RESOLUTION 09-01-2019

DIGEST
Law Enforcement: Reporting on Electronic Control Weapons
Amends Government Code section 12525.2 to require a report to the California Department of Justice when a peace officer deploys an Electronic Control Weapon against a suspect.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
Similar to Resolution 09-05-2018, which was disapproved.

Reasons:
This resolution amends Government Code section 12525.2 to require a report to the California Department of Justice when a peace officer deploys an Electronic Control Weapon against a suspect. This resolution should be approved in principle because it is important for the public to understand when and how electronic control weapons are used by law enforcement officers.

Government Code section 12525.2 currently requires law enforcement agencies to report all uses of force causing serious bodily injury or death to the California Department of Justice regardless of the type of weapon or force used. (Gov. Code, § 12525.2, subds. (a)(3) and (b)(4).) Thus, as the law stands now, if a peace officer uses an Electronic Control Weapon (e.g., Taser) against a suspect and that weapon causes serious bodily injury or death it must be reported to the Department of Justice. (*Ibid*.) However, there is currently no reporting requirement if the Electronic Control Weapon does not cause serious bodily injury or death.

This resolution would expand the reporting requirement to require law enforcement agencies to report all uses of Electronic Control Weapons even in cases where the weapon does not cause serious bodily injury or death. In addition to reporting instances of the use of the Electronic Control Weapon, the resolution would also require law enforcement agencies to report the number and length of shocks, the number of officers firing the weapons, whether the weapon was successful in stopping the threat, whether there was use of another weapon and any death or injuries after deployment of the Electronic Control Weapon. The information about the number and length of shocks is easily obtainable because Electronic Control Weapons record this information. In light of the fact that Electronic Control Weapons are sometimes used in combination with firearms, it is helpful for the public to understand in what situations these weapons are used and how and why force was used in a given situation. Since it is not a reiteration of current law, as was 09-05-2018, Resolution 09-01-2019 should be approved in principle.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 12525.2, to read as follows:

§12525.2

(a) Beginning January 1, 2020, each law enforcement agency shall annually furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

(1) An incident involving the shooting of a civilian by a peace officer.

(2) An incident involving the shooting of a peace officer by a civilian.

(3) An incident in which the use of force by a peace officer against a civilian result in serious bodily injury or death.

(4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(5) All incidents in which an Electronic Control Weapon (ECW) was used whether or not the person was injured or killed or there was subsequent use of another weapon.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

(1) The gender, race, and age of each individual who was shocked, shot, injured, or killed.

(2) The date, time, and location of the incident.

(3) Whether the civilian was armed, and, if so, the type of weapon.

(4) The type of force used against the officer, the civilian, or both, including the types of weapons used.

(5) The number of officers involved in the incident.

(6) The number of civilians involved in the incident.

(7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

(8) Additional reporting required for ECW use includes: the number and length of shocks, the number of officers firing ECWs, whether the ECW was successful in stopping the threat, whether there was subsequent use of another weapon, and any death or injuries after the ECW was deployed.

(c) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) in its annual crime report issued by the department pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.

(d) For purposes of this section, "serious bodily injury" means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(e) If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

STATEMENT OF REASONS

The Problem: ECWs are hand-held weapons that fire two projectiles from a range of seven to 15 feet and use 50,000 volt shocks to induce temporary paralysis. ECWs are purportedly used by police throughout California as an alternative to lethal force. Despite the assertion that ECWs are a safe alternative to lethal force, many incidents have resulted in serious injury or death. There were four deaths after ECW deployment in San Mateo County alone in the past year. Despite the assertion that ECWs are safe, the manufacturer has continually revised its warnings restricting use. A recent article published by Reuters discusses the 1,028 deaths since 2000 involving ECWs and warns, "Nearly 80 percent of the population could fit into one of the higher risk groups identified by Taser's maker. ..."(https://www.reuters.com/investigates/special-report/usa-taser-vulnerable/) Many incidents of ECW use show police deploying the weapons to control verbally resisting or otherwise non-compliant individuals in situations justifying only minimal force, many times causing serious injury or death.

In spite of the dangers of ECWs there are no statewide regulations regarding use. Collection data on use of ECWs will provide needed facts to inform development of statewide ECW regulations..

The Solution: The National Lawyers Guild urges the Conference to ask the California Legislature to enact legislation that establishes mandatory reporting under §12525.2 of the California Government of all incidents in which ECW's are used, tracking the number and length of shocks, the number of officers firing ECWs in the incident, the race of the person shocked, whether there were mental health issues involved, the threat to the officer, whether the ECW was successful in stopping the threat, whether there was subsequent use of another weapon, and any death or injuries after the ECW was deployed caused by the ECW, a subsequent use of force, or any health or physical problems of the person shocked.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Richard P. Koch, 268 Bush Street, Suite3237, San Francisco, CA 94104, voice 415-397-1060, fax 415-397-3077, email:rpkoch1@sbglobal.net.

RESPONSIBLE FLOOR DELEGATE: Richard P. Koch

RESOLUTION 09-02-2019

DIGEST
Law Enforcement: Use of Deadly Force by Law Enforcement Officers
Amends Penal Code sections 196 and 835a to provide a new definition for use of force by law enforcement officers.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Identical to ELF-01-2018, which was disapproved.

Reasons:
This resolution amends Penal Code sections 196 and 835a to provide a new definition for use of force by law enforcement officers. This resolution should be disapproved because it would create conflict with precedent that uses a "reasonableness" standard for when a peace officer may use deadly force against a suspect, while incorporating vague terms such as "gross negligence" and "necessary."

Penal Code section 196 currently provides it is justifiable homicide for a peace officer to use deadly force when necessary to overcome actual resistance during the execution of a legal process or the discharge of another legal duty. The related jury instruction requires that for the killing to be justifiable homicide, the peace officer must have probable cause to believe the suspect posed a threat of death or great bodily injury to the officer or others or that the suspect committed a crime that threatened the officer or others with great bodily injury or death. (CALCRIM 507.) Pursuant to federal law addressed in *Tennessee v. Garner* (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386, there is a "reasonableness" standard for use of deadly force: whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them. This resolution seeks to change the standard so law enforcement homicide is justifiable only when "necessary given the totality of the circumstances… unless committed by a public officer whose gross negligence substantially contributed to making [the deadly force] necessary." This conflicts with state and federal standards.

The use of the term "gross negligence" incorporates a civil negligence standard into a criminal statute without defining what constitutes "gross negligence." The term "necessary," which is defined as "no reasonable alternative" to the use of deadly force" based on "facts available to the police officer at the time," ignores the fact that an officer in a use of force situation is often faced with a rapidly evolving situation where split second perceptions and decisions must be made. A reasonable officer may perceive deadly force is necessary based on a suspect's behavior, actions, and statements, only to learn, after the fact, the suspect was unarmed.

The resolution tracks Assembly Bill 931 (2017-2018 Reg. Sess.), which passed the Assembly but was largely scaled back before failing to garner sufficient support to pass both houses before the end of the legislative session. A new bill, AB 392, was introduced in the current session and

modifies section 196 in similar ways as the earlier bill. It was passed by large majorities with amendments to the definition of "necessary" and removal of de-escalation requirements.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 196 and 835a to read as follows:

§196

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, ~~either —~~ as follows:

~~1.~~

(a) In obedience to any judgment of a competent ~~Court; or,~~ court.

