

Date of Hearing: April 5, 2022
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2773 (Holden) – As Introduced February 18, 2022

As Proposed to be Amended in Committee

SUMMARY: Requires a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. Makes a failure to state the reason for the stop grounds for a statutory motion to suppress. Specifically, **this bill:**

- 1) Requires a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including but not limited to, cases of terrorism or kidnapping.
- 2) Provides that failure to make the required statement is grounds for filing a motion to suppress using the procedures established in Penal Code section 1538.5.
- 3) Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.
- 4) Requires the Department of Motor Vehicles (DMV) to include information regarding the duty of a peace officer to state the reason for the stop in the handbook at the earliest opportunity when the handbook is otherwise revised or reprinted.

EXISTING LAW:

- 1) Requires DMV to publish a synopsis or summary of the laws regulating the operation of vehicles and the use of highways. This summary is referred to as the California Driver's Handbook (Handbook). (Veh. Code, § 1656.)
- 2) Requires DMV to include within the Handbook a section on a person's civil rights during a traffic stop, including:
 - a) The limitations on a peace officer's authority during a traffic stop; and
 - b) The legal rights of drivers and passengers, including, but not limited to, the right to file complaints against a peace officer. (Veh. Code, § 1656.3, subd. (a)(4).)
- 3) Requires DMV to develop this section in consultation with the civil rights section of the of the Department of Justice (DOJ), California Highway Patrol (CHP), California Commission on Peace Officer Standards and Training (POST), and civil rights organizations, including

community-based organizations. (Veh. Code, § 1656.3, subd. (a)(4).)

- 4) Provides that the information shall be included in the handbook at the earliest opportunity when the handbook is revised or reprinted. (Veh. Code, § 1656.3, subd. (b).)
- 5) Prohibits unreasonable searches and seizures. (U.S. Const., amends. IV & XIV.)
- 6) Specifies procedures for a defendant in a criminal action to move to suppress evidence obtained as the result of an illegal search or seizure. (Pen. Code § 1538.5.)
- 7) Provides that a defendant may move for the return of property or to suppress evidence obtained as a result of a search or seizure if either of the following is true:
 - a) The search without a warrant was unreasonable; or
 - b) The search or seizure with a warrant was unreasonable because the warrant is insufficient on its face; the property or evidence obtained is not that described in the warrant; there was not probable cause for the issuance of the warrant; the method of execution of the warrant violated federal or state constitutional standards; or, there was any other violation of federal or state constitutional standards. (Pen. Code, § 1538.5, subd. (a).)
- 8) Provides that at any hearing on a motion to suppress, the court may hear evidence on any issue of fact necessary to reach a proper ruling of the motion. (Pen. Code, § 1538.5, subd. (c).)
- 9) Provides that any person in a trial, hearing, or proceeding may move to suppress any electronic information obtained or retained in violation of the Fourth Amendment or the Electronic Communications Privacy Act (ECPA). The motion shall be made, determined, and be subject to review in accordance with the procedures set forth in Penal Code section 1538.5. (Pen. Code, § 1546.4, subd. (a).)
- 10) States that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evid. Code, §§ 350, 351.)
- 11) Provides that relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, subject to the existing statutory role of evidence relating to privilege or hearsay, or inadmissibility. (Cal. Const., art. I, § 28, as adopted June 8, 1982.)
- 12) Defines “relevant evidence” as meaning evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “To promote equity and accountability in communities across California — that is my goal. AB 2773 brings transparency to service of protecting our public.”
- 2) **The Racial and Identity Profiling Act (RIPA):** AB 953 (Weber), Chapter 466, Statutes of 2015, enacted RIPA. Among other things, RIPA requires law enforcement agencies employing peace officers to report their stop data annually to the Attorney General. RIPA guidelines define a “stop” as “any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search. This data include both pedestrian and vehicle stops.” (<https://openjustice.doj.ca.gov/exploration/stop-data> [as of March 19, 2022].) “The data elements are statutorily mandated by the regulations underlying RIPA and include person-level and stop-level information (e.g., actions taken, reason for stop). Officers are required to record their perception of the identity characteristics pertaining to each stopped person, including their; race or ethnicity, gender, approximate age, lesbian, gay bisexual or transgender (LGBT) status, English fluency, and disability. Officers are prohibited from asking the person stopped to self-identify these characteristics. Consequently, officer perceptions of identity characteristics may differ from how an individual self-identifies.” (*Ibid.*)
- 3) **Racial Profiling:** Existing law prohibits law enforcement officers from engaging in racial profiling. (Pen. Code, § 13519.4, subd. (f).) “Racial or identify profiling” is the practice of detaining a suspect, or engaging in law enforcement activities after the stop, based on a broad set of criteria which casts suspicion on an entire class of people rather than individualized suspicion of the particular person being stopped. (Pen. Code, § 13519.4, subd. (e).)

Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. According to the Public Policy Institute of California (PPIC), the first wave of RIPA data reflects that Black individuals are “notably overrepresented in police stops.” (<https://www.ppic.org/blog/african-americans-are-notably-overrepresented-in-police-stops/> [as of March 22, 2022].) In this first wave of data, eight agencies reported regarding stops between July 1, and December 31, 2018. The PPIC analyzed the RIPA data and found “[w]hile African Americans make up roughly 6% of the population in the [reported] jurisdictions, they made up slightly more than 15% of all stops. Those perceived to be Middle Eastern or South Asian make up about 1.8% of the population but represented 4.4% of all stops. In contrast, the state’s two largest racial/ethnic groups—Latinos and whites—were slightly underrepresented, as they make up about 41% and 35% of the population, respectively, but around 40% and 33% of all stops. Asian Americans were even more underrepresented: they are roughly 12% of the population, but made up about 5.5% of all stops.” (*Ibid.*) For African Americans, the racial inequities were the greatest, and existed among all eight of the agencies reporting. (*Ibid.*)

- 4) **Pretext Stops:** Under federal law, officers generally have wide latitude to initiate a traffic stop regardless of the officer’s motivation in making the stop. Under the Fourth Amendment, the decision to stop an automobile is reasonable if the officer has probable cause to believe that a traffic violation has occurred. (*Whren v. United States* (1996) 517 U.S. 806, 810.) A “pretext stop” occurs when an officer stops a vehicle for a traffic violation in order to investigate a more serious offense for which the officer lacks probable cause.

Officers stop drivers for low-level offenses such as tinted windows, broken taillights, license

plates improperly affixed to vehicles, obstructed windshields or objects hanging from a rearview mirror. (See, e.g., Pen. Code § 26708(a)(2); *People v. Colbert* (2007) Cal.App.4th 1068, 1073 [a stop under § 26708(a)(2) is reasonable when the police officer “explicitly testifie[s] that the air freshener was ‘large enough to obstruct [the driver’s] view through the front windshield’”]; *People v. Guerra* (2002) 2002 WL 31717061 [stopping a driver to see whether a neck chain hanging from a rearview mirror violated the Vehicle Code]; Baker & Bogel-Burroughs, *How a Common Air Freshener Can Result in a High-Stakes Traffic Stop*, N.Y. Times (Apr. 17, 2021) <<https://www.nytimes.com/2021/04/17/us/police-air-fresheners.html?referringSource=articleShare>> [“prohibitions against objects hanging from rearview mirrors can extend to fuzzy dice, graduation tassels, and rosaries”].)

Research shows that there is significant racial bias both as to who gets stopped and the outcomes of those stops, including the officer’s use of a weapon. (<https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/> [as of March 31, 2022].)

In light of the racial disparities in law enforcement stops, as well as the outcomes of those stops, this bill seeks to deter “pretext stops” by requiring more police accountability – i.e., by requiring officers to state the reason for the stop and document it on a citation or police report. According to the author’s office, “in most instances the confrontation between law enforcement and people of color begin when people of color are not afforded the privilege of knowing why they were pulled over or stopped from continuing their walk in the first place. In these instances, people of color are demanded to comply or the situation escalates.”

