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DEERING'S CALIFORNIA CODES ANNOTATED
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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

PENAL CODE
Part 2. Of Criminal Procedure
Title 10. Miscellaneous Proceedings
Chapter 7. Compromising Certain Public Offenses by Leave of the Court

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 1377 (2007)

§ 1377. Compromise of offense for which person injured has civil action; Exceptions

When the person injured by an act constituting a misdemeanor has a remedy by a civil action, the offense may be compromised, as provided in Section 1378, except when it is committed as follows:

- (a) By or upon an officer of justice, while in the execution of the duties of his or her office.
- (b) Riotously.
- (c) With an intent to commit a felony.
- (d) In violation of any court order as described in Section 273.6 or 273.65.
- (e) By or upon any family or household member, or upon any person when the violation involves any person described in *Section 6211 of the Family Code* or subdivision (b) of Section 13700 of this code.
- (f) Upon an elder, in violation of Section 368 of this code or *Section 15656 of the Welfare and Institutions Code*.
- (g) Upon a child, as described in Section 647.6 or 11165.6.

HISTORY:

Enacted 1872. Amended Stats 1957 ch 102 § 1; Stats 1979 ch 795 § 13, operative July 1, 1980. Amended Stats 1992 ch 475 § 1 (AB 3544); Stats 1993 ch 219 § 219 (AB 1500); Stats 1st Ex Sess 1993-94 ch 35 § 1 (AB 88 X), effective November 30, 1994; Stats 1997 ch 18 § 1 (SB 115), ch 243 § 1 (SB 97).

NOTES:

Amendments:

1957 Amendment:

Substituted the introductory clause for the former introductory clause which read: "When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:".

1979 Amendment:

Added subd 4.

1992 Amendment:

(1) Substituted ", as provided in Section 1378, except when it is committed as follows" for "as provided in the next section, except when it is committed" in the introductory clause; (2) redesignated former subds (1)-(4) to be subds (a)-(d); (3) added "or her" in subd (a); (4) substituted a period for the former semi-colon at the end of subds (a)-(c); (5) deleted ", unless the offense charged is the first such offense committed by the defendant against the family or household member under Section 273.6" at the end of subd (d); and (6) added subd (e).

1993 Amendment:

Substituted "*Section 6211 of the Family Code*" for "subdivision (b) of *Section 542 of the Code of Civil Procedure*" wherever it appears.

1994 Amendment:

Added the last two sentences in the second to last paragraph.

1997 Amendment:

(1) Added "or 273.65" in subd (d); (2) deleted ", and when the defendant has civilly compromised any domestic violence offense committed upon any victim within seven years of the commission of the currently charged offense"; at the end of subd (e); (3) deleted the former second and last paragraphs which read: "When an offense by or upon any family or household member, or upon any person, when the violation involves any person described in *Section 6211 of the Family Code* or subdivision (b) of Section 13700 of this code, is sought to be compromised and the prosecution objects to that civil compromise pursuant to this section, the court shall hold a hearing that is noticed within 10 court days where the victim is present and acknowledges and presents proof of satisfaction for injury. During the hearing, the prosecution shall have an opportunity to present evidence and make arguments with regard to the proposed civil compromise, and the court may question the victim in open court on the issue of the satisfaction being presented as a basis for the compromise. The court shall require a defendant who enters into a civil compromise to attend a batterer's program. The amount of program sessions shall be determined by the court, but shall not be less than eight hours.

"For purposes of this subdivision, a victim of a domestic violence offense is a person described in *Section 6211 of the Family Code* or subdivision (b) of Section 13700 of this code."; and (4) added subs (f) and (g). (As amended Stats 1997 ch 243, compared to the section as it read prior to 1997. This section was also amended by an earlier chapter, ch 18. See *Gov C § 9605*.)

Historical Derivation:

- (a) Criminal Practice Act § 675 (Stats 1851 ch 29 § 675).
- (b) Stats 1850 ch 119 § 724.
- (c) NY Code Crim Proc § 663.

