
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2645 **Hearing Date:** June 18, 2024
Author: Lackey
Version: April 3, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Electronic toll collection systems: information sharing: law enforcement*

HISTORY

Source: San Bernardino County

Prior Legislation: AB 1463 (Lowenthal, 2023), failed in Senate Judiciary
AB 946 (Nguyen, Ch. 93, Stats. of 2023)
SB 673 (Bradford, Ch. 627, Stats. of 2023)
AB 1314 (Ramos, Ch. 476, Stats. Of 2022)
AB 1732 (Patterson, Ch. 107, Stats. of 2022)
AB 2192 (Ramos, 2022), not voted upon in Assembly Privacy
SB 210 (Wiener, 2021), held in Senate Appropriations
SB 34 (Hill, Ch. 532. Stats. of 2015)
AB 179 (Bocanegra, Ch. 375, Stats. of 2013)

Support: California Association of Highway Patrolmen; California State Sheriffs' Association; Los Angeles County Professional Peace Officers Association

Opposition: None known

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill is to require a transportation agency to notify law enforcement when a vehicle identified in an emergency alert passes through a toll station, as specified.

Existing law provides that all people have an inalienable right to privacy. (Cal. Const., art. I, § 1.)

Existing law establishes the “Amber Alert” system issued when a law enforcement agency determines that a child 17 years of age or younger, or an individual with a proven mental or physical disability, has been abducted or taken and the victim is in imminent danger of serious bodily injury or death, and there is information available that, if disseminated to the general public, could assist in the safe recovery of the victim. (Gov. Code, § 8594, subd. (a).)

Existing law establishes the “Blue Alert” system to issue and coordinate alerts following an attack on a law enforcement officer. (Gov. Code, § 8594.5, subd. (a).)

Existing law establishes the “Silver Alert” system to issue and coordinate alerts for a missing person who is 65 years old or older, developmentally disabled, or cognitively impaired. (Gov. Code, § 8594.10, subd. (a).)

Existing law establishes the “Endangered Missing Advisory” system to issue and coordinate alerts with respect to a person who is at risk, developmentally disabled, or cognitively impaired. (Gov. Code, § 8594.11, subd. (a).)

Existing law establishes the “Feather Alert” system to issue and coordinate alerts for missing, under unexplained or suspicious circumstances, endangered indigenous people, specifically indigenous women or indigenous people. (Gov. Code, § 8594.13, subd. (a).)

Existing law establishes the “Ebony Alert” system to issue and coordinate alerts with respect to Black youth, including young women and girls, who are reported missing under unexplained or suspicious circumstances, at risk, developmentally disabled, or cognitively impaired, or who have been abducted. (Gov. Code, § 8594.14, subd. (a).)

Existing law establishes the “Yellow Alert” system designed to issue and coordinate alerts with respect to a hit-and-run incident resulting in the death of a person. (Gov. Code, § 8594.15, subd. (a).)

Existing law defines “automated license plate recognition system” or “ALPR system” to mean a searchable computerized database resulting from the operation of one or more mobile or fixed cameras combined with computer algorithms to read and convert images of registration plates and the characters they contain into computer-readable data. “ALPR information” means information or data collected through the use of an ALPR system. “ALPR operator” means a person that operates an ALPR system, except as specified. “ALPR end-user” means a person that accesses or uses an ALPR system, except as specified. The definitions for both ALPR operator and ALPR end-user exclude transportation agencies when subject to Section 31490 of the Streets and Highways Code. (Civ. Code § 1798.90.5.)

Existing law requires an ALPR operator to maintain reasonable security procedures and practices, as specified, and to implement usage and privacy policies in order to ensure that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals’ privacy and civil liberties. (Civ. Code § 1798.90.51.)

Existing law provides that a public agency shall not sell, share, or transfer ALPR information, except to another public agency, and only as otherwise permitted by law. For purposes of this section, the provision of data hosting or towing services shall not be considered the sale, sharing, or transferring of ALPR information. (Civ. Code § 1798.90.55.)

Existing law authorizes the Department of the California Highway Patrol (CHP) to retain license plate data captured by a license plate reader for no more than 60 days, except in circumstances when the data is being used as evidence or for all felonies being investigated, including, but not limited to, auto theft, homicides, kidnaping, burglaries, elder and juvenile abductions, Amber Alerts, and Blue Alerts. (Veh. Code § 2413(b).)

