



1-1-1982

# Transportation and Motor Vehicles

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## Recommended Citation

University of the Pacific; McGeorge School of Law, *Transportation and Motor Vehicles*, 13 PAC. L. J. 787 (1982).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol13/iss2/35>

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# Transportation and Motor Vehicles

## Transportation and Motor Vehicles; driving under the influence

Penal Code §1463.18 (new); Vehicle Code §§13201.5, 13210, 23101 (Cal. Stats. 1980, c. 1004, §3, at —), 23102 (Cal. Stats. 1980, c. 1004, §5, at —), 23102.1, 23105, 23105 (Cal. Stats. 1980, c. 1004, §§8, 9, at —), 23106, 23106 (Cal. Stats. 1980, c. 1004, §§10, 11, at —) (repealed); §§1463.18, 14601.2, 23100, 23103.5, 23151, 23160, 23161, 23165, 23166, 23167, 23168, 23170, 23171, 23180, 23181, 23185, 23186, 23187, 23190, 23191, 23195, 23200, 23202, 23203, 23204, 23206, 23207, 23210, 23211, 23212, 23215, 23231, 23232, 23233, 23234, 23235, 23236 (new); §§11110, 12810, 13201, 13209, 13352, 13352, 13353, 13354, 14601, 14601.1, 40000.11, 40000.15 (amended); §§23101, 23102, 23102.2, 23102.3, 23101.4, 23107, 23121, 23121.5, 23122, 23122.5, 23123, 23123.5, 23123.6, 23125, 23126 (amended and renumbered as 23153, 23152, 23208, 23205, 23209, 23201, 23220, 23221, 23222, 23223, 23225, 23224, 23226, 23229, 23155 respectively). AB 7 (Hart); Stats. 1981, Ch 939

Support: California Highway Patrol; Department of Motor Vehicles

Opposition: American Civil Liberties Union

AB 348 (Levine); Stats. 1981, Ch 941

Support: California Highway Patrol

AB 541 (Moorhead); Stats. 1981, Ch 940

Source: Mothers Against Drunk Driving (MADD)

Support: California District Attorneys Association; Californians for Sober Highways; California Peace Officers' Association; California State Police Chiefs Association; California State Sheriffs Association; City of San Diego; Los Angeles City Attorney; Los Angeles County District Attorney

Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice; California Public Defenders Association

Each year in California, more than 73,000 people are injured and another 2500 killed by drinking drivers.<sup>1</sup> The concern over these statistics have brought about legislation designed to deter the practice of driving while intoxicated.<sup>2</sup> With the enactment of Chapters 939, 940,

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1. Sacramento Union, Feb. 12, 1981, at A12, col. 1.

2. See Healdsburg Tribune, Feb. 27, 1981, at 1, col. 1.

and 941, persons who drive while under the influence of an alcoholic beverage, a drug, or a combination of the two will find it more difficult to avoid a conviction for the offense of driving under the influence.<sup>3</sup> Furthermore, this legislation increases the penalties that may be imposed upon conviction.<sup>4</sup>

### Penalties

In an apparent effort to deter intoxicated<sup>5</sup> persons from driving,<sup>6</sup> Chapter 940 increases the penalties for persons convicted of driving under the influence of an alcoholic beverage,<sup>7</sup> any drug,<sup>8</sup> or any combination of the two (this violation will hereinafter be referred to as a misdemeanor DUI offense).<sup>9</sup> Chapter 940 also increases penalties for persons convicted of proximately causing death or bodily injury to persons while driving under the influence of an alcoholic beverage, any drug, or any combination of the two (this violation will hereinafter be referred to as a felony DUI offense).<sup>10</sup> The penalties for DUI offenses include the imposition of fines and sentences of imprisonment, the suspension,<sup>11</sup> revocation,<sup>12</sup> or restriction<sup>13</sup> of driving privileges and the impoundment of the motor vehicle.<sup>14</sup>

#### A. Fines and Sentences of Imprisonment—Probation

Existing law outlines minimum and maximum fines, sentences of imprisonment, or both for violations of misdemeanor and felony DUI offenses that vary in the amount of fine and time of imprisonment depending on the number of prior convictions the convicted person had

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3. Compare CAL. VEH. CODE §§23152(b), 23153(b), (c) with CAL. STATS. 1980, c. 1004, §§2, 4, 8, 10, at — (amending CAL. VEH. CODE §§23101, 23102, 23105, 23106).

4. See, e.g., CAL. VEH. CODE §§23160, 23180, 23200(a), 23206(a), (c); cf., CAL. STATS. 1980, c. 1004, §§2, 4, 7, 8, 10, at — (amending CAL. VEH. CODE §§23101, 23102, 23102.1, 23105, 23106).

5. See *Taylor v. Joyce*, 4 Cal. App. 2d 614, 615, 41 P.2d 967, 968 (1935) (definition of intoxicated).

6. See generally *Healdsburg Tribune*, Feb. 27, 1981, at 1, col. 1.

7. CAL. VEH. CODE §23151(a) (definition of alcoholic beverage).

8. *Id.* §312 (definition of drug).

