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Chapter 30: Correcting a Drafting Error in California's Latest DUI Law

Michael Malone

Code Sections Affected

Vehicle Code §§ 13352.5, 13353.3, 23247 (amended).

SB 895 (Huff); 2010 STAT. Ch. 30 (*Effective June 22, 2010*).

I. INTRODUCTION

Twenty year-old Cara Lee was a young woman with a bright future.¹ She balanced attending college while pursuing a modeling career and working as a youth counselor for the city of Newport Beach, California.² Remarkably, she did all of this while battling cervical cancer, which she was diagnosed with at age seventeen.³ In January 2010, Cara received exciting news—she had won her battle with cancer.⁴ Unfortunately, happiness soon gave way to tragedy.⁵ While she had beaten cancer, Cara was unable to survive a vehicle crash that occurred only one month after learning she was cancer free.⁶ Adding to the heartbreak of the incident was the fact that the driver of the other vehicle, Gustavo Vega, was drunk when he drove his truck into the car Cara was riding in.⁷ The ensuing investigation revealed Gustavo had twice the legal limit of alcohol in his system.⁸ He was fleeing the scene of a hit-and-run when he ran a red light and caused the fatal collision.⁹ Cara died at the scene.¹⁰

Unfortunately, stories like Cara Lee's are not uncommon.¹¹ Driving-under-the-influence (DUI) is a major problem in California.¹² In 2008, nearly one-third

1. Ellyn Pak, *Woman Killed in Crash Known for Big Heart*, ORANGE COUNTY REGISTER, Feb. 25, 2010, available at <http://www.ocregister.com/articles/cara-236220-lee-day.html?pic=7> (on file with the *McGeorge Law Review*).

2. Matt Coker, *Cara Lee, OC Homicide No. 6: Killed by Alleged Drunken Driver*, OC WEEKLY, Feb. 18, 2010, available at <http://blogs.ocweekly.com/navelgazing/a-clockwork-orange/cara-lee-oc-homicide-no-6-kill/> (on file with the *McGeorge Law Review*).

3. *Id.*

4. Pak, *supra* note 1.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Coker, *supra* note 2.

11. Editorial, *Cracking Down on DUIs*, NAPA VALLEY REGISTER, July 2, 2010, available at http://napavalleyregister.com/news/opinion/editorial/article_06d5cc64-85a0-11df-95e9-001cc4c03286.html (on file with the *McGeorge Law Review*).

12. *Id.*

of all California traffic fatalities involved drunk driving.¹³ To combat the impact of drunk driving on California citizens, the Legislature is actively seeking to reduce the frequency of DUI offenses.¹⁴ Most recently, it enacted Chapter 30.¹⁵

II. LEGAL BACKGROUND

Before enactment of Chapter 30, the law required driver's license suspension for DUI convictions and reinstatement of the driver's license with restrictions after a specified period of time.¹⁶ It also provided for the use of ignition interlock devices in some cases.¹⁷ On July 1, 2010, Chapter 193 took effect.¹⁸ This bill established a pilot program in California authorizing the issuance of a restricted driver's license when a person receives a DUI conviction, provided that the offender installs an ignition interlock device in his or her vehicle.¹⁹ A drafting error in the bill, however, temporarily prevented it from achieving the intended result.²⁰ On June 22, 2010, the Legislature passed Chapter 30 to preempt this defect.²¹

A. Existing DUI Law

In California, a DUI conviction results in suspension or revocation of the offender's driver's license.²² There are two types of driver's license suspensions—criminal and administrative.²³ While a court imposes a criminal suspension, the Department of Motor Vehicles (DMV) imposes an administrative suspension.²⁴ An offender's license can be both administratively and criminally suspended at

13. *Id.*

14. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 91, at 1, 4 (Apr. 14, 2009) (discussing Chapter 193, which the Legislature enacted in 2009, requiring first-time offenders to install ignition interlock devices in their vehicles).

15. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at A (Apr. 13, 2010) (stating that in 2010, the Legislature introduced SB 895 to combat DUI).

16. CAL. VEH. CODE §§ 13352, 13352.5(a) (West 2010).

17. *Id.* § 23575 (West 2000).

18. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 91, at 1 (Apr. 14, 2009).

19. *Id.*

20. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at A-B (Apr. 13, 2010) (explaining the Legislature's intent to "correct a drafting error in a law passed [in 2009] to allow a person convicted of a DUI to get a restricted license after a specified period of time if he or she installs an ignition interlock device on his or her vehicle").

21. Complete Bill History of SB 895, http://leginfo.ca.gov/pub/09-10/bill/sen/sb_0851-0900/sb_895_bill_20100622_history.html (last visited Apr. 3, 2011) (on file with the *McGeorge Law Review*).

22. CAL. VEH. CODE § 13352 (West 2010).

23. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at E (Apr. 13, 2010); see CAL. VEH. CODE § 13352 (describing the department-imposed suspension); *id.* § 13206 (describing the court-imposed suspension).

24. See *supra*, note 23.

the same time.²⁵ The length of the suspension depends on multiple factors, including the number of prior convictions for a given offender.²⁶

After a person is arrested for his or her first DUI offense, the DMV immediately suspends his or her driver's license, even before he or she is convicted.²⁷ The length of the suspension is four months, provided the offender did not refuse a chemical test.²⁸ If the offender shows proof of enrollment in a DUI program and is over twenty-one years of age, he or she may receive a restricted driver's license after thirty days that lasts for five months.²⁹

Conviction for a first offense that does not result in injury leads to a six-month suspension, during which the offender may not operate a vehicle.³⁰ Offenders may, upon proof of financial responsibility and completion of a DUI program, have their driving privileges reinstated.³¹ If the offense results in bodily injury, however, the term of the suspension is typically one year, and the same reinstatement provisions apply.³²

Arrest for a second DUI offense triggers a one-year suspension.³³ Conviction for that second offense, so long as it does not result in injury, generally leads to a two-year suspension.³⁴ The offender may receive a restricted license after one year if he or she meets certain criteria.³⁵

Conviction for a third DUI offense that does not result in injury leads to a three-year license suspension.³⁶ The offender may obtain a restricted license after one year if he or she meets certain requirements.³⁷ If the offense results in injury, the suspension lasts for five years, but the offender may still apply for the restricted license.³⁸ Conviction for a fourth DUI offense carries the same penalty, except the original suspension lasts for four years.³⁹

25. *Id.* (leaving open the possibility of dual court and department-imposed suspensions by not specifying that only one type of suspension may be in effect at a given time).

26. CAL. VEH. CODE § 13352(a)(1) (providing the varying length of suspension based on prior convictions); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 91, at 7 (Apr. 14, 2009).

27. CAL. VEH. CODE § 13353.2(a)(1) (West 2010).

28. *Id.* § 13353.2(b)(2).

29. *Id.* § 13353.7(a)(1)-(3). A restricted license allows the driver to drive to and from certain places, such as the DUI program, school, work, etc. *Id.* § 13352.5(c).

30. *Id.* § 13352(a)(1).

31. *Id.*

32. *Id.* § 13352(a)(2).

33. *Id.* § 13353.3(b)(2).

34. *Id.* § 13352(a)(3).

35. *Id.* § 13352(a)(3)(A)-(F).

36. *Id.* § 13352(a)(5).

37. *Id.* § 13352.5. Requirements include enrollment in and completion of a DUI program, submission of proof of financial responsibility, completion of twelve months of the suspension, and payment of applicable fees. *Id.*

38. *Id.* § 13352(a)(6).

39. *Id.* § 13352(a)(4).

