

Date of Hearing: April 18, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 2367 (Cooley) – As Amended April 11, 2016

SUBJECT: Driving under the influence: 24/7 Sobriety program

SUMMARY: Authorizes the court to order a person convicted of driving under the influence of alcohol (DUI) with one or more DUI priors within 10 years, to enroll, participate in, and successfully complete, a qualified “24/7 Sobriety” monitoring program, as defined, as a condition of probation. Specifically, **this bill:**

- 1) Specifies that the court may order a person convicted of a DUI, or DUI with injury, to enroll, participate in, and successfully complete, a qualified 24/7 Sobriety monitoring program as a condition of probation, if the program is available and deemed appropriate, and the person has one or more prior convictions for a violation of DUI or DUI with injury within a 10-year period.
- 2) Provides that a 24/7 Sobriety program requires a person in the program to abstain from alcohol and unauthorized controlled substances and be subject to frequent testing with certain but modest punishment for violations, requires the program to be evidence-based, provides that persons ordered into a program may also be required to participate in other driving-under-the-influence programs as provided law, and requires a 24/7 Sobriety program to be licensed, as specified.
- 3) Specifies that an “evidence-based program” means a program that satisfies the requirements of at least two of the following:
 - a) The program is included in the federal registry of evidence-based programs and practices;
 - b) The program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or,
 - c) The program has been documented as effective by informed experts and other sources.
- 4) Specifies that the program may monitor alcohol or controlled substances through breath testing twice a day, continuous transdermal alcohol monitoring in cases of hardship, and/or random blood, breath, sweat, urine, or oral fluid testing.
- 5) Provides that testing locations that provide the best ability to sanction a violation as close in time as reasonably feasible to the occurrence of the violation should be given preference.
- 6) Requires each person to pay program costs commensurate with the person’s ability to pay, as specified.
- 7) Prohibits the court from imposing a program of more than 180 days in length unless the defendant tests positive for alcohol or an unauthorized controlled substance or fails to appear for a test.

- 8) Requires the court, in establishing reporting requirements, to consult with the county probation department.
- 9) Authorizes the court to notify the Department of Motor Vehicles (DMV) that a person participating in the program who provides proof of insurance is eligible for a temporary restricted driver's license, and requires the court to direct DMV to withdraw the person's restricted driver's license and reinstate the remainder of the suspension period if the person fails to comply with the program's requirements. The person's driving privilege shall not be restored until the person provides proof satisfactory to DMV of successful completion of the program.
- 10) Exempts a person who receives such a temporary restricted driver's license pursuant from any requirement to install an ignition interlock device (IID) on the person's vehicle during the time the person is participating in the program.
- 11) Requires DMV to study and report to the Legislature by January 1, 2020, on the success of the 24/7 Sobriety program in reducing the driving-under-the-influence recidivism rate in counties where it is used.
- 12) Establishes a sunset date of January 1, 2021.

EXISTING LAW:

- 1) Prohibits a person who is under the influence of any alcoholic beverage or drug or combined influence of any alcoholic beverage and drug, or who has 0.08% or more, by weight, of alcohol in his or her blood, from driving a vehicle while under the influence of alcohol or from driving a vehicle while under the influence of alcohol and causing a person other than the driver bodily injury.
- 2) Authorizes the court to grant probation to a person who commits the above offense within 10 years of a separate DUI violation under specific conditions, including a fine, imprisonment in jail, suspension of the person's driving privilege, and enrollment and participation in a specified licensed DUI program.
- 3) Authorizes DMV to issue a restricted driving privilege to a person with a suspended driving privilege, as specified, if the person enrolls in or completes a licensed DUI program, submits proof of insurance, completes 12 months of the suspension period, and pays all applicable reinstatement fees. The driving privilege is restricted to driving to and from the person's place of employment, driving during the course of employment, and driving to and from activities required under the licensed DUI program.
- 4) Authorizes a person who has been convicted of DUI or DUI with injury to apply to DMV for a restricted driver's license that prohibits the person from operating a motor vehicle unless it is equipped with a certified IID.

FISCAL EFFECT: Unknown

COMMENTS: Under existing law, a person who is convicted of DUI or DUI with injury within 10 years of a prior DUI offense can be granted probation under certain circumstances, including paying a fine, serving a jail sentence, enrollment in a DUI program licensed by the Department of Health Care Services (DHCS), and suspension of the person's driving privilege.