Existing law prohibits CHP from selling license plate reader data for any purpose and from making the data available to an agency that is not a law enforcement agency or an individual who is not a law enforcement officer. The data may be used by a law enforcement agency only

for purposes of locating vehicles or persons when either are reasonably suspected of being involved in the commission of a public offense. (Veh. Code § 2413(c).)

Existing law requires CHP to monitor internal use of the license plate reader data to prevent unauthorized use. (Veh. Code § 2413(d).)

Existing law requires CHP to annually report the license plate reader practices and usage, including the number of license plate reader data disclosures, a record of the agencies to which data was disclosed and for what purpose, and any changes in policy that affect privacy concerns to the Legislature. (Veh. Code § 2413(e).)

Existing law provides that a transportation agency may not sell or otherwise provide to any other person or entity personally identifiable information of any person who subscribes to an electronic toll or electronic transit fare collection system or who uses a toll bridge, toll lane, or toll highway that employs an electronic toll collection system. (Sts. & Hy Code, § 31490, subd. (a).)

Existing law provides that a transportation agency that employs an electronic toll collection or an electronic transit fare collection system shall establish a privacy policy regarding the collection and use of personally identifiable information, as specified. (Sts. & Hy Code, § 31490, subd. (b).)

Existing law provides that a transportation agency may make personally identifiable information of a person available to a law enforcement agency only pursuant to a search warrant, and that absent a provision to the contrary, the law enforcement agency shall immediately, but in any event within no more than five days, notify the person that their records have been obtained and shall provide the person with a copy of the search warrant and the identity of the law enforcement agency or peace officer to whom the records were provided. (Sts. & Hy Code, § 31490, subd. (e)(1).)

Existing law provides that the search warrant requirement does not prohibit law enforcement, when conducting a criminal or traffic collision investigation, from obtaining personally identifiable information of a person if the officer has good cause to believe that a delay in obtaining this information by seeking a search warrant would cause an adverse result, as specified. (Sts. & Hy. Code, § 31490, subd. (e)(2).)

Existing law defines “transportation agency” as the Department of Transportation, the Bay Area Toll Authority, any entity operating a toll bridge, toll lane, or toll highway within the state, any entity administering an electronic transit fare collection system and any transit operator participating in that system, or any entity under contract with any of the those entities. (Sts. & Hy Code, § 31490, subd. (l).)

Existing law defines “electronic toll collection system” as a system where a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscriber’s account or to establish an obligation to pay a toll. (Sts. & Hy. Code, § 31490, subd. (m).)

Existing law defines “personally identifiable information,” for the purposes of the above provisions regarding transportation agencies, any information that identifies or describes a

person including, but not limited to, travel pattern data, address, telephone number, email address, license plate number, photograph, bank account information, or credit card number, but does not include photographic or video footage. (Sts. & Hy. Code, § 31490, subd. (o).)

This bill provides that if the CHP activates an emergency alert, as specified, and that alert contains a license plate number of a vehicle involved in the incident, a transportation agency that uses an electronic toll collection system shall notify the CHP and the law enforcement agency that requested the alert upon identifying the vehicle with that license plate number, as specified.

This bill specifies that the transportation agency shall also review prior footage within a reasonable time after an alert has been activated and notify the CHP and the law enforcement agency that requested the alert upon identifying the vehicle with that license plate number.

This bill specifies that in the notification required above, the transportation agency shall include the time and location that the vehicle was identified.

This bill provides that the CHP, in consultation with transportation agencies that employ an electronic toll collection system, shall develop a standard protocol regarding the notification required by the bill, including how the transportation agencies will receive notifications of the initiation and conclusions of alerts and report any notifications to the CHP and any local law enforcement.

COMMENTS

1. Need for This Bill

According to the Author:

AB 2645 amends California Streets and Highways Code to include special alerts as justifiable cause for transportation agencies to share license plate reading data from toll lanes with California Highway Patrol and the law enforcement agency that requested the alert, including time and location that the vehicle was identified. This proposed legislative amendment seeks to improve public safety and make law enforcement more efficient and responsive by leveraging existing available technology in specific cases involving special alerts.

