

RESOLUTION 10-01-2017 (REVISED)

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 ANALYSIS

History:

No similar resolutions found.

Reasons:

This resolution amends California Vehicle Code section 41500 to add nonfelony violations of the Health & Safety Code to pending criminal prosecutions subject to dismissal due to the incarceration of the defendant. This resolution should be approved in principle with recommended amendments to limit its application to nonfelony offenses within Division 10 of the Health & Safety Code related to controlled substance offenses because automatic dismissal of such offenses serves judicial economy and is in line with prior voter approval of Proposition 47.

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 & Safety Code nonfelony drug related offenses when a person is sent to prison or jail for a felony conviction. It is based on the theory that the Health & Safety Code primarily involves drug related offenses and nonfelony offenses should be accorded the same automatic dismissal as nonfelony Vehicle Code violations.

The rationale of the resolution is consistent with concepts of judicial economy in dismissing specified nonfelony offenses which would be concurrently served with the felony sentence if prosecuted and a conviction obtained. The rationale is also consistent with voter approval of Proposition 47 removing previously harsh penalties imposed in relation to drug offenses and prevailing public opinion that medical treatment for drug related addictions is preferred over criminalization.

However, since the Health & Safety Code governs more than just drug related offenses, the language should be amended to reflect its application solely to Division 10 of the Health & Safety Code which governs controlled substances. Consideration should also be given to providing a cross-reference within Division 10 of the Health & Safety Code.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

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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