

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 571**

**Introduced by Assembly Member Levine**  
***(Coauthor: Assembly Member Spitzer)***

February 16, 2005

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An act to amend Sections ~~23538, 23578, 23646,~~ 23578 and 23649 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 571, as amended, Levine. Vehicles: DUI: blood-alcohol concentration: sanctions.

(1) When a person is convicted of violating specified driving-under-the-influence provisions (DUI), existing law requires a court to consider a concentration of alcohol in a person's blood of 0.20% or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

This bill, for the purposes of the above determination, would decrease the required blood-alcohol concentration (BAC) from 0.20% to 0.15%. ~~The bill would make conforming changes in other, related provisions of law.~~

~~(2) Existing law, for judicial districts that participate in a county alcohol and drug problem assessment program requires a court to order a person to participate in an alcohol and drug problem assessment program, if the person is convicted of a violation of a DUI~~

~~offense that occurred within 10 years of a separate conviction of a DUI offense:~~

~~This bill would additionally impose the above required court order based solely on the person being convicted of a violation of a DUI offense and the person had a BAC of 0.15% or more, by weight, of alcohol in his or her blood.~~

~~Because this bill would increase the level of services imposed on counties, the bill would impose a state-mandated local program:~~

~~(3)~~

~~(2) Existing law levies an assessment of not more than \$100 upon every fine, penalty, or forfeiture imposed and collected by the courts for a DUI violation in a judicial district that participates in a county alcohol and drug problem assessment program and an assessment of not more than \$100 levied and collected by the courts from each person convicted of a specified reckless driving violation in a county that participates in an alcohol and drug problem assessment program.~~

~~This bill would require the State Department of Alcohol and Drug Programs to ensure that the assessments enable counties to adequately provide for the continuation of the alcohol and drug program and to adopt regulations to increase the above described assessments to pay for the costs of developing, implementing, operating, maintaining, and evaluating alcohol and drug problem assessment programs when necessary to maintain the fiscal integrity of those programs.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions:~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes-no*.~~

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

- 1 SECTION 1. ~~Section 23538 of the Vehicle Code is amended~~
- 2 ~~to read:~~
- 3 23538. (a) (1) ~~If the court grants probation to person~~
- 4 ~~punished under Section 23536, in addition to the provisions of~~

1 ~~Section 23600 and any other terms and conditions imposed by~~  
2 ~~the court, the court shall impose as a condition of probation that~~  
3 ~~the person pay a fine of at least three hundred ninety dollars~~  
4 ~~(\$390), but not more than one thousand dollars (\$1,000). The~~  
5 ~~court may also impose, as a condition of probation, that the~~  
6 ~~person be confined in a county jail for at least 48 hours, but not~~  
7 ~~more than six months.~~

8 ~~(2) The person's privilege to operate a motor vehicle shall be~~  
9 ~~suspended by the department under paragraph (1) of subdivision~~  
10 ~~(a) of Section 13352. The court shall require the person to~~  
11 ~~surrender the driver's license to the court in accordance with~~  
12 ~~Section 13550.~~

13 ~~(3) Whenever, when considering the circumstances taken as a~~  
14 ~~whole, the court determines that the person punished under this~~  
15 ~~section would present a traffic safety or public safety risk if~~  
16 ~~authorized to operate a motor vehicle during the period of~~  
17 ~~suspension imposed under paragraph (1) of subdivision (a) of~~  
18 ~~Section 13352, the court may disallow the issuance of a restricted~~  
19 ~~driver's license required under Section 13352.4.~~

20 ~~(b) In any county where the board of supervisors has~~  
21 ~~approved, and the State Department of Alcohol and Drug~~  
22 ~~Programs has licensed, a program or programs described in~~  
23 ~~Section 11837.3 of the Health and Safety Code, the court shall~~  
24 ~~also impose as a condition of probation that the driver shall enroll~~  
25 ~~and participate in, and successfully complete a~~  
26 ~~driving-under-the-influence program, licensed pursuant to~~  
27 ~~Section 11836 of the Health and Safety Code, in the driver's~~  
28 ~~county of residence or employment, as designated by the court.~~  
29 ~~For the purposes of this subdivision, enrollment in, participation~~  
30 ~~in, and completion of an approved program shall be subsequent~~  
31 ~~to the date of the current violation. Credit may not be given for~~  
32 ~~any program activities completed prior to the date of the current~~  
33 ~~violation.~~

