
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: AB 397 **Hearing Date:** July 9, 2019
Author: Chau
Version: June 18, 2019
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicles: Driving Under the Influence*

HISTORY

Source: Author

Prior Legislation: AB 2058 (Chau) Vetoed 2018
AB 1273 (Hill) Held Senate Appropriations 2018
AB 2740 (Low) Held Assembly Appropriations 2016
AB 2500 (Frazier) Failed Assembly Public Safety 2014
AB 1215 (Benoit) Failed Assembly Public Safety 2008
AB 2552(Torres) Chapter 753, Stats. 2012

Support: AAA Northern California, Nevada and Utah; Alcohol Justice; Auto Club of Southern California; California Bus Association; California District Attorneys Association; Smart Approaches to Marijuana; one individual

Opposition: California Attorneys for Criminal Justice; California Law Enforcement Association of Records Supervisors

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to require every chief of police, sheriff, district attorney and others to report to the Department of Justice monthly, beginning in January 1, 2022, data relating to the arrests made for driving under the influence and arrests in which cannabis was suspected to be the substance or one of the substances under which a person was under the influence.

Existing law provides that it shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

- To install and maintain records needed for the correct reporting of statistical data required by him or her.
- To report statistical data to the department at those times and in the manner the Attorney General Prescribes.
- To give the Attorney General, or his or her accredited agent access to the statistical data for the purpose of carrying out their duties. (Penal Code § 13020)

Existing law states that it is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle. (Vehicle Code § 23152 (a).)

Existing law specifies that it is unlawful for a person who has 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 it is unlawful for a person who is under the influence of any drug to drive a vehicle. (Vehicle Code, § 23152 (f).)

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

Existing law requires DMV to establish and maintain a data and monitoring system to evaluate the efficacy of intervention programs for persons convicted of violations of Section 23152 or 23153. (Vehicle Code § 1821 (a).)

Existing law requires DMV to submit an annual report of its evaluations to the Legislature. (Vehicle Code § 1821 (d).)

Existing law specifies that the Controller shall disburse the sum of three million dollars annually to the Department of the California Highway Patrol beginning with the 2018–19 fiscal year until the 2022–23 fiscal year to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of cannabis or cannabis products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies. (Rev. and Tax Code, § 34019 (c).)

Existing law states that the Controller shall next disburse the sum of two million dollars annually to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the center, including the enhanced understanding of the efficacy and adverse effects of cannabis as a pharmacological agent. (Rev. and Tax Code, § 34019 (e).)

This bill provides that on January 1, 2022, and monthly thereafter, law enforcement entities specified in Penal Code Section 2030 shall submit to the Department of Justice Data relating to arrests made during the preceding calendar month for any violation of driving under the influence of drugs or driving under the influence of combined drugs and alcohol that involved cannabis as the drug or one of the drugs, of which the arrestee was suspected of being under the influence.

This bill makes technical and cross reference changes to Vehicle Code § 2322.

COMMENTS

1. Need for This Bill

According to the author:

Proposition 215 (The Compassionate Use Act of 1996) made it legal in the state of California for seriously ill patients to obtain a prescription from their doctor for medicinal use of cannabis. In November of 2016, Proposition 64 (The Adult Use of Marijuana Act) passed to make adult use of cannabis legal to cultivate and consume in the state.

In 2012, Colorado and Washington became the first states in the nation to fully legalize marijuana for recreational purposes. Since that time, these two states have shared a very similar experience, as it pertains to drugged driving involving cannabis.

According to the Denver Post, the number of drivers involved in fatal crashes who tested positive for cannabis in Colorado jumped from 47 in 2013 to 115 in 2016 – an increase of 145%. Similarly, according to the Washington State Patrol, the number of drivers involved in fatal crashes who tested for cannabis in Washington rose from 64 in 2013 to 116 in 2017.

Since 1973, the National Highway Traffic Safety Administration and the Insurance Institute for Highway Safety have conducted five national roadside surveys to estimate the prevalence of drinking and driving in the United States. In 2007, for the first time since 1973, the roadside survey included procedures to estimate the use of potentially impairing drugs by drivers. In the 2007 and 2013 surveys, “THC was by far the most prevalent drug detected in the representative sample of drivers”. Further, the survey’s noted a 48% increase in drivers testing positive for THC between the 2007 and 2013 studies.

