Using The United States Coast Guard to Send Drunken Boaters to Dry Docks—Another Exception to Penal Code Section 836

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Code Sections Affected

AB 979 (Leach); 1997 STAT. Ch. 23

I. INTRODUCTION

When the summer begins many people enjoy heading to the nearest water for a day out on the boat. However, boaters who drink too much alcohol jeopardize boating safety and increase the potential for accidents. Boating under the influence is becoming a problem on waters around the United States and in California. In fact, "alcohol is a greater factor in accidents than the statistics might show." These grim findings have led states to enact tougher boating while intoxicated or boating under the influence laws. Chapter 23 is California's effort to tighten up boating under the influence laws. Chapter 23 employs the use of the U.S. Coast Guard to help California Peace Officers make arrests for misdemeanor boating violations.

1. Boating under the influence and boating while intoxicated will be used interchangeably.
2. See David Bauder, Boaters Are Sobering Up About BWI Laws, TIMES UNION (Albany, NY), May 28, 1996, at B2 (stating that in 1995 there were 181 arrests in New York for boating under the influence versus only 62 arrests in 1991); William E. Gibson, Bill Targets Drunken Boaters, Pilots—House Measure Would Stiffen Penalties, Bankruptcy Rules, SUN-SENTINEL Ft. LAUDERDALE, June 5, 1996, at A3 (noting that Florida leads the country in boating fatalities and that about half of the fatalities involve alcohol); Phil Mulkins, Holiday Boaters Rarely Willing to Float Alone, TULSA WORLD, May 26, 1997, at A2 (relating figures received from the Lake Patrol that each year there are at least 10 deaths and 50-60 injuries resulting from accidents where alcohol was involved); Douglas P. Shuit, Boating Injuries on the Rise, L. A. TIMES, May 12, 1997, at B1 (reporting that while deaths from boating accidents may be down, the number of accidents on California waterways are at a record high); id. (noting that in 1996 there were "850 accidents, 537 injuries and 56 fatalities" actually reported in California and that many more go unreported).
3. See Bauder, supra note 2, at B2 (citing a report done by the New York State Parks Department); see also Shuit, supra note 2, at B1 (reporting that 39% of the boating fatalities in California in 1996 were attributable to drinking).
5. SENATE FLOOR, ANALYSIS OF AB 979, at 1 (May 23, 1997).
6. See id. (stating that the purpose of the amendment to California Harbor and Navigation Code § 655 is to allow California Peace Officers to use information provided by specified U.S. Coast Guard personnel to establish reasonable cause to make a warrantless arrest).
Although boating under the influence is becoming a larger problem, the U.S. Attorney’s office has not made prosecuting drunken boating violations a priority, thus creating the need to prosecute boaters under the state judicial system in California. Chapter 23, according to the Department of Boating and Waterways, could result in approximately 200-300 arrests per year.

II. THE LEGISLATION

A. Existing California Law

California law provides that a person “under the influence of alcohol or drugs or a combination of both, shall not operate or manipulate any vessel, water skis, aquaplane, or similar device in a dangerous or harmful manner.” A person is considered to be under the influence when his or her blood alcohol concentration is 0.08% or higher. Violation of section 655 of the Harbor and Navigation code is a misdemeanor.

Also under existing law, in order for a California Peace Officer to make an arrest for a misdemeanor, he or she must either have a warrant, or if making a warrantless arrest, must have reasonable cause to arrest and the misdemeanor must have been committed in his or her presence. But often the misdemeanor boating under the influence offense is not committed in the California Peace Officer’s presence. Therefore, to arrest the intoxicated boater, an exception to the presence rule was necessary.

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7. Id. at 2.
8. Id.
9. See Assembly Floor, Committee Concurrence in Senate Amendments of AB 979, at 2 (June 2, 1997) (noting that the U.S. Coast Guard gave the Department of Boating and Waterways the figure of 200-300 arrests per year).
11. Id. § 655(c) (West Supp. 1997).
12. See Senate Floor, Committee Analysis of AB 979, at 2 (May 23, 1997) (stating that under existing law it is a misdemeanor to operate a vessel, water skis, aquaplane or similar device under the influence).
14. See id. § 836(a)(1) (West Supp. 1997); Senate Floor, Committee Analysis of AB 979, at 2 (May 23, 1997); see also infra note 19 and accompanying text (defining and discussing reasonable cause).
15. See infra Part III.C.1 and accompanying notes (discussing the presence rule).
B. Current Legislation

Chapter 23 creates an exception to existing law regarding warrantless arrests.\(^{16}\) Chapter 23 allows a California Peace Officer to arrest a boater violating sections 655(b), (c), (d), or (e) of the Harbors and Navigation Code without having the boating under the influence committed in his or her presence.\(^{17}\) This is done by using information\(^{18}\) received from a specified officer of the U.S. Coast Guard as the basis for establishing reasonable cause.\(^{19}\) The California Peace Officers may rely only on information given to them by commissioned warrant or petty officers of the U.S. Coast Guard who directly observe the offense, to establish reasonable cause for the warrantless arrest.\(^{20}\) The information obtained from the specified U.S. Coast Guard officers can be “verbal or otherwise,” the real necessity being that the U.S. Coast Guard officer directly observe the offense.\(^{21}\) Moreover, Chapter 23 is only applicable to vessels, water skis, aquaplanes, and similar devices on California waters where there is concurrent state and federal jurisdiction.\(^{22}\)