This bill would add an additional post-trial option to the punishment of a DUI offender who reoffends within 10 years of a prior DUI offense: a 24/7 Sobriety program. In such a program, as established by this bill and licensed by DHCS pursuant to existing requirements, the participant must abstain from alcohol and controlled substances and submit to either twice daily alcohol or drug testing, continuous alcohol testing (through a transdermal bracelet), or random drug and alcohol testing as a condition of probation. If a participant fails a test, they are subject to "certain but modest punishment." In similar programs established in other states, these punishments are typically a day or two in jail. This bill provides that an offender can still be required by the court to participate in any other DHCS-licensed DUI program as a condition of probation.

The author intends to add to the toolkit of options available to judges in California through the use of 24/7 Sobriety programs. As the author notes, 40% of all traffic-related fatalities in California involve alcohol, and critically, nearly one-third of those convicted for DUI re-offend. By establishing 24/7 Sobriety as an additional option for the courts, the author intends to target those offenders with an underlying alcohol problem that makes them more likely to consistently drive while impaired.

This bill also requires DMV to study the use of 24/7 Sobriety programs by January 1, 2020. The study would gather data from across the state and provide analysis as to whether 24/7 Sobriety programs are effective in California from the standpoint of evidence-based practices.

24/7 Sobriety began as a pilot program in South Dakota in 2005 and required those convicted of alcohol-related offenses to take twice-a-day breathalyzer tests or wear a continuous alcohol monitoring bracelet. After a five-county pilot project, the program grew to include more jurisdictions and offenses. By the end of 2013, studies found that the total number of repeat driving under the influence arrests in counties operating the program fell by 12%, and the total number of arrests for domestic violence dropped by 9%. Subsequently, 24/7 Sobriety programs have been implemented in several additional states.

In December of 2015, President Obama signed the Fixing America's Surface Transportation Act (FAST Act), a comprehensive highway funding bill. Part of the FAST Act provided incentive grants for states to use 24/7 Sobriety programs and laid out the federal criteria for 24/7 Sobriety programs. The programs established by AB 2367 are consistent with those criteria.

Committee concerns: Under existing law, after 12 months have elapsed on the suspension of a person's driving privilege pursuant to that person's probation terms and conditions, a person may, under some circumstances, apply for a restricted license. The restricted license allows them to drive to and from work and to and from activities required by a licensed DUI program. Existing law also allows a person to get a restricted license sooner if they install an IID. An IID prevents a vehicle from being operated unless the driver passes a breathalyzer-type test administered by the device.

This bill would also allow a person in a 24/7 Sobriety program to apply for a restricted driver's license outside the existing process for receiving a restricted driver's license and without having to comply with any IID requirements existing elsewhere in law.

While it may be desirable for a court to order participation in a 24/7 Sobriety program as a condition of probation for an offender, imposing a blanket exemption on IID requirements may hamper the discretion of the court to order participation in 24/7 Sobriety, an IID program, or any combination of the two. Furthermore, by establishing a new avenue for an offender to receive a restricted driver's license, a court could order an offender into a program that allows them to circumvent existing requirements for getting a restricted license.

Additionally, Mothers Against Drunk Driving opposes this bill due to the concern that allowing a DUI offender to apply for a restricted license without installing an IID does little to prevent that person from driving their vehicle while under the influence.

While a 24/7 Sobriety program is targeted primarily at preventing a person from drinking, an IID specifically is targeted at a symptom of that drinking, specifically driving a vehicle while drunk.

Suggested amendment: To address the concern of circumventing the existing process for receiving a restricted driver's license and reducing judicial discretion in ordering a DUI offender to install an IID, the committee suggests an amendment to strike subdivision (g) of the bill, which provides that a person participating in a 24/7 Sobriety program may apply for a restricted driver's license, as specified, as is exempt from any requirement to install an IID.

Double referral: This bill passed out of the Assembly Public Safety Committee on March 29, 2016, with a 6-0 vote.

Related legislation: SB 1046 (Hill), requires all DUI offenders to install an IID for a specified period of time in order to have their license reinstated. SB 1046 is scheduled to be heard in the Senate Appropriations Committee on April 25, 2016.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice

Association for Los Angeles Deputy Sheriffs

California Association of Code Enforcement Officers

California College and University Police Chiefs Association

California Narcotic Officers Association

Florida Association of DUI Programs, Inc.

Intoximeters, Inc.

Los Angeles County Professional Peace Officers Association

Los Angeles Police Protective League

Riverside Sheriffs Association

SCRAM Systems

Thomas Butler, Colonel, Montana Highway Patrol

We Save Lives.org

1 private citizen

Opposition

Legal Services for Prisoners with Children
Mothers Against Drunk Driving

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