

# CARLSON & NICHOLAS, LLP

Attorneys at Law

Scott W. Carlson  
Francisco J. Nicholas  
Richard A. McDonald\*  
\*Of Counsel

301 E. Colorado Blvd., Suite 320  
Pasadena, California 91101  
(626) 796-6161  
(626) 796-0593 [Fax]  
(626) 356-0240 [Direct]  
www.carlsonnicholas.com

scott@carlsonnicholas.com  
frank@carlsonnicholas.com

May 2, 2019

TO: CADTP Members

SUBJ: CADTP Position Paper on  
DUI Court Referral & Tracking System

Dear Members:

I have been requested to provide a CADTP Position Paper respecting the responsibilities of the Courts in California as to the DUI referral system. Please note that Position No. 1 of this Position Paper is based primarily upon a legislative analysis dated 4/27/18, prepared by Aimee C. Martin, Deputy Legislative Counsel. That legislative analysis is attached, at least in part.

## Position No. 1:

The Courts must require a person -- who does not contest a charge of Driving under the Influence ("DUI") -- to enroll in a DUI Program as a condition of that person's probation.

## Authorities for Position No. 1:

The applicable statutes which support the above Position are Vehicle Code Sections 23538, 23542, 23548, 23552, 23556, 23562, and 23568. Details concerning those statutes are set forth in the attached legislative analysis. In addition, the Court referral must be to a DUI Program which has been licensed by the State Department of Health Care Services ("DHCS"). See Health & Safety Code Section 11837.2(a)(1).

Note: It is the recommendation of CADTP that when a Court orders a person to enroll in a DUI Program, a form (with instructions) be utilized, in addition to the Court Docket. It is also recommended that Counties that do not have a referral system in place take advantage of the Technical Assistance materials provided by DHCS. Details regarding this form and the referral system are set forth in the concurrently submitted memorandum from Teri Kerns, CADTP Legislation Committee Chair.

## Position No. 2:

After the Court orders a person to enroll in a DUI Program, the subsequent reporting requirements imposed upon the licensed DUI Programs demonstrate that the Court, at least indirectly, requires proof of compliance.

Authorities for Position No. 2:

Health & Safety Code Section 11837.1(a) provides, in part, that “the court may require periodic reports concerning the performance of each person referred to and participation in a [DUI] program.” However, within the body of that same section, it is clearly stated that **“the [DUI] program shall provide the court, the Department of Motor Vehicles, and the person participating in a program with an immediate report of any failure of the person to comply with the program’s rules and policies [emphasis added].”**

There is little no doubt that the above code section imposes upon DUI Programs the absolute duty to report to the Court any failure by the program participant to comply with the rules and policies of the DUI Program. Further, Health & Safety Code Section 11837.3(d)(1) & (2) clearly imposes a duty to report enrollment, successful completion, and failure to complete:

**“(d)(1) Any person required to successfully complete an alcohol and other drug education and counseling program as a condition of probation shall enroll in the program and, except when enrollment is required in a program that is required to report failures to enroll to the court, shall furnish proof of the enrollment to the court within the period of time and in the manner specified by the court. The person also shall participate in and successfully complete the program, and shall furnish proof of successful completion within the period of time and in the manner specified by the court.”**

**“(2) An alcohol and other drug education and counseling program shall report to the court, within the period of time and in the manner specified by the court, the name of any person who fails to successfully complete the program.”**

[Emphasis added].

Therefore, it can be persuasively argued that the statutory scheme as to Court referrals to DUI Programs includes a requirement that proof of compliance be provided by the licensed DUI Programs. It is CADTP’s recommendation that DUI Programs comply with this requirement.

Should there be any questions, or any requests for clarification, feel free to contact the undersigned, Teri Kerns (CADTP Leg Chair at [teri.r.kerns@mhn.com](mailto:teri.r.kerns@mhn.com)), or Barbara Aday-Garcia (CADTP Executive Director at [BarbaraAday-Garcia@cadtp.org](mailto:BarbaraAday-Garcia@cadtp.org)).

Very truly yours,

CARLSON & NICHOLAS, LLP

  
FRANCISCO J. NICHOLAS