~~2.~~

(b) When ~~necessarily committed in overcoming actual resistance~~ necessary given the totality of the circumstances, pursuant to ~~the execution~~ subdivision (d) of ~~some legal process, or in the discharge of any other legal duty; or,~~ 835a, unless committed by a public officer whose gross negligence substantially contributed to making it necessary. ~~3.When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.~~

§835a

(a) The Legislature finds and declares that the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that must be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive force by officers acting under color of law.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent ~~escape~~ escape, or to overcome resistance.

(c) A peace officer ~~who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor~~ shall ~~such officer~~ not be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the ~~arrest or~~ arrest, to prevent ~~escape~~ escape, or to overcome resistance.

(d) (1) Notwithstanding any other law, a peace officer may use deadly force only when such force is necessary to prevent imminent and serious bodily injury or death to the officer or to a third party.

(2) A peace officer shall not use deadly force against an individual based on the danger that individual poses to himself or herself, if the individual does not pose an imminent threat of serious bodily injury or death to officers or to other members of the public.

(3) A peace officer may use deadly force against persons fleeing from arrest or imprisonment only when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving serious bodily injury or death, and there is an imminent

risk of serious bodily injury or death to the officer or to another person if the subject is not immediately apprehended.

(4) For the purposes of this subdivision:

(A) "Necessary" means that, given the totality of the circumstances, a reasonable peace officer would conclude that there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury to the peace officer or to a third party. Reasonable alternatives include, but are not limited to, deescalation, tactics set forth in the officer's training or in policy, and other reasonable means of apprehending the subject or reducing the exposure to the threat.

(B) The "totality of the circumstances" includes, but is not limited to, the facts available to the peace officer at the time, the conduct of the subject and the officer leading up to the use of deadly force, and whether the officer's conduct was consistent with applicable training and policy.

(C) "Deescalation" means taking action or communicating verbally or nonverbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction of the force necessary. Deescalation tactics include, but are not limited to, warnings, verbal persuasion, and tactical repositioning.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: According to the Washington Post, police officers killed 998 people in 2018. That number was up from 987 in 2017, so despite greater publicity that has been given to the subject, no restraint on police use of deadly force appears to have occurred. Logic suggests that not all those deaths were necessary, and occasional film of police encounters by cell phone or body cameras reinforces that conclusion. However, existing law provides so much protection for law enforcement officers in the use of deadly force that for all intents and purposes, there is no circumstance in which the use of deadly force is not legally justified. San Francisco District Attorney George Gascón said as much last year when he declined to prosecute cases against police officer involved in fatal shootings:

> "[C]urrent law … talks about police being able to use force under a 'reasonable officer' and a 'reasonable person' standard, which basically puts deadly force in a toolbox with other alternatives, and even if deadly force is not a last resort, if it is reasonable under the circumstances, they get to use it, and that's taken us to where we are today."

https://www.sfchronicle.com/bayarea/article/Prosecutors-face-a-high-bar-when-deciding-to-hold-12941397.php.

The Solution: In 2018 Assembly member Shirley Weber answered the call with Assembly Bill 931, which would permit police to use deadly force only when necessary also encourage officers to defuse confrontations or use less deadly weapons, with qualifying definitions favoring the police officer. This resolution is based on the original version of AB 931, but Ms. Weber has introduced a new version in the current session: AB 392. If a motion s made to substitute AB 392 for the attached resolution, the Bar Association of San Francisco would find that a friendly amendment.

AB 392 provides much greater protection of citizens against the unnecessary and unfortunately frequent use of deadly force. The Washington Post recently reported that fatal shootings by police nationally has remained at nearly 1,000 for three years in a row. However, officers involved in unnecessary killings are seldom if ever prosecuted or, if prosecuted, convicted. This state of affairs must change. To use DA Gascón's phrase, it would shift the "tool box" for use of force from police officers to prosecutors when it appears that the fatal use of deadly force was unnecessary.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule.

CURRENT OR RELATED LEGISLATION
None known.

AUTHOR AND PERMANENT CONTACT: John T. Hansen, 582 Market Street, 17th Floor, San Francisco, California 94104; 510-910-1392; jhansenlaw101@gmail.com.

RESPONSIBLE FLOOR DELEGATE: John T. Hansen

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RESOLUTION 09-03-2019

DIGEST
Civil Rights: Strict Liability Compensation for Police Shootings
Adds Government Code section 815.2.5 to provide for a strict liability cause of action for police shootings that result in death.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolution 09-06-2018, which was disapproved.

Reasons:
This resolution adds Government Code section 815.2.5 to provide for a strict liability cause of action for police shootings that result in death. This resolution should be disapproved because, although it identifies a serious problem, it does not adequately address that problem, and would create unintended consequences both for and against liability.

The resolution seeks to address the problem of juries being reluctant to find liability in traditional tort or civil rights actions claiming wrongful death against police officers who discharged firearms. The general approach it suggests—finding a way that juries can compensate without having to find that the officer did anything wrong, and providing reasonable attorney fees—is promising, but the six-month window to file a claim, and issues with the standard of proof and limitations period make this resolution unworkable.

The proponent suggests that the plaintiff must show, by a preponderance of evidence, that the decedent was unarmed and did not present a threat necessitating deadly force. But the language of the resolution allows compensation only if "there is no substantial evidence" the decedent was armed or otherwise presented a threat necessitating deadly force. Lack of substantial evidence is generally an appellate standard, and is significantly harder to meet than the preponderance standard. A party claiming that no substantial evidence supports a finding loses if there is any credible evidence on the other side—such as, for example, testimony by the officer who shot the decedent. Thus, juries would still be asked to evaluate whether the officer was credible, and whether he or she had reason to shoot the decedent.

The resolution would also lead to a couple of unintended consequences. First, the finding, near the beginning, that law enforcement firearm deployment is an "ultrahazardous activity," would make it fairly easy for plaintiffs to prevail on a claim of strict liability for ultrahazardous activity. Proving an activity is "ultrahazardous" involves a six-factor balancing test (see *Ahrens v. Superior Court* (1988) 197 Cal.App.3d 1134, 1142 & fn. 5), and is generally the most difficult part of the plaintiff's burden in such cases. With that element legislatively determined, the remaining elements would be met in nearly any death caused by an officer shooting: the

plaintiff was harmed; the harm was of the kind that could be anticipated as a result of the officer shooting a gun; and the officer shooting the gun was a substantial factor in causing the plaintiff's harm. (CACI Instruction No. 460.) Particularly given that such a tort claim would have a longer limitations period and a lower standard of proof, few if any plaintiffs would take advantage of the claims procedure set forth in the resolution.

Second, the resolution's exclusivity language could be read as barring other claims even if the plaintiffs do not bring a claim under the resolution. Subdivision (i) provides that "[c]ompensation under this section shall be exclusive and shall preclude compensation under federal claims for the fatality." The likely intended meaning of this provision is that receiving compensation under this section precludes other claims. But it could arguably mean that the availability of compensation under this section precludes other claims. This potential ambiguity could require unnecessary litigation until it is resolved by the courts.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 815.2.5 to read as follows:

§815.2.5
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that law enforcement firearm deployment is an ultrahazardous activity and that law enforcement firearm deployment resulting in the death of a nonthreatening, unarmed individual is compensable.

