
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 2773 (Holden) - Stops: notification by peace officers

Version: June 13, 2022

Urgency: No

Hearing Date: August 1, 2022

Policy Vote: PUB. S. 4 - 0, TRANS. 13 - 3

Mandate: Yes

Consultant: Matthew Fleming

Bill Summary: AB 2773 would require a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking investigatory questions, as specified. The bill would require the Department of Motor Vehicles (DMV) to add information regarding this requirement to the DMV Driver's Handbook and it would require local law enforcement agencies report additional stop information to the Department of Justice (DOJ).

Fiscal Impact:

- CHP: The California Highway Patrol (CHP) reports costs of approximately \$160,000 for information technology changes that would be required to collect and report additional "stop data" information to the Department of Justice (Special Fund – Motor Vehicle Account).
- DOJ: The Department of Justice reports costs of \$43,000 in 2022-23 for consulting services for application development and to assist with analysis and design, database modification, web application development, web services development, deployment and follow-up (General Fund).
- DMV: Staff notes likely minor and absorbable costs to the DMV to update the Driver's Handbook (Special Fund – Motor Vehicle Account).
- Local Reimbursements: Unknown, potentially significant costs for all 608 state and local agencies employing peace officers to update policies regarding pedestrian and traffic stops and provide the training necessary to comply with the reporting requirements of AB 2773 (Local Funds, General Fund). Costs to the General Fund will depend predominantly on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

Background: This purpose of this bill is 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.

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. 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." 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*.

Pretext stops have been widely criticized. Much of that criticism is centered around their disparate impact on communities of color. 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."

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. 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."

This bill seeks to reduce the use of pretext stops by requiring a peace officer to state the reason for a stop prior to any interaction with the person being stopped. This would serve to prevent a peace officer from coming up with a legitimate justification for the stop after it occurs, thereby obscuring a biased motive. 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."

The bill would also seek to inform the public of this requirement by requiring it to be published in the DMV Driver Handbook. It would also require local law enforcement to report to DOJ with information regarding the reason given to the person stopped at the time of the stop.

Proposed Law:

- 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.
- Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.

- Requires the DMV to update the Driver's Handbook include information regarding the requirement that a peace officer state the reason for the stop.
- Requires local law enforcement agencies, in their reports to DOJ regarding stops, to include information regarding the reason given to the person stopped at the time of the stop.

Related Legislation:

- SB 1359 (Hueso, 2022) would require a peace officer to confirm that a vehicle does not have current DMV registration before issuing a citation for failure to display registration tabs and would prohibit the issuance of a citation for failure to display registration tabs when the vehicle registration is current or there is an application for registration on file with the department of Motor Vehicles (DMV).
- SB 1389 (Bradford, 2022) would prohibit a peace officer from initiating a traffic stop for a low-level infraction, as defined, unless there is a separate, independent basis to initiate the traffic stop. SB 1389 did not receive a vote on the Senate Floor.

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