

**ASSEMBLY BILL**

**No. 2674**

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**Introduced by Assembly Member Cardenas**

February 23, 1998

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An act to amend Sections 23161 and 23166 of the Vehicle Code, relating to driving under the influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2674, as introduced, Cardenas. Driving under the influence: penalties.

Existing law provides that if the court grants probation to any person convicted of a first violation of the law prohibiting driving while under the influence of any alcoholic beverage or drug, or both, the court shall impose as a condition of probation, among other things, that the person be confined in the county jail for at least 48 hours.

This bill would increase that county jail time to 72 continuous hours. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.

Existing law provides that if the court grants probation to any person convicted of a 2nd violation of the law prohibiting driving while under the influence of any alcoholic beverage or drug, or both, the court may impose as a condition of probation, among other things, that the person be confined in the county jail for at least 48 hours.

This bill would increase that county jail time to at least 96 hours. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

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 23161 of the Vehicle Code is  
2 amended to read:

3 23161. (a) Except as provided in subdivision (e), if  
4 the court grants probation to any person punished under  
5 Section 23160, in addition to the provisions of Section  
6 23206 and any other terms and conditions imposed by the  
7 court, the court shall impose as a condition of probation  
8 that the person be subject to one of the following:

9 (1) Be confined in the county jail for at least ~~48~~ 72  
10 *continuous* hours but not more than six months, and pay  
11 a fine of at least three hundred ninety dollars (\$390) but  
12 not more than one thousand dollars (\$1,000). The court  
13 may order the Department of Motor Vehicles to suspend  
14 the privilege to operate a motor vehicle pursuant to  
15 paragraph (1) of subdivision (a) of Section 13352 when  
16 this condition of probation is imposed.

17 (2) Pay a fine of at least three hundred ninety dollars  
18 (\$390) but not more than one thousand dollars (\$1,000),  
19 and, if the person gives proof of financial responsibility,  
20 as defined in Section 16430, to the Department of Motor  
21 Vehicles, have the privilege to operate a motor vehicle  
22 restricted for 90 days to necessary travel to and from that  
23 person's place of employment and to and from  
24 participation in a program described in subdivision (b).  
25 If driving a motor vehicle is necessary to perform the  
26 duties of the person's employment, the restriction also  
27 shall allow the person to drive to locations within the  
28 person's scope of employment. Whenever the driving  
29 privilege is restricted pursuant to this paragraph, the



1 person shall maintain proof of financial responsibility for  
2 three years.

3 (3) If the court elects to order a 90-day restriction as  
4 provided for in paragraph (2), the court shall order that  
5 the restriction commence on the date of the  
6 reinstatement by the Department of Motor Vehicles of  
7 the person's privilege to operate a motor vehicle. If a  
8 suspension was imposed pursuant to Section 13353.2, the  
9 person shall be advised by the court of all of the following  
10 matters:

11 (A) The person's restricted driver's license does not  
12 allow the person to operate a motor vehicle unless and  
13 until the suspension under Section 13353.2 has either  
14 been served to completion or set aside, and his or her  
15 license has been reinstated.

16 (B) The restriction of the driver's license ordered by  
17 the court shall commence upon the reinstatement of the  
18 privilege to operate a motor vehicle.

19 (b) Except as provided in subdivision (c), in any  
20 county where the board of supervisors has approved, and  
21 the State Department of Alcohol and Drug Programs has  
22 licensed, a program or programs described in Section  
23 11837.3 of the Health and Safety Code, the court shall also  
24 impose as a condition of probation that the driver shall  
25 enroll and participate in, and successfully complete, an  
26 alcohol and other drug education and counseling  
27 program, licensed pursuant to Chapter 9 (commencing  
28 with Section 11836) of Part 2 of Division 10.5 of the Health  
29 and Safety Code, in the driver's county of residence or  
30 employment, as designated by the court.

31 (c) For persons who are active duty personnel in the  
32 United States Navy or Marine Corps, the court, unless the  
33 defendant requests otherwise, shall impose as a condition  
34 of probation that the driver participate in, and  
35 successfully complete, the Navy Alcohol Drug Safety  
36 Action Program rather than a program described in  
37 Section 11837.3 of the Health and Safety Code.

38 (d) (1) The court shall revoke the person's probation  
39 pursuant to Section 23207, except for good cause shown,



1 for the failure to enroll in, participate in, or complete a  
2 program specified in subdivision (b) or (c).

3 (2) The court, in establishing reporting requirements,  
4 shall consult with the county alcohol program  
5 administrator. The county alcohol program administrator  
6 shall coordinate the reporting requirements with the  
7 department and with the State Department of Alcohol  
8 and Drug Programs. That reporting shall ensure that all  
9 persons who, after being ordered to attend and complete  
10 a program, may be identified for either (1) failure to  
11 enroll in, or failure to successfully complete, the program,  
12 or (2) successful completion of the program as ordered.

