
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1206 **Hearing Date:** July 11, 2017
Author: Bocanegra
Version: June 28, 2017
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Vehicles: Impoundment: Pilot Program*

HISTORY

Source: Author

Prior Legislation: AB 2147 (Eggman) Vetoed 2016
AB 2877 (Chavez) Failed Assembly Public Safety 2015
AB 14 (Fuentes) Chapter 210, Stats. 2009
AB 1751 (Fuentes) – 2008, Vetoed
AB 1724 (Jones) – 2008, Vetoed
AB 1332 (Gotch) Chapter 485, Stats. 1993

Support: Abolitionist Mom; AnnieCannons; California Police Chiefs Association;
California State Sheriffs' Association; City of Los Angeles; City of Los Angeles
Councilwoman Nury Martinez; City of Oakland; Journey Out; Los Angeles
County District Attorney's Office; Love From Margo Foundation; Saving
Innocence; The Freedom Story; Volkswagen of Oakland

Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice;
California Public Defenders Association

Assembly Floor Vote: 69 - 1

PURPOSE

The purpose of this bill is to authorize a two-year pilot program in the cities of Los Angeles and Oakland to permit law enforcement officers to remove the vehicles of people arrested for first time prostitution related offenses.

Existing law provides that any person who maintains or commits any public nuisance for which the punishment is not otherwise prescribed, or who willfully omits performing any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor punishable by up to 6 months in the county jail and/or a fine up to \$1000. (Penal Code § 372.)

Existing law authorizes a local county, city or city and county to adopt a five-year pilot program for declaring a motor vehicle used in prostitution and related offenses to be a nuisance. (Vehicle Code § 22659.5.) An ordinance adopted pursuant to Vehicle Code Section 22659.5 shall have the following features:

- Where the defendant is arrested and taken into custody, the arresting officer may remove the vehicle from a public highway or public land. The owner may retrieve the vehicle through proof of registration and payment of applicable fees and costs. (Vehicle Code §§ 22651 and 22850 et seq.)
- The nuisance provisions apply only if the defendant was convicted of a specified offense, or a lesser included offense as part of a plea bargain.
- The defendant can be ordered not to use the vehicle again for purposes of committing prostitution or a related offense. Violation of such an order may result in impoundment of the vehicle for up to 48 hours.

Existing law provides that any person who maintains or commits any public nuisance for which the punishment is not otherwise prescribed or who willfully omits performing any legal duty relating to the removal of a public nuisance is guilty of a misdemeanor punishable by up to six months in the county jail and/or a fine up to \$1000. (Penal Code § 372)

Existing law prohibits any person from dumping or causing to be dumped any waste matter, including rocks or dirt, in or upon any public or private highway or road, without the consent of the owner, or in or upon any public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. The penalty is an infraction with a penalty of \$250-\$1000 plus penalty assessments for a first offense. (Penal Code § 374.3.)

Existing law provides that dumping commercial quantities of waste in violation of Penal Code Section 374.3 is a misdemeanor, punishable by imprisonment in the county jail for up to six months and a mandatory fine of between \$1000 and \$3000 for a first conviction, between \$3000 and \$6000 for a second conviction, and between \$6000 and \$10,000 for a third or subsequent conviction. (Penal Code § 374.3(h).)

Existing law defines commercial quantities of waste as either waste generated in the course of a business or trade, or an amount equal to one cubic yard. (Penal Code § 374.3 (h).)

Existing law authorizes the impoundment and, in specific instances, civil forfeiture of a motor vehicle when the registered owner has multiple convictions for misdemeanor illegal dumping of waste matter. (Vehicle Code § 23112.7.)

Existing law states notwithstanding any other provision of law and except as provided in this provision, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a California highway by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for driving on a suspended or revoked license. (Vehicle Code § 14607.6 (a.) 3)

Existing law provides that a peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations,

and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle. (Vehicle Code § 14607.6 (c)(3).)

Existing law provides a registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment, as specified. (Vehicle Code § 14607.6 (c)(4).)

Existing law states if the driver of a vehicle impounded, as specified, was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for driving on a suspended or revoked license, the vehicle shall be released pursuant to the Vehicle Code and is not subject to forfeiture. (Vehicle Code § 14607.6 (c)(5).)

This bill authorizes the cities of Los Angeles and Oakland to conduct a 24-month pilot program in which law enforcement officers may remove a vehicle if it is used in the commission, or attempted commission, of pimping, pandering, or solicitation of prostitution.

The bill requires the city, if it elects to implement the pilot program, to take specified actions, including, among others, offering a diversion program to prostitutes cited or arrested in the course of the pilot program.

This bill authorizes removal only if the arrestee is the sole owner of the vehicle.

