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OAKLAND

CITY OF OAKLAND  
BILL ANALYSIS

2011 MAY -5 PM 6:56  
Date: May 19, 2011



Bill Number: **AB 1389** (as amended)

Bill Author: **Allen**

**DEPARTMENT INFORMATION**

Contact: **Claudia Burgos**, District 5, 510-238-17051  
cburgos@oaklandnet.com

**RECOMMENDED POSITION: SUPPORT**

**Summary of the Bill:**

**AB 1389** would clarify for law enforcement departments across California what criteria and precautions must be in place to ensure that **DUI** checkpoints are effective for public safety, protect all drivers equally, and uphold the constitution.

This bill would authorize the **Department of the California Highway Patrol**, and a city, county, or city and county, by ordinance or resolution, to establish a sobriety checkpoint program on highways within their respective jurisdictions to identify drivers who are in violation of specified **DUI** offenses. The bill would require that the program be conducted by the local governmental agency or department with the primary responsibility for traffic law enforcement.

The bill would require that the selection of the site of the checkpoint and the procedures for a checkpoint operation be determined by supervisory law enforcement personnel and that the law enforcement agency employ a neutral methodology for determining which vehicles to stop at the checkpoint or that all vehicles that drive through the checkpoint be stopped. The bill would also require a law enforcement agency to ensure that there are proper lighting, warning signs and signals, and clearly identifiable official vehicles, and uniformed personnel to minimize the risk to motorists and their passengers and to only operate a checkpoint when traffic volume allows for the safe operation of the program.

The bill would, notwithstanding other provisions of law, require that a peace officer or any other authorized person not cause the impoundment of a vehicle at a sobriety checkpoint, established pursuant to these provisions or any other law, unless at least one of a number of specified conditions applies. The bill would delete the county board of supervisor's authority to conduct a combined vehicle inspection and sobriety checkpoint program. The bill would require a law enforcement agency that conducts a sobriety checkpoint program to provide advance notice of the checkpoint location to the public within a minimum of 48 hours of the checkpoint operation.

Item: \_\_\_\_\_  
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**Positive Factors for Oakland**

In recent years, checkpoints throughout the state of California are increasingly coming under scrutiny for their impact on drivers that are **NOT** driving under the influence. More and more, studies are showing that DUI Check points are not getting drunk drivers off the road, instead they are resulting in the impoundment of vehicles, primarily of unlicensed drivers which in turn leads to a 30 day impound. A 2010 report by the Investigative Reporting Program at UC Berkeley showed that local law enforcement agencies conducting checkpoints were towing the vehicles of unlicensed drivers at a rate of as much as 20 times the rate of arrests made for DUI's.

This legislation will improve safety while providing protection for low-income communities and all drivers who are bearing the costs of unclear, unsafe, and non-standard policies regarding checkpoints, towing and vehicle impoundments.

**Negative Factors for Oakland**

NONE

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical (top priority for City lobbyist, city position required ASAP)**  
 **Very important (priority for City lobbyist, city position necessary)**  
 **Somewhat Important (City position desirable if time and resources are available)**  
 **Minimal or**  **None (do not review with City Council, position not required)**

**Known support:**

PICO California

MALDEF

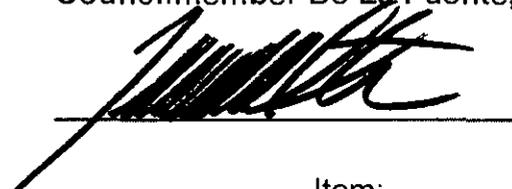
California Immigrant Policy Center

ACLU

**Known Opposition:**

No Known Opposition

Respectfully Submitted,  
Councilmember De La Fuente,



Item: \_\_\_\_\_

Rules &amp; Legislation Comte.

