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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2876                      **Hearing Date:** June 19, 2018  
**Author:** Jones-Sawyer  
**Version:** June 12, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** EC

**Subject:** *Vehicles: Removal and Impound Authority*

## HISTORY

**Source:** Mexican American Legal Defense and Educational Fund

**Prior Legislation:** AB 353 (Cedillo), Chapter 653, Statutes of 2011

**Support:** California Attorneys for Criminal Justice; California Immigrant Policy Center; California Public Defenders Association; California Rural Legal Assistance Foundation

**Opposition:** California Police Chiefs Association

**Assembly Floor Vote:** 75 - 0

## PURPOSE

*The purpose of this bill is to clarify that the protections against removal and subsequent storage of a vehicle, as authorized by California statute, must be reasonable under the Fourth Amendment and California Constitution.*

*Existing law* states that it is unlawful for any peace officer, or any unauthorized person to remove any unattended vehicle from a highway to a garage or to any other place with some exceptions. (Veh. Code § 22650.)

*Existing law* authorizes peace officers, or a employee, engaged in directing traffic or enforcing parking laws and regulations, may remove a vehicle under the following circumstances (Veh. Code § 22651, subs. (a)–(g).):

- 1) When a vehicle is left unattended on a bridge, viaduct, or other specified roadway constituting an obstruction to traffic;
- 2) When a vehicle is placed on a highway obstructing the normal movement of traffic or poses a hazard to other traffic;
- 3) When a vehicle is found on public land and has previously been reported as stolen or a warrant has been issued charging that the vehicle was embezzled;
- 4) When a vehicle is illegally parked blocking the entrance to a private driveway and it is impractical to move the vehicle to another point on the highway;
- 5) When a vehicle is illegally parked and is preventing access by firefighting equipment to a fire hydrant and it is impractical to move the vehicle;

- 6) Excluding highway maintenance or construction equipment, when a vehicle is stopped more than four hours on the right-of-way of a freeway that has full control of access and no crossings at grade and the vehicle cannot be moved under its own power; and,
- 7) When the driver of the vehicle on public land is incapacitated due to some illness and is unable to provide for its custody or removal.

*Existing law* authorizes an officer, upon arresting and taking into custody a person driving a vehicle, to remove the vehicle. (Veh. Code § 22651, subd. (h)(1).)

*Existing law* authorizes an officer serving a notice of an order of suspension or revocation for a DUI-related offense, to remove the vehicle. (Veh. Code § 22651, subd. (h)(2).)

*Existing law* authorizes a law enforcement agency to impound a vehicle that has been issued five or more parking violations and the owner has not responded, when the registered owner has been issued failed to appear in court for traffic violations, or in other specified situations. (Pen. Code § 22651, subd. (i).)

*Existing law* states that a vehicle may be impounded if found illegally parked and there are no license plates or other evidence of registration displayed, unless the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of their identity. (Pen. Code § 22651, subd. (j).)

*Existing law* authorizes vehicle removal when the vehicle is parked or left standing upon a highway for 72 or hour consecutive hours in violation of a local ordinance. (Pen. Code § 22651, subd. (k).)

*Existing law* authorizes vehicle removal when the vehicle is illegally parked in violation of a local ordinance forbidding parking and the highway needs to be used for the purposes of repair of construction. (Veh. Code § 22651, subd. (l).)

*Existing law* authorizes vehicle removal when the vehicle would prohibit or interfere with the normal flow of traffic or the movement of equipment, articles, or structures of unusual size, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority. (Veh. Code § 22651, subd. (m).)

*Existing law* authorizes vehicle removal when the vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. (Veh. Code § 22651, subd. (n).)

*Existing law* authorizes vehicle removal when found or operated upon a highway, public land, or an off-street parking facility and has an expired registration in excess of six months, is displaying a license plate or registration not issued for the vehicle, and other specified circumstances. (Veh. Code § 22651, subd. (o).)

*Existing law* authorizes a vehicle removal when an officer issues the driver of a vehicle a notice to appear for violating a traffic law, as specified, and the vehicle has not been impounded. (Veh. Code § 22651, subd. (p).)

*Existing law* authorizes vehicle removal when a vehicle is parked more than 24 hours on a specified portion of a highway. (Veh. Code § 22651, subd. (q).)

