

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 361 (Ward) – As Amended March 9, 2023

As Proposed to be Amended

SUBJECT: Vehicles: video imaging of bicycle lane parking violations

SYNOPSIS

This author sponsored bill allows local traffic enforcement agencies to install automated forward facing parking control cameras on parking enforcement vehicles for the purpose of capturing photographic images of cars parking in bicycle lanes.

Many bike lanes are on the far right side of the road near sidewalks and where cars park. Because many bike lanes do not have physical barriers blocking them from the road, it is not uncommon for cars to park in bike lanes or to park in a way that blocks them.

This common problem is a big issue for those who are bicycling in the bike lanes because it forces them to swerve into car traffic, creating a hazard for themselves and motorists. This creates a direct problem in the moment for bicyclists, but it also dissuades people who observe this issue from bicycling in some of the most optimal locations: city centers.

The privacy protections in the bill strictly limit the use of the images captured by these cameras. In addition, Committee amendments further strengthen the bill by limiting the use of the cameras to capturing only photographs, rather than allowing the passive collecting of video images of cars as traffic enforcement officers drive around cities. In addition, the amendments reduce the length of time that images can be retained from six months, to 30 days after the disposition of the citation; in no case can the images be retained more than six months.

These privacy protections, including the amendments taken by this Committee, provide clear limitations on the use of the images captured by these cameras. However, as with other tools of surveillance, prohibitions in state law related to how the equipment is used do not necessarily guarantee compliance. As a result, a system that captures images of cars or faces for any law enforcement purpose, including parking violations, puts the privacy of individuals at risk. Therefore, the question before the Committee is whether the benefits of this system outweigh the erosion of privacy.

Given the potential benefits of providing additional protections for cyclists riding in bicycle lanes by more efficiently and quickly issuing citations for parking violations, the privacy protections in the bill, and the reporting requirements analyzing the effectiveness of these measures, it appears that the potential benefits outweigh privacy concerns related to misuse of the information that is being collected.

This bill is supported by the cities of San Jose and San Francisco, along with several organizations. There is no registered opposition.

This bill was previously heard by the Assembly Transportation Committee, where it passed on a 12-1-2 vote.

SUMMARY: 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. Specifically, **this bill:**

- 1) Defines “local agency” to include a public transit operator, a local city, county, or city and county parking enforcement authority.
- 2) Requires cameras to record the date and time of a parking violation at the same time the photograph of a violation is captured.
- 3) Requires local agencies to provide reduced or waived payments for parking penalties for indigent persons.
- 4) Requires warning notices to be issued for the first 60 days the automated forward facing control program is in use and requires a public announcement of program with information about the enforcement, existing parking regulations, and the payment options available for low-income persons at least 60 days prior to the commencement of issuing notices of parking violations.
- 5) Requires a designated employee of a city, county, city and county, or a contracted law enforcement agency for a special transit district who is qualified to issue parking citations to review photographs for the purpose of determining whether a parking violation occurred in a bicycle lane.
- 6) Requires the registered owner of the vehicle to be permitted to review the photographic evidence of the alleged violation during normal business hours at no costs.
- 7) Authorizes the photographic evidence to be retained for up to 30 days after final disposition of the citation, and in no case to retain it for more than six months from the date the information was first obtained, after which time the information must be destroyed.
- 8) States that the photographic records are confidential and public agencies shall use and allow access to these records only for the purposes authorized by this legislation.
- 9) Requires any photographic evidence captured from the devices that do not contain evidence of a parking violation occurring in a bicycle lane to be destroyed within 15 days after the information was first obtained and prohibits an automated license plate recognition system from being used unless it is necessary for the purposes of this bill.
- 10) Requires a local agency that implements this bill 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, 2029.

- 11) Requires a designated employee of a local agency, including a contracted law enforcement agency, to issue a notice of parking violation to the registered owner of a vehicle within 15 calendar days of the date of violation.
- 12) Authorizes a local agency to decline to issue a ticket based on evidence in the photograph illustrating hardship.
- 13) Requires the notice of parking violation to list the all of the following:
 - a) The statute, regulation, or ordinance governing vehicle parking being violated.
 - b) A statement indicating that payment is required within 21 calendar days from the date of citation issuance.
 - c) The procedure for the registered owner, lessee, or renter to pay the parking penalty or contest the citation pursuant to existing law governing parking tickets.
- 14) The notice is required to set the date, time and location of the violation, the vehicle license number, registration expiration date, the color of the vehicle, and, if possible, the make of the vehicle.
- 15) 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.
- 16) The notice also is required to include information regarding the process for requesting review of the photographic evidence along with the notice of parking violation.
- 17) Authorizes 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 (DMV). The proof of mailing demonstrating that the notice of parking violation was mailed to that address is required to be maintained by the local agency.
- 18) Requires a local agency to charge the penalty in the notice if the registered owner, by appearance or by mail, makes payment to the processing agency or contests the violation within either 21 calendars days from the date of mailing of the citation, or 14 calendar days after the mailing of the notice of delinquent parking violation.
- 19) Authorizes a local agency to cancel a parking violation within 21 day and requires the cancellation to be set forth in writing.
- 20) Authorizes a person, following an initial review by the local agency and an administrative hearing, to seek court review by filing an appeal.
- 21) 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, but requires the local agency to maintain overall control and supervision of the program.