- 5) **Suppression of Evidence and Proposition 8:** California’s search and seizure procedures are codified in Penal Code section 1538.5. The statute sets forth a process by which a defendant may move to suppress evidence obtained as the result of an illegal search or seizure.

“[I]n 1982, the California voters passed Proposition 8. Proposition 8 enacted article I, section 28 of the California Constitution, which provides in relevant part: ‘Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings’ (Cal. Const., art. I, § 28, subd. (f), par. (2).)” (*People v. Lazlo* (2012) 206 Cal.App.4th 1063, 1069.) The “Truth-in-Evidence” provision of Section 28(f)(2) “was intended to permit exclusion of relevant, but unlawfully obtained evidence, only if exclusion is required by the United States Constitution” (*In re Lance W.* (1985) 37 Cal.3d 873, 890 (*Lance W.*)). Section 28(f)(2) is applicable not only to judicially created rules of exclusion (*In re Demetrius A.* (1989) 208 Cal.App.3d 1245, 1247), but also to statutory evidentiary restrictions (*Lance W.*, *supra*, 37 Cal.3d at p. 893).

Article I, section 28, federalized California’s search and seizure law. A trial court may exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution. (*Lance W.*, *supra*, 37 Cal.3d at p. 896.) The exclusionary rule under the Fourth Amendment requires suppression of evidence seized during an unreasonable search or seizure. (U.S. Const., amend. IV, XIV; *Wong Sun v. United States* (1963) 371 U.S. 471, 484-487 [9 L.Ed.2d 441, 83 S.Ct. 407]; *Mapp v. Ohio* (1961) 367 U.S. 643, 655 [6 L.Ed.2d 1081, 81 S.Ct. 1684]; *People v. Williams* (1999) 20 Cal.4th 119, 125.)

This bill would create a statutory right to suppress evidence obtained as the result of an officer's failure to state the reason for the stop which would not necessarily rise to the level of a Fourth Amendment violation. (*People v. McKay* (2002) 27 Cal.4th 601, 605 [the violation of a state statute, standing alone, does not form the basis for suppression under the Fourth Amendment.]) Accordingly, it requires a two-thirds vote.

- 6) **California Driver's Handbook:** DMV publishes the California Driver Handbook which provides a synopsis of existing law and rules of the road. The Handbook provides a more accessible means for potential and current drivers to understand the rules of the road. DMV puts this document together on its own, and has a few statutory requirements on particular sections of the Handbook. (<https://www.dmv.ca.gov/portal/handbook/california-driver-handbook/> [as of March 30, 2022].) As relevant here, under current law, DMV is required to include a section on a person's civil rights during a traffic stop. (Veh. Code, § 1656.3, subd. (a)(4).)

This bill would require the DMV handbook to also contain information regarding the duty of a peace officer to state the reason for the traffic stop. DMV would be required to update the Handbook with this information at the earliest opportunity when the Handbook is revised or reprinted.

- 7) **Practical Considerations:** The author may wish to clarify whether or not there are any exceptions to the search remedy under this bill. For example, is the suppression remedy intended to apply to persons on searchable probation who have waived their Fourth Amendment rights but not their statutory rights under this bill?
- 8) **Argument in Support:** According to the *California Public Defenders Association*, "It is a common experience for community members to be stopped on our streets and highways by peace officers for minor traffic violations and pedestrian offenses. Those community members are obliged to stop for the officer, and failure to do so is at least a misdemeanor, which could subject them to a custodial arrest. Most people are nervous and apprehensive after being stopped by an officer who can deprive them of their liberty.

