
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2147 **Hearing Date:** June 21, 2022
Author: Ting
Version: February 15, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Pedestrians*

HISTORY

Source: Lawyer's Committee for Civil Rights of the San Francisco Bay Area
California Bicycle Coalition

Prior Legislation: AB 1238 (Ting, 2021), vetoed by the Governor
AB 390 (Santiago), Ch. 402, Stats. of 2017

Support: Albany Strollers & Rollers; America Walks; California Environmental Voters;
California Interfaith Power & Light; California Public Defenders Association;
City of Berkeley; Circulate San Diego; Coalition for Sustainable Transportation;
Day One; Disability Rights California; Ella Baker Center for Human Rights;
Inland Empire Biking Alliance; Investing in Place; LA Forward; Los Angeles
County Bicycle Coalition; Los Angeles Neighborhood Land Trust; Marin County
Bicycle Coalition; National Association of Social Workers, California Chapter;
Planning and Conservation League; Public Counsel; Prevention Institute; Public
Counsel; Santa Barbara Bicycle Coalition; Santa Monica Safe Streets Alliance;
Santa Monica; Spoke; Shasta Living Streets; Spur; Streets for All

Opposition: California State Sheriff's Association; City of Thousand Oaks; California District
Attorneys Association (oppose unless amended)

Assembly Floor Vote: 50 - 18

PURPOSE

The purpose of this bill is to prohibit a peace officer from stopping a pedestrian for specified traffic infractions unless a reasonably careful person would realize there is an immediate danger of collision with a moving vehicle or other device moving exclusively by human power.

Existing law requires drivers of a vehicle to yield the right-of-way to a pedestrians crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection. (Vehicle Code (VC) §21950 (a).)

Existing law prohibits a pedestrian from suddenly leaving a curb or other place of safety and walking or running into the path of a vehicle that is so close as to constitute an immediate hazard. The same provision prohibits a pedestrian from unnecessarily stopping or delaying traffic while in a marked or unmarked crosswalk. (VC § 21950(b).)

Existing law provides that the driver of any motor vehicle, prior to driver over or upon any sidewalk, shall yield the right-of-way to any pedestrian approaching thereon. (VC §21952)

Existing law requires that pedestrians upon a roadway to yield the right-of-way to all vehicles on a highway or roadway so near as to constitute an immediate hazard. (VC §§21953, 21954.)

Existing law provides that between adjacent intersections controlled by traffic control signal devices or by police officers, pedestrians shall not cross the roadway at any place except in a crosswalk. (VC §21955.)

Existing law prohibits a pedestrian from walking upon a roadway outside of a business or residence district otherwise than close to the pedestrian's left-hand edge of the roadway. However, a pedestrian may walk close to their right-hand edge of the roadway if a crosswalk or other means of safely crossing the roadway is not available or if existing traffic or other conditions would compromise the safety of a pedestrian attempting to cross the road. (VC § 21956.)

Existing law prohibits a pedestrian from proceeding along a bicycle path or line where there is an adjacent adequate pedestrian facility. (VC § 21966.)

Existing law provides that a pedestrian facing a circular green traffic signal may proceed across the roadway but shall yield the right of way to vehicles lawfully within the intersection at the time that signal is first shown. (VC §21451(c).)

Existing law provides that a pedestrian facing a green arrow turn signal shall not enter the roadway, other than as specified. (VC §21451(d).)

Existing law provides that a pedestrian facing a circular yellow or yellow arrow signal, unless otherwise directed as specified, is, by that signal, warned that there is insufficient time to cross the roadway and shall not enter the roadway. (VC §21452(b).)

Existing law provides that a pedestrian facing a steady circular red or red arrow signal shall not enter the roadway. (VC §21453(d).)

Existing law provides that a pedestrian facing a "WALK" or "walking person" symbol may proceed across the roadway but must yield the right of way to vehicles lawfully within the intersection at the time the signal is first shown. (VC §21456(a).)

Existing law provides that a pedestrian facing a flashing "DON'T WALK," "WAIT," or "upraised hand" symbol may start to cross the roadway but must complete crossing prior to the display of a steady signal. (VC §21456(b).)

Existing law provides that a pedestrian facing a steady "DON'T WALK," "WAIT," or "upraised hand" symbol or a similar flashing symbol but without a countdown shall not start to cross the roadway, but any pedestrian who started crossing and partially completed crossing shall proceed to a sidewalk or safety zone or otherwise leave the roadway. VC §21456(c).)

Existing law provides that it is unlawful for any pedestrian to fail to obey any sign or signal erected or maintained to indicate or carry out the provisions of the Vehicle Code or local traffic ordinance. (VC §21461.5.)

Existing law provides that the driver of any vehicle, the person in charge of any animal, any pedestrian, and the motorman of any streetcar shall obey the instructions of any official traffic signal applicable to them and placed as provided by law, except under specified conditions. (VC §21462.)

Existing law specifies that local authorities are not prevented from adopting ordinances prohibiting pedestrians from crossing roadways at other than crosswalks. (VC §21961.)