SEC. 2. Section 815.2.5 is added to the Government Code to read:

815.2.5 (a) This section shall be known, and may be cited, as the Unarmed Decedent Agency Liability and Family Compensation Act of 2020.

(b) Whenever a firearm deployment by an officer of a California state, city, county or city and county law enforcement agency, or by an officer of a University of California police department, a California State University police department, a California Community College police department, or a police department of a school district, or other local or regional law enforcement or public safety agency results in the death of an unarmed individual who did not present a threat necessitating deadly force, the eligible surviving family members shall receive compensation by the agency for their loss.

(c) For purposes of this section, "eligible surviving family members" shall include a spouse or domestic partner, parents, children, and dependent relatives specified in Code of Civil Procedure Sec. 377.60.

(d) An eligible surviving family member may file a compensation claim against the agency under this section with the Department of General Services or local or regional government entity within six months of receiving notice from a California public law enforcement agency of the family member's death as a result of a firearm deployment by the law

enforcement agency. A compensation claim shall not be filed against any law enforcement individual employee under this section.

(e) If there is no substantial evidence the deceased was armed with a weapon or simulated weapon, and there is no substantial evidence the deceased presented a threat necessitating deadly force, the claim against the agency shall be approved, unless evidence of the deceased having been unarmed or not having been a threat necessitating deadly force is contradicted by more credible substantial evidence such as corroborated law officer testimony.

(f) The Department of General Services or local or regional government entity shall negotiate a compensation amount for an approved claim against the agency. In state law enforcement agency cases, the Controller shall certify the negotiated compensation amount for the claimant or representative of a minor or dependent adult claimant. If a negotiated compensation amount cannot be reached, the claim may proceed to state court. Compensation, whether negotiated or provided by a judgment against the agency, may be paid in full or on a multiyear schedule as the claimant or representative may elect.

(g) Eligible surviving family members shall be entitled to reasonable attorney fees for assistance with preparing, advancing, negotiating, and securing payment of claims.

(h) Compensation, whether by negotiated amount or by judgment, with respect to a death resulting from a state law enforcement agency firearm deployment, shall be paid upon an appropriation for that purpose by the Legislature.

(i) Compensation under this section shall be exclusive and shall preclude compensation under federal claims for the fatality.

Sec. 3. If the Commission on State Mandates determines that this act contains costs mandated by the State, reimbursement to local and regional agencies, and to school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild – San Francisco Bay Chapter

STATEMENT OF REASONS

The Problem: Law enforcement firearm deaths of nonthreatening unarmed individuals undermine public confidence in our justice system. Such deaths can be compensated under current state and federal law provided excess force, negligence or other wrongful conduct can be proven. That is not always the case. Various causes – mistaken judgments, or unintentional weapon discharges – can result in what hindsight shows are unnecessary fatalities but do not necessarily establish a viable claim for wrongful death. See "Wrongful death suits rarely filed; families seldom win," Las Vegas Review-Journal, November 27, 2011. There is no persuasive policy reason to not treat such deaths as compensable without requiring proof of wrongful law officer conduct. A Washington Post November 29, 2017 report lists 903 fatalities nationwide that year including more than 300 persons fatally shot while fleeing. A February 12, 2019 Washington Post report lists nearly1000 such fatalities over each of the last four years including

998 fatalities in 2018. The Guardian 2017 report, "The Counted," lists 130 California law enforcement gunshot fatalities during 2016 including 12 unarmed persons. Breakdowns of 2017 and 2018 California fatalities of unarmed persons are not available but the 2019 Washington Post investigation indicates unarmed person fatalities declined nationwide in 2018.

The Solution: The solution is to simplify the litigation of these claims by adopting the option of strict liability as a basis for compensation. The proposed statute provides a more appropriate and reliable state statutory option for survivors to seek compensation in such cases. It is more efficient because it simplifies the requirements to establish a right to compensation. Proof by a preponderance of evidence that the decedent was unarmed and not presenting a threat necessitating use of deadly force establishes compensability. The statute will provide a more reliable claim procedure because proof of wrongful conduct by law enforcement is not required for survivor compensation. Why limit family survivors to asserting claims of wrongful conduct against individual law enforcement officers if none is apparent in cases of unnecessary death?

The proposed strict liability option for compensation will not deter decisive law enforcement firearm deployment for fear of personal liability. To the contrary, current law extends only qualified immunity to law officers while this proposed statute includes absolute immunity from such a claim because claims against individual law enforcement agency employees are expressly prohibited.

Even in clear cases of law enforcement officer misconduct, jurors can have great difficulty finding wrongdoing by law officers. In a South Carolina criminal trial following the 2015 fatal shooting of unarmed motorist Walter Scott, the jury viewed video evidence showing no threat to anyone when the officer on trial repeatedly and fatally shot the fleeing, unarmed Mr. Scott in the back. Video evidence and bystander testimony also showed after the shooting the officer retrieved then placed his taser weapon next to Mr. Scott's prone body. The officer testified that Mr. Scott had taken possession of the taser before the fatal shooting. The eye witness testified Scott never touched the taser. The jury could not reach a verdict.

IMPACT STATEMENT
The proposed statute adds to the grounds for recovery presently contained in the California Government Claims Act.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Peter Pursley, 1308 ½ Addison Street, Berkeley, CA 94702, voice: (916) 972-1722, email: peterpursley.ph.d@gmail.com.

RESPONSIBLE FLOOR DELEGATE: Peter Pursley

RESOLUTION 09-04-2019

DIGEST
Parking Tickets: Requiring Licensed Attorney to Administratively Determine Legal Challenges
Amends Vehicle Code section 40215 to require the agency issuing the citation to have a licensed attorney administratively determine legal challenges to the citation.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Vehicle Code section 40215 to require the agency issuing the citation to have a licensed attorney administratively determine legal challenges to the citation. This resolution should be disapproved because it would add to the administrative costs ultimately passed on as additional fees, parking ticket resolution is an administrative procedure which does not require a licensed attorney, and judicial review by a person meeting the proponent's qualifications is reasonably available for a $25 filing fee.

The vast majority of parking citations entail fact questions, not a legal challenge to the citation or ordinance upon which the citation is based. The administrative process is intended to efficiently and quickly determine contested parking violations without charge to the citee. This resolution would markedly increase administrative costs by requiring licensed attorneys to determine possible legal issues associated with thousands of parking tickets on initial review or at a formal administrative hearing. It is conceivable such cost ultimately would be passed on to the consumer by increased fines or a charge for informal review.

If the recipient of the parking citation requests initial review, the processing agency notifies the issuing agency, which reviews the citation and either resolves it or confirms it, stating reasons for the denial. (Veh. Code, § 40215, subd. (a).) If the recipient is dissatisfied with the determination, the citee may request an administrative hearing before an examiner who has completed certain training requirements. (Veh. Code, § 40215, subd. (c)(4).) The training requires examiners to demonstrate the qualifications, training, and objectivity necessary to conduct a fair and impartial review. There is no requirement that the trained examiner be a licensed lawyer.

