

RESOLUTION 10-01-2017

DIGEST

Incarceration: Dismissal of Pending Nonfelony Drug Charges When Defendant Incarcerated
Amends Vehicle Code section 41500 to add non-felony violations of the Health and Safety Code to pending criminal prosecutions subject to dismissal due to the incarceration of the defendant.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 41500 to add non-felony violations of the Health and Safety Code to pending criminal prosecutions subject to dismissal due to the incarceration of the defendant. This resolution should be disapproved because the proposed solution is in the wrong code, the Health and Safety Code is not limited to solely drug offenses, automatic dismissal may not be appropriate in all cases and it removes prosecutorial discretion.

Under current law, nonfelony traffic offenses are automatically dismissed when a defendant is incarcerated in prison, or is sentenced to jail for felony offenses subject to prison realignment. The concept is that the conviction for any such vehicle offenses would run concurrent with and be subsumed by the felony level sentence and judicial economy is served by automatic dismissal.

This resolution would expand the concept to provide for the automatic dismissal of Health and Safety Code nonfelony offenses when a person is sent to prison or jail based on a felony conviction on the theory that code primarily involves drug related offenses. There are multiple reasons why the resolution should be disapproved.

First, the Vehicle Code is an improper statutory vehicle to accomplish the proponent's goal. The change, if any, should be made in the Health and Safety Code or within the Penal Code in relation to felony sentencing.

Second, the Health and Safety Code governs more than just drug related offenses. There are a number of misdemeanor licensing related offenses, e.g. licensed child care and day care centers, tissue banks, and other infractions having no relation to drug offenses. The wholesale automatic dismissal of all nonfelony Health and Safety Code violations is unwarranted.

Third, given the potential seriousness of even misdemeanor related Health and Safety Code violations, automatic dismissal may not be appropriate in all cases. Dismissal should be a decision remaining within the discretion of the prosecutor and/or appropriate licensing authorities.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 41500 to read as follows:

1 § 41500

2 (a) ~~No~~ A person shall not be subject to prosecution for any nonfelony offense arising out
3 of the operation of a motor vehicle or violation of this code as a pedestrian, or nonfelony
4 violation of the Health and Safety code, which that is pending against him at the time of his
5 commitment to the custody of the Secretary of the Department of Corrections and Rehabilitation,
6 the Division of Juvenile Justice in the Department of Corrections and Rehabilitation, or to a
7 county jail pursuant to subdivision (h) of Section 1170 of the Penal Code. Director of
8 Corrections or the Department of the Youth Authority.

9 (b) Notwithstanding any other provisions of law to the contrary, no driver's license shall
10 be suspended or revoked, nor shall the issuance or renewal of a license be refused as a result of a
11 pending nonfelony offense occurring prior to the time a person was committed to the custody of
12 the Director of Corrections or the Department of the Youth Authority or as a result of a notice
13 received by the department pursuant to subdivision (a) of Section 40509 when the offense which
14 gave rise to the notice occurred prior to the time a person was committed to the custody of the
15 Director of Corrections or the Department of the Youth Authority.

16 (c) The department shall remove from its records any notice received by it pursuant to
17 subdivision (a) of Section 40509 upon receipt of satisfactory evidence that a person was
18 committed to the custody of the Director of Corrections or the Department of the Youth
19 Authority after the offense which gave rise to the notice occurred.

20 (d) The provisions of this section shall not apply to any non-felony offense wherein the
21 department is required by this code to immediately revoke or suspend the privilege of any person
22 to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court
23 showing that the person has been convicted of that non-felony offense.

24 (e) The provisions of subdivisions (a), (b), and (c) do not apply to any offense committed
25 by a person while he is temporarily released from custody pursuant to law or while he is on
26 parole.

27 (f) The provisions of subdivisions (a), (b), and (c) do not apply if the pending offense is a
28 violation of Section 23103, 23152, or 23153.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Section 41500 was designed to relieve court congestion (and decrease public expense) by mandating dismissal of non-violent, victimless misdemeanor offenses, where a defendant has already received substantial custody time as a result of a felony conviction. For example, if a defendant is sentenced to five years in prison, §41500 requires that the court dismiss any pending misdemeanor tickets faced by that defendant (such as driving on a suspended license).

The problem is that given the fiscal realities of modern California, the statute as written is inadequate. Specifically, while the statute currently mandates dismissal of non-violent, minor Vehicle Code offenses following a substantial custody sentence, the statute does not mandate dismissal of other non-violent, non-serious misdemeanors listed outside the Vehicle Code. The best example of these type of offenses are the drug misdemeanors listed in the Health and Safety Code (e.g. possession of a controlled substance).

NOTE - because the arguably more serious Health and Safety violations (such as selling drugs) are generally felonies, these more serious offenses would NOT be subject to dismissal under a modified § 41500.

The Solution: The proposed resolution would resolve the problem by broadening the application of § 41500 to include non-violent, victimless misdemeanor offenses listed in the Health and Safety Code (which primarily deals with drug offenses). Thus, if a defendant has just received a substantial prison sentence, this modification will mean that the public need no longer spend scarce resources prosecuting the defendant for a minor offense.

To illustrate by example:

Under the current version of § 41500, a defendant is charged with robbery in one case and driving on a suspended license (Vehicle Code §14601.1) in another case. The man is convicted and sentenced to state prison on the robbery. Because the man is now serving substantial custody on a more serious case (and because further prosecution is a waste of money and time) § 41500 mandates dismissal of the Vehicle Code charge.

However, under current law, if that same defendant were charged with robbery in one case and in another case with possession of a drug-pipe (Health and Safety Code §11364), the pipe case would NOT be dismissed under § 41500 because it is not a “Vehicle Code” charge.

The proposed modification would recognize that there is no substantial difference between low-grade, victimless Vehicle Code misdemeanors and low-grade, victimless Health and Safety Code misdemeanors. Thus, under either of the examples listed above, following a conviction and sentence to state prison on the defendant’s robbery charge, the non-violent misdemeanor would be dismissed under the modified version of § 41500.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 10-02-2017

DIGEST

Criminal Law: Pretrial Diversion for Military Personnel

Amends Vehicle Code section 23640 to clarify that the statute’s prohibition against the diversion and dismissal of driving under the influence (DUI) charges does not apply to military diversion pursuant to Penal Code 1001.80.

**RESOLUTIONS COMMITTEE RECOMMENDATION
ACTION UNNECESSARY**

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 23640 to clarify that the statute’s prohibition against the diversion and dismissal of driving under the influence (DUI) charges does not apply to military diversion pursuant to Penal Code 1001.80. This resolution is action unnecessary because Senate Bill No. 725 (Jackson) was signed into law as urgency legislation making it effective August 7, 2017. (Stats. 2017, ch. 179.)

Currently, there is a split of authority regarding whether military diversion applies to DUIs. In *People v. VanVleck* (2016) 2 Cal.App.5th 355, the Fourth District held that Vehicle Code section 23640 bars diversion as a matter of statutory construction. The Second District took the opposite view in *Hopkins v. Superior Court* (2016) 2 Cal.App.5th 1275. This resolution clarifies the Legislature’s intent in a manner consistent with the fact that military diversion is already permitted for such crimes as vehicular manslaughter, child molestation, distribution of child pornography, domestic violence, sexual battery, and willful animal cruelty.

Note: The Resolutions Committee originally voted to approve in principle at its three-day meeting with a notation that Senate Bill No. 725 was pending before the Governor. The Governor’s action has rendered this resolution action unnecessary. This resolution is related to Resolution 06-01-2017.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 23640 to read as follows:

- 1 § 23640.
- 2 (a) In any case in which a person is charged with a violation of Section 23152 or 23153,
- 3 prior to acquittal or conviction, except in situations to which Penal Code Section 1001.80
- 4 applies, the court shall neither suspend nor stay the proceedings for the purpose of allowing the
- 5 accused person to attend or participate, nor shall the court consider dismissal of or entertain a
- 6 motion to dismiss the proceedings because the accused person attends or participates during that

7 suspension, in any one or more education, training, or treatment programs, including, but not
8 limited to, a driver improvement program, a treatment program for persons who are habitual
9 users of alcohol or other alcoholism program, a program designed to offer alcohol services to
10 problem drinkers, an alcohol or drug education program, or a treatment program for persons who
11 are habitual users of drugs or other drug-related program.

