

## Chapter 411: Putting the Brakes on the Dangerous Street Racing Phenomenon in California

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### *Code Section Affected*

Vehicle Code § 23109.2 (amended).  
SB 1489 (Perata); 2002 STAT. Ch. 411.

### I. INTRODUCTION

On a crisp morning in January 1958, two youths pulled up to an intersection in the sprawl of the Los Angeles area.<sup>1</sup> After eyeing the occupants of the other car at the light, the passenger exclaimed, "Look at the chicks!"<sup>2</sup> The driver then "revved up" the engine and proceeded to catch up to the girls, with both cars racing at fifty-five miles an hour.<sup>3</sup> This scene of teenagers "cruising" down the road in pursuit of girls appears to be a romanticized image of America's love for the automobile, mixed with the reckless abandon of youth. Is this a scene from *Rebel Without a Cause* or *American Graffiti*?<sup>4</sup> While similar to the onscreen antics depicted in these film classics, the above scenario is a case of illegal street racing.<sup>5</sup> The only significant difference between the depictions of racing in movies and the facts in the above case is that instead of winning the race in dramatic fashion, the youth was caught and convicted of engaging in a speed contest.<sup>6</sup>

Fueled by America's obsession with the automobile, auto racing has become one of the most popular sports in the country.<sup>7</sup> While hundreds of thousands of fans can fill the stands at most racetracks,<sup>8</sup> an unknown number of spectators line

1. See *In re Harvill*, 168 Cal. App. 2d 490, 491-92, 335 P.2d 1016, 1017-18 (1959) (recounting the actions of the appellant, Roger Harvill, and his passenger, Kenneth Taten, that were the basis for their conviction for engaging in a speed contest).

2. *Id.* at 492, 335 P.2d at 1017.

3. *Id.* at 491-92, 335 P.2d at 1017-18.

4. See Mai Tran, *A Deadly Rite of Passage; Drag-racing; Five People Have Recently Been Killed in Orange County as a Result of Competition*, L.A. TIMES, Nov. 28, 2001, at CAL 1 (recognizing *Rebel Without a Cause* and *American Graffiti* as films that have glamorized the youthful act of drag racing).

5. *Harvill*, 168 Cal. App. 2d at 492-93, 335 P.2d at 1017-18.

6. *Id.*

7. See NASCAR.com, *Brickyard 400 Telecast Sets Ratings Record*, at <http://www.nascar.com/raccs/ontv> (last visited Aug. 9, 2002) (copy on file with the *McGeorge Law Review*) (announcing that a record breaking twenty-one million television viewers watched the 2002 Brickyard 400 at Indianapolis Motor Speedway).

8. See NASCAR.com, *Lowe's Motor Speedway*, at <http://www.nascar.com/races/tracks/lms> (last visited Aug. 9, 2002) (copy on file with the *McGeorge Law Review*) (describing how Lowe's Motor Speedway in Concord, North Carolina is capable of holding 217,000 spectators).

public streets during illegal speed contests.<sup>9</sup> Unlike racetracks that allow for spectators to observe races in safe, closed environments, illegal street races encourage spectators to stand an arms-length away from the path of possibly inexperienced drivers.<sup>10</sup>

The dangers involved in street racing have always been present,<sup>11</sup> but to some the adrenaline rush from the knowledge of the illegal and dangerous nature of the sport is the motivation to participate.<sup>12</sup> While drivers have always been drawn to the allure of street racing, a new generation of street racers has emerged in recent years.<sup>13</sup> Presently, imported cars, compared to the domestic "muscle cars" of generations past, dominate the street-racing scene.<sup>14</sup> With a large supply of parts, many racers modify vehicles to gain more speed.<sup>15</sup> To add to the aesthetics, many racers also add new body panels to the cars including spoilers and finish the look with "specialized paint jobs."<sup>16</sup>

The summer 2001 blockbuster movie, *The Fast and the Furious*,<sup>17</sup> depicted underground racing and featured many imported vehicles, such as Hondas, Toyotas, and Mitsubishi's.<sup>18</sup> The movie was released with disclaimers and service announcements against street racing, but law enforcement officials were unhappy with the image that the movie gave to impressionable youths who do not comprehend the dangers involved.<sup>19</sup> The movie release was followed by many round-ups of racers by law enforcement, and served as a catalyst for new

9. See Angela Lau, *Tapping the Brakes, Police Sweeps Aim to Stop Street Racing, Sites for Legal Events Sought*, SAN DIEGO UNION-TRIB., July 7, 2002, at B1 (commenting that more legal racing sites would deter illegal racing, which subjects spectators to potential injury from the racing vehicles).