California is not the first state to use the U.S. Coast Guard in this respect. Delaware has a similar statute allowing local law enforcement to arrest intoxicated boaters without a warrant based on information supplied by the U.S. Coast Guard.\(^{23}\) In addition, New Hampshire goes farther and defines the U.S. Coast Guard personnel as peace officers, thereby allowing them to make arrests for the state.\(^{24}\)

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17. Id. § 655(g) (amended by Chapter 23).
18. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 979, at 2 (May 23, 1997) (stating that information can be “verbal or otherwise”).
19. See Henry v. United States, 361 U.S. 98, 102 (1959) (stating that probable cause exists if, under the circumstances known to the officer, a prudent person would believe an offense has been committed, and that good faith is not enough); see also People v. Price, 1 Cal. 4th 324, 409, 821 P.2d 610, 656, 3 Cal. Rptr. 2d 106, 152 (1991) (stating that, to determine if an officer had reasonable cause, the court must ascertain when the arrest occurred and what the officer knew and whether that knowledge was adequate to establish reasonable cause); People v. Fein, 4 Cal. 3d 747, 752, 484 P.2d 583, 586, 94 Cal. Rptr. 607, 610 (1971) (stating that reasonable cause is determined on a case by case basis); People v. Ingle, 53 Cal. 2d 407, 412-413, 348 P.2d 577, 581, 2 Cal. Rptr. 14, 17 (1960) (defining reasonable cause as the “state of facts that would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion of guilt of the accused”).
20. CAL. PENAL CODE § 655(g) (amended by Chapter 23); SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 979, at 2 (May 20, 1997).
21. CAL. PENAL CODE § 655(g) (amended by Chapter 23); see ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 979, at 2 (Apr. 14, 1997) (stating that the specified U.S. Coast Guard personnel who directly sees the offense and informs a California Peace Officer only needs to establish that the boater operated the vessel while intoxicated, not make the actual arrest).
22. ASSEMBLY FLOOR, CONCURRENCE IN SENATE AMENDMENTS OF AB 979, at 1-2 (June 2, 1997).
23. See DEL. CODE ANN. tit. 23, § 2126 (Supp. 1996) (detailing arrests without warrants under the Navigation and Waters title of the code of Delaware to include arrests based on information received from U.S. Coast Guard active duty personnel); cf. VA. CODE ANN. §§ 19.2-81, 29.1-205 (Michie 1995 & Supp. 1997) (expressly giving the U.S. Coast Guard the authority to make the arrest).
24. N.H. REV. STAT. ANN. § 270:48 (1987 & Supp. 1996); see id. (defining “peace officer” to include the U.S. Coast Guard).
III. CONSTITUTIONAL CONCERNS REGARDING THE PRESENCE RULE OF PENAL CODE SECTION 836

A. Background to the Rule

Currently under both the Fourth Amendment of the United States Constitution and Article I, section 13 of the California Constitution, which is modeled after the Fourth Amendment, an arrest without a warrant cannot be made unless the arresting officer has probable cause to make the arrest. Moreover, the “presence rule” required under Penal Code section 836 was derived from the common law of arrests. The strict common law rule required that, for a warrantless misdemeanor arrest to be valid, the misdemeanor must have been committed in the arresting officer’s presence and there must have been a breach of the peace. The broader common law rule merely required that the officer have probable cause. California combines both of these rules by requiring that the misdemeanor be committed in the officer’s presence and that the officer have probable cause for the arrest.

Nevertheless, the California Legislature made exceptions to Penal Code section 836, which codified the common law presence rules. The Vehicle Code section for driving under the influence creates an exception to Penal Code section 836. The Supreme Court of California even commented that if the legislature wanted to make

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26. See Raymond Kurtzman, Casenote, 25 S. Cal. L. Rev. 449, 450 (1952) (noting that under common law an officer could arrest without a warrant if the misdemeanor was committed in the officer’s presence); see also Street v. Surdyka, 492 F.2d 368, 370 (4th Cir. 1974) (noting that a Maryland statute requiring the misdemeanor be committed in the officer’s presence follows the common law).
27. Kurtzman, supra note 26, at 450.
28. See id. (noting that the probable cause came from the standard for felony warrantless arrests). California courts use the phrase “probable or reasonable cause,” indicating that reasonable cause is the same as probable cause. See Ingle, 53 Cal. 2d at 414, 348 P.2d at 581, 2 Cal. Rptr. at 18 (using the phrase “probable or reasonable cause” when referring to Penal Code § 836); see also People v. Roland, 270 Cal. App. 2d 639, 644, 76 Cal. Rptr. 72, 75 (1969) (using “probable or reasonable cause” when referring to California Penal Code § 836).
29. Cal. Penal Code § 836 (West 1985 & Supp. 1997); see Kurtzman, supra note 26, at 449-450 (noting also that when California Penal Code § 836 was first enacted, it codified the strict common law rule).
30. See Cal. Penal Code § 243.5 (West 1988) (making an exception to California Penal Code § 836 for assault and battery on school property); id. § 836(c) (West Supp. 1997) (providing an exception to California Penal Code § 836 for assault and battery committed in a domestic violence situation); id. § 836.1 (West Supp. 1997) (making an exception to California Penal Code § 836 for assault and battery committed against safety and emergency personnel); id. § 836.3 (West 1985) (creating an exception for warrantless arrests of those who have escaped from prison or other forms of police or state custody); see also Cal. Veh. Code § 40300.5 (West 1985 & Supp. 1997) (making an exception to California Penal Code § 836 for drunk driving when the intoxicated driver has been in a traffic accident or has been observed near a vehicle that is obstructing part of the road).
31. See generally Cal. Veh. Code § 40300.6 (West Supp. 1997) (stating that Vehicle Code § 40300.5 is to be liberally interpreted allowing for an exception to Penal Code § 836).
an outright exception to Penal Code section 836 for driving under the influence they could do so.\textsuperscript{32} Therefore, the legislature can implement Chapter 23.

