

Motor Vehicle Code applied to "for hire" only (CVC §21100).

California Vehicle Code (CVC) from <http://leginfo.legislative.ca.gov/>.

§260:

(a) A "**commercial vehicle**" is a motor vehicle of a **type required to be registered** under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(b) *Passenger vehicles* and house cars that are *not used for the transportation of persons for hire, compensation, or profit* **are not commercial vehicles**. This subdivision shall not apply to Chapter 4 (commencing with Section 6700) of Division 3.

(c) Any vanpool vehicle is **not a commercial vehicle**.

(d) The definition of a commercial vehicle in this section does not apply to Chapter 7 (commencing with Section 15200) of Division 6.

§625:

A "**traffic officer**" is any member of the California Highway Patrol, or any peace officer who is on duty for the exclusive or **main purpose of enforcing Division 10** (commencing with Section 20000) or **11** (commencing with Section 21000). (i.e., starts with **20000-20038** and/or **21000-21138**)

§21100: Part of Division 11. **Rules of the Road** Article 3. Local Regulation. **Rules and Regulations: Subject Matter** telling enforcement officers these are the only people they can ticket unless there is a tort, trespass/breach of peace or violation of contract.

Local authorities may adopt rules and regulations by ordinance or resolution regarding the following matters: (b) "Licensing and regulation of the operation of vehicles **for hire** and drivers of passenger vehicles **for hire**." See Attached (all of §21100).

"A **carriage** is peculiarly a **family or household article**. It *contributes* in a large degree the *health, convenience, comfort, and welfare of the householder or of the family*." *Arthur v Morgan*, 113 U.S. 495, 500, 5 S.Ct. 241, 243 (S.D. NY 1884).

"The Supreme Court, in *Arthur v. Morgan*, U.S. 495, 5 S.Ct. 241, 28 L.Ed. 825, held that carriages were properly classified as household effects, and we see **no reason that an automobile should not be similarly disposed of**." *Hillhouse v United States*, 152 F. 163, 164 (2nd Cir. 1907).

“We conclude that the lower court's construction of Vehicle Code section 260 more reasonably conforms to the legislative intent and that the term “for hire” modifies the word “transportation,” so that a commercial vehicle is one in which persons or property are transported for hire. Thus, “commercial vehicles” are of two types: (1) those put to the use of transporting persons for hire, and (2) those designed, used or maintained primarily for the transportation of property. In other words, vehicles used for the traditional purposes of public livery or conveyance, such as buses, taxicabs or other vehicles functioning as common carriers or otherwise, operate for a profit.”
Government Employees Ins. Co. [GEICO] v. Carrier Ins. Co. (1975), 45 Cal.App.3d 223

<http://login.findlaw.com/scripts/callaw?dest=ca/calapp3d/>

Police are making UNAUTHORIZED (unlawful) WARRANTLESS ARRESTS for **NONCRIMINAL traffic infractions**. The classification of minor traffic violations as noncriminal infractions is receiving increasing attention in recent years, not only in California but in other jurisdictions, as a basis for more realistic treatment of the problem in the courts. Leading authorities in the field of criminal law are proposing that the historic distinction between petty and serious offenses be defined more systematically to facilitate enforcement of lesser violations of police regulations. The system under study involves the creation of a category of non-criminal offenses for which the sentence authorized upon conviction would be a fine or other civil penalty, ... **1967 JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE, CHAPTER 1 - A SYSTEM FOR CLASSIFYING MINOR TRAFFIC VIOLATIONS AS NONCRIMINAL TRAFFIC INFRACTIONS**, p. 31 stated in plain English, cops are breaking the law, and the motorist is being subjected to **FALSE IMPRISONMENT**. Stated in plain English, the people who swore an oath not to violate secured rights of the people they work for are doing just that. . . . **infractions are not crimes** upon the rationale the Legislature did not intend to classify infractions as crimes. (See *People v. Oppenheimer* (1974) 42 Cal.App.3d Supp. 4 [116 Cal.Rptr. 795] and *People v. Battle*, 50 Cal.App.3d Supp. 1.) *People v. Sava* (1987) 190 Cal.App.3d 935

So-called "traffic stops" are **ARRESTS**. (See Cal Vehicle Code sections 40300, 40500, & 40504). An arrest without a warrant is **PRESUMED ILLEGAL** for infractions.

Municipal [or Superior] Court [acting a legislative court] – No Authority

Agency, or party sitting for the agency, (which would be the magistrate of a municipal court or commissioner [one under dictates of legislature]) “has no authority to” enforce as to any “**license unless** he is **acting for compensation**. Such an act is **highly penal in nature**, and should not be constructed to include anything, which is not embraced within its terms.” “[Where] there is no charge within a complaint that the accused was **employed for compensation** to do the **act complained of**, or that the **act constituted part of a contract**” *Schomig v. Kaiser*, 189 Cal. 596 (1922).

