

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 361 (Ward)
Version: June 20, 2023
Hearing Date: June 27, 2023
Fiscal: No
Urgency: No
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SUBJECT

Vehicles: photographs of bicycle lane parking violations

DIGEST

This bill authorizes a local agency to install an automated parking control device on parking enforcement vehicles for the purpose of capturing photographic images of parking violations occurring in bicycle lanes, until January 1, 2030.

EXECUTIVE SUMMARY

To this point, California has taken an incremental approach at phasing in automated enforcement of certain laws. In 1994, the Legislature authorized automated rail crossing enforcement systems, recognizing the potential fatal consequences of the relevant violations. Over the following years, the trend moved to red-light cameras under a trial basis that was then made permanent. Next, a very limited pilot was authorized in San Francisco to install cameras on public transit vehicles, for the first time explicitly authorizing automated enforcement of parking violations, but limited to transit-only lanes. A similar trial was authorized in connection with the Alameda-Contra Costa Transit District (AC Transit). Both programs came with requirements to report back to the Legislature on the impacts of the programs. This law has since been extended state-wide indefinitely. Current law also authorizes cameras on street sweeping vehicles.

Automated enforcement can provide more thorough enforcement of certain laws and reduce the need for employees conducting such enforcement, a cost savings measure. However, with these benefits come serious concerns regarding privacy and equity. Furthering the reach of automated surveillance should arguably be gradual, thoughtful, and done with an understanding of, and countermeasures to prevent, potential unintended consequences. Such enforcement gathers a vast amount of data, may reduce the judicious enforcement of parking laws, and has the ability to create a perverse incentive for governments that stand to financially benefit from increased citations.

This bill authorizes a local agency to install an automated forward facing parking control device on city-owned or district-owned parking enforcement vehicles for the purpose of capturing photographic images of parking violations occurring in bicycle lanes, until January 1, 2030.

The bill is author-sponsored. It is supported by a variety of organizations and public entities, including the City and County of San Francisco. There is no known opposition. The bill passed out of the Senate Transportation Committee on a 12 to 2 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a violation of any regulation governing the standing or parking of a vehicle under the Vehicle Code, federal statute or regulation, or local ordinance, is subject to a civil penalty. (Veh. Code § 40200.)
- 2) Authorizes the use of an automated enforcement system for enforcement of red light violations by a governmental agency, subject to specific requirements and limitations. (Veh. Code § 21455.5.)
- 3) Provides that notice of a parking violation must contain certain information, including information stating that unless the parking penalty is paid or contested within 21 calendar days from the issuance of a citation, or 14 calendar days from the mailing of the violation, as specified, the renewal of the vehicle registration shall be contingent upon compliance with the notice. (Veh. Code § 40207.)
- 4) Authorizes a public transit operator to install automated forward facing parking control devices on city-owned or district-owned public transit vehicles for the purpose of video imaging parking violations occurring in transit-only traffic lanes and at transit stops. Existing law defines a “transit-only traffic lane” to mean any designated transit-only lane on which use is restricted to mass transit vehicles, or other designated vehicles including taxis and vanpools, during posted times. (Veh. Code § 40240(a), (h).)
- 5) States that citations shall only be issued for violations captured during the posted hours of operation for a transit-only traffic lane. Existing law requires designated employees to review video image recordings for the purpose of determining whether a parking violation occurred in a transit-only traffic lane, and permits alleged violators to review the video image evidence of the alleged violation during normal business hours at no cost. (Veh. Code § 40240(a), (c), (d).)
- 6) Requires automated forward facing parking control devices to be angled and focused so as to capture video images of parking violations and not

unnecessarily capture identifying images of other drivers, vehicles, and pedestrians. Existing law requires the devices to record the date and time of the violation at the same time video images are captured, and provides that video image records are confidential and shall not be used or accessed for any purposes not related to the enforcement of parking violations occurring in transit-only traffic lanes. (Veh. Code § 40240(a), (f).)

- 7) Authorizes the retention of video image evidence obtained from an automated forward facing parking control device for up to six months from the date the information was obtained, or 60 days after final disposition of the citation, whichever date is later, and provides that after such time the information shall be destroyed, except as it may be included in court records, as provided. Existing law requires video image evidence from forward facing automated enforcement devices that does not contain evidence of a parking violation to be destroyed within 15 days after the information was first obtained. (Veh. Code § 40240(e).)
- 8) Does not prohibit local authorities from establishing, by ordinance or resolution, bicycle lanes separated from any vehicular lanes upon highways, other than state and county highways, as defined. (Veh. Code § 21207.)