\textbf{B. The Exception Created by Chapter 23 is Constitutional}

Chapter 23 adds another exception to the presence rule of Penal Code section 836 and allows for California Peace Officers to make a warrantless arrest based on information provided by specified U.S. Coast Guard personnel.\textsuperscript{33} The California Legislature cannot expand California arrest law beyond the bounds of the Constitution. However, Fourth Amendment jurisprudence only requires the element of probable cause for a valid warrantless misdemeanor arrest.\textsuperscript{34} Therefore, because the presence rule is only a creature of the common law and not required by the United States Constitution or the California Constitution, the exception to the presence rule created by Chapter 23 is constitutional.\textsuperscript{35}

\textbf{C. How Probable Cause is Established}

As noted above, for a warrantless arrest to be valid under the United States Constitution and the California Constitution, the arresting California Peace Officer must have reasonable cause to believe a person has committed an offense.\textsuperscript{36} Reasonable cause is determined by an objective test—would a prudent officer believe an offense had been committed.\textsuperscript{37} However, reasonable cause can be established by information received from official sources or a reliable informant.\textsuperscript{38}

\begin{footnotesize}
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\item \textsuperscript{32} See Mercer v. Department of Motor Vehicles, 53 Cal. 3d 753, 761-69, 809 P.2d 404, 408-14, 280 Cal. Rptr. 745, 749-55 (1991) (discussing that the court will read the exception to Penal Code § 836 in the Vehicle Code literally and that, if the legislature wishes, it can make an exception to the presence rule).
\item \textsuperscript{33} See \textit{Street}, 492 F.2d at 371 (finding that in a situation where there was a Maryland statute similar to that of California Penal Code § 836 and a misdemeanor had not taken place in the officer's presence, the Constitution only requires probable cause for a valid arrest); see also People v. Trapane, 1 Cal. App. 4th Supp. 10, 13, 3 Cal. Rptr. 2d 423, 425 (1991) (stating that the Fourth Amendment does not prohibit warrantless arrests for misdemeanors committed outside the presence of the arresting officer); 4 B.E. Witkin, \textit{SUMMARY OF CALIFORNIA CRIMINAL LAW: CRIMINAL PROCEDURE} § 1928 (2d ed. 1996 supp.) (stating that federal law does not require that a misdemeanor be committed in the arresting officer's presence); \textit{CALIFORNIA CRIMINAL LAW, PROCEDURE AND PRACTICE} §52.21 (Anne Harris, ed., 3d ed. 1996) (stating that a warrantless arrest for a misdemeanor committed outside the arresting officer's presence is not prohibited by the Fourth Amendment).
\item \textsuperscript{34} See \textit{Trapane}, 1 Cal. App. 4th Supp. at 13, 3 Cal. Rptr. 2d at 425 (stating that the Fourth Amendment does not prohibit warrantless arrests for misdemeanors committed outside the presence of the arresting officer).
\item \textsuperscript{35} See U.S. CONST. amend. IV; see also CAL. CONST. art I, § 13.
\item \textsuperscript{36} See \textit{Henry}, 361 U.S. 102 (stating the test for reasonable cause); see also discussion \textit{supra} note 19 (discussing, in depth, the test for reasonable cause).
\item \textsuperscript{37} See \textit{People v. Lee}, 275 Cal. App. 2d 827, 832, 80 Cal. Rptr. 491, 495 (1969) (noting that information received from other police officers is an official source); \textit{People v. Estrada}, 234 Cal. App. 2d 136, 152, 44 Cal. Rptr. 165, 175-76 (1965) (noting that police officers can rely on information received from official sources); \textit{People v. Schellin}, 227 Cal. App. 2d 245, 251, 38 Cal. Rptr. 593, 597 (1964) (holding that information received by one police department (an official source) from another is presumed reliable).
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Because the U.S. Coast Guard has the authority to make arrests (like police officers) for boating under the influence under federal law they could be considered an official source. Accordingly, under Chapter 23, a California Peace Officer could use information from a commissioned, warrant or petty officer of the U.S. Coast Guard to establish probable cause.