12 (b) This section shall not apply to any attendance or participation in any education,
13 training, or treatment programs after conviction and sentencing, including attendance or
14 participation in any of those programs as a condition of probation granted after conviction when
15 permitted.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Penal Code section 1001.80, subdivision (a), effective January 1, 2015, provides that where the defendant in a misdemeanor case is a current or former member of the military and is suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service, pretrial diversion in specific situations on specific terms. The section does not articulate any exceptions. However, Vehicle Code section 23640 specifically prohibits any diversion for driving under the influence in violation of Vehicle Code sections 23152 and 23153. This has resulted in a split of authority between the Fourth District Court of Appeal in *People v. Van Vleck* [citation D69893] where the court held that military diversion is not available, and the Second District Court of Appeal in *Hopkins v. Superior Court* [citation B270503] in which the court, in issuing a writ of mandate, specifically held that diversion is available under section 1001.80, stating “We urge the Legislature act by amending section 1001.80 to express its intent with regard to military diversion in DUI cases.”

The Solution: Would add language to Vehicle Code section 23640 to clarify that the diversion provisions of Penal Code section 1001.80 are applicable to arrests for violation of Vehicle Code sections 23152 and 23153.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None Known.

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RESOLUTION 10-03-2017

DIGEST

Vandalism: Driver’s License Suspension Permissive Not Mandatory

Amends Vehicle Code section 13202.6 to provide that the suspension of a driver’s license for a vandalism conviction be permissive and not mandatory.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 13202.6 to provide that suspension of a driver’s license for a vandalism conviction be permissive and not mandatory. This resolution should be approved in principle because it gives courts the flexibility to impose a license suspension on a case-by-case basis.

The rationale behind the original law was to harshly punish gang members who tagged their territory with graffiti. However, the vandalism statute is broad, applying to any malicious damage or destruction of personal or real property of another person regardless of whether it is graffiti or gang related. Graffiti is only one type of vandalism and it is not exclusive to gang members. Impulsive, thoughtless, or even vengeful acts in the heat of emotion by an individual, can constitute vandalism and come under the purview of this provision for a two-year minimum driver’s license suspension.

Driver’s license suspensions can have a deleterious effect on a person, particularly where commutes are long and public transportation is wanting. Judges should have the discretion to craft a punishment to fit the crime. The nature and extent of an act of vandalism, the actor, circumstances and motive, are specific to the crime. Sometimes it warrants a driver’s license suspension in addition to the other punishment, but sometimes it does not. The resolution gives that discretion to the judge.

This resolution is related to Resolution 10-07-2017, which deletes Vehicle Code section 13202.6.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 13202.6 to read as follows:

- 1 § 13202.6
- 2 (a) (1) For every conviction of a person for a violation of Section 594, 594.3, or 594.4 of
- 3 the Penal Code, committed while the person was 13 years of age or older, the court may ~~shall~~
- 4 suspend the person’s driving privilege for not more than two years, except when the court finds
- 5 that a personal or family hardship exists that requires the person to have a driver’s license for his

6 or her own, or a member of his or her family's, employment, school, or medically related
7 purposes. If the person convicted does not yet have the privilege to drive, the court may ~~shall~~
8 order the department to delay issuing the privilege to drive for not less than one year nor more
9 than three years subsequent to the time the person becomes legally eligible to drive. However, if
10 there is no further conviction for violating Section 594, 594.3, or 594.4 of the Penal Code in a
11 12-month period after the conviction, the court, upon petition of the person affected, may modify
12 the order imposing the delay of the privilege. For each successive offense, the court may ~~shall~~
13 suspend the person's driving privilege for those possessing a license or delay the eligibility for
14 those not in possession of a license at the time of their conviction for one additional year.

15 (2) A person whose driving privilege is suspended or delayed for an act involving
16 vandalism in violation of Section 594, 594.3, or 594.4 of the Penal Code, may elect to reduce the
17 period of suspension or delay imposed by the court by performing community service under the
18 supervision of the probation department. The period of suspension or delay ordered under
19 paragraph (1) shall be reduced at the rate of one day for each hour of community service
20 performed. If the jurisdiction has adopted a graffiti abatement program as defined in subdivision
21 (f) of Section 594 of the Penal Code, the period of suspension or delay ordered under paragraph
22 (1) shall be reduced at the rate of one day for each day of community service performed in the
23 graffiti abatement program when the defendant and his or her parents or legal guardians are
24 responsible for keeping a specified property in the community free of graffiti for a specified
25 period of time. The suspension shall be reduced only when the specified period of participation
26 has been completed. Participation of a parent or legal guardian is not required under this
27 paragraph if the court deems this participation to be detrimental to the defendant, or if the parent
28 or legal guardian is a single parent who must care for young children. For purposes of this
29 paragraph, "community service" means cleaning up graffiti from any public property, including
30 public transit vehicles.

31 (3) As used in this section, the term "conviction" includes the findings in juvenile
32 proceedings specified in Section 13105.

33 (b) (1) Whenever the court suspends driving privileges pursuant to subdivision (a), the
34 court in which the conviction is had shall require all drivers' licenses held by the person to be
35 surrendered to the court. The court shall, within 10 days following the conviction, transmit a
36 certified abstract of the conviction, together with any drivers' licenses surrendered, to the
37 department.

38 (2) Violations of restrictions imposed pursuant to this section are subject to Section
39 14603.

40 (c) The suspension, restriction, or delay of driving privileges pursuant to this section shall
41 be in addition to any penalty imposed upon conviction of a violation of Section 594, 594.3, or
42 594.4 of the Penal Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: The driver's license suspension associated with vandalism was a response to graffiti in the early 1990's. At the time, there was a popular and unfounded sentiment associating

graffiti with gang activity. Under current law, a conviction for vandalism *of any kind* comes with a mandatory driver's license suspension. Vandalism is one of the *only* non-driving related criminal offenses that comes with a driver's license suspension. Failure to appear, failure to pay traffic fines, and contempt of court may carry driver's license suspensions. Those issues are being addressed by unrelated legislation. Burglars, rapists, and murderers do not face this type of punishment.

The Solution: This resolution seeks to amend Vehicle Code Section 13202.6 to make the driver's license suspension associated with vandalism permissive rather than mandatory. If, in a specific case, a judge finds the ability to legally drive is somehow related to the vandalism conduct, the court may still impose the driver's license suspension.

IMPACT STATEMENT

This resolution does affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 10-04-2017

DIGEST

Vehicles: Exclusion of Evidence from Search and Specified Exceptions

Adds Evidence Code section 1110 to exclude evidence obtained from a vehicle search unless consent, a warrant, or imminent threat of harm exists.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Evidence Code section 1110 to exclude evidence obtained from a vehicle search unless consent, a warrant, or imminent threat of harm exists. This resolution should be approved in principle because, absent an arrest, it makes sense to exclude information obtained by a warrantless search of a person stopped for a traffic violation.

“In California, issues relating to the suppression of evidence derived from governmental searches and seizures are reviewed under federal constitutional standards.” (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1212, quoting *People v. Troyer* (2011) 51 Cal.4th 599, 605.) The *Macabeo* Court applied existing federal standards to conclude that the search of a cell phone without a warrant was not authorized following the traffic stop of a bicyclist who consented to the removal of the contents of his pockets, but was never asked for consent to search his cell phone. (*People v. Macabeo, supra*, 1 Cal.5th at pp. 1213-1219.) The Supreme Court held the lower courts erred in failing to suppress child pornographic images on defendant’s cell phone found as a result of the search. (*Id.*, at pp. 1219, 1226.)

