

Date of Meeting: September 5-6, 1958

Date of Memo: August 20, 1958

Memorandum No. 7

Subject: Study No. 19 - Penal and
Vehicle Code Overlap.

The Commission considered and acted upon this matter at the April 1958 meeting. The action taken is reported in the enclosed pages from the minutes of that meeting.

We have revised the study somewhat, drawing in part on a memorandum sent to us by Mr. Gustafson. A copy of the revised study is enclosed. (We have not included the footnotes) I hope that the study can be approved at the September meeting to send to the State Bar.

A proposed Recommendation of the Commission, including legislation to effectuate the same, is also enclosed. This too should be acted upon at the September meeting.

You will note that while the portion of the Recommendation and proposed legislation relating to driving while intoxicated reflects the action taken at the April meeting, this is not true with respect to the portion dealing with the unlawful taking of motor vehicles. Three departures from the April action are involved: (1) whereas the Commission decided to retain the language of Penal Code Section 487 which makes the permanent taking of a motor vehicle grand theft, the Recommendation would delete it; (2) while

the Commission decided that Section 499b of the Penal Code should cover temporary takings, the Recommendation broadens it to cover permanent takings as well; (3) the Recommendation writes into Penal Code Section 499b a provision now found in Vehicle Code Section 503 relating to inferences not to be drawn from consent given by the owner of a vehicle on prior occasions. The reason for these proposed departures from the action taken in April is that under the law as it would have stood if the recommendations then agreed upon had been enacted by the Legislature there would have been two substantive departures from the present law:

- (1) It would not have been possible to charge a defendant with a felony for driving a motor vehicle with intent to permanently deprive the owner thereof.
- (2) The law would no longer contain a provision relating to what inferences relating to an owner's consent to a taking may not be drawn from consent given by the owner on former occasions.

(The proposed Recommendation reports one other substantive change in the law relating to the unlawful taking of motor vehicles which was decided upon at the April meeting and which is preserved in the Recommendation.)

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

E. Study No. 19 - Penal and Vehicle Code Overlap.

The Commission considered Memorandum No. 3 and the research study prepared by Mr. I. Robert Harris, of the Stanford Law School (copies of which are attached to these minutes). The Commission unanimously approved ^{Mr.}/Gustafson's motion which was seconded by Mr. Matthews to repeal Section 503 of the Vehicle Code and to amend Section 499(b) of the Penal Code as follows:

499(b). Any person who, shall without the permission of the owner thereof, takes or drives any automobile, bicycle, motorcycle or other vehicle, ~~for the purpose of temporarily using or operating the same,~~ with the intent to temporarily deprive the owner thereof of such vehicle shall-be-deemed is guilty of a misdemeanor, ~~and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars (\$200), or by imprisonment not exceeding three months, or by both such fine and imprisonment.~~

The Commission unanimously approved Mr. Gustafson's motion which was seconded by Mr. Matthews to repeal Section 367(d) of the Penal Code and to amend Section 502 of the Vehicle Code as follows:

502. WHEN PERSON DRIVING UNDER
INFLUENCE OF LIQUOR GUILTY OF MISDEMEANOR.

(a) It is unlawful for any person who is under the influence of intoxicating liquor to drive a vehicle, upon-any-highway. Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 30 days nor more than six months or by fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by both such fine and imprisonment and upon a second or any subsequent conviction by imprisonment in the county jail for not less than 90 days nor more than one year or by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment. A conviction under this section shall be deemed a second conviction if the person has previously been convicted of a violation of Section 501 of this code.

(b) Whenever any person is convicted of a violation of this section it is the duty of the judge unless, under the provisions of Section 307, the court recommends that there be no license suspension, to require the surrender to him of any operator's or chauffeur's license of such person and to forward the same to the department with the abstract of conviction as provided

August 20, 1958

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to Elimination of Overlapping
Provisions of the Penal and Vehicle Codes
Relating to the Unlawful Taking of Vehicles
and Driving While Intoxicated.

