

ASSEMBLY BILL

No. 2020

Introduced by Assembly Member Pan

February 23, 2012

An act to amend Section 23612 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2020, as introduced, Pan. Vehicles: driving under the influence: chemical tests.

Existing law provides that a person who is lawfully arrested for driving under the influence of a drug or the combined influence of an alcoholic beverage and drug has a choice of whether a chemical test to determine his or her drug or drug and alcohol level shall be a blood, breath, or urine test. If the person chooses to submit to a breath test, he or she may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence.

This bill would revise these provisions to delete the person's option to choose a chemical test of his or her urine for the purpose of determining the drug content of his or her blood. The bill would require that if a blood test is unavailable, then the person is deemed to have given his or her consent to a urine test. The bill would also require that if the person is lawfully arrested for driving under the influence of a drug or the combined influence of an alcoholic beverage and any drug, the person only has the choice of either a blood or breath test. The bill

would delete the option of a urine test, except as required as an additional test.

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

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

1 SECTION 1. Section 23612 of the Vehicle Code is amended
2 to read:

3 23612. (a) (1) (A) A person who drives a motor vehicle is
4 deemed to have given his or her consent to chemical testing of his
5 or her blood or breath for the purpose of determining the alcoholic
6 content of his or her blood, if lawfully arrested for an offense
7 allegedly committed in violation of Section 23140, 23152, or
8 23153. If a blood or breath test, or both, are unavailable, then
9 paragraph (2) of subdivision (d) applies.

10 (B) A person who drives a motor vehicle is deemed to have
11 given his or her consent to chemical testing of his or her blood-~~or~~
12 ~~urine~~ for the purpose of determining the drug content of his or her
13 blood, if lawfully arrested for an offense allegedly committed in
14 violation of Section 23140, 23152, or 23153. *If a blood test is*
15 *unavailable, the person shall be deemed to have given his or her*
16 *consent to chemical testing of his or her urine and shall submit to*
17 *a urine test.*

18 (C) The testing shall be incidental to a lawful arrest and
19 administered at the direction of a peace officer having reasonable
20 cause to believe the person was driving a motor vehicle in violation
21 of Section 23140, 23152, or 23153.

22 (D) The person shall be told that his or her failure to submit to,
23 or the failure to complete, the required chemical testing will result
24 in a fine, mandatory imprisonment if the person is convicted of a
25 violation of Section 23152 or 23153, and (i) the suspension of the
26 person’s privilege to operate a motor vehicle for a period of one
27 year, (ii) the revocation of the person’s privilege to operate a motor
28 vehicle for a period of two years if the refusal occurs within 10
29 years of a separate violation of Section 23103 as specified in
30 Section 23103.5, or of Section 23140, 23152, or 23153 *of this*
31 *code*, or of Section 191.5 or subdivision (a) of Section 192.5 of
32 the Penal Code that resulted in a conviction, or if the person’s
33 privilege to operate a motor vehicle has been suspended or revoked

1 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that
2 occurred on a separate occasion, or (iii) the revocation of the
3 person's privilege to operate a motor vehicle for a period of three
4 years if the refusal occurs within 10 years of two or more separate
5 violations of Section 23103 as specified in Section 23103.5, or of
6 Section 23140, 23152, or 23153 *of this code*, or of Section 191.5
7 or subdivision (a) of Section 192.5 of the Penal Code, or any
8 combination thereof, that resulted in convictions, or if the person's
9 privilege to operate a motor vehicle has been suspended or revoked
10 two or more times pursuant to Section 13353, 13353.1, or 13353.2
11 for offenses that occurred on separate occasions, or if there is any
12 combination of those convictions or administrative suspensions
13 or revocations.

14 (2) (A) If the person is lawfully arrested for driving under the
15 influence of an alcoholic beverage, the person has the choice of
16 whether the test shall be of his or her blood or breath and the officer
17 shall advise the person that he or she has that choice. If the person
18 arrested either is incapable, or states that he or she is incapable,
19 of completing the chosen test, the person shall submit to the
20 remaining test. If a blood or breath test, or both, are unavailable,
21 then paragraph (2) of subdivision (d) applies.

22 (B) If the person is lawfully arrested for driving under the
23 influence of any drug or the combined influence of an alcoholic
24 beverage and any drug, the person has the choice of whether the
25 test shall be of his or her blood, ~~breath,~~ or ~~urine~~ *breath*, and the
26 officer shall advise the person that he or she has that choice.

27 (C) A person who chooses to submit to a breath test may also
28 be requested to submit to a blood ~~or urine~~ test if the officer has
29 reasonable cause to believe that the person was driving under the
30 influence of a drug or the combined influence of an alcoholic
31 beverage and a drug and if the officer has a clear indication that a
32 blood ~~or urine~~ test will reveal evidence of the person being under
33 the influence. The officer shall state in his or her report the facts
34 upon which that belief and that clear indication are based. ~~The~~
35 ~~person has the choice of submitting to and completing a blood or~~
36 ~~urine test, and the officer shall advise the person that he or she is~~
37 ~~required to submit to an additional test and that he or she may~~
38 ~~choose a test of either blood or urine. The officer shall advise the~~
39 ~~person that he or she is required to submit to an additional test.~~
40 *The person shall submit to and complete a blood test.* If the person

1 ~~arrested either is incapable, or states that he or she is incapable,~~
2 ~~of completing either chosen~~ *the blood* test, the person shall submit
3 ~~to and complete the other remaining~~ *a urine* test.