May 19, 2011

AMENDED IN ASSEMBLY MAY 4, 2011  
AMENDED IN ASSEMBLY MARCH 31, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1389**

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Introduced by Assembly Member Allen

February 18, 2011

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An act to amend Section 2814.1 of, and to add ~~Section 2814.2~~  
*Sections 2814.2 and 2814.3* to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1389, as amended, Allen. Vehicles: sobriety checkpoints: impoundment.

Existing law authorizes a city or a county to establish a sobriety checkpoint program in highways under its jurisdiction to check for violations of driving-under-the-influence (DUI) offenses and authorizes the board of supervisors of a county to establish, by ordinance, a combined vehicle inspection and sobriety checkpoint program to check for violations of motor vehicle exhaust standards in addition to DUI offenses.

Existing law authorizes a peace officer, whenever the peace officer determines, among other things, that a person was driving a vehicle (1) without ever having been issued a driver's license, to immediately arrest that person and cause the removal and seizure of his or her vehicle for an impoundment period of 30 days, or (2) if the person is currently without a valid driver's license, to remove the vehicle for a shorter period of time upon issuance of a notice to appear if the registered owner or the registered owner's agent presents a currently valid driver's license and proof of current vehicle registration, or upon order of the court.

This bill would authorize the Department of the California Highway Patrol, and a city, county, or city and county, by ordinance or resolution, to establish a sobriety checkpoint program on highways within their respective jurisdictions to identify drivers who are in violation of specified DUI offenses. The bill would require that the program be conducted by the local governmental agency or department with the primary responsibility for traffic law enforcement.

The bill would require that the selection of the site of the checkpoint and the procedures for a checkpoint operation be determined by supervisory law enforcement personnel and that the law enforcement agency employ a neutral methodology for determining which vehicles to stop at the checkpoint or that all vehicles that drive through the checkpoint be stopped. The bill would also require a law enforcement agency to ensure that there are proper lighting, warning signs and signals, and clearly identifiable official vehicles, and uniformed personnel to minimize the risk to motorists and their passengers and to only operate a checkpoint when traffic volume allows for the safe operation of the program.

The bill would, notwithstanding other provisions of law, require that a peace officer or any other authorized person not cause the impoundment of a vehicle at a sobriety checkpoint, established pursuant to these provisions or any other law, unless at least one of a number of specified conditions applies. The bill would delete the county board of supervisors authority to conduct a combined vehicle inspection and sobriety checkpoint program. The bill would require a law enforcement agency that conducts a sobriety checkpoint program to provide advance notice of the checkpoint location to the public within a minimum of 48 hours of the checkpoint operation.

~~The bill would require that a driver who does not wish to submit to the checkpoint not be compelled to drive through the checkpoint. The bill would require the law enforcement agency conducting the checkpoint to post signs announcing the checkpoint sufficiently in advance of the location of the checkpoint to permit motorists to not enter the location and to ensure that there is a clear and safe way to turn away from the checkpoint for those motorists who choose not to drive through the checkpoint. The bill would prohibit a law enforcement agency from stopping a motorist who chooses to avoid the checkpoint.~~

*This bill would require that each motorist stopped be detained so that the law enforcement officer may briefly question the driver and look for specified signs of intoxication.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2814.1 of the Vehicle Code is amended  
2 to read:

3 2814.1. (a) A board of supervisors of a county may, by  
4 ordinance, establish, on highways under its jurisdiction, a vehicle  
5 inspection checkpoint program to check for violations of Sections  
6 27153 and 27153.5. The program shall be conducted by the local  
7 agency or department with the primary responsibility for traffic  
8 law enforcement.

9 (b) A driver of a motor vehicle shall stop and submit to an  
10 inspection conducted under subdivision (a) when signs and displays  
11 are posted requiring that stop.

12 (c) A county that elects to conduct the program described under  
13 subdivision (a) may fund that program through fine proceeds  
14 deposited with the county under Section 1463.15 of the Penal  
15 Code.