10. *Id.*

11. See Larry Saavedra, *Enthusiasts React Coolly to Film on Street Racing, "The Fast and the Furious" is No. 1 at the Box Office. But Car Culture Fans Have Mixed Feelings*, L.A. TIMES, June 27, 2001, at G1 (explaining that illegal street racing has been around as long as cars and that the Specialty Equipment and Market Association (SEMA), which represents the compact car equipment industry, deplors the "unsafe practice" of street racing).

12. See Lau, *supra* note 9 (describing the view of one racer, "They told us not to do it, we do the opposite. That's the sensation that we enjoy.").

13. See Gary Dretzka, *Fast Times are Back on Track. "Rebel Without a Cause" Goes Modern at a "Furious" Pace*, CHI. TRIB., July 23, 2001, at N3 (commenting on the import racing scene which has "gotten crazy in the last [ten years]").

14. See generally *id.* (stating that the large Asian population in Southern California created the desire for the imported cars, and this trend quickly spread to other areas).

15. See Jennifer Dobner, *Speed Demons, Despite Long History, Street Racing Remains Illegal and Dangerous, Police Crackdown Stems from Potential for Massive Injuries*, SAN DIEGO UNION-TRIB., Aug. 5, 2001, at B1 (listing common items used to customize a car, including illegal nitrous oxide systems that cause large performance increases when mixed with the fuel entering the engine).

16. *Id.*

17. THE FAST AND THE FURIOUS (Universal Studios 2000).

18. See Saavedra, *supra* note 11 (describing how the movie reflected only a portion of the street-racing scene and contained some inaccuracies).

19. See Orith Goldberg, *Valley's High-Speed Pursuit, Police Sweep Follows Opening of Drag Race Film*, DAILY NEWS OF L.A., June 24, 2001, at N3 (reporting the view of law enforcement officials that the movie would give kids the false impression that they are invincible and can race cars without any of the dangerous consequences).

legislation to further deter the activity.<sup>20</sup> While existing law already allowed for fines, jail-time, and the impoundment of vehicles of those caught racing,<sup>21</sup> the Chapter 411 was enacted to discourage the "sideshow" of spectators that encourage the racers.<sup>22</sup> Because of the possibility of a major catastrophe, street racing is considered by many to be a serious public health risk,<sup>23</sup> and Chapter 411 was enacted to prevent further deadly accidents from illegal street racing.<sup>24</sup>

## II. EXISTING LAW

Because "illegal street racing has been part of the American car culture since there were cars to race,"<sup>25</sup> California has had regulations in force to prevent the dangerous activity for over forty years.<sup>26</sup> In certain areas of the State, local ordinances have been passed to further assist law enforcement in preventing the deadly outcomes of illegal racing.<sup>27</sup> In addition to criminal penalties, safe, legal racing programs are being used as positive reinforcement to keep youths from racing on the streets.<sup>28</sup>

### A. *Prior California Law Regarding Illegal Street Racing*

Engaging in a speed contest on a highway is illegal in California.<sup>29</sup> A "speed contest" occurs when a motor vehicle races against another vehicle or is being timed by a clock or other device.<sup>30</sup> The penalty for being convicted of engaging in a speed contest consists of a fine up to one thousand dollars plus penalty

20. See Sandra Stokley, *Racing Streets Get Speed Humps: Ontario Police Say that a Movie Has Exacerbated an Existing Problem There*, PRESS-ENTERPRISE (Riverside, Cal.), June 29, 2001, at B1 (illustrating how the film exacerbated an existing problem of street racing by noting that Ontario Police officers issued about four hundred traffic citations the weekend after the release of the movie).

21. See *infra* Part II (elaborating on the punishment imposed for illegal racing).

22. See ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 1489, at 2-3 (June 24, 2002) (explaining that laws were needed to prevent the danger of pedestrian injuries involved in automobile "sideshows," that include dangerous behavior like "spin[ning] donuts" and fleeing from police).