*Existing law* authorizes vehicle removal when a vehicle is illegally parked so as to block the movement of a legally parked vehicle. (Veh. Code § 22651, subd. (r).)

*Existing law* authorizes vehicle removal when a vehicle, except highway maintenance equipment or other specified vehicles, is parked for more than hours at a roadside rest area or viewpoint. (Veh. Code § 22651, subd. (s).)

*Existing law* states that an officer may remove a vehicle parked in violation of a specified local ordinance with the registered owner was previously issued a warning citation for the same offense. (Veh. Code § 22651, subd. (w).)

*Existing law* authorizes an officer to remove a vehicle and imposes guidelines for storage and release, as specified. (Veh. Code, §§ 22651.05 – 22856.)

*Existing law* provides that law enforcement and other agencies have authority to remove vehicles shall also have authority to provide hearings, as specified. (Veh. Code, § 22650, subd. (a).)

*Existing law* places the burden of establishing the authority for and the validity of the removal on the storing agency during the hearings. (Veh. Code, § 22650, subd. (a).)

*Existing U.S. Constitutional Amendment* states 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. amend. IV, sec. 1).

*This bill* allows the warrantless vehicle removal for the purposes of officer seizure, community caretaking, safe flow of traffic, protection from theft or vandalism, if constitutionally reasonable under the Fourth Amendment of the U.S. Constitution and Article 1, section 13 of the California Constitution.

*This bill* states that any removal and/or subsequent storage of a vehicle that is based on community caretaking is only reasonable if an individual's substantial interest in possessing their vehicle is outweighed by one or more of the following community caretaking justifications:

- 1) Preventing a hazard to other drivers;
- 2) Protecting the public from an unsafe driver; or
- 3) Preventing theft or vandalism.

## COMMENTS

### 1. Need for This Bill

The author states:

In various court cases this lack of clarity in state statute has led to the seizure of vehicles that should not have been removed. These instances are violations of people's 4th Amendment right, but more importantly they are instances where people's only means of transportation was taken from them. In urban districts, like the one I represent, having a vehicle impounded

can mean that an individual needs to choose between picking up their child from school and going to work on time. Providing clarity regarding the 4th Amendment would help law enforcement know their rights as community caretakers, while preventing needless vehicle seizures.

The 4th Amendment of the Constitution of the United States and the Constitution of the State of California provide peace officers the ability to seize property with the use of a warrant. Additionally, courts have ruled that in a limited number of circumstances warrantless seizures may also be appropriate under the “community caretaking doctrine,” however current law does not reflect the narrow scope of this power.

The “community caretaking doctrine” has been defined by courts through various rulings to mean that warrantless seizures of vehicles are only reasonable if an individual’s substantial property interest in possessing his or her vehicle is outweighed by one or more of the following justifications:

- i) Preventing a hazard to other drivers;
- ii) Protecting the public from an unsafe driver; or
- iii) Preventing theft or vandalism.

Although the court has made clear that property rights protections exist for individuals, current law is not explicit on this matter, resulting in inadvertent unconstitutional vehicle seizures. This is especially important in cases where a towed vehicle can make the difference between going to work or staying home. Without clarifying 4th Amendment protections in state law, low-income and immigrant families are especially vulnerable to unwarranted vehicle seizures and their dire economic consequences.

AB 2876 would make explicitly clear that vehicle seizures must comply with the “community caretaking doctrine” in accordance with the United States and California constitutions. Providing this clarification in state law preserves the discretion peace officers have, while clarifying property rights protections for individual California residents.

## **2. Fourth Amendment and the California Constitution**

The Fourth Amendment of the United States Constitution protects the right of people to be secure in their persons, property, and documentation from unreasonable searches and seizures unless permitted by warrants upon probable cause. Article 1, Section 13 of the California Constitution declares that,

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.<sup>1</sup>

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<sup>1</sup> “Law Section,” accessed June 11, 2018, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%2013.&article=I](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%2013.&article=I).

The Supreme Court affirmed in *Agnello v. United States* that searches conducted without warrants have been held unlawful “notwithstanding facts unquestionably showing probable cause” (*Agnello v. U.S.* (1925) 269 U. S. 20, 269 U. S. 33). *Katz v. U.S.* further emphasized that searches and seizures without a warrant issued by a judge or magistrate are considered to be unreasonable (*Katz v. U.S.* (1967) 389 U.S. 347, 357).

