

RESOLUTION 03-03-2018

DIGEST

Revocation of Supervision: Exception for Specified Infraction Violations

Amends Penal Code section 19.8 to specify that infraction violations, except as specified, shall not be grounds for revocation of supervision.

STATEMENT OF REASONS

The Problem: When it comes to how a conviction for an infraction may be used against a person, the Penal Code is very odd. Penal Code section 19.8 prohibits using enumerated crimes (misdemeanors that have been reduced to infractions) to violate a person’s parole or probation. But it says nothing about whether a straight infraction (for example, expired registration, jaywalking, or speeding) may be used to violate a person’s parole or probation. It makes no sense for a crime that could have been a misdemeanor to be unusable to violate probation or parole but at the same time a crime that is only an infraction might be so used. In addition, there are two new levels of supervision that are not mentioned in the statute: Post Release Community Supervision (PRCS) and mandatory supervision.

The Solution: The solution is to clarify the law so that no infraction may be used to violate a person’s parole, probation, PRCS, or mandatory supervision. It really doesn’t make any sense that a person can be sent to prison, or returned to county jail, because of a fix-it ticket or a speeding ticket.

TEXT OF RESOLUION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 19.8 to read as follows:

- 1 § 19.8
- 2 (a) The following offenses are subject to subdivision (d) of Section 17: Sections 193.8,
- 3 330, 415, 485, 490.7, 555, 602.13, and 853.7 of this code; subdivision (c) of Section 532b, and
- 4 subdivision (o) of Section 602 of this code; subdivision (b) of Section 25658 and Sections 21672,
- 5 25661, and 25662 of the Business and Professions Code; Section 27204 of the Government
- 6 Code; subdivision (c) of Section 23109 and Sections 5201.1, 12500, 14601.1, 27150.1, 40508,
- 7 and 42005 of the Vehicle Code, and any other offense that the Legislature makes subject to
- 8 subdivision (d) of Section 17. Except where a lesser maximum fine is expressly provided for a
- 9 violation of those sections, a violation that is an infraction is punishable by a fine not exceeding
- 10 two hundred fifty dollars (\$250).
- 11 (b) Except in cases where a different punishment is prescribed, every offense declared to
- 12 be an infraction is punishable by a fine not exceeding two hundred fifty dollars (\$250).
- 13 (c) Except for the violations enumerated in subdivision (d) of Section 13202.5 of the
- 14 Vehicle Code, and Section 14601.1 of the Vehicle Code based upon failure to appear, a
- 15 conviction for an ~~offense made an infraction under subdivision (d) of Section 17~~ is not grounds
- 16 for the suspension, revocation, or denial of a license, or for the revocation of probation, ~~or~~
- 17 parole, post release community supervision or mandatory supervision of the person convicted.

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

PROPONENT: Los Angeles County Bar Association

IMPACT STATEMENT

This 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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RESPONSIBLE FLOOR DELEGATE: Mark Harvis

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 19.8 to specify that infraction violations, except as specified, shall not be grounds for revocation of supervision. This resolution should be approved in principle because it is consistent with the goals of criminal justice realignment, the expansion of community-based supervision, and the national movement to lessen the criminal implications of infraction violations.

Current law states that, except for violations related to driving under the influence of controlled substances or alcohol, or failing to submit to field and alcohol tests, or testing at or above legal limits for controlled substances and alcohol, a conviction for an offense that was reduced to an infraction as defined shall not be grounds for the revocation of probation or parole. The resolution seeks to do two important things. First, it seeks to expand the class of infraction violations for which an individual would not suffer a revocation of probation and parole. Current law refers only to those offenses that were reduced to infractions. The resolution would expand this provision to state that no infraction shall result in the revocation of supervision, except those enumerated and related to driving under the influence, refusal to take field sobriety tests, and failing field sobriety tests. This makes sense given that (a) most of the DUI and related provisions are not infractions in the first instance; (b) there is a valid distinction to be made between the vast majority of infraction violations which are punishable by fines and penalties only, and those that result in mandatory suspension of driver’s licenses for drug and alcohol-related motor vehicle offenses; and (c) there is a significant nation-wide movement away from the over-criminalization of infraction violations because of the disparate impact of over-

criminalization on low-income people and people of color that perpetuates the cycle of injustice and poverty.

The second change the resolution addresses is to expand the kinds of community supervision that would not be violated for an infraction violation. As a result of criminal justice realignment (Assm. Bill No. 109, Chapter 15, Statutes of 2011), community-based supervision was expanded to include post-release community supervision and mandatory supervision. The resolution would include post-release community supervision and mandatory supervision as kinds of supervision that would not be violated for an infraction violation in addition to probation and parole. This provision makes sense because of the changed definition of community supervision post-realignment. Failure to make the change would lead to irregularities and inconsistencies in the law that would have no justification.