This bill provides that a peace officer shall not stop a pedestrian for a violation of any of the above provisions or related local ordinance unless a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle or other device moving exclusively by human power.

This bill provides that its provisions do not relieve a pedestrian from the duty of using care for their safety or a bicyclist from the duty of exercising due care for the safety of any pedestrian.

COMMENTS

1. Need for This Bill

According to the Author:

Every day, millions of Californians cross the street outside of an intersection when no cars are present. California’s jaywalking laws criminalize one of our most vulnerable transportation modes and are unevenly enforced. A 2017 study in Sacramento showed Black Californians were cited for jaywalking five times more than the general population. Beyond inequitable enforcement, the prevalence of jaywalking in certain neighborhoods reflects inequities in street design. People who need to walk in their neighborhoods should not be penalized for decades of infrastructure neglect and auto-first street design that fails to consider the needs of users who aren’t in cars. AB 2147 promotes safe walking and limits unjust enforcement by prohibiting law enforcement from stopping individuals for jaywalking unless there is an immediate danger of a collision with a moving vehicle.

2. Pretext Stops and Racial Disparities

The Fourth Amendment of the United States Constitution provides in part that “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated.” The United States Supreme Court has held that temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of persons within the meaning of this provision.¹ In *Whren v. United States*, decided in 1996, the Court further held that “the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment’s prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law

¹ See *Delaware v. Prouse*, [440 U.S. 648](#), 653 (1979); *United States v. Martinez Fuerte*, [428 U.S. 543](#), 556 (1976); *United States v. Brignoni Ponce*, [422 U.S. 873](#), 878 (1975)

enforcement objective.”² The Court’s decision in *Whren* has given rise to what have been dubbed “pretext stops,” a practice in which a law enforcement officer uses a minor traffic violation as a pretext to stop a vehicle or pedestrian in order to investigate other possible crimes. Given the litany of possible traffic-related violations, especially in California, the use of pretext stops as an investigative tool has become widespread since the decision in *Whren*.

Pretext stops are also valid in the context of pedestrians – that is, officers may lawfully stop a pedestrian for a traffic-related violation (i.e. jaywalking), when the officer’s true purpose is to investigate other possible criminal behavior. For a pedestrian stop to be valid, an officer need only meet the standard of “reasonable suspicion” that a violation occurred. Specifically, the standard requires that the officer be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.³ Under existing case law, a pedestrian stop based on reasonable suspicion also authorizes the officer to conduct a cursory frisk of the individual if the officer believes them to be armed and dangerous.⁴

Pretext and pedestrian stops have been the subject of significant criticism, particularly due to their disparate impact on communities of color. In 2015, the Legislature passed AB 953 (Weber, Ch. 466, Stats. of 2015), also known as the Racial and Identity Profiling Act (RIPA) of 2015, which expressly prohibited racial and identity profiling by law enforcement and requires law enforcement agencies to report stop data to the DOJ. RIPA data – which includes both pedestrian and vehicle stops – reveal that Black Californians are more than twice as likely to be searched than White Californians (though less likely to yield contraband or evidence), and at least twice as likely to be handcuffed or experience a stop involving an officer’s weapon.⁵ RIPA data collected from the San Diego PD, Los Angeles County Sheriff, LAPD, and Long Beach PD shows that between 2018 and 2020, Black residents were between 3 and 4.3 times more likely to be stopped for jaywalking than white residents.⁶

The Author cites these statistics as a major impetus for this bill. He further argues that “the fees associated with jaywalking tickets place an undue burden on the people least able to afford them,” a problem compounded by the fact that “low-income neighborhoods are more likely to have larger distances between designated marked or unmarked crosswalks, malfunctioning pedestrian crossing buttons, and lack sidewalks. People who need to walk in their neighborhoods should not be penalized for decades of infrastructure neglect and auto-first street design that fails to consider the needs of users who aren’t in cars.”

3. Veto of Similar Legislation – AB 1238 (Ting, 2021)

In 2021, the Author carried a similar bill, which was vetoed by the Governor. That measure, AB 1238, would have eliminated or exempted pedestrians from nearly all Vehicle Code provisions

² *Whren v. United States*, 517 U.S. 806, 809-819 (1996); the application of the decision extends to non-motorists as well, i.e. pedestrians.

³ *Terry v. Ohio* (1968) 392 U.S. 1, 21.

⁴ *Id.* at 30.

⁵ Lofstrom, Magnus et. al. “Racial Disparities in Law Enforcement Stops.” *Public Policy Institute of California*. Published October 2021. <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>

⁶ Data computed from “Racial and Identity Profiling Advisory Board Annual Report 2022.” <https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf> ; accessed from <https://www.calbike.org/freedom-to-walk-campaign/>

placing restrictions on how and when pedestrians may enter a roadway, and instead provided that no pedestrian may enter a roadway so as to constitute an immediate hazard to vehicles. In his veto message, the Governor wrote:

I want to thank the author for bringing this important issue forward. Unequal enforcement of jaywalking laws and the use of minor offenses like it as a pretext to stop people of color, especially in under-resourced communities, is unacceptable and must be addressed. While I am committed to tackling this issue as part of our continued work to reduce excessive use of force and bias, I cannot support this bill in its current form.

