

RESOLUTION 09-02-2018

DIGEST

Vandalism: Suspension of License Must be Tied to Vehicle Use

Amends Vehicle Code section 13202.6 to make suspension of a driver’s license for vandalism discretionary and tied to the use of a vehicle.

STATEMENT OF REASONS

The Problem: Under current law, any person convicted of vandalism must have his or her driver’s license suspended for up to two years. This is true even where the offense does not involve a car, and even where the offense has nothing to do with “tagging” or other forms of graffiti. The requirement that the defendant’s driver’s license be suspended is utterly impractical because the suspension of the defendant’s license impacts the defendant’s ability to work (and thereby maintain employment, and pay restitution) and, particularly in larger metropolitan areas where driving is a necessity, makes it more likely that a desperate defendant will violate the law again (by driving on a suspended license).

The Solution: This resolution would make suspension of a defendant’s driver’s license following a vandalism conviction permissible only where the offense involved the use of a vehicle, increasing the likelihood that those convicted of vandalism will be able to maintain employment and pay restitution.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 13202.6 to read as follows:

- 1 § 13202.6
- 2 (a)(1) For every conviction of a person for a violation of Section 594, 594.3, or 594.4 of
- 3 the Penal Code, committed while the person was 13 years of age or older, and involving the use
- 4 of a vehicle, the court ~~shall~~ may suspend the person’s driving privilege for not more than two
- 5 years, except when the court finds that a personal or family hardship exists that requires the
- 6 person to have a driver’s license for his or her own, or a member of his or her family’s,
- 7 employment, school, or medically related purposes. If the person convicted does not yet have the
- 8 privilege to drive, the court ~~shall~~ may order the department to delay issuing the privilege to drive
- 9 for not less than one year nor more than three years subsequent to the time the person becomes
- 10 legally eligible to drive. However, if there is no further conviction for violating Section 594,
- 11 594.3, or 594.4 of the Penal Code in a 12-month period after the conviction, the court, upon
- 12 petition of the person affected, ~~may~~ shall modify the order imposing the delay of the privilege.
- 13 For each successive offense, the court ~~shall~~ may suspend the person’s driving privilege for those
- 14 possessing a license or delay the eligibility for those not in possession of a license at the time of
- 15 their conviction for one additional year.
- 16 (2) A person whose driving privilege is suspended or delayed for an act involving
- 17 vandalism in violation of Section 594, 594.3, or 594.4 of the Penal Code, may elect to reduce the
- 18 period of suspension or delay imposed by the court by performing community service under the
- 19 supervision of the probation department. The period of suspension or delay ordered under
- 20 paragraph (1) shall be reduced at the rate of one day for each hour of community service

21 performed. If the jurisdiction has adopted a graffiti abatement program as defined in subdivision
22 (f) of Section 594 of the Penal Code, the period of suspension or delay ordered under paragraph
23 (1) shall be reduced at the rate of one day for each day of community service performed in the
24 graffiti abatement program when the defendant and his or her parents or legal guardians are
25 responsible for keeping a specified property in the community free of graffiti for a specified
26 period of time. The suspension shall be reduced only when the specified period of participation
27 has been completed. Participation of a parent or legal guardian is not required under this
28 paragraph if the court deems this participation to be detrimental to the defendant, or if the parent
29 or legal guardian is a single parent who must care for young children. For purposes of this
30 paragraph, "community service" means cleaning up graffiti from any public property, including
31 public transit vehicles.

32 (3) As used in this section, the term "conviction" includes the findings in juvenile
33 proceedings specified in Section 13105.

34 (b)(1) Whenever the court suspends driving privileges pursuant to subdivision (a), the
35 court in which the conviction is had shall require all drivers' licenses held by the person to be
36 surrendered to the court. The court shall, within 10 days following the conviction, transmit a
37 certified abstract of the conviction, together with any drivers' licenses surrendered, to the
38 department.

39 (2) Violations of restrictions imposed pursuant to this section are subject to Section
40 14603.

41 (c) The suspension, restriction, or delay of driving privileges pursuant to this section shall
42 be in addition to any penalty imposed upon conviction of a violation of Section 594, 594.3, or
43 594.4 of the Penal Code.

(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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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.