34 ~~(1) The court shall refer a first offender whose blood-alcohol~~  
35 ~~concentration was less than 0.15 percent, by weight, to~~  
36 ~~participate for at least three months or longer, as ordered by the~~  
37 ~~court, in a licensed program that consists of at least 30 hours of~~  
38 ~~program activities, including those education, group counseling,~~  
39 ~~and individual interview sessions described in Chapter 9~~

1 ~~(commencing with Section 11836) of Part 2 of Division 10.5 of~~  
2 ~~the Health and Safety Code.~~

3 ~~(2) The court shall refer a first offender whose blood-alcohol~~  
4 ~~concentration was 0.15 percent or more, by weight, or who~~  
5 ~~refused to take a chemical test, to participate for at least six~~  
6 ~~months or longer, as ordered by the court, in a licensed program~~  
7 ~~that consists of at least 45 hours of program activities, including~~  
8 ~~those education, group counseling, and individual interview~~  
9 ~~sessions described in Chapter 9 (commencing with Section~~  
10 ~~11836) of Part 2 of Division 10.5 of the Health and Safety Code.~~

11 ~~(3) The court shall advise the person at the time of sentencing~~  
12 ~~that the driving privilege shall not be restored until proof~~  
13 ~~satisfactory to the department of successful completion of a~~  
14 ~~driving-under-the-influence program of the length required under~~  
15 ~~this code that is licensed pursuant to Section 11836 of the Health~~  
16 ~~and Safety Code has been received in the department's~~  
17 ~~headquarters.~~

18 ~~(c) (1) The court shall revoke the person's probation pursuant~~  
19 ~~to Section 23602, except for good cause shown, for the failure to~~  
20 ~~enroll in, participate in, or complete a program specified in~~  
21 ~~subdivision (b).~~

22 ~~(2) The court, in establishing reporting requirements, shall~~  
23 ~~consult with the county alcohol program administrator. The~~  
24 ~~county alcohol program administrator shall coordinate the~~  
25 ~~reporting requirements with the department and with the State~~  
26 ~~Department of Alcohol and Drug Programs. That reporting shall~~  
27 ~~ensure that all persons who, after being ordered to attend and~~  
28 ~~complete a program, may be identified for either (A) failure to~~  
29 ~~enroll in, or failure to successfully complete, the program, or (B)~~  
30 ~~successful completion of the program as ordered.~~

31 ~~(d) This section shall become operative on September 20,~~  
32 ~~2005.~~

33 ~~SEC. 2.~~

34 ~~SECTION 1.~~ Section 23578 of the Vehicle Code is amended  
35 to read:

36 23578. In addition to any other provision of this code, if a  
37 person is convicted of a violation of Section 23152 or 23153, the  
38 court shall consider a concentration of alcohol in the person's  
39 blood of 0.15 percent or more, by weight, or the refusal of the  
40 person to take a chemical test as a special factor that may justify

1 enhancing the penalties in sentencing, in determining whether to  
2 grant probation, and, if probation is granted, in determining  
3 additional or enhanced terms and conditions of probation.

4 ~~SEC. 3. Section 23646 of the Vehicle Code is amended to~~  
5 ~~read:~~

6 ~~23646. (a) Each county alcohol program administrator or the~~  
7 ~~administrator's designee shall develop, implement, operate, and~~  
8 ~~administer an alcohol and drug problem assessment program~~  
9 ~~pursuant to this article for each person described in subdivision~~  
10 ~~(b). The alcohol and drug problem assessment program may~~  
11 ~~include a referral and client tracking component.~~

12 ~~(b) (1) The court shall order a person to participate in an~~  
13 ~~alcohol and drug problem assessment program pursuant to this~~  
14 ~~section and Sections 23647 to 23649, inclusive, and the related~~  
15 ~~regulations of the State Department of Alcohol and Drug~~  
16 ~~Programs, if the person was convicted of a violation of Section~~  
17 ~~23152 or 23153 that occurred within 10 years of a separate~~  
18 ~~violation of Section 23152 or 23153 that resulted in a conviction~~  
19 ~~or the person was convicted of a violation of Section 23152 or~~  
20 ~~23153 with a blood-alcohol concentration of 0.15 percent or~~  
21 ~~more, by weight, of alcohol in his or her blood.~~

22 ~~(2) A court may order a person convicted of a violation of~~  
23 ~~Section 23152 or 23153 to attend an alcohol and drug problem~~  
24 ~~assessment program pursuant to this article.~~