B. Ignition Interlock Devices

Ignition interlock devices (IIDs) have been in use for several years; in fact, California law requires their use under certain circumstances.⁴⁰ Under prior law, the Legislature authorized courts to require the use of IIDs when the circumstances warranted such measures.⁴¹ Courts could even require a first-time DUI offender to install an IID on any vehicle the offender owned or operated.⁴² When determining whether to require the use of an IID for a first-time offender, the Legislature required courts to seriously consider high blood alcohol content (BAC) or multiple other violations.⁴³ While the Legislature granted courts the discretion to set a time requirement for the use of the IID, it capped that time requirement at three years.⁴⁴

The Legislature also required courts to order the use of an IID when an offender was convicted of driving with a suspended license, provided that the license was suspended as a consequence of a previous DUI conviction.⁴⁵ The Legislature again capped the time the court could require the IID at three years.⁴⁶ The courts could also require installation of an IID as a condition of probation.⁴⁷ Failure to comply could result in a violation of probation and additional jail time.⁴⁸ Additionally, prior law prohibited “attempt[ing] to remove, bypass, or tamper with an IID.”⁴⁹

40. *Id.* § 23575(a)(2) (West 2000) (mandating IID installation when an offender is convicted for driving on a suspended license where the license suspension is the result of a DUI conviction). Ignition interlock devices are wired to a vehicle’s ignition and require the driver to blow into the device before starting the vehicle. Joseph Marutollo, *No Second Chances: Leandra’s Law and Mandatory Alcohol Ignition Interlocks for First-Time Drunk Driving Offenders*, 30 PACE L. REV. 1090, 1091 (2010). The device detects the presence of alcohol on the driver’s breath. *Id.* If the device detects more alcohol than the preset limit allows, the vehicle will not start. *Id.* Some systems require the driver to provide breath samples while driving, in addition to providing a sample before starting the vehicle, which prevents drivers from drinking once they have already started the vehicle. *Id.* at 1092. A common feature of such a system is to continuously blow the vehicle’s horn if the device detects alcohol on the driver’s breath after successfully starting the vehicle by having a sober person provide the sample, or leaving the vehicle on while getting drunk, etc. *Id.* Typically, a government-supervised private company installs the device, and the DUI offender pays the costs associated with installation and maintenance. JAY M. ZITTER, VALIDITY, CONSTRUCTION, AND APPLICATION OF IGNITION INTERLOCK LAWS, 15 A.L.R.6th 375, 375 (2006).

41. CAL. VEH. CODE § 23575 (West 2000) (authorizing a court to mandate installation of an IID as appropriate).

42. *Id.* § 13352(a)(1) (West 2010).

43. *Id.*

44. *Id.* § 23575(a)(2) (West 2000).

45. *Id.*

46. *Id.* § 23575(a)(1).

47. The statute allows the court to require IID installation “in addition to any other provisions of law.” CAL. VEH. CODE § 23575(a)(1). The court may also impose probation for a DUI conviction. *Id.* § 23538(a)(1). Probation includes “any ... terms and conditions imposed by the court.” *Id.* Thus, when read together, these statutes allow the court to require IID installation as a condition of probation.

48. *Id.* § 23602.

49. *Id.* § 23575(f)(2).

C. Chapter 193's Drafting Error

In 2009, the Legislature passed Chapter 193, establishing a pilot DUI program in four California counties.⁵⁰ The bill took effect on July 1, 2010.⁵¹ It provided that a driver convicted of DUI could legally operate his or her vehicle upon installing an IID and meeting certain conditions.⁵² If the offender took the necessary steps, he or she could obtain a restricted driver's license.⁵³

The intent of Chapter 193 was to allow convicted DUI offenders to obtain restricted drivers' licenses sooner, provided they installed IIDs.⁵⁴ The goal was simple: "get more people driving with a valid yet restricted license."⁵⁵ However, an error in the drafting of the bill required offenders to serve their full administrative suspension, even though their criminal suspensions had ended.⁵⁶ This simple mistake in drafting undermined the point of the bill, because ultimately, the suspension was no shorter.⁵⁷ The Legislature enacted Chapter 30 in an effort to correct the defect and effectuate the intent of Chapter 193.⁵⁸

