

RESOLUTION 11-06-2011

DIGEST

License Suspension: Exception for Simple Possession of Marijuana

Adds section 13202.51 to the Vehicle Code to provide that a person's driving privileges will not be suspended for a conviction of simple possession of marijuana.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 05-06-2000, which was approved in principle.

Reasons:

This resolution adds section 13202.51 to the Vehicle Code to provide that a person's driving privileges will not be suspended for a conviction of simple possession of marijuana. This resolution should be approved in principle because it ensures the punishment, in the criminal court, for a violation of this section is appropriate for an infraction.

In California, there are three different types of offenses: infractions, misdemeanors, and felonies. An infraction is not a crime, and is not punishable by imprisonment. (*People v. Sava* (1987) 190 Cal.App.3d 935.) An infraction is typically punishable only by imposition of a fine or removal from public office. For example, a driver who exceeds the posted speed limit is subject to a fine, but not imprisonment.

Effective January 1, 2011, Health and Safety Code section 11357, subdivision (b) was amended to state that possession of less than 28.5 grams of marijuana is an infraction punishable by a fine of not more than one hundred dollars.

Accordingly, because the nature of this offense has been changed from a misdemeanor to an infraction, the severity of the punishment in the criminal court should follow suit. At the present time, violation of Health and Safety Code section 11357, subdivision (b) requires suspension of the violator's driver's license for a period of one year, even though the actual offense is simple possession, and has nothing to do with the actual operation of a motor vehicle (driving under the influence of marijuana is a separate offense, the punishment of which would not be affected by this resolution). Rather, this resolution seeks to, as Gilbert and Sullivan aptly put, "let the punishment fit the crime." (*The Mikado*, Gilbert & Sullivan, 1885.)

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Vehicle Code section 13202.51 to read as follows:

- 1 § 13202.51
- 2 (a) Notwithstanding any other provision of law, a person's driving privilege shall not be
- 3 suspended for a conviction of simple possession of marijuana pursuant to Health and Safety

4 Code section 11357, subdivision (b) or Vehicle Code section 23222, subdivision (b).
5 (b) As used in this section, “conviction” includes a finding in a juvenile proceeding.
6 (Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Effective January 1, 2011, possession of less than 28.5 grams of marijuana is an infraction with a maximum \$100 fine. Existing law requires a court to order a person’s privilege to drive to be suspended for one year upon a conviction for any drug offense, including simple possession of marijuana.

This Resolution: This resolution prohibits the suspension of a driver’s license for simple possession of marijuana.

The Problem: Simple possession of marijuana is now an infraction. Previously, violators had the right to a jury trial and the right to an attorney – who would often mitigate the license suspension by pleading a person to a different charge or obtaining a dismissal. A one-year license suspension for an offense that has nothing to do with driving and is such a low-level offense that it is now an infraction is out of proportion and overly punitive. Nothing in this resolution prohibits a court from suspending a license for driving under the influence of marijuana – this resolution only applies to simple possession of marijuana.

IMPACT STATEMENT

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

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