Macabeo shows that application of federal constitutional standards for searches and seizures of property incident to an arrest, and the suppression of such evidence obtained as a result of a violation of those standards, works. This approach provides certainty of law with the flexibility necessitated by the particular facts of each case.

The resolution proposes that *Macabeo* be codified out of a concern that subsequent judicial decisions may limit its scope or overrule it. While this concern overlooks the fact that *Macabeo* is a California Supreme Court decision that lower courts must follow (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.), a similar concern exists for all California search and seizure cases that may be affected and informed by development of federal constitutional law, and for that reason should be approved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Evidence Code section 1110 to read as follows:

1 § 1110

2 Pursuant to California Constitution, Article 1, Section 13, in any criminal action evidence
3 obtained as a result of a search of a person or a vehicle incident to a stop for an infraction shall
4 be inadmissible, except in the following circumstances:

5 (1) The person stopped or the owner of the vehicle, or a person in actual possession of the
6 vehicle with the owner's permission, consents in writing or to the search, or orally to the search,
7 provided that an oral consent is preserved on a recording instrument;

8 (2) The search is authorized by a warrant issued upon probable cause; or

9 (3) The search is necessary to protect persons from an imminent threat of harm.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: The law regarding searches following stopping a person or vehicle (mostly the latter) for a traffic infraction is confusing, although generally favors law enforcement. In a December 2016 decision, the California Supreme Court provided some clarification of the issue by limiting searches following stopping a person for a traffic infraction. (*People v. Macabeo* (2016) 1 Cal.5th 1206). The Court held that, unless the person consents to a search, or some other exception applies (such as the person being on probation), the police may not search a person after stopping that person for a traffic infraction, unless the police first obtain a search warrant for probable cause. The Court pointed out that police may not circumvent the limitation imposed by arresting the detained person, because the Vehicle Code permits the arrest of a person charged with an infraction only under limited circumstances. *Macabeo* should be protected from subsequent judicial decisions limiting its scope or overruling it.

The Solution: In addition to codifying a good court decision, the resolution would add another clarification to the law. Although the *Macabeo* case involved citing and searching a person on a bicycle for running a stop sign, the logic of the case applies equally to stopping a motorist for the same offense and searching the motorist's vehicle. This resolution would make that clear.

The resolution would greatly reduce the number of vehicle searches incident to traffic stops, and thereby relieve society and the court system of the burden of prosecuting minor drug offenses (falsely with some frequency due to the unreliability of field drug tests). In addition, there is considerable evidence that police are more likely to search vehicles of minorities when they are stopped for minor traffic violations; yet police discover drugs in vehicles about the same percentage of the time regardless of the ethnicity of the driver. (S. LaFreniere and A.W. Lehren. "The Disproportionate Risks of Driving While Black." *New York Times*, 10/24/2015. p.1a [<https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving->

black.html?_r=0.]). The resolution would alleviate that problem, as well.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 10-05-2017

DIGEST

Vehicle Code: Repealing Suspension of Driver's Licenses for Habitual Truancy

Deletes Vehicle Code section 13202.7 to prohibit the suspension of a driver's license for habitual school truancy.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution deletes Vehicle Code section 13202.7 to prohibit the suspension of a driver's license for habitual school truancy. This resolution should be disapproved because there is no evidence that denying a driver's license to a habitually-truant teenager is ineffective, and there is some evidence that such laws promote school attendance and graduation.

No Pass No Drive ("NPND") laws are growing in popularity in the United States, and there is much research indicating that denial of a driver's license for habitual truancy is effective in keeping some teenagers in school. (See, e.g., James Crotty: "No Pass No Drive: Effective Answer to Dropout Epidemic," Forbes, July 31, 2012.) Many of the NPND laws could be improved: for example, where it is possible to leave school at age 15 the threat of depriving a habitually-truant teenager younger than 18 of his or her driver's license could actually incentivize dropping out of school early. But it does not follow that they are not often effective in achieving their goals. Research suggests that they may have contributed to improved national high school graduation rates.

The proponent has identified some research indicating that California's equivalent of a NPND law might be less ineffective than hoped, such as the fact that many teenagers are now foregoing obtaining a driver's license until later. But there is no evidence that denying a license is harmful, or never serves as a disincentive to truancy. Notably, California requires school attendance until the age of 18 (see, Educ. Code, § 48200), so the loss of a driver's license to a teenager under the age of 18 can never provide an incentive to dropping out. The research suggests that the threat of denial of a license will incentivize some teenagers to stay in school, which warrants preserving the existing statute in its current form. Notably, the statute as written is discretionary, and never mandates suspension of a driver's license.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to repeal Vehicle Code section 13202.7 to read as follows:

- 1 §13202.7
2 (a) ~~Any minor under the age of 18 years, but 13 years of age or older, who is an habitual~~

3 ~~truant within the meaning of Section 48262 of the Education Code, or who is adjudged by the~~
4 ~~juvenile court to be a ward of the court under subdivision (b) of Section 601 of the Welfare and~~
5 ~~Institutions Code, may have his or her driving privilege suspended for one year by the court. If~~
6 ~~the minor does not yet have the privilege to drive, the court may order the department to delay~~
7 ~~issuing the privilege to drive for one year subsequent to the time the person becomes legally~~
8 ~~eligible to drive. However, if there is no further truancy in the 12 month period, the court, upon~~
9 ~~petition of the person affected, may modify the order imposing the delay of the driving privilege.~~
10 ~~For each successive time the minor is found to be an habitual truant, the court may suspend the~~
11 ~~minor's driving privilege for a minor possessing a driver's license, or delay the eligibility for the~~
12 ~~driving privilege for those not in possession of a driver's license, for one additional year.~~
13 ~~(b) Whenever the juvenile court suspends a minor's driving privilege pursuant to~~
14 ~~subdivision (a), the court may require all driver's licenses held by the minor to be surrendered to~~
15 ~~the court. The court shall, within 10 days following the surrender of the license, transmit a~~
16 ~~certified abstract of the findings, together with any driver's licenses surrendered, to the~~
17 ~~department.~~
18 ~~(c) When the juvenile court is considering suspending or delaying a minor's driving~~
19 ~~privilege pursuant to subdivision (a), the court shall consider whether a personal or family~~
20 ~~hardship exists that requires the minor to have a driver's license for his or her own, or a member~~
21 ~~of his or her family's, employment or for medically related purposes.~~
22 ~~(d) The suspension, restriction, or delay of a minor's driving privilege pursuant to this section~~
23 ~~shall be in addition to any other penalty imposed by law on the minor.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: When a minor is a “habitual truant,” Vehicle Code § 13202.7 allows the court to suspend or to delay the minor’s driver’s license. However, in its “Best Practices Guide to Reducing Suspended Drivers” report from February 2013, the American Association of Motor Vehicle Administrators (AAMVA) recommended that legislatures should repeal state laws requiring the suspension of driving privileges for non-highway safety related violations. The report claimed:

- The common belief that a driver license suspension provides effective, sustainable motivation to encourage individuals to comply with court ordered or legislated mandates to avoid suspension is not supported by empirical evidence.
- When licenses are suspended for social non-conformance reasons, the suspension is “watered down” in value; it becomes less serious in the minds of law enforcement, the courts and the public.

In addition, according to an AAA Foundation for Traffic Safety report from 2013, available at: <http://newsroom.aaa.com/wp-content/uploads/2013/07/Teens-Delay-Licensing-FTS-Report.pdf>, many teenagers are not obtaining their driver’s licenses until they are older. As a result, most

teenagers who are between the ages of 16 and 18 are not motivated to obtain their driver's licenses anyway.

