
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1978 **Hearing Date:** July 2, 2024
Author: Sanchez
Version: June 12, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicles: speed contests*

HISTORY

Source: Author

Prior Legislation: AB 74 (Muratsuchi) Failed Assm. Trans. 2023
AB 822 (Alanis) not heard ACoPS 2023
AB 2000 (Gabriel) Chapter 436, Stats. 2022
AB 3 (Fong) Chapter 106, Stats. 2021
AB 410 (Nazarian) failed Assem. Public Safety 2019
SB 699 (Galgiani) amended out in Assembly 2017
SB 67 (Perata) Chapter 727, Stats. 2007
AB 1325 (Vargas) Chapter 475, Stats. 2005
SB 1541 (Margett) Chapter 595, Stats. 2004
AB 985 (Vargas) - failed Senate Public Safety 2004
AB 1341 (Para) - 6/9/04 version, failed Sen Public Safety 2004
AB 2440 (Shirley Horton) - held Assembly Appropriations 2004
SB 1489 (Perata) Chapter 411, Stats. 2002
SB 2087 (Soto) - died on inactive file Senate Floor 2002
AB 2288 (Aguiar) Chapter 884, Stats. 1996
SB 833 Chapter 922, Stats. 1995
SB 1738 Chapter 1221, Stats. 1994
AB 5 Chapter 3, Stats. 1959

Support: California State Sheriffs' Association; City of Bakersfield; City of Visalia

Opposition: ACLU California Action; All of Us or None Los Angeles; Californians United for a Responsible Budget; Legal Services for Prisoners With Children; Western Center on Law & Poverty, INC.

Assembly Floor Vote: 65 - 0

PURPOSE

The purpose of this bill is to authorize 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.

Existing law provides that a person shall not engage in an exhibition of speed on a highway or in an offstreet parking facility. (Vehicle Code § 23109)

Existing law 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.)

Existing law allows a peace officer to immediately arrest and take into custody a person engaged in a speed contest, and to remove and impound the vehicle used in the offense for up to 30 days. (Vehicle Code § 23109.2)

Existing law 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. (Vehicle Code § 14602.7)

Existing law 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. (Vehicle Code § 14602.7)

Existing law 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. (Vehicle Code § 14602.7)

Existing law 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. (Vehicle Code § 14602.7)

Existing law 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. (Vehicle Code § 14602.7)

Existing law provides the opportunity for the owner of the vehicle to contest the impoundment in a poststorage hearing to determine the validity of the storage. (Vehicle Code § 14602.7)

Existing law 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. (Vehicle Code § 14602.7)

Existing law 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. (Vehicle Code § 14602.7)

Existing law defines “speed contest” as a motor vehicle race against another vehicle, a clock, or other timing device. (Vehicle Code § 23109)

Existing law provides that a person shall not engage in a speed contest on a highway or in an offstreet parking facility. (Vehicle Code § 23109)

Existing law provides that a person shall not, for the purpose of facilitating or aiding or as an incident to any motor vehicle speed contest or exhibition upon a highway or in an offstreet parking facility, in any manner obstruct or place a barricade or obstruction or assist or participate in placing a barricade or upon a highway or in an offstreet parking facility.

This bill 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.

COMMENTS

1. Need for This Bill

According to the author:

Illegal street racing is on the rise and it is eroding our sense of safety. Street racers take advantage of highways, parking lots, and roads through forcibly blocking other cars from using these roadways. Illegal street racing is not only dangerous, but it often has fatal consequences for participants, pedestrians, commuters, and law enforcement alike. AB 1978 will allow peace officers to seize a vehicle from someone that aids and abets street races without taking the owner of the vehicle into custody. This will ensure that speed exhibitions will not continue in a different location once a street race has been dispersed and will keep roads, pedestrians, and other drivers safe.

2. Seizure of vehicles

Pursuant to Vehicle Code section 22651, the legislature has authorized vehicle seizures in a range of different circumstances. Section 22651, subdivision (h)(1), at issue in this bill, authorizes vehicle impoundment if an officer arrests a person driving or in control of a vehicle for an alleged offense, and the officer, by law, is required or permitted to take, and does take, the person into custody. This bill creates an exception to custody requirement for people who facilitate or in speed contest or exhibition of speed.

Engaging in speed contests and exhibitions of speed are misdemeanors, punishable by imprisonment in a county jail for not more than 90 days, by a fine up to \$500, or by both. (Vehicle Code, §§ (a) & (c), 23109.25, & 40000.15.) Existing Vehicle Code sections allow officers to arrest and take a person into custody for directly engaging in speed contests and exhibitions of speed. If a person is taken into custody for these offenses, peace officers can remove and impound the vehicle used in the offense for up to 30 days. (Vehicle Code §§ (a) & (c), 23109.25, & 40000.15.) The vehicle used in the offense can also be impounded upon conviction, if the defendant is the registered owner, for 30 days. (Vehicle Code, § 23109 (h).)

