

RESOLUTION ELF-02-2007

DIGEST

Exemption From Liability For Rescue Of Children In Locked Cars

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Section 15621 of the Vehicle Code as follows:

- 1 §15621
2 (a) A person may use reasonable means to open a motor vehicle without obtaining the
3 consent of the owner, lessee, or operator of that motor vehicle if that person reasonably
4 believes that all of the following are true:
5 (1) a child has been left unattended in the motor vehicle;
6 (2) the child, whether due to immaturity, restraint, medical condition, or any other reason, is
7 unable to open the door or window of the motor vehicle by himself or herself upon the
8 instruction or urging of an adult;
9 (3) the child's parent, guardian, or other adult responsible for the child's safety is not present
10 in the immediate area and cannot be located immediately; and
11 (4) the circumstances are such that the child is likely to suffer injury or death if the child is
12 not removed from the motor vehicle before law enforcement, safety forces, or child
13 protection authorities can be summoned.
14 (b) A person who opens a motor vehicle under circumstances fulfilling subdivision (a) of
15 this section shall not be held civilly or criminally liable for doing so.
16 (c) As used in subdivision (a) of this section, the term "reasonable means" includes, but is
17 not limited to, the following:
18 (1) Breaking a window, windshield, or sunroof of the motor vehicle;
19 (2) Prying or otherwise forcing open a door, sunroof, trunk lid, or hatch of the motor
20 vehicle; and
21 (3) Using tools, devices, or other means to deactivate the locking mechanism of the door or
22 window of the motor vehicle.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS:

Existing Law: Does not provide for the rescue of unattended children from motor vehicles by passersby under dangerous circumstances.

This Resolution: Would permit anyone finding an unattended child in a motor vehicle under dangerous circumstances to rescue the child immediately without incurring civil or criminal liability for doing so.

The Problem: There has been a recent rash of incidents in California in which children have been killed or seriously injured after having been left unattended in vehicles. (See, e.g., *Girl, 2, left in hot car - nanny is arrested* (San Francisco Chronicle, Aug. 30, 2007), p. B-3; *Manslaughter charge in child's car death* (San Francisco Chronicle, Aug. 28, 2007), p. B-3; *Baby found in car leads to arrest* (San Mateo Daily Journal, Sept. 3, 2007), http://www.smdailyjournal.com/article_preview.php?id=80057&eddate=09/03/2007.) Most of these tragedies have resulted from exposure to heat. Despite the wide reporting of these incidents and efforts to inform the public of the dangers of leaving children unattended in motor vehicles, many adults are simply not getting the message.

Even on mild days, the temperature inside a car can rise quickly to lethal levels. A child left inside that car can sustain serious injuries, suffer excruciating torment, and can even be killed before law enforcement or other authorities can be called to the scene. However, would-be rescuers might hesitate to take action to assist the child for fear that they might be held civilly or criminally liable for breaking into the car to save the child.

“Kaitlyn’s Law” presently provides for a \$100 fine (waivable upon the finding of “economic disadvantage”) to be levied upon a person who leaves a child unattended in a motor vehicle. The person may also be prosecuted under other legal provisions. (Veh. Code, § 15620.) These provisions, however, are after-the-fact measures that are apparently having little educational effect. Week after week, we hear of another child’s death from being left unattended due to carelessness or simple forgetfulness.

There is no replacement for the loss of a child. Rescuers should be encouraged to intervene immediately to save a child before it’s too late.

IMPACT STATEMENT

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

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