Additionally, a recipient who is dissatisfied with the outcome of the administrative hearing then has the option of seeking review in superior court (Veh. Code, § 40230), upon payment of a $25 filing fee. (Gov. Code, § 70615.) Such review is a subordinate judicial duty that can be conducted by a traffic trial commissioner or other subordinate judicial officer (Veh. Code, § 40230, subd. (c)), who is required by California Rules of Court, rule 10.701(b), to be a member of the bar for at least five years. There is no appeal from this decision. (See, e.g., *Smith v. City of Los Angeles Department of Transportation* (1997) 59 Cal.App.4th Supp. 7.) Therefore, the current process provides adequate protections, safe-guards, and remedies, for persons who

contest traffic citations.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 40215 to read as follows:

§40215

(a) For a period of 21 calendar days from the issuance of a notice of parking violation or 14 calendar days from the mailing of a notice of delinquent parking violation, exclusive of any days from the day the processing agency receives a request for a copy or facsimile of the original notice of parking violation pursuant to Section 40206.5 and the day the processing agency complies with the request, a person may request an initial review of the notice by the issuing agency. The request may be made by telephone, in writing, or in person. There shall not be a charge for this review.

(1) If, following the initial review, the issuing agency is satisfied that (i) the violation did not occur, (ii) that the registered owner was not responsible for the violation, (iii) that the parking ordinance, regulatory signage or traffic control device is unlawful, (iv) that the registered owner did not have sufficient notice of the parking restriction and it would violate his or her due process rights to assess a civil penalty for such violation, or (v) that extenuating circumstances make dismissal of the citation appropriate in the interest of justice, then the issuing agency shall cancel the notice of parking violation or notice of delinquent parking violation. The issuing agency shall advise the processing agency, if any, of the cancellation. If the contested citation involves a legal challenge under subdivisions (a)(1)(iii) or (a)(1)(iv), the issuing agency must have the citation reviewed by a licensed California attorney who shall issue a determination whether the citation is lawful or whether the citation should be dismissed on legal grounds. This determination shall include the name and bar number of the reviewing attorney and the reasons, authorities, evidence and analysis supporting such determination.

(2) The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice, and, if following that review, cancellation of the notice does not occur, include a reason for that denial, including any attorney determination required under subdivisions (a)(1)(iii) or (a)(1)(iv), notification of the ability to request an administrative hearing, and notice of the procedure adopted pursuant to subdivision (b) for waiving prepayment of the parking penalty based upon an inability to pay.

(b) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review. The request may be made by telephone, in writing, or in person. The person requesting an administrative hearing shall deposit the amount of the parking penalty with the processing agency. The issuing agency shall adopt a written procedure to allow a person who is indigent, as defined in Section 40220, to request an administrative hearing without payment of the parking penalty upon satisfactory proof of an inability to pay the amount due. An administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to this article. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(c) The administrative hearing process shall include all of the following:

(1) The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency. If an issuing agency contracts with an administrative provider, hearings shall be held within the jurisdiction of the issuing agency or within the county of the issuing agency.

(2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the parking violation without the necessity of the appointment of a guardian. The processing agency may proceed against the minor in the same manner as against an adult.

(3) The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested parking violations in compliance with California law.

(4) (A) The issuing agency's governing body or chief executive officer shall appoint or contract with qualified examiners or administrative hearing providers that employ qualified examiners to conduct the administrative hearings. Examiners shall demonstrate those qualifications, training, and objectivity necessary to conduct a fair and impartial review. An examiner shall not be employed, managed, or controlled by a person whose primary duties are parking enforcement or parking citation, processing, collection, or issuance. The examiner shall be separate and independent from the citation, collection, or processing function. An examiner's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of fines collected by the examiner.

(B) (i) Examiners shall have a minimum of 20 hours of training. The examiner is responsible for the costs of the training. The issuing agency may reimburse the examiner for those costs.

(ii) Training may be provided through any of the following:

(I) An accredited college or university.

(II) A program conducted by the Commission on Peace Officer Standards and Training.

(III) American Arbitration Association or a similar established organization.

(IV) Through a program approved by the governing board of the issuing agency, including a program developed and provided by, or for, the issuing agency.

(iii) Training programs may include topics relevant to the administrative hearing, including, but not limited to, applicable laws and regulations, parking enforcement procedures, due process, evaluation of evidence, hearing procedures, and effective oral and written communication.

(iv) Upon the approval of the governing board of the issuing agency, up to 12 hours of relevant experience may be substituted for up to 12 hours of training. In addition, up to eight hours of the training requirements described in clause (i) may be credited to an individual, at the discretion of the governing board of the issuing agency, based upon training programs or courses described in clause (ii) that the individual attended within the last five years.

(C) If the contested citation involves a legal challenge under subdivisions (a)(1)(iii) or (a)(1)(iv), the examiner must be a licensed California attorney and/or judicial officer, having more than five years of experience in the practice of law. The issuing agency shall comply fully with any requests for information by the independent attorney examiner under this subdivision that may be necessary to evaluate the legality of the citation. If the driver presents evidence or argument to establish that the traffic control device is unlawful or that there was not adequate

notice of the applicable parking restriction provided to drivers, then the burden shifts to the issuing agency to prove otherwise.

(5) The officer or person who issues a notice of parking violation shall not be required to participate in an administrative hearing. The issuing agency shall not be required to produce any evidence other than the notice of parking violation or copy of the notice and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the violation.

(6) The examiner's decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail, and, if the notice is not cancelled, include a written reason for that denial.

(7) The examiner or the issuing agency may, at any stage of the initial review or the administrative hearing process, and consistent with the written guidelines established by the issuing agency, allow payment of the parking penalty in installments, or the issuing agency may allow for deferred payment, if the person provides evidence satisfactory to the examiner or the issuing agency, as the case may be, of an inability to pay the parking penalty in full. If authorized by the governing board of the issuing agency, the examiner may permit the performance of community service in lieu of payment of a parking penalty.

(d) The provisions of this section relating to the administrative appeal process do not apply to an issuing agency that is a law enforcement agency if the issuing agency does not also act as the processing agency.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: California Vehicle Code § 40215 establishes that people who receive parking citations and wish to contest them must submit an appeal informally to the citing agency, followed by an administrative hearing by an "independent examiner." The "examiner" is not required to have a legal degree, training or experience. (*See id.* § 40215(c)(4)(B).) While legal expertise is not always necessary, if there are legal challenges to the citation (*e.g.*, whether the city ordinance or traffic control device is legal, or whether the citation violates due process), the current examiners (in many cases retired police officers) are not qualified to conduct the necessary legal research and analysis to issue just decisions.

The judicial appeal process for further review is cost-prohibitive for most drivers. Valid legal challenges to potential abuses of city powers thus evade review, and unlawful citations may continue unchecked under the current system. (*See* Petition for Review, *Guevara v. Los Angeles Superior Court*, Superior Court Case No. S193357 (May 24, 2011), *available at* 2011 WL 2551433 [petition denied July 27, 2011].)