III. CHAPTER 30

Chapter 30 changes California law in two key ways.⁵⁹ First, the bill provides for the simultaneous termination of the criminal and administrative suspensions.⁶⁰ The DMV may issue a restricted driver's license when both suspensions arise out of the same incident and when the offender installs an IID, satisfies all other conditions of license suspension, and is otherwise eligible for a restricted license.⁶¹ Second, the bill requires the DMV to issue a restricted driver's license only if an offender completes at least twelve months of his or her license suspension.⁶² These changes are intended to clarify the timing provisions of previously enacted Chapter 193.⁶³

50. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 91, at 1 (Apr. 14, 2009) (stating the program is in effect in Sacramento, Los Angeles, Alameda, and Tulare Counties).

51. *Id.*

52. *See id.* (discussing the provisions of Chapter 193 and the requirements for obtaining a restricted license).

53. *Id.*

54. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at F (Apr. 13, 2010).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *See* CAL. VEH. CODE §§ 13352.5, 13353.3(2)(B) (amended by Chapter 30) (describing the way in which Chapter 30 amends the Vehicle Code).

60. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at E (Apr. 13, 2010).

61. CAL. VEH. CODE § 13353.3(2)(B) (amended by Chapter 30).

62. *Id.* § 13352.5(a)(3) (amended by Chapter 30).

63. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at A, F (Apr. 13, 2010).

IV. ANALYSIS

As enacted, Chapter 193 was virtually useless.⁶⁴ While it required courts to terminate an offender's suspension, the administrative DMV suspension remained in place.⁶⁵ Since the intent of Chapter 193 was to shorten suspension times, it had no real effect as enacted.⁶⁶ To the extent that Chapter 30 corrects the defect in Chapter 193, it is quite significant.⁶⁷

At the heart of Chapter 30 is the idea that allowing convicted drunk drivers to get back on the road, subject to restrictions, is a good thing.⁶⁸ While this may seem like an odd proposition, in reality, license suspension might not be the most effective way to combat DUI.⁶⁹ The idea behind license suspension is that it "prevents all driving, 'separating the drinking from the driving.'"⁷⁰ However, this fails to address the source of the offender's problem: substance misuse.⁷¹ Moreover, enforcing license suspensions can be difficult.⁷² While driver's license suspension may not be the ultimate way to deter and punish DUI, it has historically been a somewhat useful tool.⁷³ Chapter 30 allows offenders to receive reinstated driving privileges, but retains license suspension as part of the offender's punishment.⁷⁴ Thus, it retains a useful tool in combating DUI, but does not rely solely on this approach.⁷⁵

Chapter 30 also preserves the provision requiring offenders to install IIDs in order to obtain restricted licenses.⁷⁶ This approach to addressing the DUI problem shows promise.⁷⁷ Other states have implemented successful programs requiring IIDs for DUI offenders.⁷⁸ In Arkansas, offenders who installed IIDs were less

64. See *id.* at F (discussing the error in Chapter 193 and the resulting failure to achieve its intended outcome).

65. *Id.*

66. See *id.* at C (explaining that Chapter 193 only addressed the criminal suspension, thereby leaving in place the administrative suspension).

67. See *id.* at F (stating that Chapter 30 is an urgency statute).

68. *Id.* (stating that the point of Chapter 193 was to allow more convicted offenders to drive on valid restricted licenses sooner, and that Chapter 30 makes this possible).

69. Robert L. DuPont et al., *Leveraging the Criminal Justice System to Reduce Alcohol- and Drug-Related Crime: A Review of Three Promising and Innovative Model Programs*, 44 PROSECUTOR 38, 39 (2010).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at B (Apr. 13, 2010) (indicating that the administrative and criminal suspensions will apply, but will terminate at the same time upon the installation of an ignition interlock device and satisfaction of all other applicable conditions).