This bill:

- 1) Authorizes a local agency to install automated forward facing parking control devices on city-owned or district-owned parking enforcement vehicles for the purpose of taking photographs of parking violations occurring in bicycle lanes.
- 2) Requires the devices to be angled and focused so as to only capture photographs of parking violations and not capture identifying images of other drivers, vehicles, and pedestrians. The devices shall record the date and time of the violation at the same time as the photographs are captured. A local agency may only install forward facing cameras if the examiner or issuing agency includes options to reduce or waive the payment of a parking penalty if the examiner or issuing agency determines that the person is an indigent person as defined in Section 40220.
- 3) Requires a local agency to commence a program to issue only warning notices for 60 days and shall also make a public announcement of the program and provide the public with information about the enforcement program, existing parking regulations, and the payment options available for low-income persons at least 60 days prior to commencement of issuing notices of parking violations.
- 4) Limits retention of the photographic evidence to up to 30 days after final disposition of the citation, except as provided. The photographic evidence shall not be retained for more than six months from the date the information was first

obtained, after which time the information shall be destroyed. If it does not contain evidence of a parking violation occurring in a bicycle lane, it must be destroyed within 15 days.

- 5) Provides that photographic data and records collected shall not be used or processed by an automated license plate recognition system, unless the local agency meets certain requirements, including the requirements of subdivision (e) of Section 40247.
- 6) Makes the photographic records confidential. Public agencies shall use and allow access to these records only for the purposes authorized therein.
- 7) Defines “local agency” as a public transit operator or a local city, county, or city and county parking enforcement authority.
- 8) Requires a local agency to provide to the transportation, privacy, and judiciary committees of the Legislature an evaluation report of the enforcement system’s effectiveness, impact on privacy, impact on traffic outcomes, cost to implement, change in citations issued, and generation of revenue, no later than December 31, 2028.
- 9) Requires a designated employee, who is qualified to issue parking citations, to review photographs for the purpose of determining whether a parking violation occurred in a bicycle lane. Violations occurring in a bicycle lane observed by the designated employee in the recordings are subject to civil penalties. A designated employee of a local agency must issue a notice of parking violation to the registered owner within 15 calendar days of the date of the violation. A designated employee may decline to issue a ticket based on the evidence in the photograph illustrating hardship.
- 10) Requires the notice of parking violation to set forth the following:
 - a) the violation of the law;
 - b) the date, time, and location of the violation;
 - c) the vehicle license number;
 - d) the registration expiration date, if visible;
 - e) the color of the vehicle;
 - f) a copy of the photographic evidence;
 - g) a statement indicating that payment is required within 21 calendar days from the date of citation issuance; and
 - h) the procedure for the registered owner, lessee, or rentee to deposit the parking penalty or contest the citation.

- 11) Provides that the notice of parking violation, or copy of the notice, shall be considered a record kept in the ordinary course of business of the local agency and shall be prima facie evidence of the facts contained in the notice.
- 12) Provides that the registered owner shall be permitted to review the photographic evidence of the alleged violation during normal business hours at no cost. The local agency shall send information regarding the process for requesting review of the photographic evidence along with the notice of parking violation.
- 13) Requires the notice of parking violation to be served by depositing the notice in the United States mail to the registered owner's last known address listed with the Department of Motor Vehicles. Proof of mailing demonstrating that the notice of parking violation was mailed to that address shall be maintained by the local agency. If the registered owner, by appearance or by mail, makes payment to the processing agency or contests the violation within either 21 calendar days from the date of mailing of the citation, or 14 calendar days after the mailing of the notice of delinquent parking violation, the parking penalty shall consist solely of the amount of the original penalty.
- 14) Provides that if, within 21 days after the notice of parking violation is issued, the local agency determines that, in the interest of justice, the notice of parking violation should be canceled, the local agency shall cancel the notice of parking violation. The reason for the cancellation shall be set forth in writing.
- 15) Authorizes a contestant, following an initial review by the local agency and an administrative hearing, to seek court review by filing an appeal.
- 16) Authorizes a local agency or a contracted law enforcement agency to contract with a private vendor for the processing of notices of parking violations and notices of delinquent violations. The local agency shall maintain overall control and supervision of the program.
- 17) Provides that it shall remain in effect only until January 1, 2030, and as of that date is repealed.