The Solution: According to the California Department of Education:

When a student is a habitual truant, the student may be referred to a school attendance review board (SARB) or to the county probation department pursuant to Education Code § 48263. The student may also be referred to a probation officer or district attorney mediation program pursuant to Education Code § 48263.5. The intent of these laws is to provide intensive guidance to meet the special needs of students with school attendance problems or school behavior problems pursuant to Education Code § 48320. These interventions are designed to divert Students with serious attendance and behavioral problems from the juvenile justice system and to reduce the number of students who drop out of school.

See CA Department of Education "Truancy" webpage, available at <http://www.cde.ca.gov/ls/ai/tr/>.

Because Vehicle Code § 13202.7, to suspend driver's licenses, conflicts with the California Department of Education's guidelines for mediation and rehabilitation, then § 13202.7 should be repealed.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

Education Code § 48263: Habitually truant students may be referred to a school attendance review board or to the probation department.

Education Code § 48263.5: A school attendance review board may refer a truancy matter to the district attorney or the probation officer.

Education Code § 48320: School attendance review boards can "propose and promote the use of alternatives to the juvenile court system."

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RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 10-06-2017

DIGEST

Prostitution Related Convictions: Repeal of Driver’s License Suspension

Deletes Vehicle Code section 13201.5 and amends Penal Code section 647 to prohibit suspension of driver’s licenses based on a conviction of prostitution related offenses.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution deletes Vehicle Code section 13201.5 and amends Penal Code section 647 to prohibit suspension of driver’s licenses based on a conviction of prostitution related offenses. This resolution should be approved in principle because there is no evidence that the threat of suspension of the driver’s license of an individual convicted of soliciting prostitution increases compliance with anti-prostitution laws.

Driver’s license suspensions are reasonable where the underlying conviction involves the reckless or unsafe use of a motor vehicle; however, where the most current evidence does not confirm a nexus between compliance with current anti-prostitution laws and the threat of (or actual) suspension of an individual’s driver’s license, this punishment is ineffective. Decoupling driver’s license suspensions from non-driving offenses also makes sense to focus the limited resources of the court and law enforcement on addressing motor vehicle violations through suspensions and developing other, more effective programs to prevent prostitution and related crimes.

This resolution is related to Resolutions 10-03-2017 and 10-07-2017.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to repeal Vehicle Code section 13201.5 and amend Penal Code section 647 to read as follows:

- 1 § 13201.5
- 2 (a) ~~A court may suspend, for not more than 30 days, the privilege of any person to~~
- 3 ~~operate a motor vehicle upon conviction of subdivision (b) of Section 647 of the Penal Code~~
- 4 ~~where the violation was committed within 1,000 feet of a private residence and with the use of a~~
- 5 ~~vehicle.~~
- 6 (b) ~~A court may suspend, for not more than 30 days, the privilege of any person to~~
- 7 ~~operate a motor vehicle upon conviction of subdivision (a) of Section 647 of the Penal Code,~~
- 8 ~~where a peace officer witnesses the violator pick up a person who is engaging in loitering with~~
- 9 ~~the intent to commit prostitution, as described in Section 653.22 of the Penal Code, and the~~

10 violator subsequently engages with that person in a lewd act within 1,000 feet of a private
11 residence and with the use of a vehicle.

12 ~~(e) Instead of ordering the suspension under subdivision (a) or (b), a court may order a~~
13 ~~person's privilege to operate a motor vehicle restricted for not more than six months to necessary~~
14 ~~travel to and from the person's place of employment or education. If driving a motor vehicle is~~
15 ~~necessary to perform the duties of the person's employment, the court may also allow the person~~
16 ~~to drive in that person's scope of employment.~~

17
18 § 647

19 Except as provided in paragraph (5) of subdivision (b) and subdivision (l), every person
20 who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

21 (a) An individual who solicits anyone to engage in or who engages in lewd or dissolute
22 conduct in any public place or in any place open to the public or exposed to public view.

23 (b) (1) An individual who solicits, or who agrees to engage in, or who engages in, any act
24 of prostitution with the intent to receive compensation, money, or anything of value from another
25 person. An individual agrees to engage in an act of prostitution when, with specific intent to so
26 engage, he or she manifests an acceptance of an offer or solicitation by another person to so
27 engage, regardless of whether the offer or solicitation was made by a person who also possessed
28 the specific intent to engage in an act of prostitution.

29 (2) An individual who solicits, or who agrees to engage in, or who engages in, any act of
30 prostitution with another person who is 18 years of age or older in exchange for the individual
31 providing compensation, money, or anything of value to the other person. An individual agrees
32 to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an
33 acceptance of an offer or solicitation by another person who is 18 years of age or older to so
34 engage, regardless of whether the offer or solicitation was made by a person who also possessed
35 the specific intent to engage in an act of prostitution.

36 (3) An individual who solicits, or who agrees to engage in, or who engages in, any act of
37 prostitution with another person who is a minor in exchange for the individual providing
38 compensation, money, or anything of value to the minor. An individual agrees to engage in an
39 act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of
40 an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer
41 or solicitation was made by a minor who also possessed the specific intent to engage in an act of
42 prostitution.

43 (4) A manifestation of acceptance of an offer or solicitation to engage in an act of
44 prostitution does not constitute a violation of this subdivision unless some act, in addition to the
45 manifestation of acceptance, is done within this state in furtherance of the commission of the act
46 of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in
47 that act. As used in this subdivision, "prostitution" includes any lewd act between persons for
48 money or other consideration.

49 (5) Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a
50 child under 18 years of age who is alleged to have engaged in conduct to receive money or other
51 consideration that would, if committed by an adult, violate this subdivision. A commercially
52 exploited child under this paragraph may be adjudged a dependent child of the court pursuant to
53 paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be
54 taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and
55 Institutions Code, if the conditions allowing temporary custody without warrant are met.

56 (c) Who accosts other persons in any public place or in any place open to the public for
57 the purpose of begging or soliciting alms.

58 (d) Who loiters in or about any toilet open to the public for the purpose of engaging in or
59 soliciting any lewd or lascivious or any unlawful act.

60 (e) Who lodges in any building, structure, vehicle, or place, whether public or private,
61 without the permission of the owner or person entitled to the possession or in control of it.

62 (f) Who is found in any public place under the influence of intoxicating liquor, any drug,
63 controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled
64 substance, or toluene, in a condition that he or she is unable to exercise care for his or her own
65 safety or the safety of others, or by reason of his or her being under the influence of intoxicating
66 liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor,
67 drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or
68 other public way.

69 (g) If a person has violated subdivision (f), a peace officer, if he or she is reasonably able
70 to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The
71 person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and
72 Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may
73 place a person in civil protective custody with that kind and degree of force that would be lawful
74 were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been
75 placed in civil protective custody shall not thereafter be subject to any criminal prosecution or
76 juvenile court proceeding based on the facts giving rise to this placement. This subdivision does
77 not apply to the following persons:

78 (1) A person who is under the influence of any drug, or under the combined influence of
79 intoxicating liquor and any drug.

80 (2) A person who a peace officer has probable cause to believe has committed any felony,
81 or who has committed any misdemeanor in addition to subdivision (f).

82 (3) A person who a peace officer in good faith believes will attempt escape or will be
83 unreasonably difficult for medical personnel to control.

84 (h) Who loiters, prowls, or wanders upon the private property of another, at any time,
85 without visible or lawful business with the owner or occupant. As used in this subdivision,
86 "loiter" means to delay or linger without a lawful purpose for being on the property and for the
87 purpose of committing a crime as opportunity may be discovered.

88 (i) Who, while loitering, prowling, or wandering upon the private property of another, at
89 any time, peeks in the door or window of any inhabited building or structure, without visible or
90 lawful business with the owner or occupant.

91 (j) (1) A person who looks through a hole or opening, into, or otherwise views, by means
92 of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera,
93 motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom,
94 changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in
95 which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy
96 of a person or persons inside. This subdivision does not apply to those areas of a private business
97 used to count currency or other negotiable instruments.

