

## RESOLUTION 09-01-2018

### DIGEST

#### Traffic Citations: Burden of Proof, Presumptions, and Standards of Review

Amends Vehicle Code sections 41100 and 41101, adds section 41102, and renumbers section 41103, to state the burden of proof, presumptions and standard of review in traffic court proceedings.

### STATEMENT OF REASONS

The Problem: Although the applicable standards can be pieced together from various codes and sources by skilled attorneys, including the Penal Code, Evidence Code, Vehicle Code, Government Code, the U.S. and State Constitutions, and the voluminous Uniform Manuals on Traffic Control Devices, a *pro se* defendant is unlikely to be able to easily compile the various standards that apply to protect their rights in defending against traffic related citations. Police officers who issue tickets are now the principal “prosecutors” for traffic infractions in this state. There is no right to counsel for defendants, and generally no unbiased prosecutor (as in other criminal proceedings) to represent the interests of the state in traffic court. There are no lawyers other than the judge to “advocate” with respect to any necessary legal arguments. While the law requires all traffic control devices and signage to conform to certain uniform standards, there is no means to enforce these requirements to ensure local jurisdictions are in compliance. Thus, traffic citations are being issued in certain localities for violations of traffic control devices and signage that are unlawful; the citations are upheld because testifying officers are currently permitted to simply presume the signage is legal.

The Solution: This resolution amends the Vehicle Code to expressly set forth all of the applicable burdens, presumptions and standards applicable in traffic citation proceedings in one place. Reinforce the requirements for signage to be legally maintained by local jurisdictions prior to issuing citations by clarifying the limits of the applicable presumptions. The intent is to make it easier to reference and apply the proper standards, for both the parties and the court, and to ensure justice and protect the rights of drivers to fair trials in traffic court.

Clarifying the standards will not only assist defendants, but it will also ensure that traffic judges are properly applying the presumptions and burdens of proof. When there are genuine issues in dispute, particularly questions of law for which the testifying police officer is not qualified to testify concerning the legality of devices and signs, this can place the traffic commissioner/judge in an inappropriate position where they are compelled to do the job of the prosecutor in an attempt to uphold the law. The current system permits localities to unfairly cite drivers and collect penalties, while evading their obligations to update and maintain their traffic control devices and signage as required by law. With a complete lack of counsel for the prosecution or defense in most cases, the current process can easily violate the defendant’s Constitutional rights to a fair trial.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code sections 41100, 41101, add section 41102, and renumber

41104 to 41103 to read as follows:

1 CHAPTER 4. Burdens of Proof and Presumptions [41100 - 4110441103]

2  
3 § 41100

4 ~~In any action involving the question of unlawful speed of a vehicle upon a highway~~  
5 ~~which has been signposted with speed restriction signs of a type complying with the~~  
6 ~~requirements of this code, it shall be presumed that existing facts authorize the erection of the~~  
7 ~~signs and that the prima facie speed limit on the highway is the limit stated on the signs. This~~  
8 ~~presumption may be rebutted.~~

9 (a) A defendant in an action charging a violation of this code is presumed to be innocent  
10 until the contrary is proved, and in case of a reasonable doubt whether his or her guilt is  
11 satisfactorily shown, he or she is entitled to an acquittal, but the effect of this presumption is only  
12 to place upon the state the burden of proving him or her guilty beyond a reasonable doubt.  
13 Reasonable doubt is defined as follows: "It is not a mere possible doubt; because everything  
14 relating to human affairs is open to some possible or imaginary doubt. It is that state of the case,  
15 which, after the entire comparison and consideration of all the evidence, leaves the minds of the  
16 trier of fact in that condition that they cannot say they feel an abiding conviction of the truth of  
17 the charge."

18 (b) The state bears the burden of proof of each element of the charged offense beyond a  
19 reasonable doubt. Unless expressly set forth by statute, a defendant is not required to negate any  
20 element of the offense to prove his or her innocence.

21 (c) The state bears the burden of proof using only evidence admissible under the  
22 California Evidence Code. In any trial involving an infraction violation of this code, regardless  
23 of any objection by the defendant, all hearsay, speculation and unqualified legal or factual expert  
24 opinion by testifying officers, unless otherwise admissible, shall be noted for the record and  
25 excluded by the trier of fact.

26  
27 § 41101

28 (a) Whenever a facially compliant traffic sign or traffic control device is placed in a  
29 position approximately conforming to the requirements of this code on the date of the citation, it  
30 shall be presumed to have been placed by the official act or direction of lawful authority, unless  
31 the contrary is established by any competent evidence.

32 (b) Any sign or traffic control device placed pursuant to this code and purporting to  
33 conform to the lawful requirements pertaining to it at the time of the citation shall be presumed  
34 to comply with the requirements of this code unless the contrary is established by any competent  
35 evidence.

36 (c) This presumption operates only if the facts that give rise to the presumption have  
37 been found or otherwise established beyond a reasonable doubt under Evidence Code Section  
38 607, and, in such case, the defendant need only raise a reasonable doubt as to the existence of the  
39 presumed fact.

40 (d) If any competent evidence is proffered suggesting that the traffic sign or traffic  
41 control device was not lawfully authorized or placed in conformity with California Vehicle Code  
42 Section 21100.1, and/or any of the standards in the California Manual on Uniform Traffic  
43 Control Devices, the presumption shall be disregarded, and the state has the burden to prove the

44 legality of the traffic sign or traffic control device at the time of the citation beyond a reasonable  
45 doubt to support a conviction. No citation shall be upheld if there is any doubt as to the current  
46 legality of any traffic control device or signage at the time of the citation.

47 (e) Upon a timely public records act request under the California Public Records Act, the  
48 local authority responsible for maintaining the traffic control device or signage in question shall  
49 produce all records supporting the legality of the signage to the defendant accused of any  
50 violation of this code. It shall be the affirmative obligation of the local authority to maintain  
51 records sufficient to establish the legality of any traffic control devices or signage in compliance  
52 with Vehicle Code Section 21100.1 as of the date when the challenged citation is issued. The  
53 absence of public records demonstrating the legality of the cited traffic control device or sign by  
54 the official custodian of records of such authority shall give rise to a rebuttable presumption in  
55 favor of the defendant that the signage is not lawful.

56 (f) On and after one year from the date of enactment of this section, all traffic citations  
57 for violation of any traffic control device or sign must provide written notice of the defendant's  
58 right to request public records pursuant to this section to verify the legality of the traffic control  
59 device or signage and specify how to timely request such records prior to trial and introduce such  
60 records at trial if desired.

61  
62 § 41102

63 In any action involving the question of unlawful speed of a vehicle upon a highway  
64 which has been signposted with speed restriction signs of a type complying with the  
65 requirements of this code, it shall be presumed that existing facts authorize the erection of the  
66 signs and that the prima facie speed limit on the highway is the limit stated on the signs. This  
67 presumption may be rebutted.

68  
69 § ~~41104~~ 41103

70 In any case, involving an accident or otherwise, where any rear component of a train of  
71 vehicles fails to follow substantially in the path of the towing vehicle while moving upon a  
72 highway, the vehicle shall be presumed to have been operated in violation of Section 21711.

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

**PROPONENT:** Orange 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.

**AUTHOR AND/OR PERMANENT CONTACT:** Kelly A. Ernby, Deputy District Attorney,  
Orange County District Attorney's Office, 401 Civic Center Drive West, Santa Ana, CA 92701;  
email: kelly.ernby@da.ocgov.com; 949-903-5439 cell

**RESPONSIBLE FLOOR DELEGATE:** Kelly A. Ernby