IV. POSSIBLE CONCERN OVER WHETHER THE U.S. COAST GUARD IS A PEACE OFFICER AS DEFINED UNDER CALIFORNIA LAW

There could be a problem with Chapter 23 in that the specified officers of the U.S. Coast Guard do not have "peace officer" training. However, Chapter 23 merely empowers the designated officers of the U.S. Coast Guard to give information to California Peace Officers regarding events that they have directly observed. The indicated U.S. Coast Guard personnel are not given express authority by Chapter 23 to arrest an intoxicated boater under California law, nor does Chapter 23 require the specified U.S. Coast Guard personnel to make an arrest. Chapter 23 only requires that they provide information, therefore it should not matter that U.S. Coast Guard Personnel have not had peace officer training. Moreover, the U.S. Coast Guard has said that it will make itself available to appear in court if necessary to verify the reasonable cause. Thus, because the U.S. Coast Guard personnel do not have to make the actual arrests, they do not have to be peace officers under California law.

V. CONCLUSION

With the enactment of Chapter 23, boaters on California waters can feel a bit safer when out enjoying the water. Moreover, Chapter 23 enhances the California

39. 14 U.S.C.A. § 89(a) (West 1990 & Supp. 1997) (stating that commissioned, warrant and petty officers have law enforcement authority as granted to the U.S. Coast Guard, including the authority to make arrests).
40. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 979, at 3 (May 20, 1997); see CAL. HARB. & NAV. CODE § 655(g) (amended by Chapter 23) (specifying the appropriate officers as commissioned, warrant or petty officers of the U.S. Coast Guard); see also CAL. PENAL CODE § 832 (West 1985 & Supp. 1997) (listing the training required in order to qualify as a peace officer).
41. CAL. HARB. & NAV. CODE § 655(g) (amended by Chapter 23); see discussion infra note 43 (noting that U.S. Coast Guard personnel are not given authority to arrest the intoxicated boaters under California law).
42. CAL. HARB. & NAV. CODE § 655(g) (amended by Chapter 23).
43. Id. § 655(g) (amended by Chapter 23); see ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 979, at 2 (Apr. 14, 1997) (stating that the specified U.S. Coast Guard personnel who directly see the offense and inform a California Peace Officer only need establish that the boater operated the vessel while intoxicated); see also id. (noting that the statute says nothing about requiring the U.S. Coast Guard personnel to make the actual arrest).
44. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 979, at 3 (May 20, 1997) (stating that the U.S. Coast Guard will cooperate in the state prosecution); see also 14 U.S.C.A. § 141 (West 1990 & Supp. 1997) (authorizing the U.S. Coast Guard to assist a State in performing any activity for which the requested personnel are qualified).
Peace Officer's ability to arrest more intoxicated boaters. Chapter 23 should survive any constitutional challenges because the Fourth Amendment only requires probable cause and that will be provided by the U.S. Coast Guard personnel. Furthermore, there should be no objection to the fact that the U.S. Coast Guard personnel are not trained peace officers under California law since the U.S. Coast Guard merely gives information to the California Peace Officers, and do not make arrests under the power of California law.

Hopefully, Chapter 23 will help get the message out that California views boating under the influence as a serious offense. California is tightening up the boating laws to make certain that the waterways are safe and the number of accidents and fatalities are reduced.

45. See supra note 9 and accompanying text (estimating the number of arrests under this law).
Law Overcomes Challenge from Lawmakers Resisting Federal Mandates: “Smoke a Joint, Lose Your License”

Wendy Gable

Code Sections Affected

Vehicle Code § 13202.3 (amended).
AB 74 (Bowler); 1997 Stat. Ch. 5
Vehicle Code § 14907 (amended).
SB 131 (Kopp); 1997 Stat. Ch. 6

I. INTRODUCTION

Federal law mandates that states must either enact laws that require suspension or revocation of one's driver's license for violation of specified controlled substance laws or formally declare that the state does not wish to impose such a sanction.\(^1\) The penalty for states that fail to choose one of these options is the loss of federal highway funds, which for California amounts to more than $90 million.\(^2\)

Although California has enacted a license suspension law,\(^3\) current legislation also declares that California is opting out of the federal mandate.\(^4\) These apparently conflicting laws are the result of a compromise which satisfies both those in favor of the license suspension law and those who oppose federal mandates.\(^5\) This legislative note explains the changes in the California law as implemented by Chapters 5 and 6, and explores the issues on both sides of the controversy.

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1. See 23 U.S.C.A. § 159 (West Supp. 1997) (requiring states to enact and enforce a law to suspend or revoke for a minimum of 6 months the driver's license of any individual convicted of drug offenses, but providing that states may formally opt out of enforcing such a law).
2. See id. § 159(a)(2) (West Supp. 1997) (providing that 10% of federal highway funds are withheld from states that do not either enact driver's license suspension laws or formally opt out of the requirement to do so); see also Carl Ingram, Compromise Passed on Drug Crime- Driver License Link, L.A. Times, Apr. 11, 1997, at A3 (noting that California was threatened with the loss of approximately $92 million in highway construction and maintenance funds for failure to comply with the federal mandate).
3. CAL. VEH. CODE § 13202.3 (amended by Chapter 5).
5. See Ingram, supra note 2, at A3 (calling the passage of Chapters 5 and 6 an "unusual political compromise" that eliminates the perception that the legislature is soft on drug-use penalties while rebuffing federal intrusions into state lawmaking).
II. CHAPTERS 5 AND 6

Chapter 5 modifies California’s driver’s license suspension law which was enacted in 1996. Chapter 5 mandates an automatic six-month suspension of a person’s driver’s license if that person is convicted of a controlled substance offense. In addition, Chapter 5 allows courts to consider whether an individual will experience a hardship due to the suspension of his license. Chapter 5, which expires on June 30, 1999, modifies prior law by adding a requirement that the person charged with the violation of a controlled substance law must be notified by the law enforcement officer who arrests him or her, or issues him or her a notice to appear, of the driver’s license sanctions required under Chapter 5.

