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Criminal Procedure

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Criminal Procedure

Criminal Procedure; bail hearings—domestic offenses

Penal Code § 1270.1 (amended).
ABX 59 (Alpert); 1994 STAT. Ch. 58X

Existing law requires each county to adopt a uniform bail schedule to be used throughout the county.[1] Existing law also provides that when a person who has been arrested for a violent felony[2] is released on bail for an amount that is either more or less than that set in the bail schedule for the offense charged, there must be a hearing before the magistrate or judge.[3] If the judge or magistrate sets the bail at an amount that is more or less than that specified in the bail schedule, the judge or magistrate is required to state the reasons for the deviation and may be required to address the issue of threats made against the victim(s).[4]

Chapter 58X adds to existing law by imposing the same hearing requirements whenever a person who has been arrested for the rape of a spouse,[5] corporal injury to a spouse or cohabitant,[6] stalking,[7] or battery of a noncohabiting former

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1. CAL. PENAL CODE § 1269b (West Supp. 1994); *see* Review of Selected 1973 Legislation, *Criminal Procedure; Adoption of Bail Schedules*, 5 PAC. L.J. 205, 334 (1974) (discussing bail schedules in California); *see also* CAL. CONST. art. 1, § 12 (setting forth the rights of a defendant to be released on bail); CAL. PENAL CODE § 1275 (West Supp. 1994) (setting forth considerations for fixing bail amounts); People v. Arnold, 58 Cal. App. 3d Supp. 1, 5, 132 Cal. Rptr. 922, 925-26 (1976) (applying California Penal Code § 1275 and discussing the considerations for fixing bail amounts). *See generally* 4 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW, *Proceedings Before Trial*, § 2004(e) (2d ed. 1989) (discussing bail schedules).

2. *See* CAL. PENAL CODE § 667.5(c) (West Supp. 1994) (defining violent felonies); *see also* People v. Hetherington, 154 Cal. App. 3d 1132, 1140, 201 Cal. Rptr. 756, 760 (1984) (holding that child molestation and abuse qualifies as a violent felony due to the extreme psychological and emotional harm to the victim); *accord* People v. Stephenson, 160 Cal. App. 3d 7, 10, 206 Cal. Rptr. 444, 446 (1984).

3. CAL. PENAL CODE § 1270.1 (amended by Chapter 58X); *see id.* § 825 (West Supp. 1994) (setting forth procedures for a hearing before the magistrate and prohibiting unnecessary delay of the hearing); *see also* CAL. CONST. art. 1, § 14 (requiring that a defendant be taken before a magistrate without unnecessary delay); *id.* § 15 (providing a defendant with the right to a speedy trial). *But see* Barry D. Parkinson, Comment, *Preventative Detention in California: Can Some Criminal Defendants be Detained Prior to Trial?*, 3 PAC. L.J. 142, 148-65 (1972) (discussing preventive detention without bail and its constitutional implications).

4. CAL. PENAL CODE § 1270.1 (amended by Chapter 58X).

5. *See id.* § 262 (West Supp. 1994) (defining rape of a spouse); *see also id.* § 261 (West Supp. 1994) (defining rape); *id.* § 264 (West Supp. 1994) (setting forth the punishment for rape and rape of a spouse). *See generally* Carin C. Azarcon & Jennifer L. Miller, Review of Selected 1993 Legislation, *Crimes; Sex Offenses—Spousal Rape, Sex Offender Registration*, 25 PAC. L.J. 368, 590 (1994) (discussing spousal rape).

6. *See* CAL. PENAL CODE § 273.5 (West Supp. 1994) (defining corporal injury to a spouse or cohabitant); *see also* People v. Wilkins, 14 Cal. App. 4th 761, 771, 17 Cal. Rptr. 2d 743, 748 (1993) (stating that a person has committed corporal injury to a spouse or cohabitant by merely inflicting minor injury as opposed to serious or great bodily injury), *review denied*, 1993 Cal. LEXIS 3903 (1993); People v. Holifield, 205 Cal. App. 3d 993, 1000, 252 Cal. Rptr. 729, 733-34 (1988) (defining cohabiting to mean an unrelated man and woman living together in a substantial relationship manifested by permanence and sexual or amorous intimacy).