9. See *id.* §40000.15. Compare *id.* §§23160, 23165, 23170 with CAL. STATS. 1980, c. 1004, §§4, 8, at — (amending CAL. VEH. CODE §§23102, 23105). See generally CAL. VEH. CODE §23152(c) (it is unlawful for persons addicted to any drug to drive unless they are participating in a methadone maintenance program).

10. Compare CAL. VEH. CODE §§23108, 23185, 23190 with CAL. STATS. 1980, c. 1004, §§2, 10, at — (amending CAL. VEH. CODE §§23101, 23106). See generally CAL. PENAL CODE §17(a) (definition of felony); CAL. VEH. CODE §23153.

11. CAL. VEH. CODE §13102 (definition of suspension).

12. *Id.* §13101 (definition of revocation).

13. See generally *id.* §§23161(b), 23166(b)(3) (the restriction may be that the person may only be allowed to drive his or her vehicle for employment purposes).

14. See generally *id.* §23195.

within the preceding five years.<sup>15</sup> Existing law also permits a court to grant probation in lieu of the statutory sentence to persons convicted of DUI offenses and to impose fines and sentences of imprisonment as conditions of probation.<sup>16</sup> Under prior law, the fines, sentences of imprisonment, and conditions of probation imposed on the convicted person were more severe if the person's previous conviction was for a violation of a felony DUI offense.<sup>17</sup> With the enactment of Chapter 940, the distinction between a previous misdemeanor DUI and a previous felony DUI conviction has been removed for the purpose of sentencing and determining conditions of probation.<sup>18</sup> In addition, Chapter 940 establishes a minimum probationary period of three years<sup>19</sup> and requires the court, unless otherwise provided by the Vehicle Code, to revoke the suspension of sentence and to revoke or terminate the convicted person's probation when that person has violated a condition of probation.<sup>20</sup> These new penalties will be discussed with reference to the specific offense committed by a defendant.

### 1. First-time Offenders of Misdemeanor DUI Offenses

Chapter 940 increases the penalties for a first conviction of a misdemeanor DUI offense<sup>21</sup> and establishes conditions for probation.<sup>22</sup> Under prior law, the convicted person could be subject to *either* imprisonment in a county jail ranging from forty-eight hours to six months, fined for an amount ranging from \$285<sup>23</sup> to \$500, or both.<sup>24</sup> With the enactment of Chapter 940, persons convicted of a first-time misdemeanor DUI offense are *required* to serve a jail sentence ranging from four days to six months *and* pay a fine ranging from \$375 to \$500.<sup>25</sup> In addition, the convicted person's driving privilege is to be suspended for

15. See generally CAL. VEH. CODE §§13209, 23160, 23165, 23170, 23180, 23185, 23190 (before sentencing a person upon a conviction of any DUI offense, the court must first obtain a record of the person's prior conviction of traffic violations from the Department of Motor Vehicles); CAL. STATS. 1980, c. 1004, §§3, 5, 9, 11, at — (amending CAL. VEH. CODE §§23101, 23102, 23105, 23106) (these sections, repealed by Chapter 940, would have reduced the minimum fines for convictions of misdemeanor and felony DUI offenses beginning July 1, 1982).

16. Compare CAL. VEH. CODE §§23161, 23166, 23171, 23181, 23186, 23191 with CAL. STATS. 1980, c. 1004, §§2, 4, 8, 10, at — (amending CAL. VEH. CODE §§23101, 23102, 23105, 23106).

17. See CAL. STATS. 1980, c. 1004, §§2(d), 4(e), 8(f), 10(d), at —.

18. Compare *id.* with CAL. VEH. CODE §§23165, 23166, 23186.

19. See CAL. VEH. CODE §23206(b).

20. See *id.* §23207. See generally *id.* §§23167, 23187.

21. Compare *id.* §23160(a), (c) with CAL. STATS. 1980, c. 1004, §§4, 8, at —.

22. See CAL. VEH. CODE §23161.

23. Compare CAL. STATS. 1980, c. 1004, §4(c), (d), (e), (f), at — with *id.* 1980, c. 1004, §8(d), (e), (f), (g), at — (the minimum fine imposed on persons convicted for driving under the influence of alcohol or alcohol and drug was \$355).

24. See CAL. STATS. 1980, c. 1004, §§4, 8, at —.

25. CAL. VEH. CODE §23160(a). See generally *id.* §23160(b) (the court may allow the time to be served on non-working days).

six months.<sup>26</sup> If the court grants probation to the convicted person in lieu of those sentences, however, the court must require as a condition of probation that the person participate in and successfully complete a driver improvement or treatment program for habitual users of alcohol or drugs, or both, as designated by the court.<sup>27</sup> The court must also impose as a condition of probation that the convicted person be subject to either confinement in a county jail for a period ranging from forty-eight hours to six months and payment of the prescribed fine *or* payment of the fine and a restriction<sup>28</sup> of the driving privilege for ninety days.<sup>29</sup>

