

## RESOLUTION 09-03-2018

### DIGEST

Driver's License: Notice Requirements for Re-Examination Procedures to Determine Capacity Amends Vehicle Code section 21061 to require the Department of Motor Vehicles to provide notice to a driver of the procedures used for determining the capacity of the driver.

### STATEMENT OF REASONS

The Problem: Existing law establishes a procedure where if a traffic officer believes a driver lacks the capacity to drive safely, the officer can have the Department of Motor Vehicles evaluate the driver's capacity. There is no due process for the cited individual until the end by way of a writ of mandamus. The present system mandates that the citee contact the DMV in as little as 5 days. At that first meeting without notice before hand the citee is given a written test. After the test the cited individual is asked to explain the circumstances of the citation. The information on the citation is given full credibility including hearsay. Denial of the violation is documented as "no recollection" and inferred as a lack of capacity. The examiner, who lacks professional training, evaluates the answers to determine whether the examinee exhibited cognitive issues or inability to remember specific details of the incident. Based on the original officer's ticket, the test results, and the interview, the hearing officer makes their determination to suspend the license. If an internal appeal is requested, the file is merely given to another hearing officer. The only review avenue available is a Writ of Administrative Mandate.

The Solution: This resolution attempts to inject some fairness in the process by requiring that the driver be alerted to the reexamination procedures. It allows the citee to study for the exam. (I still bone up for the driver's test if I don't get a pass on my license renewal.) It is lunacy for the DMV to infer passing knowledge of the written driver's test has anything to do with capacity especially when the driver has not had an opportunity to review the rules of the road when the re-examination date is scheduled before one can run to the DMV, wait in line, and get a handbook. The idea of a non-professional evaluating the mental capacity of a driver without using one objective standard test is mind boggling. This also leads to age bias. A case I witnessed the hearing officer noted every misstatement as a mental defect in a ninety minute interview but neglected to mention that the examinee was wearing hearing aids and possibly was not hearing the question. This resolution will give us the opportunity to bring up these shortcomings to the legislature and force the DMV to admit and hopefully modify their practices.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code Section 21061 to read as follows:

- 1 § 21061
- 2 (a) In addition to any action prescribed in Division 17 (commencing with Section
- 3 40000.1), a traffic officer may issue a notice of reexamination to any person who violates any
- 4 provision of this division and who, at the time of the violation, exhibits evidence of incapacity to
- 5 the traffic officer which leads the traffic officer to reasonably believe that the person is incapable
- 6 of operating a motor vehicle in a manner so as not to present a clear or potential danger of risk of

7 injury to that person or others if that person is permitted to resume operation of a motor vehicle.  
8 (b) For purposes of this section, “evidence of incapacity” means evidence, other than  
9 violations of this division, of serious physical injury or illness or mental impairment or  
10 disorientation which is apparent to the traffic officer and which presents a clear or potential  
11 danger or risk of injury to the person or others if that person is permitted to resume operation of a  
12 motor vehicle.

13 (c) Such notice of re-examination issued by said officer shall inform the citee the  
14 following:

15 1. The individual should be prepared to take the written driving exam at the first meeting  
16 with the DMV.

17 2. The individual may have someone accompany them to the DMV re-examination but  
18 will not be allowed to be represented by counsel.

19 3. During the re-examination interview process reaction time, mistakes and self-  
20 corrections made, and overall demeanor will be used in determining whether the citee lacks the  
21 capacity to drive.

(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:** Robert Unetic, 2309 N. Westwood Ave.,  
Santa Ana, CA 92706-1967, (714) 571-5274, [FAX] (209) 215-8800.

**RESPONSIBLE FLOOR DELEGATE:** Robert Unetic.