7. *See* CAL. PENAL CODE § 646.9 (West Supp. 1994) (defining the crime of stalking); *cf.* CAL. CIV. CODE § 1708.7(a)(1) (West Supp. 1994) (defining the tort of stalking). *See generally* Jennifer L. Miller, Review of Selected 1993 Legislation, *Crimes; Stalking*, 25 PAC. L.J. 368, 595 (1994) (discussing the crime of stalking).

spouse, fiance(e), or a person who currently has or previously had a dating relationship[8] with the defendant, is released on a bail amount that is more or less than that set in the bail schedule.[9]

Additionally, Chapter 58X imposes the same hearing requirements when a person who has been arrested for one of the specified offenses is to be released on his or her own recognizance.[10]

INTERPRETIVE COMMENT

The purpose of Chapter 58X is to protect the public from improper release of defendants by preventing defense attorneys from "judge shopping" in an attempt to have their clients released without any or with reduced bail.[11] Chapter 58X allows the prosecutor to argue that a defendant's bail should not deviate from the bail schedule.[12] However, there is some question as to whether holding a hearing for deviation from the bail schedule has had any effect in protecting the public.[13]

Jonathan P. Hobbs

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8. *See* CAL. PENAL CODE § 243(e)(1) (West Supp. 1994) (setting forth the punishment for battery of a former spouse, fiance(e), or person with current or previous dating relationship); *id.* § 243(f)(11) (West Supp. 1994) (defining dating relationship as a frequent, intimate association primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations); County of Santa Clara v. Willis, 179 Cal. App. 3d 1240, 1251 n.6, 225 Cal. Rptr. 244, 250 n.6 (1986) (stating that the slightest touching may constitute a criminal battery even if it does not cause bodily harm or pain or leave a mark on the victim); *see also* CAL. PENAL CODE § 242 (West 1988) (defining battery).

9. CAL. PENAL CODE § 1270.1 (amended by Chapter 58X).

10. *Id.* § 1270.1 (amended by Chapter 58X); *see id.* § 1270 (West Supp. 1994) (setting forth the conditions when a person may be released on his or her own recognizance); *see also* Kawaichi v. Madigan, 53 Cal. App. 3d 461, 465, 126 Cal. Rptr. 63, 66 (1975) (holding that arrestees must bear the burden of showing that they should be released on their own recognizance).

11. *SEE* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF ABX 59, at 1 (May 3, 1994) (stating that attorneys have been known to judge shop when their clients are accused of stalking or domestic violence); *see also* Carbo v. United States, 288 F.2d 282, 285-86 (9th Cir. 1961) (holding that the court has the power to revoke bail in order to further the administration of justice); Kelly Rowe, Comment, *The Limits of the Neighborhood Justice Center: Why Domestic Violence Cases Should Not Be Mediated*, 34 EMORY L.J. 855, 907 (1985) (advocating higher bails for domestic violence cases); Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 320-21 (1985) (recommending stricter bail requirements for persons arrested for spouse beating). *But see* Bob Levenson, *Court Thinks Spouse Abuse Rules Unfair*, ORLANDO SENTINEL TRIB., Aug. 7, 1992, at B1 (quoting a judge's disapproval of the holding of a defendant without bail for 24 days on domestic violence charges that were eventually dropped).

12. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF ABX 59, at 1 (May 3, 1994).

13. *Id.* at 2; *see id.* (questioning whether there is any data tending to indicate that holding bail hearings has helped protect the public).