Chapter 5 appears to comply with the federal mandate that a driver’s license suspension law be enacted; however, California has acted on its own in passing Chapter 5. This becomes clear when Chapter 5 is read in conjunction with Chapter 6, its companion bill.

Chapter 6 reflects the viewpoint that the federal government should not tell the State how to legislate. Specifically, Chapter 6 was enacted to tell the Federal Government that California rejects its mandate to implement a driver’s license suspension law. Chapter 6 complies with the federal procedures to opt out of imple-
menting a drivers' license suspension law so as to avoid the loss of federal highway funds.15

III. CHAPTERS 5 AND 6 REFLECT A NECESSARY COMPROMISE

A recent Gallup poll reflects that drug abuse is the second most serious problem facing the nation.16 Though we made progress in the war on drugs between 1985 and 1992, since 1992 we have lost ground.17 One report states that there is a clear relationship between drug convictions and an increased risk of traffic accidents. Thus, it makes sense to keep drug criminals from driving.18 Therefore, it is probably good policy to maintain current laws which attempt to keep at-risk drivers off the road.

Some legislators did not want to retreat from the California drivers' license suspension law because they felt it was an effective tool in keeping dangerous individuals from driving.19 Other legislators strenuously objected to the federal mandate because the federal government should not tell the State which laws to enact.20 Chapters 5 and 6 appear contradictory because Chapter 5 extends the current driver's license suspension law originally enacted in compliance with federally mandated law,21 while Chapter 6 declares that California opts out of the mandatory

15. See 23 U.S.C.A. § 159 (West Supp. 1997) (allowing a state to avoid loss of federal highway funds if the state properly certifies their objection to enacting a driver's license suspension law); see also 1997 Cal. Stat. ch. 6, sec. 1(e), at 19 (expressing California's intent to enact a law which conforms with the federal statute in order to avoid the loss of federal highway funds).


18. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 74, at 2 (Feb. 12, 1997) (citing a January, 1994 report by the Department of Motor Vehicles which establishes a nexus between drug convictions and an increased risk of traffic accidents).

19. See Matthews, supra note 13, at A4 (articulating arguments in favor of the passage of the "smoke a joint-lose your license" law as the means of compliance with the federal mandate).

20. See id. (reporting the conviction of some legislators that the federal government should not mandate state legislation).

21. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 74, at 2, (Apr. 11, 1997) (noting that previously, and until March 1, 1997, California Vehicle Code § 13202.3 was enacted in order to comply with the federally mandated driver's license suspension law).
driver's license suspension law. However, Chapter 5 does not extend prior law in such a way as to conform with the federal mandate.

Chapter 5 continues to provide for the suspension of driver's licenses for violation of controlled substances offenses, but explicitly provides that Chapter 5 may only be enacted if Chapter 6 is also enacted. Lawmakers' passage of both Chapters 5 and 6 was necessary to keep the license suspension law on the books while attracting the votes of legislators who object to federally mandated laws. In essence, the passage of both Chapters 5 and 6 effects a bipartisan compromise, thus satisfying legislators who favor anti-drug measures as well as those who object to federal interference with state lawmaking.

IV. ISSUES CONCERNING CHAPTER 5

A. Suspension of Driver's License Unrelated to Operation of Motor Vehicle

Opponents of Chapter 5 feel that driving sanctions should be related to driving; therefore, they do not like the idea that controlled substance violations that occur even when one is not operating a motor vehicle will result in a licensee losing his or her driver's license. However, the penalty is part of a national anti-drug strategy which deters the use of illegal substances anywhere, not just in motor vehicles.

No California court has interpreted the “smoke a joint-lose your license” law. However, courts from other states have interpreted similar laws. Generally, they

22. See supra note 15 and accompanying text (citing the provision in the federal law which allows states to opt out of the federal mandate and noting that Chapter 6 is California's certification of compliance with that federal provision).
23. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 74, at 2 (Apr. 11, 1997); see supra note 11 and accompanying text (documenting that California enacted Chapter 5 outside of the requirements of the federal mandate).
24. CAL. VEH. CODE § 13202.3 (amended by Ch. 5).
25. See 1997 Cal. Stat. ch. 5, sec. 5, at 18 (specifying that Chapter 5 becomes operational only if Senate Bill 131 (now Chapter 6) is enacted).
26. See Matthews, supra note 11, at A3 (explaining that in order to obtain votes for the license suspension law from legislators opposing federal mandates, it was necessary to formally oppose the federal mandate and separately enact a license suspension law).
27. See id. (coining the phrase "bipartisan compromise" to describe the enactment of Chapters 5 and 6 concurrently).
28. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 74, at 4 (Apr. 11, 1997) (reporting that opponents of AB 74 consider the statute irrational and that they therefore criticize the suspension of driving privileges, particularly since California lacks adequate mass transportation).
29. See Ingram, supra note 2, at A3 (emphasizing that the law is not meant to deter drug use only while an individual operates a motor vehicle, but is meant to deter the use of drugs anywhere, at any time).
30. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 74, at 2 (Jan. 13, 1997) (surmising that the reason no one has sued over lack of a nexus between the offense and the punishment is because of the prior law's sunset date of March 1, 1997).
31. See infra notes 32-39 and accompanying text (reviewing state court decisions which have interpreted laws similar to California Vehicle Code § 13202.3).
uphold the mandatory suspension or revocation of one’s driver’s license upon conviction of a controlled substance offense unrelated to the use of a vehicle. In *Quiller v. Bowman*, the Georgia Supreme Court held that a statute providing for the automatic suspension of the driver’s license of anyone convicted of possession of a controlled substance or marijuana was valid. Specifically, the Court concluded the statute was reasonably related to the legislative goals of deterring drug use, deterring distribution and transportation of drugs, and promoting safe driving.