COMMENTS

1. The history of automated parking enforcement

While some counties may have installed automated traffic enforcement systems at an earlier date, legislative authorization for automated enforcement procedures relating to traffic violations began in 1994 with SB 1802 (Rosenthal, Ch. 1216, Stats. 1994). That bill authorized the use of "automated rail crossing enforcement systems" to enforce prohibitions on drivers from passing around or under rail crossings while the gates are

closed. (Veh. Code § 22451.) Those systems functioned by photographing the front license plate and the driver of vehicles who proceeded around closed rail crossing gates in violation of the Vehicle Code provisions. The drivers of photographed vehicles, in turn, received citations for their violations.

In 1995, the Legislature authorized a three-year trial for red light camera enforcement programs. (SB 833, Kopp, Ch. 922, Stats. 1995.) Using similar technology, that program used sensors connected to cameras to take photographs of the front license plate and driver upon entering an intersection on a red light. That program was permanently extended in 1998 by SB 1136 (Kopp, Ch. 54, Stats. 1998).

In 2007, the Legislature authorized a four-year pilot project where San Francisco was authorized to install video cameras on city-owned public transit vehicles for the purpose of video imaging parking violations occurring in transit-only traffic lanes. (AB 101, Ma, Ch. 377, Stats. 2007.) Three years later, the Legislature authorized a five-year statewide pilot project to allow local public agencies to use automated parking enforcement systems for street sweeping-related violations. (AB 2567, Bradford, Ch. 471, Stats. 2010.) In 2011, the Legislature extended San Francisco's automated transit-only lane enforcement program for an additional year, and required the City and County to provide a report to the Transportation and Judiciary Committees of the Legislature no later than March 1, 2015, describing the effectiveness of the pilot program and its impact on privacy. (AB 1041, Ma, Ch. 325, Stats. 2011.) Following the receipt of that report, San Francisco's transit-only lane enforcement program was permanently extended in AB 1287 (Chiu, Ch. 485, Stats. 2015).

The following year, AB 1051 (Hancock, Ch. 427, Stats. 2016) authorized AC Transit to operate an automated transit-only lane enforcement program similar to San Francisco's with a sunset on January 1, 2022. AC Transit was required to provide to the Transportation, Privacy and Consumer Protection, and Judiciary Committees of the Legislature an evaluation report of the enforcement system's effectiveness, impact on privacy, cost to implement, and generation of revenue, no later than January 1, 2021. (Veh. Code § 40240.5.)

Last session, AB 917 (Bloom, Ch. 709, Stats. 2021) expanded automated enforcement of parking violations using forward-facing cameras on transit vehicles to include both transit-only lanes and transit stops and extended the authorization statewide until January 1, 2027.

This bill authorizes a local agency to install an automated parking control device on parking enforcement vehicles for the purpose of capturing photographic images of parking violations occurring in bicycle lanes, until January 1, 2030.

2. Stated intent of the bill

According to the author: "Assembly Bill (AB) 361 would create a pilot program in participating cities that would allow increased enforcement of bike lane parking violations."

3. Right to Privacy

The California Constitution provides that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, Sec. 1.) The California Supreme Court writes:

The right of privacy is vitally important. It derives, in this state, not only from the protections against unreasonable searches and seizures guaranteed by the Fourth Amendment and article I, section 13, but also from article I, section 1, of our State Constitution. Homage to personhood is the foundation for individual rights protected by our state and national Constitutions.

(In re William G. (1985) 40 Cal.3d 550, 563.)

This Committee has previously expressed concern about the privacy implications of equipping large numbers of vehicles with forward-facing video cameras that record not only other vehicles, but also individuals on sidewalks and commercial and residential property adjacent to the roadway. Amendments taken to the bill limit the program to only photographic imaging, rather than video, which mitigates some of the privacy concerns that would exist.

A number of other privacy protections are also built into the program. The devices are required to be forward-facing only and angled and focused so as to only capture photographs of parking violations and not capture identifying images of other drivers, vehicles, and pedestrians. There are also strict retention limitations. Any photographic evidence may only be retained for up to 30 days after final disposition and shall in no event be retained for more than six months from the date the information was first obtained, after which time the information must be destroyed. If the photographs do not contain evidence of a parking violation occurring in a bicycle lane they must be destroyed within 15 days.

