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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 699                      **Hearing Date:** April 25, 2017  
**Author:** Galgiani  
**Version:** February 17, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Vehicles: Removal and Impoundment*

### HISTORY

**Source:** City of Oakland  
California Police Chiefs Association

**Prior Legislation:** SB 67 (Perata) Chapter 727, Stats. 207  
AB 1325 (Vargas) Chapter 475, Stats. 2005  
SB 1541 (Margett) Chapter 595, Stats. 2004  
AB 985 (Vargas) failed Senate Public Safety 2003  
SB 2087 (Soto) inactive file Senate Floor 2002  
SB 1489 (Perata) Ch. 411, Stats. 2002  
AB 2592 (Maddox) failed Senate Public Safety  
AB 2288 (Aguiar) Ch. 884, Stats. 1996  
SB 833 Ch. 922, Stats. 1995  
SB 1738 Ch. 1221, Stats. 1994  
AB 5 Ch. 3, Stats. 1959

**Support:** California State Sheriffs' Association; Melrose High Hopes Neighborhood Council Beat 27x; Maxwell Park Neighborhood Council; Oakland Residents for Peaceful Neighborhoods; Toler Heights Neighborhood Council; 27y Rainbow Community Neighborhood Crime Prevention Council; 63<sup>rd</sup> Ave Block Club; several individuals

**Opposition:** American Civil Liberties Union; California Public Defenders Association

### PURPOSE

*The purpose of this bill is to allow evidence delivered to the police be the reasonable cause to allow a car to be impounded for participation in a speed contest, evading the police, or reckless driving.*

*Existing law* provides that the Department of Motor Vehicles (DMV) shall immediately suspend or revoke the driving privilege of any person convicted or adjudicated of engaging in a speed contest. (Vehicle Code § 13352 (a).)

*Existing law* provides that upon conviction or adjudication of engaging in a speed contest the person's driving privilege shall be suspended for a period of six months if the court orders DMV

to suspend the privilege. Before a person's license is reinstated proof of financial responsibility must be given to DMV. (Vehicle Code § 13352 (a)(9).)

*Existing law* provides that any person who drives any vehicle upon a highway or in any off-street parking facility in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Persons convicted of reckless driving shall be punished by imprisonment in the county jail for not less than five days nor more than 90 days; by a fine of not less than \$145 nor more than \$1,000; or by both that fine and imprisonment. (Vehicle Code § 23103.)

*Existing law* provides that whenever reckless driving of a vehicle proximately causes bodily injury to any person other than the driver, the person driving the vehicle is guilty of a misdemeanor, punishable by not less than 30 days nor more than six months in the county jail; by a fine of not less than \$220 nor more than \$1,000; or by both that fine and imprisonment. (Vehicle Code § 23104(a).)

*Existing law* provides that whenever reckless driving of a vehicle proximately causes GBI to any person other than the driver, and the person driving the vehicle has a prior conviction for reckless driving, reckless driving with bodily injury, speed contest or exhibition, driving under the influence (DUI), or DUI with injury, the person is guilty of a wobblers. The misdemeanor penalty is imprisonment in the county jail for a minimum of 30 days and a maximum of six months, or by a fine, or by both a fine and imprisonment. The felony penalty is 16 months, 2, or 3 years in county jail. (Vehicle Code § 23104(b).)

*Existing law* provides that when a person is arrested for a speed contest, the officer may impound the vehicle for not more than 30 days. The registered and legal owner of the vehicle shall be provided with a hearing regarding the storage and the vehicle shall be returned before the conclusion of the impoundment period, as specified. (Vehicle Code § 23109.2.)

*Existing law* provides that no person shall engage in any motor vehicle speed contest. A speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device. No person may aid or abet a speed contest. (Vehicle Code § 23109(a).)

*Existing law* provides that no person shall engage in any motor vehicle exhibition of speed or aid or abet an exhibition of speed. The penalty for a speed contest or the exhibition of speed is a misdemeanor, punishable as a first offense by 24 hours to 90 days in jail; by a fine of not less than \$355 nor more than \$1,000; or by both that fine and imprisonment. In addition, the person's privilege to operate a motor vehicle shall be subject to suspension. The person's privilege to operate a motor vehicle may be restricted for 90 days to 6 months to necessary travel to and from that person's place of employment and if necessary scope of employment. (Vehicle Code §23109(e).)

*This bill* provides that a person shall also not engage in a motor vehicle contest in a parking facility.

*Existing law* provides that a second offense within five years is punishable by four days to six months in jail; by a fine of not less than \$500 nor more than \$1,000; or by both that fine and imprisonment. Furthermore, the DMV shall either suspend the person's privilege to operate a motor vehicle or the person's privilege to operate a motor vehicle shall be restricted for six months to transportation to and from work. (Vehicle Code § 23109(f).)

