

April 10, 2019

The Honorable Jim Frazier
Chair, Assembly Transportation Committee
California State Capitol, Room 3091
Sacramento, CA 95814

Re: Assembly Bill 516 (Chiu) - Support

Dear Assembly Member Frazier,

The Western Center on Law and Poverty advocates on behalf of low income Californians in the areas of health care, affordable housing and public benefits. We also work to preserve and enhance the right of low income Californians to have access to the court system. We are a co-sponsor of AB 516 (Chiu) to reduce the number of Californians losing their vehicles due to minor Vehicle Code infractions.

For the last half dozen years, our organization and other legal service groups have been documenting the devastating impact that traffic violations, parking violations, juvenile fines and bail have on low income Californians. Fines and fees for even routine violations can run into the hundreds of dollars and if a person cannot afford to pay, the costs can exceed \$1,000 quickly. Fortunately, California has been a national leader in addressing the disproportionate impact that these policies have caused and our state is a better place for the quick responses by California's policymakers.

A recent report by legal service organizations, including the Western Center, entitled *Towed Into Debt: How Towing Practices in California Punish Poor People*, found that municipalities were towing hundreds of thousands of vehicles in California annually, with tens of thousands of low income persons permanently losing their vehicles. Specifically, the report found that cars were permanently lost due to:

- (1) Having 5 or more unpaid parking tickets,
- (2) DMV registration out of date by six months or more or
- (3) Parking a car for 72 hours without moving it.

For example, in San Francisco while only 9 percent of towed cars were sold at lien sales, nearly 50 percent of cars towed for the above three reasons resulted in lien sales. This information confirms what legal service advocates have been saying for years: that when our clients cannot afford to pay fines and fees they lose their cars and suffer a series of negative consequences. AB 516 would repeal state laws that allow for these three types of "poverty tows" and for that reason we support AB 516.

Beyond the impact on our clients, the report uncovered an important truth about towing practices in California. The current system for ensuring compliance with the vehicle code is badly flawed. While the public believes that towing companies are profiting from these practices, the report shows that towing cars due to poverty is actually a financial burden on tow company operators. While the goal of towing



is to collect unpaid fines and fees, when cars are sold at lien sales local governments do not collect the unpaid debt. And the poor lose an important asset and their way to get to work. In short, our current policy works for no one and should be abandoned.

Owning a Vehicle is Key to Employment

As the Transportation Committee knows, access to transportation, particularly a car, is crucial to getting to work and conducting everyday activities like taking children to school, going shopping and attending medical appointments. The *Towed Into Debt* report notes the substantial body of research on the positive economic impacts that come from having a car: ¹

Beyond the direct financial impacts of towing and lien sales, the loss of a vehicle can have far-reaching economic consequences for low wage workers and their ability to earn a living. Having regular access to a vehicle is one of the biggest factors in determining who will prosper in our economic system and who will be shut out of it. One survey of California residents found that respondents identified a lack of access to reliable transportation as the second biggest immediate barrier to employment, behind reliable child care. Another study indicated that car ownership plays a bigger role in getting a job than having a high school diploma.

A vehicle can make it easier to find work. One study suggested that unemployed people with access to cars were more likely to find a job and leave welfare than individuals without vehicles,³² potentially because private vehicles increase the number of jobs which a person can physically access. Some jobs and even professions also require access to a vehicle, as Ms. Lovelace's story on page 6 illustrates. As an interior designer, she needed a car to transport samples and visit clients' homes. When she lost her car, she could not find a job as an interior designer again. She was shut out, not only from a job, but her entire profession.

Having a vehicle also correlates with keeping a job if a person has one already. One study found that workers with access to a car were almost twice as likely to remain employed over a full 18 to 24 months period than workers without a car, even after leaving the examined welfare program. Another study examining employment rates in Fresno found that cars not only help people *become employed, but also help workers to stay employed.*

Finally, access to a car not only divides those who can get a job from those who cannot, and those who can keep their job from those who will lose it, it may also impact how much someone earns at their job. In one survey of people who were given a loan for a vehicle when they were struggling financially, half of respondents increased their gross monthly income, with an average increase of 8.2 percent in wages. Over one-third of respondents saw an increase in their income of over 10 percent. In another study, researchers found that car ownership actually had a higher correlation with higher wages than a Latinx person's citizenship status.



Towing Can Be a Ticket Into Poverty

Losing a vehicle due to towing has a devastating impact on poor Californians. When a person gets their car towed they are faced with three unappealing choices. One, they can spend the little money they have to pay off the fines and fees, pay the release fee to local law enforcement and then pay off the towing and storage costs. But as the Federal Reserve notes 46 percent of Americans can't afford an unexpected \$400 bill let alone a tow costing \$1,000 or more. If they pay off the towing costs, it likely means the family is not paying other bills which simply extends the crisis to another aspect of the family's life. For many this can lead to an eviction.

Two, persons can borrow money from friends or family, attempt to sell an asset to get the money or go to a high cost consumer loan company to get the money to get the car back. For many families these are not options at all as they don't have family or friends they can borrow from and they may not have the credit to borrow enough. But if they can borrow money, it places the family in deeper debt.

