(h).)

Existing law defines commercial quantities of waste as either waste generated in the course of a business or trade, or an amount equal to one cubic yard. (Penal Code § 374.3 (h).)

Existing law authorizes the impoundment and, in specific instances, civil forfeiture of a motor vehicle when the registered owner has multiple convictions for misdemeanor illegal dumping of waste matter. (Vehicle Code § 23112.7.)

Existing law states notwithstanding any other provision of law and except as provided in this provision, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a California highway by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for driving on a suspended or revoked license. (Vehicle Code § 14607.6 (a).) 3)

Existing law prohibits a peace officer from impounding a vehicle, as specified, if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed. (Vehicle Code § 14607.6 (c)(2).)

Existing law provides that a peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle. (Vehicle Code § 14607.6 (c)(3).)

Existing law provides a registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment, as specified. (Vehicle Code § 14607.6 (c)(4).)

Existing law states if the driver of a vehicle impounded, as specified, was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for driving on a suspended or revoked license, the vehicle shall be released pursuant to the Vehicle Code and is not subject to forfeiture. (Vehicle Code § 14607.6 (c)(5).)

This bill provides that a vehicle used in the commission of a crime related to prostitution by a person buying or attempting to buy sexual services is a nuisance subject to an impoundment period of up to 30 days.

- Specifies that a motor vehicle is a public nuisance subject to seizure by a local law enforcement agency and an impoundment period of up to 30 days when the motor vehicle is used in the commission or attempted commission of a violation solicitation by a person buying or attempting to buy sexual services if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years; and
- The vehicle may only be impounded pursuant to a valid arrest by a local law enforcement agency of the driver for a violation of solicitation for buying or attempting to buy sexual services.

This bill specifies that the impoundment procedures shall apply to offenders buying or purchasing sexual services.

This bill imposes the same procedures for impoundment, storage, and release of the vehicle as are provided under the ordinance-authorizing provisions under existing law, as they apply to solicitation of prostitution offenses, without the requirement that an ordinance be passed in order to authorize local authorities to make use of the impounding authority. The following procedures shall apply:

- Requires that within two working days after impoundment, the impounding agency shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded;
- States the notice shall also include notice of the opportunity for a post-storage hearing to determine the validity of the storage or to determine mitigating circumstances establishing that the vehicle should be released. The impounding agency shall be prohibited from charging for more than five-days' storage if it fails to notify the legal owner within two working days after the impoundment when the legal owner redeems the impounded vehicle;
- Provides that the impounding agency shall maintain a published telephone number that provides information 24 hours per day regarding the impoundment of vehicles and the rights of a legal owner and a registered owner to request a hearing;
- Mandates the notice include all of the following information: The name, address, and telephone number of the agency providing the notice; The location of the place of storage and description of the vehicle, that shall include, if available, the model or make, the manufacturer, the license plate number, and the mileage; The authority and purpose for the removal of the vehicle; and, A statement that in

- order to receive a post-storage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.
- States the post-storage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency may authorize one of its own officers or employees to conduct the hearing if that hearing officer is not the same person who directed the seizure of the vehicle. Failure of the legal and the registered owners, or their agents, to request or to attend a scheduled hearing shall satisfy the post-storage hearing requirement;
 - Requires the agency employing the person who directed the storage to be responsible for the costs incurred for towing and storage if it is determined in the post-storage hearing that reasonable grounds for the storage are not established. Any period during which a vehicle is subjected to storage under an ordinance adopted pursuant to this bill shall be included as part of the period of impoundment;
 - States the impounding agency shall release the vehicle to the registered owner or his or her agent prior to the end of the impoundment period under any of the following circumstances:
 - The driver of the impounded vehicle was arrested without probable cause;
 - The vehicle is a stolen vehicle;
 - The vehicle is subject to bailment and was driven by an unlicensed employee of a business establishment, including a parking service or repair garage;
 - The driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period;
 - The registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation, or was unaware that the driver was using vehicle to engage in solicitation of prostitution,; and
 - A spouse, registered domestic partner, or other affected third party objects to the impoundment of the vehicle on the grounds that it would create a hardship if the subject vehicle is the sole vehicle in a household.
 - The hearing officer shall release the vehicle where the hardship to a spouse, registered domestic partner, or other affected third party created by the impoundment of the subject vehicle, or the length of the impoundment, outweigh the seriousness and the severity of the act in which the vehicle was used.
 - Provides that notwithstanding any provision of law, if a motor vehicle is released prior to the conclusion of the impoundment period because the driver was arrested without probable cause, neither the arrested person nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges;
 - Requires that the registered owner or his or her agent be responsible for all towing and storage charges related to the impoundment except as otherwise provided;
 - States no lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any vehicle having possession of the vehicle shall collect from the legal owner fees associated with towing a storage, as specified, unless the legal owner voluntarily requests a post storage hearing;

