
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 1389 **Hearing Date:** April 19, 2022
Author: Bradford
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Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Vehicles: traffic stops*

HISTORY

Source: NAACP, California/Hawaii Chapter

Prior Legislation: AB 953 (Weber, 2015) Ch. 466, Stats. of 2015
AB 2133 (Torrico, 2006), not heard in Assembly Public Safety
SB 1389 (Murray, 2000), held in Senate Appropriations

Support: Essie Justice Group

Opposition: California Association of Highway Patrolmen; California State Sheriff's Association; Peace Officers Research Association of California

PURPOSE

The purpose of this bill is to prohibit a peace officer from initiating a traffic stop for a low-level infraction, as defined, unless there is a separate, independent basis to initiate the traffic stop.

Existing law requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. (Government Code §12525.5(a)(1).)

Existing law requires reports on stops submitted to the Attorney General to include, at a minimum, the following information:

- The time, date, and location of the stop.
- The reason for the stop.
- The result of the stop, such as: no action, warning, citation, arrest, etc.
- If a warning or citation was issued, the warning provided or the violation cited.
- If an arrest was made, the offense charged.
- The perceived race or ethnicity, gender, and approximate age of the person stopped. For motor vehicle stops, this paragraph only applies to the driver unless the officer took actions with regard to the passenger.
- Actions taken by the peace officer, as specified. (Government Code §12525.5(b)(1)-(7).)

Existing law provides that law enforcement agencies shall not report personal identifying information of the individuals stopped to the Attorney General, and that all other information in the reports, except for unique identifying information of the officer involved, shall be available to the public. ((Government Code §12525.5(d).)

Existing law defines “stop,” for the purposes of reports sent by law enforcement agencies to the Attorney General, as ‘any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person’s body or property in the person’s possession or control.’ (Government Code §12525.5(g)(2).)

Existing law finds and declares that pedestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices (Penal Code §13519.4(d)(4).)

Existing law creates the Racial and Identity Profiling Advisory Board (RIPA), which, among other duties, is required to conduct and consult available, evidence-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics. (Penal Code §13519.4(j)(3)(D).)

Existing law prohibits a peace officer from engaging in racial or identity profiling, as defined. (Penal Code §13519.4(e),(f).)

Existing law requires the California Department of Motor Vehicles (DMV) to include in the California Driver’s Handbook information regarding a person’s civil rights during a traffic stop. (Vehicle Code §1653.6(a)(4).)

Existing law provides that a person shall not drive, move, or leave standing upon a highway, or in an off-street public parking facility, any motor vehicle unless it is registered with the DMV and the appropriate fees have been paid, with exceptions. (Vehicle Code §4000).

Existing law requires motorists to have their valid driver’s license in their immediate possession when driving a motor vehicle, and to present their license for examination upon demand of a peace officer. (Vehicle Code §12951(a),(b).)

Existing law establishes various requirements regarding the equipment specifications and operation of bicycles, as well as related safety devices. (Vehicle Code §§21201, 21212).

Existing law makes it unlawful to willfully fail or refuse to comply with a lawful order, signal or direction of a uniformed peace officer or to refuse to submit to a lawful inspection pursuant to the Vehicle Code. (Vehicle Code §2800(a).)

This bill provides that, notwithstanding any other law, a peace officer shall not initiate a motor vehicle stop for a low-level infraction unless there is a separate, independent basis to initiate the motor vehicle stop.

This bill defines “low-level infraction” as any of the following:

- A violation related to the registration of a vehicle or vehicle equipment or the operation of a bicycle, as specified.
- A violation pertaining to a license plate not securely fastened to the vehicle, but the plate is otherwise clearly displayed.
- A violation for lighting equipment not illuminating, but the violation is limited to a single brake light, headlight, or running light or a single bulb in a larger light of the same.

This bill specifies that “low-level infraction” does not include either of the following:

- Vehicle registrations that have expired for more than six months.
- Violations relating to commercial vehicles.

COMMENTS

1. Need for This Bill

According to the author:

“Law enforcement traffic stops are racially disproportionate in the state of California. Black Californians are more than twice as likely to be searched as white Californians. Anecdotal and quantitative data show that law enforcement across the state and country misuse their power during traffic stops to “fish” for information or “suspected criminal activity,” which perpetuates mistrust in the community and leads to unnecessary and negative encounters with law enforcement.

Black people and other minorities in America have been most negatively impacted by encounters with law enforcement. The stop and search practices by law enforcement serve as entry points into the criminal justice system. Additionally, the long term impacts of “driving while Black” and over policing contribute to widespread crises in public health, mental health, and erosion of trust toward law enforcement officers. When law enforcement focuses energy on pursuing low level traffic violations, it reduces their ability to focus on more critical needs in the community.