Law Revision Commission Comments:**1993**

Section 1377 is amended to substitute references to the Family Code provision that replaced former Code of Civil Procedure Section 542(b). The Family Code provision is substantively the same as the former Code of Civil Procedure section, but makes explicit the coverage of children of the parties. See *Fam. Code § 6211* ("domestic violence" defined).

Cross References:

Statement in disposition report that defendant was discharged because restitution or other satisfaction was made:
Pen C § 13151.1.

Collateral References:

- Witkin & Epstein, *Criminal Law* (3d ed), Crimes Against Governmental Authority §§ 22, 23, 24, 25.
- Witkin & Epstein, *Criminal Law* (3d ed), Defenses § 240.
- Cal Jur 3d (Rev) *Criminal Law* § 2825.
- Am Jur 2d (Rev) Compounding Crimes* §§ 1 et seq.

Forms:

- Calif Criminal Forms & Instructions (BW, 1983) § 27:1.

Law Review Articles:

Civil compromise. 18 LA Law No. 6, p. 17.

The compromise of criminal cases. *1 SCLR 1*.

Rehabilitation of crime victims; restitution by the offender. *21 UCLA LR 323*.

Annotations:

Recovery of money or property entrusted to another for illegal purpose, but not so used. 8 ALR2d 307.

Hierarchy Notes:

Pt. 2, Tit. 10, Ch. 7 Note

NOTES OF DECISIONS

Where defendant was arrested following accident and her sentence on conviction of reckless driving was suspended upon condition that she contribute stated amount of money to plaintiff's family, which amount was paid through justice of peace who told plaintiff that it was not in settlement of any claims, and there was no compliance with this section, and plaintiff did not appear before court or acknowledge that he had received satisfaction for his injury, and there was no agreement between plaintiff or justice of peace and defendant that payment should constitute such satisfaction, there was no compromise or settlement of civil action for damages, and no return of money or tender thereof was necessary in order to maintain action. *Harvey v. Aceves (1931, Cal App) 115 Cal App 333, 1 P2d 1043, 1931 Cal App LEXIS 613*.

That person who has committed offense of hit and run with property damage defined in *Veh C § 20002* subd (a) may be subject to civil remedy for damages does not give rise to right to compromise or compound offense under §§ 1377-1379; offender may or may not be negligent and still commit offense; in addition, this section authorizes dismissal of criminal charge only where private citizen is "injured by an act constituting a misdemeanor," and gravamen of offense defined by *Veh C § 20002* subd (a) is failure to stop and make necessary report after accident or damage has occurred; this omission is not one that causes injury to private citizen and he is technically not "person injured by an act constituting a misdemeanor" within meaning of this section. *People v. O'Rear (1963, Cal App Dep't Super Ct) 220 Cal App 2d Supp 927, 34 Cal Rptr 61, 1963 Cal App LEXIS 2332*.

An agreement between a prosecutor and a criminal defendant to dismiss a criminal misdemeanor charge of disturbing the peace in exchange for defendant's waiver of his civil action rights against those responsible for his arrest at a club was valid, not contrary to public policy, and constituted an affirmative defense to the subsequent civil action by defendant against those responsible for his arrest, where the prosecutor acted in the interest of justice in dismissing the charges. The release-dismissal procedure did not violate the public policy expressed in *Pen. Code, § 153*, providing punishment for the offense of compounding a crime; no claim was made that the prosecutor personally received any consideration for moving to dismiss charges pending against defendant. Moreover, the prohibition of *Pen. Code, § 1379*, prohibiting the compromise of public offenses is limited to the procedures (*Pen. Code, §§ 1377 and 1378*) by which misdemeanor charges may be dismissed in the case of civil injuries to the victim of the criminal act, does not preclude prosecutorial initiative to refrain from charging or moving to dismiss in other proper cases. *Hoines v. Barney's Club, Inc. (1980) 28 Cal 3d 603, 170 Cal Rptr 42, 620 P2d 628, 1980 Cal LEXIS 238, 26 ALR4th 229*.

