

AMENDED IN ASSEMBLY MARCH 28, 2016
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~~ *Section* 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: conviction, unless an extension of no longer than 30 days is granted by the court, as specified. The bill would also require the court, for first time offenders, to consider a blood-alcohol concentration of 0.08% or more, by weight, in combination with the presence of a Schedule I or II controlled substance, as defined, as an aggravating factor that may justify enhancing the terms and conditions of probation, as specified.~~ 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 any blood-alcohol concentration in combination with the presence of a controlled substance in the person's blood, as defined, as a special factor for purposes of 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

1 Section 23655 of the Vehicle Code, or other screening procedure.
2 That information shall not be furnished, however, by any person
3 who also provides services in a privately operated, licensed
4 program or who has any direct interest in a privately operated,
5 licensed program. In addition, the court shall obtain from the
6 Department of Motor Vehicles a copy of the person's driving
7 record to determine whether the person is eligible to participate in
8 a licensed 18-month or 30-month program pursuant to this chapter.
9 When preparing a presentence report for the court, the probation
10 department may consider the suitability of placing the defendant
11 in a treatment program that includes the administration of
12 nonscheduled nonaddicting medications to ameliorate an alcohol
13 or controlled substance problem. If the probation department
14 recommends that this type of program is a suitable option for the
15 defendant, the defendant who would like the court to consider this
16 option shall obtain from his or her physician a prescription for the
17 medication, and a finding that the treatment is medically suitable
18 for the defendant, prior to consideration of this alternative by the
19 court.

20 (c) (1) The court shall, as a condition of probation pursuant to
21 Section 23538 or 23556 of the Vehicle Code, refer a first offender
22 whose concentration of alcohol in his or her blood was less than
23 0.20 percent, by weight, to participate for at least three months or
24 longer, as ordered by the court, in a licensed program that consists
25 of at least 30 hours of program activities, including those education,
26 group counseling, and individual interview sessions described in
27 this chapter.

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

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

5 (2) Any program licensed pursuant to this chapter may provide
6 treatment services to participants receiving at least six months of
7 licensed program services under Section 23538 or 23556 of the
8 Vehicle Code.

9 (e) The court shall, subject to Section 11837.2, and as a
10 condition of probation, refer a person with a second or subsequent
11 violation to a licensed program, ~~even program~~ even if the person's
12 privilege to operate a motor vehicle is restricted, suspended, or
13 revoked. An 18-month program described in Section 23542 or
14 23562 of the Vehicle Code or a 30-month program described in
15 Section 23548, 23552, or 23568 of the Vehicle Code may include
16 treatment of family members and significant other persons related
17 to the convicted person with the consent of those family members
18 and others as described in this chapter, if there is no increase in
19 the costs of the program to the convicted person.

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

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

25 23538. (a) (1) If the court grants probation to a person
26 punished under Section 23536, in addition to the provisions of
27 Section 23600 and any other terms and conditions imposed by the
28 court, the court shall impose as a condition of probation that the
29 person pay a fine of at least three hundred ninety dollars (\$390),
30 but not more than one thousand dollars (\$1,000). The court may
31 also impose, as a condition of probation, that the person be
32 confined in a county jail for at least 48 hours, but not more than
33 six months.

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

39 (3) Whenever, when considering the circumstances taken as a
40 whole, the court determines that the person punished under this

1 section would present a traffic safety or public safety risk if
2 authorized to operate a motor vehicle during the period of
3 suspension imposed under paragraph (1) of subdivision (a) of
4 Section 13352 or Section 13352.1, the court may disallow the
5 issuance of a restricted driver's license required under Section
6 13352.4.

7 (b) In any county where the board of supervisors has approved,
8 and the State Department of Health Care Services has licensed, a
9 program or programs described in Section 11837.3 of the Health
10 and Safety Code, the court shall also impose as a condition of
11 probation that the driver shall enroll and participate in, and
12 successfully complete a driving-under-the-influence program,
13 licensed pursuant to Section 11836 of the Health and Safety Code,
14 in the driver's county of residence or employment, as designated
15 by the court. For the purposes of this subdivision, enrollment in
16 an approved program shall take place within 30 days of conviction
17 and participation in, and completion of, the program shall be
18 subsequent to the date of the current violation. Credit may not be
19 given for any program activities completed prior to the date of the
20 current violation. *If a person is unable to enroll in a program*
21 *within 30 days of conviction, the court may grant that person an*
22 *extension of no longer than 30 days upon the request of the*
23 *program provider. Extensions may be requested or granted by*
24 *telephone or by other electronic means.*

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

33 (2) The court shall refer a first offender whose blood-alcohol
34 concentration was 0.20 percent or more, by weight, ~~whose blood~~
35 ~~contained a blood-alcohol concentration of 0.15 percent or more,~~
36 ~~by weight, and a controlled substance, as defined in Section 812~~
37 ~~of Chapter 13 of Title 21 of the United States Code,~~ or who refused
38 to take a chemical test, *test* to participate for at least nine months
39 or longer, as ordered by the court, in a licensed program that
40 consists of at least 60 hours of program activities, including those

1 education, group counseling, and individual interview sessions
2 described in Chapter 9 (commencing with Section 11836) of Part
3 2 of Division 10.5 of the Health and Safety Code.

4 *(3) The court shall consider, for first time offenders, a*
5 *blood-alcohol concentration of 0.08 percent or more, by weight,*
6 *in combination with the presence of a Schedule I or II controlled*
7 *substance, as defined in Section 812 of Chapter 13 of Title 21 of*
8 *the United States Code, as an aggravating factor that may justify*
9 *enhancing the terms and conditions of probation with regards to*
10 *referrals and participation in licensed programs and program*
11 *activities described in Chapter 9 (commencing with Section 11836)*
12 *of Part 2 of Division 10.5 of the Health and Safety Code.*

13 ~~(3)~~

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

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

25 (2) The court, in establishing reporting requirements, shall
26 consult with the county alcohol program administrator. The county
27 alcohol program administrator shall coordinate the reporting
28 requirements and court referral and tracking documents with the
29 department and with the State Department of Health Care Services.
30 That reporting shall ensure that all persons who, after being ordered
31 to attend and complete a program, may be identified for either (A)
32 failure to enroll in, or failure to successfully complete, the program,
33 or (B) successful completion of the program as ordered.

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

35 ~~23578. In addition to any other provision of this code, if a~~
36 ~~person is convicted of a violation of Section 23152 or 23153, the~~
37 ~~court shall consider a concentration of alcohol in the person's~~
38 ~~blood of 0.15 percent or more, by weight, any blood-alcohol~~
39 ~~concentration in combination with the presence of a controlled~~
40 ~~substance in the person's blood, as defined in Section 812 of~~

1 ~~Chapter 13 of Title 21 of the United States Code, or the refusal of~~
2 ~~the person to take a chemical test as a special factor that may justify~~
3 ~~enhancing the penalties in sentencing, in determining whether to~~
4 ~~grant probation, and, if probation is granted, in determining~~
5 ~~additional or enhanced terms and conditions of probation.~~

6 ~~SEC. 4.~~

7 *SEC. 3.* If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.