Both the Penal Code and the Vehicle Code contain provisions relating to the unlawful taking of vehicles and to driving a vehicle while intoxicated. The Commission has found that the provisions in each code largely duplicate those in the other, and that this overlapping of statutory provisions is not only unnecessary but has created a number of both theoretical and practical problems for the courts. (See the Commission's research study, infra.) The Commission recommends, therefore, that the existing duplication be eliminated by the following legislative action:

1. Repeal both subsection (3) of Section 487 of the Penal Code which defines the permanent taking of an automobile as grand theft and Section 503 of the Vehicle Code which makes the temporary or permanent taking of an automobile a felony and amend Section 499b of the Penal Code to provide that (1) the temporary taking or driving of a motor vehicle without the owner's consent is a misdemeanor and (2) the permanent taking or driving of a motor vehicle without the owner's consent is a felony. There should also be added to Section 499b the provision now found in Section 503 of the Vehicle Code that the consent of an owner to its taking shall not be inferred from the fact that he consented to past takings by the defendant or another. These changes in the law relating to the unlawful taking of motor vehicles would eliminate the unnecessary and somewhat confusing duplication which now exists in the statutes relating to the various offenses involved. While the proposed changes almost

entirely preserve existing law, it should be noted that Vehicle Code Section 503 presently authorizes the charging of a felony in the case of the temporary taking or driving of a motor vehicle without the owner's consent, whereas Penal Code Section 499b as proposed to be revised would make such a taking a misdemeanor in all cases.

2. Repeal Sections 367d and 367e of the Penal Code and amend Section 502 of the Vehicle Code to make it applicable to driving while under the influence of intoxicating liquor whether or not the driving occurs upon a highway. These changes will preserve in Sections 501 and 502 of the Vehicle Code the substance of the present law relating to driving while intoxicated while eliminating two Penal Code provisions which are unnecessary and whose continued existence can only be a source of confusion. Moreover, it will assure that the provisions of the Vehicle Code which make jail sentences mandatory for second drunk driving offenders and which require that judgments of conviction of all drunk driving offenders be sent to the Department of Motor Vehicles with consequent revocation of their drivers licenses will be applicable to all persons who commit such offenses.

The Commission's recommendation would be effectuated by enacting the following measures:*

An act to repeal Section 503 of the Vehicle Code and to amend Sections 487 and 499b of the Penal Code, all relating to taking a vehicle without

*Matter in italics would be added to the present law; matter in "strikeout" type would be eliminated from the present law.

the consent of the owner.

The people of the State of California do enact as follows:

SECTION 1. Section 503 of the Vehicle Code is hereby repealed.

SEC. 2. Section 487 of the Penal Code is amended to read:

487 Grand theft is theft committed in any of the following cases:

1. When the money, labor or real personal property taken is of a value exceeding two hundred (\$200); provided, that when domestic fowls, avocados, citrus or deciduous fruits, nuts and artichokes are taken of a value exceeding fifty dollars (\$50) the same shall constitute grand theft.

2. When the property is taken from the person of another.

3. When the property taken is an automobile, a horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow or pig.

SEC. 3. Section 499b of the Penal Code is amended to read:

499b. Any person who shall, without the permission of the owner thereof, takes or drives any automobile, bicycle, motorcycle or other vehicle, ~~for the purpose of temporarily using or operating the same shall be deemed~~ is guilty of a misdemeanor if the act is done with the intent to temporarily deprive the owner of possession of such vehicle and is guilty of a felony if the act is done with the intent to permanently deprive the owner of title to or possession of such vehicle. ~~and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars (\$200), or by imprisonment not ex-~~

ceeding-three-month,-or-by-both-such-fine-and-imprisonment. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same person or a different person.

An act to repeal Sections 367d and 367e of the Penal Code and to amend Section 502 of the Vehicle Code, all relating to driving a vehicle while under the influence of intoxicating liquor.

The people of the State of California do enact as follows:

SECTION 1. Sections 367d and 367e of the Penal Code are hereby repealed.

SEC. 2. Section 502 of the Vehicle Code is amended to read:

502. (a) It is unlawful for any person who is under the influence of intoxicating liquor to drive a vehicle ~~upon-any-highway~~. Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 30 days nor more than six months or by fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) or by both such fine and imprisonment and upon a second or any subsequent conviction by imprisonment in the county jail for not less than five days nor more than one year and by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000). A conviction under this

section shall be deemed a second conviction if the person has previously been convicted of a violation of Section 501 of this code.

(b) Whenever any person is convicted of a violation of this section it is the duty of the judge unless, under the provisions of Section 307, the court recommends that there be no license suspension, to require the surrender to him of any operator's or chauffeur's license of such person and to forward the same to the department with the abstract of conviction as provided in Section 744 hereof, and the department shall suspend the driving privilege of any person so convicted as provided in Section 307.

(c) Any person convicted of a second or subsequent offense under this section shall not be granted probation by the court, nor shall the court suspend the execution of the sentence imposed upon such person.