*Existing law* provides that when a person is arrested for reckless driving, reckless driving in a parking facility, exhibition of speed or a speed contest the officer may impound the vehicle for not more than 30 days. The registered and legal owner of the vehicle shall be provided with a hearing regarding the storage and the vehicle shall be returned before the conclusion of the impoundment period under the following circumstances:

- If the vehicle is a stolen vehicle;
- If the person alleged to have engaged in the speed contest was not authorized by the registered owner to drive the vehicle at the time of the offense;
- If the registered owner was neither the passenger or the driver of the vehicle;
- If the legal or registered owner is a rental agency;
- If the citation is dismissed and criminal charges are not filed. (Vehicle Code § 23109.2.)

*Existing law* provides a magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle was an instrumentality used in the peace officer's presence in violation of prohibitions on evading the police or reckless driving shall issue a warrant or order authorizing any peace officer to immediately seize and cause removal of the vehicle. The vehicle may be impounded for a period not to exceed 30 days. (Vehicle Code § 14602.7)

*This bill* also adds speed contests to the violations for which a vehicle may be impounded under this section.

*This bill* deletes the requirement that the vehicle be used in the peace officer's presence and states instead that the violation may be based on evidence witnessed by, delivered to or developed by a peace officer within 364 days of the violation.

## COMMENTS

### 1. Need for This Bill

According to the author:

The recent proliferation of sideshows has created a unique threat to public safety. These vehicle exhibitions can result in temporary road closures and increased traffic in addition to a number of public safety concerns. Senate Bill 699 will help combat this dangerous activity by increasing the usage of video evidence to impound vehicles used in sideshows.

While illegal street racing has become a known problem amongst law enforcement officials, research has found that vehicle impoundments are an effective public safety tool that has also been proven to change driver behavior. According to the U.S. Department of Justice (DOJ), impounding and/or forfeiting vehicles used in street racing has been found to be an effective deterrent due to the threat of loss of valuable property and means to race. DOJ states that this response works best when the ordinance is widely publicized to deter illegal racing and an impound fee is assessed in order for the driver to reclaim the vehicle.

Despite laws designed to combat illegal sideshows, they continue to grow more frequent and larger in size. Law enforcement agencies require more tools in order to target and impound vehicles used in sideshows.

Senate Bill 699 will allow a peace officer to submit an affidavit to the court establishing reasonable cause that a speed contest or sideshow occurred based on evidence provided by an officer within 364 days of the violation.

The primary method used by law enforcement to address the problem of Sideshows has been the towing of cars used by participants. Increased towing of vehicles has resulted in decreased Sideshow activity. These “30-day holds” have been determined to be effective in reducing the sideshows. Senate Bill 699 enhances existing legislation to impound vehicles by providing video evidence as a means to secure an ‘Affidavit in Support of Seizure Warrant’ which would provide more target vehicles.

## 2. Impound for Speed Contests

Existing law specifically allows for the impounding of a car participating in a speed contest and speed contest related activities happening on a freeway or a parking lot. The section implies that the peace officer will have observed this activity. The impound is for not more than 30 days. (Vehicle Code § 23109.2)

Existing law also allows for the impounding of a vehicle that was used in evading the police or reckless driving in the peace officer’s presence. This impound is also for not more than 30 days. (Vehicle Code § 14602.7)

This bill add speed contests to the provision that allows for the impound of a vehicle for evading the police or reckless driving. It also deletes the statement that the vehicle must have been used in the peace officer’s presence and provided instead that the affidavit presented to a magistrate to request the impound may be based on evidence witnessed by, delivered to, or developed by a peace officer within 364 days of the violation.

- a. Evidence presented to or developed by a peace officer

The sponsor of this bill points to all the videos that appear online of speed contest and side shows and would like law enforcement to be able to use these videos as evidence to impound a car for 30 days.

The evidence can be presented up to 364 days later. Impound costs and fees are expensive and can cause people to lose their vehicle, should this evidence, which may show up months later, be used to impound a vehicle for 30 days?

The evidence must be presented in 364 days but the bill does not specify how quickly the order to impound may happen, should there be some time frame on the impound?

Since they are potentially relying on evidence that may be months old, should there be some evidence that the person is continuing to use their vehicle to participate in speed contests?

b. Why Section 14602.7?

This bill amends Vehicle Code Section 14602.7 which deals with evading the police and reckless driving instead of amending the Vehicle Code Section that specifically deals with impounding in for a speed contest. In amending Vehicle Code Section 14602.7 it changes the requirement that a peace officer must observe the violation for not just speed contests but also these other violations. It would seem more appropriate that if the rationale for this bill is that speed contest are often videoed and those videos should be used as evidence of the speed contest and the reason for impounding, the section that deals with speed contests should be the one that is amended.

c. Hardship exception

Should there be a hardship exception if the car being impounded is the only one the family has to get to and from school, work etc.? Since under this bill the impound order could happen almost a year after the violation a lot of things could have happened in that year, a person could have started a family, got a job etc. that has them now using the car for legitimate reasons.

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