

5-15-1983

## Legislative Update: Revisions in the California Drunk Driving Law

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### Recommended Citation

A. Randall Farnsworth *Legislative Update: Revisions in the California Drunk Driving Law*, 10 Pepp. L. Rev. Iss. 4 (1983)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol10/iss4/3>

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## Legislative Update: Revisions in the California Drunk Driving Law

During the course of the 1981-82 legislative session, the California legislature passed a number of amendments to the California drunk driving law. This update discusses these changes as they relate to a comment entitled *Under the Influence of California's New Drunk Driving Law: Is the Drunk Driver's Presumption of Innocence on the Rocks?*,<sup>1</sup> which appears in volume 10, issue 1 of the Pepperdine Law Review.

The minimum fines for a conviction of drunk driving have been changed. Minimum fines for a conviction of drunk driving have been increased from \$375 to \$390<sup>2</sup> except for a conviction of "felony drunk driving" where the defendant has two prior convictions for drunk driving within the past five years. In this instance the minimum fine has been increased from \$1,000 to \$1,015.<sup>3</sup>

Changes have also been imposed in the requirements concerning treatment programs where one is convicted of drunk driving. Under the law as initially enacted, when a first time offender convicted of "misdemeanor drunk driving" was granted probation, the court could, as a condition of probation, require participation in a driver improvement program or an alcohol treatment program.<sup>4</sup> Under the new law this person must participate in an alcohol treatment program.<sup>5</sup> Additionally, under the original law, there was no requirement that a first-time felony offender partici-

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1. See Comment, *Under the Influence of California's New Drunk Driving Law: Is the Drunk Driver's Presumption of Innocence on the Rocks?*, 10 PEPPERDINE L. REV. 91 (1982). For a comprehensive discussion of these amendments see Cook & Crahan, *Legislation Digest 1982 Session*, L.A. DAILY J., Jan. 7, 1983, 23-32.

2. Act of Sept. 24, 1982, ch. 1339, §§ 15-28, 1982 Cal. Legis. Serv. 7166-72 (West) (amending CAL. VEH. CODE §§ 23160, 23165, 23166, 23170, 23171, 23180, 23181, 23185, 23186, 23190, and 23191).

3. Act of Sept. 24, 1982, ch. 1339, § 27, 1982 Cal. Legis. Serv. 7171-72 (West) (amending CAL. VEH. CODE § 23190).

4. Act of Feb. 18, 1982, ch. 53, § 30, 1982 Cal. Legis. Serv. 278-79 (West) (amending CAL. VEH. CODE § 23161(b)).

5. Act of Sept. 24, 1982, ch. 1339, § 16, 1982 Cal. Legis. Serv. 7166-67 (West) (amending CAL. VEH. CODE § 23161(2)(b)).

pate in a treatment program as a condition of probation.<sup>6</sup> Under the new law, this person must participate in an alcohol treatment program.<sup>7</sup>

Finally, the law concerning punishment of a two-time offender has been changed. Under the original law, a person convicted of "felony drunk driving" who had one prior drunk driving conviction within five years could receive a three-year restriction on his driving privileges if granted probation.<sup>8</sup> The new law provides for a one year suspension followed by a two year license restriction.<sup>9</sup>

A. RANDALL FARNSWORTH

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6. Act of Feb. 28, 1982, ch. 53, § 36, 1982 Cal. Legis. Serv. 280-81 (West) (amending CAL. VEH. CODE § 23181).