The Solution: To curb potential abuse and ensure that cities use lawful parking control devices and provide adequate notice to drivers of traffic regulations before issuing citations, there must be a meaningful system to challenge the legality of citations in order to ensure justice and due process for drivers. By requiring a licensed California attorney -- who is an officer of the court, bound by ethical rules, and legally trained and experienced -- to review contested citations that

involve certain legal questions, justice will be better achieved within the existing statutory framework.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rules, other than those discussed above.

CURRENT OR PRIOR RELATED LEGISLATION
Not known.

AUTHOR AND/OR PERMANENT CONTACT: Melissa A. Petrofsky, The Petrofsky Law Firm, 260 Newport Center Dr., Newport Beach, CA 92660; Kelly A. Ernby, Esq; email: kellyernby@gmail.com; 949-903-5439 cell

RESPONSIBLE FLOOR DELEGATE: Kelly A. Ernby

COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

BANSDC

This resolution should be disapproved, because the recipient of the parking ticket has the ability to pay a $25.00 filing fee and have the ticket reviewed by a Commissioner of the Superior Court. (Veh. Code, § 40230.)

RESOLUTION 09-05-2019

DIGEST
Infraction: Reflective Material on License Plates
Amends Vehicle Code section 5201.1 to make it unlawful to drive with a license plate where the reflective coating has been removed, painted over, or altered.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Vehicle Code section 5201.1 to make it unlawful to drive with a license plate where the reflective coating has been removed, painted over, or altered. This resolution should be approved in principle because it closes a loophole that permits the operation of a vehicle with a license plate that has been unlawfully altered.

Existing law makes it an infraction to modify a license plate in such a way that it defeats visual or electronic recognition, which is typically done to avoid tolls and tickets. (See Veh. Code, § 5201.1, subd. (c).) An infraction is a public offense that is punishable only by a fine. (See Pen. Code, §§ 16, 19.8.)

However, existing law does not prohibit someone from driving a vehicle with a license plate that has been modified in violation of Vehicle Code section 5201.1. This resolution would ensure that a driver, who is the primary beneficiary of an altered license plate, is subject to the same fine as a person who made the alteration.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 5201.1, to read as follows:

§5201.1

(a) A person shall not sell a product or device that obscures, or is intended to obscure, the reading or recognition of a license plate by visual means, or by an electronic device as prohibited by subdivision (c) of Section 5201.

~~(b) A person shall not operate a vehicle with a product or device that violates subdivision (a).~~

~~(c)~~ (b) A person shall not erase the reflective coating of, paint over the reflective coating of, or alter a license plate to avoid visual or electronic capture of the license plate or its characters by state or local law enforcement.

~~(d)~~ (c) A person shall not operate a vehicle with a license plate that violates subdivisions (a) or (b).

(d) A conviction for a violation of this section is punishable by a fine of two hundred fifty dollars ($250) per item sold or per violation.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: Criminals, toll evaders, and carpool cheaters don't like to be caught. Cameras have made it harder for them, but they are starting to adapt. To make license plates easy to see even at night, DMV ships them with a bright reflective material similar to the materials found on traffic signs.

Criminals, toll evaders and carpool cheaters have caught on. To prevent being caught, they are using tools to erase the reflective material or adding chemicals that reduce or eliminate the reflectiveness. When they do this, their license plate is less visible to people and cameras. Thus, these people can get away with more crimes undetected, evade tolls, and cheat in the carpool lane.

The current law prohibits someone from removing the reflective materials, painting over it, or altering the plate to make it harder to see. The problem is that it does not prohibit a person from driving their vehicle with a plate with the reflective material removed, painted over or altered. Thus, the current law arguably only permits a person to be cited if they are caught in the act of defacing their license plate, which is probably done in the privacy of one's home or garage.

The Solution: The change makes it an infraction to operate a vehicle with a defaced plate. This way, people who are cheating the system can be pulled over and cited. As a practical matter, law enforcement can only enforce this law by viewing license plates that are defaced and enforcing the law against those drivers. This is a correctable offense which means that someone who fixes the problem would only have to pay a nominal fee. It will make to subdivision about reflective materials will match the structure of the subdivision that deals license covers that make it harder to see license plates.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Dorian A. Peters, Attorney at Law, 535 Main St., Martinez, CA 94553; (510) 684-7696; dorian@petersesq.com.

RESPONSIBLE FLOOR DELEGATE: Dorian A. Peters

RESOLUTION 09-06-2019

DIGEST
License Suspension: Exception for Simple Possession of Marijuana
Amends Vehicle Code section 13202 and adds Vehicle Code section 13202.51 to eliminate license suspension for simple marijuana possession not involving a vehicle.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
Similar to Resolutions 05-06-2000 and 11-06-2011, both of which were approved in principle.

Reasons:
This resolution amends Vehicle Code section 13202 and adds Vehicle Code section 13202.51 to eliminate license suspension for simple marijuana possession not involving a vehicle. This resolution should be approved in principle to reflect the recent decriminalization of marijuana use and possession, and the recent legislative trend towards the elimination of license suspension for non-vehicle offenses.

Driver's license suspensions are reasonable where the underlying conviction involves the reckless or unsafe operation of a motor vehicle. This resolution would make permissive the now mandatory suspension of the driver's license of an individual convicted under the various marijuana laws. (Health & Saf. Code, §§ 11350 et. seq.) It should be noted that this resolution also applies this permissive approach to an individual convicted for possession of a controlled substance that is not marijuana.

This resolution would also prohibit the suspension of the driver's license of an individual convicted under Health and Safety Code section 11357 when no motor vehicle was involved in the commission of the offense. Health and Safety Code section 11357 provides that a person is guilty of an offense if they are under the age of 18 and in possession of marijuana, or, if 18 years of age or over, in possession of more than 28.5 grams of cannabis (or 8 grams of concentrate). The punishment for a Health and Safety Code section 11357 violation includes community service (which may be difficult to complete if the offender's driver's license is revoked), drug education (also possibly difficult to complete), fines and imprisonment. The suspension of an offender's driver's license is in addition to, and would possibly undermine, these punishments. For this reason, and the lack of an apparent nexus between the punishment and the crime, this resolution should be approved in principle.

This resolution is similar to Assembly Bill No. 2600 (2011-2012 Reg. Sess.), which failed to pass the Assembly Transportation Committee.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 13202 and add Vehicle Code section 13202.51 as follows:

§13202

(a) A court may suspend ~~or order that the department revoke in which case the department shall revoke~~ the privilege of any person to operate a motor vehicle upon conviction of any offense related to controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code when the use of a motor vehicle was involved in, or incidental to, the commission of the offense.

(b) A court ~~shall~~ may order that the department ~~revoke~~ suspend and the department shall suspend the privilege of any person to operate a motor vehicle upon conviction of a violation of Section 11350, 11351, 11352, 11353, 11357, 11359, 11360, or 11361 of the Health and Safety Code when a motor vehicle was involved in, or incidental to, the commission of such offense.

(c) The period of time for suspension ~~or the period after revocation during which the person may not apply for a license~~ shall be determined by the court, but in no event shall such period exceed three years from the date of conviction.

§ 13202.51.

