
UNFINISHED BUSINESS

Bill No: SB 725
Author: Jackson (D), et al.
Amended: 7/3/17
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 4/18/17
AYES: Skinner, Anderson, Bradford, Jackson, Mitchell, Stone, Wiener

SENATE FLOOR: 39-0, 5/4/17
AYES: Allen, Anderson, Atkins, Bates, Beall, Berryhill, Bradford, Cannella, De León, Dodd, Fuller, Gaines, Galgiani, Glazer, Hernandez, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mendoza, Mitchell, Monning, Moorlach, Morrell, Newman, Nguyen, Nielsen, Pan, Portantino, Roth, Skinner, Stern, Stone, Vidak, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Hertzberg

ASSEMBLY FLOOR: 64-2, 7/17/17 - See last page for vote

SUBJECT: Veterans: pretrial diversion: driving privileges

SOURCE: California Veterans Legal Task Force

DIGEST: This bill specifies that a trial court can grant military pretrial diversion on a misdemeanor charge of driving under the influence of alcohol and/or drugs (DUI).

Assembly Amendments add co-authors and make technical changes.

ANALYSIS:

Existing law:

- 1) Provides for pretrial diversion of a misdemeanor offense when the defendant was or is currently a member of the military who may be suffering 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.
- 2) Defines "pretrial diversion" as the procedure of postponing prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication.
 - 3) Provides that a pretrial diversion program shall utilize existing resources available to current members of the military and veterans that address and treat the specified service-related mental health issues.
 - 4) Specifies that the diversion period shall be no longer than two years.
 - 5) States that upon successful completion of diversion, the arrest upon which the diversion was based shall be deemed never to have occurred. The person may indicate in response to any question concerning his or her prior record that he or she was not arrested or diverted for the offense, except in response to a direct question in a questionnaire or application for a peace officer position.
 - 6) Prohibits DUI as follows:
 - a) States it is unlawful to drive a vehicle while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug;
 - b) States it is unlawful to drive a vehicle while having 0.08% or more, by weight, of alcohol in the blood;
 - c) States it is unlawful to drive a vehicle while addicted to any drug, unless participating in an approved narcotic treatment program, as specified;
 - d) States it is unlawful to drive a commercial motor vehicle, as defined by statute, while having 0.04% or more, by weight, of alcohol in the blood; and,
 - e) Provides that commencing July 1, 2018, it shall be unlawful to drive a motor vehicle while having 0.04% or more, by weight, of alcohol in the blood when a passenger for hire is in the vehicle.
 - 7) Provides that a first violation of DUI is punishable as a misdemeanor by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than six months, and by a fine of not less than \$390 nor more than \$1,000. (Vehicle Code (VEH), Section 23536 subd.

- (a.) Further states that the person's privilege to drive a motor vehicle shall be suspended. (VEH Section 23536 subd. (c).) If probation is granted, the court shall refer the person to a three-month treatment program or, if the blood alcohol content was .20% or more, a nine-month program.
- 8) Provides graduated misdemeanor penalties for a DUI conviction where the offense occurred within 10 years of one or two separate DUI offenses resulting in conviction. (VEH Sections 23540, 23542, 23546, 23548.) A DUI conviction where the offense occurred within 10 years of three or more separate DUI offenses resulting in a conviction may be punished as a misdemeanor or a felony.
 - 9) States that it is unlawful for a person to commit a DUI offense and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.
 - 10) Provides that a first violation of DUI causing injury is punishable as a misdemeanor by imprisonment in the county jail for not less than 90 days, nor more than one year, and by a fine of not less than \$390 nor more than \$1,000. Further states that the person's privilege to drive a motor vehicle shall be suspended. (VEH Section 23554.) If probation is granted, the court shall refer the person to a three-month treatment program or, if the blood alcohol content was .20% or more, a nine-month program.
 - 11) Provides graduated misdemeanor penalties for a DUI with injury conviction where the offense occurred within 10 years of a separate DUI with injury offense that resulted in a conviction. (VEH Sections 23560, 23562.) A third or subsequent DUI with injury conviction where the offense occurred within 10 years of two or more separate DUI offenses that resulted in convictions is punishable as a felony.
 - 12) Provides that in a DUI or DUI causing injury case, the court shall neither suspend nor stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during that suspension in any one or more education, training or treatment programs.

This bill:

- 1) Provides that a trial court can grant diversion on a misdemeanor charge of DUI or of DUI causing injury, to a veteran or current member of the military who is suffering 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.
- 2) States that participation in the military diversion program does not limit the Department of Motor Vehicles' ability to take administrative sanctions against the person's driver's license.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/18/17)

California Veterans Legal Task Force (source)
American G.I. Forum of California
American Legion-Department of California
AMVETS-Department of California
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
National Guard Association of California

OPPOSITION: (Verified 7/18/17)

California District Attorneys Association
San Diego County District Attorney

ARGUMENTS IN SUPPORT: According to the American G.I. Forum of California:

SB 725 clarifies that active duty military (and veterans) who suffer from military related traumatic mental health conditions and are before the court charged with violations of Vehicle Code sections 23152 and 23153 dealing with DUIs are and have always been eligible for military diversion under Penal Code section 1001.80. This legislation is to correct an oversight in the statutory language to avoid a prolonged period of confusion while differing opinions of Court of Appeal divisions work through the appeals process to the California Supreme Court.

