
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 346 **Hearing Date:** June 9, 2015
Author: Wilk
Version: February 13, 2015
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Vehicle Infractions and Misdemeanors: Arrests*

HISTORY

Source: Simi Valley Police Officers Association

Prior Legislation: None

Support: The Association for Los Angeles Deputy Sheriffs; California Peace Officers' Association; California State Lodge, Fraternal Order of Police; California Statewide Law Enforcement Association; Long Beach Police Officers Association; Los Angeles County Professional Peace Officers Association; The Los Angeles Police Protective League; The Riverside Sheriffs Association; Sacramento County Professional Peace Officers Association; Santa Ana Police Officers Association

Opposition: Legal Services for Prisoners with Children

Assembly Floor Vote: 78 - 1

PURPOSE

The purpose of this bill is to allow the arrest of a person who fails to present both his or her driver's license or other satisfactory evidence of his or her identity and an unobstructed view of his or her full face for examination when a person is stopped for a Vehicle Code infraction or misdemeanor.

Existing law requires a person that is under a non-custodial arrest for a vehicle-related infraction or misdemeanor to be taken immediately before a court magistrate if they fail to present their driver's license or other satisfactory evidence to a law enforcement officer. (Vehicle Code § 40302)

This bill would also require that a person that is under non-custodial arrest for a vehicle-related infraction or misdemeanor to be taken immediately before a court magistrate if they fail to present their driver's license and an unobstructed view of his or her full face for examination.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."(Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for The Bill

According to the author:

In the State of California, one must carry a valid driver's license in order to operate a vehicle. In the event that one is pulled over in a traffic stop, he or she must

present law enforcement with identification. Once pulled over, one is considered to be under arrest for a particular offense, such as speeding. For many infractions and misdemeanors in the Vehicle Code, once a notice to appear in court is signed, one will be released from arrest.

This arrest is considered non-custodial, as a person is never taken into custody and booked. At the time of the arrest it is procedurally important to establish the identity of the driver. Should the case arise that a motorist has forgotten his or her identification at home, he or she may still satisfy confirmation of identity by other means, to ensure the possession of a driver's license. The law states that a motorist must give "satisfactory evidence of his identity for examination." Recently, an instance occurred during a traffic stop regarding a motorcyclist refusing to remove his helmet. This prevented law enforcement from successfully confirming that the photo on the driver's license was indeed the motorcyclist. The act of obstructing one's face from law enforcement is a public safety concern. Furthermore, establishing the identity of the motorist is a necessary part of the arrest procedure, such as checking against outstanding warrants. Another example in which it could be necessary to confirm a motorist's identity would be in the instance of an Amber Alert.

In regards to driver's licenses, the Department of Motor Vehicle's has a strict policy for photographing persons obtaining identification. Each person must present his or her full face including eyes, nose and mouth for the photo. It makes no exceptions for religion or personal preferences. Additionally, a 2005 Appellate Court Case *Valov vs Department of Motor Vehicles*, upheld the requirement that a full face photograph is a condition of obtaining a driver's license, and does not infringe on religious liberties under either the California or US Constitution.

Current law, authored by Assemblyman Cooley with AB 334, addresses the widespread concern of profiling motorcycle riders. Its creation noted that motorcycle communities have a diverse group of members, and that law enforcement must establish a written policy that prevents this from happening. With the current events that have taken place in Waco, Texas, this legislation and AB 346 become even more essential for law enforcement.

2. Full View of The Face

This bill would allow for a person to be taken into custody if he or she refuses to present "an unobstructed view of his or her full face for examination" along with his or her driver's license during a stop for a Vehicle Code infraction or misdemeanor. According to the author and the sponsor this would close a loophole that may keep law enforcement from confirming that the identity of the person matches the identity on the driver's license.

The incident that gave rise to this bill involved a motorcyclist that refused to remove his helmet. Failure to remove a helmet with a face shield is a clear obstruction of person's face. Are there situations that may be more subjective? What about a tall man who does not bend down to show his full face in the window as he hands his license to the police officer. What about a person who refuses to remove his or her baseball cap, sun hat or hood? If the officer feels that he or she can't see the FULL face would this allow the officer to go beyond a simple traffic stop?

3. Support

The California Peace Officers' Association supports this bill stating:

AB 346 is a good bill, and one would that prove extremely beneficial to the practices of law enforcement officers who often encounter suspects whose driver's license and or identity is not sufficient to prove that the suspect and the person on the identification are one and the same.

4. Opposition

Legal Services for Prisoners with Children opposes this bill stating:

A 2013 ACLU study showed persistent trends of racial bias in the policing and stopping of vehicles for traffic infractions and crimes. Across the state of Illinois, the rate of black drivers in stops (46%) was far higher than the rate of black residents in the surveyed city (32%). Furthermore, black and Hispanic drivers were nearly twice as likely as white drivers to be asked during a routine traffic stop to consent to a search of their car. We are concerned that this bill will be applied in a way that targets racial or cultural minorities in the same way that legal searches after stops have been shown to be applied in a discriminatory manner.

We understand the need for officers to be able to verify the identity of a driver during a routine stop. Existing law already accounts for this, requiring that a motorist give "satisfactory evidence of his identity for examination." Hooded sweatshirts, baseball caps or hijab may all create some obstruction over the face that does not prevent a police officer from confirming a person's identity, yet under this bill could be used as a pretext for threatening or harassing communities.

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