- Provides a person operating or in charge of a storage facility where vehicles are stored, as specified, shall accept a valid bank credit card or cash for payment of towing, storage and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card or debit card shall be in the name of the person presenting the card. The term "credit card" does not include one issued by a retail seller and is defined in the Civil Code;
- Requires that if a person operating or in charge of a storage facility, as specified, does not allow for the use of a credit card or cash, he or she shall be civilly liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing, storage, and related fees not to exceed \$500;
- Mandates a person operating or in charge of the storage facility, as specified, must have sufficient funds on the premises during normal business hours to accommodate, and make change for a reasonable monetary transaction;
- States credit charges for towing and storage services shall comply with relevant sections of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates;
- States a vehicle removed and seized under an ordinance adopted pursuant to this bill shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if all of the following conditions are met:
 - The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle;
 - The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle;
 - The legal owner, or his or her agent, presents to the law enforcement agency, impounding agency, person in possession of the vehicle or any person acting on behalf of those agencies, a copy of the assignment, as specified, a release from the one responsible governmental agency, a government-issued photographic identification card and any one of the following as determined by the legal owner or his or her agent: a certificate of repossession for the vehicle; a security agreement for the vehicle, and; title showing proof of ownership, as specified;
 - The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or fax of its repossession agency license or registration issued pursuant to the Business and Professions Code. Any document may be originals, photocopies or faxes or may be transmitted electronically and need not be notarized;
 - Administrative costs, as specified, shall not be charged to the legal owner, as specified, unless he or she requests a post-storage hearing. No agency may require a post-storage hearing as a requirement for release of a vehicle. Copies of all documents must be provided to the legal owner except for the vehicle evidentiary log book. The legal owner shall indemnify and hold harmless a storage facility from any claims arising out of the release of the vehicle to the legal owner or his or her agent and from any damage to the vehicle after its release, including the reasonable costs associated with defending any such claims; and

- A failure by a storage facility to comply with any applicable conditions set forth in this bill shall not affect the right of the legal owner or his or her agent to retrieve the vehicle if all the conditions are met, as specified.

This bill states a legal owner, or his or her agent, who meets the requirements for release of a vehicle, as specified, shall not be required to request a post-storage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent;

This bill provides a legal owner, or his or her agent, who meets the requirements for release of a vehicle, as specified, shall not release the vehicle to the registered owner of the vehicle or an agent of the registered owner unless the registered owner is a rental car agency, until after the termination of the impoundment period;

This bill states prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the seizure and impoundment;

This bill provides a vehicle removed and seized pursuant to an ordinance adopted pursuant to this bill shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure and impoundment of the vehicle; and

This bill states the owner of a rental vehicle that was seized under an ordinance adopted pursuant to this bill may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until the impoundment period has expired. The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the seizure and impoundment.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-

Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

At this very moment, there are more than 100,000 children in the U.S. being exploited by sex traffickers. Sex trafficking among minors is only growing in California and continues to exploit the lives of children. Despite recent attempts to fight back against sex trafficking, the number of children being exploited continues to rise and sex traffickers continue to operate in California almost unimpeded. So far, efforts have concentrated on the traffickers, while there has not been a correspondingly robust effort targeting the other half of the market for exploited children—the demand side, the people who buy children for sex and perpetuate demand. The demand is an inseparable part of the problem, yet buyers do not face criminal penalties as harsh as traffickers, and penalties have not kept pace with awareness.

An example: Currently the law allows for the impounding of a vehicle belonging to a solicitor of prostitution—either the buyer or seller, if and only if authorized by local ordinance.

Impounding a vehicle isn't just punishment; it also hurts the ability of a given sex trafficker to take children, to move them around the country or across borders, and

to deliver them to buyers. This could be an important tool in fighting sex trafficking, but it is limited by the requirement that there be a local ordinance.

AB 2147 would empower law enforcement to penalize sex traffickers and their clientele by eliminating the requirement for a local ordinance, allowing a law enforcement agency to impound the vehicle of a solicitation offender without authorization by a local ordinance.

