

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2773 (Holden) – As Amended April 7, 2022

Policy Committee:	Public Safety	Vote:	5 - 2
	Transportation		10 - 4

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill 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. Specifically, this bill:

- 1) 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.
- 2) Provides that failure to make the required statement is grounds for filing a motion to suppress evidence pursuant to the procedures established in Penal Code section 1538.5.

FISCAL EFFECT:

- 1) Cost pressure (Trial Court Trust Fund) possibly in the mid-hundreds of thousands of dollars in increased staff workload to the trial courts in the event this bill increases the number of motions to suppress evidence pursuant to Penal Code section 1538.5. Penal Code section 1538.5 allows a defendant to move pre-trial to suppress any evidence obtained in violation of state or federal search and seizure laws. Penal Code section 1538.5 motions require written briefing and often require a contested hearing wherein the officer who made the arrest will testify about the facts. If this bill results in 100 new motions to suppress for an officer's failure to properly identify a reason for any stop and any subsequent arrest that may occur thereafter, requiring six hours of court time for each motion, at an average hourly cost of \$1000 to the trial courts, the cost would be \$600,000 annually. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. The Governor's proposed 2022-23 Budget allocates \$13.4 million dollars annually in to backfill the loss of funding from criminal fines and fees and \$117.8 million dollars annually to continue backfilling the Trial Court Trust Fund to address the decline in revenue.
- 2) Likely minor and absorbable costs (Motor Vehicle Fund) to the DMV to include the requirements of this bill in its handbook when the next update occurs.

COMMENTS:

- 1) **Purpose.** This bill seeks to create more transparency and equity in police practices by requiring any peace officer to cite a reason for stopping a driver or pedestrian. Racial profiling continues to be an issue in California and requiring a peace officer to identify the reasons for any stop will ensure law enforcement has a valid reason for detaining a driver or pedestrian. 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) **Pretext Stops.** The Fourth Amendment of the U.S. Constitution and Article 1, section 13 of the California Constitution both prohibit unlawful search and seizure. However, existing law also allows police officers to cite any plausible reason to believe a traffic violation occurred to detain a motorist or pedestrian even if the intent is to conduct a broader investigation. (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. Frequently, officers will stop motorists for minor infractions such as items hanging from a rear view mirror or inoperable break lights or a pedestrian for crossing against the light (jay-walking) in order to inquire whether a person is on probation or parole and if so, whether search conditions apply. If a person is on searchable probation, the officer has carte blanche to search the person without any other cause. In 2018, an officer in the Sacramento Police Department, working the Del Paso Heights area stopped a Black pedestrian for jay walking, proceeded to interrogate the pedestrian as to whether they were on searchable probation, and when the pedestrian refused to cooperate, the officer assaulted and arrested the pedestrian. (<https://www.nytimes.com/2017/04/13/us/cop-jaywalk-beating-video.html>.)
- 3) **Penal Code section 1538.5.** As noted above, Penal Code section 1538.5 allows a defendant charged with a crime to file a motion to suppress any evidence obtained in violation of existing search and seizure laws. If the motion is granted, any statements or evidence obtained as a result of the violation is suppressed. In many instances, the case is dismissed thereafter for lack of evidence. This bill authorizes a defendant to file a motion to suppress any evidence that may result from an officer’s failure to state a reason for a stop. While officers may be able to cite a pretext reason, if any evidence the officer finds will be suppressed for failure to cite a reason, officers may be more likely to comply.
- 4) **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.

5) **Argument in Opposition.** According to the California State Sheriffs' Association:

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. 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.

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