
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 421 **Hearing Date:** April 27, 2021
Author: Bradford
Version: April 15, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicles: driving under the influence of alcohol and drugs*

HISTORY

Source: Author

Prior Legislation: AB 3234 (Ting) Chapter 334, Stats. 2020
SB 545 (Hill) Not heard Assembly Public Safety 2019
SB 1046 (Hill) Chapter 783, Stats. 2016
SB 61 (Hill) - Chaptered 350, Stats. 2015
SB 55 (Hill) - held in Assembly Appropriations (2013)
AB 520 (Ammiano) - Chapter 657, Stats. 2011
SB 598 (Huff) - Chapter 193, Stats. 2009
AB 91 (Feuer) - Chapter 217, Stats. 2009
SB 1190 (Oropeza) - Chapter 392, Stats. 2008
SB 1361 (Correa) - Vetoed (2008)
SB 1388 (Torlakson) - Chapter 404, Stats. 2008
AB 2784 (Feuer) - until August 28, 2008 version
SB 177 (Migden) - did not move (2007)
AB 4 (Bogh) - held in Assembly Appropriations (2005)
AB 979 (Runner) - Chapter 646, Stats. 2005
AB 638 (Longville) - prior to 7/2/2003 amends
died on Concurrence (2003)
AB 1026 (Levine) - failed Senate Public Safety (2003)
AB 762 (Torlakson) - Chapter 756, Stats. 1998

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to allow a court to offer diversion to a person convicted of a DUI under specified conditions including that person install and Ignition Interlock Device (IID) for at least 12 months and attend the appropriate licensed alcohol drug treatment program. A violation dismissed pursuant to this section can still be used as a prior for a subsequent offense occurring within 10 years.

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 approximately 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 a person who is convicted of a first DUI with injury is subject to the following penalties:

- 16 months, 2 or 3 years in state prison or 90 days to 1 year in county jail;
- \$390 to \$1,000 fine plus 250% penalty assessments; and
- 1 year driver's license suspension.

Or, when probation is given:

- 5 days to one year in jail;
- \$390 to \$1,000 fine plus 250% penalty assessments;
- 1 year license suspension;
- 3 month treatment program or a 9-month program if the BAC was .20% or more; and
- the additional penalties that apply to a first DUI without injury. (Vehicle Code § 23554.)

Existing law provides that if a first-offender DUI is found to have a blood concentration of .20% BAC or above or who refused to take a chemical test, the court shall refer the offender to participate in a 9-month licensed program. (Vehicle Code § 23538 (b)(2).)

Existing law provides that a first-time DUI offender sentenced to a 9-month program because of a high BAC or a refusal shall have their license suspended for 10 months. The law further provides that their license may not be reinstated until the person gives proof of insurance and proof of completion of the required program. (Vehicle Code § 13352.1.)

Existing law provides that a person convicted of a first-time DUI may apply for a restricted license for driving to and from work and to and from a driver-under-influence program if specified requirements are met, paying all applicable fees, submitting proof of insurance and proof of participation in a program. (Vehicle Code § 13352.4.)

Existing law provides that a second or subsequent DUI offender can get his or her license reinstated earlier if he or she agrees to install an Ignition Interlock Device (IID) along with his or her enrollment in the required program, proof of insurance and payment of specified fees. (Vehicle Code §§ 13352(a)(3)(B); (a)(4) (B); (a)(5)(C); (a)(6)(B); (a)(7)(B)&(C))

Existing law created an IID pilot project in Alameda, Los Angeles, Sacramento and Tulare Counties requiring a person convicted of a DUI to install an IID for 5 months upon a first offense, 12 months for a second offense, 24 months for a 3rd offense and for 36 months for a 4th or subsequent offense. It required DMV to report to the Legislature regarding the effectiveness of the IID pilot project to reduce the number of first-time violations and repeat DUI offenses. This pilot project was repealed on January 1, 2019 when a statewide pilot project took effect. (Vehicle Code § 23700; 23701)

Existing law creates a pilot project that requires a person convicted of a second or subsequent DUI or DUI causing injury to install and maintain an IID for 12 months for a second offense, 24 months for a 3rd offense and for 36 months for a 4th or subsequent offense.. Proof of installation of the interlock device, along with other requirement, permits a person to get a restricted license after a specified period of time. (Vehicle Code §§ 13352; 13352.4; 13353.3; 13353.6; 13353.75)

Existing law provides that the existing IID pilot project shall sunset on January 1, 2026.

Existing law provides for misdemeanor diversion, at the discretion of the judge, for misdemeanors including DUIs. (Penal Code Section 100.1.95)

This bill would allow for diversion on for a first DUI and only under the following conditions:

- It is the defendant's first DUI.
- The defendant is not currently in, and has not in the previous 10 years completed diversion.
- The defendant does not hold a commercial driver's license.
- The offense did not occur while operating a commercial vehicle.
- The prosecutor does not object to the diversion.

This bill that the court may continue a diverted case for a period not to exceed 24 months.

