
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 725 **Hearing Date:** April 18, 2017
Author: Jackson
Version: February 17, 2017
Urgency: Yes **Fiscal:** No
Consultant: MK

Subject: *Veterans: Pretrial Diversion: Driving Privileges*

HISTORY

Source: California Veterans Legal Task Force

Prior Legislation: SB 1227 (Hancock) Chapter 658, Stats. 2013

Support: American G.I. Forum of California; the American Legion-Department of California; the AMVETS-Department of California; the California Association of County Veterans Service Officers; California Attorneys for Criminal Justice; California Public Defenders Association; County Behavioral Health Directors Association; Military Officers Association of America, California Council of Chapters

Opposition: California District Attorneys Association; San Diego County District Attorney

PURPOSE

Existing law provides for diversion of a misdemeanor offense when the defendant is currently a military officer or has suffered from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse or mental health problems as a result of his or her military service. (Penal Code § 1001.80)

Existing law provides that if diversion is granted the person shall be referred to a treatment program that will deal with mental health issues related to the military service. (Penal Code § 1001.80)

Existing law provides it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. (Vehicle Code § 23152(a).)

Existing law provides that it is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (Vehicle Code § 23152(b).)

Existing law provides that a person who is convicted of a first DUI is subject to the following penalties when given probation:

- possible 48 hours to 6 months in jail;
- \$390 to \$1,000 fine plus 310% penalty assessments;

- completion of a 3-month treatment program or a 9-month program if the BAC was .20% or more;
- 6 month license suspension or 10 month suspension if 9-month program is ordered; and
- restricted license may be sought upon proof of enrollment or completion of program, proof of financial responsibility and payment of fees. However, the court may disallow the restricted license. (Vehicle Code §§ 13352 (a)(1); 13352.1; 13352.4; 23538(a)(3).)

Existing law provides that in a DUI case the court shall neither suspend or stay the proceedings for the purpose of allowing the accused person attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceeding because the accused person attends or participates during that suspension in any one or more education, training or treatment programs. (Vehicle Code § 23640)

This bill clarifies that a person charged with a DUI can participate in the military diversion program.

This bill also clarifies that participation in the military diversion program does not limit the DMV's ability to take administrative sanctions against the person's driver's license.

COMMENTS

1. Need for This Bill

According to the author:

Senate Bill 725 clarifies that military veterans who suffer from military related traumatic mental health conditions and who are before a sentencing court charged with violations of Vehicle Code sections 23152 and 23153, pertaining to driving under the influence of alcohol and/or drugs, are eligible for diversion to a treatment court under Penal Code section 1001.80.

Veterans Treatment Courts are collaborative courts throughout California that provide treatment in lieu of incarceration for a myriad of offenses for military veterans with trauma resulting from their military service. Data shows that at least one-third of all persons seeking military diversion are charged with violations of Vehicle Code section 23152 or section 23153. Currently, statutory language is contradictory on the question of eligibility for diversion for driving under the influence (DUI) offenses. The California Vehicle Code prohibits pretrial diversion for military members charged with driving under the influence, while the Penal Code establishes qualifying criteria for diversion.

The majority of California courts have interpreted the plain language of Penal Code Section 1001.80 referring to "a misdemeanor" as including Vehicle Code sections 23152 and 23153 offenders, however, some courts have interpreted Vehicle Code section 23640, enacted in 1981, as unambiguously stating that a person charged with a DUI must not be granted a pretrial diversion. The appellate courts are

currently split on whether to rely on the later enacted Penal Code statute or the Vehicle Code statutes.

Data shows that timely and appropriate treatment for the conditions underlying substance abuse yields effective results and greatly reduces recidivism. California courts are experiencing requests for military diversion from veterans charged with violations of Vehicle Code sections 23152 and 23153 in significantly high numbers. While some superior courts are denying admission of these offenders others are continuing these matters in anticipation of further clarification of the law.

SB 725 amends California Penal Code §1001.80 by adding an additional section stating that, notwithstanding any other law, including Section 23640 of the Vehicle Code, a misdemeanor offense for which a defendant may be placed in a pretrial diversion program in accordance with this section includes a misdemeanor violation of Section 23152 or 23153 of the Vehicle Code. In doing so, SB 725 allows military veterans who violate these sections of the Vehicle Code, or any misdemeanor charge, to be eligible for military diversion as long as the other criteria stated in Penal Code section 1001.80 are met.

In order to resolve the conflicting interpretations of existing law at issue in pending cases that may affect the rights and liberties of veterans, and in order to protect the public safety, SB 725 contains an urgency clause.

2. Military Diversion

SB 1227 (Hancock) Chapter 658, Stats. 2013 created a military diversion program. A person who is currently in the military or who is a veteran who suffered sexual trauma, a traumatic brain injury or post-traumatic stress, substance abuse or mental health problems as a result of his or her military service. If the defendant participates in the program then they are diverted to an appropriate treatment program and upon successful completion the arrest shall be deemed to have never occurred.

When SB 1227 was making its way through the legislature, whether or not DUI convictions were included was not discussed. Because they were not explicitly included or excluded, as the author's statement notes, courts have made different determinations as to whether a person charged with a DUI can be eligible for military diversion. This bill states that a member of the military or a veteran can be eligible for diversion. Unlike many offenses, a person arrested for a DUI also faces administrative sanctions. This bill explicitly states that getting diversion does not relieve and individual of these sanctions.

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