Existing law also punishes those facilitate or aid or as an incident to any motor vehicle speed contest or exhibition of speed, in any manor obstruct or places a barricade or obstruction on the street or offstreet parking facility.(Vehicle Code § 23109(d).) This offense is a misdemeanor, punishable by imprisonment in a county jail for not more than 90 days, by a fine up to \$500, or by both. For this offense whether the person will be taken into custody, or released and given a notice to appear, is at the discretion of the arresting officer. (Vehicle Code, § 40303.) However,

unlike those directly engaged, police cannot impound cars solely because they were driven by aiders and abettors.

This bill would authorize an officer to impound a person's vehicle for aiding and abetting a speed contest or exhibition of speed by creating an obstruction, without booking that person into custody. The person can be cited and released but their vehicle will be impounded. As it currently reads, the bill does require that the removal or seizure be of a vehicle used to commit the violation so would appear to require the vehicle be what was used to make the obstruction and not some other barrier.

3. Constitutional questions raised by seizures

The Fourth Amendment guarantees the right against unreasonable searches and seizures, which applies to the states through the Fourteenth Amendment. (*Soldal v. Cook County, Illinois* (1992) 506 U.S. 56, 61; *Verdun v. City of San Diego* (9th Cir. 2022) 51 F.4th 1033, 1036.) It is undisputed that seizures occur when cars are impounded. (*Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 862.) Hence, the seizure of a vehicle, even when authorized by state law, must be reasonable under the Fourth Amendment. (*Ibid.*) A seizure conducted without a warrant is per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions. (*Ibid.*; see also *City of Los Angeles v. Patel* (2015) 576 U.S. 409, 419.)

Here, the pertinent exception to the warrant requirement for vehicle impoundments is the Vehicular Community Caretaker Doctrine. 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.)

Ultimately, the decision to impound a vehicle must be reasonable and in furtherance of public benefit and public safety. This rule has been codified in California law; Vehicle Code section 22650 provides: “A removal [...] is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.” (Vehicle Code § 22650 (b); see also *S. Dakota v. Opperman* (1976) 428 U.S. 364, 369, [noting police will impound automobiles that jeopardize both the public safety and the efficient movement of vehicular traffic]; see also *People v. Williams* (2006) 145 Cal.App.4th 756, 762–763 [tow served no community caretaking function where the car was legally parked, there was no particular possibility that the vehicle would be stolen, broken into, or vandalized, and the car did not pose hazard or impediment to other traffic]; *Miranda*, at p. 866 [an officer cannot reasonably order an impoundment in situations where the location of the vehicle does not create any need for the police to protect the vehicle or to avoid a hazard to other drivers].) Do the warrantless impoundments that would be authorized by this bill fit in the community caretaking doctrine? If a person is arrested and taken into custody, impoundment could

potentially be justifiable because leaving their car on the road could create a hazard to other drivers, or it could be a target of vandalism or theft. Given that this bill would allow for impoundment when the person was aiding and abetting (and not directly engaging in a speed contest or exhibition of speed), and that the person is, in the officer's discretion, safe enough to be released and not taken into custody, does a community care taking rational justify impounding their car.

If the impoundment in this bill does not meet a community caretaking justification, are the impoundments intended to be purely punitive, punishing a person through the seizure of their property without their first being a conviction for the offense? *Miranda* court expressly rejected a deterrence rationale as justification for impoundment of a vehicle that was not "actually impeding traffic or threatening public safety and convenience on the streets." (*Miranda, supra*, 429 F.3d at p. 865, quoting *Opperman, supra*, 428 U.S. at p. 369.) As the Ninth Circuit in *Miranda* explained, "While the Supreme Court has accepted a deterrence rationale for civil forfeitures of vehicles that were used for criminal activity, . . . the deterrence rationale is incompatible with the principles of the community caretaking doctrine. Unlike in civil forfeitures, where the seizure of property penalizes someone who has been convicted of a crime, the purpose of the community caretaking function is to remove vehicles that are presently impeding traffic or creating a hazard. ***The need to deter a driver's unlawful conduct is by itself insufficient to justify a tow under the 'caretaker' rationale.***" (*Miranda*, at p. 866; *Sandoval v. Cnty. of Sonoma* (9th Cir. 2018) 912 F.3d 509, 516.) The *Miranda* court also expressed a concern that adopting a deterrence rationale "would expand the authority of the police to impound regardless of the violation, instead of limiting officers' discretion to ensure that they act consistently with their role of caretaker of the streets." (*Miranda, supra*, 429 F.3d at p. 866.)