Criminal Procedure; insanity plea—inadmissible mental conditions

Penal Code § 25.5 (new).
SBX 40 (Bergeson); STAT. Ch. 10X

Existing law provides that the defense of "not guilty by reason of insanity" will be found by the trier of fact only when the accused proves by a preponderance of the evidence that he or she was incapable of knowing or understanding his or her act, nor capable of distinguishing right from wrong at the time when the act was committed.[1] Chapter 10X bars any finding in support of a defense by reason of insanity that is based solely on a personality or adjustment disorder,[2] a seizure, or an addiction to, or abuse of, intoxicating substances.[3] Chapter 10X is

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1. CAL. PENAL CODE § 25(b) (West 1988); *see* CAL. EVID. CODE § 522 (West 1966) (providing that any party claiming insanity has the burden of proof on that issue); *see also* People v. Horn, 158 Cal. App. 3d 1014, 1032, 205 Cal. Rptr. 119, 127 (1984) (holding that California Penal Code § 25 reinstates the M'Naghten right and wrong test for the insanity defense in California, and interpreting insanity under that section to be satisfied by a preponderance of the evidence that either the person was unable to understand the nature and quality of his or her act or unable to distinguish right from wrong); M'Naghten's Case, 8 Eng. Rep. 718, 719 (1843) (holding that in order to establish a defense on the ground of insanity, the person must show that at the time of committing the act, he was unable, by reason of defect or disease of the mind, to know that his act was wrong); *cf.* ARIZ. REV. STAT. ANN. § 13-502(A) (Supp. 1994) (providing that a person may be found "guilty except insane" if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong); *id.* § 13-502(D) (Supp. 1994) (providing that if a defendant is found to be "guilty except insane," the court must determine the sentence that the defendant could have received had he not been insane, and the judge must commit the defendant pursuant to specifications for that term); ILL. ANN. STAT. ch. 720, para. 5/6-2(a) (Smith-Hurd 1993) (providing that a person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he or she lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of the law). *See generally In re* Slayback, 209 Cal. 480, 490, 288 P. 769, 773 (1930) (stating that punishment cannot be legally inflicted upon a person for an act committed while insane); 1 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW, *Defenses* §§ 204-212 (2d ed. 1988 & Supp. 1994) (discussing the effects and interpretations of Proposition 8, the California M'Naghten test, and voluntary intoxication as no defense).

2. *See* AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 335 (3d ed. rev. 1987) (describing personality disorder as constituting inflexible and maladaptive personality traits that cause either significant functional impairment or subjective distress); *id.* at 335-58 (setting forth provisions regarding diagnosis and categorization of personality disorders); *id.* at 329 (defining adjustment disorder as a maladaptive reaction to an identifiable psychosocial stressor that occurs within three months after the onset of the stressor, and has persisted for no longer than six months); *id.* at 329-31 (setting forth diagnostic criteria for adjustment disorder and the various types of adjustment disorder); SENATE FLOOR, COMMITTEE ANALYSIS OF SBX 40, at 2 (May 12, 1994) (stating that according to the Department of Mental Health, personality disorders do not render the person suffering from them out of touch with reality, but that persons with these disorders have difficulty adjusting to societal constructs and are persons who are easily angered and suffer from irresponsible behavior patterns); *id.* (stating that people with personality disorders are not particularly amenable to therapeutic support); *id.* (stating that adjustment disorders are temporary, short lived, uncharacteristic dysfunctional reactions that may occur in response to a normal life situation, and that persons suffering from adjustment disorders are not out of touch with reality).

3. *Id.* § 25.5 (enacted by Chapter 10X); *see* People v. Fields, 35 Cal. 3d 329, 369, 673 P.2d 680, 706, 197 Cal. Rptr. 803, 829 (1983) (holding that the insanity defense requirement that the defendant be suffering from a mental disease or defect prevents consideration of a mental illness if that illness is manifested only by a series of criminal or antisocial acts), *cert. denied*, 469 U.S. 897 (1984); *id.* at 372, 673 P.2d at 708, 197 Cal. Rptr. at 831 (stating that to classify persons suffering from antisocial personality disorders as insane would put

applicable to persons who use the insanity defense on or after the date its provisions become effective.[4]

INTERPRETIVE COMMENT

By enacting Chapter 10X, the Legislature defines the mental conditions that are not admissible when a plea of not guilty by reason of insanity is entered.[5] The exclusion of personality or adjustment disorders, seizures, or addiction to or abuse of intoxicating substances is designed to prevent abuse of the insanity plea and to appropriately direct individuals to the correctional system rather than the state hospitals.[6] Experts agree that individuals suffering from personality or adjustment disorders do not have a major mental disorder, and these individuals usually have the capacity to distinguish right from wrong.[7] The sponsor of Chapter 10X states that individuals with personality disorders may attempt to use the insanity defense to avoid prison terms, and if successful in this defense, these individuals will be committed to a state hospital, where they are eligible to apply for a conditional release from the hospital after 180 days.[8] The sponsor of Chapter 10X also asserts

