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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** SB 1021                      **Hearing Date:** April 19, 2022  
**Author:** Bradford  
**Version:** March 16, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

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

### HISTORY

**Source:** Coalition of Ignition Interlock Manufacturers; Distilled Spirits Council of the United States; Recording Artists Against Drunk Driving; Responsibility.org; Students Against Drunk Driving; National Alliance to Stop Impaired Driving; Traffic Safety Partners

**Prior Legislation:** SB 421 (Bradford) 2021, held in Senate Appropriations  
AB 882 (Lackey) 2021, held in Senate Public Safety  
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:** Advocates for Highway and Auto Safety; National Safety Council

**Opposition:** American Property Casualty Insurance Association; National Association of Mutual Insurance Companies; Personal Insurance Federation of California; AAA Northern California, Nevada & Utah (unless amended); Auto Club of Southern California (AAA) (unless amended)

### 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 3<sup>rd</sup> offense and for 36 months for a 4<sup>th</sup> 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 3<sup>rd</sup> offense and for 36 months for a 4<sup>th</sup> 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.
- The court gives the defendant the admonition in the Vehicle Code that states that DUI is dangerous and can result in a murder conviction if someone dies.

*This bill* provides 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 and transmit the record to the Department of Justice and Department of Motor Vehicles.

*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.

*This bill* provides that if a person has any failed start that occurs within the last 60 days of the mandatory term, the term shall be extended by 60 days.

## COMMENTS

### 1. Need for This Bill

According to the author:

In 2020, AB 3234 directed that diversion programs be available for all misdemeanor crimes, including DUI. Since that time, many of us expressed the need for strict guidelines to ensure serial DUI offenders aren't avoiding penalties or accountability for their crimes. Additionally, a recent state Appellate Court decision ruled against diversion programs for misdemeanor DUI convictions. This is an opportunity for the Legislature to prescribe smart standards for DUI diversion programs that will help rehabilitate offenders, reduce recidivism, and protect public safety.

To address these issues and make our streets safer, SB 1021 establish a diversion program for first-time, misdemeanor DUI offenders. Participants are required to enroll in a DUI education program, attend a victim impact panel, and install an ignition interlock device while participating in the diversion program. These new safeguards will give individuals the knowledge and experience to learn from their actions and to prevent senseless tragedies related to DUIs in California. This bill fulfills what Governor Newsom identified in his signing message for AB 3234, "to expeditiously remedy this issue [misdemeanor DUI] with the Legislature in the next legislative session."

This legislation will provide a crucial second chance for those who deserve it, while ensuring repeat DUI offenders be held accountable for the seriousness of their crimes. This measure limits the number of times an individual can participate in a DUI diversion program, remedying the problem that a chronic or habitual impaired driver could be arrested multiple times for misdemeanor DUI without a conviction ever showing up on their record. This bill also gives the courts the ability to treat an individual as a repeat offender if they are arrested for additional DUIs after completing a DUI diversion program.

Importantly, SB 1021 recognizes social inequities within the criminal justice system, evidenced by the fact that individuals from communities of color are disproportionately arrested for DUI in California. This bill declares the imperative that these community members have equitable access to participate in DUI diversion programs, and that race and ethnicity of program enrollees and completion rates are measured to ensure that equitable access to these programs is occurring.

## **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**

In 2020, 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 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> DUI within 10 years. However, the courts have not been consistent on whether the diversion provisions apply to DUI and specifically the 4<sup>th</sup> District Court of Appeal found that the Ting diversion does not apply to DUI. (*Grassi v. Superior Court of Orange County* (2021) 73 Cal.App.5th 283)

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. Argument in Support

The sponsors of this bill, Alliance to Stop Impaired Driving; Coalition of Ignition Interlock Manufacturers; Distilled Spirits Council of the United States; Recording Artists Against Drunk Driving; Responsibility.org; Students Against Drunk Driving; National; and Traffic Safety Partners state:

Under a recently passed California law (AB 3234 of 2020) every person who commits misdemeanor DUI in California is eligible to avoid a conviction for that crime by participating in a court-ordered diversion program. Unfortunately, this law did not prescribe any standards for DUI diversion programs to help rehabilitate offenders, reduce recidivism, or protect public safety. SB 1021 addresses this problem by requiring DUI diversion participants to enroll in a DUI education program, attend a victim impact panel, and install an ignition interlock device while participating in the diversion program.

Additionally, under the 2020 law, an individual is allowed to participate an unlimited amount of diversion programs to avoid conviction for misdemeanor DUI. A chronic or habitual impaired driver could be arrested multiple times for misdemeanor DUI without a conviction ever showing up on their record. SB 1021 remedies this problem by limiting the number of times an individual can participate in a DUI diversion program. This bill also gives the courts the ability to treat an individual as a repeat offender if they are arrested for additional DUIs after completing a DUI diversion program.

Importantly, SB 1021 also recognizes social inequities within the criminal justice system that are evidenced by the fact that communities of color are disproportionately arrested for DUI in California. This bill declares the imperative that these communities have equitable access to participation in DUI diversion programs, and that race and ethnicity of program enrollees and completion rates are measured to ensure that equitable access to these programs is occurring.

## **6. Argument in Opposition**

American Property Casualty Insurance Association; National Association of Mutual Insurance Companies; Personal Insurance Federation of California oppose this bill stating:

The trades oppose SB 1021, a bill that would require a person, upon the person's first DUI conviction, to install and maintain an Ignition Interlock Device (IID) for a specified period of time. The bill would also delete the ability for a point to be added to a driver's record when they participate in this diversion program. Points are one of the critical measures by which insurers are able to determine the likely risk of a particular driver. While the trades support the use of IID's, removing the penalty after someone is convicted of a DUI skews the information that insurers have available in determining appropriate rating. Insurance companies set rates for auto premiums based on many factors, including driving habits. DUIs are a clear indication of a driver's increased probability of causing an accident.

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