There are also use limitations placed on the evidence, allowing public agencies to use and allow access to this photographic evidence only for authorized purposes.

In addition, any entity implementing a program pursuant to this bill is required to provide a report to the relevant committees of the Legislature, including this

Committee, no later than December 31, 2028, which shall specifically include an assessment of the program's impact on privacy.

4. Equity, due process, and revenue generation

This Committee has also previously expressed concern over the use of automated traffic enforcement programs not as a means to promote roadway safety, but as a mechanism for revenue generation and how that might affect the fairness and equity of the program. The Committee's analysis of AB 101 (Ma, Ch. 377, Stats. 2007), which created San Francisco's automated transit-only lane enforcement program noted:

While previously allowing citations based upon photographic evidence for dangerous rail crossings and red light violations appeared to be mainly supported by the lives that would be saved by increased enforcement, and deterrence of reckless conduct, parking violations do not rise to that level. . . . Thus, the program proposed by this bill represents a fundamental shift in the justification required in order to implement an automatic enforcement system. If cost savings are considered sufficient justification for such automation, many additional types of violations could be modified pursuant to the precedent set by [AB 101].

Similarly, the Committee's analysis of AB 2567 (Bradford, Ch. 471, Stats. 2010), which authorized local public agencies to install and operate automated parking enforcement systems on street sweepers, noted:

[AB 2567] would rely upon the precedent set by AB 101 (Ma, 2007) to allow street sweepers throughout the state to capture digital photographs for purposes of issuing parking citations. That precedent – authorizing the use of cameras to save on costs – represents a fundamental change in how California has historically used cameras to enforce violations. This legislation represents another step away from the rationale previously used to justify the use of cameras for automated enforcement. Although this bill could arguably result in reduced employee costs for local governments (and increased revenue from citations), part of that cost reduction could also come in the form of fewer employees needed to patrol for those violations.

Ultimately, there is concern that those paying for whatever revenue generation there is will be disproportionately low-income communities who tend to bear the brunt of the cost of citations. Depending on how authorized local agencies administer this new power, it could lead to an unreasonable or inflexible mode of enforcement that would not necessarily be the case with enforcement by traffic officers present to witness a violation. Photographic evidence necessarily limits the field of view of an observer, and prevents consideration of relevant facts that would otherwise be available to an officer who sees an event transpire in person. In addition, the holistic assessment that can be performed by an actual person on the ground allows for more thoughtful and judicious

enforcement of parking violations. Will a vehicle's parking control device be able to clearly distinguish between a vehicle slowing to park legally but adjacent to a bicycle lane versus a vehicle parked in such a lane? Would the angle of a transit vehicle's camera obscure critical facts that explain a would-be violator's actions, such as the presence of a small child in a vehicle's path of travel, or a disabled vehicle obstructing the normal flow of traffic?

Ultimately, the technology and process will inevitably lead to errors. Yet, unlike in felony cases, the overwhelming portion of people receiving parking citations are unrepresented. They also receive far fewer procedural protections than do those in traffic or criminal court. For these reasons, they are less likely to identify errors in the technology or process that led to their citation.

The bill includes a number of provisions that seek to mitigate these equity and due process concerns.

First, the examiner or ticket issuing agency must include options to reduce or waive the payment of a parking penalty if the examiner or issuing agency determines that the person is an indigent person, as defined. To ensure the public is adequately put on notice prior to the local agency issuing notices of parking violations, the agency is required to commence a program to issue only warning notices for 60 days and to also make a public announcement of the program and provide the public with information about the enforcement program, existing parking regulations, and the payment options available for low-income persons at least 60 days prior to commencement of issuing notices of parking violations.

There is also a clear process delineated in the bill for reviewing evidence, issuing tickets, providing adequate information to motorists, and allowing for contestations and appeals. The bill requires designated employees to review the photographs to determine whether a parking violation in a bicycle lane in fact occurred and must issue any citation within 15 calendar days of the violation. There is explicit discretion given to the employee to decline to issue a ticket based on evidence from the photograph illustrating a hardship on the part of the motorist.

