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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** SB 393                      **Hearing Date:** March 26, 2019  
**Author:** Stone  
**Version:** February 20, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Vessels: Impoundment*

## HISTORY

Source: Author

Prior Legislation: SB 644 (Stone) Vetoed, 2017  
AB 1829 (Levine) – Chapter 68, Stats. 2016  
AB 538 (Levine) – Chapter 118, Stats. 2015  
SB 717 (DeSaulnier) – Chapter 317, Stats. 2013

Support: California District Attorneys Association

Opposition: None known

## PURPOSE

***The purpose of this bill is to provide for the impounding of a vessel if a person is boating under the influence (BUI) and the conduct resulted in the unlawful killing of a person.***

*Existing law* provides that a motor vehicle used by the registered owner in driving under the influence (DUI) conviction may be impounded for one to 30 days upon conviction. (Vehicle Code § 23594(a))

*Existing law* provides that if the DUI offense occurred within five years of another offense the court shall, except in unusual cases where the interest of justice would not be served, impound the vehicle upon conviction for one to 30 days. (Vehicle Code § 23594 (a))

*Existing law* provides that if the DUI offense occurred within five years of two or more offenses the court shall, except in unusual cases where the interest of justice would not be served impound the vehicle upon conviction for one to 30 days. (Vehicle Code § 23594 (a))

*Existing law* prohibits a person from operating a vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug. (Harbors & Navigation Code, § 655 (b))

*Existing law* prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harbors & Navigation Code, § 655 (c))

*Existing law* prohibits a person from operating any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood. (Harbors & Navigation Code, § 655 (d))

*This bill* states that a vessel that has been used in the commission of a violation of BUI for which the owner was convicted and where the conduct resulted in the unlawful killing of a person, is subject to impoundment.

*This bill* allows the court to impound the vessel at the registered owner's expense for up to 30 days.

*This bill* allows the court to consider, in the interests of justice, factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, result in the loss of the vessel because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant, when making a determination on impoundment.

*This bill* defines “vessel” for purposes of this bill as “every watercraft used or capable of being used as a means of transportation on the waters of the state, including all boats, motorboats, personal watercraft, recreational vessels, and undocumented vessels, except foreign and domestic vessels engaged in interstate or foreign commerce upon the waters of the state.”

## COMMENTS

### 1. Need for This Bill

According to the author:

Existing California law provides that the court may order a vehicle registered to the defendant and used in the commission of a Driving under the Influence (DUI) to be impounded at the defendant’s expense for up to 30 days if the defendant has not had a prior conviction within the last five years.

While the law is clear about the rules for impounding a vehicle that has been used in the commission of a DUI the law is less clear on the rules for a boat that has been used in a Boating under the Influence (BUI) incident.

### 2. DUI and Impound

Existing law allows for the impound of a vehicle upon the *conviction* of a DUI for up to 30 days. (Vehicle Code § 23594) It is discretionary on a first offense and provides that the court shall impose it for a repeat offense within five years, although it unclear how often the court actually orders an impound in these cases.

### 3. BUI and Impound

Under existing law it is illegal to drive a vessel under the influence of drugs or alcohol or to drive a vessel with a .08% blood alcohol concentration (BAC) or a .04% BAC for a commercial vessel.

This bill would allow a court to impound, for up to 30 days, a boat used in a violation of boating under the influence (BUI) if the owner is convicted and the conduct resulted in the unlawful killing of a person. The boat may be impounded for period of up to 30 days and the owner would be financially responsible for the costs of the impound.

### 4. Veto of SB 644 (Stone) 2017

This bill is identical to SB 644 (Stone) 2017 which the Governor vetoed stating:

This bill authorizes a court to impound a boat for up to 30 days in boating under the influence cases if the owner is convicted and the conduct resulted in the unlawful killing of a person.

Boating under the influence is a very troubling crime which exposes the public to grave danger. However, especially in cases where this conduct resulted in an unlawful killing, a defendant will be exposed to very serious criminal and civil liability, including potentially years in prison depending on the circumstances. I do not see the need, in these tragic but narrow instances, to additionally expand the powers of government to impound private property as an added punitive measure.

Because this bill will not act as a deterrent, and existing criminal and civil penalties are sufficient to address the conduct contemplated, I am returning this measure without my signature.

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