

## RESOLUTION 02-06-2013

### DIGEST

#### Criminal Law: Dismissal of Minor Vehicle Code Offenses for Incarcerated Defendants

Amends Vehicle Code section 41500 to include prisoners sentenced pursuant to Penal Code section 1170, subdivision (h) within the ambit of those defendants exempt from prosecution for infractions while incarcerated.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Vehicle Code section 41500 to include prisoners sentenced pursuant to Penal Code section 1170, subdivision (h) within the ambit of those defendants exempt from prosecution for infractions while incarcerated. This resolution should be approved in principle because it rectifies an inconsistency in the law that has arisen because of the legislation realigning sentencing to allocate more offenders to county jails.

Under the existing language of section 41500, as a general proposition, any Vehicle Code offenses that a prisoner is charged with cannot be prosecuted if it is pending while the prisoner is committed to the custody of the Director of Corrections or the Youth Authority, but it makes no mention of local facilities such as county jails. With realignment, Penal Code section 1170, subdivision (h) now sends some convicted defendants who otherwise would go to a state facility to county jail for sentences as long as three years. The result is a hole in the statutory scheme.

In addition to the reference to *People v. Freeman* (1987) 225 Cal.App.3d Supp. 1, 4, the proponent correctly points to *People v. Joseph* (1992) 9 Cal.App.4th 498 which holds, at page 508: "Section 41500 places no time limits on defendants who seek relief. It places no obligation on a defendant to seek relief at all. Instead, it bars prosecution of cases pending at time of commitment, without reference to time of release."

This resolution clarifies that the section applies to all persons convicted of felonies, not just those confined in state facilities. There is no apparent reason why persons convicted of violent felonies should be freed of defending these infractions, whereas others convicted of less egregious felonies should not.

### TEXT OF RESOLUTION

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

1 § 41500

2 (a) No person shall be subject to prosecution for any nonfelony offense arising out of the  
3 operation of a motor vehicle or violation of this code as a pedestrian which is pending against  
4 him at the time of his commitment to the custody of the Director of Corrections or the  
5 Department of the Youth Authority or commitment to a county jail or other local facility  
6 pursuant to a non-probationary sentence imposed pursuant to Penal Code section 1170,  
7 subdivision (h).

8 (b) Notwithstanding any other provisions of law to the contrary, no driver's license shall  
9 be suspended or revoked, nor shall the issuance or renewal of a license be refused as a result of a  
10 pending nonfelony offense occurring prior to the time a person was committed to the custody of  
11 the Director of Corrections or the Department of the Youth Authority or committed to a county  
12 jail or other local facility pursuant to a non-probationary sentence imposed pursuant to Penal  
13 Code section 1170, subdivision (h) or as a result of a notice received by the department pursuant  
14 to subdivision (a) of Section 40509 when the offense which gave rise to the notice occurred prior  
15 to the time a person was committed to the custody of the Director of Corrections or the  
16 Department of the Youth Authority or committed to a county jail or other local facility pursuant  
17 to a non-probationary sentence imposed pursuant to Penal Code section 1170, subdivision (h).

18 (c) The department shall remove from its records any notice received by it pursuant to  
19 subdivision (a) of Section 40509 upon receipt of satisfactory evidence that a person was  
20 committed to the custody of the Director of Corrections or the Department of the Youth  
21 Authority or commitment to a county jail or other local facility pursuant to a non-probationary  
22 sentence imposed pursuant to Penal Code section 1170, subdivision (h) after the offense which  
23 gave rise to the notice occurred.

24 (d) The provisions of this section shall not apply to any nonfelony offense wherein the  
25 department is required by this code to immediately revoke or suspend the privilege of any person  
26 to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court  
27 showing that the person has been convicted of that nonfelony offense.

28 (e) The provisions of subdivisions (a), (b), and (c) do not apply to any offense committed  
29 by a person while he is temporarily released from custody pursuant to law or while he is on  
30 parole, Postrelease Community Supervision, or while out of custody under mandatory  
31 supervision for the unexecuted portion of a sentence imposed pursuant to Penal Code section  
32 1170, subdivision (h)(5).

33 (f) The provisions of subdivisions (a), (b), and (c) do not apply if the pending offense is a  
34 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: For the last 40+ years, persons committed to prison have been able to get relatively minor Vehicle Code offenses dismissed. The purpose of this law was to implement a “strong public policy that allows felons sentenced to state institutions to obtain relief from detainers that might render their release date uncertain and thus adversely affect their eventual rehabilitation.”

(*People v. Freeman* (1987) 225 Cal.App.3d Supp. 1, 4.) More serious misdemeanors, such as drunk driving charges, are not subject to dismissal. Although the Legislature updated many statutes to reflect the changes caused by realignment, they neglected to update Vehicle Code section 41500. This resolution fixes that omission.

This Solution: The State of California has “realigned” felony sentencing and now, for the first time, some persons convicted of less-serious felonies are serving their non-probationary sentences in a county jail. The fact that the person is being sentenced for a felony has not changed; what has changed is where the person is incarcerated. Although the Legislature updated many statutes to reflect the changes caused by realignment, they neglected to update Vehicle Code section 41500. This resolution fixes that omission. Judge J. Richard Couzens (Placer County Superior Court, Ret.) and Justice Tricia Bigelow (2nd District Court of Appeal, Div. 8), have written extensively on realignment. They have written that the policy reasons for enacting section 41500 apply with equal validity to persons committed for lengthy terms in county jail. They also opined that failure to apply section 41500 to inmates serving their felony sentences in county jail would give those persons a strong equal protection argument. (Felony Sentencing After Realignment, September 2012, p. 40.) This resolution ultimately could save the state money from having to pay for the upkeep and transportation of persons who would otherwise have served their sentence and been released.

#### **LEGISLATIVE HISTORY**

Not known

#### **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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