7. Act of Sept. 24, 1982, ch. 1339, § 23, 1982 Cal. Legis. Serv. 7169-70 (West) (amending CAL. VEH. CODE § 23181).

8. Act of Feb. 28, 1982, ch. 53, § 38, 1982 Cal. Legis. Serv. 281 (West) (amending CAL. VEH. CODE § 23186(b)(3)).

9. Act of Sept. 24, 1982, ch. 1339, § 25, 1982 Cal. Legis. Serv. 7170-71 (West) (amending CAL. VEH. CODE § 23186(b)(3)).

APPENDIX A\*: Differing Consequences of an initial "alcohol-related reckless driving" conviction and an initial "misdemeanor drunk driving" conviction

	Minimum	Maximum	Minimum	Jail		Maximum	Length of Probation	Department of Motor Vehicles Suspensions or Restrictions		Priors	
				No Probation	With Probation			No Probation	With Probation	For Subsequent Misdemeanor Convictions	For Subsequent Felony Convictions
Misdemeanor Drunk Driving	\$390	\$500	96 hours	48 hours**	6 months	3 years (minimum)	6 month suspension	90 day** restriction	Yes: for all in 5 years	Yes: for all in 5 years	NEVER
Alcohol-Related Reckless Driving per § 23103.5	none	\$500	5 days or \$130	none	90 days	judicial discretion	none	none	Only if no other valid prior in 5 years***		

\* This chart is adapted from one provided by the Los Angeles County Municipal Court's Planning and Research Department.

\*\* The 48 hour jail sentence and the 90 day restricted license are alternate mandatory sentences if probation is granted for an initial misdemeanor conviction.

\*\*\* An "alcohol-related reckless driving conviction" can only affect the first misdemeanor drunk driving conviction (within five years) and will never put the defendant in the three convictions category.

## APPENDIX B\*: Consequences of a "misdemeanor drunk driving" conviction

	Minimum Jail Sentence		Maximum Jail Sentence (With or Without Probation)	Minimum Fine (With or Without Probation)	Maximum Fine (With or Without Probation)	License Suspensions and Restrictions	
	Without Probation	With Probation				Without Probation	With Probation
First Offense	96 hours	48 hours** OR none	6 months	\$390	\$500	Suspended 6 months	None** OR 90 day restriction
Second Offense	90 days	10 days*** OR 48 hours	1 year	\$390	\$1,000	Suspended at least 1 year	Suspended at least 1 year*** OR Restriction at least 1 year and treatment program (the restriction may be removed after 6 months of successful participation in the treatment program)
Third and Subsequent Offenses	120 days	120 days	1 year	\$390	\$1,000	Suspended at least 3 years	Suspended at least 3 years and treatment program if not previously completed

\* This chart is adapted from one provided by the Los Angeles County Municipal Court's Planning and Research Department.

\*\* When the court grants probation and sentences the defendant to 48 hours in jail the court *may* suspend the license for six months. When the court grants probation and does not sentence the defendant to jail it must restrict the license for 90 days.

\*\*\* When the court grants probation and sentences the defendant to 10 days in jail the one year suspension provision applies. When the court grants probation and sentences the defendant to 48 hours in jail the one year restriction provision applies.

## APPENDIX C\*: Consequences of a "felony drunk driving" conviction

	Minimum Jail Sentence		Maximum Jail Sentence	Minimum Fine		Maximum Fine		License Suspensions and Restrictions	
	Without Probation	With Probation		Without Probation	With Probation	Without Probation	With Probation	Without Probation	With Probation
First Offense	90 days	5 days	1 year	\$390	\$390	\$1,000	\$1,000	Suspended at least 1 year	Suspended at least 1 year and participation in a treatment program
Second Offense	120 days	120 days** OR 30 days	1 year	\$390	\$390	\$5,000 OR \$1,000	\$5,000** OR \$1,000	Suspended for 3 years	Suspended at least 3 years** OR Participation in a treatment program and a one year license suspension followed by a two year license restriction
Third Offense	2 years	1 year	4 years	\$1,015	\$390	\$5,000	\$5,000	Suspended at least 5 years	Suspended at least 5 years and treatment program if not previously completed

\* This chart is adapted from one provided by the Los Angeles County Municipal Court's Planning and Research Department.

\*\* When the court grants probation and sentences the defendant to 120 days in jail the maximum fine is \$5,000 and the license suspension is for a minimum of three years. When the court grants probation and sentences the defendant to 30 days in jail the maximum fine is \$1,000 and the one year suspension followed by a two year restriction provision applies.