Further, this bill is also raises constitutional questions because it would allow peace officers to conduct warrantless vehicle searches, including searches of locked portions of the vehicle, like the trunk. (*People v. Benites* (1992) Cal.App.5th Dist. 1992 [the inevitable inventory search following impoundment is also proper].) This affects the guarantees Fourth Amendment, as it allows for warrantless searches and seizures of not only the automobile, but of the property therein. As the court has cautioned "we should not ignore that purported caretaking tows may also conceal a criminal law "investigatory motive." (*People v. Torres* (2010) 188 Cal.App.4th 775, 790.) Indeed, this is not a speculative concern or cautionary tale---it the exact conduct the San Joaquin County Sheriff Patrick Withrow recently boasted about to CBS News, after 88 people had their cars impounded during a sideshow in Stockton:

The 88 people who had their cars impounded during a sideshow operation in Stockton over the weekend may never get them back. [...]

That is because San Joaquin County Sheriff Patrick Withrow said they just got 88 warrants to search the 88 vehicles that are now securely locked away at the sheriff's office, and they are not just looking for evidence of drivers doing donuts. [...]

They are looking in the vehicles to see if there is any contraband. Are there drugs? Are there guns? Is there any evidence of other crimes?' [...]

This could mean more charges than just misdemeanors. [...]

It may take days or even weeks before the sheriff's office goes through every single one of the 88 vehicles. They will be video recording each search and may need to

take fingerprints in some cases before they determine what each person will be charged with. [...]

If you went to that sideshow and you ran because you didn't want to get caught by the police, but you left guns in the car or drugs, well, now you're facing possession of a firearm in the vehicle, possession of drugs. [...]

Anytime these people come back here again and try to do this, we are going to be waiting for them and we are going to do the exact same thing," Withrow said. [...]

(CBS Sacramento, *The 88 Cars Seized During Northern California Sideshow May Never Return To Owners* (Feb. 7, 2024). Available at: <<https://www.cbsnews.com/sacramento/news/88-cars-seized-during-stockton-sideshow-may-never-return-to-owners/>> [as of March 23, 2024]; see also, Fox KTVU, *California Sheriff Seeks To Destroy Cars Seized In Sideshows* (Feb. 7, 2024) Available at: <<https://www.ktvu.com/news/california-sheriff-seeks-to-destroy-cars-seized-in-sideshows>> [as of March 23, 2024].)

4. Related legislation

AB 1978 (Sanchez) expands the list of offenses for which a peace officer may impound a vehicle pursuant to a warrant or order issued by a magistrate to include a vehicle that was used in a speed contest or exhibition of speed.

5. Argument in Support

The California State Sheriffs' Association supports for this bill:

Despite recent statutes signed into law, street racing has escalated in some communities across California. This illegal activity sometimes has fatal consequences for participants, pedestrians, commuters, and law enforcement alike. Oftentimes, law enforcement officials find illegal drugs and firearms at these outlawed sideshows or street races.

This proposal reinforces current laws by allowing law enforcement to impound a vehicle that is used to aid and abet street races without taking the owner of the vehicle into custody. AB 1978 will provide an added deterrent to participating in illegal street racing by providing law enforcement with an additional tool.

6. Argument in Opposition

ACLU California Action opposes this bill:

AB 1978 harshly punishes people by towing their vehicle without a formal judicial hearing or determination. For low income and working households, the towing of a vehicle is often catastrophic. Retrieving a car after it has been towed is time-consuming and costly, and for many people a tow means total loss of their car. The tow and storage fees are often more than people can afford, and when an individual cannot pay the fees associated with the tow, the vehicle is sold at auction, resulting in the person permanently losing their car. According to a 2018 federal report, 46% of American adults lack the savings necessary to cover an unanticipated expense of

\$400 or more. But a report from the following year found that the average towing and storage fees in California for a vehicle that is held for just 3 days is nearly \$500.² When people lose their cars, they often lose their biggest personal asset, their ability to get to work, and their ability to meet their basic needs like grocery shopping, taking children to school, or going to medical appointments. Someone in violation of Cal. Veh. Code sections 23109(b-d) can already be cited and fined \$500 – adding tow costs and the potential loss of their vehicle based solely on the discretion of a police officer is an outsized and unjust punishment.

By establishing a blunt, overbroad tool to seize Californians' vehicles, AB 1978 is likely unconstitutional. Courts have made it clear that even if cities are following a state law, if the underlying tow violates the Constitution, cities can be held liable for their unconstitutional actions.³ Under the Fourth Amendment, a warrant is required to tow a vehicle unless the vehicle falls under a limited number of exceptions to the warrant requirement. As written, AB 1978 allows officers to tow vehicles without a warrant, even though the vehicles they would be towing are not exempted from the warrant requirement. AB 1978 opens cities up to resource-intensive litigation and costly liability while encouraging them to violate the most fundamental rights of their citizens.

-- END --