Three, a person will make the rational decision that options one and two will cause more problems than they will solve and abandons the car. While this comes with its' own set of complications, at least the family is not out \$1,000 or more. They will, though, struggle to do the everyday tasks many take for granted.

Towing Vehicles for Minor Traffic Offenses is a Constitutionally Suspect

In addition, to the real life impacts of towing vehicles, it is constitutionally suspect. Both the U.S. Supreme Court and several lower courts have recently found that towing of cars violates the 4th, 8th and 14th Amendments of the Constitution. *Towed Into Debt* noted that:

California has also recognized the importance of ensuring that any towing of a vehicle complies with the protections of the Fourth Amendment. In 2018, the state legislature passed AB 2876 (Jones-Sawyer) clarifying that “[a]ny removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence.” The new law clarifies that tows without a warrant are constitutional only if they fall under one of the exceptions to the warrant requirement, “such as ensuring the safe flow of traffic or protecting property from theft or vandalism.”

Cities across California violate the Fourth Amendment when they tow cars without warrants just because the owner owes fines and fees, has not paid the vehicle registration fee, or has not moved their car for 72 hours. None of these rationales for vehicle tows are sufficient to justify a warrantless seizure under the Fourth Amendment. None are emergencies, none are crimes, and none implicate safety concerns.

The Constitution prohibits a state from depriving “any person of ... property, without due process of law.” At the core of the Due Process guarantee of the Fourteenth Amendment is pre-deprivation notice--some advance warning that the government is going to take your property-- and a meaningful chance to challenge the deprivation before it happens. In the context of vehicle tows, courts have recognized that people have an important right in continued possession of their cars, and that the government's seizure of a person's car



causes significant hardship. Because cars are so important to people’s daily lives, courts have required that governments must give people notice before towing vehicles and must provide vehicle owners a reasonable opportunity to contest the tow or to show that towing the car would be illegal or unconstitutional.

*In its February 2019 decision in *Timbs v. Indiana*, the United States Supreme Court issued a rare unanimous decision, holding that the State of Indiana may have violated the 8th Amendment’s Excessive Fines Clause when it seized the vehicle of an Indiana man because he had committed a drug crime. Under the Eighth Amendment, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” In deciding that the Excessive Fines clause applies to the states, and to the state of Indiana taking Mr. Timbs’ car, the Supreme Court recognized that the government must not impose fines that are out of proportion to the crime committed, that government-imposed fines must “not be so large as to deprive [an offender] of his livelihood,” and that no one shall have a larger fine than their “circumstances or personal estate will bear.”*

Affordable Payment Plans a Better Option for Collecting Unpaid Fines and Fees

Towing vehicles for failure to pay parking fines, failure to pay DMV registration or parking in one spot for 72 hours is akin to using a sledgehammer to crack an egg. For low income persons it can have a devastating economic impact that leads to job loss, debt and even homelessness. Nonetheless, it is important that persons comply with DMV registration requirements and pay parking tickets when they receive them.

Some 7 million Californians live in poverty and face challenges each month paying their bills. For many of them paying for traffic tickets, parking tickets or DMV registration can be a financial burden because California has some of the most expensive fines and fees in the country. There are, however, proven methods to assist these households. One option is to reduce the cost of tickets for low income drivers. Another option is to permit persons to make affordable payments. In 2017, the Legislature passed AB 503 (Lackey) to allow low income persons to pay off their parking tickets at \$25 a month and to eliminate late fees if they made their payments. When San Francisco instituted a version of this plan in 2018, they experienced a four-fold increase in parking revenue. As more cities provide payment plans options, there will be less need for drastic practices like towing.

In 2018 the state budget included an eight county pilot project to allow persons to adjudicate traffic tickets on line and, if they are low income, have the cost of the ticket reduced by 50 percent and keep payments at \$25 a month. California Rules of Court already provide for discounts on traffic tickets and payment plans if requested by the defendant. Having affordable payment plans like these encourages people to become compliant with the law.

Currently, the Department of Motor Vehicles does not allow for payment plans for car registration but three bills have been introduced this session that would require the department to begin offering them. If approved, payment plans would allow low income drivers to pay registration in affordable monthly installments, keep them in compliance with state law and reduce the need and cost for law enforcement and traffic court interactions.



Many Penalties Remain in Place

There are additional alternatives to bringing persons into compliance with the law without the use of towing. California already has numerous methods for collecting unpaid fines and fees including wage garnishments, bank levies and employing collection agencies. State law permits municipalities to place a hold on DMV registrations if a person fails to pay parking tickets or gets a ticket for not moving a car after 72 hours. A person who then drives with overdue registration can receive a traffic ticket. If they fail to get the car registered and don't appear for court, the court will issue a failure to appear, can suspend the driver's license and impose a fine of up to \$300.

The severity of the towing as punishment for minor traffic infractions is disproportionate to the offense. It is a failure as a policy as it does not result in recovery of fines and fees when the person cannot afford to get the car out of impoundment. It imposes an economic cost on towing companies when uncollected cars sit for a month without payment. The policy is constitutionally suspect.

For these reasons, Western Center supports AB 516 and respectfully request your AYE vote.

Sincerely,

Michael Herald

Director of Policy Advocacy

ⁱ *Towed Into Debt: How Towing Practices in California Harms Poor People*, page 18, <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>