13 (e) Notwithstanding subdivision (a), if the offense  
14 occurred in a vehicle requiring a driver with a class A or  
15 class B driver's license or with an endorsement specified  
16 in Section 15278, the court shall upon conviction order the  
17 department to suspend the driver's privilege pursuant to  
18 paragraph (1) of subdivision (a) of Section 13352.

19 SEC. 2. Section 23166 of the Vehicle Code is amended  
20 to read:

21 23166. If the court grants probation to any person  
22 punished under Section 23165, in addition to the  
23 provisions of Section 23206 and any other terms and  
24 conditions imposed by the court, the court shall impose  
25 as conditions of probation that the person be subject to  
26 either subdivision (a) or (b), as follows:

27 (a) Be confined in the county jail for at least 10 days  
28 but not more than one year, and pay a fine of at least three  
29 hundred ninety dollars (\$390) but not more than one  
30 thousand dollars (\$1,000). The person's privilege to  
31 operate a motor vehicle shall be suspended by the  
32 Department of Motor Vehicles pursuant to paragraph (3)  
33 of subdivision (a) of Section 13352.

34 (b) All of the following:

35 (1) Be confined in the county jail for at least ~~48~~ 96  
36 hours but not more than one year.

37 (2) Pay a fine of at least three hundred ninety dollars  
38 (\$390) but not more than one thousand dollars (\$1,000).

39 (3) If the person gives proof of financial responsibility,  
40 as defined in Section 16430, to the Department of Motor



1 Vehicles, have the privilege to operate a motor vehicle be  
2 restricted by the Department of Motor Vehicles pursuant  
3 to Section 13352.5, for the duration of the treatment  
4 program prescribed in paragraph (4), to necessary travel  
5 to and from that person's place of employment and to and  
6 from the applicable treatment program described in  
7 paragraph (4). If driving a motor vehicle is necessary to  
8 perform the duties of the person's employment, the  
9 restriction also shall allow the person to drive in that  
10 person's scope of employment.

11 Except as is specified in subparagraph (B) of paragraph  
12 (4), if the person gives proof of financial responsibility to  
13 the Department of Motor Vehicles, the Department of  
14 Motor Vehicles shall not suspend the person's privilege to  
15 operate a motor vehicle under Section 13352, as provided  
16 in Section 13352.5, unless the offense occurred in a vehicle  
17 requiring a driver with a class A or class B driver's license  
18 or with an endorsement prescribed in Section 15278.

19 (4) Either of the following:

20 (A) Enroll and participate, for at least 18 months  
21 subsequent to the date of the underlying violation and in  
22 a manner satisfactory to the court, in a program licensed  
23 pursuant to Chapter 9 (commencing with Section 11836)  
24 of Part 2 of Division 10.5 of the Health and Safety Code,  
25 as designated by the court. The person shall complete the  
26 entire program subsequent to, and shall not be given any  
27 credit for any program activities completed prior to, the  
28 date of the current violation. The program shall provide  
29 for persons who cannot afford the program fee pursuant  
30 to paragraph (2) of subdivision (b) of Section 11837.4 of  
31 the Health and Safety Code in order to enable those  
32 persons to participate.

33 (B) Enroll and participate, for at least 30 months  
34 subsequent to the date of the underlying violation and in  
35 a manner satisfactory to the court, in a program licensed  
36 pursuant to Chapter 9 (commencing with Section 11836)  
37 of Part 2 of Division 10.5 of the Health and Safety Code.  
38 The person shall complete the entire program  
39 subsequent to, and shall not be given any credit for any  
40 program activities completed prior to, the date of the



1 current violation. A person ordered to treatment  
2 pursuant to this subparagraph shall apply to the court or  
3 to a board of review, as designated by the court, at the  
4 conclusion of the program to obtain the court's order of  
5 satisfaction. Only upon the granting of that order of  
6 satisfaction by the court may the program issue its  
7 certificate of successful completion and report the  
8 completion to the Department of Motor Vehicles. A  
9 failure to obtain an order of satisfaction at the conclusion  
10 of the program is a violation of probation. In order to  
11 enable all required persons to participate, each person  
12 shall pay the program costs commensurate with the  
13 person's ability to pay as determined pursuant to Section  
14 11837.4 of the Health and Safety Code. No condition of  
15 probation required pursuant to this subparagraph is a  
16 basis for reducing any other probation requirement or for  
17 avoiding the mandatory license revocation provisions of  
18 paragraph (5) of subdivision (a) of Section 13352.

19 SEC. 3. No reimbursement is required by this act  
20 pursuant to Section 6 of Article XIII B of the California  
21 Constitution because the only costs that may be incurred  
22 by a local agency or school district will be incurred  
23 because this act creates a new crime or infraction,  
24 eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section  
26 17556 of the Government Code, or changes the definition  
27 of a crime within the meaning of Section 6 of Article  
28 XIII B of the California Constitution.

29 Notwithstanding Section 17580 of the Government  
30 Code, unless otherwise specified, the provisions of this act  
31 shall become operative on the same date that the act  
32 takes effect pursuant to the California Constitution.