98 (2) A person who uses a concealed camcorder, motion picture camera, or photographic
99 camera of any type, to secretly videotape, film, photograph, or record by electronic means,
100 another, identifiable person under or through the clothing being worn by that other person, for
101 the purpose of viewing the body of, or the undergarments worn by, that other person, without the

102 consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust,
103 passions, or sexual desires of that person and invade the privacy of that other person, under
104 circumstances in which the other person has a reasonable expectation of privacy.

105 (3) (A) A person who uses a concealed camcorder, motion picture camera, or
106 photographic camera of any type, to secretly videotape, film, photograph, or record by electronic
107 means, another, identifiable person who may be in a state of full or partial undress, for the
108 purpose of viewing the body of, or the undergarments worn by, that other person, without the
109 consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing
110 room, fitting room, dressing room, or tanning booth, or the interior of any other area in which
111 that other person has a reasonable expectation of privacy, with the intent to invade the privacy of
112 that other person.

113 (B) Neither of the following is a defense to the crime specified in this paragraph:

114 (i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or
115 business partner or associate of the victim, or an agent of any of these.

116 (ii) The victim was not in a state of full or partial undress.

117 (4) (A) A person who intentionally distributes the image of the intimate body part or parts
118 of another identifiable person, or an image of the person depicted engaged in an act of sexual
119 intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the
120 person depicted or in which the person depicted participates, under circumstances in which the
121 persons agree or understand that the image shall remain private, the person distributing the image
122 knows or should know that distribution of the image will cause serious emotional distress, and
123 the person depicted suffers that distress.

124 (B) A person intentionally distributes an image described in subparagraph (A) when he or
125 she personally distributes the image, or arranges, specifically requests, or intentionally causes
126 another person to distribute that image.

127 (C) As used in this paragraph, "intimate body part" means any portion of the genitals, the
128 anus and in the case of a female, also includes any portion of the breasts below the top of the
129 areola, that is either uncovered or clearly visible through clothing.

130 (D) It shall not be a violation of this paragraph to distribute an image described in
131 subparagraph (A) if any of the following applies:

132 (i) The distribution is made in the course of reporting an unlawful activity.

133 (ii) The distribution is made in compliance with a subpoena or other court order for use in
134 a legal proceeding.

135 (iii) The distribution is made in the course of a lawful public proceeding.

136 (5) This subdivision does not preclude punishment under any section of law providing for
137 greater punishment.

138 ~~(k) In addition to any punishment prescribed by this section, a court may suspend, for not
139 more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section
140 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within
141 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court
142 may order a person's privilege to operate a motor vehicle restricted, for not more than six
143 months, to necessary travel to and from the person's place of employment or education. If
144 driving a motor vehicle is necessary to perform the duties of the person's employment, the court
145 may also allow the person to drive in that person's scope of employment.~~

146 ~~(4)-(1)~~ (1) A second or subsequent violation of subdivision (j) is punishable by imprisonment
147 in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000),

148 or by both that fine and imprisonment.
149 (2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the
150 violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not
151 exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

152 (1) ~~(m)~~(1) If a crime is committed in violation of subdivision (b) and the person who was
153 solicited was a minor at the time of the offense, and if the defendant knew or should have known
154 that the person who was solicited was a minor at the time of the offense, the violation is
155 punishable by imprisonment in a county jail for not less than two days and not more than one
156 year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and
157 imprisonment.

158 (2) The court may, in unusual cases, when the interests of justice are best served, reduce
159 or eliminate the mandatory two days of imprisonment in a county jail required by this
160 subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court
161 shall specify the reason on the record.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: In its “Best Practices Guide to Reducing Suspended Drivers” report from February 2013, the American Association of Motor Vehicle Administrators (AAMVA) claimed:

- The common belief that a driver license suspension provides effective, sustainable motivation to encourage individuals to comply with court ordered or legislated mandates to avoid suspension is not supported by empirical evidence.
- When licenses are suspended for social non-conformance reasons, the suspension is “watered down” in value; it becomes less serious in the minds of law enforcement, the courts and the public.

As a result, the report recommended that legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations.

The Solution: Because prostitution in a parked car is not a highway-safety-related offense, then Vehicle Code §13201.5, to allow courts to suspend the driver’s licenses for prostitution offenders, should be repealed and Penal Code § 647, also to suspend driver’s licenses, should be amended.

See “Final Report on the Evaluation of the First Offender Prostitution Program (FOPP), Report Summary,” U.S. Department of Justice (Mar. 7, 2008), available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf> (“The [San Francisco FOPP] program is effective in producing positive shifts in attitudes and gains in knowledge. More importantly, the program was found to have reduced recidivism.”).

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

SB 420 (Huff, 2016): to distinguish between people getting paid for sex and the people who are paying for sex.

AB 1322 (Mitchell, 2016): Penal Code 647, for prostitution, no longer applies to a child under age 18.

SB 1129 (Monning, 2016): deleting the mandatory minimum terms of incarceration imposed for engaging in prohibited acts relating to prostitution. SB 1129 initially included a repeal for court-ordered driver's license suspensions for prostitution.

AB 2147 (Eggman, 2016): to impound vehicles used in prostitution. Vetoed by the Governor.

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RESOLUTION 10-07-2017

DIGEST

Vandalism Offenses: Repealing Suspension of Driver’s Licenses for Vandalism Offenses

Deletes Vehicle Code section 13202.6 to prohibit the suspension of a driver’s license for vandalism offenses including graffiti.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution deletes Vehicle Code 13202.6 to prohibit the suspension of a driver’s license for vandalism including graffiti. This resolution should be disapproved because there is no evidence that suspending the driver’s licenses of persons who deface property with graffiti or commit other acts of vandalism is an ineffective deterrent in all cases.

The proponent claims some research indicating that suspension of driving privileges as a punishment might be less ineffective than hoped for as a deterrent for graffiti offenses. This is apparently because minors, who are often the perpetrators of such vandalism, are now foregoing obtaining a driver’s license until they are older. While community service and graffiti removal may promote rehabilitation, it nonetheless stands to reason that denial of driving privileges will serve as a deterrent to such conduct, especially by teenagers. Even if some are waiting to obtain a driver’s license, most teenagers are eager to learn to drive a car, and would be restricted in movements without a license. Further, Vehicle Code section 13202.6 is not only addressed to graffiti offenses, but vandalism generally. However, this resolution takes away all of the court’s discretion to impose the suspension of a driver’s license as part of the sentence even where there is a nexus between driving and the vandalism at issue.

California recognizes that loss of driving privileges could have a negative economic impact in the long run, and therefore allows an exception to license suspension, where loss of driving privileges would affect employment. (Veh. Code, § 13202.6, subd. (a)(1).) Thus, the Court has some discretion on the imposition of the sentence.

This resolution is related to Resolution 10-03-2017, which gives the judicial officer discretion to suspend a driver’s license.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to delete Vehicle Code section 13202.6 to read as follows:

- 1 § 13202.6
- 2 (a) (1) ~~For every conviction of a person for a violation of Section 594, 594.3, or 594.4 of~~

3 the Penal Code, committed while the person was 13 years of age or older, the court shall suspend
4 the person's driving privilege for not more than two years, except when the court finds that a
5 personal or family hardship exists that requires the person to have a driver's license for his or her
6 own, or a member of his or her family's, employment, school, or medically related purposes. If
7 the person convicted does not yet have the privilege to drive, the court shall order the department
8 to delay issuing the privilege to drive for not less than one year nor more than three years
9 subsequent to the time the person becomes legally eligible to drive. However, if there is no
10 further conviction for violating Section 594, 594.3, or 594.4 of the Penal Code in a 12-month
11 period after the conviction, the court, upon petition of the person affected, may modify the order
12 imposing the delay of the privilege. For each successive offense, the court shall suspend the
13 person's driving privilege for those possessing a license or delay the eligibility for those not in
14 possession of a license at the time of their conviction for one additional year.