This bill requires the city, within six months of the completion of the pilot program to issue a report, as specified. The bill would repeal these provisions on January 1, 2022. The report shall include the following:

- The number of individuals cited, and the number of individuals arrested, during the pilot program for the commission, or attempted commission, of a crime;
- The number of vehicles impounded during the pilot program because they were used in the commission, or attempted commission, of a crime;
- The number of minor victims of a crime that law enforcement encountered during the course of the pilot program; and
- Whether the implementation of the pilot program impacted the number of citations or arrests for commission, or attempted commission, of a crime.

This bill provides that an ordinance adopted pursuant to this section shall contain but not be limited to, the following provisions:

- At the time of arrest, the person shall be notified that his or her vehicle will be towed and given information on how the vehicle may be retrieved.
- The registered owner or his or her agent may retrieve the vehicle at any time.
- The registered owner or his or her agent is responsible for all towing and storage fees related to the seizure of a vehicle pursuant to this section.
- If a vehicle is not claimed by the registered owner within 30 days the legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner but holds a security interest in the vehicle, the legal owner shall be given notice that the car has been seized and shall be given an opportunity to retrieve the

vehicle. The vehicle shall be released to the legal owner upon payment of all towing and storage fees due.

This bill provides that it shall not be construed to limit the authority of any peace officer to impound a vehicle pursuant to any applicable provision of this code.

COMMENTS

1. Need for This Bill

According to the author:

Under existing law, a city or county may pass an ordinance to tow a vehicle that is used in the commission or attempted commission of the crimes of pimping, pandering, and soliciting, or agreeing to engage in, or engaging in any act of prostitution, only if the individual in question has a prior conviction within the last three years for one of the aforementioned crimes. Unfortunately, the requirement that an individual have a conviction within the last three years should a local government want to tow a vehicle is extremely problematic and counter-productive for jurisdictions trying to tackle human/sex trafficking in an expedited manner. Not only are vehicles left on the side of the road, in private driveways, in front of homes, in neighborhoods, and in alley ways for extended periods of time, but they're readily available for other individuals involved in sex trafficking rings to pick up and resume trafficking at a moment's notice.

Furthermore often vehicles are used to transport victims of human/sex trafficking making the vehicle a part of the crime. There are also other criminal acts that take place in vehicles, such as Johns physically assaulting the victims using various weapons. The Los Angeles Police Human Trafficking Task Force Operations-Valley Bureau made over 3,000 traffic citations in regards to commission or attempted commission of the crimes of pimping, pandering, and soliciting, or agreeing to engage in, or engaging in any act of prostitution in 2016, however only impounded 63 vehicles, leaving key evidence behind for perpetrators to reclaim after being detained.

2. O'Connell v. City of Stockton

In *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061 the California Supreme Court overturned a Stockton ordinance allowing forfeiture to the city of any vehicle used to solicit prostitution or to obtain or attempt to obtain controlled substances. The court held that the ordinance was preempted by state law. As to the Stockton drug forfeiture provisions, the court ruled that the comprehensive nature of the Uniform Controlled Substances Act, which includes vehicle forfeiture (Health & Safety. Code § 11469 et seq.), manifest the Legislature's intent to preclude local regulation. Further, the Stockton ordinance conflicted with state law because it provided for penalties in excess of those prescribed by the Legislature. As to the prostitution related forfeiture provisions, the court held that the Vehicle Code preempted local ordinances. Vehicle Code Section 21 expressly states that "no local authority shall enact or enforce any ordinance on the matters covered by [the Vehicle Code] unless expressly authorized therein." Vehicle Code Section 22659.5, subdivision (a), sets out the limits and requirements for local

ordinances declaring vehicles used in the solicitation of prostitution to be nuisances. Such ordinances can only be enacted as five-year pilot programs. Allowed ordinances can include provisions ordering the defendant not to use the vehicle again and allowing forcible removal of the vehicles. "Section 22659.5 contains no language, however, that would allow a local entity such as the City [of Stockton] here to seize and forfeit a vehicle that, through its use in soliciting prostitution, has created a public nuisance." (*O'Connell v. City of Stockton*, supra, 41 Cal.4th 1061, 1074.)

3. Brewster v Beck

The 9th Circuit released an opinion on June 21, 2017 in the Case of Brewster v. Beck.

The court held that the 30-day impoundment of a vehicle constitutes a "seizure" requiring compliance with the Fourth Amendment.

Lamya Brewster loaned her vehicle to a driver with a suspended license. Los Angeles Police Department (LAPD) officers stopped the driver, discovered the suspension, and impounded the vehicle, relying on Veh. Code §14602.6(a)(1), which authorizes impounding a vehicle when the driver has a suspended license. Vehicles seized under this section must generally be held in impound for 30 days. Three days later, Brewster appeared at a hearing before the LAPD with proof that she was the registered owner of the vehicle and her valid California driver's license. Brewster offered to pay all towing and storage fees that had accrued, but the LAPD refused to release the vehicle before the 30-day holding period had lapsed.

Brewster filed suit under 42 U.S.C. §1983, arguing the 30-day impound was a warrantless seizure that violated the Fourth Amendment. The district court granted the city's motion to dismiss, finding the 30-day impound was a valid administrative penalty.

