
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2773 **Hearing Date:** June 21, 2022
Author: Holden
Version: May 19, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Traffic or pedestrian stops: notification by peace officers*

HISTORY

Source: Author

Prior Legislation: AB 2918 (Holden), Ch. 723, Stats. of 2018
AB 953 (Weber, 2015), Ch. 466, Stats. of 2015
AB 2133 (Torrico, 2006), not heard in Assembly Public Safety
SB 1389 (Murray, 2000), held in Senate Appropriations

Support: California Public Defenders Association; Initiate Justice; National Association of Social Workers, California Chapter; Oakland Privacy; The Young Women's Freedom Center

Opposition: California State Sheriffs' Association; California Police Chiefs Association

Assembly Floor Vote: 43 - 22

PURPOSE

The purpose of this bill is to require a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking investigatory questions unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. Additionally, the bill adds information regarding this requirement to the DMV Driver's Handbook, and requires local law enforcement agencies to report additional stop information to the DOJ.

Existing law, the United States Constitution, 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. (U.S. Const., amend. IV.)

Existing law 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.)

Existing law requires DMV to include specified information in the handbook, including a section on a person's civil rights during a traffic stop. This section must include information regarding the limitations of a peace officer's authority during a traffic stop and the legal rights of drivers

and passengers, including the right to file complaints against a peace officer. (Veh. Code, § 1656.3, subd. (a)(4).)

Existing law requires DMV to develop the above section of the Handbook 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).)

Existing law provides that the information included in the handbook shall be initially include in the handbook at the earliest opportunity when the handbook is otherwise revised or reprinted, in order to minimize costs. (Veh. Code, § 1656.3, subd. (b).)

Existing law requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. (Government Code §12525.5(a)(1).)

Existing law requires reports on stops submitted to the Attorney General to include, at a minimum, the following information:

- The time, date, and location of the stop.
- The reason for the stop.
- The result of the stop, such as no action, warning, citation, arrest, etc.
- If a warning or citation was issued, the warning provided or the violation cited.
- If an arrest was made, the offense charged.
- The perceived race or ethnicity, gender, and approximate age of the person stopped. For motor vehicle stops, this paragraph only applies to the driver unless the officer took actions with regard to the passenger.
- Actions taken by the peace officer, as specified. (Government Code §12525.5(b)(1)-(7).)

Existing law provides that law enforcement agencies shall not report personal identifying information of the individuals stopped to the Attorney General, and that all other information in the reports, except for unique identifying information of the officer involved, shall be available to the public. ((Government Code §12525.5(d).)

Existing law defines “stop,” for the purposes of reports sent by law enforcement agencies to the Attorney General, as ‘any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person’s body or property in the person’s possession or control.’ (Government Code §12525.5(g)(2).)

Existing law finds and declares that pedestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices (Penal Code §13519.4(d)(4).)

Existing law prohibits a peace officer from engaging in racial or identity profiling, as defined. (Penal Code §13519.4(e),(f).)

Existing law creates the Racial and Identity Profiling Advisory Board (RIPA), which, among other duties, is required to conduct and consult available, evidence-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics. (Penal Code §13519.4(j)(3)(D).)

This bill requires a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.

This bill requires the officer to document the reason for the stop on any citation or police report resulting from the stop.

This bill requires that the Handbook include information regarding the requirement above.

This bill requires local law enforcement agency, in their reports to DOJ regarding stops, to include information regarding the reason given to the person stopped at the time of the stop.

COMMENTS

1. Need for This Bill

According to the Author:

“To promote equity and accountability in communities across California — that is my goal. AB2773 brings transparency to service of protecting our public.”

2. Pretext Stops

The Fourth Amendment of the United States Constitution provides in part 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.” The United States Supreme Court has held that temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of persons within the meaning of this provision.¹ In *Whren v. United States*, decided in 1996, the Court further held that “the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment’s prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.”² The Court’s decision in *Whren* has given rise to what have been dubbed “pretext stops,” a practice in which a law enforcement officer uses a minor traffic violation as a pretext to stop a vehicle in order to investigate other possible crimes. Given the litany of possible traffic violations, especially in California, the use of pretext stops as an investigative tool has become widespread since the decision in *Whren*.

