
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1462 **Hearing Date:** April 19, 2016
Author: Huff
Version: March 30, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicles: Driving Under the Influence: Drug Testing*

HISTORY

Source: We Save Lives

Prior Legislation: None

Support: The Association for Los Angeles Deputy Sheriffs; The California Association of Code Enforcement Officers; California Association of Highway Patrolmen; The California College and University Police Chiefs Association; California Narcotic Officers' Association; California Police Chiefs Association Inc.; Crime Victims United of California; The Los Angeles Police Protective League; The Los Angeles County Professional Peace Officers Association; The Riverside Sheriffs Association

Opposition: None known

PURPOSE

The purpose of this bill is to allow for the use of a preliminary oral fluid screening test to establish reasonable cause to believe a person was driving in violation of laws prohibiting driving under the influence.

Existing law provides that it is unlawful for a person under the age of 21 years who has 0.05% or more, by weight, of alcohol in his or her blood to drive a vehicle. (Vehicle Code § 23140)

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)

Existing law provides it is unlawful for a person, while driving under the influence of any drug to drive a vehicle 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. (Vehicle Code § 23153(e))

Existing law provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the

alcoholic content of his or her blood, if lawfully arrested for a DUI offense. (Vehicle Code § 23612 (a))

Existing law provides that a preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of the sections prohibiting driving under the influence is a field sobriety test and may be used by an officer as a further investigative tool. (Vehicle Code § 23162 (h))

This bill provides that a preliminary oral fluid screening test that indicates the presence or concentration of a drug or controlled substance based on a sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of the sections prohibiting driving under the influence is a field sobriety test and may be used by the officer as a further investigative tool.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v.*

Brown (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Given the shocking escalation in drug overdose related deaths and increasing number of drugged driving fatalities, this has become an urgent matter of public safety. The alarming increase in drugged drivers is clearly becoming a greater threat than drunk drivers. The National Highway Traffic Safety Administration has reported a decrease in alcohol consumption and an increase in drug use by drivers in 2014. <http://www.leftlanenews.com/nhtsa-drunk-driving-down-drugged-driving-up-in-2014.html#ixzz44u6uzjBD>

Drugged driving is a serious public health and safety problem that is under-reported and under-enforced. According to Mothers Against Drunk Driving, over 10 million Americans admitted to driving under the influence of illicit drugs.

We lack the same kind of deterrents for drugged driving as we do for drunk driving, yet highway safety hazards and fatalities are increasing with widespread prescription and illicit drug abuse across all demographics. Driving under the influence of drugs is a growing problem nationally and in California. A 2014 National Highway Traffic Safety Administration report found that between 2007 and 2014, the percentage of drivers with drugs in their system on weekend nights grew from 16% to 20% - including a 50% increase in drivers with cannabis in their system. The same study found that the prevalence of alcohol declined by 30% over the same period, showing the success of increased enforcement and educational efforts.

Currently, law enforcement lacks a roadside screening device which can detect drugs in a motorist's system – similar to field breathalyzers to detect alcohol.

SB 1462 allows law enforcement officers to use oral fluid drug screening tests, proven to be highly effective, when there is probable cause that a driver is impaired and the driver has failed sobriety field tests. Law enforcement now relies on blood tests to measure drug presence and to indicate possible drug impairment. Blood tests cannot measure drug levels at the time of an incident because of legal and logistical delays in collecting a blood sample. For drugs, this is a serious problem. For example, 90% of marijuana's THC is cleared from blood within the first hour after smoking.

Oral fluid drug screening technology allows officers to receive critical information in their evaluation of impaired driving incident, through an oral fluid drug screening test. Officers can produce more meaningful impairment assessments and get drivers under the influence off the road.

Police departments in Bakersfield, Fullerton, Los Angeles and Sacramento tested oral swabs during 2013 and 2014, with assistance from the California Office of Traffic Safety and the National Highway Traffic Safety Administration.

Kern's case is believed to be the first time oral swab evidence has been used to get a DUI conviction in California. "Kern was chosen as a pilot area for the swab study for some decidedly sordid reasons, according to Supervising Deputy District Attorney Michael Yraceburn said.

"We have the most drunken drivers in Kern County. And we have a methamphetamine problem. And that's one of the reasons we were chosen unfortunately, the high likelihood of catching people driving under the influence of different substances," Yraceburn said. "A lot of people have been watching our case. That's my understanding."

Oral swabs do not replace blood tests, which deliver more conclusive detail about the exact concentration of legal and illegal substances in a person's blood. However, oral swabs are the only way to quickly and accurately test for the presence of six most common drugs for abuse in a motorist's system. These are, Amphetamine, Benzodiazepines, Cannabis (THC), Cocaine, Methamphetamine, Opiates.

According to We Save Lives approximately 13 states allow for oral fluid testing with California (LA pilot program), Arizona, Nevada, Vermont and Tennessee currently using oral fluid testing devices. The program has been so successful in England and Wales that it is being expanded to Ireland and the use of the roadside devices will be phased in nationwide beginning in 2016.

Oral fluid technology presents a solution to this problem of drugged driving by allowing an opportunity to provide roadside testing to detect the presence of drugs at the time of the traffic stop before the drug has had time to metabolize. Oral fluid testing is now used internationally in Australia and Belgium among other countries, and has been used to administer roadside tests in a pilot program by the City of Los

Angeles since 2012. The Los Angeles City Attorney's office has cited that impaired driving cases filed using oral fluid technology as evidence are pleading out earlier than cases solely using blood tests. The speed of test results from oral fluids allowed them to be available at the time of filing the case, while blood results were still pending at the crime lab.

2. Use of Preliminary Oral Fluid Screening Test

When a person is suspected of being DUI, an officer can use a preliminary alcohol screening test to indicate the presence of alcohol based on sample breath in order to establish reasonable cause to believe a person was driving in violations of the section prohibiting driving under the influence.

This bill would allow law enforcement to use a preliminary oral fluid screening test that indicates the presence or concentration of a drug or controlled substance based on a sample in order to establish reasonable cause to believe the person was driving in violation of sections prohibiting driving under the influence.

3. No Per Se for Drugs

Unlike alcohol, there is no per se level at which a person is presumed intoxicated because of a controlled substance because the science has yet to be conclusive on what those levels should be. Because a person can be deemed DUI at a .08% alcohol level even if they are not showing other signs of intoxication, giving a breathalyzer to a person who is not otherwise showing signs of intoxication may not be inappropriate. However, because there is not a per se level for controlled substances giving the oral swab test without other reasonable suspicion is probably not appropriate. The Committee may wish to consider whether it is appropriate to amend this bill to require reasonable suspicion of impairment before an oral swab test is given.

4. Technical Amendment

The Vehicle Code Section 23140 reference should be removed from this bill because it only addresses people under 21 driving with alcohol in their system not controlled substances.

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