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Motor Vehicles

University of the Pacific, McGeorge School of Law

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Motor Vehicles

Motor Vehicles; Department of Motor Vehicles

Vehicle Code §25.5 (new).

AB 2495 (Briggs); STATS 1971, Ch 1386

Section 25.5 is added to the Vehicle Code to provide that it shall be unlawful for any person to falsely represent himself in any manner as an employee of the Department of Motor Vehicles for the purpose of obtaining records or information to which he is not entitled.

Motor Vehicles; drugs

Vehicle Code §§312, 23105, 23106 (new), 11110, 12805, 12810, 13201, 13209, 13210, 13350, 13352, 13355, 13550, 14601, 23107, 40302 (amended), 23101.5, 23102.5, 23105, 23106, 23108 (repealed).

AB 600 (Schabarum); STATS 1971, Ch 1487

AB 1069 (Biddle); STATS 1971, Ch 1530

AB 1953 (Z'berg); STATS 1971, Ch 1296

Revises provisions and penalties relative to the operation of a vehicle while under the influence of drugs as defined by this act.

Section 312 is added to the Vehicle Code to define "drug" to mean any substance, other than alcohol, which could affect the nervous system, brain, or muscles so as to impair the driving ability of a person below that of a reasonable man driving under similar circumstances.

Section 23105 is added to the Vehicle Code to provide that it is unlawful for any person who is under the influence of any drug to drive a vehicle upon any highway. It is also unlawful for a person who is addicted to the use of any drug (other than methadone patients as provided for in §11655.7 of the Health and Safety Code) to drive a vehicle upon any highway. Section 23105 further provides that the penalty for violation of this section shall be a misdemeanor, punishable by a fine and/or imprisonment, depending upon the number of violations within a given amount of time. In addition, if a person is under the age of 21, and he is the registered owner of the vehicle used in any such violation, the vehicle may be impounded for up to 30 days at the owner's expense.

The following sections are amended to incorporate within their provisions, the offense of driving while under the influence of any drug or the combined influence of intoxicating liquor or any drug: §§11110, 12810, 13201, 13209, 13210, 13352.

Subdivision (g) of §11110 is amended to allow suspension or revocation of a driver's license for violation of §§23105 or 23106 of this code as added by this act.

Subdivision (j) is added to §11110 to provide that "whenever the licensee conducts driver training, or permits driver training by any employee, in an unsafe manner or contrary to safe driving practices," the department may suspend, etc, the driver's license of such employee.

Subdivision (b) of §12805 is amended to provide that the department shall not issue or renew a driver's license to a person who is addicted to the use of *narcotic* drugs.

Subdivision (e) is added to §13201 to provide that the court may suspend a driver's license for the offense of driving while addicted to the use, or under the influence of any drug under §23105 (*supra*).

Subdivision (b) is added to §13350 to provide that the department shall immediately revoke a driver's license upon receipt of the record of any court showing that such person has been convicted of the offense of failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with the provisions of §20001.

Section 13550 is amended to provide that a person shall be required to surrender his driver's license upon conviction of a violation of §23105 (*supra*).

Section 14601 is amended to prohibit a person from driving after his driving privilege has been suspended or revoked for the offense of driving while under the influence of any drug, or under the combined influence of alcohol and any drug, rather than any narcotic drug.

Section 23106 is added to the Vehicle Code to provide that any person who, while under the influence of any drug, drives a vehicle and while so driving does any act forbidden by law, or neglects any duty imposed by law proximately causing bodily injury to any person other than himself, is guilty of a felony. The penalty upon conviction shall be imprisonment in the state prison for 1 to 5 years or in the county jail for 90 days to 1 year and by a fine of not less than \$250 dollars nor more than \$5,000 dollars.

Section 23107 is amended to provide that the fact that a person is or

has been entitled by law to use a drug, rather than a drug or amphetamine, is no defense to a violation of §§23105 or 23106.

Section 40302, which relates to the arrest procedures for violation of the provisions of the Vehicle Code is amended to delete the reference to §§23102.5 and 23106 as repealed by this act, and to add §23105 as added by this act.