The phrase "with an intent to commit a felony" has appeared without change in the California civil compromise

statutes and their predecessor New York statutes for nearly 170 years, and long antedates the more precise distinctions between felonies and misdemeanors appearing in *Pen. Code*, § 17. In its original application, the phrase simply connoted a distinction between minor offenses, as to which the policy of the law favored civil compromise, and more serious ones, the compromising of which would leave the purposes of the criminal law unvindicated. *People v. Moulton* (1982, *Cal App Dep't Super Ct*) 131 *Cal App 3d Supp 10*, 182 *Cal Rptr 761*, 1982 *Cal App LEXIS 1490*.

In determining whether an offense which may be punishable as either a felony or a misdemeanor is excluded from civil compromise under *Pen. Code*, § 1377, 1378, as an offense committed with felonious intent, neither the fact that the charge might be filed as a felony or a misdemeanor nor the prosecutor's decision to file a misdemeanor complaint is controlling. The issue of whether the defendant had the intent to commit a felony is a factual one to be resolved at a hearing in which both the People and the defendant have a right to present evidence. Thus, in a case in which defendant was charged with grand theft, the trial judge erred in ordering, on defendant's motion for civil compromise on the basis of a letter signed by the victim under penalty of perjury, acknowledging that she had received full satisfaction and wished to drop all charges against defendant, all proceedings stayed and defendant discharged, without permitting inquiry into the underlying facts, on the ground that the only relevant fact was that the charge had been filed as a misdemeanor. *People v. Moulton* (1982, *Cal App Dep't Super Ct*) 131 *Cal App 3d Supp 10*, 182 *Cal Rptr 761*, 1982 *Cal App LEXIS 1490*.

The word "felony" as used in the phrase "with intent to commit a felony," which phrase is used in civil compromise statutes to set a limitation upon the right to compromise a criminal action by civil settlement, is used in the sense of distinguishing between misdemeanor offenses subject to compromise and the more serious ones, the compromise of which would be contrary to the purpose of the criminal law. *People v. Moulton* (1982, *Cal App Dep't Super Ct*) 131 *Cal App 3d Supp 10*, 182 *Cal Rptr 761*, 1982 *Cal App LEXIS 1490*.

Trial court's order granting defendant's motion for dismissal of a misdemeanor charge of false imprisonment of a minor because a civil compromise had been reached pursuant to *Pen C* §§ 1377-1399, was reversed, where the record was inadequate to determine whether defendant's alleged crime fell within the conduct described by *Pen C* §§ 647.6 or 11165.6. *People v. Gokcek* (2006, *Cal Super Ct*) 138 *Cal App 4th Supp 8*, 42 *Cal Rptr 3d 405*, 2006 *Cal App LEXIS 581*.

Except where so expressly stated, there is no requirement that "child abuse," as defined by *Pen C* § 11165.6 contains a requirement that the abuse be inflicted by a person in whose care the child was entrusted as a caretaker, custodian, or family member for purposes of the prohibition against civil compromise found in *Pen C* § 1377(g). *People v. Gokcek* (2006, *Cal Super Ct*) 138 *Cal App 4th Supp 8*, 42 *Cal Rptr 3d 405*, 2006 *Cal App LEXIS 581*.

Pen C § 1377(g)'s prohibition of civil compromises where a crime was committed upon a child applies only to offenses that meet the description of any conduct listed in *Pen C* §§ 647.6 and 11165.6. The issue of whether the charged crime falls within the conduct described by *Pen C* §§ 647.6 and 11165.6 is a factual one to be resolved at a hearing. *People v. Gokcek* (2006, *Cal Super Ct*) 138 *Cal App 4th Supp 8*, 42 *Cal Rptr 3d 405*, 2006 *Cal App LEXIS 581*.