SB 1389 would prevent law enforcement from stopping vehicles for low-level driving code infractions such as expired registration, failure to properly secure a license, or a vehicle lighting malfunction. According to the Racial and Identity Profiling Act Board, these violations are the top three non-moving/equipment violations to result in a traffic stop across all racial/ethnic groups, as reported by officers.”

2. Pretext Stops

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 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 in order to investigate other possible crimes. Given the litany of possible traffic violations, especially in California, the use of pretext stops as an investigative tool has become widespread since the decision in *Whren*.

As use of pretext stops has increased, so too has criticism of the practice. Many argue that pretext stops are a driver of racial bias in law enforcement (discussed further below), while others claim that they subvert the spirit, if not the letter, of the Fourth Amendment by giving officers carte blanche to stop a vehicle. Critics also point to the difficulty in contesting a pretext stop in court. That is, if an officer stops a driver based on an observed traffic violation – of which there are dozens – the driver bears the burden of producing evidence to refute the officer’s testimony, that, for instance, the license plate was obscured or a taillight was not properly illuminated on a specific date and time. All of these issues, critics argue, lead to disparate outcomes, primarily based on race, and undermine police legitimacy in the eyes of the communities they serve.

3. The Racial Implications of Traffic Stops

As mentioned above, much of the criticism of pretext stops has centered around their disparate impact on communities of color. In 2020, the Stanford Open Policing Project published an analysis of almost 100 million police traffic stops conducted between 2011 and 2017 by 21 state patrol agencies (including the California Highway Patrol) and 29 municipal police departments nationwide. One of the study’s central findings was that “police stopped and searched black and Hispanic drivers on the basis of less evidence used in stopping white drivers, who are searched less but are more likely to be found with illegal items.”³ Moreover, these stops based on routine traffic violations often turn violent. A 2021 New York Times investigation found that in the preceding 5 years, police officers killed at least more than 400 unarmed drivers and passengers who were not under pursuit for a violent crime, while about 60 officers died at the hands of motorists who had been pulled over.⁴

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 vehicle stop data to the DOJ. A 2019 analysis of RIPA stop data by the Public Policy Institute of California found the following:

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)

² *Whren v. United States*, 517 U.S. 806, 809-819 (1996).

³ Pierson, Emma et. al. “A large-scale analysis of racial disparities in police stops across the United States.” *The Stanford Open Policing Project*. July 2020. <https://5harad.com/papers/100M-stops.pdf>

⁴ Kirkpatrick, David et. al. “Pulled Over: Why Many Police Traffic Stops Turn Deadly.” *New York Times*. 31 Oct 2021. <https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html>

RIPA data reveal that Black Californians have notably different experiences during stops than white Californians. Black people are more than twice as likely to be searched, even though searches of Black people are somewhat less likely to yield contraband or evidence. Black people are overrepresented in stops with no enforcement—but Black Californians are almost twice as likely to be booked into jail.

Stops are also more intrusive. During a law enforcement stop, Black people are at least twice as likely to be asked to step out of a vehicle, to be handcuffed, or to experience a stop involving an officer's weapon. However, context significantly contributes to racial disparities. For example, officers stop more Black people than white for reasonable suspicion, an outstanding warrant, or being on parole/probation. Agency type and jurisdiction also play a significant role.⁵

RIPA stop data for the following year (2020) showed that the most commonly reported reason for a stop (86.1%) across all racial/ethnic groups was a traffic violation, and that individuals perceived as Black or Hispanic comprised 60% of the stops reported, while just under 32% of the stops involved individuals perceived as White.⁶ The 2020 data also reflected a continuation of the previous year's trends as well as a finding that "officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more individuals perceived as Black than individuals perceived as White, even though they stopped more than double the number of individuals perceived as White than individuals perceived as Black."⁷

4. Recent Traffic Stop Reforms

In recent years, several local jurisdictions have advanced reforms related to traffic stops. For instance, in 2018, the Oakland Police Department, long criticized for using traffic violations to stop and search people of color, instituted a policy of declining to initiate traffic stops for low-level infractions. Although the racial breakdown of traffic stops in the first year of the policy resembled that from the year prior, the number of traffic stops involving black individuals decreased by over eight thousand, representing a 43% drop.⁸ In nearby Berkeley, the city council in 2020 proposed the creation of a new Berkeley Department of Transportation, which would assume responsibility for the city's traffic enforcement from the police department.⁹ However, this reform depends on changes to state law that would allow for civilian traffic enforcement.