4 (3) If the person is lawfully arrested for an offense allegedly
5 committed in violation of Section 23140, 23152, or 23153, and,
6 because of the need for medical treatment, the person is first
7 transported to a medical facility where it is not feasible to
8 administer a particular test of, or to obtain a particular sample of,
9 the person's blood, ~~breath,~~ or ~~urine~~ *breath*, the person has the
10 choice of those tests, *including a urine test*, that are available at
11 the facility to which that person has been transported. In that case,
12 the officer shall advise the person of those tests that are available
13 at the medical facility and that the person's choice is limited to
14 those tests that are available.

15 (4) The officer shall also advise the person that he or she does
16 not have the right to have an attorney present before stating whether
17 he or she will submit to a test or tests, before deciding which test
18 or tests to take, or during administration of the test or tests chosen,
19 and that, in the event of refusal to submit to a test or tests, the
20 refusal may be used against him or her in a court of law.

21 (5) A person who is unconscious or otherwise in a condition
22 rendering him or her incapable of refusal is deemed not to have
23 withdrawn his or her consent and a test or tests may be
24 administered whether or not the person is told that his or her failure
25 to submit to, or the noncompletion of, the test or tests will result
26 in the suspension or revocation of his or her privilege to operate
27 a motor vehicle. A person who is dead is deemed not to have
28 withdrawn his or her consent and a test or tests may be
29 administered at the direction of a peace officer.

30 (b) A person who is afflicted with hemophilia is exempt from
31 the blood test required by this section.

32 (c) A person who is afflicted with a heart condition and is using
33 an anticoagulant under the direction of a licensed physician and
34 surgeon is exempt from the blood test required by this section.

35 (d) (1) A person lawfully arrested for an offense allegedly
36 committed while the person was driving a motor vehicle in
37 violation of Section 23140, 23152, or 23153 may request the
38 arresting officer to have a chemical test made of the arrested
39 person's blood or breath for the purpose of determining the

1 alcoholic content of that person's blood, and, if so requested, the
2 arresting officer shall have the test performed.

3 (2) If a blood or breath test is not available under subparagraph
4 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)
5 of paragraph (2) of subdivision (a), or under paragraph (1) of this
6 subdivision, the person shall submit to the remaining test in order
7 to determine the percent, by weight, of alcohol in the person's
8 blood. If both the blood and breath tests are unavailable, the person
9 shall be deemed to have given his or her consent to chemical testing
10 of his or her urine and shall submit to a urine test.

11 (e) If the person, who has been arrested for a violation of Section
12 23140, 23152, or 23153, refuses or fails to complete a chemical
13 test or tests, or requests that a blood or urine test be taken, the
14 peace officer, acting on behalf of the department, shall serve the
15 notice of the order of suspension or revocation of the person's
16 privilege to operate a motor vehicle personally on the arrested
17 person. The notice shall be on a form provided by the department.

18 (f) If the peace officer serves the notice of the order of
19 suspension or revocation of the person's privilege to operate a
20 motor vehicle, the peace officer shall take possession of all driver's
21 licenses issued by this state that are held by the person. The
22 temporary driver's license shall be an endorsement on the notice
23 of the order of suspension and shall be valid for 30 days from the
24 date of arrest.

25 (g) (1) The peace officer shall immediately forward a copy of
26 the completed notice of suspension or revocation form and any
27 driver's license taken into possession under subdivision (f), with
28 the report required by Section 13380, to the department. If the
29 person submitted to a blood or urine test, the peace officer shall
30 forward the results immediately to the appropriate forensic
31 laboratory. The forensic laboratory shall forward the results of the
32 chemical tests to the department within 15 calendar days of the
33 date of the arrest.

34 (2) (A) Notwithstanding any other ~~provision of law~~, a document
35 containing data prepared and maintained in the governmental
36 forensic laboratory computerized database system that is
37 electronically transmitted or retrieved through public or private
38 computer networks to or by the department is the best available
39 evidence of the chemical test results in all administrative
40 proceedings conducted by the department. In addition, any other

1 official record that is maintained in the governmental forensic
2 laboratory, relates to a chemical test analysis prepared and
3 maintained in the governmental forensic laboratory computerized
4 database system, and is electronically transmitted and retrieved
5 through a public or private computer network to or by the
6 department is admissible as evidence in the department's
7 administrative proceedings. In order to be admissible as evidence
8 in administrative proceedings, a document described in this
9 subparagraph shall bear a certification by the employee of the
10 department who retrieved the document certifying that the
11 information was received or retrieved directly from the
12 computerized database system of a governmental forensic
13 laboratory and that the document accurately reflects the data
14 received or retrieved.

15 (B) Notwithstanding any other ~~provision of~~ law, the failure of
16 an employee of the department to certify under subparagraph (A)
17 is not a public offense.

18 (h) A preliminary alcohol screening test that indicates the
19 presence or concentration of alcohol based on a breath sample in
20 order to establish reasonable cause to believe the person was
21 driving a vehicle in violation of Section 23140, 23152, or 23153
22 is a field sobriety test and may be used by an officer as a further
23 investigative tool.

24 (i) If the officer decides to use a preliminary alcohol screening
25 test, the officer shall advise the person that he or she is requesting
26 that person to take a preliminary alcohol screening test to assist
27 the officer in determining if that person is under the influence of
28 alcohol or drugs, or a combination of alcohol and drugs. The
29 person's obligation to submit to a blood, breath, or urine test, as
30 required by this section, for the purpose of determining the alcohol
31 or drug content of that person's blood, is not satisfied by the person
32 submitting to a preliminary alcohol screening test. The officer shall
33 advise the person of that fact and of the person's right to refuse to
34 take the preliminary alcohol screening test.