23. See Dobner, *supra* note 15 (hypothesizing how a racer could blow a tire, thereby losing control and hitting onlookers).

24. See *infra* Part III (describing how Chapter 411 will aid in the battle against illegal street racing).

25. See Saavedra, *supra* note 11 (commenting on the negative attitude of professional racers and automotive performance companies toward the summer blockbuster *The Fast and the Furious* for glamorizing illegal street racing).

26. See CAL. VEH. CODE § 23109 (West 2000) (enacting prohibitions of "speed contests and exhibition of speed" in 1959).

27. See *infra* Part II.B (describing ordinances that create severe penalties for spectators at illegal races and ordinances that enable law enforcement officials to impound racers' vehicles with ease).

28. See *infra* Part II.C (describing legal alternatives to street racing including drag racing events open to street vehicles at certain race tracks in the State).

29. CAL. VEH. CODE § 23109(a) (West 2000); 2 B.E. WITKIN, CALIFORNIA CRIMINAL LAW, *Crimes Against Public Peace and Welfare* § 254 (3d ed. 2000).

30. See *id.* § 23109(a) (noting that a race in which the time to travel over twenty miles is measured, and the vehicle does not break any speed laws, is not considered a speed contest).

assessments, no more than ninety days in jail, or both.<sup>31</sup> Also, if convicted of participating in an illegal speed contest, existing law mandates that the perpetrator's license be suspended or restricted for up to six months.<sup>32</sup> If the license is restricted, then the offender is only allowed to drive within his scope of employment.<sup>33</sup> If convicted of street racing within five years of a previous conviction for illegal racing, then courts may impose stiffer fines, impose a lengthier jail term, and suspend the offender's license.<sup>34</sup> Additionally, a court is not allowed to strike any prior convictions of engaging in a speed contest in order to avoid imposing the minimum jail time or avoid suspending, revoking, or restricting the offender's license.<sup>35</sup>

Another deterrent under existing law is if the offender is using his own vehicle, then the vehicle can be impounded at the owner's expense.<sup>36</sup> The owner of the seized vehicle is entitled to a post-storage hearing to determine the validity of the seizure.<sup>37</sup> A notice of storage shall be sent to the owner of the vehicle within forty-eight hours of impoundment and will contain a description of the vehicle and the place that it is stored, authority and reasoning behind the seizure, and the agency responsible for the seizure.<sup>38</sup> The owner must respond within ten days of receiving notice of the post-storage hearing.<sup>39</sup> If it is found at the hearing that reasonable grounds for the storage are not established, then the agency responsible for the seizure of the vehicle is liable for the costs incurred.<sup>40</sup>

Persons who aid or abet any speed contest can also be charged with a misdemeanor.<sup>41</sup> Therefore, whoever flags the start of a race by dropping his hands can be charged with the crime.<sup>42</sup> The act of facilitating a speed contest by

31. *See id.* § 23109(e) (stating that the minimum time to be served in county jail is one day and the minimum fine allowed is \$355).

32. *See id.* §§ 13352(a), (a)(8) (West 2000) (laying out the minimum suspension or restriction for driving under the influence and speed contest violations, specifically stating a ninety day to six month suspension for an individual's first conviction of speed contest laws); *id.* § 23109(e) (stating that section 13352 governs the terms of license suspension for violating speed contest and exhibition of speed laws).

33. *Id.* §23109(e).

34. *See* CAL. VEH. CODE § 13352(a), (a)(9) (stating that the individual's privilege to drive will either be suspended or restricted for six months); *id.* § 23109(f) (disclosing that the period of imprisonment would be between four days and six months, a monetary fine between five hundred to one thousand dollars).

35. *Id.* §23109.5 (West 2000).

36. *See id.* § 23109(h) (West 2000) (describing the period of impoundment being from one to thirty days).

37. *Id.* §§ 22852(a)-(e) (West 2000), 23109.2(b) (West 2000).

38. *Id.* § 22852(b).

39. *Id.*

40. *See id.* §§ 22852(b)-(e) (stating that failure to respond or appear meets the requirements of the hearing, and would thereby make the owners liable for the costs of storage since they would be unable to show the lack of reasonable grounds for the seizure of the vehicle).

41. *Id.* §23109(b).