(a) Notwithstanding any other provision of law, a person's driving privilege shall not be suspended for a conviction of simple possession of marijuana pursuant to Health and Safety Code section 11357 when a motor vehicle was not involved in or incidental to the commission of the offense.

(b) As used in this section, "conviction" includes a finding in a juvenile proceeding.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Proposition 64 radically changed marijuana laws. Simple possession of marijuana for a person over the age of 21 is generally legal. Simple possession by a person under age 21 is an infraction. (Health and Safety Code § 11357 (a) and (b).) Existing law requires a court to suspend the driving privilege of a person under the age of 21 but 13 or over for one year upon a conviction for any drug offense, including simple possession of marijuana. (Veh. Code § 13202.5.) The privilege to drive must be suspended even though the marijuana possession did not occur in a vehicle and had nothing to do with a vehicle. This license suspension is unduly punitive for a crime that is at best an infraction and had nothing to do with a vehicle. Existing law also allows the court to order the privilege to drive suspended or revoked for a controlled substance offense involving a vehicle. A revocation is also unduly harsh given that a suspension accomplishes the same goal.

The Solution: This resolution prohibits the suspension of a driver's license for simple possession of marijuana when the possession did not involve a vehicle. It also prohibits the revocation of a

driver's license for a controlled substance violation although it retains the provision allowing a 3-year suspension when the controlled substance offense involves a vehicle.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
Similar to Resolutions 11-06-2011 and 05-06-2000. Resolution 11-06-2011 became AB 2600 (2011-2012) but died in the Assembly Transportation Committee.

AUTHOR AND/OR PERMANENT CONTACT: Mark Harvis, Los Angeles County Deputy Public Defender, 320 W. Temple Suite 590, Los Angeles, CA 90012, 213-974-3066, mharvis@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Mark Harvis

COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

BANSDC

Although it is framed as eliminating drivers license suspension based solely on possession of marijuana, embedded in this resolution is a removal of the court's discretion to revoke a driver's license "when the use of a motor vehicle was involved in, or incidental to, the commission of the offense." The proponent's explanation for this appears to be "A revocation is also unduly harsh given that a suspension accomplishes the same goal." There may be circumstances where revocation is appropriate, as there should be a general evaluation as to whether the defendant should be licensed. This approach also calls into question what the Department of Motor Vehicles can do administratively with regard to prospective revocation.

RESOLUTION 09-07-2019

DIGEST
Vehicles: Mistake of Fact as Defense for Driving Without a Valid License
Amends Vehicle Code section 12500 to clarify that a driver's reasonable, but mistaken, belief that their previously issued license remained valid is a defense to driving without a valid license.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Vehicle Code section 12500 to clarify that a driver's reasonable, but mistaken, belief that their previously issued license remained valid is a defense to driving without a valid license. This resolution should be approved in principle because a defendant should have the opportunity to demonstrate to the court that the defendant had a reasonable belief that the driver's license was valid and therefore the defendant did not have the proper mens rea to commit a crime.

Historically to commit a crime a person must commit an actus reus and have mens rea. This means the defendant must have done a substantial act towards the commission of the crime (the actus reus) and must have had the intention or knowledge of the wrongdoing (the mens rea). However, over the past decades the law has moved towards strict liability offenses. These are offenses that do not require a mens rea. As such, they are a dramatic shift from our historical procedures and processes for committing a crime. Under strict liability theories, a person can act without any criminal intent and be still convicted of a crime.

Here, Vehicle Code section 12500 allows for strict liability offenses when related to driving without a license. The proposed language allows a defendant to present to the court and assert an affirmative defense that the defendant had a reasonable belief that his or her license was still valid. This is important for a number of reasons. First, it brings this part of the Vehicle Code closer to our historical antecedents with mens rea. With this change a person must actually have intended or known of their wrongdoing (driving without a license). Second, the defendant still has the burden of demonstrating to the court that they had a reasonable belief that their license was valid. Third, it protects innocent parties from criminal convictions for an innocent error.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Vehicle Code section 12500 to read as follows:

§12500

(a) A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license issued under this code, except those persons who are expressly exempted under this code.

(b) A person may not drive a motorcycle, motor-driven cycle, or motorized bicycle upon a highway, unless the person then holds a valid driver's license or endorsement issued under this code for that class, except those persons who are expressly exempted under this code, or those persons specifically authorized to operate motorized bicycles or motorized scooters with a valid driver's license of any class, as specified in subdivision (h) of Section 12804.9.

(c) A person may not drive a motor vehicle in or upon any offstreet parking facility, unless the person then holds a valid driver's license of the appropriate class or certification to operate the vehicle. As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(d) A person may not drive a motor vehicle or combination of vehicles that is not of a type for which the person is licensed.

(e) A motorized scooter operated on public streets shall at all times be equipped with an engine that complies with the applicable State Air Resources Board emission requirements.

(f) It shall be an affirmative defense to a violation of this section that a driver reasonably, but mistakenly believed that their previously issued driver's license remained valid at the time of driving.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under the California Vehicle Code, driver's license privileges are frequently subject to termination or suspension without notice for reasons that have nothing to do with bad driving. Not infrequently, the DMV fails to notify a driver that their license has been suspended or terminated. Such drivers, who honestly and reasonably believe that their previously issued license remains valid, are criminalized under section 12500 (driving without a valid license), which carries six months in county jail, and is a strict liability statute.

The Solution: This resolution would create an affirmative defense to a violation of section 12500 where the driver reasonably, but mistakenly believed that their previously issued driver's license remained valid at the time he or she was driving.

IMPACT STATEMENT:
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known

AUTHOR AND/OR PERMANENT CONTACT: Nick Stewart-Oaten, 320 W. Temple Street, 5th Floor, Los Angeles, CA 90012, 213-974-3000

RESPONSIBLE FLOOR DELEGATE: Nick Stewart-Oaten

RESOLUTION 09-08-2019

DIGEST
Insurance: Disclaimer Requirement for Ride-Share Companies
Amends Public Utilities Code section 5433 to require ride-share companies to provide a disclaimer that the driver's automobile insurance may not be correctly rated or adequate.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Public Utilities Code section 5433 to require ride-share companies to provide a disclaimer that the driver's automobile insurance may not be correctly rated or adequate. This resolution should be disapproved because its requirements are vague and ambiguous, the proposal is unrelated to this statutory provision which only concerns public liability limits, and the added language does not identify nor solve an existing problem.

For companies which match passengers with drivers via websites and mobile applications, Public Utilities Code section 5433 requires $1 million in public liability coverage for personal injury and property damage, and $1 million in uninsured and underinsured motorist coverage. The coverage is to be provided through policies maintained by the transportation network company ("TNC") (aka: mobility service provider) and/or the participating driver. The obligation is on the TNC to satisfy and ensure the required liability coverage limits are in effect.

The resolution requires the TNC to provide a written disclaimer that "they may still need to change the terms of their personal automobile polices due to an increase in miles regularly driven," and that "this insurance does not cover any damage to one's personal vehicle" and the only way to have such coverage "is to buy a supplemental policy." However, the term "They" is not defined, how the disclaimer is communicated is unspecified, and the caveat lacks meaningful specificity. Further, it is irrelevant to and incongruent with the body and intent of the statute. The statute solely requires the TNC ensure, either through the TNC's primary coverage or insurance maintained by the driver, minimum liability limits to protect passengers and the public, either through its own policy or individual personal coverage by the driver.

