

AMENDED IN ASSEMBLY APRIL 19, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2552

Introduced by Assembly Member Torres

February 24, 2012

An act to amend Section 11160 of the Penal Code, and to amend and repeal Sections 23152 and 23153 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2552, as amended, Torres. Vehicles: driving under the influence: controlled substances.

(1) Existing law prohibits a person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, who has 0.08% or more, by weight, of alcohol in his or her blood, or who is addicted to the use of any drug, to drive a vehicle. Existing law also makes it unlawful to drive under the influence and cause bodily injury to another person.

This bill would revise and recast these provisions ~~and would additionally make it a crime for a person who has any detectable amount of a specified controlled substance that has not been administered, dispensed, or prescribed by a person licensed by the state to do so, including metabolites and their derivatives, to drive a vehicle.~~

(2) Existing law requires a health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the

scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm, to make a specified written report to a law enforcement agency.

This bill would ~~also~~ require a health practitioner to make this written report to a law enforcement agency when the health practitioner knows or reasonably suspects the person is suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is the result of a vehicle accident involving the suspected use of alcohol or drugs.

By expanding the duties of local public officials ~~and creating new crimes~~, the bill would impose a state-mandated local program.

~~(3) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~(3) 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.

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

- 1 SECTION 1. Section 11160 of the Penal Code is amended to
- 2 read:
- 3 11160. (a) A health practitioner employed in a health facility,
- 4 clinic, physician’s office, local or state public health department,

1 or a clinic or other type of facility operated by a local or state
2 public health department who, in his or her professional capacity
3 or within the scope of his or her employment, provides medical
4 services for a physical condition to a patient whom he or she knows
5 or reasonably suspects is a person described as follows, shall
6 immediately make a report in accordance with subdivision (b):

7 (1) Any person suffering from any wound or other physical
8 injury inflicted by his or her own act or inflicted by another where
9 the injury is by means of a firearm or the result of a vehicle
10 accident involving the suspected use of alcohol or drugs.

11 (2) Any person suffering from any wound or other physical
12 injury inflicted upon the person where the injury is the result of
13 assaultive or abusive conduct.

14 (b) A health practitioner employed in a health facility, clinic,
15 physician's office, local or state public health department, or a
16 clinic or other type of facility operated by a local or state public
17 health department shall make a report regarding persons described
18 in subdivision (a) to a local law enforcement agency as follows:

19 (1) A report by telephone shall be made immediately or as soon
20 as practically possible.

21 (2) A written report shall be prepared on the standard form
22 developed in compliance with paragraph (4) of this subdivision,
23 and Section 11160.2, and adopted by the California Emergency
24 Management Agency, or on a form developed and adopted by
25 another state agency that otherwise fulfills the requirements of the
26 standard form. The completed form shall be sent to a local law
27 enforcement agency within two working days of receiving the
28 information regarding the person.

29 (3) A local law enforcement agency shall be notified and a
30 written report shall be prepared and sent pursuant to paragraphs
31 (1) and (2) even if the person who suffered the wound, other injury,
32 or assaultive or abusive conduct has expired, regardless of whether
33 or not the wound, other injury, or assaultive or abusive conduct
34 was a factor contributing to the death, and even if the evidence of
35 the conduct of the perpetrator of the wound, other injury, or
36 assaultive or abusive conduct was discovered during an autopsy.

37 (4) The report shall include, but shall not be limited to, all of
38 the following:

39 (A) The name of the injured person, if known.

40 (B) The injured person's whereabouts.

1 (C) The character and extent of the person’s injuries.

2 (D) The identity of any person the injured person alleges
3 inflicted the wound, other injury, or assaultive or abusive conduct
4 upon the injured person.

5 (c) For the purposes of this section, “injury” shall not include
6 any psychological or physical condition brought about solely
7 through the voluntary administration of a narcotic or restricted
8 dangerous drug.

9 (d) For the purposes of this section, “assaultive or abusive
10 conduct” shall include any of the following offenses:

11 (1) Murder, in violation of Section 187.

12 (2) Manslaughter, in violation of Section 192 or 192.5.

13 (3) Mayhem, in violation of Section 203.

14 (4) Aggravated mayhem, in violation of Section 205.

15 (5) Torture, in violation of Section 206.

16 (6) Assault with intent to commit mayhem, rape, sodomy, or
17 oral copulation, in violation of Section 220.

18 (7) Administering controlled substances or anesthetic to aid in
19 commission of a felony, in violation of Section 222.

20 (8) Battery, in violation of Section 242.

21 (9) Sexual battery, in violation of Section 243.4.

22 (10) Incest, in violation of Section 285.

23 (11) Throwing any vitriol, corrosive acid, or caustic chemical
24 with intent to injure or disfigure, in violation of Section 244.

25 (12) Assault with a stun gun or taser, in violation of Section
26 244.5.