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in the mental institutions persons for whom there is currently no treatment and who would present a constant danger to staff and other inmates); *id.* (stating that prisons, not mental hospitals, are for persons with antisocial personality disorders); People v. Griggs, 17 Cal. 2d 621, 625, 110 P.2d 1031, 1034 (1941) (stating that although drunkenness is no excuse for crime, when insanity is the result of long continued intoxication, it affects responsibility in the same way as insanity produced by any other cause); *cf.* ARIZ. REV. STAT. ANN. § 13-502(A) (Supp. 1994) (stating that mental defect or disease that constitutes legal insanity does not include disorders resulting from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or impulse control disorders, and that conditions that do not constitute legal insanity include, but are not limited to, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person not suffering from a mental defect or disease or an abnormality that is manifested only by criminal conduct); ILL. ANN. STAT. ch. 720, para. 5/6-2(b) (Smith-Hurd 1993) (stating that the terms mental disease or mental defect, for purposes of an insanity defense, do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct).

4. CAL. PENAL CODE § 25.5 (enacted by Chapter 10X).

5. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX 40, at 2 (May 12, 1994).

6. *Id.* at 2-3.

7. *Id.* at 3; *see* Miles Corwin, *Recent Crimes Shock Old-Timers Doing Time: California Joint Insiders See Trend of More Ruthless, Random Violence and Less Remorse*, WASH. POST, Dec. 26, 1993, at A19 (reporting that people with what psychiatrists call "antisocial personality disorder" are more prevalent today, and that such persons basically have no feelings and absolutely no remorse or concern for other people's suffering). *But see* Elyn R. Saks, *Multiple Personality Disorder and Criminal Responsibility*, 25 U.C. DAVIS L. REV. 383, 385 (1992) (arguing that persons suffering from multiple personality disorder are not blameworthy and should not be punished).

8. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX 40, at 3 (MAY 12, 1994); *see* CAL. PENAL CODE § 1601(a) (West Supp. 1994) (requiring persons found not guilty by reason of insanity of murder, mayhem, and other specified violent felonies to spend not less than 180 days confined in a state hospital before outpatient status will be available to them); *id.* § 1026.2 (West Supp. 1994) (providing the procedure and application requirements for persons committed to a state mental hospital to apply for release from the state hospital on the grounds of restoration of sanity); *id.* § 1026.2(d) (West Supp. 1994) (providing that no hearing upon application for release from a state mental hospital will be allowed until the person committed has been confined or placed on outpatient status for not less than 180 days).

that with the enactment of California's "three strikes" law,[9] many more individuals will attempt to use the insanity defense in order avoid life imprisonment, therefore necessitating a clearer definition of the conditions that do not qualify under the defense.[10]

Darren K. Cottriel

Criminal Procedure; suspension of driver's license—controlled substance conviction

Vehicle Code §§ 13202.3, 14907 (repealed and new).
ABX 79 (Frazee); 1994 STAT. Ch. 38X

Existing law allows a court to suspend or order the Department of Motor Vehicles (DMV)[1] to revoke the driver's license of an individual convicted of a specified controlled substance offense[2] if the use of a vehicle was involved in, or incidental to, the commission of the offense.[3] Existing law provides that such a suspension or revocation may not exceed three years.[4] Existing law requires the court to suspend the driver's license of, or delay the issuance of a driver's license to, any individual between the ages of thirteen and twenty-one who has been convicted of certain controlled substance offenses.[5] Under Chapter 38X, a person

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9. *See Increased Sentences, Repeat Offenders Initiative Statute, Proposition 184*, Nov. 8, 1994 California General Election (adding Penal Code § 1170.12).

10. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX 40, at 3 (May 12, 1994).

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1. *See* CAL. VEH. CODE §§ 1650-1678 (West 1987 & Supp. 1994) (describing the powers and duties of the Department of Motor Vehicles).