Section 13352 provides that the department shall immediately suspend or revoke a driver's license upon a conviction of driving while under the influence of intoxicating liquor. This section is amended to provide that a license shall be suspended or revoked for any of the following reasons:

- (1) conviction of driving while under the influence of intoxicating liquor or any drug, or
- (2) a conviction of driving while under the combined influence of intoxicating liquor and any drug, or
- (3) for a violation of subdivision (b) of §23105, or
- (4) upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed the offense of operating a vehicle while under the influence of intoxicating liquor or any drug, or while under the combined influence of intoxicating liquor and any drug, or in violation of subdivision (b) of §23105.

Section 13352 is further amended to provide that the penalty for violation of this section shall depend upon the number of convictions or *findings* within a given time span.

Subdivision (a) of §13352 is amended to provide that with the exception of §23106, as well as §23101, upon a first conviction or finding, a license shall be suspended or revoked as provided for in §§ 13201 or 13358.

The following sections of the Vehicle Code are repealed:

- (1) §23101.5 Felony driving while under the influence of poison.
- (2) §23102.5 Misdemeanor driving under the influence of poison.
- (3) §23105 Narcotics.
- (4) §23106 Nonnarcotic drugs.
- (5) §23108 Nonnarcotic drugs.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crime* §§973, 974 (1963).
- 2) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 214.

Motor Vehicles; motor vehicle actions

Vehicle Code §§17459, 17460, 17461 (amended).
SB 912 (Grunsky); STATS 1971, Ch 622

Section 17459 of the Vehicle Code is amended to provide that if a resident of this state accepts a certificate of ownership, registration or a renewal thereof for any motor vehicle, such resident impliedly consents that service of summons may be made upon him within or without this state, whether or not he is then a resident of this state, in an action arising in this state out of the ownership or operation of the vehicle.

Section 17460 of the Vehicle Code is amended to provide that if a resident of this state accepts or retains a driver's license, such resident impliedly consents that service of summons may be made upon him within or without this state the same as provided for in §17459 of the Vehicle Code.

Section 17461 of the Vehicle Code, as amended, provides that summons served out of state pursuant to §§17459 and 17460 shall be made in the manner provided for in §§17454, 17455, 17456 or Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

Prior to amendment, §§17459 and 17460 required that a summons be served in person. [SB 912 was sponsored by the California State Bar]

See Generally:

- 1) CAL. CODE CIV. PROC. §§413.10 *et seq.* (STATS. 1969, c. 1610).
- 2) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 67.

Motor Vehicles; regulating public traffic on driveways, paths, and grounds

Vehicle Code §21113 (amended).
AB 1907 (Foran); STATS 1971, Ch 508

Section 21113 of the Vehicle Code is amended to provide that when a governing board or officer of a state or public school, hospital district, municipal airport or building, state park, or any tax exempt educational institution permits public traffic upon driveways, paths, or grounds under their control, all provisions of the Vehicle Code applicable to traffic upon the highway shall be in effect and applicable to such public traffic, *except* for those conditions or regulations enacted by the governing board or officer.

COMMENT

The intent of the Legislature in enacting this amendment was to

eliminate the ambiguity of the wording previously used to state the exception to the application of the Vehicle Code to the situation herein described. The section had read "in the absence of any special condition or regulation", and it was not readily apparent what the source and nature of such conditions and regulations might be.

See Generally:

- 1) 34 OPS. ATT'Y GEN. 283 (1959).

Motor Vehicles; pedestrians, right-of-way

Vehicle Code §21954 (amended).

AB 2017 (McAlister); STATS 1971, Ch 1015

Subsection (a) of §21954 of the Vehicle Code is amended to provide that every pedestrian who is not within a marked crosswalk or at an intersection shall yield the right-of-way to all vehicles upon the roadway *so near as to constitute an immediate hazard*.

Prior to the enactment of Chapter 1015 a pedestrian not within a marked crosswalk or at an intersection was required to yield right-of-way to all vehicles regardless of whether or not such vehicle was so near as to constitute an immediate hazard.

COMMENT

Prior to the enactment of Chapter 1015, if a person crossed at a place other than in a marked crosswalk or at an intersection, such violation of §21954 was considered negligence per se [Ferner v. Casalegno, 141 Cal. App. 2d 467 (1956)]. It now appears that it is no longer negligence per se to cross at a place other than at a marked crosswalk or at an intersection so long as there is no immediate hazard from vehicles upon the roadway.