27 (13) Assault with a deadly weapon, firearm, assault weapon, or
28 machinegun, or by means likely to produce great bodily injury, in
29 violation of Section 245.

30 (14) Rape, in violation of Section 261.

31 (15) Spousal rape, in violation of Section 262.

32 (16) Procuring any female to have sex with another man, in
33 violation of Section 266, 266a, 266b, or 266c.

34 (17) Child abuse or endangerment, in violation of Section 273a
35 or 273d.

36 (18) Abuse of spouse or cohabitant, in violation of Section
37 273.5.

38 (19) Sodomy, in violation of Section 286.

39 (20) Lewd and lascivious acts with a child, in violation of
40 Section 288.

- 1 (21) Oral copulation, in violation of Section 288a.
- 2 (22) Sexual penetration, in violation of Section 289.
- 3 (23) Elder abuse, in violation of Section 368.
- 4 (24) An attempt to commit any crime specified in paragraphs
- 5 (1) to (23), inclusive.

6 (e) When two or more persons who are required to report are
7 present and jointly have knowledge of a known or suspected
8 instance of violence that is required to be reported pursuant to this
9 section, and when there is an agreement among these persons to
10 report as a team, the team may select by mutual agreement a
11 member of the team to make a report by telephone and a single
12 written report, as required by subdivision (b). The written report
13 shall be signed by the selected member of the reporting team. Any
14 member who has knowledge that the member designated to report
15 has failed to do so shall thereafter make the report.

16 (f) The reporting duties under this section are individual, except
17 as provided in subdivision (e).

18 (g) A supervisor or administrator shall not impede or inhibit the
19 reporting duties required under this section and a person making
20 a report pursuant to this section shall not be subject to any sanction
21 for making the report. However, internal procedures to facilitate
22 reporting and apprise supervisors and administrators of reports
23 may be established, except that these procedures shall not be
24 inconsistent with this article. The internal procedures shall not
25 require any employee required to make a report under this article
26 to disclose his or her identity to the employer.

27 (h) For the purposes of this section, it is the Legislature's intent
28 to avoid duplication of information.

29 SEC. 2. Section 23152 of the Vehicle Code, as amended by
30 Section 31 of Chapter 455 of the Statutes of 1995, is amended to
31 read:

32 23152. (a) (1) It is unlawful for a person who is under the
33 influence of any alcoholic beverage to drive a vehicle.

34 (2) It is unlawful for a person who is under the influence of any
35 drug to drive a vehicle.

36 (3) It is unlawful for a person who is under the combined
37 influence of any alcoholic beverage and drug to drive a vehicle.

38 (b) It is unlawful for a person who has 0.08 percent or more, by
39 weight, of alcohol in his or her blood to drive a vehicle.

1 (1) For purposes of this article and Section 34501.16, percent,
2 by weight, of alcohol in a person’s blood is based upon grams of
3 alcohol per 100 milliliters of blood or grams of alcohol per 210
4 liters of breath.

5 (2) In any prosecution under this subdivision, it is a rebuttable
6 presumption that the person had 0.08 percent or more, by weight,
7 of alcohol in his or her blood at the time of driving the vehicle if
8 the person had 0.08 percent or more, by weight, of alcohol in his
9 or her blood at the time of the performance of a chemical test
10 within three hours after the driving.

11 (c) It is unlawful for a person who is addicted to the use of any
12 drug to drive a vehicle. This subdivision shall not apply to a person
13 who is participating in a narcotic treatment program approved
14 pursuant to Article 3 (commencing with Section 11875) of Chapter
15 1 of Part 3 of Division 10.5 of the Health and Safety Code.

16 (d) (1) It is unlawful for a person who has 0.04 percent or more,
17 by weight, of alcohol in his or her blood to drive a commercial
18 motor vehicle, as defined in Section 15210.

19 (2) In any prosecution under this subdivision, it is a rebuttable
20 presumption that the person had 0.04 percent or more, by weight,
21 of alcohol in his or her blood at the time of driving the vehicle if
22 the person had 0.04 percent or more, by weight, of alcohol in his
23 or her blood at the time of the performance of a chemical test
24 within three hours after the driving.

25 ~~(e) (1) It is unlawful for a person who has a detectable amount~~
26 ~~of any controlled substance identified in Section 11550 of the~~
27 ~~Health and Safety Code to drive a vehicle, except when the~~
28 ~~controlled substance was administered, dispensed, or prescribed~~
29 ~~by a person licensed by the state to administer, dispense, or~~
30 ~~prescribe controlled substances.~~

31 ~~(2) In any prosecution under this subdivision, it is a rebuttable~~
32 ~~presumption that the person had a detectable amount of a controlled~~
33 ~~substance identified in Section 11550 of the Health and Safety~~
34 ~~Code in his or her blood at the time of driving the vehicle, if the~~
35 ~~person had a detectable amount of the controlled substance in his~~
36 ~~or her blood at the time of the performance of a chemical test~~
37 ~~within three hours after driving.~~

38 SEC. 3. Section 23152 of the Vehicle Code, as amended by
39 Section 32 of Chapter 455 of the Statutes of 1995, is repealed.