2. *See* CAL. HEALTH & SAFETY CODE §§ 11000-11648 (West 1991 & Supp. 1994) (encompassing the Uniform Controlled Substances Act, providing general definitions, standards, and schedules, and describing offenses, penalties, and other matters relating to controlled substances).

3. CAL. VEH. CODE § 13202(a) (West 1987).

4. *Id.* § 13202(c) (West 1987); *see id.* (allowing courts discretion in determining a period of revocation while establishing a maximum length); *see also* People v. Monday, 224 Cal. App. 3d 1489, 1492-93, 274 Cal. Rptr. 617, 619 (1990) (holding that a defendant's loss of his driver's license was supported by evidence that he was traveling in an automobile and was carrying methamphetamine, even though his travel was only incidental to the offense).

5. CAL VEH. CODE. § 13202.5 (West Supp. 1994); *see id.* (requiring an automatic one-year license suspension for a violation of any of the following: California Health and Safety Code §§ 11000-11748 (controlled substance offenses); California Penal Code § 191.5 (gross vehicular manslaughter while intoxicated); California Penal Code § 192(c)(3) (vehicular manslaughter while intoxicated); or California Penal Code § 647(f) (disorderly conduct while intoxicated)); *see also* People v. Valenzuela, 3 Cal. App. 4th Supp. 6, 10, 5 Cal. Rptr. 2d 492, 494 (1991) (finding that the law requiring license suspension for possession of alcohol by a minor is rationally related to the state's legitimate interest in promoting highway safety). *See generally* George J. Kunzelman, Review of Selected 1990 California Legislation, *Transportation and Motor*

convicted of a specified controlled substance offense[6] would lose his or her license for six months.[7] Each subsequent conviction for a specified offense would require an additional six-month suspension.[8] However, Chapter 38X allows individuals convicted of specified drug offenses to retain their license if they can demonstrate compelling circumstances.[9]

INTERPRETIVE COMMENT

Chapter 38X was enacted in order to comply with a federal law[10] that requires states to either impose a six-month driver's license suspension on a convicted drug offender[11] or to deliver a resolution from the state legislature, signed by the Governor, to the United States Secretary of Transportation, indicating that the state does not wish to implement the license suspension policy.[12] The penalty for

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Vehicles; Drivers' License Suspension—Vandalism, 22 PAC. L.J. 323, 734 (1991) (describing license suspension for alcohol, controlled substances, and vandalism offenses by juveniles).

6. *See* CAL. VEH. CODE § 13202.3(c) (enacted by Chapter 38X) (specifying that a conviction means a conviction of any controlled substance offense contained in the laws of the United States, each state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any controlled substance offense; a violation of California Health and Safety Code §§ 11000-11648 involving possession, distribution, manufacture, cultivation, or transfer of those substances which are prohibited under those sections; or an offense involving a controlled substance as defined in California Vehicle Code §§ 23152-23229.1). *But see* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS of ABX 79, at 2 (June 28,1994) (stating that according to the National Highway Traffic Safety Administration, a person will not be deemed to be convicted if he or she is diverted to a drug diversion program).

7. CAL. VEH. CODE § 13202.3(a) (enacted by Chapter 38X); *see id.* (providing that the penalty of driver's license suspension is in addition to any other penalty for the controlled substance offense and stating that this penalty need not be applied if the defendant's license is already suspended pursuant to California Vehicle Code §§ 13202 or 13202.5).

8. *Id.* § 13202.3(a) (enacted by Chapter 38X).

9. *Id.* § 13202.3(b) (enacted by Chapter 38X).

10. *See* 23 U.S.C.A. § 159(a) (West Supp. 1994) (describing the procedures for the withholding of highway apportionments for non-compliance with the provisions of 23 U.S.C.A. § 159); *see also* Quiller v. Bowman, 425 S.E.2d 641, 642 (Ga. 1993) (upholding a suspension of a driver's license for a conviction of a drug offense), *cert. denied*, 114 S. Ct. 72 (1993).