2. O'Connell v. City of Stockton

In *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061 the California Supreme Court overturned a Stockton ordinance allowing forfeiture to the city of any vehicle used to solicit prostitution or to obtain or attempt to obtain controlled substances. The court held that the ordinance was preempted by state law. As to the Stockton drug forfeiture provisions, the court ruled that the comprehensive nature of the Uniform Controlled Substances Act, which includes vehicle forfeiture (Health & Safety Code § 11469 et seq.), manifest the Legislature's intent to preclude local regulation. Further, the Stockton ordinance conflicted with state law because it provided for penalties in excess of those prescribed by the Legislature. As to the prostitution related forfeiture provisions, the court held that the Vehicle Code preempted local ordinances. Vehicle Code Section 21 expressly states that "no local authority shall enact or enforce any ordinance on the matters covered by [the Vehicle Code] unless expressly authorized therein." Vehicle Code Section 22659.5, subdivision (a), sets out the limits and requirements for local ordinances declaring vehicles used in the solicitation of prostitution to be nuisances. Such ordinances can only be enacted as five-year pilot programs. Allowed ordinances can include provisions ordering the defendant not to use the vehicle again and allowing forcible removal of the vehicles. "Section 22659.5 contains no language, however, that would allow a local entity such as the City [of Stockton] here to seize and forfeit a vehicle that, through its use in soliciting prostitution, has created a public nuisance." (*O'Connell v. City of Stockton*, supra, 41 Cal.4th 1061, 1074.)

3. Current Procedures With Local Approval

Existing law authorizes local jurisdictions to adopt ordinances declaring vehicles used in the commission of prostitution to be impounded as a public nuisance. Vehicle Code Section 22659.5 was enacted in 1993 and allowed a local government to impound a vehicle after a conviction for prostitution, as specified, for up to 48 hours. AB 1332 (Gotch), Chapter 485, Statutes of 1993, declared legislative intent as follows:

The Legislature hereby finds and declares that under the Red Light Abatement Law every building or place used for, among other unlawful purposes, prostitution is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered. It is recognized that in many instances vehicles are used in the commission of acts of prostitution and that if these vehicles were subject to the same procedures currently applicable to buildings and places, the commission of prostitution in vehicles would be vastly curtailed. The Legislature, therefore, intends to enact a five-year pilot program in order to ascertain whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities.

In 2009, the pilot program was extended to be a statewide program which permitted the same provisions and procedures in this bill to be adopted by local ordinance through passage of AB 14 (Fuentes), Chapter 210, Statutes of 2009. This bill would carve out the solicitation of prostitution offenses from pimping and pandering offenses. The programs for solicitation would be authorized under state law, while programs for pimping and pandering would continue to need local authorization under Vehicle Code § 22659.5. Additionally, the bill limits the solicitation offenses to buyers rather than persons selling sexual services. The procedures are identical to those that must currently be adopted by a local ordinance.

4. Support

According to the San Joaquin District Attorney's Office:

This bill would allow for the impoundment of vehicles belonging to sex purchasers, including those arrested for purchasing sex, or attempting to purchase sex, from children who are victims of human trafficking. The number of children who become victims of human trafficking is staggering, on a local, statewide and national level. These victims are our children, our future, deserving of dignity and respect which they do not encounter when they are repeatedly purchased and abused on a daily basis. The act of purchasing sex should not simply be considered an act of prostitution, the extent of this crime runs much deeper and the mind set surrounding these criminal acts must change.

In many instances, those who purchase, or attempt to purchase, sex from another, whether a child or an adult, can only be arrested and prosecuted for a misdemeanor offense. These offenses carry little or no consequence. Assembly Bill 2147 would provide a mechanism to AB 2147 Page 8 impound vehicles belonging to sex purchasers, providing an additional penalty designed to curtail the demand and impede the purchasers repeated conduct.

5. Opposition

The California Attorneys for Criminal Justice opposes this bill stating:

A vehicle is "property" and accordingly, the Due Process clauses of the Federal and State Constitutions apply to their seizure. A person's property may not be confiscated by the state without notice and an opportunity to be heard. In most cases the hearing must be the property taken before the defendant is provided a hearing pursuant to the due process clause. There is nothing in these acts that is "unusual" such that it would trigger a constitutional seizure of a vehicle prior to a noticed hearing. *See Bryte v. City of La Mesa* 207 Cal. App. 3d 687 (1989)

The use of a collateral hearing, such as a hearing at the arresting agency is insufficient to satisfy due process requirements, whether before or after such a seizure of property.

Further, the seizure of a vehicle not registered to the actor at issue is also a violation of the State and Federal Constitutions as well as causing undue harm to an otherwise completely innocent citizen. This person would then be deprived of their

property of ran unknown period of time after taking of the vehicle, left unable to take children to school, shop for groceries or go to their place of worship.

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