Most recently, in early March 2022, the Los Angeles Police Department enacted a policy to limit the use, duration and scope of pretext stops conducted by its officers. The policy allows officers to make stops for minor equipment violations or other infractions *only* when the officer believes

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 This breakdown is significant given the racial breakdown of the state according to the 2020 census: 39% of Californians identify as Hispanic/Latino, 35% as white, and 5% as black. <https://www.ppic.org/publication/californias-population/>

⁷ "Racial and Identity Profiling Advisory Board Annual Report 2022." <https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>

⁸ "To curb racial bias, Oakland police are pulling fewer people over. Will it work?" *San Francisco Chronicle*. 15 November 2019. <https://www.sfchronicle.com/bayarea/article/To-curb-racial-bias-Oakland-police-are-pulling-14839567.php>

⁹ "Plans firm up to remove police from traffic stops, but it's a long road ahead." *Berkeleyside*. 25 May 2021. <https://www.berkeleyside.org/2021/05/25/berkeley-department-of-transportation-civilian-traffic-enforcement>

that such a violation significantly interferes with public safety, and requires officers to state the public safety reason for such stops on their body-worn cameras. Additionally, the policy prohibits pretext stops *unless* officers are acting upon articulable information in addition to the traffic violation, which may or may not amount to reasonable suspicion, regarding other specified crimes, such as a serious or violent crime, reckless driving, burglary, and others. According to the policy, “such decisions should not be based on a mere hunch or on generalized characteristics such as a person’s race, gender, age, homeless circumstance, or presence in a high crime neighborhood.”¹⁰

5. Effect of this Bill

The California Vehicle Code establishes roughly 1,000 infractions related to a wide array of conduct and vehicle types.¹¹ This bill prohibits officers from initiating a vehicle stop for a “low-level infraction,” unless there is a separate, independent basis for the stop. The bill defines “low-level infraction” as any violation related to a vehicle’s registration or equipment, the operation of a bicycle, a license plate not securely fastened to a vehicle but otherwise clearly displayed, and lighting equipment not illuminating. The bill expressly excludes from the definition of “low-level infraction” vehicle registrations that have expired for more than 6 months and violations relating to commercial vehicles. Thus, while the bill does limit the permissible bases for a traffic stop to some degree, there are still hundreds of traffic violations for which an officer could initiate a stop, even as a pretext to investigate other potential crimes.

6. Argument in Support

According to Essie Justice Group:

Vehicle stops by law enforcement often result in violence towards civilians, particularly for communities of color. In fact, vehicle and pedestrian stops account for about 15 percent of police encounters in which a civilian is seriously injured or killed. Moreover, law enforcement conducts vehicle stops more often for Black and Brown individuals. For instance, in 2020, a higher proportion of traffic violation stops of Black and Latinx individuals were for non-moving or equipment violations, as compared to white individuals. This type of profiling in vehicle stops contributes to the over-policing and over-incarceration of communities of color. SB 1389 (Bradford) will reduce potentially deadly interactions between law enforcement and communities of color. Specifically, this bill will prohibit law enforcement from initiating a vehicle stop for a low-level infraction, such as an equipment violation, a broken tail light, or a loose license plate, unless there is a separate, independent basis to initiate the stop.

Vehicle stops for minor traffic infractions have contributed to mass incarceration. Women with incarcerated loved ones know that the state’s reliance on incarceration to solve for harm is not working. Instead, it has furthered a legacy of racism and generational trauma in Black and Brown communities that have lasting impacts, not

¹⁰ “Policy – Limitation on Use of Pretextual Stops – Established.” Special Order #3, March 9, 2022. LAPD. https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/03/3_9_22_SO_No.3_Policy_Limitation_on_Use_of_Pretexual_Stops_Established.pdf

¹¹ “Traffic Infraction Fixed Penalty Schedule.” Published by Marin County Superior Court. <https://www.marincourt.org/data/UBPS/Traffic.pdf>

just on the incarcerated person, but their entire family and community. Reducing traffic stops by law enforcement will reduce the number of people entering jails and prison by cutting off one of the entry points to the carceral system. Additionally, vehicle stops have historically led to violence against the Black and Brown communities, including women. There is currently very little data on police-involved use of force towards, and deaths, of Black women, and when these instances occur, they rarely garnered national attention. However, according to the Washington Post, 250 women, including 48 Black women, have been shot and killed by police since the newspaper began tracking police-involved shootings in 2015. This is relevant since one in eighteen Black women and 47 percent of all Black transgender women will be incarcerated in their lifetime.

7. Argument in Opposition

According to the California State Sheriff's Association:

First, we object to the policy of keeping law enforcement from enforcing the law. The “low-level infractions” described by the bill are related to vehicle safety or identification and if they are important enough to be kept on the books, peace officers should not be told they must not enforce them unless there is a separate violation. Additionally, the exception to allow a stop for an expired registration only if the registration is more than six months expired is, in practice, not helpful because it may not be readily apparent, or easy for a peace officer to ascertain that level of detail with two vehicles in motion. Also, traffic stops for violations described by this bill routinely result in enforcement actions for much more serious offenses. In many cases, guns are taken off the street, drugs are seized, and other crimes are uncovered in the process of a traffic stop.

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