“Ministerial officers are *incompetent* to receive grants of *judicial power* from the legislature, their acts in attempting to exercise such powers are *necessarily nullities*” *Burns v. Sup. Ct., SF*, 140 Cal. 1 (1903).

False imprisonment is a wrong akin to the wrongs of assault and battery, and consists in imposing, by force or threats, an unlawful restraint upon a man's freedom of locomotion.

Defendant makes a prima facie case of unlawful arrest when he establishes that arrest was **made without a warrant, and burden rests on prosecution to show proper justification.** *People v. Holguin* (1956) 145 Cal.App.2d. 520

Even if the officer is not expected to know the law of all 50 states, **surely he is expected to know the California Vehicle Code**,... *THE PEOPLE v. JESUS SANTOS SANCHEZ REYES*, (6/17/2011) Case No. H035872, COURT OF APPEAL OF THE STATE OF CALIFORNIA

We thus require citizens to apprise themselves not only of **statutory language** but also of **legislative history**, subsequent **judicial construction**, and **underlying legislative purposes** (*People v. Grubb* (1965) 63 Cal.2d 614, 620 [47 Cal.Rptr. 772, 408 P.2d 100]). (See generally Amsterdam, The Void-For-Vagueness Doctrine in the Supreme Court (1960) 109 U. Pa. L.Rev. 67.) *Walker v. Superior Court* (1988) 47 Cal.3d 112 " . . . **an officer may be held liable in damages to any person injured in consequence of a breach of any of the duties connected with his office...** The liability for nonfeasance, misfeasance, and for malfeasance in office is in his 'individual', not his official capacity..." 70 Am. Jur. 2nd Sec. 50, VII Civil Liability

“It has long been **established** that a State may not impose a penalty upon those who **exercise a right guaranteed by the Constitution.**” *Frost & Frost Trucking Co. v. Railroad Comm'n of California*, 271 U . S . 583 . "Constitutional rights would be of little value **if they could be indirectly denied**, '*Smith v. Allwright*, 321 U . S . 649 , 644 , or **manipulated out of existence**,' *Gomillion v. Lightfoot*, 364 U . S . 339, 345.” [*Harman v. Forssenius*, 380 U.S. 528 at 540, 85 S.Ct. 1177, 1185 (1965)] (if you are part of the compact: all other must be by consent)

mu·nic·i·pal·i·ty (my-ns-pl-t)

n. pl. mu·nic·i·pal·i·ties

1. A political unit, such as a city, town, or village, incorporated for local self-government.
2. A body of officials appointed to manage the affairs of a local political unit.

People v. Battle, 50 Cal.App.3d Supp. 1 (1975) [<http://www.findlaw.com/cacases/>]

“The court in *In re Hayes* (1969) 70 Cal.2d 604, 605 [75 Cal.Rptr. 790, 451 P.2d 430] held that section 654 of the Penal Code applied to acts or omissions not only interdicted by the Penal Code but which also “embrace[s] penal provisions in other codes as well, including those found in the Vehicle Code” (Italics added). fn. 1 This **language causes us to doubt that the high court had infractions in mind when it dealt with the problem of successive prosecutions inasmuch as an infraction *is neither a***

misdemeanor nor a felony under either the Vehicle Code or the Penal Code (Pen. Code, §§ 16; Veh. Code, §§ 40000.1). [50 Cal.App.3d Supp. 6]

In summation, *it is questionable whether the Legislature considers an infraction to be a "crime."* The Legislature enacted section 19c of the Penal Code which deprives a person committing an infraction of the right to a jury trial and the right to counsel at public expense; however, both of these rights are guaranteed to one accused of a crime by sections 15 and 16 of article I of the California Constitution. We *must, if we can, construe a statute in such a fashion as to preserve it from unconstitutionality. (In re Kay (1970) 1 Cal.3d 930 [83 Cal.Rptr. 686, 464 P.2d 142].) By construing section 19c of the Penal Code to relate to noncriminal offenses we can avert a clash with the Constitution* and achieve our goal, i.e., the continued viability of the statute.

Inconsistency of Sections 19c and 1042.5 vis-a-vis 689 of the Penal Code

[2] Section 16 of the Penal Code declares that "crimes and public offenses" include not only felonies and misdemeanors but also infractions. Sections 19c and 1042.5 of the Penal Code *deprive a person accused of an infraction of the right to jury trial. Yet, section 689 of the Penal Code declares that "[n]o person can be convicted of a public offense unless by verdict of a jury."* (Italics added.) (The 1968 amendment of section 16 of the Penal Code substituted the words "crimes and public offenses include:" for the words "crimes, how defined. Crimes are divided into.")