This controversy arose when most California courts interpreted the plain language of Penal Code Section 1001.80 referring to “a misdemeanor” as including Vehicle Code sections 23152 and 23153 misdemeanor offenders, while other courts relied on a 1981 enacted statute Vehicle Code section 23460 as denying any form of diversion on these offenses.

Currently, in San Diego County, more than thirty cases involving offenders charged with Vehicle Code sections [sic] 23152 misdemeanors are awaiting resolution on this issue. The majority of which remain on active duty and many have served multiple tours in the war zones since 9/11. Their careers are ended if criminal proceedings are not timely resolved. When they are convicted, they will be terminated from the military due to their civilian misdemeanor DUI conviction. They will be given Other than Honorable (OTH) discharges regardless of how many years of honorable service. This OTH discharge bars them from VA healthcare at a time when they need it most. It will also make them ineligible for many federal benefits that require an honorable discharge such as GI Bill educational benefits and VA home loans. This also shifts their treatment and assistance from the federal government onto the state and local county healthcare and assistance programs.

Data today shows that at least 1/3 of all persons who seek military diversion are charged with violations of Vehicle Code section 23152/23153 [Report on Military Diversion Program, PC1001.80, of the Superior Court of California, County of San Diego January 1, 2015-December 31, 2016) DUI's make up the most common offenses committed by veterans with mental health conditions – which is expected since self-medication is widely known to be connected to symptoms of mental health conditions like post traumatic stress disorder (PTSD) and traumatic brain injury (TBI). Any incentive that gets the veteran into treatment helps protect the public safety. The near zero recidivism rates for those who have completed veterans' treatment court and other diversion programs bear this out. (San Diego VTRC Pilot Program 3 year Cumulative Report) In counties with a large activity duty military population, nearly half of those seeking diversion are still on active duty. { *supra* Report on Military Diversion).

In enacting Penal Code section 1001.80, while it was clearly the intent of the legislature to carve out an exception to the bar on diverting Vehicle Code section 23152 and 23153 offenders who met the criteria for inclusion, the differing interpretations by courts have necessitated SB 725. This bill specifically carves out an exception to Vehicle Code section 23460 and its relevant case law interpretations and allows military and veterans who are

charged with misdemeanors including Vehicle Code section 23152 and 23153 to be eligible for military diversion as long as the other criteria stated in Penal Code section 1001.80 are met.

This urgency legislation is needed to protect public safety and restore military personnel and veterans to normal life. The diversion and treatment of veterans with mental health conditions from their military service is important to the safety and health of the people of California. Untreated mental health conditions have strong propensity to lead to self-medication with alcohol and drugs. (see National Center for PTSD website www.ncptsd@va.gov)

ARGUMENT IN OPPOSITION: According to the San Diego County District Attorney:

The Veteran's Court program is a collaborative effort between the Superior Court, District Attorney's Office, Defense Bar, treatment providers, and the Veterans Administration. Veterans Court takes veterans with misdemeanor and felony convictions and places them on a separate track, giving them treatment designed especially for veterans. In 2014, SB 1277 (Hancock) passed; giving veterans the ability to participate in pretrial diversion. Vehicle Code section 23640, however, explicitly banned such pretrial diversion programs for driving under the influence cases.

Currently, there is a split of opinion as to whether or not the pretrial diversion statute for veterans supersedes the ban on pretrial diversion for driving under the influence cases. The issue is currently before the Supreme Court in the case of *Hopkins v. Superior Court* (S237734).

Because the issue is before the Supreme Court, and because of the inherently dangerous nature of driving under the influence, the San Diego District Attorney's Office opposes SB 725. Veterans that drink and drive because of a duty related mental illness can already seek to have their case dismissed under Penal Code section 1170.9, the statute utilized by Veterans Courts throughout our state. Going further and allowing diversion for these offenses provides no guarantee of structured treatment, misses an opportunity to require attendance at a Mothers Against Drunk Driving Impact Panel, and potentially harms public safety by eliminating increased penalties for future offenses – even if they drink, drive, and kill someone in the future.

ASSEMBLY FLOOR: 64-2, 7/17/17

AYES: Aguiar-Curry, Arambula, Baker, Berman, Bloom, Bocanegra, Bonta, Brough, Burke, Caballero, Calderon, Chau, Chávez, Chen, Chiu, Chu, Cooley,

Cooper, Dababneh, Daly, Eggman, Flora, Fong, Frazier, Friedman, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Kiley, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Patterson, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Santiago, Mark Stone, Thurmond, Ting, Voepel, Weber, Wood, Rendon

NOES: Travis Allen, Lackey

NO VOTE RECORDED: Acosta, Bigelow, Cervantes, Choi, Cunningham, Dahle, Harper, Irwin, Muratsuchi, Obernolte, O'Donnell, Steinorth, Waldron

Prepared by: Mary Kennedy / PUB. S. /
7/19/17 16:27:00

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