11. *See* 23 U.S.C.A. § 159(a)(3)(A) (West Supp. 1994) (noting that in addition to a six-month suspension of licenses already issued, individuals who do not have licenses must receive a six-month delay in the issuance of their license from their application date); *see also* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF ABX 79, at 4 (June 28, 1994) (indicating that as of June 28, 1994, 14 states plus the District of Columbia and Puerto Rico have enacted laws suspending driver's licenses of convicted drug offenders for at least six months); *see, e.g.*, ALA. CODE §§ 13A-12-290, 13A-12-291 (Supp. 1993); ARK. CODE ANN. § 27-16-915 (Michie Supp. 1994); GA. CODE ANN. § 40-5-75 (1991); IND. CODE ANN. § 35-48-4-15 (West Supp. 1994); MISS. CODE ANN. § 63-1-71 (Supp. 1993) (all imposing a minimum six-month driver's license suspension for a controlled substance conviction); S.C. CODE ANN. § 56-1-745 (Law Co-op. 1990) (imposing a driver's license suspension of six months for marijuana and hashish offenses and a suspension of one year for other controlled substance violations).

12. ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF ABX 79, at 2 (Apr. 11, 1994); *see* 23 U.S.C.A. 159(a)(3)(B) (West Supp. 1994) (describing procedures for opting-out of the program and providing that a resolution in opposition to enactment or enforcement of the law must be signed by the Governor and approved by both houses of the state's legislature where applicable); *see also* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF ABX 79, at 4 (June 28, 1994) (noting that as of June 28, 1994, 28 states had complied with the federal legislation by stating that they were opposed to it).

failing to follow either of these options is the loss of specified federal highway funds.[13]

The federal legislation stems from the "War on Drugs."[14] It is believed that the threat of the loss of a driver's license will be an effective deterrent to casual drug users and the young, and that the safety of the nation's highways will be improved.[15] The federal legislation was also designed to influence states to pass stricter anti-drug measures.[16] However, opponents believe that the policy will not be effective as a deterrent[17] and that persons charged with minor drug offenses will go to court to protect their licenses, straining judicial and financial resources.[18] In addition, some detractors feel that the penalty of reduced driving

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13. 23 U.S.C.A. § 159(a)(1),(2) (West Supp. 1994); *see id.* (requiring a 5% annual reduction in federal highway funds for non-compliance beginning in fiscal year 1994, and a 10% annual reduction for non-compliance beginning in fiscal year 1996); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF ABX 79, at 2 (June 13, 1994) (estimating that the penalty for California's failure to comply is approximately $54 million annually for the first two years, and $108 million annually thereafter).

14. *See* Randy E. Barnett, *Bad Trip: Drug Prohibition and the Weakness of Public Policy*, 103 YALE L.J. 2593 (1994), (reviewing STEVEN B. DUKE & ALBERT GROSS, AMERICA'S LONGEST WAR: RETHINKING OUR TRAGIC CRUSADE AGAINST DRUGS (1993)) discussing various drug war efforts, such as the seizure of property, civil fines, and license suspensions); Diana R. Gordon, *The Drug War Hits the Roads*, NATION, May 31, 1993, at 735 (analyzing the federal policy and stating that President Bush and the Director of National Drug Control Policy, William Bennett, were trying to encourage state enactment of license suspension laws as part of the effort to come down hard on casual use); *Press Conference with William Bennett*, Federal News Service, Nov. 15, 1990, *available in* LEXIS, News Library, Arcnws File (discussing state and local policies as being crucial fronts in the war on drugs). *But see Dumb Drug Laws*, SACRAMENTO BEE, Apr. 19, 1994, at B8 (calling the license suspension proposal one of the "dumber" Bush-era war-on-drugs laws).

15. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF ABX 79, at 5 (June 28, 1994) (quoting a DMV report entitled "*The Relationship Between Drug Arrests and Driving Risk*" issued January, 1994, which states that there is a nexus between drugs and traffic safety); Gordon, *supra* note 14, at 736 (quoting the co-author of the federal legislation, Representative Gerald Solomon, as stating that he wanted to send a meaningful message to America's youth); Laura R. Hamburg, *States to Yank Offenders' Drivers' Licenses*, STATES NEWS SERVICE, July 8, 1994, *available in* LEXIS, News Library, Curnws File (stating that the program is popular with law enforcement personnel and quoting an officer as saying that the program will allow law enforcement to get drug offenders off the road and that teen-age drivers will be deterred by the threat of losing their license); *Rules Ready to Suspend Drivers' License for Drug Convictions*, ALCOHOLISM & DRUG ABUSE WEEK, Sept. 2, 1992, at 5 (noting that according to the Federal Highway Administration, the rule was implemented primarily to deter young people from experimenting with drugs).