42. *See* Goldberg, *supra* note 19 (explaining that racers and those aiding and abetting racers, including spectators, can be charged in Los Angeles County).

placing a barricade on the highway is also considered aiding and abetting a speed contest.<sup>43</sup>

Existing law also prohibits any motor vehicle demonstrating the exhibition of speed and the aiding or abetting of any such exhibition.<sup>44</sup> An exhibition of speed can involve the peeling or screeching of tires due to a loss of traction during hard acceleration.<sup>45</sup> Alternatively, the "revving up" of the engine in combination with speeding has also been considered an exhibition of speed.<sup>46</sup> An exhibition of speed can take place no matter how few people witness the deed.<sup>47</sup> The punishment for such activity is imprisonment for up to ninety days, a fine of no more than five hundred dollars plus penalty assessments, or both.<sup>48</sup>

### *B. The Effect of Local Ordinances in Abating Street Racing*

In response to illegal street races, the Los Angeles County Board of Supervisors approved an ordinance creating a misdemeanor for being a spectator at an illegal race.<sup>49</sup> Individuals charged with the misdemeanor would be fined five hundred dollars and could be placed in jail for up to six months.<sup>50</sup> Along with the new misdemeanor, law enforcement can still charge any minors present at the illegal street race with unlawful assembly and curfew violations.<sup>51</sup> Officers rarely witness which cars are actually racing because the gathering scatters at the first sign of law enforcement.<sup>52</sup> But, with the ordinance, anyone present can be

43. CAL. VEH. CODE §§ 23109(b), (d) (West 2000).

44. *Id.* §23109(c).

45. *See* *People v. Grier*, 226 Cal. App. 2d 360, 363, 38 Cal. Rptr. II, 12-13 (1964) (explaining that by peeling out, one is intentionally losing traction, which is necessary for the control and safety of the vehicle). The noise also creates apprehension in other drivers, which increases the likelihood of an accident. *Id.*

46. *See Harvill*, 168 Cal. App. at 490, 493, 335 P.2d at 1018 (stating that evidence of "revving up" the engine and evidence of the vehicles "running 'neck and neck'" at speeds of at least fifty miles per hour in a thirty five mile per hour zone were sufficient to charge the defendant with either engaging in a speed contest or an exhibition of speed).

47. *See Grier*, 226 Cal. App. 2d at 364, 38 Cal. Rptr. at 13 (stating that "[n]o particular type of audience to such an exhibition can nor need be implied in the statute. It was an exhibition of speed on a highway, as much as if it had been a prearranged affair with an invited or selected audience of observers.").

48. CAL. VEH. CODE § 23109(i) (West 2000).

49. *See Board OKs Jail. Fine for Watching Street Races*, L.A. TIMES, Mar. 6, 2002, at B4 [hereinafter *Board OKs Jail*] (explaining that the ordinance will cause the number of spectators to diminish, and that a reduction in racing will follow); Patrick McGreevy, *Penalties Urged for Spectators at Illegal Street Races*, L.A. TIMES, May 27, 2000, at B1 (recounting how "[Granada Hills City Councilman Hal] Bernson called a summit... with police officers ... to find ways to curtail the illegal races before moving for the ordinance); *see also* SKNATK RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 2087, May 20, 2002, at 1-2 (describing a proposed state bill by Senator Soto, which attempted to create a similar misdemeanor as state law). Senator Soto withdrew the bill before passage. *Id.*

50. *Board OKs Jail*, *supra* note 49.

51. *See* John Welsh, *Sting Proves Drag for Racers: Enforcement: A Raid in Mira Loma is Part of a Regional Crackdown on Illegal Car Runs*, PRESS-ENTERPRISE (Riverside, Cal.), Oct. 21, 2001, at B1 (recounting that peace officers issued over three hundred citations to spectators at an illegal race in Mira Loma).