If the intent of the resolution is to inform the TNC drivers they should (1) advise their personal automobile insurers that they are using their vehicle commercially for hire, (2) assure their vehicles are properly rated, and (3) the wisdom of obtaining material damage coverage provided through their own personal automobile insurance, none of this is accomplished by the language of the resolution and it is unrelated to the purpose and intent of this statute. Public Utilities Code section 5433 simply seeks to assure liability coverage to protect passengers and the public. What a driver should tell his or her insurance company about rating risks, the consideration of other non-liability protection, and what discussions the TNC should have with its drivers, either as

employees or contractors, have no place in this statute, and the matters are not adequately addressed in the resolution, as it is currently written.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Public Utilities Code section 5433 to read as follows:

§5433

(a) A transportation network company and any participating driver shall maintain transportation network company insurance as provided in this section. A transportation network company shall also provide a disclaimer in all capitals, bold style, and a font at least the same size as the rest of their insurance description, that they might still need to change the terms of their personal automobile insurance policies due to an increase in miles regularly driven.

(b) The following requirements shall apply to transportation network company insurance from the moment a participating driver accepts a ride request on the transportation network company's online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later:

(1) Transportation network company insurance shall be primary and in the amount of one million dollars ($1,000,000) for death, personal injury, and property damage. The requirements for the coverage required by this subdivision may be satisfied by any of the following:

(A) Transportation network company insurance maintained by a participating driver.

(B) Transportation network company insurance maintained by a transportation network company.

(C) Any combination of subparagraphs (A) and (B).

(2) Transportation network company insurance coverage provided under this subdivision shall also provide for uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars ($1,000,000) from the moment a passenger enters the vehicle of a participating driver until the passenger exits the vehicle. The policy may also provide this coverage during any other time period, if requested by a participating driver relative to insurance maintained by the driver.

(3) The insurer, in the case of insurance coverage provided under this subdivision, shall have the duty to defend and indemnify the insured.

(4) A transportation network company may meet its obligations under this subdivision through a policy obtained by a participating driver pursuant to subparagraph (A) or (C) of paragraph (1) only if the transportation network company verifies that the policy is maintained by the driver and is specifically written to cover the driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.

(c) The following requirements shall apply to transportation network company insurance from the moment a participating driver logs on to the transportation network company's online-enabled application or platform until the driver accepts a request to transport a passenger, and from the moment the driver completes the transaction on the online-enabled application or platform or the ride is complete, whichever is later, until the driver either accepts another ride request on the online-enabled application or platform or logs off the online-enabled application or platform:

(1) Transportation network company insurance shall be primary and in the amount of at least fifty thousand dollars ($50,000) for death and personal injury per person, one hundred thousand dollars ($100,000) for death and personal injury per incident, and thirty thousand dollars ($30,000) for property damage. The requirements for the coverage required by this paragraph may be satisfied by any of the following:

(A) Transportation network company insurance maintained by a participating driver.

(B) Transportation network company insurance maintained by a transportation network company that provides coverage in the event a participating driver's insurance policy under subparagraph (A) has ceased to exist or has been canceled, or the participating driver does not otherwise maintain transportation network company insurance pursuant to this subdivision. If the coverage is satisfied by this subdivision, the transportation network company shall include a disclaimer in all capitals, bold style, and a font at least the same size as the rest of their description that this insurance does not cover any damage to one's personal vehicle and that because their regular personal automobile insurance policy might not either, the only way for them to have coverage for damage to their personal vehicle is to buy a supplemental insurance policy.

(C) Any combination of subparagraphs (A) and (B).

(2) A transportation network company shall also maintain insurance coverage that provides excess coverage insuring the transportation network company and the driver in the amount of at least two hundred thousand dollars ($200,000) per occurrence to cover any liability arising from a participating driver using a vehicle in connection with a transportation network company's online-enabled application or platform within the time periods specified in this subdivision, which liability exceeds the required coverage limits in paragraph (1).

(3) The insurer providing insurance coverage under this subdivision shall be the only insurer having the duty to defend any liability claim arising from an accident occurring within the time periods specified in this subdivision.

(4) A transportation network company may meet its obligations under this subdivision through a policy obtained by a participating driver pursuant to subparagraph (A) or (C) of paragraph (1) only if the transportation network company verifies that the policy is maintained by the driver and is specifically written to cover the driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.

(d) Coverage under a transportation network company insurance policy shall not be dependent on a personal automobile insurance policy first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(e) In every instance where transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has lapsed or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

(f) This article shall not limit the liability of a transportation network company arising out of an automobile accident involving a participating driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

(g) This section shall become operative on July 1, 2015.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: New laws concerning rideshare companies have provided clarity on the legality of ridesharing and what companies are required to provide for their drivers. One of the requirements was that companies offer a three-stage insurance policy, differing based on whether the driver has the application on but has not agreed to give a ride, the driver has accepted a ride but the passenger has not entered the car, or a passenger has entered the vehicle and not yet dropped off. Although the coverage is useful, the requirements also give drivers a false sense of security regarding the sufficiency and level of the coverage.

Many people will become rideshare drivers with no idea that (1) when they have the rideshare application on but have not accepted a ride, the company provides no insurance for damage to their personal vehicle (only to other people and their property), and their private automobile insurance likely does not either because the car is being used for commercial purposes, and (2) they still might need to change the terms of their personal insurance and pay more because of the increase in annual mileage. That is essential information about the risks and costs of being a rideshare driver that many are unaware of, and the rideshare companies have no obligation to disclaim.

The Solution: This resolution requires that rideshare companies disclaim to their drivers, in visible font, that (1) the insurance they provide does not cover damage to their personal vehicle when the application is on but they have not accepted a ride and their private automobile insurance might not either, so they might need to buy a supplemental policy if they wish to have such damage covered, and (2) that they might need to change the terms of their personal automobile insurance due to the additional miles regularly driven. This ensures that those who sign up to drive for Lyft, Uber, or another rideshare company are more aware of the risks and costs involved and able to plan accordingly.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
AB 2293 (2015).

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 09-09-2019

DIGEST
License Plates: Designated Officers and Employees of Taiwan
Amends Vehicle Code section 5006.5 to allow vehicle license plates issued to Taiwanese officials to read "foreign state" rather than "foreign organization."

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Vehicle Code section 5006.5 to allow vehicle license plates issued to Taiwanese officials to read "foreign state" rather than "foreign organization." This resolution should be approved in principle because it is important to recognize the sovereignty and self-determination of our international allies, and to show them we support their independence.

Despite a convoluted relationship between China and Taiwan, the United States has managed to maintain strong diplomatic and economic ties with both. The current diplomatic license plate designation of "Foreign Organization" was certainly a compromise among nation-states that, if changed by California, could signal to the federal government, if not the rest of the world, that the time has come to recognize the independence and sovereignty of Taiwan. While the move is certain to compound tensions with China, it seems unlikely that any potential economic ramifications could be more significant than those resulting from recent and intended trade sanctions against China.