2. Emergency Alert Systems

The Emergency Alert System (EAS) is part of the broader Integrated Public Alert & Warning System (IPAWS) within FEMA's national system for local alerting that provides authenticated emergency and life-saving information to the public through mobile phones using Wireless Emergency Alerts to radio and television via the EAS, and on the National Oceanic and Atmospheric Administration's Weather Radio. For California, FEMA and Cal OES designate entities with authority to alert and warn the public when there is a disaster, threat, or dangerous or missing person. Over 1,500 federal, state, local, tribal and territorial entities use IPAWS to send alerts and warnings.

The California Public Alert and Warning System (CalPAWS) Plan was developed by Cal OES for the purposes of formalizing effective processes and recommending standardized policies for alerting and warning California residents during local or state disasters. The plan outlines new and existing public alerts, warnings, and notification systems to offer state and local authorities various capabilities and dissemination channels for emergency alerts¹. Currently, California utilizes IPAWS to disseminate emergency information via satellite Emergency Alert System providers, Wireless Emergency Alert system providers, Weather Service Systems, unique systems, and potential future systems.

California also has several alert systems for the purposes of aiding in the location of specific individuals or alerting of particular emergencies. The first system developed in California was “Amber Alert,” which authorized law enforcement agencies to use digital messaging on overhead roadway signs to assist in recovery efforts for child abduction cases. After a successful implementation, the “Blue Alert” and the “Silver Alert” notification systems were developed. The “Blue Alert” system provides for public notification when a law enforcement officer has been attacked, and the “Silver Alert” notification system provides for public notification when either (1) a person age 65 years or older or (2) a person who is developmentally disabled or cognitively impaired is missing. In 2022, AB 1314 (Ramos, Ch. 476, Stats. of 2022) enacted the “Feather Alert,” notifies the public in cases of endangered indigenous people who are reported missing under unexplained or suspicious circumstances. The following year, and most recently, SB 673 (Bradford, Ch. 627, Stats. of 2023) enacted the “Ebony Alert” which is intended to aid in the location of missing Black youths who are reported missing under unexplained or suspicious circumstances, at risk, developmentally disabled, cognitively impaired, or who have been abducted.

3. Automated License Plate Readers (ALPR) and Electronic Toll Collection Systems

An automated license plate reader (ALPR) is a camera that captures color images of license plates within its field of view, and may be mobile, e.g. mounted on patrol cars, or fixed, e.g. mounted on light poles. ALPR systems allow for the widespread and systematic collection of license plate information, which can have legitimate uses, including for law enforcement purposes. Currently, at least 230 police and sheriff departments in California use an ALPR system, with many more developing or planning such systems.² ALPRs are also used in the context of electronic toll collection systems, which charge a toll to the driver without requiring them to stop or take any action, often by connecting a license plate captured via ALPR with the vehicle’s registered owner.

While ALPRs are useful, serious privacy concerns associated with the collection, storage, disclosure, sharing and use of ALPR data led to the enactment of SB 34 (Hill, Ch. 532, Stats. of 2015), which established regulations on the use of ALPR data by operators and end-users of those systems and expanded the meaning of “personal information” to include that collected through an ALPR system.³ These regulations primarily applied to law enforcement agencies. In February of 2020, roughly 4 years after SB 34 took effect, the California State Auditor published

¹ “California State Warning Plan,” published December 2016., <https://calalerts.org/documents/calpaws/01California-State-Warning-Plan.pdf>

² California State Auditor, “Automated License Plate Readers: To Better Protect Individuals’ Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects,” Published February 2020 <https://www.auditor.ca.gov/pdfs/reports/2019-118.pdf>

³ Codified at Civil Code §1798.90.5 et. seq.

a report reviewing the ALPR practices and policies of several law enforcement agencies and found them lacking:

“The agencies we reviewed have not implemented all of the requirements in that law [SB 34] [...] Law enforcement agencies must first create policies that set clear guidelines for how they will use ALPR data. Setting certain expectations in writing through an ALPR usage and privacy policy helps ensure that agencies operate their ALPR programs in a manner that better protects individuals’ privacy. However, none of the four agencies have an ALPR policy that contains all of the required information. In fact, Los Angeles has not developed an ALPR policy at all. The other three agencies did not completely or clearly specify who has system access, who has system oversight, or how to destroy ALPR data. Their poorly developed and incomplete policies contributed to the agencies’ failure to implement ALPR programs that reflect the privacy principles in SB 34.”⁴