This bill provides that the terms of diversion shall include both of the following:

- Installation of an IID for not less than 12 months.
- Attendance at the appropriate drinker driving treatment program, depending on the person's blood alcohol level at the time of the violation.

This bill provides that if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the court shall dismiss the action against the defendant.

This bill provides that if it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings.

This bill provides that a DUI that has been dismissed pursuant to diversion may still act as a prior for a subsequent offense within 10 years.

This bill requires each certified IID provider to maintain a participant file for every person to whom they have provided an IID and shall include information and records related to installation, service, calibration, and removal of the device and all data retrieved from the device.

COMMENTS

1. Need for This Bill

According to the author:

Under existing law recently enacted with the passing of AB 3234 (Ting, 2020), DUI offenders are currently eligible for misdemeanor diversion. However, providing diversion with no limitations on the eligibility of repeat DUI offenders will allow them to be eligible for diversion over and over again without being identified as a high risk chronically impaired driver. SB 421 will create specific safeguards for DUI offenders participating in California's existing misdemeanor diversion program, while achieving two important objectives:

1. It would preserve the ability for first-time DUI offenders to participate in misdemeanor diversion.
2. It would address the important public safety concerns specific to DUI diversion by requiring an IID during the first twelve months of the diversion program.

SB 421 creates a fair and equitable way to address the needs specific to DUI offenders participating in California's misdemeanor diversion program. The bill would ensure that the same alcohol education and treatment programs currently required for DUI convictions are also required under a DUI diversion program and would also allow a DUI offender the ability to retain their driving privileges while completing diversion

2. Existing IID pilot project

In 2009, AB 91 (Feuer) created an IID pilot project in four counties which mandated the use of an IID for all DUI offenders. DMV issued a report in June 2016 on the specific deterrent of the pilot project.

The rationale for a pilot project was to see what impact a mandatory IID program has on recidivism in California. While the impact of IID has been studied elsewhere, with mixed results, the comparisons are not perfect because while some of the other states began mandating IID at the same time they strengthened other sanctions, California has had a complex group of sanctions including high fines, jail time, licensing sanctions, mandatory drinker-driver treatment programs and optional IID in place since the mid-1980's with sanctions being evaluated, changed and strengthened on an ongoing basis since. The thought was that with a pilot project, DMV can evaluate how best a mandatory IID system should work in California. By evaluating four counties, the counties without the mandatory programs act like a control group for the researchers at DMV. Evaluating how the DUI sanctions work is something DMV researchers have been doing with great success since 1990. DMV's reports have helped inform the

Legislature on where changes needed to be made and have helped reduce recidivism in California.

SB 1046 (Hill) deleted the four county pilot project when it created a statewide IID pilot project for **repeat** offender DUI.

3. DUI Sanctions

Most people convicted of a first DUI are given probation. As part of probation, as well as a condition for getting relicensed a person must attend a licensed treatment program, in addition to fines, fees, and license sanctions. The program is either 3 or 9 months depending on the person's blood alcohol level. The program and other existing sanctions imposed on a DUI have reduced the recidivism rate of DUI by about half over the years since they were initially instituted in 1990. (see DMV, 2019 Annual Report of the California Management Information System; Annual Report to the Legislature of the State of California)

In a DUI, sanctions are imposed by the court and by DMV through an administrative per se action. APS. A person cannot get their license reinstated if they do not complete the licensed treatment program under APS sanctions.

DUI sanctions change and increase with any subsequent DUIs in 10 years.

4. Changes to DUI Diversion

Last year, AB 3224 (Ting) provided for misdemeanor diversion for most offenses, including a DUI. A person who receives diversion under will not have the DUI act as a prior for any future DUI and thus will not face the increased sanctions that come with a 2nd, 3rd or 4th DUI within 10 years.

This bill amends the misdemeanor diversion program as to first time DUI offenders by allowing a DUI offender to participate in diversion if:

- It is the defendant's first DUI.
- The defendant is not currently in, and has not in the previous 10 years completed diversion.
- The defendant does not hold a commercial driver's license.
- The offense did not occur while operating a commercial vehicle.
- The prosecutor does not object to the diversion.

Included in diversion for a DUI offender must be the requirements that they install an IID for 12 months and that they participate in the appropriate treatment program. If they successfully complete the diversion the DUI will not be on their driving record so they will not face the increased insurance costs associated with a DUI but the diverted DUI will act as a prior for future DUIs in the next 10 years. The intent is to give a person the benefit of not having the costs and job implications associated with a DUI follow them for years but at the same time protect repeat offenders from endangering the public by keeping the diverted DUI as a prior. While the majority of DUI offenders are first offenders, 27% of the offenders were repeat offenders in 2016. (DMV, 2019 Annual Report of the California Management Information System; Annual Report to the Legislature of the State of California, p.ix) A person who made a mistake and committed a DUI but learns from their

mistake will not have ongoing costs associated with a DUI, while the person who has an ongoing issue with drinking and driving will not be able to avoid the consequences of being a repeat offender.

5. Related Legislation

AB 282 (Lackey) exempts DUI from the misdemeanor diversion program. It passed the Assembly Public Safety Committee 5-3 and is currently on the Assembly Floor.

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