52. *See* McGreevy, *supra* note 49 (quoting a police captain, "[t]hey have scouts who alert the racers that we are coming and everyone scatters.").

charged with a misdemeanor, making it much easier to charge the individuals involved.<sup>53</sup>

In an attempt to stop racers, cities and law enforcement agencies have tried many things to keep racers off the streets. The city of Ontario, California has installed speed bumps on large industrial streets frequented by illegal racers.<sup>54</sup> The city installed the speed bumps a year after a city ordinance closed the streets to outside traffic.<sup>55</sup> But after over four hundred people were arrested in one year for racing, the city determined that the ordinance was not enough and created physical barriers in the form of speed bumps.<sup>56</sup> While the speed bumps will prevent racing on the streets,<sup>57</sup> the fact that such a measure was necessary shows that existing laws were not enough to deter racers from engaging in the activity.<sup>58</sup>

In the San Fernando Valley, the Sun Valley City Council and police marked curbs as "no-stopping zones" in order to facilitate mass impounding of vehicles used in street racing.<sup>59</sup> The ordinance gives the police the ability to impound cars that are trapped on the marked streets, because once they stop, they are violating the ordinance.<sup>60</sup> Anyone present must pay two hundred dollars in impounding fees and fines for being present at the races.<sup>61</sup> While impounding cars, law enforcement officers also inspect modified cars to determine if the vehicle or any of its parts are stolen.<sup>62</sup> Law enforcement officers also inspect cars for modified or missing pollution control devices.<sup>63</sup> Once an owner is cited for illegal modifications, he must replace the modified parts with factory parts and prove that the corrections have been made to a third-party referee.<sup>64</sup>

53. See Rachel Uranga, *New Law Makes Attending Street Races a Crime Punishable by \$500 Fine*, COPLEYS NEWS SERVICE, Mar. 13, 2002 (describing the ordinance as just "one more tool to discourage" attendance at illegal street races).

54. See Stokley, *supra* note 20 (describing the city of Ontario as "a mecca for street racers from all over Southern California").

55. *Id.*

56. *Id.*

57. See generally *id.* (inferring that speed bumps create a physical barrier that would damage any car that tries to race on the selected streets).

58. See generally *id.* (explaining that the California Highway Patrol would still provide "maximum enforcement during the Fourth of July weekend" to prevent street racing even with the presence of speed bumps).

59. See Joseph Giordano, *No-Stopping Zones Help LA. Cops Curb Street Drag Racing, Popular Roads for Road Marked to Enable Mass Impounding of Vehicles*, S.F. CHRON., Jan. 21, 2001, at A19 (explaining that the ordinance allowed police to impound seventy-two vehicles in a previous bust and almost one hundred in the latest attempt).

60. See *id.* (commenting that "carloads of young people blasted loud music and shouted for officers to hurry up and give them their tickets, unaware that their vehicles would end up being towed.").

61. *Id.*

62. *Id.*; see Caitlin Liu, *Weekend Task Force Takes Aim at the Dangerous Activity that Involves Teens and Young Adults*, L.A. TIMES, Jan. 15, 2001, at B2 (detailing an incident in the Van Nuys area where a task force for regional auto theft inspected cars at a bust that resulted in almost one hundred citations).

63. See Giordano, *supra* note 59 (commenting that it is common for racers to remove catalytic converters and that some spend thousands of dollars to modify their vehicles).

64. *Id.*

### C. Alternative Racing Programs

Besides creating more laws and stiffer penalties, many areas created programs where the public can conduct drag races at the local speedway.<sup>65</sup> In Irwindale, "Operation Speeding Ticket" allowed police to hand to any young driver that they pulled over a ticket to participate in racing at Irwindale Speedway.<sup>66</sup> The speedway also created an eighth mile track especially for those racing imported vehicles.<sup>67</sup>

Racing at a local speedway is not only legal; it is also much safer than racing on the street.<sup>68</sup> Measures such as insurance, inspection of the cars before racing, paramedics on scene, and track supervision exist to keep problems to a minimum.<sup>69</sup> In meeting the National Hot Rod Association's (NHRA) standards, safety features must be in place to race at the track.<sup>70</sup> Safety features such as helmets are required if the vehicle is capable of achieving certain speeds.<sup>71</sup> For even faster cars, a roll bar or cage is required to provide more protection for the driver.<sup>72</sup> In addition to safety requirements, tracks usually require full exhaust systems on vehicles to race, thereby deterring any illegal modification.<sup>73</sup>

Programs also exist in order to build a better relationship between police officers and the youthful racers. In San Diego, off-duty officers have created the "Code 4 Racing Program."<sup>74</sup> The program allows youths to challenge off-duty police officers to a race, and if the youths beat the "Code 4" racecar, they are given a t-shirt in recognition.<sup>75</sup>

65. See Dobner, *supra* note 15 (describing the efforts of Professor Stephen Bender of San Diego State University to create a program for legal racing at Qualcomm Stadium).