Critically, SB 34 exempted transportation agencies from its regulations regarding the use of ALPR systems and data. The electronic toll systems operated by these agencies – and the data they generated – are subject to a different statute, Streets and Highways Code Section 31490. Section 31490 generally prohibits these agencies from selling or otherwise providing to any other person or entity personally identifiable information of any person who subscribes to an electronic toll or electronic transit fare collection system or who uses a toll bridge, toll lane, or toll highway that employs an electronic toll collection system. Further, existing law limits when transportation agencies can share electronic toll collection system data with law enforcement, and specifies that furnishing such data may only occur pursuant to a search warrant. Section 31490 provides, however, that the search warrant requirement does not prohibit law enforcement, when conducting a criminal or traffic collision investigation, from obtaining personally identifiable information of a person if the officer has good cause to believe that a delay in obtaining this information by seeking a search warrant would cause an adverse result. Adverse results exist when delay would result in among other things, danger to the life or physical safety of an individual; a flight from prosecution; the destruction of or tampering with evidence; the intimidation of potential witnesses; or the serious jeopardy to an investigation.⁵

This bill provides that if the CHP activates an emergency alert (as described in Comment 2) and that alert contains a license plate of a vehicle involved in the incident, a transportation agency that employs the relevant electronic toll system must notify the CHP and the law enforcement agency requesting the alert once the vehicle has been identified. This provision effectively eliminates the existing requirement that law enforcement obtain a search warrant when seeking personally identifying information from a transportation agency, but only in the context of active emergency alerts and only with regard to the location of the vehicle in question at the time it was identified.⁶ The bill also includes a requirement that the transportation agency “review prior

⁴ *Auditor’s Report, supra, at p.2*; In the years since the Auditor’s report, there have been at least two failed attempts to enact additional safeguards on the use of ALPR systems and the data they produce: SB 210 (Wiener, 2021) was held in Senate Appropriations, and AB 1463 (Lowenthal, 2023) failed in Senate Judiciary. It is unclear in the years since the report’s publication whether the ALPR policies and practices of the agencies reviewed have come into greater compliance with the mandates SB 34.

⁵ Penal Code § 1524.2, subd. (a)(2).

⁶ The Fourth Amendment’s prohibition against unreasonable searches and seizures is likely not implicated here – although the United States Supreme Court has not directly decided a case addressing ALPR images and data, because license plates are in plain view, the collection of license plate images by law enforcement is not a per se violation of the 4th Amendment. However, the Court has found that certain

footage within a reasonable time after an alert has been activated” and notify law enforcement upon identifying the vehicle in question. However, given the previous requirement, this appears to be somewhat duplicative, and any requirement to “review prior footage” could be included in that previous requirement in order to avoid any confusion regarding what constitutes compliance with the measure. The Author and Committee may wish to consider clarifying this provision.

Another provision in the bill requires the CHP, in consultation with transportation agencies that employ an electronic toll collection system, to develop a standard protocol regarding the notification provided pursuant to the above requirements, including how the transportation agencies will receive notifications of the initiation and conclusions of alerts and report any notifications to law enforcement. Currently, both this provision and the requirements outlined above will go into effect on January 1, 2025 should this bill be signed into law. In order to give transportation agencies greater opportunity to develop and standardize their notification procedures prior to complying with the notification requirements of the bill, the Author and Committee may wish to consider delaying those notification requirements until the transportation agencies have had time to develop the required protocols.

4. Argument in Support

According to the Los Angeles Professional Peace Officers Association:

AB 2645 would enhance public safety by facilitating swift and efficient communication between law enforcement agencies and transportation authorities. By promptly notifying law enforcement about vehicles involved in incidents, authorities can respond faster and potentially prevent further harm or criminal activity. In addition to aiding in the response to ongoing incidents, the data collected through electronic toll collection systems can also be valuable for crime prevention strategies. Patterns and trends identified from this data can inform proactive measures to address security concerns and enhance public safety. In an increasingly interconnected world, harnessing technology to address public safety challenges is imperative.

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