The bill requires a detailed notice of parking violation to be served, as specified, and to set forth all of the following:

- the violation of the law alleged;
- the date, time, and location of the violation;
- the vehicle license number;
- registration expiration date, if visible;
- the color of the vehicle;
- a statement indicating that payment is required within 21 calendar days from the date of citation issuance; and

- the procedure for the registered owner, lessee, or rentee to deposit the parking penalty or contest the citation.

A copy of the photographic evidence of the violations is also required to be included.

Once issued, the registered owner must be permitted to review the photographic evidence of the alleged violation during normal business hours and at no cost. The local agency must provide information detailing the process for requesting such review.

The bill limits the penalty to only the amount of the original penalty if the registered owner makes payment or contests the violation in a timely manner, as provided. The bill again provides discretion to the local agency to cancel the ticket, should it determine that, in the interest of justice, the notice of parking violation should so be canceled.

After a local agency reviews a contested citation, an administrative hearing can be sought. If the owner so chooses, they may seek review in the courts by filing an appeal, as provided.

To ensure the Legislature is given a chance to review the efficacy of these protective provisions and the overall success of the program, the authorization sunsets on January 1, 2030.

Writing in support, the City and County of San Francisco states:

Bike lanes provide a dedicated space for cyclists to improve safety and visibility and further encourages use of this zero-carbon mode. As of May 2022, the San Francisco Municipal Transportation Agency (SFMTA) installed 463.7 miles of bike lanes and 121 protected miles. While counted bike volumes dropped substantially in 2020 and 2021 due to COVID, counted bike volumes in 2022 are the highest since 2019. SFMTA invests significant resources to plan and implement bike lanes. When a motorist parks in the bike lane, it undermines this work and creates a dangerous environment for cyclists, causing them to swerve into the traffic lane.

Currently, the only tool cities have to discourage a driver from stopping in bike lane is the risk of receiving a parking ticket. Issuing a parking ticket can be time intensive as the parking enforcement official must witness the offense, approach the vehicle in violation to record the vehicle's VIN number, and affix the citation onto the vehicle. With limited city resources and enforcement personnel, it not possible to hold everyone accountable for this violation to deter this dangerous behavior. Moreover, there have been incidents of assaults of parking enforcement officers when they issue parking tickets by angry drivers receiving the ticket.

This bill would authorize cities to use existing technology to make it easier and safer to enforce violations of illegally parking in a bike lane.

SUPPORT

City and County of San Francisco
City of Santa Monica
San Francisco Municipal Transportation Agency (SFMTA)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 1463 (Lowenthal, 2023) requires a local public agency end-user of an automated license plate reader (ALPR) to purge information that does not match information on a hot list, as defined, within 30 days and explicitly prohibits the selling, sharing or transferring of ALPR data to an out-of-state or federal agency without a valid California court order or warrant. AB 1463 is currently in this Committee.

AB 645 (Friedman, 2023) establishes a five-year pilot program to give local transportation authorities in the cities of San Jose, Oakland, Los Angeles, Glendale, Long Beach, and the City and County of San Francisco the authority to install speed safety systems. AB 645 is currently in the Senate Transportation Committee.

Prior Legislation:

AB 550 (Chiu, 2021) would have authorized a pilot program for automated speed enforcement in several cities in California. AB 550 was held in the Assembly Appropriations Committee.

AB 917 (Bloom, Ch. 709, Stats. 2021) *See* Comment 1.

AB 1051 (Hancock, Ch. 427, Stats. 2016) *See* Comment 1.

AB 1287 (Chiu, Ch. 485, Stats. 2015) *See* Comment 1.

AB 1041 (Ma, Ch. 325, Stats. 2011) *See* Comment 1.

AB 2567 (Bradford, Ch. 471, Stats. 2010) *See* Comment 1 and 4.

AB 101 (Ma, Ch. 377, Stats. 2007) *See* Comment 1 and 4.

SB 1136 (Kopp, Ch. 54, Stats. 1998) *See* Comment 1.

SB 833 (Kopp, Ch. 922, Stats. 1995) *See* Comment 1.

SB 1802 (Rosenthal, Ch. 1216, Stats. 1994) *See* Comment 1.

PRIOR VOTES:

Senate Transportation Committee (Ayes 12, Noes 2)

Assembly Floor (Ayes 62, Noes 11)

Assembly Privacy and Consumer Protection Committee (Ayes 7, Noes 1)

Assembly Transportation Committee (Ayes 12, Noes 1)
