

AMENDED IN ASSEMBLY APRIL 25, 2016  
AMENDED IN ASSEMBLY MARCH 28, 2016  
AMENDED IN ASSEMBLY FEBRUARY 23, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1571**

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**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

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An act to amend Section 11837 of the Health and Safety Code, and to amend Section 23538 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 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, 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, *except for marijuana or a controlled substance prescribed by a licensed physician or dentist*, 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 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~~ *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 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  
29 a licensed 18-month or 30-month program pursuant to this chapter.  
30 When preparing a presentence report for the court, the probation  
31 department may consider the suitability of placing the defendant  
32 in a treatment program that includes the administration of  
33 nonscheduled nonaddicting medications to ameliorate an alcohol  
34 or controlled substance problem. If the probation department  
35 recommends that this type of program is a suitable option for the  
36 defendant, the defendant who would like the court to consider this  
37 option shall obtain from his or her physician a prescription for the  
38 medication, and a finding that the treatment is medically suitable

1 for the defendant, prior to consideration of this alternative by the  
2 court.

3 (c) (1) The court shall, as a condition of probation pursuant to  
4 Section 23538 or 23556 of the Vehicle Code, refer a first offender  
5 whose concentration of alcohol in his or her blood was less than  
6 0.20 percent, by weight, to participate for at least three months or  
7 longer, as ordered by the court, in a licensed program that consists  
8 of at least 30 hours of program activities, including those education,  
9 group counseling, and individual interview sessions described in  
10 this chapter.

11 (2) Notwithstanding any other provision of law, in granting  
12 probation to a first offender described in this subdivision whose  
13 concentration of alcohol in the person's blood was 0.20 percent  
14 or more, by weight, or who refused to take a chemical test, the  
15 court shall order the person to participate, for at least nine months  
16 or longer, as ordered by the court, in a licensed program that  
17 consists of at least 60 hours of program activities, including those  
18 education, group counseling, and individual interview sessions  
19 described in this chapter.

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

24 (2) Any program licensed pursuant to this chapter may provide  
25 treatment services to participants receiving at least six months of  
26 licensed program services under Section 23538 or 23556 of the  
27 Vehicle Code.

28 (e) The court shall, subject to Section 11837.2, and as a  
29 condition of probation, refer a person with a second or subsequent  
30 violation to a licensed program, even if the person's privilege to  
31 operate a motor vehicle is restricted, suspended, or revoked. An  
32 18-month program described in Section 23542 or 23562 of the  
33 Vehicle Code or a 30-month program described in Section 23548,  
34 23552, or 23568 of the Vehicle Code may include treatment of  
35 family members and significant other persons related to the  
36 convicted person with the consent of those family members and  
37 others as described in this chapter, if there is no increase in the  
38 costs of the program to the convicted person.

39 (f) The clerk of the court shall indicate the duration of the  
40 program in which the judge has ordered the person to participate

1 in the abstract of the record of the court and on the court referral  
2 and tracking documents forwarded to the department.

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

4 23538. (a) (1) If the court grants probation to a person  
5 punished under Section 23536, in addition to the provisions of  
6 Section 23600 and any other terms and conditions imposed by the  
7 court, the court shall impose as a condition of probation that the  
8 person pay a fine of at least three hundred ninety dollars (\$390),  
9 but not more than one thousand dollars (\$1,000). The court may  
10 also impose, as a condition of probation, that the person be  
11 confined in a county jail for at least 48 hours, but not more than  
12 six months.

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

18 (3) Whenever, when considering the circumstances taken as a  
19 whole, the court determines that the person punished under this  
20 section would present a traffic safety or public safety risk if  
21 authorized to operate a motor vehicle during the period of  
22 suspension imposed under paragraph (1) of subdivision (a) of  
23 Section 13352 or Section 13352.1, the court may disallow the  
24 issuance of a restricted driver's license required under Section  
25 13352.4.

26 (b) In any county where the board of supervisors has approved,  
27 and the State Department of Health Care Services has licensed, a  
28 program or programs described in Section 11837.3 of the Health  
29 and Safety Code, the court shall also impose as a condition of  
30 probation that the driver shall enroll and participate in, and  
31 successfully complete a driving-under-the-influence program,  
32 licensed pursuant to Section 11836 of the Health and Safety Code,  
33 in the driver's county of residence or employment, as designated  
34 by the court. For the purposes of this subdivision, enrollment in  
35 an approved program shall take place within 30 days of conviction  
36 and participation in, and completion of, the program shall be  
37 subsequent to the date of the current violation. Credit may not be  
38 given for any program activities completed prior to the date of the  
39 current violation. If a person is unable to enroll in a program within  
40 30 days of conviction, the court may grant that person an extension

1 of no longer than 30 days upon the request of the program provider.  
2 Extensions may be requested or granted by telephone or by other  
3 electronic means.

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

12 (2) The court shall refer a first offender whose blood-alcohol  
13 concentration was 0.20 percent or more, by weight, or who refused  
14 to take a chemical test to participate for at least nine months or  
15 longer, as ordered by the court, in a licensed program that consists  
16 of at least 60 hours of program activities, including those education,  
17 group counseling, and individual interview sessions described in  
18 Chapter 9 (commencing with Section 11836) of Part 2 of Division  
19 10.5 of the Health and Safety Code.

20 (3) The court shall consider, for first time offenders, a  
21 blood-alcohol concentration of 0.08 percent or more, by weight,  
22 in combination with the presence of a Schedule I or II controlled  
23 substance, as defined in Section 812 of Chapter 13 of Title 21 of  
24 the United States Code, *except marijuana, as defined in paragraph*  
25 *(16) of Section 802 of Title 21 of the United States Code, or a*  
26 *controlled substance prescribed by a licensed physician or dentist,*  
27 as an aggravating factor that may justify enhancing the terms and  
28 conditions of probation with regards to referrals and participation  
29 in licensed programs and program activities described in Chapter  
30 9 (commencing with Section 11836) of Part 2 of Division 10.5 of  
31 the Health and Safety Code.

32 (4) 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. If the Commission on State Mandates determines that  
13 this act contains costs mandated by the state, reimbursement to  
14 local agencies and school districts for those costs shall be made  
15 pursuant to Part 7 (commencing with Section 17500) of Division  
16 4 of Title 2 of the Government Code.