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# ONE MINUTE BRIEF

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**NUMBER:** 2019-10    **DATE:** 04-22-19    **BY:** Devallis Rutledge    **TOPIC:** CVC § 10851 Offenses

**ISSUE:** What are the key points to remember when handling 10851 cases?

VC § 10851 can be violated in different ways:

- **Taking** another's vehicle without consent, with intent to **permanently** deprive the owner of possession (a form of **theft**). After Proposition 47, this violation is punishable as a **felony** (wobbler) if the vehicle is valued at **more than \$950**, but **only** as a **misdemeanor** if valued at **\$950 or less**. PC § 490.2(a); *People v. Page* (2017) 3 Cal.5<sup>th</sup> 1175, 1187.

- **Taking** another's vehicle (of **any** value) without consent, with intent to **temporarily** deprive the owner of possession ("joyriding"). This **non-theft** violation is a wobbler. *People v. Gutierrez* (2018) 20 Cal.App.5<sup>th</sup> 847, 856.

- **Driving** another's vehicle (of **any** value) without consent, following a substantial break **after the taking is complete**, and with intent **either** to **permanently** or **temporarily** deprive the owner of possession. This violation is a wobbler. *In re JR* (2018) 22 Cal.App.5<sup>th</sup> 805, 813.

*"[T]he section prohibits **driving** as separate and distinct from the act of **taking**."* *People v. Jaramillo* (1976) 16 Cal.3d 752, 759, fn. 6.

*"[U]nlawful **driving** of a vehicle is not a form of theft when the driving occurs or continues **after the theft is complete**...."* *People v. Garza* (2005) 25 Cal.4<sup>th</sup> 866, 871 (defendant driving the car 6 days after the theft could be convicted of unlawful **driving**); *People v. Strong* (1994) 30 Cal.App.4<sup>th</sup> 366, 499 (same, 4-day interval).

Since a **driving** violation of 10851 is **not a form of theft**, the value of the vehicle does not affect the wobbler classification for this violation:

*“Proposition 47 did not reduce to misdemeanors all violations of Vehicle Code section 10851. ... [O]nly theft-based violations fall within Penal Code section 490.2, making them misdemeanors unless the vehicle stolen was worth more than \$950.*

*“Where the evidence shows a ‘substantial break’ between the taking and the driving, **posttheft driving** may give rise to a conviction under Vehicle Code section 10851 distinct from any liability for vehicle theft.”*

*People v. Lara* (2019) \_\_\_ Cal.5th \_\_\_, No. S243975, Slip opn. at 9, 10 (defendant driving a stolen vehicle 6 or 7 days later could be convicted of unlawful **driving**).

(Where **felony** charging appears appropriate, a suspect who is found driving a vehicle valued at \$950 or less **after the taking is completed** might be charged with taking **with intent to temporarily deprive**, or *only* with **driving** and *not* with **taking** the vehicle.)

- The **basis** for any 10851 charge is significant when determining whether the defendant may **also** be charged with violating PC § 496d, and whether PC § 666 or § 666.5 may apply to present and future cases.

- To ensure that the correct charges are brought, prosecutors should consider whether the evidence shows a **taking** (and with which intent, and of what value vehicle) or a **driving**, or both. **Proof, argument, jury instructions and verdict forms should match the charged form of violation.** To insulate convictions from potential changes in the law that might apply retroactively, it may be prudent to introduce evidence of the value of vehicles in **all** 10851 prosecutions, at grand jury or preliminary hearing and at trial. (See GOM 18-025.)

- Law enforcement officers completing crime and arrest reports in 10851 cases should detail the facts that show the **form** of the crime (**larcenous** taking, **non-larcenous** taking, and/or subsequent **driving**). To permit proper charge evaluation, officers should document the value of vehicles in **all** 10851 cases. Reports should also show the **date, time** and **location** of the **taking**, and the **date, time** and **location** of provable **driving** by the suspect.

**BOTTOM LINE:** Under VC § 10851, ***taking*** and ***driving*** are different violations, which in some cases may be affected by the value of the vehicle or time interval, requiring officers and prosecutors to evaluate charges under relevant statutes and decisions.

(Emphases added and citations omitted in some quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.