
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2175 **Hearing Date:** June 19, 2018
Author: Aguiar-Curry
Version: June 11, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vessels: Removal*

HISTORY

Source: California State Sheriff's Association

Prior Legislation: SB 644 (Stone) 2017 Vetoed

Support: Recreational Boaters of California; San Bernardino County

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to authorize a peace officer or marine safety officer to remove a vessel from public property when the vessel has been used in a crime or provides evidence of a crime.

Existing law provides 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, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., Art. I, § 13.)

Existing law allows a peace officer to impound a vehicle from a highway or from public or private property without a warrant if:

- a) The officer has probable cause to believe that the car was used to commit a crime; or,
- b) There peace officer has probable cause to believe that the vehicle itself tends to show that a crime has been committed, or that the vehicle contains evidence which cannot readily be removed and which tends to show that a crime has been committed. (Vehicle Code, § 22655.5.)

Existing law provides that if a vehicle is impounded based on probable cause it was used to commit a crime, or because it shows or contains evidence that a crime has been committed, and the person is subsequently convicted, then the prosecutor may request, and the court may order, the defendant to pay the costs of towing, storage and related administrative charges. (Vehicle Code, § 22655.5 (d).)

Existing law provides that when a person is arrested for street racing, a speed contest or recklessly driving on a highway, an officer may impound the vehicle for not more than 30 days and that the registered and legal owner of the vehicle is required to be provided a hearing regarding the storage of the vehicle. (Vehicle Code § 23109.2.)

Existing law provides that a peace officer, or a lifeguard or marine safety officer, while engaged in the performance of official duties may remove a vessel from, and if necessary store a vessel removed from a waterway under any of the following circumstances:

- a) When the vessel is left unattended and is in a position that obstructs normal movement or traffic or creates a hazard.
- b) When the vessel is found upon a waterway and a report has previously been made that the vessel has been stole or a complaint has been filed and a warrant thereon issued charging that the vessel has been embezzled.
- c) When the person or person in charge of the vessel are by reason of physical injuries or illness incapacitated to an extent as to be unable to provide for its custody and removal.
- d) When an officer arrest a person operating or in control of the vessel for an alleged offense, and the officer is, by any provision of law, required or permitted to take and does take , the person arrested before a magistrate without unnecessary delay. (Harbors and Navigations Code §523)

This bill would allow a peace officer or marine safety officer to impound a vessel in either of the following circumstances:

- a) When the vessel is found on public property and the officer has probable cause to believe that it was used in the commission of a crime; or,
- b) When the vessel is found on public property and the officer has probable cause to believe that the vessel itself provides evidence that a crime was committed, or it contains evidence of a possible crime and the evidence cannot be easily removed from it.

This bill states that a lien shall not attach to a vessel impounded under this section unless it is determined that it was used in the commission of a crime with the express or implied consent of the owner.

This bill allows the court to order a person convicted of a crime involving the use of the impounded vessel to pay for the costs of towing and storage, as well as any administrative charges related to the removal, impoundment, storage, or release of the vessel.

This bill defines “vessel” for the purposes of the section to include both the vessel and any trailer used by the operator to transport the vessel.

COMMENTS

1. Need for This Bill

According to the author:

Currently there is no specific removal authority in the Harbors and Navigation Code Section 523 (vessel removal and storage) that authorizes removal of a vessel from public property where the vessel was used in a crime and the officer has probable cause to believe tht the vessel is itself evidence, or that the vessel contains evidence which cannot be readily removed; this tends to show that a crime has been committed. Similar language exists in the Vehicle Code that allows for the removal of a vehicle in the situation described above. AB 2175 will create consistency between the Harbors and Navigations code and the Vehicle code, by giving peace officers and harbor patrol officers the same removal authority for vehicles and vessels.

2. Impoundment for Purposes of Gathering Evidence

Under current law, a peace officer may impound a vehicle from public or private property when the officer has probable cause to believe that the vehicle was either used as the means of committing a crime, is evidence itself that a crime was committed, or contains evidence which cannot readily be removed and tends to show that a crime has been committed. (Vehicle Code, § 22655.5 (a) & (b).)

Existing law does not have similar provisions which extend to vessels used as the means of committing a crime, or which contain evidence that a crime was committed.

This bill would allow peace or marine officers to impound a vessel, and its trailer, from public property when the officer has probable cause to believe that it was either used as the means of committing a crime, or is itself evidence that a crime was committed, or contains evidence which cannot readily be removed and tends to show that a crime was committed. (Vehicle Code, § 22655.5, (d).)

The Vehicle Code impoundment for evidence gathering statute provides that if the person is subsequently convicted, then the court may order, the defendant to pay the costs of towing and storage and related administrative charges. This bill would impose the same costs on a defendant who was convicted of the suspected crime for which the vessel was impounded.

3. Recent Governor's Veto Messages on Impoundment

Last year the legislature passed SB 644 (Stone), which would have would have authorized a court to impound, for up to 30 days, a vessel used in a violation of BUI if the owner was convicted and the conduct resulted in the unlawful killing of a person. That bill was vetoed. The Governor's veto message stated:

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.

A second bill relating to vehicle impoundment was also vetoed. AB 1393 (Friedman) would have allowed for impound of a vehicle upon conviction for reckless driving and mandated impound upon a second conviction for reckless driving or speed contest. The Governor's veto message on this bill said:

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.

However, in contrast to those bills which were punitive in nature because they allowed impoundment after a conviction, the impound provisions of this bill are related to gathering evidence for prosecution of a case.

4. Argument in Support

According to the *California State Sheriffs' Association*, the sponsor of this bill:

There is no specific removal authority in Harbors and Navigation Code Section 523 (vessel removal and storage) that authorizes removal of a vessel from the water or property where the vessel was used in a crime and the officer has probable cause to believe that the vessel is itself evidence that tends to show that a crime has been committed, or that the vessel contains evidence that cannot readily be removed, which tends to show that a crime has been committed. However, similar language allowing the removal of a vehicle in the situations described above exists in the Vehicle Code (Section 22655.5(b)). This provision is necessary to clarify the ability to appropriately remove and store vessels and to facilitate accurate records management.