California has the highest total number of pedestrian fatalities in the nation and ranks 8th for pedestrian fatality rate per 100,000 in population. According to data collected in the Statewide Integrated Traffic Records System, there has been an average of 3,500 traffic fatalities per year over the past five years and approximately 30 percent of those were pedestrian fatalities. During that time period, 63 percent of the crashes resulting in pedestrian fatalities were the result of pedestrians taking actions against traffic controls or safety laws. I am concerned that AB 1238 will unintentionally reduce pedestrian safety and potentially increase fatalities or serious injuries caused by pedestrians that enter our roadways at inappropriate locations.

I am committed to working with the author, the Legislature, and stakeholders on legislation that addresses the unequal enforcement of jaywalking laws in a manner that does not risk worsening California's pedestrian safety.

In the meantime, I strongly encourage local governments to conduct a review of the demographics and enforcement levels of jaywalking in their communities and to identify and address concerns at the local level as appropriate.

This bill takes a different approach to the problem identified by the Author and Governor, though seeks to achieve the same effect. Specifically, this bill, rather than repeal various pedestrian-related restrictions, provides that a law enforcement officer may not stop a pedestrian for a violation of those restrictions unless a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle or other human-powered device. Additionally, the bill specifies that its provisions do not relieve pedestrians from the duty of using due care for their safety or drivers from the duty of exercising due care for the safety of pedestrians.

4. A “Reasonable” Enforcement Standard?

As discussed above, rather than simply repeal various pedestrian violations, this bill requires that, prior to enforcing a violation, the officer make a determination that a person has acted unreasonably. The “reasonable person” standard is a common form in the American legal system, though is most predominant in civil tort cases involving negligence. The standard does make appearances throughout criminal law, such as in the elements necessary to prove certain assault crimes, criminal negligence, and self-defense claims. It is far less common as an enforcement standard, where enforcement depends not on the mere commission of specific conduct, but on a determination by an officer – as opposed to a court or jury – that the conduct was reasonable. The subjective nature of this standard, especially in the context of this bill, may lead to inconsistent enforcement across or even within jurisdictions, which in turn may result in

an uptick in legal challenges to pedestrian stops when they do occur. Additionally, the bill specifies that an officer may not stop a pedestrian unless “a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle.” Under this standard, by the time the officer determines that they may make a valid stop, it could be too late to prevent the pedestrian from being injured. The Author may wish to consider these issues, and how the language of the bill furthers, or hinders, the purpose of the pedestrian-related statutes at issue

5. Argument in Support

According to a letter submitted by the two sponsor groups and a coalition of 20 other groups supporting the measure:

AB 2147 would reform the state’s ‘jaywalking’ laws by preventing law enforcement from citing pedestrians unless “*a reasonably careful person would realize there is an immediate danger of a collision.*” It does not decriminalize all street crossings; law enforcement would still retain the authority to cite a person who is crossing when it is hazardous to do so. But for pedestrians crossing safely, AB 2147 would protect them from citations and the many collateral consequences that follow.

The Freedom to Walk Act is urgently needed because the state’s current approach results in highly unequal enforcement patterns. Black pedestrians, in particular, are subject to intolerably high rates of jaywalking enforcement, resulting in higher exposure to citations, fines and fees, and bench warrants, as well as police harassment and violence. Based on data from police departments in Long Beach, San Diego, and Bakersfield, we found that Black people were 5.18 times more likely to be cited for jaywalking than white people, proportional to their share of the population. Another study, in Sacramento, found that nearly 50% of jaywalking citations in 2016 were given to Black people, despite only 14% of the city’s population being Black. These disparities are reason enough to stop punishing safe street crossings.

To the extent that our laws need to signal to pedestrians what kind of activity is acceptable, AB 2147 sends a much more effective message than does existing law. While existing law allows law enforcement to cite people for all mid-block crossings—which is both unnecessary and unrealistic—AB 2147 focuses only on preventing hazardous street crossings, those where a risk of collision exists. The message sent by existing law is widely ignored—most Californians cross mid-block when it is safe and convenient to do so. AB 2147, on the other hand, sets commonsense, realistic, safety-based standards for enforcing pedestrian laws.

6. Argument in Opposition’

According to the City of Thousand Oaks:

This bill would simply permit jaywalking. Although this bill seems harmless at best, crossing the street in non-designated areas constitutes reckless endangerment. Cities have traffic mechanisms in place such as crosswalks, signals, signage, and reflective striping as a means to protect not only pedestrians but also bicyclists against the potential dangers of cars, trucks, and public transit. These mechanisms are to assure that both the pedestrians, especially children and drivers are not caught off guard from a potential collision. Unfortunately, during these types of accidents, pedestrians

likely suffer the brunt of bodily injury and harm. Peace officers should still have the ability to stop a pedestrian and issue an infraction for the sake of deterring such behavior and protecting the public.

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