In interpreting a law that allowed the revocation of a driver’s license for violation of a controlled substance, the Supreme Court of Florida declared that a direct relationship need not exist between the type of punishment and the offense itself. The court emphasized that possession of a driver’s license is a privilege and not a property interest. California, like Florida, declares driving a privilege and allows the privilege to be taken away when doing so meets a legitimate state interest. The system of licensing and regulating drivers is analogous to the issuance and regulation of licenses to practice professions, such as law or medicine, where the government may revoke professional licenses for failure to act responsibly.

Courts have upheld other drivers’ license suspension laws when the offense is not related to driving. For example, in *Means v. Sidiropolis*, the Supreme Court of West Virginia upheld a statute that allowed the revocation of the drivers’ license of youths who fail to attend school. The court found that while the truancy was not related to driving, it was evidence that the youth was “irresponsible and more likely

32. See *Lite v. State*, 617 So. 2d 1058, 1059 (Fla. 1993) (holding license suspension for drug offense unrelated to operation of vehicle is valid); see also *Quiller v. Bowman*, 425 S.E.2d 641, 643 (Ga. 1993) (holding that a Georgia law allowing driver’s license suspension for violation of controlled substance laws unrelated to the use of a vehicle does not violate due process or equal protection clauses of the United States or Georgia Constitution).
33. 425 S.E.2d 641 (Ga. 1993).
34. See *Quiller*, 425 S.E.2d at 642 (holding that neither the due process nor the equal protection clauses of the United States Constitution is violated by a statute requiring the suspension of the driver’s license of the person convicted of possession of a controlled substance).
35. *Id.* at 642-43.
36. See *Lite v. State*, 617 So. 2d 1058, 1060 (Fla. 1993) (interpreting Florida Vehicle § 322.055 (1) as constitutionally valid as a reasonable regulation of an individual right in the interest of the public good).
37. *Id.* at 1060.
38. CAL. VEH. CODE § 14607.4(a) (West Supp. 1997).
39. See *Ellis v. Pierce*, 230 Cal. App. 3d 1557, 1562, 287 Cal. Rptr. 93, 95 (1991) (comparing disbarment or suspension of attorneys to protect the public with long range purpose of driver’s license suspension, which protects the public by keeping irresponsible drivers off the road).
40. See infra notes 41-44 and accompanying text (furnishing an example of a statute that provided for revocation of a driver’s license for a reason unrelated to driving, which was upheld as constitutional).
42. See *Means v. Sidiropolis*, 401 S.E.2d 447, 452 (W. Va. 1990) (stating that many children profit from a school environment even if they do not like it, and the intent of the law was to keep adolescents in school).
to be out making mischief with his or her car." 43 Ultimately, the court found that conditioning a driver's license on this basis was constitutional. 44

Not only have courts upheld laws that suspend a person's driver's license for reasons not related to the operation of a motor vehicle, but such suspensions have proven effective in achieving desired behaviors. 45 For example, there are statutes allowing suspension of a driver's license to punish people that refuse to pay child support. 46 As a result of such a statute, an extraordinary number of parents in South Dakota came forward to make good on their support obligations when faced with the threat of the revocation of their drivers' licenses. 47

Hence, although some California legislators do not like the punishment of drivers' license suspension under Chapter 5 because they feel the punishment is not related to driving a vehicle, other similar laws have been upheld as valid and have shown to be effective in achieving the legislature's desired result.

B. Does Drivers' License Suspension Coupled With Criminal Sanctions Constitute Double Jeopardy?

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." 48 Although double jeopardy is generally thought of in the context of criminal sanctions, the United States Supreme Court held in United States v. Halper 49 that a civil penalty could be considered punishment for double jeopardy purposes. 50

In Halper, the defendant was first convicted under a criminal false claims statute. 51 On the facts of the criminal case, the Government then brought a civil suit