66. See Dennis Romero, *Irwindale Police Tell Speeders to Take it to the Track*, CITY NEWS SERVICE (Irwindale, CaL), May 9,2002 (explaining that the usual entry fee to race at the speedway is twenty dollars).

67. See *id.* (comparing the shortened track to the normal quarter-mile-length drag strip).

68. See *id.* (describing that speedway racing is supervised by the National Hot Rod Association (NHRA), which has tried to legitimize drag racing since its inception fifty-one years ago).

69. *Id.*

70. SacramentoRaceway.com, *Sacramento Raceway Wednesday Night Street Legal Fun Drags*, at <http://www.sacramentoraceway.com/sacwednite.htm> (last visited Aug. 1, 2002) (copy on file with the *McGeorge Law Review*)

71. See NHRA.com, *Frequently Asked NHRA Tech Questions*, at [http://www.nhra.com/contacts/tcch\\_faq.html](http://www.nhra.com/contacts/tcch_faq.html) (last visited Aug. 1,2002) (copy on file with the *McGeorge Law Review*) (explaining that any driver of a car or truck that can complete a quarter mile in less than fourteen seconds and all motorcycle riders are required to wear a helmet)-

72. See *id.* (stating that any car running less than a twelve second quarter mile is required by NHRA rules to have a roll bar).

73. See SacramentoRaceway.com, *supra* note 70 (requiring all vehicles to be fully muffled street machines and requiring that the mufflers must reduce vehicle noise to ninety decibels at fifty feet from the vehicle).

74. See Racelegal.com, *SDSU--Racelegal.com 's "Code 4--(Situation Under Control)--Racing Program*," at <http://www.racelegal.com/code4.shtml> (last visited Aug. 2,2002) (copy on file with the *McGeorge Law Review*) (stating that the program was designed to re-direct youths from illegal street racing to legal track racing).

75. *Id.*

III. CHAPTER 411

Chapter 411 creates new regulations in an attempt to deter street racing,<sup>76</sup> thereby eliminating the dangers resulting from and accompanying such activity.<sup>77</sup> Titled the U'Kendra K. Johnson Memorial Act,<sup>78</sup> Chapter 411 allows a peace officer to impound a vehicle when the driver is arrested for engaging in a speed contest, for reckless driving, or for demonstrating exhibition of speed.<sup>79</sup> The vehicles would be impounded for thirty days, and it would cost the perpetrator fifteen hundred dollars to retrieve the vehicle.<sup>80</sup> Chapter 411 also allows for the release of impounded vehicles before thirty days have passed if certain circumstances are met.<sup>81</sup> Such circumstances include: (1) the vehicle is stolen,<sup>82</sup> (2) the driver of the vehicle is not the owner,<sup>83</sup> (3) the vehicle is owned by a rental agency,<sup>84</sup> or (4) the criminal charges are dismissed.<sup>85</sup>

The purpose of Chapter 411 is to prevent "sideshow" activity, which is described as dangerous driving behavior for the entertainment of participants and spectators.<sup>86</sup> Such dangerous activity includes "spinning donuts," where vehicles are spun in circles often with people hanging out the windows; "peeling out;" and reckless driving when fleeing from police.<sup>87</sup> Chapter 411 hopes to save individuals like U'Kendra Johnson, whom the act was named after and was killed by an Oakland resident fleeing from police after "spinning donuts."<sup>88</sup> With the

76. See Jennifer M. Fitzenberger, *Pulling Brakes on Street Racing; Fines, Laws Against Watching Sought*, FRESNO BEE, June 8, 2002, at B1 (describing three legislative proposals, including Chapter 411, and Assemblymember Sarah Reyes's view that the "laws will be enough to stop [the] senseless deaths" caused by racing).

77. See Dobner, *supra* note 15 (explaining that the racing scene attracts other illegal activity including "drugs, theft, and gambling.").

78. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 1489, at I (June 24, 2002).

79. See CAL. VEH. CODE § 23109.2 (enacted by Chapter 411) (requiring that a vehicle, if seized, may not be impounded for more than thirty days).

