

## **California Vehicle Code 13202.6 One Year Suspension of CDL for 594 Conviction**

Previously California criminal law required one year driver's license suspensions for vandalism convictions. In 2006, this was amended from one year minimum suspension, to two years maximum suspension. This change is important for prosecutors who traditionally automatically include one year CDL suspension or restriction for *Tahl* forms, and for vandalism defendants considering their plea.

### Question Presented

2010 California Vehicle Code (CVC) 13202.6(a)(1) states, "For every conviction of a person for a violation of Section 594 . . . of the Penal Code, committed while the person was 13 years of age or older, the court shall suspend the person's driving privilege for not more than two years".

Is a typical prosecutor standard offer of one year minimum suspension of the defendant's California driver's license (CDL) for 594 convictions, statutorily sound according to the CVC, and California Department of Motor Vehicle (DMV) policies?

### Short Answer

Yes and no, because in 2006 the CVC was amended, changing the mandatory minimum one year suspension to trial court discretion suspension of two years maximum.

### Discussion

#### **I. CVC13202.6(a)(1) 2006 Amendment and Subsequent Case Law**

CVC 13202.6(a)(1) still states that the court "shall" suspend the defendant's CDL when they plead guilty or are convicted of vandalism charges 594, 594.3, or 594.4 of the Penal Code. 2010 CVC 13202.6(a)(1). Before 2006, CVC 13202.6(a)(1) required that suspension shall be for "one year". Stats. 2006, ch. 434, § 1, p. 2590; Stats. 1996, ch. 918, § 2, p. 5221. However, CVC 13202.6(a)(1) was

amended in 2006, giving the trial court statutory discretion to “suspend the person's driving privilege *for not more than two years*, except when the court finds that a personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's, employment, school, or medically related purposes”. 2010 CVC 13202.6(a)(1), emphasis added.

In an unpublished decision *People v. Rojas*, the California court of appeals reversed a 594 conviction for the limited purpose of allowing the trial court to exercise statutory discretion pursuant to 13202.6. *People v. Rojas* (2009), unpublished H033186, Cal Ct of App, 6th App Dist., at 152. In that case, a jury found the defendant guilty of a vandalism charge, and the lower court suspended the defendant's CDL for “the term prescribed by law pursuant to 13202.6”. The appellate court found it apparent the lower court was following CVC 13202.6(a)(1) law from prior to 2006. They held that “a failure to exercise sentencing discretion may be an abuse of discretion” (relying on *People v. Sandoval*, (2007) 41 Cal 4<sup>th</sup> 825, at 848). The case was remanded to allow the trial court to make a determination in setting the period of CDL suspension.

The 2010 California Driver Handbook issued by the DMV is in keeping with the amended 13202.6(a)(1) statute language. For Vandalism/Graffiti CDL suspension, it states that “California law allows the courts to suspend the driver license for up to two years of a person convicted of engaging in vandalism, including graffiti”. 2010 Cal Drv HB, <http://www.dmv.ca.gov/pubs/dl600.pdf> (accessed 6/18/10), pg 87.

Case law and 13202.6(a)(1) indicate that prosecutors are not statutorily required to include a one year CDL suspension term as part of a standard offer for vandalism charges. However, *People v. Rojas* is an unpublished decision, and is not mandatory authority. In addition, the lower *Rojas* court imposed an automatic CDL suspension “pursuant to 13202.6” as a result of conviction after a jury trial. This could be distinguishable from a prosecutor negotiating a one year CDL suspension in exchange for the defendant's guilty plea.

### Conclusion

Despite the CVC 13202.6 amendment, it may be that the trial court must still suspend the defendant's CDL after vandalism convictions (See 13202.6(a)(1), which states “For every conviction. .the court *shall* suspend the person’s driving privilege”, emphasis added). If *Rojas* is persuasive, then read together with 13202.6(a)(1), when there is a qualifying vandalism conviction, a trial court must exercise discretion in suspending the defendant's CDL, possibly noting the aggravating or mitigating factors the length of suspension is based on. Such factors might include “personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's, employment, school, or medically related purposes”. 2010 CVC 13202.6(a)(1). It should be further noted that 13202.6(a)(1) requires “one additional year” suspension for each successive offense conviction. 2010 CVC13202.6(a)(1). Court consideration of priors for determining CDL suspension after vandalism convictions is required by the CVC.