15 ~~(2) A person whose driving privilege is suspended or delayed for an act involving~~
16 ~~vandalism in violation of Section 594, 594.3, or 594.4 of the Penal Code, may elect to reduce the~~
17 ~~period of suspension or delay imposed by the court by performing community service under the~~
18 ~~supervision of the probation department. The period of suspension or delay ordered under~~
19 ~~paragraph (1) shall be reduced at the rate of one day for each hour of community service~~
20 ~~performed. If the jurisdiction has adopted a graffiti abatement program as defined in subdivision~~
21 ~~(f) of Section 594 of the Penal Code, the period of suspension or delay ordered under paragraph~~
22 ~~(1) shall be reduced at the rate of one day for each day of community service performed in the~~
23 ~~graffiti abatement program when the defendant and his or her parents or legal guardians are~~
24 ~~responsible for keeping a specified property in the community free of graffiti for a specified~~
25 ~~period of time. The suspension shall be reduced only when the specified period of participation~~
26 ~~has been completed. Participation of a parent or legal guardian is not required under this~~
27 ~~paragraph if the court deems this participation to be detrimental to the defendant, or if the parent~~
28 ~~or legal guardian is a single parent who must care for young children. For purposes of this~~
29 ~~paragraph, "community service" means cleaning up graffiti from any public property, including~~
30 ~~public transit vehicles.~~

31 ~~(3) As used in this section, the term "conviction" includes the findings in juvenile~~
32 ~~proceedings specified in Section 13105.~~

33 ~~(b) (1) Whenever the court suspends driving privileges pursuant to subdivision (a), the~~
34 ~~court in which the conviction is had shall require all drivers' licenses held by the person to be~~
35 ~~surrendered to the court. The court shall, within 10 days following the conviction, transmit a~~
36 ~~certified abstract of the conviction, together with any drivers' licenses surrendered, to the~~
37 ~~department.~~

38 ~~(2) Violations of restrictions imposed pursuant to this section are subject to Section~~
39 ~~14603.~~

40 ~~(e) The suspension, restriction, or delay of driving privileges pursuant to this section shall~~
41 ~~be in addition to any penalty imposed upon conviction of a violation of Section 594, 594.3, or~~
42 ~~594.4 of the Penal Code.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: When a minor is convicted of a graffiti offense under Penal Code section 594, then Vehicle Code § 13202.6 requires the court to suspend or to delay the issuance of the minor driver's license. In addition, Vehicle Code § 13202.6 allows the court to force the minor's family members to perform community service – when they were not the ones who created the graffiti.

According to an AAA Foundation for Traffic Safety report from 2013 (available at: <http://newsroom.aaa.com/wp-content/uploads/2013/07/Teens-Delay-Licensing-FTS-Report.pdf>), many teenagers are not obtaining their driver's licenses until they are older. The report found that only 44% of the survey respondents reported obtaining a driver's license within one year of the minimum age for licensing, and only 54% reported obtaining a license before age 18. The main reasons were: lack of access to a car, alternative transportation options, and costs associated with driving.

Vehicle Code § 13202.6 was created to be “tough on crime” by taking driving privileges away from offending teenagers. However, this approach is not effective because so many teenagers are not motivated to earn a driver's license or do not have access to a car.

The Solution: Penal Code §§ 594 et al. allow a court to order “community service or graffiti removal ... or to undergo counseling.” Because this rehabilitation approach is ideal, then Vehicle Code § 13202.6 should be repealed.

In addition, the American Association of Motor Vehicle Administrators (AAMVA) recommends that legislatures should repeal state laws requiring the suspension of driving privileges for non-highway safety related violations. See “Best Practice Guide to Reducing Suspended Drivers (2013),” available at: <http://www.aamva.org/best-practices-and-model-legislation/>.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

Penal Code sections 594, 594.1, 594.6, and 594.8.1: to allow courts to order community service, graffiti removal, or counseling.

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RESOLUTION 10-08-2017

DIGEST

Vehicle Code Infractions: Elimination of Penalty Assessments

Amends Penal Code section 1464 to remove Vehicle Code infractions from those violations to which a penalty assessment is assessed.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1464 to remove Vehicle Code infractions from those violations to which a penalty assessment is assessed. This resolution should be approved in principle because government should not be funded by assessing additional fees and penalty assessments in lieu of either raising taxes or reprioritizing the expenditure of General Fund monies, the fees and penalty assessments have a disparate impact on poor and low-income people, and the imposition of fines and fees by the courts, who are already underfunded, gives the impression that the courts are imposing fees to fund their operations rather than to administer justice.

Fine, fee, penalty, and assessment structure of California's traffic courts is in need of overhaul. In addition to articles and studies by advocates at the Western Center for Law and Poverty, the ACLU, the Southern Poverty Law Center, and many others, the Judicial Council of California has invested hundreds of hours over the past two years investigating possible solutions to reduce the impacts of traffic violations on low income Californians. The Chief Justice of California convened the Commission on California's Courts ("the Futures Commission") to identify possible solutions to the disparate impact of fines, fees, penalties, and assessments on low income Californians, as well as to address the inherent conflicts of interests in courts levying penalties and assessments that fund their operations. Specifically, an update from the Future's Commission is due to the Judicial Council by the end of this calendar year on the subject of civil adjudication of traffic violations. If the Judicial Council adopts the recommendations, it could be a year or more before the change is enacted.

While the work of the Judicial Council is ongoing, the impact on low-income people in California of the fines, fees, penalties and assessments goes on, and continues to create burdens that can't be overcome by a change in adjudication sometime in the future. Likewise, the Legislature should not simply increase penalties to raise money for government functions including the funding of the courts. Either it must increase revenue fairly, for example via taxes, or it must prioritize how it allocates existing General Fund revenue.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1464 to read as follows:

1 § 1464

2 (a) (1) Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the
3 Government Code, and except as otherwise provided in this section, there shall be levied a state
4 penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10),
5 upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal
6 offenses, including all offenses, except:

7 (i) parking offenses as defined in subdivision (i) of Section 1463, involving a violation of
8 a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, and
9 (ii) Vehicle Code infractions.

10 (2) Any bail schedule adopted pursuant to Section 1269b or bail schedule adopted by the
11 Judicial Council pursuant to Section 40310 of the Vehicle Code may include the necessary
12 amount to pay the penalties established by this section and Chapter 12 (commencing with
13 Section 76000) of Title 8 of the Government Code, and the surcharge authorized by Section
14 1465.7, for all matters where a personal appearance is not mandatory and the bail is posted
15 primarily to guarantee payment of the fine.

16 (3) The penalty imposed by this section does not apply to the following:

17 (A) Any restitution fine.

18 (B) Any penalty authorized by Chapter 12 (commencing with Section 76000) of Title 8
19 of the Government Code.

20 (C) Any parking offense subject to Article 3 (commencing with Section 40200) of
21 Chapter 1 of Division 17 of the Vehicle Code.

22 (D) The state surcharge authorized by Section 1465.7.

23 (b) Where multiple offenses are involved, the state penalty shall be based upon the total
24 fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be
25 reduced in proportion to the suspension.

26 (c) When any deposited bail is made for an offense to which this section applies, and for
27 which a court appearance is not mandatory, the person making the deposit shall also deposit a
28 sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail
29 is returned, the state penalty paid thereon pursuant to this section shall also be returned.

30 (d) In any case where a person convicted of any offense, to which this section applies, is
31 in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the
32 payment of which would work a hardship on the person convicted or his or her immediate
33 family.

34 (e) After a determination by the court of the amount due, the clerk of the court shall
35 collect the penalty and transmit it to the county treasury. The portion thereof attributable to
36 Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code shall be
37 deposited in the appropriate county fund and 70 percent of the balance shall then be transmitted
38 to the State Treasury, to be deposited in the State Penalty Fund, which is hereby created, and 30
39 percent to remain on deposit in the county general fund. The transmission to the State Treasury
40 shall be carried out in the same manner as fines collected for the state by a county.