1 SEC. 4. Section 23153 of the Vehicle Code, as amended by
2 Section 18 of Chapter 974 of the Statutes of 1992, is amended to
3 read:

4 23153. (a) (1) It is unlawful for a person, while under the
5 influence of any alcoholic beverage to drive a vehicle and
6 concurrently do any act forbidden by law, or neglect any duty
7 imposed by law in driving the vehicle, which act or neglect
8 proximately causes bodily injury to any person other than the
9 driver.

10 (2) It is unlawful for a person, while under the influence of any
11 drug, to drive a vehicle and concurrently do any act forbidden by
12 law, or neglect any duty imposed by law in driving the vehicle,
13 which act or neglect proximately causes bodily injury to any person
14 other than the driver.

15 (3) It is unlawful for a person, while under the combined
16 influence of any alcoholic beverage and drug, to drive a vehicle
17 and concurrently do any act forbidden by law, or neglect any duty
18 imposed by law in driving the vehicle, which act or neglect
19 proximately causes bodily injury to any person other than the
20 driver.

21 (b) (1) It is unlawful for a person, while having 0.08 percent
22 or more, by weight, of alcohol in his or her blood to drive a vehicle
23 and concurrently do any act forbidden by law, or neglect any duty
24 imposed by law in driving the vehicle, which act or neglect
25 proximately causes bodily injury to any person other than the
26 driver.

27 (2) In any prosecution under this subdivision, it is a rebuttable
28 presumption that the person had 0.08 percent or more, by weight,
29 of alcohol in his or her blood at the time of driving the vehicle if
30 the person had 0.08 percent or more, by weight, of alcohol in his
31 or her blood at the time of the performance of a chemical test
32 within three hours after driving.

33 (c) In proving the person neglected any duty imposed by law
34 in driving the vehicle, it is not necessary to prove that any specific
35 section of this code was violated.

36 (d) (1) It is unlawful for a person, while having 0.04 percent
37 or more, by weight, of alcohol in his or her blood to drive a
38 commercial motor vehicle, as defined in Section 15210, and
39 concurrently to do any act forbidden by law or neglect any duty
40 imposed by law in driving the vehicle, which act or neglect

1 proximately causes bodily injury to any person other than the driver
2 except when the controlled substance was administered, dispensed,
3 or prescribed by a person licensed by the state to administer,
4 dispense, or prescribe controlled substances.

5 (2) In any prosecution under this subdivision, it is a rebuttable
6 presumption that the person had 0.04 percent or more, by weight,
7 of alcohol in his or her blood at the time of driving the vehicle if
8 the person had 0.04 percent or more, by weight, of alcohol in his
9 or her blood at the time of performance of a chemical test within
10 three hours after driving.

11 ~~(e) (1) It is unlawful for a person who has a detectable amount
12 of any controlled substance identified in Section 11550 of the
13 Health and Safety Code to drive a vehicle and concurrently to do
14 any act forbidden by law or neglect any duty imposed by law in
15 driving the vehicle, which act or neglect proximately causes bodily
16 injury to any person other than the driver except when the
17 controlled substance was administered, dispensed, or prescribed
18 by a person licensed by the state to administer, dispense, or
19 prescribe controlled substances.~~

20 ~~(2) In any prosecution under this subdivision, it is a rebuttable
21 presumption that the person had a detectable amount of a controlled
22 substance identified in Section 11550 of the Health and Safety
23 Code in his or her blood at the time of driving the vehicle, if the
24 person had a detectable amount of the controlled substance in his
25 or her blood at the time of the performance of a chemical test
26 within three hours after driving.~~

27 SEC. 5. Section 23153 of the Vehicle Code, as amended by
28 Section 19 of Chapter 974 of the Statutes of 1992, is repealed.

29 ~~SEC. 6. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution for certain
31 costs that may be incurred by a local agency or school district
32 because, in that regard, this act creates a new crime or infraction,
33 eliminates a crime or infraction, or changes the penalty for a crime
34 or infraction, within the meaning of Section 17556 of the
35 Government Code, or changes the definition of a crime within the
36 meaning of Section 6 of Article XIII B of the California
37 Constitution.~~

38 However, if the Commission on State Mandates determines that
39 this act contains other costs mandated by the state, reimbursement
40 to local agencies and school districts for those costs shall be made

1 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
2 ~~4 of Title 2 of the Government Code.~~
3 *SEC. 6. If the Commission on State Mandates determines that*
4 *this act contains costs mandated by the state, reimbursement to*
5 *local agencies and school districts for those costs shall be made*
6 *pursuant to Part 7 (commencing with Section 17500) of Division*
7 *4 of Title 2 of the Government Code.*

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