

## RESOLUTION 07-09-05

### DIGEST

#### Motor Vehicles: Online Traffic Violator Schools

Amends Vehicle Code section 42005 to require courts to accept credit from any traffic school licensed by the Department of Motor Vehicles.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Vehicle Code section 42005 to require courts to accept credit from any traffic school licensed by the Department of Motor Vehicles. This resolution should be approved in principle because the policies for allowing traffic violators to attend online traffic schools should be uniform across the state.

Traffic schools have become a popular way to remediate violations while keeping one's driving record free from minor violations that can affect insurance costs. The development of online traffic schools gives even more Californians the opportunity to participate in these benefits, especially those who reside in rural or isolated areas.

At least 30 counties accept credits from online school. (See, e.g., <[http://www.sfgov.org/site/courts\\_page.asp?id=3783](http://www.sfgov.org/site/courts_page.asp?id=3783)> [San Francisco].) However, online schools still have not attained universal acceptance. Some counties refuse to accept credit from online schools, often for little or no reason. (See, e.g., <<http://www.co.marin.ca.us/depts/MC/main/traffic.cfm>> [Marin County].) This inconsistency means that some drivers lose the ability to protect their driving records economically and conveniently for no other reason than they happened to get pulled over in the wrong county.

Traffic schools are subject to strict and extensive evaluation and licensing requirements. If the DMV determines that a traffic school meets its standards, that determination should have statewide effect. There is no reason to exclude online traffic schools on a county-by-county basis.

The resolution also proposes a change to section 42005 to provide violators with the unrestricted option to attend traffic school, which is also the goal of Resolution 07-10-05.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 42005 as follows:

- 1 § 42005
- 2 (a) ~~The court may order or permit a person convicted of a traffic violation to attend a traffic~~
- 3 ~~violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.~~
- 4 (b) In lieu of adjudicating a traffic offense committed by a person who holds a
- 5 noncommercial class C, class M1, or class M2 driver's license, ~~and with the consent of the~~
- 6 ~~defendant, upon the request of the defendant the court may shall~~ order the person to attend a
- 7 licensed traffic violator school, a licensed driving school, or any other court-approved program or
- 8 driving instruction.
- 9 (e)(b) Pursuant to Title 49 of the Code of Federal Regulations, the court may not order or
- 10 permit a person who holds a class A, class B, or commercial class C driver's license to complete a
- 11 licensed traffic violator school, a licensed driving school, or any other court-approved program of
- 12 driving instruction in lieu of adjudicating any traffic offense committed by the holder of a class A,
- 13 class B, or commercial class C driver's license.

14 ~~(d)~~(c) The court may not order or permit a person, regardless of the driver's license class, to  
15 complete a licensed traffic violator school, a licensed driving school, or any other court-approved  
16 program of driving instruction in lieu of adjudicating an offense if that offense had occurred in a  
17 commercial motor vehicle, as defined in subdivision (b) of Section 15210.

18 ~~(e)~~(d) Except as otherwise provided in subdivision ~~(f)~~(e), a person so ordered may choose  
19 the traffic violator school the person will attend. The court shall make available to each person  
20 subject to that order the current list of traffic violator schools published by the department pursuant to  
21 Section 11205.

22 ~~(f) In those counties where, prior to January 1, 1985, one or more individual courts, or the~~  
23 ~~county acting on behalf of one or more individual courts, contracted for the provision of traffic safety~~  
24 ~~instructional services to traffic violators referred by the court pursuant to a pretrial diversion program,~~  
25 ~~the courts may restrict referrals under this section to those schools for traffic violators or licensed~~  
26 ~~driving schools that are under contract with the court or with the county to provide traffic safety~~  
27 ~~instructional services for persons referred pursuant to subdivision (a).~~

28 (e)(1) No court shall refuse a person's request to attend a traffic violator school that is  
29 licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5. Each court in this  
30 State shall give equal credit to courses attended at any traffic violator school licensed by the  
31 department, without regard to whether those courses are conducted or attended in person, on the  
32 Internet, or via any particular medium.

33 (2) In enacting this subdivision, it is the purpose of the Legislature to provide efficient,  
34 instructive, and economical opportunities for all persons to attend traffic violator schools without  
35 undue hardship, burdensome costs, or unnecessary travel, and to provide for the uniform  
36 acceptance throughout the state of traffic violator school courses attended or conducted online or  
37 through means other than in person.

38 ~~(g) A county described in Section 28023 of the Government Code may continue to provide~~  
39 ~~the program authorized by this section in accordance with the provisions of current and future~~  
40 ~~contracts as may be amended and approved by the individual courts within that county and the~~  
41 ~~county shall be exempt from state regulations relative to maximum classroom attendance.~~

42 ~~(h) Notwithstanding subdivisions (f) and (g), a court in the counties described in those~~  
43 ~~subdivisions shall comply with the prohibitions set forth in subdivisions (c) and (d).~~

44 ~~(i)~~(f) A person who willfully fails to comply with a court order to attend traffic violator school  
45 is guilty of a misdemeanor.

46 ~~(j)~~(g) This section shall become operative on September 20, 2005.

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

PROPONENT: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing Law: Does not require courts to accept credit from online traffic schools.

This Resolution: Would require all courts to accept credit from all traffic schools licensed by the Department of Motor Vehicles.

The Problem: Online traffic schools provide an opportunity for drivers to fulfill traffic school requirements and keep points off their records in an economical and convenient manner. However, some counties in the state accept credit from online traffic schools, while others do not. The ability of a driver to attend an online traffic school depends on nothing more than his or her dumb luck in getting cited in the right county.

The traffic laws should be administered uniformly throughout the state. There is no reason why a driver in one county should be denied the same chance to remediate his or her license as any other driver in another county. Online traffic schools can be taken anywhere at any time and should not be subjected to the whim of local authorities.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

#### **IMPACT STATEMENT**

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

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#### **COUNTERARGUMENT**

##### **SANTA CLARA COUNTY BAR ASSOCIATION**

We agree that making online traffic schools available statewide is a desirable goal provided appropriate safeguards are in place to prevent fraud.

However, this resolution completely changes the law by requiring the court to order traffic school for any eligible person who requests it. (See lines 2-6). This completely eliminates judicial discretion. Thus, an eligible person doing 80 mph in a 25 mph zone past a school in session would have to be given traffic school upon their request - even if they had three prior speeding convictions. Furthermore, the Statement of Reasons offers no rationale for such a radical change in the law.

Therefore, we oppose this resolution in its current form but would support it if the changes proposed for subdivisions (a) and (b) at lines 2 through 6 were deleted and the original text reinstated.