25 ~~(3) (A) The court shall order a person convicted of a violation~~  
26 ~~of Section 23152 or 23153 who has previously been convicted of~~  
27 ~~a violation of Section 23152 or 23153 that occurred more than 10~~  
28 ~~years ago, or has been previously convicted of a violation of~~  
29 ~~subdivision (f) of Section 647 of the Penal Code, to attend and~~  
30 ~~complete an alcohol and drug problem assessment program under~~  
31 ~~this article. In order to determine whether a previous conviction~~  
32 ~~for a violation occurring more than 10 years ago exists, the court~~  
33 ~~shall rely on state summary criminal history information, local~~  
34 ~~summary history information, or records made available to the~~  
35 ~~judge through the district attorney.~~

36 ~~(B) If the program assessment recommends additional~~  
37 ~~treatment, the court may order a person sentenced under either~~  
38 ~~Section 23538 or 23556 to enroll, participate, and complete either~~  
39 ~~of the programs described under paragraph (4) of subdivision (b)~~  
40 ~~of Section 23542.~~

1 ~~(e) The State Department of Alcohol and Drug Programs shall~~  
2 ~~establish minimum specifications for alcohol and other drug~~  
3 ~~problem assessments and reports.~~

4 ~~SEC. 4.~~

5 *SEC. 2.* Section 23649 of the Vehicle Code is amended to  
6 read:

7 23649. (a) Notwithstanding any other provision of law, in  
8 addition to any other fine or penalty assessment, there shall be  
9 levied an assessment of not more than one hundred dollars  
10 (\$100) upon every fine, penalty, or forfeiture imposed and  
11 collected by the courts for a violation of Section 23152 or 23153  
12 in any judicial district that participates in a county alcohol and  
13 drug problem assessment program. An assessment of not more  
14 than one hundred dollars (\$100) shall be imposed and collected  
15 by the courts from each person convicted of a violation of  
16 Section 23103, as specified in Section 23103.5, who is ordered to  
17 participate in a county alcohol and drug problem assessment  
18 program pursuant to Section 23647. The amount of the  
19 assessments set forth in this subdivision may be increased  
20 pursuant to subdivision (h).

21 (b) The court shall determine if the defendant has the ability to  
22 pay the assessment. If the court determines that the defendant has  
23 the ability to pay the assessment then the court may set the  
24 amount to be reimbursed and order the defendant to pay that sum  
25 to the county in the manner that the court determines is  
26 reasonable and compatible with the defendant's financial ability.  
27 In making a determination of whether a defendant has the ability  
28 to pay, the court shall take into account the amount of any fine  
29 imposed upon the defendant and any amount the defendant has  
30 been ordered to pay in restitution.

31 (c) Notwithstanding Section 1463 or 1464 of the Penal Code  
32 or any other provision of law, all moneys collected pursuant to  
33 this section shall be deposited in a special account in the county  
34 treasury and shall be used exclusively by the county alcohol  
35 program administrator or the administrator's designee to pay for  
36 the costs of developing, implementing, operating, maintaining,  
37 and evaluating alcohol and drug problem assessment programs.

38 (d) On January 15 of each year, the treasurer of each county  
39 that administers an alcohol and drug problem assessment  
40 program shall determine those moneys in the special account that

1 were not expended during the preceding fiscal year, and shall  
2 transfer those moneys to the general fund of the county.

3 (e) Any moneys remaining in the special account, if and when  
4 the alcohol and drug problem assessment program is terminated,  
5 shall be transferred to the general fund of the county.

6 (f) The county treasurer shall annually transfer an amount of  
7 money equal to the county's administrative cost incurred  
8 pursuant to this section, as he or she shall determine, from the  
9 special account to the general fund of the county.

10 (g) The State Department of Alcohol and Drug Programs shall  
11 ensure that the assessment required under subdivision (a) will  
12 enable counties to adequately provide for the continuation of  
13 programs required pursuant to this chapter.

14 (h) The State Department of Alcohol and Drug Programs may  
15 adopt regulations to increase the amount of the assessment  
16 required under subdivision (a) above one hundred dollars (\$100)  
17 to pay for the costs of developing, implementing, operating,  
18 maintaining, and evaluating alcohol and drug problem  
19 assessment programs when necessary to maintain the fiscal  
20 integrity of those programs.

21 ~~SEC. 5. If the Commission on State Mandates determines that~~  
22 ~~this act contains costs mandated by the state, reimbursement to~~  
23 ~~local agencies and school districts for those costs shall be made~~  
24 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
25 ~~4 of Title 2 of the Government Code.~~