
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1407 **Hearing Date:** July 2, 2019
Author: Friedman
Version: March 27, 2019
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Reckless Driving: Speed Contests: Vehicle Impoundment*

HISTORY

Source: Author

Prior Legislation: AB 1393 (Friedman) Vetoed 2017
SB 510 (Hall) Vetoed 2015
SB 67 (Perata) Chapter 727, Stats. 2007
AB 430 (Benoit) Chapter 682, Stats. 2007
AB 2190 (Benoit) Chapter 432, Stats. 2006
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 amended version, failed Senate 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: Auto Club of Southern California; AAA Northern California, Nevada, and Utah;
California State Sheriffs' Association

Opposition: American Civil Liberties Union

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to authorize law enforcement to impound a vehicle for up to 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.

Existing law 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. (Vehicle Code § 23103(a))

Existing law provides that a person convicted of reckless driving shall be imprisoned for not less than five days nor more than 90 days or by a fine of not less than \$145 nor more than \$1,000, or both. (Vehicle Code § 23103(b))

Existing law provides that a person who causes bodily injury to another person when guilty of reckless driving the punishment is imprisonment in the county jail for not less than 30 days nor more than 6 months and/or a fine of not less than \$220 nor more than \$1,000. If the injuries are one of specified more serious injuries then the penalty is a wobbler with a jail felony of 16 months, 2 or 3 years or a misdemeanor with jail time of 30 days to 6 months and/or a fine of not less than \$220 nor more than \$1,000. (Vehicle Code § 23104 and 23105)

Existing law provides that any person shall not engage in a motor vehicle speed contest on a highway. A person convicted of engaging in a motor vehicle speed contest shall be imprisoned for not less than 24 hours nor more than 90 days or by a fine of not less than \$355 nor more than \$1,000 or both. If the vehicle used is related to the convicted person, the vehicle may be impounded for not more than 30 days. (Vehicle Code § 23109)

Existing law provides that a vehicle used in a speed contest may be removed by a peace officer. (Vehicle Code 22651.6)

Existing law provides that whenever a peace officer determines that a person was engaged in: a motor vehicle speed contest; reckless driving on a highway; reckless driving on an off-street parking facility; or, exhibition of speed on a highway the peace officer may immediately arrest and take into custody that a person may cause the removal and seizure of the motor vehicle which may be impounded for 30 days. (Vehicle Code § 23109.2)

This bill provides that for a first conviction of reckless driving or speed contest, if the vehicle used is owned by the convicted person, that vehicle *may* be impounded for up to 30 days, reduced by the number of days it was impounded upon arrest.

This bill provides that for a second conviction of reckless driving or engaging in a speed context, the vehicle *shall* be impounded for 30 days.

This bill provides that, 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.

This bill authorizes the court to decline to impound the vehicle if it finds undue hardship to the defendant or the defendant's family.

COMMENTS

1. Need for This Bill

According to the author:

Illegal street racing continues to create a significant public safety threat across California. Traffic data collected by the California Highway Patrol (CHP) show

that over a four-year period, the CHP issued citations resulting in 12,586 convictions for engaging in, aiding, or abetting exhibition of speed on a highway.

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. A recent study by the National Highway Safety Administration evaluated California's 30-day impound requirement for motorists driving with a suspended license and found that the impoundment of the vehicle substantially reduced a driver's subsequent violations and crashes. A California Department of Motor Vehicles study of the same requirement noted that the penalty resulted in an estimated 38% reduction in subsequent crashes and up to a 23% reduction in subsequent convictions when a driver's vehicle was impounded.

In contrast to the requirements for convictions connected to a suspended license violation, California currently allows, but does not require, the impoundment of a vehicle used in connection to a reckless driving, speed racing, or sideshows. While courts can impound a vehicle, drivers have the ability to retrieve their vehicle through a variety of methods.

For those vehicles that have been modified illegally, current law does not require the removal of those modifications in connection with the impoundment which has allowed a vehicle's owner to retrieve a vehicle, with all of its modifications intact, within a few days.

2. Brewster v Beck

The 9th Circuit released an opinion on June 21, 2017 in the Case of *Brewster v. Beck*.

The court held that the 30-day impoundment of a vehicle constitutes a "seizure" requiring compliance with the Fourth Amendment.

Lamya Brewster loaned her vehicle to a driver with a suspended license. Los Angeles Police Department (LAPD) officers stopped the driver, discovered the suspension, and impounded the vehicle, relying on Veh. Code §14602.6(a)(1), which authorizes impounding a vehicle when the driver has a suspended license. Vehicles seized under this section must generally be held in impound for 30 days. Three days later, Brewster appeared at a hearing before the LAPD with proof that she was the registered owner of the vehicle and her valid California driver's license. Brewster offered to pay all towing and storage fees that had accrued, but the LAPD refused to release the vehicle before the 30-day holding period had lapsed.

Brewster filed suit under 42 U.S.C. §1983, arguing the 30-day impound was a warrantless seizure that violated the Fourth Amendment. The district court granted the city's motion to dismiss, finding the 30-day impound was a valid administrative penalty.

The court of appeals reversed, holding that the 30-day impound of Brewster's vehicle was a seizure that required compliance with the Fourth Amendment. That the seizure of the vehicle was lawful at the outset was not determinative. A seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification. Here, although the initial seizure had a legitimate public safety purpose, that justification vanished when Brewster showed up with proof of ownership and a valid driver's license. Because the city failed to provide any justification for the continued retention of her car, the district court erred in granting its motion to dismiss. (*Brewster v. Beck* D.C. No. 5:14-cv-02257-JGB-SP; Summary of the case from *The Recorder* June 21, 2017 <http://www.therecorder.com/id=1202790834632/Brewster-v-Beck?slreturn=20170528190128>)

3. Impound Upon Conviction in Addition to Upon Arrest

Existing law provides that law enforcement may impound for 30 days upon arrest and a court may impound upon conviction of a reckless driving or speed contest violation. This bill would provide that upon conviction the court may impound the vehicle for 30 days and if it is a second or subsequent conviction the court *shall* impound a car upon a conviction for reckless driving or street racing.

The bill does say that the court shall reduce the number of days by the days a car may have been impounded upon arrest and also provides that the court shall not impound if it will result in undue hardship to the family.

Will this impound upon conviction pass the Constitutional issues raised by *Brewster*? Is there a legitimate safety concern after conviction, which may occur months after the violation?

4. Veto of AB 1393 (Friedman)

In his veto message of AB 1393 (Friedman) Governor Brown stated:

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.

-- END --