If the Legislature intended to treat infractions as public offenses and if the charging of a public offense invokes the right to trial by jury, sections 19c and 1042.5, *which deny a jury to one who commits an infraction, conflict with section 689. However, the same (1968) Legislature enacted section 19c, the pertinent amendment of section 16 and section 1042.5. Construing these sections in accordance with the precepts laid down in In re Kay, supra, we must conclude that it was not the intent of the Legislature to enact inconsistent statutes and, further, that when it added the term "public offense" to section 16 it was not so categorizing infractions because if it did so, it would have caused inconsistency between sections 19c and 689 of the Penal Code. Support for this interpretation is found in the language of section 1042.5 which states that a defendant "charged with an infraction and with a public offense for which there is a right to jury trial" (italics added) may be accorded a jury trial. Had the Legislature intended that an infraction be treated as a public offense, it would have worded the statute differently, for example, "an infraction and with some other public offense."* [50 Cal.App.3d Supp. 7]"

There is a quote from a California court case known as *People v. Sava* which ruled "*The limitation of an accused right to a jury trial has withstood constitutional attack upon the rationale that the legislature had never intended infractions to be criminal.***"**

The powers of arrest by a peace officer: turns out that peace officers only have the authority to make an arrest without a warrant if they have probable cause to believe a public offense has been committed in their presence. Since there was no public offense and no warrant nor did CVC §40500 give authority to arrest (by means to detain), there was no authority for the actions taken on this date.

California Penal Code 683

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=681-691>

683: The **proceeding** by which a party charged with a **public offense** is accused and brought to trial and punishment, is known as a **criminal action**

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## California Vehicle Code Section 40500 Notice to Appear

<http://www.dmv.ca.gov/pubs/vctop/d17/vc40500.htm>

**40500: (a)** Whenever a person is **arrested** for any violation of this code not declared to be a felony, or for a violation of an ordinance of a city or county relating to traffic offenses and he or she is not immediately taken before a magistrate, as provided in this chapter, the arresting officer shall prepare in triplicate a written notice to appear in court or before a person authorized to receive a deposit of bail, containing the name and address of the person, the license number of his or her vehicle, if any, the name and address, when available, of the registered owner or lessee of the vehicle, the offense charged and the time and place when and where he or she shall appear. If the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the **arrestee** to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the **arrestee**, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print .

**(b)** The Judicial Council shall prescribe the form of the notice to appear.

**(c)** Nothing in this section requires the law enforcement agency or the **arresting** officer issuing the notice to appear to inform any person **arrested** pursuant to this section of the amount of bail required to be deposited for the offense charged.

**(d)** Once the **arresting** officer has prepared the written notice to appear, and has delivered a copy to the **arrested** person, the officer shall deliver the remaining original and all copies of the notice to appear as provided by Section 40506.

Any person, including the **arresting** officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a **citation** that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate or judge to receive a deposit of bail, is guilty of a misdemeanor.

If, after an **arrested** person has signed and received a copy of a notice to appear, the **arresting** officer or other officer of the issuing agency, determines that, in the interest of justice, the citation or notice should be dismissed, the **arresting** agency may recommend, in writing, to the magistrate or judge that the case be dismissed. The recommendation shall cite the reasons for the recommendation and be filed with the court.

**If the** magistrate or judge makes a finding that there are grounds for dismissal, the finding shall be entered on the record and the **infraction or misdemeanor dismissed.**

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

**(e) (1)** A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court determines that referral is not in the interest of justice.

**(2)** Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

**(3)** Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department

of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

**(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence** pursuant to Section 530.6 of the Penal Code, unless the court determines that a finding of factual innocence is not in the interest of justice.

**(5) The citation or notice to appear** may be held by the prosecuting attorney or issuing agency for future adjudication should the **arrestee** who received the citation or notice to appear be found.

**Amended Sec. 3, Ch. 93, Stats. 1995. Effective January 1, 1996.**

**Amended Sec. 7, Ch. 467, Stats. 2003. Effective January 1, 2004.**

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California Penal Code Section 146

<http://law.onecle.com/california/penal/146.html>

Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, does any of the following, without a regular process or other lawful authority, is guilty of a misdemeanor:

- (a) Arrests any person or detains that person against his or her will.
- (b) Seizes or levies upon any property.
- (c) Dispossesses any one of any lands or tenements.