"In October of 2021, the Public Policy Institute of California (PPIC) published a report entitled, 'Racial Disparities in Law Enforcement Stops.' In its report, which analyzed data for almost four million stops by California's 15 largest law enforcement agencies in 2019 it found the following:

- Black Californians are significantly more likely to be stopped than white individuals.
- Black individuals are more than twice as likely to be searched as white individuals.
- Black people are at least twice as likely as whites to experience so-called intrusive outcomes, ranging from being asked to step out of a vehicle, to being handcuffed, to the stop involving a weapon.
- Stops of Black individuals are three times more likely to involve a weapon than stops of white individuals.
- In CHP stops for traffic violations, almost everyone, Black or white, receives at least a warning, 98.5 percent and 98.6 percent, respectively. While being stopped for a traffic violation rarely results in a booking, both state and local law enforcement agencies book Black drivers more often than white, about 3.5 percent and 2.5 percent respectively.

“AB 2773 would increase transparency and public confidence in law enforcement by requiring an officer to immediately reassure the individual of the reason for the stop. Unfortunately, some officers launch into a series of questions that may have no apparent relationship to any basis for the stop. The longer the questioning goes on the more apprehensive the individual becomes of the officer’s true motives. However, when confronted by an officer they may feel compelled to answer the questions when in fact they are not required to do so. If informed at the outset of the basis for the stop, the individual would know if any subsequent questions are legitimate or an attempt to elicit incriminating statements or acquiescence to a search.

“As public defenders we see the disproportionate effect on our black and brown clients who are more likely to be searched and arrested following a traffic stop. Many times, there were handcuffed and left sitting on the side of the road, while their vehicles were searched. Other times, once the officer pulled them over, the first thing the officer said was ‘are you on probation or parole?’

“AB 2773 is good commonsense public policy. The many officers who do not engage in such tactics would be benefitted by measures that discourage the offending few from doing so. The good public policy reasons behind this bill are further enhanced by its efforts to educate the public of their civil rights through the DMV handbook. Preserving civil rights is every bit as important as preserving public safety on our highways. Civil rights that are forfeited out of ignorance are not civil rights and serve only to reward those who seek to capitalize on that ignorance.”

- 9) **Argument in Opposition:** According to the *California State Sheriffs’ Association*, “When a peace officer initiates a stop, there are many variables that must be considered and information that should be gathered. Traffic stops can be among the most dangerous types of interactions that peace officers encounter and it often makes sense for an officer to seek and obtain additional information at the very beginning of a contact. This can be vital in assessing the risk emanating from the stop, and peace officers are trained that determining risk surrounding a traffic stop is a key consideration. This bill’s limitation is so strict, in fact, that it prohibits an officer from asking for a person’s identification or even asking a person to turn off the vehicle’s ignition prior to disclosing the reason for the stop. Obtaining more information from the subject of the stop is vital to protecting everyone’s safety and the bill’s exception based on an ‘imminent threat’ is not enough to address all situations imbued with risk.

“Further, the bill’s provision that failure to tell the person the reason for the stop before asking any questions is grounds for filing a motion to suppress could end up ultimately keeping crucial information from a judge or jury if there is criminal activity discovered during the stop. A confession to a murder given by the subject of a traffic stop after the person has been Mirandized would be subject to a motion to suppress if the peace officer started the stop with a question – any question – before stating the reason for the stop. This language creates the very real possibility of vast miscarriages of justice based on the simple timing of an officer asking if they may see the person’s identification before telling the person why they were stopped.”

- 10) **Related Legislation:**

- a) AB 2285 (Smith), clarifies that a “stop” for the purposes of the RIPA does not include circumstances upon which a peace officer is dispatched to a call for service or a medical emergency. AB 2285 failed passage in this Committee and was granted reconsideration.
- b) AB 2537 (Gipson) requires Department of Motor Vehicles, in conjunction with the Department of Justice and the Commission on Peace Officer Standards and Training, to develop and create a video showing the proper conduct by a peace officer during a traffic stop and to post the video on its internet website.

11) **Prior Legislation:** AB 2918 (Holden), Chapter 723, Statutes of 2018, required the DMV to include within the Handbook a section on a person’s civil rights during a traffic stop.

REGISTERED SUPPORT / OPPOSITION:

Support

California for Safety and Justice
California Public Defenders Association
Californians United for a Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice

Opposition

California State Sheriffs' Association

A

nalysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744