41 (f) The moneys so deposited in the State Penalty Fund shall be distributed as follows:

42 (1) Once a month there shall be transferred into the Fish and Game Preservation Fund an
43 amount equal to 0.33 percent of the state penalty funds deposited in the State Penalty Fund
44 during the preceding month, except that the total amount shall not be less than the state penalty
45 levied on fines or forfeitures for violation of state laws relating to the protection or propagation
46 of fish and game. These moneys shall be used for the education or training of department
47 employees which fulfills a need consistent with the objectives of the Department of Fish and
48 Game.

49 (2) Once a month there shall be transferred into the Restitution Fund an amount equal to
50 32.02 percent of the state penalty funds deposited in the State Penalty Fund during the preceding
51 month. Those funds shall be made available in accordance with Section 13967 of the
52 Government Code.

53 (3) Once a month there shall be transferred into the Peace Officers' Training Fund an
54 amount equal to 23.99 percent of the state penalty funds deposited in the State Penalty Fund
55 during the preceding month.

56 (4) Once a month there shall be transferred into the Driver Training Penalty Assessment
57 Fund an amount equal to 25.70 percent of the state penalty funds deposited in the State Penalty
58 Fund during the preceding month.

59 (5) Once a month there shall be transferred into the Corrections Training Fund an amount
60 equal to 7.88 percent of the state penalty funds deposited in the State Penalty Fund during the
61 preceding month. Money in the Corrections Training Fund is not continuously appropriated and
62 shall be appropriated in the Budget Act.

63 (6) Once a month there shall be transferred into the Local Public Prosecutors and Public
64 Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.78 percent
65 of the state penalty funds deposited in the State Penalty Fund during the preceding month. The
66 amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars
67 (\$850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars
68 (\$850,000) shall be transferred to the Restitution Fund.

69 (7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an
70 amount equal to 8.64 percent of the state penalty funds deposited in the State Penalty Fund
71 during the preceding month.

72 (8) (A) Once a month there shall be transferred into the Traumatic Brain Injury Fund,
73 created pursuant to Section 4358 of the Welfare and Institutions Code, an amount equal to 0.66
74 percent of the state penalty funds deposited into the State Penalty Fund during the preceding
75 month. However, the amount of funds transferred into the Traumatic Brain Injury Fund for the
76 1996–97 fiscal year shall not exceed the amount of five hundred thousand dollars (\$500,000).
77 Thereafter, funds shall be transferred pursuant to the requirements of this section.
78 Notwithstanding any other provision of law, the funds transferred into the Traumatic Brain
79 Injury Fund for the 1997–98, 1998–99, and 1999–2000 fiscal years, may be expended by the
80 State Department of Mental Health, in the current fiscal year or a subsequent fiscal year, to
81 provide additional funding to the existing projects funded by the Traumatic Brain Injury Fund, to
82 support new projects, or to do both.

83 (B) Any moneys deposited in the State Penalty Fund attributable to the assessments made
84 pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter
85 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code
86 is repealed shall be utilized in accordance with paragraphs (1) to (8), inclusive, of this
87 subdivision.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Tickets for all Vehicle Code violations include supplemental fees for various state and local programs, with one exception for “parking offenses.” For example, Penal Code § 1464 doubles the base fine to fund these programs:

Restitution
Peace Officer’s Training
Driver Training Penalty Assessment
Corrections Training, and
Local Public Prosecutors and Public Defenders Training

And Government Code §§ 70372 and 76000 add fees for:

Courthouse Construction
Criminal Justice Facilities Construction
Automated Fingerprint Identification
Emergency Medical Service, and
DNA Identification

Due to these ten supplemental fees, a Vehicle Code violation with a \$100 base fine results in a \$490 total fine. “Not Just a Ferguson Problem,” 10, <http://www.lccr.com/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>. If a person cannot afford to pay, then a \$300 late fee will apply. And then the court will order the DMV to suspend the person’s driver’s license. Vehicle Code § 13365. According to the US Department of Justice, these governmental supplemental fees and driver’s license suspensions are harmful because they force individuals into escalating debt and unnecessary incarceration, leading to job loss and becoming trapped in a cycle of poverty. *See* <https://www.justice.gov/opa/pr/justice-department-announces-resources-assist-state-and-local-reform-fine-and-fee-practices>.

The Solution: A Vehicle Code infraction with a base fine of \$100 should have a total cost of a little over \$100. If this were the case, then many people would pay what they owe, and the \$100 would go to the local court. However, when a \$100 ticket ends up costing \$500, then many people decide to pay nothing. As a result, the court does not collect its \$100 and the ten supplemental fees are not collected either.

Instead of addressing the supplemental fees, California’s “solution” has been to create a Traffic Ticket Amnesty Program. *See* Vehicle Code § 42008.8. During the first seven months of the 2015-2017 Amnesty Program, the Senate shared that “more than 132,000 delinquent debt cases” had been resolved. SB 881 (Hertzberg, 2016) Senate Floor Analysis (Aug. 24, 2016). However, according to “Not Just a Ferguson Problem: How Traffic Court Drive Inequality in California

(Report),” our courts have 10 billion dollars in outstanding debt for traffic tickets. (Report, at 6.) Thus, the amnesty approach has been an epic failure.

SB 185’s goal is to improve California’s amnesty program. For example, the bill would require the courts to offer an “indigency” determination for each person with a traffic ticket. If the person is found to be indigent, then the court shall reduce the traffic ticket fee by 80%. As a result, SB 185’s will create an overly-burdensome administrative program to allow courts to take a \$100 ticket that was inflated to \$500 back down to \$100 – for people who can file paperwork to prove that they are poor.

Charging \$500 for a \$100 traffic ticket is not reasonable – no matter what a person’s economic status is. Because Penal Code § 1464 has caused 10 billion in uncollected debt, it must be repealed.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

SB 185 (Hertzberg, 2017): People with traffic tickets for Vehicle Code infractions will have the right to request an “indigency” determination. If the court finds the person to be indigent, then the court will reduce the fine and fees by 80%. In addition, if the person does not pay the fees within a 4-year period, then the debt will be vacated, in the interest of justice.

SB 85 (Committee on Budget and Fiscal Review, 2015): established the 2015-2017 Traffic Ticket Amnesty Program in Vehicle Code § 42008.8.

SB 881 (Hertzberg, 2016): clarified procedures for the courts to administer the 2015-2017 Amnesty Program.

AB 1657 (Wieckowski, 2012): proposed adding another supplemental fee for spinal cord injury research, and was vetoed by the Governor.

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RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 10-09-2017

DIGEST

Repeal Driver’s License Suspensions for Failure to pay Court Fees

Deletes Vehicle Code section 13365 and amends Penal Code section 1463.007 to prohibit the DMV from suspending a person’s driver’s license for failure to pay court fees.

RESOLUTIONS COMMITTEE RECOMMENDATION

ACTION UNNECESSARY

History:

No similar resolutions found.

Reasons:

This resolution deletes Vehicle Code section 13365 and amends Penal Code section 1463.007 to prohibit the DMV from suspending a person’s driver’s license for failure to pay court fees. This resolution is action unnecessary because Assembly Bill 103 was signed into law, which accomplishes the goals of the proponent. (Stats. 2017, ch. 17, §§ 33, 51-54.)