16 SEC. 2. Section 2814.2 is added to the Vehicle Code, to read:

17 2814.2. (a) The Department of the California Highway Patrol  
18 may, and the governing body of a city, county, or city and county  
19 may adopt an ordinance or resolution to, establish, on highways,  
20 roads, or streets under its jurisdiction, a sobriety checkpoint  
21 program to identify drivers who are in violation of Section 23140  
22 or 23152. The program shall be conducted by the local  
23 governmental agency or department with the primary responsibility  
24 for traffic law enforcement.

25 (b) The selection of the site of the checkpoint and the procedures  
26 for a checkpoint operation, including, but not limited to, time and  
27 location shall be determined by supervisory law enforcement  
28 personnel.

29 (1) The law enforcement agency that conducts the checkpoint  
30 shall employ a neutral methodology for determining which vehicles  
31 to stop at the checkpoint or may stop all vehicles that drive through  
32 the checkpoint.

33 (2) The law enforcement agency shall ensure that there are  
34 proper lighting, warning signs and signals, and clearly identifiable  
35 official vehicles, and uniformed personnel to minimize the risk to

1 motorists and their passengers and shall only operate a checkpoint  
2 when traffic volume allows for the safe operation of the program.

3 (3) *Each motorist stopped shall be detained so that the officer*  
4 *may briefly question the driver and to look for signs of intoxication*  
5 *such as alcohol on the breath, slurred speech, and glassy or*  
6 *bloodshot eyes. If the driver does not display signs of impairment,*  
7 *he or she should be permitted to drive on without further delay.*

8 (4) *The law enforcement agency shall provide advance notice*  
9 *of the checkpoint location to the public at least 48 hours prior to*  
10 *the checkpoint operation.*

11 (3)

12 (5) The location of the checkpoint shall be based on a location  
13 that has a high incidence of arrests under Section 23140 or 23152,  
14 or a high volume of driving under the influence (DUI) related  
15 accidents, and shall be determined by supervisory officers of the  
16 law enforcement agency conducting the sobriety checkpoint.

17 (6) *The time of day and the duration of checkpoints shall be*  
18 *carefully reviewed and the effectiveness and safety of checkpoints,*  
19 *as well as motorists concerns shall be taken into account.*

20 (4)

21 (7) The law enforcement agency shall conduct the checkpoint  
22 after dusk or at a time and for a duration that are reasonable and  
23 effective to the objective of deterring DUI offenses.

24 (c) A driver of a motor vehicle who elects to drive through the  
25 checkpoint shall stop and submit to an inspection conducted under  
26 subdivision (a) when signs and displays are posted requiring that  
27 stop.

28 (d)

29 *SEC. 3. Section 2814.3 is added to the Vehicle Code, to read:*

30 *2814.3. (a) Notwithstanding Section 14602.6, Section 14607.6,*  
31 *or subdivision (p) of Section 22651, a peace officer or any other*  
32 *authorized person shall not cause the impoundment of a vehicle*  
33 *at a sobriety checkpoint established pursuant to this section Section*  
34 *2814.2 or any other law, unless at least one of the following*  
35 *applies:*

36 (1) The driver of the vehicle is suspected of driving in violation  
37 of Section 14601, 14601.2, 14601.3, 14601.5, 23140, or 23152.

38 (2) The vehicle is subject to impoundment pursuant to Section  
39 14602.7.

1 (3) There is probable cause to believe that the vehicle was used  
2 as the means of committing a public offense, other than a violation  
3 of Section 12500 or 14604.

4 (4) There is probable cause to believe that the vehicle is itself  
5 evidence that tends to show that a crime has been committed or  
6 that the vehicle contains evidence, that cannot readily be removed,  
7 that tends to show that a crime has been committed, other than a  
8 violation of Section 12500 or 14604.

9 (5) The driver of the vehicle is not driving with a valid driver's  
10 license and none of the following apply:

11 (A) The driver is able to obtain a validly licensed driver to drive  
12 the vehicle.

13 (B) Notwithstanding Sections 12500 and 16020, the driver is  
14 able to park or remove the vehicle in a manner that does not impede  
15 traffic or threaten public safety until a validly licensed driver can  
16 retrieve the vehicle.

