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April 27, 2018

Honorable Patrick O'Donnell
Room 2196, State Capitol

DRIVING-UNDER-THE-INFLUENCE PROGRAMS - #1722066

Dear Mr. O'Donnell:

Vehicle Code sections 23152 and 23153 prohibit a person who is under the influence of an alcoholic beverage or a drug from driving a vehicle (hereafter DUI offense). A person convicted of a DUI offense is required, as a condition of probation in certain instances, to attend a licensed driving-under-the-influence program (hereafter DUI program). You have asked four questions, separately stated and considered below, regarding requirements to enroll in a DUI program as a condition of probation.

Background

The applicable punishment for a DUI offense may differ based upon the circumstances involved in the offense or the offender's prior conviction of DUI offenses within specified periods of time.¹ Certain statutory provisions prescribing punishments for DUI offenses require a court to refer the offender to a DUI program as a condition of probation.

The State Department of Health Care Services (DHCS) is authorized to license programs for persons who have been convicted of DUI offenses. Health and Safety Code section 11836 authorizes DHCS to license DUI programs that serve certain persons, including persons who have violated Vehicle Code sections 23152 or 23153² and have been admitted to a DUI program pursuant to various provisions of the Vehicle Code. (Health & Saf. Code, § 11836, subd. (a)(1).) Health and Safety Code section 11837.3 is a more specific licensing statute, authorizing DHCS to license alcohol and other drug education and counseling services programs that are at least three months in duration and that serve persons

¹ See Veh. Code, §§ 23536, 23540, 23546, 23550, 23554, 23560 & 23566.

² All further section references are to the Vehicle Code unless otherwise indicated.

who have committed a first violation of certain DUI provisions, including sections 23152 and 23153. (Health & Saf. Code, § 11837.3, subd. (a)(1).)

1. Is a court obligated to require a person convicted of a DUI offense to enroll in a DUI program as a condition of probation?

In our view, a court must require a person to enroll in a DUI program as a condition of probation pursuant to the provisions discussed below.³

1.1 Section 23538

In a county where the board of supervisors has approved and DHCS has licensed a program described in Health and Safety Code section 11837.3, a court that grants probation to a person punished under section 23536 must require, as a condition of probation, that the person enroll and participate in, and successfully complete, a DUI program licensed under Health and Safety Code section 11836. (§ 23538, subd. (b).) The DUI program must be located in the person's county of residence or employment. (§ 23538, subd. (b).) Absent good cause, the court is required to revoke the person's probation for failing to enroll in, participate in, or complete the DUI program. (§ 23538, subd. (c)(1).)

1.2 Section 23556

In a county where the county alcohol program administrator has certified and the board of supervisors has approved a program, a court that grants probation to a person punished under section 23554 must require, as a condition of probation, that the driver participate in and complete an alcohol and other drug education and counseling program established under Health and Safety Code section 11837.3. (§ 23556, subd. (b)(1).) In a county where the board of supervisors has approved and DHCS has licensed an alcohol and other drug education and counseling program, the court must require, as a condition of probation, that the driver enroll in a DUI program that is licensed under Health and Safety Code section 11836 and that is located in the person's county of residence or employment. (§ 23556, subd. (b)(2).) Absent good cause, the court is required to revoke the person's probation for failing to enroll in, participate in, or complete the DUI program. (§ 23556, subd. (c)(1).)

1.3 Section 23562

If probation is granted to a person punished under section 23560, the court must require, as a condition of probation, that the person enroll and participate in a DUI program licensed under Health and Safety Code section 11836 if one is available in the county of the defendant's residence or employment. (§ 23562, subd. (b)(4)(A) & (B).)

³ In lieu of requiring the person to enroll in a DUI program, a court may require the person to complete a rehabilitation program specified in Penal Code section 8001 if the person consents and has been admitted into the program. (§ 23598.)

1.4 Section 23542

If probation is granted to a person punished under section 23540, the court must require, as a condition of probation, that the person enroll and participate in a DUI program licensed under Health and Safety Code section 11836. (§ 23542, subd. (b)(1) & (2).) Unlike the requirement in section 23562, the requirement in section 23542 to enroll and participate in a DUI program is not conditioned on the availability of a program in the county of the defendant's residence or employment.