16. *See* Gordon, *supra* note 14, at 736 (stating that one of the federal bill's co-authors' intent was to get California and New York, states which had basically decriminalized possession of small amounts of marijuana, to toughen their laws); Ray Tessler, *Drug Chief Urges California to Reverse its Easy Pot Laws*, S.F. CHRON., July 20, 1989, at A4 (quoting William Bennett as stating that America cannot tell other countries to get rid of their drugs until we rid ourselves of drugs); *Press Conference with William Bennett*, *supra* note 14 (stating that California and New York have major drug consumption and trafficking problems and that their laws should be sending a stronger message).

17. *See* Barnett, *supra* note 14 (arguing that drug war prohibitions have been ineffective as deterrents and have been, in fact, counter-productive); *see also* 1994 Ky. Acts 52 (stating that Kentucky has criminal drug laws on the books and that anyone not deterred from engaging in criminal conduct by those laws would certainly not be deterred by the threat of the loss of their driver's license); Gordon, *supra* note 14, at 736 (stating that only the most timorous of recreational users would be deterred and quoting North Dakota Governor George Sinner as commenting that heavy users and dealers already are so far outside the law that the lack of a valid driver's license will not stop them).

18. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF ABX 79, at 7 (June 28, 1994) (stating that according to the National Organization for the Reform of Marijuana Laws, marijuana decriminalization has led to reduced costs in law enforcement and that these savings will be lost as minor drug

privileges should only be imposed for driving violations,[19] and that this penalty will work a great hardship on many otherwise law-abiding citizens.[20]

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offenders go to court to protect their licenses); *Dumb Drug Laws*, *supra* note 14 (stating that people charged with marijuana possession are far more likely to go to trial than they were when possession was a misdemeanor carrying a mere fine of $100).

19. *See* ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF ABX 79, at 3 (Apr. 11, 1994) (arguing that license suspension is an appropriate punishment only for those offenses involving the operation of a motor vehicle); *see also* People v. Lawrence, 565 N.E.2d 322, 323 (Ill. 1987) (holding that revocation of a driver's license for an offense not related to driving is an arbitrary exercise of power by the Legislature and is unconstitutional); Hamburg, *supra* note 15 (stating the opinion of the American Civil Liberties Union that the statute is unconstitutional because there is no relationship between the crime and the punishment). *But see* People v. Valenzuela, 3 Cal. App. 4th Supp. 6, 10, 5 Cal. Rptr. 2d 492, 494 (1991), Quiller v. Bowman, 425 S.E.2d 641, 642 (Ga. 1993), Rushworth v. Registrar of Motor Vehicles, 596 N.E.2d 340, 344 (Mass. 1992) (holding that statutes requiring the suspension of a convicted drug or alcohol offender's license bear a rational relationship to a legitimate state interest and are therefore constitutional). *See generally* Jeffrey T. Walter, Annotation, *Validity and Application of Statute or Regulation Authorizing Revocation or Suspension of Driver's License for Reason Unrelated to Use of, or Ability to Operate, Motor Vehicle,* 18 A.L.R. 5TH 542 (1994) (discussing court decisions regarding statutes requiring suspension of driver's license for a drug conviction).

20. *See* Gordon, *supra* note 14, at 737 (providing estimates of the number of citizens facing hardship and detailing specific examples); Hamburg, *supra* note 15 (stating the position of the ACLU that the loss of a license may lead to loss of a job, then further criminal activity); *Dumb Drug Laws*, *supra* note 14 (arguing that the loss of a driver's license may prevent people from getting drug treatment, may make it difficult to get to a job or school, or may cause people to drive without a license or insurance).