While Statutes 2017, chapter 17, sections 33, 51-54 renders this resolution action unnecessary, it should be noted that this resolution is substantially similar to Senate Bill 185 (Hertzberg) which was amended and currently remains pending in the Assembly. Senate Bill 185 provides a more common-sense approach to ensuring that driver’s licenses of indigent drivers are not suspended than is proposed by the proponent.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to delete Vehicle Code section 13365 and amend Penal Code section 1463.007 to read as follows:

- 1 § 13365
- 2 (a) ~~Upon receipt of notification of a violation of subdivision (a) or (b) of Section 40508,~~
- 3 ~~the department shall take the following action:~~
- 4 (1) ~~If the notice is given pursuant to subdivision (a) or (b) of Section 40509, if the driving~~
- 5 ~~record of the person who is the subject of the notice contains one or more prior notifications of a~~
- 6 ~~violation issued pursuant to Section 40509 or 40509.5, and if the person’s driving privilege is not~~
- 7 ~~currently suspended under this section, the department shall suspend the driving privilege of the~~
- 8 ~~person.~~
- 9 (2) ~~If the notice is given pursuant to subdivision (a) or (b) of Section 40509.5, and if the~~
- 10 ~~driving privilege of the person who is the subject of the notice is not currently suspended under~~
- 11 ~~this section, the department shall suspend the driving privilege of the person.~~
- 12 (b) ~~A suspension under this section shall not be effective before a date 60 days after the~~
- 13 ~~date of receipt, by the department, of the notice given specified in subdivision (a), and the notice~~
- 14 ~~of suspension shall not be mailed by the department before a date 30 days after receipt of the~~
- 15 ~~notice given specified in subdivision (a).~~

16 ~~The suspension shall continue until the suspended person's driving record does not~~
17 ~~contain any notification of a violation of subdivision (a) or (b) of Section 40508.~~

18
19 § 1463.007

20 (a) Notwithstanding any other provision of law, any county or court that operates a
21 comprehensive collection program may deduct the costs of operating that program, excluding
22 capital expenditures, from any revenues collected under that program. The costs shall be
23 deducted before any distribution of revenues to other governmental entities required by any other
24 provision of law. Any county or court operating a comprehensive collection program may
25 establish a minimum base fee, fine, forfeiture, penalty, or assessment amount for inclusion in the
26 program.

27 (b) Once debt becomes delinquent, it continues to be delinquent and may be subject to
28 collection by a comprehensive collection program. Debt is delinquent and subject to collection
29 by a comprehensive collection program if any of the following conditions is met:

30 (1) A defendant does not post bail or appear on or before the date on which he or she
31 promised to appear, or any lawful continuance of that date, if that defendant was eligible to post
32 and forfeit bail.

33 (2) A defendant does not pay the amount imposed by the court on or before the date
34 ordered by the court, or any lawful continuance of that date.

35 (3) A defendant has failed to make an installment payment on the date specified by the
36 court.

37 (c) For the purposes of this section, a "comprehensive collection program" is a separate
38 and distinct revenue collection activity that meets each of the following criteria:

39 (1) The program identifies and collects amounts arising from delinquent court-ordered
40 debt, whether or not a warrant has been issued against the alleged violator.

41 (2) The program complies with the requirements of subdivision (b) of Section 1463.010.

42 (3) The program engages in each of the following activities:

43 (A) Attempts telephone contact with delinquent debtors for whom the program has a
44 phone number to inform them of their delinquent status and payment options.

45 (B) Notifies delinquent debtors for whom the program has an address in writing of their
46 outstanding obligation within 95 days of delinquency.

47 (C) Generates internal monthly reports to track collections data, such as age of debt and
48 delinquent amounts outstanding.

49 (D) Uses Department of Motor Vehicles information to locate delinquent debtors.

50 (E) Accepts payment of delinquent debt by credit card.

51 (4) The program engages in at least five of the following activities:

52 (A) Sends delinquent debt to the Franchise Tax Board's Court-Ordered Debt Collections
53 Program.

54 (B) Sends delinquent debt to the Franchise Tax Board's Interagency Intercept Collections
55 Program.

56 (C) For misdemeanors and felonies, initiates driver's license suspension or hold actions
57 when appropriate.

58 (D) Contracts with one or more private debt collectors to collect delinquent debt.

59 (E) Sends monthly bills or account statements to all delinquent debtors.

60 (F) Contracts with local, regional, state, or national skip tracing or locator resources or
61 services to locate delinquent debtors.

- 62 (G) Coordinates with the probation department to locate debtors who may be on formal
63 or informal probation.
64 (H) Uses Employment Development Department employment and wage information to
65 collect delinquent debt.
66 (I) Establishes wage and bank account garnishments where appropriate.
67 (J) Places liens on real property owned by delinquent debtors when appropriate.
68 (K) Uses an automated dialer or automatic call distribution system to manage telephone
69 calls.
70 (d) This section shall become operative on July 1, 2012.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: If a person cannot afford to pay a traffic ticket, the court can apply Vehicle Code § 13365 to suspend the person’s driver’s license. And the driver’s license remains suspended until all of the fees are paid. *See* § 13365(b). Unfortunately, the number of suspended licenses due to § 13365 is substantial and it continues to increase.

According to the report: “Not Just a Ferguson Problem,” since 2006, the courts have applied VC § 13365 in order to suspend between 450,000 and 500,000 driver’s licenses per year. <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf>, 13. As a result, by 2015, over 4 million people had suspended driver’s licenses, representing more than 17% of adult Californians. *Id.*, at 6.

Having millions of suspended driver’s licenses is harming the California economy. For example, according to a 2006 New Jersey Task Force report, when people lose their driver’s licenses, 42% of them lose their jobs and only 45% of those people find new jobs. Motor Vehicles Affordability and Fairness Task Force Final Report, available at: http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf.

The Solution: California’s “solution” has been to create an Amnesty Program. *See* Vehicle Code § 42008.8. For example, during the first seven months of the 18-month Amnesty Program, “more than 100,000” driver’s licenses had been restored. SB 881 (Hertzberg, 2016) Senate Floor Analysis (Aug. 24, 2016). When a program helps 100,000 people out of 4 million who need help, it is 2.5% effective.

SB 185’s (Hertzberg, 2017) goal is to improve California’s amnesty efforts. For example, the bill would require the courts to offer an “indigency” determination for each person with a traffic ticket so that the fees could be reduced by 80%. SB 185 would also prevent the court from suspending the person’s driver’s license, unless the person had committed two violations within five years, and had not paid. SB 185 would also dismiss unpaid fees after four years, “in the interest of justice.” Although the fees would be waived, the driver’s license remains suspended until the person is able to have it reinstated.

According to the American Association of Motor Vehicle Administrators (AAMVA), empirical evidence, of numerous suspended licenses, does not support the common belief that driver license suspensions motivate people to pay their court debts. AAMVA, “Best Practices Guide to Reducing Suspended Drivers,” 4 (Feb. 2013). The AAMVA also asserts: “The cost of handling non-highway safety related suspensions by the criminal justice system is a significant burden that society can no longer afford.” *Id.*, at 12. Because Vehicle Code § 13665 has caused so much harm, and because the amnesty approach does not work, § 13665 must be repealed.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

AB 2132, Sec. 57 (Committee on Transportation, 1998), to add Vehicle Code § 13365.

Vehicle Code § 42008.8: Traffic ticket Amnesty Program, effective Oct. 1, 2015 to Mar. 31, 2017.

Vehicle Code §§ 13200-13210, to allow the courts to suspend driver’s licenses for highway safety related reasons.

Vehicle Code §§ 13350-13392, to allow the DMV to suspend driver’s licenses for highway safety related reasons.

See Vehicle Code § 40509, for failure to appear for adults.

See Vehicle Code § 40509.5, for failure to appear for minors.

See Vehicle Code § 40508(d): Allowing the court to impound a person’s driver’s license for a period not to exceed 30 days for failure to pay fines. This section includes an exception to allow the person to travel to and from a place of employment.

SB 185 (Hertzberg, 2017)

Penal Code § 1463.007: allows the courts to use various methods besides driver’s license suspensions for debt collection, including using the Tax Board’s collections program, using the Tax Board’s “Intercept” collections program, contracting with private debt collectors, sending monthly bills, garnishing wages, and placing liens on real property.

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