43. Id.
44. See id. at 451-53 (explaining that West Virginia Vehicle Code §18-8-11, conditioning a junior driver's license on school attendance, is a rational method of encouraging education and does not violate substantive due process).
45. See infra notes 46-47 and accompanying text (supplying evidence of the effectiveness of a driver's license suspension law designed to impel parents to make good on child support obligations).
46. See S.D. CODIFIED LAWS § 32-12-116 (Michie Supp. 1997) (allowing the refusal of issuance of a driver's license to a person more than $1,000 in arrears on child support obligations); see also CAL. WELF. & INST. CODE § 11350.6(e)(3)(A) (West Supp. 1997) (codifying a California law enacted in 1995 that allows suspension of driver's licenses for parents who fail to meet child support payments).
47. See Fred Bayles, Dead Beat Parents Often Skirt License Revocation, AUSTIN AM.-STATESMAN, Mar. 31, 1995, at A21 (noting that 2,500 South Dakota parents executed promissory notes for delinquent child support when faced with the loss of their drivers' licenses. In addition, $24 million in child support was paid by more than 13,000 parents in Maine after publicity about the revocation of drivers' licenses due to non-payment of child support obligations).
48. U.S. CONST. amend. V.
51. Id. at 437.
against the defendant. The district court granted summary judgment for the Government but concluded that imposing the statutory sanctions would constitute a second punishment, and thus double jeopardy. The United States Supreme Court agreed, stating that "Where a defendant previously has sustained a criminal penalty and the civil penalty sought in the subsequent proceeding bears no rational relationship to the goal of compensating the Government for its loss, but rather appears to qualify as "punishment" in the plain meaning of the word" the penalty may constitute double jeopardy. Defense attorneys have seized upon the holding in Halper to raise the issue of double jeopardy in the context of administrative driver's license suspension (ALS) for drunk driving offenses.

The argument made by defense attorneys is that an ALS imposed along with punishment after a separate criminal prosecution violates the Fifth Amendment's guarantee against multiple punishments for the same offense. An ALS occurs at the time the police officer pulls over the suspected drunk driver. When the driver refuses to take a chemical test, or fails such a test, the police officer confiscates the driver's license on the spot. The driver's license is then revoked by the appropriate state licensing agency before the driver is tried on the drunk driving charge. Although opponents of ALS argue that this procedure violates guarantees against double jeopardy, most appellate courts hold that the tactic is constitutional.

Those courts which find no double jeopardy exists in the context of ALS hold that the license suspension or revocation is not punishment, and therefore the defendant is not punished twice. Chapter 5 is similar to laws which authorize

52. Id. at 438.
53. Id. at 438-39.
54. Id. at 449-50.
55. See infra notes 56-61 and accompanying text (explaining the administrative driver's license suspension process and its Double Jeopardy challenges).
57. Id. at 1155.
58. Id.
60. See id. at 776-78 (delineating the courts that have accepted or rejected the double jeopardy defense for administrative license suspensions); id. at 777-78 (confirming that at least two federal district courts, one federal court of appeals and a slight majority of state intermediate and supreme appellate courts have rejected the defense); see also Ellis v. Pierce, 230 Cal. App. 3d 1557, 1562, 282 Cal. Rptr. 93, 96 (1991) (holding that a person is not subject to double jeopardy when he or she receives both an administrative driver's license suspension and criminal punishment for the same infraction).
61. See Ellis, 230 Cal. App. 3d at 1562, 282 Cal. Rptr. at 95-96 (1991) (holding that an administrative driver's license suspension is not punishment and therefore does not violate the Double Jeopardy clause. But see State v. Ackrouche, 650 N.E.2d 535, 539 (1995) (holding that administrative license suspension constitutes punishment imposed in a separate proceeding for same conduct that is subject of criminal prosecution, and therefore double jeopardy clause bars criminal prosecution on that charge).
administrative license suspensions because it allows for driver's license suspension in addition to criminal punishment for the underlying offense. According to proponents of Chapter 5, it does not violate double jeopardy by analogy to ALS under drunk driving laws and can argue that the license suspension under Chapter 5 is also not punishment.

In the event that a court finds a Chapter 5 license suspension to be punishment, Chapter 5 can still withstand a double jeopardy argument because, while multiple punishments for the same offense may constitute double jeopardy, courts are allowed to impose multiple punishments in a single proceeding provided that the cumulative punishment does not exceed the amount of punishment authorized by the legislature. Under Chapter 5, the license suspension is not imposed in a proceeding separate from the criminal controlled substance proceeding as it is under drunk driving administrative license suspension laws. For this reason a double jeopardy challenge will likely not succeed.


V. CHAPTER 6: OPPOSITION TO FEDERAL MANDATES

Chapter 6 was enacted to appease those members of the California Legislature who are not eager to submit to the control of the federal government and who object to Congress telling the states which laws to enact. The basis of Congress' authority to mandate certain state legislation is the "spending power," and it allows Congress to entice states to enact certain legislation by threatening to withhold federal funds.