17 (C) A peace officer, or a similarly authorized traffic enforcement  
18 officer, is able to readily and lawfully remove the vehicle to a place  
19 that does not impede traffic or threaten public safety.

20 (e)

21 (b) The state or local governmental agency that established or  
22 conducted the checkpoint pursuant to *described in* subdivision (a)  
23 shall not be liable for any claims related to the parking or removal  
24 of the vehicle as described in subparagraph (B) or (C) of paragraph  
25 (5) of subdivision (d) (a).

26 ~~(f) The law enforcement agency that conducts a sobriety~~  
27 ~~checkpoint program shall provide advance notice of the checkpoint~~  
28 ~~location to the public within a minimum of 48 hours of the~~  
29 ~~checkpoint operation.~~

30 ~~(g) A driver who does not wish to submit to the checkpoint shall~~  
31 ~~not be compelled to drive through the checkpoint. The law~~  
32 ~~enforcement agency conducting the checkpoint shall post signs~~  
33 ~~announcing the checkpoint sufficiently in advance of the location~~  
34 ~~of the checkpoint to permit motorists to not enter the location and~~  
35 ~~shall ensure that there is a clear and safe way to turn away from~~  
36 ~~the checkpoint for those motorists who choose not to drive through~~  
37 ~~the checkpoint. The law enforcement agency shall not stop a~~  
38 ~~motorist that chooses to avoid the checkpoint.~~

39 (h)

- 1 (c) A law enforcement agency shall not conduct a combined
- 2 sobriety checkpoint and vehicle inspection program.

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OFFICE OF THE CITY CLERK  
OAKLAND

11 MAY -5 PM 6:58

Approved as to Form and Legality

City Attorney's Office

**OAKLAND CITY COUNCIL**  
**RESOLUTION No. \_\_\_\_\_ C.M.S.**

**DRAFT**

Introduced by Councilmember Ignacio De La Fuente

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**Resolution Supporting Assembly Bill 1389 (Allen) "Clarity On California DUI Checkpoints" Which Would Establish Uniformity In The Way That DUI Checkpoints And Vehicle Impoundments Are Conducted Across The State**

**WHEREAS**, A 2010 report by the Investigative Reporting Program at UC Berkeley showed that local law enforcement agencies conducting checkpoints were towing the vehicles of unlicensed drivers at a rate of as much as 20 times the rate of arrests made for DUI's; and

**WHEREAS**, In recent years, checkpoints throughout the state of California are increasingly coming under scrutiny for their negative impact on drivers that are NOT driving under the influence; and

**WHEREAS**, This legislation will improve safety while providing protection for low-income communities and all drivers who are bearing the costs of unclear, unsafe, and non-standard policies regarding checkpoints, towing and vehicle impoundments; and

**WHEREAS**, This bill would authorize the Department of the California Highway Patrol, and a City, County, or City and County, by ordinance or resolution, to establish a sobriety checkpoint program on highways within their respective jurisdictions to identify drivers who are in violation of specified DUI offenses; and

**WHEREAS**, This bill would require that the program be conducted by the local governmental agency or department with the primary responsibility for traffic law enforcement; and

**WHEREAS**, The bill would require that the selection of the site of the checkpoint and the procedures for a checkpoint operation be determined by supervisory law enforcement personnel and that the law enforcement agency employ a neutral methodology for determining which vehicles to stop at the checkpoint or that all vehicles that drive through the checkpoint be stopped; now, therefore be it

**RESOLVED**: That the City of Oakland declares its support for AB 1389 (Allen); and be it

**FURTHER RESOLVED:** That the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011

**PASSED BY THE FOLLOWING VOTE:**

**AYES-** BRUNNER, BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAFF, and PRESIDENT REID

**NOES-**

**ABSENT-**

**ABSTENTION-**

**ATTEST:**  
\_\_\_\_\_  
**LATONDA SIMMONS**  
City Clerk and Clerk of the Council  
of the City of Oakland, California