80. See Jim Herron Zamora, *Street Racers May Face Car Seizures, Fines*, S.F. CHRON., Feb. 28, 2002, at A17 (commenting that the American Civil Liberties Union has voiced concern that the fifteen-hundred-dollar fee to retrieve an impounded vehicle might constitute a permanent seizure of the vehicle for low-income individuals).

81. CAL. VEH. CODE § 23109.2(c) (enacted by Chapter 411).

82. *Id.* § 23109.2(c)(O)(A) (enacted by Chapter 411).

83. *Id.* § 23109.2(c)(IXBMC) (enacted by Chapter 411).

84. *Id.* § 23109.2(c)(1)(D) (enacted by Chapter 411).

85. *Id.* § 23109.2(c)(1)(E) (enacted by Chapter 411).

86. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 1489, at 2 (June 24, 2002).

87. See *id.* at 3 (stating that "sideshow nuisances include noise, litter, property defacement, and even riots.").

88. Wat 1-3.



possibility of a major catastrophe occurring during a street race,<sup>89</sup> officials hope that Chapter 411 will deter this dangerous activity.<sup>90</sup>

#### IV. ANALYSIS OF CHAPTER 411

Well aware of the dangers of street racing and the presence of large crowds of spectators,<sup>91</sup> legislators and law enforcement officials created different programs to deter the activity.<sup>92</sup> Some areas passed new ordinances, which create stiffer fines to discourage racing.<sup>93</sup> In other areas, programs at local drag-racing facilities allow the public to race on given nights, thereby providing a safe alternative to illegal street racing.<sup>94</sup> But in the fight against illegal racing, legal and economic problems might interfere with proper enforcement of Chapter 411.<sup>95</sup>

Chapter 411 could face legal problems on the grounds that impoundment is unfair for individuals charged but later found not guilty.<sup>96</sup> The American Civil Liberties Union voices fear that the fifteen-hundred-dollar fine and thirty-day wait is the equivalent of a seizure to many low-income people.<sup>97</sup> Since Chapter 411 only adds offenses to the current impoundment policy, the lack of prior legal challenges against impoundment due to racing indicates of lack of interest in challenging the law.<sup>98</sup> Even though drag-racing laws have not been challenged in California, the validity of the statutes against racing have almost always been upheld in other states.<sup>99</sup>

89. See Lau, *supra* note 9 (quoting Sergeant Greg Sloan of the San Diego Police Drag-Net Unit: "It's just a matter of time before a major catastrophe kills hundreds of people standing a foot or two from cars driving at highway speed").

90. See ASSEMBLY COMMITTEE ON TRANSPORTATION. COMMITTEE ANALYSIS OF SB 1489, at 2 (June 24,2002) (describing the purpose of enacting Chapter 411).

91. See *supra* Part I (discussing the deadly nature of illegal street racing).

92. See *supra* Part II.B-C (explaining that the battle against speed contests has been fought both by new legislation and by giving racers legal alternatives to their current conduct).

93. See *supra* Part II.B (discussing ordinances which allow for fines imposed upon spectators present at speed contests and ordinances which allow for law enforcement to tow any vehicles parked on certain streets, resulting in fines and fees imposed upon the owner to release the vehicle from impoundment).

94. See *supra* Part II.C (explaining that most drag racing facilities open to the public on selected nights and how some of these facilities offer shorter tracks to cater to street racers).

95. See *infra* notes 97-103 and accompanying text (describing the possibility that impounding vehicles might be considered an illegal seizure and how law enforcement already spends large sums of money to try to deter street racing).

96. See Zamora, *supra* note 80 (explaining the concerns of the American Civil Liberties Union which has yet to review the legislation or state a position on Chapter 411).

97. *Id.*

98. See generally Zamora, *supra* note 80 (explaining that "the [American Civil Liberties Union], has unsuccessfully sued [the City of] Oakland over its policy of confiscating cars of alleged drug buyers and the customers of prostitutes.").