As use of pretext stops has increased, so too has criticism of the practice. Many argue that pretext stops are a driver of racial bias in law enforcement (discussed further below), while

¹ See *Delaware v. Prouse*, [440 U.S. 648](#), 653 (1979); *United States v. Martinez Fuerte*, [428 U.S. 543](#), 556 (1976); *United States v. Brignoni Ponce*, [422 U.S. 873](#), 878 (1975)

² *Whren v. United States*, 517 U.S. 806, 809-819 (1996).

others claim that they subvert the spirit, if not the letter, of the Fourth Amendment by giving officers carte blanche to stop a vehicle. Critics also point to the difficulty in contesting a pretext stop in court. That is, if an officer stops a driver based on an observed traffic violation – of which there are dozens – the driver bears the burden of producing evidence to refute the officer’s testimony, that, for instance, the license plate was obscured or a taillight was not properly illuminated on a specific date and time. All of these issues, critics argue, lead to disparate outcomes, primarily based on race, and undermine police legitimacy in the eyes of the communities they serve.

3. The Racial Implications of Police Stops

As mentioned above, much of the criticism of pretext stops has centered around their disparate impact on communities of color. In 2020, the Stanford Open Policing Project published an analysis of almost 100 million police traffic stops conducted between 2011 and 2017 by 21 state patrol agencies (including the California Highway Patrol) and 29 municipal police departments nationwide. One of the study’s central findings was that “police stopped and searched black and Hispanic drivers on the basis of less evidence used in stopping white drivers, who are searched less but are more likely to be found with illegal items.”³ Moreover, these stops based on routine traffic violations often turn violent. A 2021 New York Times investigation found that in the preceding 5 years, police officers killed at least more than 400 unarmed drivers and passengers who were not under pursuit for a violent crime, while about 60 officers died at the hands of motorists who had been pulled over.⁴

In 2015, the Legislature passed AB 953 (Weber, Ch. 466, Stats. of 2015), also known as the Racial and Identity Profiling Act (RIPA) of 2015, which expressly prohibited racial and identity profiling by law enforcement and requires law enforcement agencies to report stop data to the DOJ. . 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 includes both pedestrian and vehicle stops.”⁵ A 2019 analysis of RIPA stop data by the Public Policy Institute of California found the following:

RIPA data reveal that Black Californians have notably different experiences during stops than white Californians. Black people are more than twice as likely to be searched, even though searches of Black people are somewhat less likely to yield contraband or evidence. Black people are overrepresented in stops with no enforcement—but Black Californians are almost twice as likely to be booked into jail.

Stops are also more intrusive. During a law enforcement stop, Black people are at least twice as likely to be asked to step out of a vehicle, to be handcuffed, or to experience a stop involving an officer’s weapon. However, context significantly contributes to racial disparities. For example, officers stop more Black people than

³ Pierson, Emma et. al. “A large-scale analysis of racial disparities in police stops across the United States.” *The Stanford Open Policing Project*. July 2020. <https://5harad.com/papers/100M-stops.pdf>

⁴ Kirkpatrick, David et. al. “Pulled Over: Why Many Police Traffic Stops Turn Deadly.” *New York Times*. 31 Oct 2021. <https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html>

⁵ <https://openjustice.doj.ca.gov/exploration/stop-data>

white for reasonable suspicion, an outstanding warrant, or being on parole/probation. Agency type and jurisdiction also play a significant role.⁶

RIPA stop data for the following year (2020) showed that the most commonly reported reason for a stop (86.1%) across all racial/ethnic groups was a traffic violation, and that individuals perceived as Black or Hispanic comprised 60% of the stops reported, while just under 32% of the stops involved individuals perceived as White.⁷ The 2020 data also reflected a continuation of the previous year's trends as well as a finding that "officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more individuals perceived as Black than individuals perceived as White, even though they stopped more than double the number of individuals perceived as White than individuals perceived as Black."⁸