See Generally:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §335 (7th ed. 1963); §235A (Supp. 1969).

Motor Vehicles; drunk driving

Vehicle Code §23102.2 (new).

SB 1312 (Grunsky); STATS 1971, Ch 1371

Section 23102.2 is added to the Vehicle Code to provide that a written motion to vacate or set aside a prior judgment of conviction of driving a motor vehicle while under the influence of intoxicating liquor may be made in a pending criminal proceeding in which the defendant is

accused of having committed another such offense. A copy of the motion shall be served on the prosecuting attorney at least two days prior to the hearing. The motion shall state the grounds upon which the prior judgment should be vacated and shall be supported by an affidavit.

Section 23102.2 further provides that the hearing on such motion may be continued for at least 5 days upon a showing that such continuance is necessary to enable the prosecuting attorney to prepare his response to the motion. The prosecuting attorney may file counteraffidavits with his response.

COMMENT

Under present provisions, §13352 of the Vehicle Code sets forth the penalty involved for a conviction of driving while under the influence of intoxicating liquor. The penalty depends on the number of convictions in a given amount of time.

In *Mitchell v. Orr*, 268 Cal. App. 2d 813, (1969), the court held that the Department of Motor Vehicles is bound by a trial court order vacating a prior conviction for driving while under the influence of intoxicating liquors, and could not impose sanctions applicable to a second conviction in light of the trial court order. However, *Mitchell* was distinguished in *Thomas v. Department of Motor Vehicles*, 3 Cal. 3d 335 (1970). *Thomas* held that the Department could suspend a driver's license on the basis of prior convictions of drunk driving if the validity of the prior convictions had not yet been litigated. Chapter 1371 allows a defendant to collaterally attack the previous conviction of drunk driving while criminal proceedings are pending wherein he is charged with another such offense, if certain criteria are met.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crimes* §974 (1963), (Supp. 1969).
- 2) Note, *California Traffic Law Administration*, 12 STAN. L. REV. 390 (1960).

Motor Vehicle; vehicle code violations

Vehicle Code §40307 (amended).

AB 918 (Russell); STATS 1971, Ch 1528

Section 40307 of the Vehicle Code provides that when an arresting officer attempts to take an arrested person charged with a misdemeanor or infraction of the Vehicle Code before a magistrate and such magistrate is not available, the arresting officer shall take the person before:

- (1) The clerk of the magistrate who shall admit him to bail, or
- (2) The officer in charge of the most accessible county or city jail or other place of detention within the county, who shall admit him to bail.

Section 40307 is amended to authorize an arresting officer to detain a person for up to 1 hour to verify the identity of such person if the person has been arrested for an offense committed while operating a motor vehicle and fails to present his driver's license or other satisfactory evidence of his identity.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §125 (1963).
- 2) REVIEW OF SELECTED 1968 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 248.

Motor Vehicles; vehicle offenses and prosecution

Vehicle Code §40515 (amended).
AB 567 (Cullen); STATS 1971, Ch 1042

Subsection (a) of §40515 of the Vehicle Code is amended to provide that if a person fails to appear, pursuant to a signed written promise to appear in lieu of bail, the magistrate *may*, rather than *shall*, issue a warrant for his arrest within 20 days after his failure to appear.

Chapter 1042 also eliminates subsection (c) of §40515 which provided that a magistrate was authorized, rather than required, to issue a warrant for the arrest of a resident of another state who failed to appear after having signed a written promise to appear.

Since Chapter 1042 amends subsection (a) to authorize the magistrate to issue a warrant, rather than to require that a warrant be issued, subsection (c) is no longer needed.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §128 (1963), (Supp. 1969).
- 2) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 260.

Motor Vehicles; liability for damages to a towed-away vehicle

Vehicle Code §22658 (amended).
AB 1424 (Gonsalves); STATS 1971, Ch 1698

Section 22658 of the Vehicle Code permits owners or lawful possessors of real property to remove vehicles parked on their property if cer-

tain notice procedures are followed. Chapter 1698 amends Section 22658 to provide that in the event of removal of a vehicle pursuant to this section, the owner of the vehicle may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing the vehicle.