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THIRD READING

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Bill No: AB 2773  
Author: Holden (D)  
Amended: 8/11/22 in Senate  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-0, 6/21/22  
AYES: Bradford, Kamlager, Skinner, Wiener  
NO VOTE RECORDED: Ochoa Bogh

SENATE TRANSPORTATION COMMITTEE: 13-3, 6/28/22  
AYES: Newman, Allen, Archuleta, Becker, Cortese, Dodd, Hertzberg, Limón,  
McGuire, Min, Rubio, Skinner, Wieckowski  
NOES: Dahle, Melendez, Wilk  
NO VOTE RECORDED: Bates

SENATE APPROPRIATIONS COMMITTEE: 5-1, 8/11/22  
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski  
NOES: Jones  
NO VOTE RECORDED: Bates

ASSEMBLY FLOOR: 43-22, 5/25/22 - See last page for vote

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**SUBJECT:** Stops: notification by peace officers

**SOURCE:** Author

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**DIGEST:** This bill requires, effective January 1, 2024, 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; and adds information regarding this requirement to the Department of Motor Vehicles (DMV) Driver's Handbook, and requires local law enforcement agencies to report additional stop information to the Department of Justice (DOJ).

**ANALYSIS:**

## Existing law:

- 1) 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.)
- 2) 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.)
- 3) 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).)
- 4) Requires DMV to develop the above section of the Handbook in consultation with the civil rights section of the 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).)
- 5) 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).)
- 6) 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).)
- 7) Requires reports on stops submitted to the Attorney General to include, at a minimum, the following information:
  - a) The time, date, and location of the stop
  - b) The reason for the stop
  - c) The result of the stop, such as no action, warning, citation, arrest, etc.

- d) If a warning or citation was issued, the warning provided or the violation cited
  - e) If an arrest was made, the offense charged
  - f) 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
  - g) Actions taken by the peace officer, as specified. (Government Code §12525.5(b)(1)-(7).)
- 8) 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).)
  - 9) 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).)
  - 10) 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).)
  - 11) Prohibits a peace officer from engaging in racial or identity profiling, as defined. (Penal Code §13519.4(e),(f).)
  - 12) 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:

- 1) 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.

- 2) Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.
- 3) Requires that the DMV Driver's Handbook include information regarding the requirement above.
- 4) 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.
- 5) Specifies that its provisions do not become operative until January 1, 2024.

### Comments

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.”

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. 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*.

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 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.

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.” 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.

In 2015, the Legislature passed AB 953 (Weber, Chapter 466, Statutes of 2015), also known as the Racial and Identity Profiling Act 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 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.”

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.

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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *CHP:* The CHP reports costs of approximately \$160,000 for information technology changes that would be required to collect and report additional "stop data" information to DOJ (Special Fund – Motor Vehicle Account).
- *DOJ:* The DOJ 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.

**SUPPORT:** (Verified 8/11/22)

ACLU California Action  
California Federation of Teachers  
California Public Defenders Association  
City of Alameda  
Initiate Justice

National Association of Social Workers, California Chapter  
Oakland Privacy  
Sister Warriors Freedom Coalition  
The Young Women's Freedom Center

**OPPOSITION:** (Verified 8/11/22)

California State Sheriffs' Association  
Los Angeles Professional Peace Officers Association  
Public Risk Innovation, Solutions and Management

**ASSEMBLY FLOOR:** 43-22, 5/25/22

**AYES:** Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, McCarty, Medina, Mullin, Nazarian, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

**NOES:** Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Muratsuchi, Nguyen, Patterson, Salas, Seyarto, Smith, Valladares, Voepel, Waldron

**NO VOTE RECORDED:** Aguiar-Curry, Berman, Cooley, Cooper, Daly, Grayson, Maienschein, Mayes, O'Donnell, Petrie-Norris, Ramos, Rodriguez, Villapudua

Prepared by: Alex Barnett / PUB. S. /  
8/15/22 13:01:41

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