The court of appeals reversed, holding that the 30-day impound of Brewster's vehicle was a seizure that required compliance with the Fourth Amendment. That the seizure of the vehicle was lawful at the outset was not determinative. A seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification. Here, although the initial seizure had a legitimate public safety purpose, that justification vanished when Brewster showed up with proof of ownership and a valid driver's license. Because the city failed to provide any justification for the continued retention of her car, the district court erred in granting its motion to dismiss. (*Brewster v. Beck* D.C. No. 5:14-cv-02257-JGB-SP; Summary of the case from *The Recorder* June 21, 2017 <http://www.therecorder.com/id=1202790834632/Brewster-v-Beck?slreturn=20170528190128>)

4. Current Procedures with Local Approval

Existing law authorizes local jurisdictions to adopt ordinances declaring vehicles used in the commission of prostitution to be impounded as a public nuisance. Vehicle Code Section 22659.5

was enacted in 1993 and allowed a local government to impound a vehicle after a conviction for prostitution, as specified, for up to 48 hours. AB 1332 (Gotch), Chapter 485, Statutes of 1993, declared legislative intent as follows:

The Legislature hereby finds and declares that under the Red Light Abatement Law every building or place used for, among other unlawful purposes, prostitution is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered. It is recognized that in many instances vehicles are used in the commission of acts of prostitution and that if these vehicles were subject to the same procedures currently applicable to buildings and places, the commission of prostitution in vehicles would be vastly curtailed. The Legislature, therefore, intends to enact a five-year pilot program in order to ascertain whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities.

In 2009, the pilot program was extended to be a statewide program which permitted the same provisions and procedures in this bill to be adopted by local ordinance through passage of AB 14 (Fuentes), Chapter 210, Statutes of 2009.

4. Pilot Would Allow Impound Upon a First Arrest

This bill would allow the cities of Los Angeles and Oakland to adopt an ordinance to create a pilot project that would provide for the removal of a vehicle used in the commission or attempted commission of pimping, pandering or soliciting. The owner of the vehicle can retrieve the vehicle upon payment of any towing and storage charges. If the car is not picked up in 30 days and there is a legal owner, the legal owner shall be notified and the legal owner can retrieve the car.

5. Support

The California Police Chiefs Association supports this bill stating:

Under existing law, a city or county may pass an ordinance to tow a vehicle that is used in the commission or attempted commission of the crimes of pimping, pandering, and soliciting, or agreeing to engage in, or engaging in any act of prostitution, only if the individual in question has a prior conviction within the last three years for one of the aforementioned crimes. Unfortunately, the requirement that an individual have a conviction within the last three years should a local government want to tow a vehicle is extremely problematic and counter-productive for jurisdictions trying to tackle human/sex trafficking in an expedited manner. Not only are vehicles left on the side of the road, in private driveways, in front of homes, in neighborhoods, and in alley ways for extended periods of time, but they are readily available for other individuals involved in sex trafficking rings to pick up and resume trafficking at a moment's notice.

6. Opposition

The California Attorneys for Criminal Justice opposes this bill stating:

As amended this measure authorizes the City of Los Angeles and Oakland to adopt a pilot program that would allow a police officer to tow the vehicle of anyone **arrested** for specified offenses including the solicitation of prostitution. There have been many legislative efforts in recent years to expand the authority of to tow and impound or remove vehicles. Notwithstanding these bill proposals, the 9th Circuit Court of Appeals has articulated a fundamental constitutional principle when it comes to vehicle impoundments or removals occurring upon arrest. According to the 9th Circuit, they are *per se* unconstitutional.

In *Miranda v. City of Cornelius* (2005) 429 F.3d 858, the court concluded that law enforcement is precluded by the 4th Amendment.

The impoundment of an automobile is a seizure within the meaning of the Fourth Amendment....A seizure conducted without a warrant is *per se* unreasonable under the Fourth Amendment. (*Miranda v. City of Cornelius*, (2005) 429 F.3d 858).

The *Miranda* court further explained that there is little justification for impounding vehicles at the time of arrest. The court went on to specifically state that neither the adoption of a local ordinance or a state legislation could overcome the constitutional protection afforded by the 4th Amendment.

We begin with the premise...that the decision to impound pursuant to of itself, determine the reasonableness of the seizure under the Fourth Amendment, as applied to the states by the Fourteenth Amendment. The question in this Court upon review of a state-approved search or seizure is not whether the search (or seizure) was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment.” *Miranda v. City of Cornelius*, (2005) 429 F.3d 858, 866; citing *Sibron v. New York* , (1968) 392 U.S. 40, 61.

In essence, the *Miranda* court requires an exception to the Fourth Amendment prohibition against unreasonable searches and seizures. Unfortunately, AB 1206 does not incorporate any of the recognized exceptions. Therefore, any towing that occurs pursuant to this bill would be in violation of constitutional protections.

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