

AMENDED IN ASSEMBLY FEBRUARY 23, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1571

Introduced by Assembly Members Lackey and Cooley

(Principal coauthor: Senator Huff)

***(Coauthors: Assembly Members Baker, Chávez, Mathis, Steinorth,
Waldron, and Wilk)***

(Coauthor: Senator Nielsen)

January 4, 2016

An act to amend Section 11837 of the Health and Safety Code, and to amend Sections 23538 and 23578 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1571, as amended, Lackey. Vehicles: driving under the influence: alcohol abuse programs.

Existing law requires the court to impose as a condition of probation for a conviction for a first violation of driving under the influence, in a county where the board of supervisors has approved, and the State Department of Health Care Services has licensed, a driving-under-the-influence program, that the driver successfully complete the program in the driver's county of residence or employment, as designated by the court. Existing law provides that enrollment and participation in, and completion of, an approved program shall be subsequent to the date of the current violation. Existing law requires a court to refer a first offender whose blood-alcohol concentration was 0.20% or more, by weight, or who refused to take a chemical test to participate in a licensed program, as specified, for at least 9 months or longer. Existing law requires a county alcohol program administrator

to coordinate court-established reporting requirements with the Department of Motor Vehicles and the State Department of Health Care Services.

This bill would require that enrollment in an approved program take place within 30 days of conviction. The bill would also require the court to refer a first offender whose blood contained a blood-alcohol concentration of 0.15% or more, by weight, and a controlled substance, as defined, to the 9-month program described above. The bill would require the county alcohol program administrator to additionally coordinate court referral and tracking documents with the Department of Motor Vehicles and the State Department of Health Care Services. By imposing new duties on a county employee, this bill would create a state-mandated local program.

Existing law provides that if a person is convicted of a driving-under-the-influence violation, the court is required to consider a concentration of alcohol in the person's blood of 0.15% 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, whether to grant probation, and if probation is granted, in determining additional or enhanced terms and conditions of probation.

This bill would additionally require the court to consider ~~a any blood-alcohol concentration of 0.08% or more, by weight,~~ in combination with the presence of a controlled substance in the person's blood, as defined, as a special factor for purposes of ~~the~~ these provisions.

Existing law authorizes a court, as a condition of probation, to refer a person *convicted for driving under the influence* to a licensed program, as specified, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. Existing law requires a clerk of the court to indicate the duration of the treatment program the judge has ordered a person to participate in the abstract of the court record that is forwarded to the State Department of Health Care Services.

This bill would instead require a court to refer a person *with a 2nd or subsequent driving under the influence conviction* to a licensed program as a condition of probation *even if the person's privilege to operate a motor vehicle is restricted, suspended, or revoked*. The bill would require the clerk of the court to also indicate the duration of the treatment program ordered on court referral and tracking documents. The bill would make other conforming changes.

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 11837 of the Health and Safety Code is
2 amended to read:
3 11837. (a) Pursuant to the provisions of law relating to
4 suspension of a person's privilege to operate a motor vehicle upon
5 conviction for driving while under the influence of any alcoholic
6 beverage or drug, or under the combined influence of any alcoholic
7 beverage and any drug, as set forth in paragraph (3) of subdivision
8 (a) of Section 13352 of the Vehicle Code, the Department of Motor
9 Vehicles shall restrict the driving privilege pursuant to Section
10 13352.5 of the Vehicle Code, if the person convicted of that offense
11 participates for at least 18 months in a driving-under-the-influence
12 program that is licensed pursuant to this chapter.
13 (b) In determining whether to refer a person, who is ordered to
14 participate in a program pursuant to Section 668 of the Harbors
15 and Navigation Code, in a licensed alcohol and other drug
16 education and counseling services program pursuant to Section
17 23538 of the Vehicle Code, or, pursuant to Section 23542, 23548,
18 23552, 23556, 23562, or 23568 of the Vehicle Code, in a licensed
19 18-month or 30-month program, the court may consider any
20 relevant information about the person made available pursuant to
21 a presentence investigation, that is permitted but not required under
22 Section 23655 of the Vehicle Code, or other screening procedure.
23 That information shall not be furnished, however, by any person
24 who also provides services in a privately operated, licensed
25 program or who has any direct interest in a privately operated,
26 licensed program. In addition, the court shall obtain from the
27 Department of Motor Vehicles a copy of the person's driving
28 record to determine whether the person is eligible to participate in

1 a licensed 18-month or 30-month program pursuant to this chapter.
2 When preparing a presentence report for the court, the probation
3 department may consider the suitability of placing the defendant
4 in a treatment program that includes the administration of
5 nonscheduled nonaddicting medications to ameliorate an alcohol
6 or controlled substance problem. If the probation department
7 recommends that this type of program is a suitable option for the
8 defendant, the defendant who would like the court to consider this
9 option shall obtain from his or her physician a prescription for the
10 medication, and a finding that the treatment is medically suitable
11 for the defendant, prior to consideration of this alternative by the
12 court.

13 (c) (1) The court shall, as a condition of probation pursuant to
14 Section 23538 or 23556 of the Vehicle Code, refer a first offender
15 whose concentration of alcohol in his or her blood was less than
16 0.20 percent, by weight, to participate for at least three months or
17 longer, as ordered by the court, in a licensed program that consists
18 of at least 30 hours of program activities, including those education,
19 group counseling, and individual interview sessions described in
20 this chapter.