However, in *Florida v. Jimeno*, the Court held that the Fourth Amendment is not violated if it is objectively reasonable for the search or seizure to be conducted (*Florida v. Jimeno* (1991) 500 U.S. 248, 250). The specific exceptions when officers may remove a vehicle without a warrant have been documented in case law. Local law enforcement has the authority to remove vehicles when it is part of their “community caretaking function,” jeopardizes public safety, or impedes the movement of vehicular traffic (*South Dakota v. Opperman* (1976) 428 U.S. 364, 368-69). Under the community caretaking doctrine, the officer’s decision to remove the vehicle depends on the location of the vehicle and the officer’s duty to prevent it from being an obstruction or hazard to traffic, or potentially being of it being stolen. (*Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864).

### 3. Case Law and California Statutes

California statutes outline which specific circumstances where a law enforcement officer may remove a vehicle including, but not limited to, when the vehicle is left unattended and obstructs traffic, poses a hazard, found on public land after being reported stolen (Veh. Code § 22650).

Even in cases where a statute may authorize the removal of a vehicle, the removal must still be reasonable under the Fourth Amendment (*People v. Williams* (2006) 145 Cal.App.4th 756, 762). In *People v. Williams*, an officer arrested the defendant and took them into custody. The officer then removed the vehicle pursuant to a statute stating that an officer to remove a vehicle upon arresting an taking into custody a person driving or in control of a vehicle for an alleged offense (Veh. Code, § 22561, subd. (h)(1)). The court stated that,

While the statute authorizes law enforcement officers to “remove” a vehicle when they make a custodial arrest of a person “driving or in control of” the vehicle, this statutory authorization does not, in and of itself, determine the constitutional reasonableness of the seizure (*People v. Williams*, supra, 145 Cal.App.4th at p. 762).

The court also stated that:

At best, the statute may constitute a standardized policy guiding officers’ discretion. It does not, however, end the inquiry. By [the officer’s] own admission, he impounded appellant’s car simply because he was taking appellant into custody. [The officer] did not assert any community caretaking justification for the impoundment, and in light of the evidence at the hearing, no such justification existed (*Id.* at p. 763).

Although the removal of the vehicle was conducted according to an authorizing statute, the removal must “still serve a community caretaking function” (*Ibid.*).

In a different case that focused on the same statute, the court upheld an officer’s decision to remove a vehicle when they asserted a valid community caretaking justification (*People v.*

*Shafir*, (2010) 183 Cal.App.4th 1238). After arresting and taking the defendant into custody, the officer removed the vehicle for safekeeping pursuant to Vehicle Code section 22651, subdivision (h) (Id. at 1241). In upholding the removal of the vehicle, the court distinguished itself from *People v. Williams*, stating that the factors articulated by the officers at the hearing explaining the decision to remove the vehicle for safekeeping purposes, "seem[ed] ... reasonable" and were "very good reasons why the car should have been taken someplace else" (Id. at 1241).

This bill codifies case law concerning warrantless removal and subsequent storage of vehicles; the removal must be reasonable, regardless of whether the removal was made pursuant to an authorizing statute.

#### **4. Argument in Support**

According to the California Public Defenders Association:

AB 2876 would amend the Vehicle Code statutes regarding police authority to impound motor vehicles by including a declaration of existing constitutional law which permits warrantless seizure of vehicles only when factual circumstances supporting narrow exceptions to the Fourth Amendment warrant requirement (such as community caretaking exception) are present.

#### **5. Argument in Opposition**

According to the California Police Chiefs Association:

Currently, the "community caretaking doctrine" allows law enforcement to remove and seize vehicles if a peace officer feels the driver is unable to lawfully operate the vehicle or if the vehicle is station in an exposed location. In June of 2017 the 9<sup>th</sup> Circuit Court of Appeals issued an opinion on *Brewster v. Beck* which upheld Los Angeles Police Department's ability to impound a vehicle pursuant to Vehicle Code section 14602.6(a)(1). The panel of judges stated, a "seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force." Law Enforcement agencies have updated their policies that reflect new case law such as the *Brewster v. Beck* decision.

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