99. See M. Schneiderman, Annotation, *Validity, Construction, and Application of Criminal Statutes Specifically Directed Against Racing of Automobiles on Public Streets or Highways, (Drag Racing)*, 24 A.L.R. 3d 1286, § 4 (1969 and Supp. 2002) (describing how various challenges to racing laws in other states were

One of the major problems with the illegal street racing scene is the large cost to law enforcement in attempting to prevent the dangerous activity.<sup>100</sup> Even though Chapter 411 gives law enforcement another tool to prevent racing, the cost of enforcement still remains. Despite the costs already associated with deterring street racing, it is unlikely that the current law will increase these costs.<sup>101</sup> Chapter 411 might also generate revenue for law enforcement agencies from the fines associated with impounding the vehicle.<sup>102</sup> Since the person convicted of racing or reckless driving pays impounding and towing fees, the law enforcement agencies would not be held responsible for the costs of impounding or towing vehicles under Chapter 411.<sup>103</sup>

While Chapter 411 may cost little to implement, it is uncertain whether the law will deter street racing.<sup>104</sup> Since many people continue to race illegally under the threat of being fined, going to jail, and getting their vehicle impounded, it is unlikely that these individuals would stop doing so as a result of Chapter 411.<sup>105</sup> Many street racers continue to race because of the fact that it is illegal and because the excitement of doing something that they are not supposed to do makes it even more exciting.<sup>106</sup>

#### V. CONCLUSION

Illegal drag racing has been around for fifty years,<sup>107</sup> and interest in the activity is not on the wane.<sup>108</sup> Due to the success of *The Fast and the Furious*,<sup>109</sup> a sequel is in the works for summer 2003.<sup>110</sup> If it is met with the same enthusiasm as the original, the movie might prompt a new group of drivers to test their mettle

unsuccessful, usually as a result of vague statutes).

100. See Zamora, *supra* note 80 (stating that the Oakland Police Department has spent up to fifty thousand dollars a night to control racing).

101. See *generally* ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 1489, at 2-3 (June 24, 2002) (stating that the bill was created to deter the illegal sideshow activity).

102. See *generally* CAL. VEH. CODE § 22852(e)(1) (West 2000) (stating that the agency who directs impoundment will be liable for all related expenses if grounds for towing are not established).

103. See *supra* notes 36-40 and accompanying text (describing how a hearing is required to determine if the owner is responsible for paying for impoundment fees).

104. See *supra* Part II (describing existing laws and programs in place to stop illegal street racing have not abated the activity).

105. See *supra* notes 11-20 and accompanying text (explaining how racers continue to violate laws that already impose fines, jail time, and impoundment).

106. *Supra* note 12 and accompanying text.

107. McGreevy, *supra* note 49.

108. See Dretzka, *supra* note 13 (describing how *The Fast and the Furious* targeted young males interested in import racing who contribute to the over six billion dollars a year in sales of parts and accessories for such cars).

109. See *id.* (stating that, as of July 23, 2001, *The Fast and the Furious* was on its way to earning over \$100 million dollars).

110. Godamongdirectors.com, *The Fast and The Furious 2: Commentary*, at <http://www.godamongdirectors.com/singleton/ff2.html> (last updated Aug. 10, 2002) (copy on file with the *McGeorge Law Review*).

on the streets next summer.<sup>111</sup> For dedicated street racers, prior law did not deter them from participating in the dangerous activity, and it is unlikely that Chapter 411 will deter them.<sup>112</sup> With Chapter 411, along with increased participation of law enforcement and local officials, the Legislature hopes that injuries and deaths associated with street racing and the activity precipitating such events will be kept to a minimum.<sup>113</sup> Unlike other dangerous criminal activities, street racers have a legal alternative, and with the advent of more fines, many racers may choose to ignore their bravado and machismo and head to legal racing facilities.<sup>114</sup>

Auto racing and fast cars will continue to be a part American culture,<sup>115</sup> but there is no reason that street racing, with its deadly consequences, should continue.

111. See *supra* notes 17-20 and accompanying text (describing the increase in illegal street racing following the release of *The Fast and the Furious*).

112. See *supra* note 12 and accompanying text (explaining how some race illegally to experience the thrill of doing something illegal).

113. See generally ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 1489, at 2-3 (June 24, 2002) (stating that Chapter 411 was enacted to prevent the dangers associated with the "sideshow" associated with illegal street racing events).

114. See *supra* Part ILC (describing how street racers can race at legal and safe events held at local racetracks).

115. See *supra* notes 7-8 and accompanying text (describing the popularity of auto racing and the number of venues created to hold hundreds of thousands of racing fans).