21 (2) Notwithstanding any other provision of law, in granting
22 probation to a first offender described in this subdivision whose
23 concentration of alcohol in the person's blood was 0.20 percent
24 or more, by weight, whose blood contained a blood-alcohol
25 concentration of 0.15 percent or more, by weight, and a controlled
26 substance, as defined in Section 812 of Chapter 13 of Title 21 of
27 the United States Code, or who refused to take a chemical test, the
28 court shall order the person to participate, for at least nine months
29 or longer, as ordered by the court, in a licensed program that
30 consists of at least 60 hours of program activities, including those
31 education, group counseling, and individual interview sessions
32 described in this chapter.

33 (d) (1) The State Department of Health Care Services may
34 specify in regulations the activities required to be provided in the
35 treatment of participants receiving nine months of licensed program
36 services under Section 23538 or 23556 of the Vehicle Code.

37 (2) Any program licensed pursuant to this chapter may provide
38 treatment services to participants receiving at least six months of
39 licensed program services under Section 23538 or 23556 of the
40 Vehicle Code.

(e) The court shall, subject to Section 11837.2, and as a condition of probation, refer a person *with a second or subsequent violation* to a licensed program, ~~even though~~ *program even if* the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23542 or 23562 of the Vehicle Code or a 30-month program described in Section 23548, 23552, or 23568 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

(f) The clerk of the court shall indicate the duration of the program in which the judge has ordered the person to participate in the abstract of the record of the court and on the court referral and tracking documents forwarded to the department.

SEC. 2. Section 23538 of the Vehicle Code is amended to read:

23538. (a) (1) If the court grants probation to *a* person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person pay a fine of at least three hundred ninety dollars (\$390), but not more than one thousand dollars (\$1,000). The court may also impose, as a condition of probation, that the person be confined in a county jail for at least 48 hours, but not more than six months.

(2) The person's privilege to operate a motor vehicle shall be suspended by the department under paragraph (1) of subdivision (a) of Section 13352 or Section 13352.1. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(3) Whenever, when considering the circumstances taken as a whole, the court determines that the person punished under this section would present a traffic safety or public safety risk if authorized to operate a motor vehicle during the period of suspension imposed under paragraph (1) of subdivision (a) of Section 13352 or Section 13352.1, the court may disallow the issuance of a restricted driver's license required under Section 13352.4.

(b) In any county where the board of supervisors has approved, and the State Department of Health Care Services has licensed, a

1 program or programs described in Section 11837.3 of the Health
2 and Safety Code, the court shall also impose as a condition of
3 probation that the driver shall enroll and participate in, and
4 successfully complete a driving-under-the-influence program,
5 licensed pursuant to Section 11836 of the Health and Safety Code,
6 in the driver's county of residence or employment, as designated
7 by the court. For the purposes of this subdivision, enrollment in
8 an approved program shall take place within 30 days of conviction
9 and participation in, and completion of, the program shall be
10 subsequent to the date of the current violation. Credit may not be
11 given for any program activities completed prior to the date of the
12 current violation.

13 (1) The court shall refer a first offender whose blood-alcohol
14 concentration was less than 0.20 percent, by weight, to participate
15 for at least three months or longer, as ordered by the court, in a
16 licensed program that consists of at least 30 hours of program
17 activities, including those education, group counseling, and
18 individual interview sessions described in Chapter 9 (commencing
19 with Section 11836) of Part 2 of Division 10.5 of the Health and
20 Safety Code.

21 (2) The court shall refer a first offender whose blood-alcohol
22 concentration was 0.20 percent or more, by weight, whose blood
23 contained a blood-alcohol concentration of 0.15 percent or more,
24 by weight, and a controlled substance, as defined in Section 812
25 of Chapter 13 of Title 21 of the United States Code, or who refused
26 to take a chemical test, to participate for at least nine months or
27 longer, as ordered by the court, in a licensed program that consists
28 of at least 60 hours of program activities, including those education,
29 group counseling, and individual interview sessions described in
30 Chapter 9 (commencing with Section 11836) of Part 2 of Division
31 10.5 of the Health and Safety Code.

32 (3) The court shall advise the person at the time of sentencing
33 that the driving privilege shall not be restored until proof
34 satisfactory to the department of successful completion of a
35 driving-under-the-influence program of the length required under
36 this code that is licensed pursuant to Section 11836 of the Health
37 and Safety Code has been received in the department's
38 headquarters.

39 (c) (1) The court shall revoke the person's probation pursuant
40 to Section 23602, except for good cause shown, for the failure to

1 enroll in, participate in, or complete a program specified in
2 subdivision (b).

3 (2) The court, in establishing reporting requirements, shall
4 consult with the county alcohol program administrator. The county
5 alcohol program administrator shall coordinate the reporting
6 requirements and court referral and tracking documents with the
7 department and with the State Department of Health Care Services.
8 That reporting shall ensure that all persons who, after being ordered
9 to attend and complete a program, may be identified for either (A)
10 failure to enroll in, or failure to successfully complete, the program,
11 or (B) successful completion of the program as ordered.

12 SEC. 3. Section 23578 of the Vehicle Code is amended to read:

13 23578. In addition to any other provision of this code, if a
14 person is convicted of a violation of Section 23152 or 23153, the
15 court shall consider a concentration of alcohol in the person's
16 blood of 0.15 percent or more, by weight, ~~a any blood-alcohol~~
17 ~~concentration of 0.08 percent or more, by weight,~~ in combination
18 with the presence of a controlled substance in the person's blood,
19 as defined in Section 812 of Chapter 13 of Title 21 of the United
20 States Code, or the refusal of the person to take a chemical ~~test;~~
21 ~~test~~ as a special factor that may justify enhancing the penalties in
22 sentencing, in determining whether to grant probation, and, if
23 probation is granted, in determining additional or enhanced terms
24 and conditions of probation.

25 SEC. 4. If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.