Additionally, the National Highway Traffic Safety Administration, noted in its July 2017 report to Congress on cannabis impaired driving, that “there is little State level data about the prevalence of use of marijuana by drivers being collected. As States continue to change their laws regarding marijuana use in general and as it relates to driving, this lack of State level data prevents evaluation of the effect of policy changes on driver behavior, including willingness to drive while under the influence of marijuana, as well as the effect of marijuana on crashes, deaths and injuries”.

Currently, existing law provides that any person who is found to be driving under the influence of cannabis must be charged under section (f) of Vehicle Code section 23152 which states that “It is unlawful for a person who is under the influence of any drug to drive a vehicle.” While this statute works as it pertains to charging someone with a cannabis DUI, and while law enforcement agencies throughout the state independently keep statistics on cannabis related DUI arrests, our state has no uniform mechanism in place to evaluate cannabis drugged driving arrests.

AB 397 will allow the state to have accurate and reliable data regarding how many cannabis DUI's occur in the state annually by requiring law enforcement entities, beginning January 1, 2022, to annually report to the Department of Justice data relating to arrests for driving under the influence of cannabis.

Furthermore, existing law makes it an infraction for a person to have in their possession on their person while driving a motor vehicle upon a highway or on specified lands any receptacle containing any cannabis or cannabis products, which has been opened or has a seal broken, or loose cannabis flower not in a container. However, the description of "lands" in Vehicle Code Section 23222 incorrectly references subdivision (b) in Vehicle Code Section 23220, which prohibits a passenger in a vehicle from drinking alcohol or ingesting cannabis when riding in a vehicle. AB 397 corrects the cross reference in Vehicle Code 23222 to properly reference subdivision (c) of 23220 which defines lands.

2. Reporting DUI arrests with suspected cannabis

This bill would require law enforcement to report to the DOJ monthly on DUI arrests where the person is suspected of being under the influence of cannabis or of cannabis and alcohol or some other drug.

Whether or not someone has cannabis in their system cannot be determined upon arrest. It will not be clear until blood test results are returned whether there is any cannabis in that person's system, and if it is combined with other alcohol or drugs, even then it won't be clear if the cannabis was the cause of the intoxication without more information.

Because whether or not someone has cannabis in his or her system when being arrested for a DUI cannot be determined at the time of arrest, what will be the purpose of this data?

3. Argument in Support

In support the Author Club of Sothern California and AA Northern California, Nevada and Utah state:

Driving Under the Influence of Drugs (DUID) is on the rise nationwide despite alcohol related arrests have been declining for years. California's Office of Traffic Safety (OTS) reported fatalities from drugged driving has been increasing and noted 38% of all drivers killed in motor vehicle crashes in 2014 tested positive for legal and/or illegal drugs. DUID is an epidemic but currently we can only assess the problem by looking back at the number of people already killed. AB 397 helps fix that problem.

An uptick in marijuana impaired driving may occur in California's post-Proposition 64 era as experienced by other states following legalization of recreational marijuana. For example, according to the AAA foundation for Traffic Safety, the percentage of fatal crashes involving drivers who recently used marijuana more than doubled (2013 to 2014) after Washington State voters legalized cannabis in 2012. If California wants to prevent the same trend from occurring here, more details about cannabis impaired arrests will be required to prepare preventative programs and better target law enforcement.

4. Argument in Opposition

In opposition the California Attorneys for Criminal Justice states:

AB 396 requires police, sheriff's departments, district attorneys or other persons dealing with crimes to submit monthly data to the Department of Justice regarding arrests for driving under the influence of cannabis. While CACJ believes that driving while intoxicated is dangerous and reasonable steps should be taken to prevent it, this bill does not acknowledge the lack of scientific evidence surrounding cannabis intoxication. Unlike alcohol, cannabis does not have levels that reliably correspond to impairment. A driver could test positive for cannabis even if they had not used for days or weeks. The data compiled as a result of this bill could be used to justify new criminal laws, which would be unwise given current science.

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