4. Recent Local Reforms and Effect of This Bill

In recent years, several local jurisdictions have advanced reforms related to traffic stops, including Oakland in 2018 and Berkeley in 2020.⁹ Most recently, in early March 2022, the Los Angeles Police Department enacted a policy to limit the use, duration and scope of pretext stops conducted by its officers. The policy allows officers to make stops for minor equipment violations or other infractions *only* when the officer believes that such a violation significantly interferes with public safety, and requires officers to state the public safety reason for such stops on their body-worn cameras. Additionally, the policy prohibits pretext stops *unless* officers are acting upon articulable information in addition to the perceived violation, and, like this bill, requires officers to provide the detainees, as early as is practicable, with the information that caused officers to stop them. According to the policy, a decision to initiate a stop "should not be based on a mere hunch or on generalized characteristics such as a person's race, gender, age, homeless circumstance, or presence in a high crime neighborhood."¹⁰

In light of the racial disparities in police stops and in an effort to improve police accountability with regard to stops, the Author seeks to enact a requirement that officers communicate the reason for their stop before engaging in investigatory questioning and document the reason for the stop in their citation or police report. However, a police officer may withhold the reason for the stop if they reasonably believe that it is necessary to protect life or property from imminent threat. This bill also provides that information regarding this requirement must be included in the DMV's Driver's Handbook.

⁶ Lofstrom, Magnus et. al. "Racial Disparities in Law Enforcement Stops." *Public Policy Institute of California*. Published October 2021. <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>

⁷ This breakdown is significant given the racial breakdown of the state according to the 2020 census: 39% of Californians identify as Hispanic/Latino, 35% as white, and 5% as black. <https://www.ppic.org/publication/californias-population/>

⁸ "Racial and Identity Profiling Advisory Board Annual Report 2022." <https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>

⁹ For more information on these reforms, see the following: <https://www.sfchronicle.com/bayarea/article/To-curb-racial-bias-Oakland-police-are-pulling-14839567.php>; <https://www.berkeleyside.org/2021/05/25/berkeley-department-of-transportation-civilian-traffic-enforcement>

¹⁰ "Policy – Limitation on Use of Pretextual Stops – Established." Special Order #3, March 9, 2022. LAPD. https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/03/3_9_22_SO_No.3_Policy_Limitation_on_Use_of_Pretextual_Stops_Established.pdf

A separate provision of this bill deals with the existing requirement that local law enforcement agencies submit annual reports to DOJ regarding traffic and pedestrian stops, including specified information. This bill requires law enforcement agencies to additionally include, for each stop reported, the reason given to the person stopped at the time of the stop.

5. Argument in Support

According to Oakland Privacy:

AB 2773 addresses a problem that has taken lives and ended in tragedy far too often. Non-emergency traffic stops for busted tail-lights or expired registration should, we can all agree, never end in death and violence and yet they do. Philando Castile was pulled over for a busted tail light in 2016. He did not survive.

Part of the reason for these tragedies is that it is human nature to be frightened, defensive and in flight mode when pulled over for a reason that you do not understand and that the cops are not explaining to you. Despite all the know your rights pamphlets (which by the most optimistic of estimates will reach only a fraction of the population), it is difficult to control these feelings, which can be interpreted by law enforcement officers as having “something to hide”. Moreover, for populations that have difficult relationships with law enforcement due to racial profiling or previous encounters, these reactions are going to be exacerbated. A simple explanation of the reason for the stop at the beginning can do a lot to prevent fear, panic and the urge to flee. There is simply no reason not to do this. The role of law enforcement is to enforce the law, not to play cat and mouse games to try to provoke people into doing the wrong thing and causing the encounter to spiral out of control.

The bill makes reasonable exemptions for imminent threats, and is targeting what are called “pretextual stops” or stops whose predicate is mostly discretionary and constitutes a minor infraction like overly tinted windows, dangling objects on a windshield, or broken tail lights. Law enforcement reporting does indicate that racial disparities continue to exist in the choices made about when to make pretextual stops, so by requiring more documentation, AB 2773 contributes to the effort to correct for implicit bias in California policing.

The bill's enforcement teeth as introduced, were to permit a motion to suppress any evidence gathered in a traffic stop when the reason for the stop was not clearly disclosed to the driver prior to the procurement of that evidence. We were glad to see the author addressing the need for an enforcement mechanism to make sure there is policy compliance and with the removal of this clause, must ask the committee to consider how the bill's requirements will be enforced. In our experience, law enforcement agencies do not consistently implement state laws that do not have enforcement mechanisms.”

6. Argument in Opposition

According to the California State Sheriff's 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."

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