1.5 Section 23548

If probation is granted to a person punished under section 23546 who has not already completed a DUI program pursuant to section 23542, subdivision (b)(4), the court must require, as a condition of probation, that the person enroll and participate in a DUI program licensed under Health and Safety Code section 11836 unless the person is ordered to participate in and complete a DUI program under another specified provision. (§ 23548, subd (c).) The requirement in section 23548, subdivision (c) to enroll and participate in a DUI program is not conditioned on the availability of a program in the defendant's county of residence or employment.⁴

1.6 Section 23552

If probation is granted to a person punished under section 23550 who has not already completed a DUI program pursuant to section 23542, subdivision (b) or section 23562, subdivision (b)(4), the court must require, as a condition of probation, that the person enroll and participate in a DUI program licensed under Health and Safety Code section 11836. (§ 23552, subd. (c).) The requirement in section 23552 to enroll and participate in a DUI program is not conditioned on the availability of a program in the defendant's county of residence or employment.⁵

1.7 Section 23568

If probation is granted to a person punished under section 23566, the court must require, as a condition of probation, that the person enroll and participate in a DUI program licensed under Health and Safety Code section 11836. (§ 23568, subd. (b).) The court must require the person to enroll and participate in either an 18-month DUI program, regardless of

⁴ Certain persons are not eligible for a referral to a DUI program under this provision. Section 23548, subdivision (c) states that a person who previously completed a 12-month or 18-month DUI program "shall not be eligible for referral pursuant to this subdivision unless a 30-month licensed driving-under-the-influence program is not available for referral in the county of the person's residence or employment."

⁵ Section 23552, subdivision (c) contains the same exclusion from eligibility contained in section 23548, subdivision (c). (See footnote 4, *ante*.)

whether the program is available in the defendant's county of residence or employment, or a 30-month DUI program if one is available in the defendant's county of residence or employment. (*Ibid.*)

1.8 Conclusion regarding Question No. 1

Thus, it is our opinion that, for persons granted probation pursuant to sections 23538 and 23556, a court must require the person to enroll and participate in a DUI program only in specified counties and only if a DUI program is available in the driver's county of residence or employment. For persons granted probation pursuant to section 23562, a court must require the person to enroll and participate in a DUI program if a DUI program is available in the person's county of residence or employment. For persons granted probation pursuant to sections 23542, 23548, subdivision (c), 23552, subdivision (c), and 23568, a court must require the person to enroll and participate in a DUI program regardless of whether there is a DUI program in the county of the person's residence or employment.

2. **When a court is obligated to require a person to enroll and participate in a DUI program as a condition of probation, is the court obligated to require the person to enroll in a specific DUI program?**

As indicated above, there are instances when a court must require a person to enroll and participate in a DUI program. In those instances, a court may choose to require enrollment in a specific DUI program.⁶ However, nothing in the statutory provisions governing probation for DUI offenses imposes an additional requirement that the court name a specific DUI program.

Thus, it is our opinion that when a court is obligated to require a person to enroll and participate in a DUI program as a condition of probation, the court is not obligated to require the person to enroll in a specific DUI program.

3. **If a court requires a person to enroll in a specific DUI program as a condition of probation, is the court obligated to inform the program that the person has been required to enroll?**

No statute or regulatory provision requires a court to inform a DUI program that a person has been required to enroll in the program.

Thus, it is our opinion that if a court requires a person to enroll in a specific DUI program as a condition of probation, the court is not obligated to inform the program that the person has been required to enroll.

⁶ See, e.g., Health & Saf. Code, § 11837.2, subd. (e).

4. After requiring a person to enroll and participate in a DUI program as a condition of probation, is a court required to solicit information regarding compliance with that condition?

With respect to a requirement that a person convicted of a DUI offense enroll in a DUI program as a condition of probation, no statute or regulatory provision expressly requires a court to track compliance with that condition. However, sections 23538 and 23556 address a court's duty to revoke probation in certain circumstances. Subdivision (c) of each of those sections (hereafter subdivision (c)) contains identical provisions. That subdivision provides as follows:

“(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

“(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the [Department of Motor Vehicles] and with the State Department of Health Care Services. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.”

It can be argued that subdivision (c)(1), which requires a court to revoke a person's probation for “the failure to enroll in, participate in, or complete” a DUI program, implies that the court must solicit information regarding a person's compliance with the condition of probation. However, we think that subdivision (c)(1) would be read in conjunction with subdivision (c)(2),⁷ which requires a court to establish reporting requirements regarding enrollment in and successful completion of DUI programs. Thus, the reporting requirements that the court establishes must provide a way for the court to determine when a defendant has failed to enroll in or complete a DUI program, but the court determines the design of the reporting requirements.

Because the design of such a reporting system is left to a court, it is our view that sections 23538 and 23556 impose no specific duty on the court to solicit information. Such a reporting system could involve reporting only by DUI programs.

⁷ In construing a statute, courts do not consider the statutory language in isolation; rather, courts look to the statute's entire substance in order to determine its scope and purposes. (*Los Angeles County Metropolitan Transp. Authority v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1106-1107.)

Thus, it is our opinion that after requiring a person to enroll in a DUI program as a condition of probation, a court is not required to solicit information regarding compliance with that condition.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

A handwritten signature in cursive script that reads "Aimee C. Martin".

By
Aimee C. Martin
Deputy Legislative Counsel

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