75. See CAL. VEH. CODE § 13352.5 (amended by Chapter 30) (providing that both license suspension and IID installation will be elements of DUI enforcement).

76. *Id.* § 13352.5(h) (amended by Chapter 30).

77. Marutollo, *supra* note 40, at 1097.

78. *Id.*

than half as likely to reoffend within three years.⁷⁹ Maryland's IID program also showed a decrease in recidivism.⁸⁰ An Ohio study illustrated the success of IIDs versus the success of license suspension.⁸¹ Offenders who had their licenses suspended were three times as likely to reoffend as those who installed IIDs.⁸² Thus, while Chapter 30 allows drivers to obtain restricted drivers' licenses more quickly, California is moving away from an arguably ineffective tool towards one that is statistically more effective.⁸³

While IIDs seem to be a promising tool in the battle against DUI offenses, there are some legitimate concerns with the efficacy of IID programs.⁸⁴ A DUI offender required to install an IID may lie and claim that he or she does not own a car, or he or she may borrow a friend's car that does not have an IID.⁸⁵ The IID may read a false positive due to mouthwash or breath mints, causing inconvenience to someone who is not breaking the law.⁸⁶ IIDs also share a fundamental problem with license suspension in that they do not directly address offenders' substance abuse problems.⁸⁷ While there may be some legitimate criticism, however, statistics support the proposition that IIDs are more effective than suspending drivers' licenses.⁸⁸

V. CONCLUSION

Driving under the influence is a serious problem in California.⁸⁹ For this reason, the Legislature is actively creating, developing, and changing DUI laws with bills like Chapter 193.⁹⁰ However, a law is not useful if a drafting error renders it ineffective.⁹¹ This was the case before Chapter 30.⁹² Fortunately, the

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. See generally SENATE PUBLIC SAFETY COMMITTEE, COMMITTEE ANALYSIS OF SB 895, at 2 (Apr. 14, 2010) (stating that Chapter 30 allows offenders to obtain restricted licenses more quickly); see also Marutollo, *supra* note 40, at 1097 (discussing the statistics related to the efficacy of IID programs in other states).

84. DuPont et al., *supra* note 69, at 39.

85. *Id.*

86. Matt Kelley, *A New Strategy on Drunk Driving*, CRIMINAL JUSTICE, July 10, 2009, available at http://criminaljustice.change.org/blog/view/a_new_strategy_on_drunk_driving (on file with the *McGeorge Law Review*).

87. DuPont et al., *supra* note 69, at 39.

88. Marutollo, *supra* note 40, at 1097.

89. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 91, at 4 (Apr. 14, 2009) (stating, "DUI has proven to be an enormous problem in California. In 2007, there were 203,866 DUI arrests made statewide DUI drivers caused 53,261 collisions, resulting in the death of 1501 people").

90. *Id.* (indicating that a goal of Chapter 193 was to respond to California's DUI problem).

91. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 895, at E (Apr. 13, 2010) (stating that under Chapter 193, offenders still had to serve the full administrative suspension).

92. *Id.*

Legislature caught the error before Chapter 193 took effect and enacted Chapter 30 to correct it.⁹³

Courts and the DMV will still suspend licenses, and offenders will only be able to drive if they install IIDs.⁹⁴ This approach combines two tools in addressing the DUI problem in California.⁹⁵ Shifting from long driver's license suspensions to restricted licenses with IID conditions seems to be a promising way to combat DUI.⁹⁶ While it is unclear whether this approach will decrease DUI recidivism, if results are consistent with those in other states, California can expect to see success from its new legislation.⁹⁷

93. *Id.* at A.

94. *Id.* at F.

95. *See* DuPont et al., *supra* note 69, at 39 (discussing various tools used in combating DUI).

96. Kelley, *supra* note 86.

97. *See* Marutollo, *supra* note 40, at 1097 (discussing results from similar DUI programs in other states).