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) Requires a peace officer or person authorized to enforce parking laws and regulations to securely attach to the vehicle a notice of parking violation, unless the vehicle is driving away at the time of the violation, in which case the peace officer or employee may mail a violation. (Veh. Code § 40202)
- 3) Authorizes all public transit operators to install automated forward facing parking control devices on transit vehicles for the purposes of enforcing parking violations occurring in transit-only traffic lanes and at transit stops and stations. (Veh. Code § 40240)

FISCAL EFFECT: As currently drafted this bill is keyed non-fiscal.

COMMENTS:

- 1) **Background.** According to the Assembly Transportation Committee analysis of this bill:

Bicyclist fatalities have increased in recent years. In 2020, 938 cyclists lost their lives in the United States, a 9.2% jump from the previous year and the highest level since 1987. Bicycle infrastructure, including bike lanes, separated bike lanes, and bike paths all play an important role in improving cyclist safety. In *Cycling for Sustainable Cities*, Professor Rune Elvik notes that studies on bicycle infrastructure have generally found that there is a 30-40% lower injury risk for cyclists on roadways with bicycle lanes, bicycle paths, or on traffic calmed streets with few cars and low speeds.

Bicycle infrastructure also increases the number of cyclists on the roads. From 2007 to 2014, Boston added 92 miles of bike lanes. The number of cyclists commuting to work doubled, while the probability of getting injured was reduced by 14%. New York City from 1996 to 2016 expanded conventional bike lanes from 250 lane miles to 1,100 lane miles. Cycling trips more than doubled to more than 134 million a year. During that same time the fatality rate dropped by 71% and the risk of serious injury dropped 73%.

When New York City added bike lanes and a road diet on Prospect Park West, neither vehicle throughput nor travel times changed, while safety significantly improved. The percentage of cars exceeding 40 mph fell from 47% to 2%, while illegal sidewalk riding by cyclists fell from 46% to 3%. Cycling volumes doubled, while the number of injuries were reduced by half.

- 2) **Purpose.** Many bike lanes are on the far right side of the road near sidewalks and where cars park. Because many bike lanes do not have physical barriers blocking them from the road, it is not uncommon for cars to park in bike lanes or to park in a way that blocks them.

This common problem is a big issue for those who are bicycling in the bike lanes because it forces them to swerve into car traffic, creating a hazard for themselves and motorists. This creates a direct problem in the moment for bicyclists, but it also dissuades people who observe this issue from bicycling in some of the most optimal locations: city centers.

This bill would permit cities, using parking enforcement technology already available, to more efficiently issue tickets to motorists who park their cars in bike lanes. The bill would be a pilot program for cities that are interested in implementing it. The ticket issuing would be done using forward facing cameras on parking enforcement cars that can read license plates of cars in violation and send a ticket to the address the car is registered to.

3) **Author's statement.** According to the author:

By enabling cities to better enforce bike lane parking violations cities will be able to ensure their large investments in bike lane infrastructure are not voided by cars regularly parking in them, making them unusable.

4) **Proposed Committee amendments.** The proposed Committee amendments do two things to increase the privacy protections in the bill:

1. Instead of authorizing the use of video imaging, the amendments limit the use of the technology to photographing the violations. All references to video images will be replaced.

Of note in the amendments related to video imaging is the following:

40245. (a) A local agency may install automated forward facing parking control devices on city-owned or district-owned parking enforcement vehicles for the purpose of *the photographing video imaging* of parking violations occurring in bicycle lanes, as described in Section 21207. The devices shall be angled and focused so as to capture ~~video images~~ *photographs* of parking violations *only* and not ~~unnecessarily~~ 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 ~~video images are~~ *photographs are* captured. A local agency may only install forward facing cameras pursuant to this section if the examiner or issuing agency, as described in Section 40215, 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.

2. The retention time frame of the images will be changed from the following:

(e) (1) Except as it may be included in court records described in Section 68152 of the Government Code, or as provided in paragraph (2), the video image evidence may be retained for up to six months from the date the information was first obtained, or 60 days after final disposition of the citation, whichever date is later, after which time the information shall be destroyed.

Instead this section will read:

(e) (1) Except as it may be included in court records described in Section 68152 of the Government Code, or as provided in paragraph (2), ~~the video image evidence may be retained for up to six months from the date the information was first obtained, or 60 days after final disposition of the citation, whichever date is later, after which time the information shall be destroyed.~~ *the photographic evidence to be retained for up to 30 days after final disposition of the citation, and in no case shall it be retained for more than six months from the date the information was first obtained, after which time the information shall be destroyed.*

4) **Analysis of the privacy protections contained in this bill.** This bill contains a number of provisions that would protect the private information of individuals, including requirements that photographs obtained must be deleted. Specifically, footage that does not contain any evidence of a parking violation must be deleted within 15 days from the time the information was first obtained. Photographs that contains evidence of a parking violation shall be deleted within 30 days of the final disposition of the citation and under no circumstances will be retained for more than six months. The bill also requires that any cameras be angled and focused so as to only capture the parking violations in the photographs and not capture identifying images of other drivers, vehicles, and pedestrians.