Taiwan is California's seventh largest trading partner and represents 3.7 percent of all exports from the Golden State. Currently, China is California's third largest trading partner after Mexico and Canada, but the United States policy on trade, sanctions, and diplomacy could erase that relationship. Despite China's claims to the contrary, Taiwan's leaders say it is much more than a province of China, arguing that it is a sovereign state. It has its own constitution, democratically-elected leaders, and about 300,000 active troops in its armed forces.

Given the huge divide between these two positions, most other countries seem happy to accept the current ambiguity, but California should honor Taiwan, which has most of the characteristics of an independent state, even if its legal status remains unclear. California should lead the way and help Taiwan assert its independence and unilateral strength by addressing it as a diplomatic equal and changing its representatives' California license plates to read "foreign state."

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 5006.5, to read as follows:

§5006.5

(a) The department may issue, for a fee determined by the department to be sufficient to reimburse the department for actual costs incurred pursuant to this section, distinctive license plates for motor vehicles owned or leased by an officer or a designated employee of ~~a foreign organization recognized by the United States pursuant to the Taiwan Relations Act (22 U.S.C. Sec. 3301 et seq.)~~ Taiwan when the department is otherwise satisfied that the issuance of the license plates is in order.

(b) The distinctive license plates shall be designed by the department and shall contain the words "Foreign ~~Organization~~ State."

(c) The department shall establish procedures for both of the following:

(1) To verify the eligibility of an applicant for plates issued pursuant to this section.

(2) To authorize ~~a recognized foreign organization~~ Taiwan to apply on behalf of its officers for plates issued pursuant to this section.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: In 1979, the Taiwan Relations Act was enacted to maintain unofficial relations with Taiwan after the United States switched diplomatic recognition to the People's Republic of China. In 1994, California enacted Vehicle Code section 5006.5 to authorize DMV to issue a special license plate to officers and designated employees of Taiwan who functioned as diplomatic and consular personnel but could not obtain diplomatic license plates from the State Department. However, this law requires the license plate to display the words "foreign organization," which diminishes Taiwan's existence as a sovereign nation.

Taiwan is California's seventh largest trading partner. (*See* California Chamber of Commerce at advocacy.calchamber.com/international/portals/taiwan.) In 1996, it held its first democratic presidential elections, following years of authoritarian rule. (*See Timeline: Taiwan's road to democracy* (Dec. 12, 2011) Reuters, www.reuters.com/article/us-taiwan-election-timeline/timeline-taiwans-road-to-democracy-idUSTRE7BC0E320111213.) In 2017, Taiwan's judiciary became the first in Asia to recognize the constitutional right of same-sex couples to marry. (*See* Peters, *VICTORY! Taiwan Constitutional Court Rules in Favor of Marriage Equality* (May 24, 2017) Human Rights Campaign, www.hrc.org/blog/taiwan-court-rules-in-favor-of-marriage-equality.) Currently, Taiwan is led by President Tsai Ing-wen, a former law professor with an LL.M from Cornell. (Ap, *Who is Tsai Ing-wen, Taiwan's newly-elected president?* (Jan. 1, 2016) CNN, www.cnn.com/2016/01/18/asia/taiwan-president-tsai-ing-wen/index.html.)

The Solution: This resolution would remedy the subterfuge of designating Taiwan a "foreign organization" by changing the wording on license plates offered to its diplomatic personnel to read "foreign state."

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Michael Fern, Los Angeles County District Attorney's Office, 211 W. Temple St., Ste. 1000, Los Angeles, CA 90012, (213) 257-2438, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern

RESOLUTION 09-10-2019

DIGEST
Vehicles: Operating a Vehicle With Self-Driving or Driver Assistance Technologies
Amends Vehicle Code section 305 to define a "driver" to include the operator of a vehicle equipped with self-driving or driver-assistance technologies.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Vehicle Code section 305 to define a "driver" to include the operator of a vehicle equipped with self-driving or driver-assistance technologies. This resolution should be approved in principle because it would add clarity to existing statutes related to autonomous vehicles and establish a policy and clear definitions in state law.

The resolution suggests that "there could be a 'no-driving' defense in a pending DUI that involves a defendant who was passed out drunk in a Tesla Model S that was traveling on autopilot at 70 mph." While that is unlikely because there is no reasonable defense that the vehicle is anything other than one that requires the operation of a driver, the resolution does point to the fact that driverless assistance and related technologies are fast being developed. It makes sense to formally establish, as a policy of the State of California, that self-driving and driver-assistance technologies are defined as depending on the existence, responsibility and potential liability of the operator of the vehicle.

Vehicle Code section 38750 et seq., enacted in 2012, begins to define and provides some context for self-driving and driverless technology vehicles in California. For the moment, most such technologies require an operator. "Operator" is defined as a person in the driver's seat, or a person who causes the autonomous technology to engage.

Until society arrives at a time when technology exists that does not require an in-the-vehicle operator, it is reasonable to expand the current definition of driver to take into account the emerging and various technologies that push the envelope towards driverless automation. The proposal helps ensure that safety laws can remain enforceable as the law develops and individuals who may be harmed can rely on the courts to identify the entity that caused the harm.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 305 to read as follows:

§305

A "driver" is a person who drives or is in actual physical control of a vehicle. A person who drives includes the operator of a vehicle equipped with self-driving or driver-assistance technologies, including but not limited to an autonomous vehicle as defined in Section 38750. The term "driver" does not include the tillerman or other person who, in an auxiliary capacity, assists the driver in the steering or operation of any articulated firefighting apparatus.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: With the advent of vehicles equipped with self-driving or driver-assistance technologies, the definition of a 'driver' needs to be updated to require the operator of the vehicle to still have a valid license and be sober. In *Mercer v. Department of Motor Vehicles* (1991) 53 Cal.3d 753, the Supreme Court held, "Based on (i) the 'plain meaning' of the statutory term 'drive,' (ii) the use of that and related terms by our Legislature in related statutes, and (iii) the interpretation of the word 'drive' and related terms in numerous decisions by our sister states, we conclude section 23152 requires proof of *volitional* movement of a vehicle." (*Id.* at 768.) (*See* Veh. Code §§ 23152, 23153.) Consequently, there could be a 'no-driving' defense in a pending DUI that involves a defendant who was passed out drunk in a Tesla Model S that was traveling on autopilot at 70 mph. (*See* Hartman, "Samek pleads not guilty to DUI" (Jan. 4, 2019) *Los Altos Town Crier*, www.losaltosonline.com/news/sections/news/200-police-fire/59214-samek-pleads-not-guilty-to-dui.)

The Solution: This resolution would broaden the definition of a "driver" to include an operator of a vehicle equipped with self-driving or driver-assistance technologies, including but not limited to an autonomous vehicle as defined in Section 38750. While such technologies improve the safety of navigating from point A to point B, no system is infallible. The vehicle's operator must still be vigilant to prevent traffic accidents and deaths. (*See* Goggin, "After Several Deaths, Tesla Is Still Sending Mixed Messages About Autopilot" (Apr. 12, 2018) *Digg.com*, digg.com/2018/tesla-crash-autopilot-investigation.)

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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