22 December A.D. 2013

This author has defined “**transportation**” this way:

- (1) removing people and/or property
- (2) from here to there (one place to another)
- (3) for profit or hire
- (4) under the choice of law of the “place” called “this state.”

Having been pressed in one particular matter to justify that same definition for a mere grammatical difference, i.e., “transport,” a study into “transport” and how that term is defined and used has produced the following modification to the foregoing definition.

“**Transportation**” means

- (1) removing people and/or property
- (2) from here to there (one place to another)
- (3) **for hire**
- (4) under the choice of law of the “place” called “this state.”

This note intends to introduce the modification rather than explain it in glorious detail, which will happen over time as the change settles into mind. In general, there are various contexts in which “transport” is part of the definition of a term or a “charge,” including (1) traditional maritime matters, (2) drug matters, (3) “tax” matters, and, of course, (4) the “ticket” matters. There is a “drug” matter case in CALIFORNIA in which the defendant was charged with “transportation” (of controlled substances) having removed the drugs from here to there by bicycle. There's an implied intent in such matters, generally, of “for profit,” and analyzing that matter with that commercial intent in mind, the “for profit” side of the definition applies directly. But, the “for hire” part doesn't. There was not one word mentioned that would satisfy the position that the guy was compensated for the specific task of taking the drugs from one place to another place. Moving van “operators” are compensated for the specific act of taking the furniture, etc., the “cargo,” from one place to another place. But, the drug dealer on the bicycle wasn't being compensated for the specific act of moving the drugs from one place to another. He wasn't “hired” for that act of relocating the drugs. That difference in commercial intent matters.

There's a "tax" case out of CALIFORNIA in which the purpose of the statute was to give a tax break to ships of a certain minimum tonnage in the "transportation" business. The fisherman applied for the tax break, and upon challenge by the taxing authority, the trial court granted the the fishermen the tax break. The county appealed, and the tax break with withdrawn. While the fisherman definitely carried the fish from the location of the catch to the location at the shore of the market, they were not being hired or paid or compensated for the activity of carrying the fish from the location of the catch to the location the market. In other words, the "for profit" side of the commercial intent was satisfied but not the "for hire" side.

These cases, among a few others, have motivated a reconsideration of the definition of "transportation." Also contributing to the updating of this commercial intent element is the *Lozman* ruling, which makes very clear that "transportation" is understood to be commercial activity. In that case, the municipality filed suit in the US trial court alleging maritime jurisdiction, calling the floating house a "vessel."

For it to be a "vessel," it had to be use for "transportation," which the Court confirmed didn't and couldn't happen without "passengers or cargo," thus (1) removal of people and/or property (2) from here to there (3) at least "for hire," (4) under the laws of "this state." Since the Court focuses on "passengers or cargo," the concept of "for hire" is a lot more consistent and descriptive than the broader concept of "for profit or hire."

While there needs to be a commercial intent, the question is how to describe it in such a way as to know what facts are relevant. "For hire" is closer to the commercial intent for the "vehicle," "driver," "motor vehicle," "operator" context than "for profit or hire."

In general, then, those not being paid, hired, compensated, remunerated, specifically to take, carry, convey, move, remove, relocate, etc., people and/or property, from here there, are not engaged in "transportation." This is a narrower way to define the necessary commercial intent, and this narrower description of the necessary commercial intent sits just fine on the mind. How far beyond the direct application in the various "transportation" ("motor vehicle," etc.) codes this narrower scope applies is a good question. For example, in the "drug" context, the larger "for profit or hire" scope may very well be the intended (and proper) scope of the commercial intent for the "transportation" charge. However, for the "driver's license" and insurance context "transportation" matter, "for hire" (only) is an improved way to describe the necessary commercial intent element (part (3) in the definitions above) of "transportation."

Those not being paid for the specific activity of taking people and/or property from one place to another are simply not in "transportation." Those not in "transportation" are the ones who don't need the "licenses" (which are the means by which one politically aligns oneself with the "new world order" system) or the insurance (which is a mean and scary legal matter, given the increased penalty level and the "threats" of seizure of the uninsured conveyance). It's an area of law with seemingly small "downside" risk, and while it's not quite as small on the downside as it may once have been, it's still an area that requires about as much study as a tax matter. It's not that complicated, but it's a lot more involved than most in our society picture it to be.

Key is the “legal description” (the definition) of what it is that we're dealing with, and for the “ticket” matters, the understanding of “transportation” from this author is now a bit narrower in description of the commercial intent element than before. That change is ringing true long enough to warrant introducing the discussion of the perspective.

Harmon L. Taylor
Legal Reality
Dallas, Texas