The bill also states that the images are private and can only be used for the purposes outlined in this bill. In addition, the bill prohibits the use of automated license plate reader systems on these photographs, except when it is for the purposes in this bill.

Finally, the bill exempts any footage captured from disclosure under the Public Records Act and allows public agencies to use and allow access to the data only for purposes authorized by the bill. Or, in other words, only for parking enforcement.

These privacy protections, including the amendments taken by this Committee, provide clear limitations on the use of the images captured by these cameras. However, as with other tools of surveillance, prohibitions in state law related to how the equipment is used do not necessarily guarantee compliance. As a result, a system that captures images of cars or faces for any law enforcement purpose, including parking violations, puts the privacy of individuals at risk. Therefore, the question before the Committee is whether the benefits of this system, outweigh the erosion of privacy.

According to the Transportation Committee analysis of this bill:

Bicycle lanes provide life-saving protection for cyclist on public roads. Unfortunately a vehicle parking in a bicycle lane negates that benefit and increases risk for a cyclist who has to swerve into the traffic lane to avoid hitting the parked vehicle. This bill would ease a city's ability to issue parking tickets to individuals parking in those lanes by authorizing the use of cameras to enforce parking violations on parking enforcement vehicles. Doing so may increase the speed in which a parking enforcement agent issues such tickets, as they would no longer be required to exit their vehicle and place a notice on every car parked in such a lane. Instead citations would be mailed directly to individuals.

Given the potential benefits of providing additional protections for cyclists riding in bicycle lanes by more efficiently and quickly issuing citations for parking violations, the privacy protections in the bill, and the reporting requirements analyzing the effectiveness of these measures, it appears that the potential benefits outweigh the privacy concerns related to misuse of the information that is being collected.

5) **Related legislation.** AB 1483 (Lowenthal, 2023) would require 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 with an out-of-state or federal agency without a valid California court order or warrant. That bill is currently pending before this Committee.

AB 645 (Friedman, 2023) would establish 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. That bill is currently pending before this Committee.

AB 917 (Bloom, Chap. 709, Stats. 2021) authorized all public transit operators to install automated forward-facing parking control devices on transit vehicles for the purposes of enforcing parking violations occurring in transit-only traffic lanes and at transit stops until January 1, 2027.

SB 1051 (Hancock, Chap. 427, Stats. 2016) authorized a pilot program for video enforcement of parking violations in transit-only traffic lanes for the Alameda Contra Costa Transit Authority.

AB 1287 (Chiu, Chap. 485, Stats 2015) removed the sunset on the authority of San Francisco's pilot program for video enforcement of parking violations in transit-only traffic lanes.

AB 1041 (Ma, Chap. 325, Stats. 2011) extended the sunset on the authority of San Francisco's pilot program for video enforcement of parking violations in transit-only traffic lanes to January 1, 2016.

AB 101 (Ma, Chap. 377, Stats. 2007) authorized San Francisco to establish a pilot program for video enforcement of parking violations in transit-only traffic lanes which expired January 1, 2012.

ARGUMENTS IN SUPPORT: In support of the bill, the City and County of San Francisco, notes:

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. Similar to the successful forward-facing camera program that the SFMTA and other transit operators across the state use to enforce violations of stopping in a transit only lane, this bill would allow cities to install forward-facing cameras onto city owned enforcement vehicles to capture violations of parking in bike lanes. If passed, AB 361 would discourage motorist from parking in bikes lanes making it safer for people to ride their bikes.

Also in support, the City of San Jose writes:

The effectiveness of our bikeways relies on ensuring they are free from all obstructions. We have seen a dangerous trend of parking violations in bikeways, causing bicyclists to veer into unsafe vehicular traffic...causing risk to all road users. Unfortunately, this is a widespread problem with over 1,700 known violations in the past two years, making up roughly one

percent (1%) of the annual parking related requests to which the City's thinly staffed parking compliance team responds.

However, cities also need additional tools to increase their response capacity toward clearing and reducing obstructed bike lanes. This legislation provides another enforcement tool and is an opportunity that the City of San Jose is interested in exploring. We appreciate the intent of the author and his willingness to work with interested cities to craft this pilot program so that it does not further strain staffing capacities.

Furthermore, we look forward to discussing potential ways to strengthen the equity and privacy provisions in this legislation to ensure that the general public's data is safeguarded, and that additional financial burden is not placed on communities of concern.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Bicycle Coalition
City and County of San Francisco
City of San Jose
San Francisco Municipal Transportation Agency (SFMTA)
Streets for All

Opposition

None on file

Analysis Prepared by: Julie Salley / P. & C.P. / (916) 319-2200