62. CAL. VEH. CODE § 13202.3 (amended by Chapter 5).
63. See Halper, 490 U.S. at 440 (explaining that one of the abuses protected by the Double Jeopardy clause of the U.S. Constitution is multiple punishments for the same offense).
64. See id. at 450 (stating that "[i]n a single proceeding the multiple-punishment issue would be limited to ensuring that the total punishment did not exceed that authorized by the legislature").
65. See CAL. VEH. CODE § 13202.3 (d) (amended by Chapter 5) (allowing that any suspension of driving privileges for violation of controlled substance offenses is in addition to (and therefore not separate from) the punishment for the controlled substance offense).
66. See Halper, 490 U.S. at 449-50 (specifying that the government may impose "both the full civil penalty and the full range of statutorily authorized criminal penalties in the same proceeding," but the government may not bring a criminal action against a defendant and "then bring a separate civil action based on the same conduct and receive a [punitive sanction]"); see also Rushworth v. Registrar of Motor Vehicles, 596 N.E.2d 340, 345-46 (1992) (holding that driver's license "suspension for violation of controlled substance laws follows automatically from conviction on an underlying drug offense as an ancillary part of the criminal proceedings); id at 346 (reflecting the view of the Court that "[i]n a single proceeding the multiple-punishment issue would be limited to ensuring that the total punishment did not exceed that authorized by the legislature").
67. See supra note 13 and accompanying text (presenting the view of legislators who favor state sovereignty).
68. See South Dakota v. Dole, 483 U.S. 203, 206-07 (1987) (stating Congress may condition the State's receipt of federal funds on states enacting legislation which Congress may not enact directly).
The spending power of Congress derives from the Constitution. The Supreme Court decided in *United States v. Butler* that so long as Congress spends for the "general welfare," there is no limitation that money be spent only to carry out one of the enumerated powers listed in Article 1, section 8 of the Constitution. If Congress desires to condition states' receipt of federal funds, it "must do so unambiguously enable[ing] the states to exercise their choice knowingly, cognizant of their participation."

The spending power of Congress allows the federal government to regulate indirectly what it cannot regulate directly by depriving states of funds. Even though it would appear that Congress is stepping beyond permissible bounds, the Supreme Court reiterated in *South Dakota v. Dole* that Congress may persuade states to enact certain laws by dangling federal money in front of them. Furthermore, federal grants which are conditional on states enacting specified legislation are legitimate when they are related "to the federal interest in particular national projects or programs." When these requirements are met, and so long as no other federal constitutional provisions are violated, Congress may use its spending power to induce states to enact laws.

The federal law that precipitated Chapters 5 and 6 complies with each of these requirements. First, the drivers' license suspension law promotes the general welfare because it seeks to deter drug use. Next, the federal mandate is unambiguous because it says that states must either enact a drivers' license suspension law or formally declare their intention to opt out, and that the failure to exercise one of these options results in the loss of 10% of that state's federal highway funds. Further, the fact that California's Legislators knew significant funds were in jeopardy and acted to prevent the loss of those funds indicates that they received

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69. See U.S. Const. art. I, § 8 (granting Congress the power "[t]o lay and collect taxes, . . . to pay the Debts and provide for the common Defence and general Welfare of the United States; . . . ." Money is therefore raised by taxation, and then spent promoting general welfare and for defense).
70. 297 U.S. 1 (1936).
71. See id. at 66 (holding that the power to tax and spend for the general welfare exists as a separate and distinct power from the other powers enumerated in Article I, § 8).
73. See Dole, 483 U.S. 203, 206 (1987) (reiterating that Congress may properly regulate states indirectly "to further broaden policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives." (quoting from Fullilove v. Klutznick, 448 U.S. 474 (1980))).
75. See id. at 206 (discussing whether Congress violated constitutional limits on the spending power by withholding federal highway funds from states that permit people under the age of 21 to purchase or possess in public any alcoholic beverage).
77. Dole, 483 U.S. at 208-09.
79. See id. § 159(a)(3)(A)(i)(I) (West Supp. 1997) (providing that a driver's license will be suspended for violation of the Controlled Substance Act, which has as its purpose the deterrence of illegal drug use and trafficking).
80. Id. § 159 (West Supp. 1997).
the message and thus exercised their choice to opt out knowingly.\footnote{See 1997 Cal. Stat. ch. 6, sec. 1, at 19 (stating failure to comply with federal law would result in the loss of federal highway funds).} Finally, the conditions imposed by Congress on receipt of funds are related to the federal interest in preventing the use of controlled substances.\footnote{See Ingram, supra note 2, at A3 (stating the underlying federal law is an anti-drug law).} Therefore, while California legislators are concerned that Congress indirectly mandates the enactment of certain laws, Congress has acted fully within its power in mandating that states enact a driver’s license suspension law or formally declare their opposition to such a law.

VI. CONCLUSION

Chapters 5 and 6 are proof that parties with different agendas can work together to establish laws. Chapter 5 continues the California law that requires automatic driver’s license suspension when an individual is convicted of controlled substance offenses: to do otherwise would be to take a step backwards in the fight against drugs.\footnote{See supra notes 5-10, 16-19, 21 and accompanying text (reviewing Chapter 5 and the public policy reasons for enacting it).} Although Chapter 5 is modeled after the law Congress would like all states to enact, Chapter 6 declares that California opts out of enacting the license suspension law, pursuant to federal law.\footnote{See supra notes 1, 3-4, 11-15, 20, 22, 23, 68-82 and accompanying text (explaining California’s compliance with the Federal mandate by opting out, and discussing the validity of federal mandates such as this one).} By formally declining to enact Congress’ license suspension law, the California legislature has complied with Congress’ requirements and thus ensured that California will not suffer a ten percent reduction in federal highway funds.\footnote{See supra note 2 and accompanying text (explaining that the failure to comply with the federal mandate results in a significant loss of federal highway funds for California).}