## *2. Persons Convicted of Misdemeanor DUI Offenses With One Previous DUI Conviction*

Chapter 940 also increases the fines, sentences of imprisonment, conditions of probation, and penalties imposed as a condition of probation that may be imposed upon persons convicted of a misdemeanor DUI offense with *one* previous conviction of *either* a misdemeanor DUI or a felony DUI offense within the preceding five years.<sup>30</sup> Under Chapter 940, the convicted person is subject to confinement in a county jail for a period ranging from ninety days to one year and payment of a fine ranging from \$375 to \$1000.<sup>31</sup> If the court grants probation to the convicted person, however, the court, as a condition of probation, *must* impose (1) confinement in a county jail for a period ranging from ten days to one year and payment of the prescribed fine or (2) confinement in a county jail for a period ranging from two days to one year, payment of the prescribed fine, a restriction of the driving privilege for one year and participation in an approved<sup>32</sup> alcohol rehabilitation program for at least one year.<sup>33</sup> In addition, if the convicted person is granted probation with the condition that the person participate in the approved program, failure to successfully complete the program will result in revocation or termination of probation.<sup>34</sup> Upon failure of the

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26. *Id.* §23160(c).

27. *Id.* §23161.

28. See notes 12, 14 *supra*.

29. CAL. VEH. CODE §23161.

30. Compare *id.* §§23165, 23166 with CAL. STATS. 1980, c. 1004, §§4, 8, at — (amending CAL. VEH. CODE §§23102, 23105).

31. CAL. VEH. CODE §23165.

32. CAL. HEALTH & SAFETY CODE §11837.4 (approval of program).

33. *Id.* §23166. See generally *id.* §23168 (any person who is required to participate in an approved alcohol rehabilitation program as a condition of probation may petition the court to have the restriction of the person's driving privilege removed after six months of participation in the treatment program).

34. *Id.* §23167.

condition, the court is to either revoke the suspension of the sentence *or* grant a new term of probation on the condition that the person be confined in a county jail for a minimum of thirty days.<sup>35</sup> Furthermore, regardless of the court's decision, the court must order the Department of Motor Vehicles (hereinafter referred to as the Department)<sup>36</sup> to suspend the driving privilege of the person who violated the condition of probation.<sup>37</sup>

### 3. *Persons Convicted of Misdemeanor DUI Offenses with Two or More Previous DUI Convictions*

Chapter 940 establishes fines, sentences of imprisonment and conditions of probation imposed on persons convicted of a misdemeanor DUI offense with two or more previous convictions of misdemeanor or felony DUI offenses within the preceding five years.<sup>38</sup> Under Chapter 940, the convicted person is subject to confinement in a county jail for a period ranging from 120 days to one year and payment of a fine ranging from \$375 to \$1000.<sup>39</sup> In addition, Chapter 940 requires the convicted person to be subject to a *mandatory* revocation of the driving privilege for a minimum of three years.<sup>40</sup> If the court grants probation to the convicted person, however, the court must impose as a condition of probation that the person be subject to the prescribed sentence of imprisonment, payment of the prescribed fine, and participation in an approved alcohol rehabilitation program for at least one year if the person has not previously completed this type of program with success.<sup>41</sup>

### 4. *First-time Offenders of Felony DUI Offenses*

Chapter 940 increases the minimum fine for first-time offenders of a felony DUI offense<sup>42</sup> and establishes conditions for their probation.<sup>43</sup> Under Chapter 940, the convicted person is subject to confinement in either a *state prison* or a county jail for a period ranging from ninety days to one year and payment of a fine ranging from \$375 to \$1000.<sup>44</sup>

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35. *Id.*

36. *See id.* §290 (definition of Department).

37. *Id.* §23167. *See generally id.* §13352(a).

38. *See id.* §§23170, 23171.

39. *Id.* §23170.

40. *See id.* §§13352(a)(5) (the privilege will not be reinstated until the person files proof of ability to respond in damages to any person from the operation of the motor vehicle), 23170. *See generally id.* §23171(b).

41. *See id.* §23171.

42. *Compare id.* §23180 with CAL. STATS. 1980, c. 1004, §§2, 10, at — (amending CAL. VEH. CODE §§23101, 23106) (prior to the enactment of Chapter 940, the minimum fine was \$355).

43. *See* CAL. VEH. CODE §23181.

44. *Id.* §23180.

If the court grants probation to the convicted person, however, the court must impose as a condition of probation that the person be subject to confinement in a county jail for a period ranging from five days to one year and payment of the prescribed fine.<sup>45</sup>

*5. Persons Convicted of Felony DUI Offenses With One Previous DUI Conviction*

Under Chapter 940, a convicted person with one previous conviction of either a misdemeanor DUI or a felony DUI offense within the preceding five years is subject to confinement in either a *state prison* or a county jail for a period ranging from 120 days to one year and payment of a fine ranging from \$375 to \$5000.<sup>46</sup> If the court grants probation to the convicted person, however, the court must impose as a condition of probation that the person be subject to either (1) the same fine and period of confinement as the original sentence<sup>47</sup> or (2) confinement in the county jail for a period ranging from thirty days to one year, payment of a fine ranging from \$375 to \$1000, a restriction of the driving privilege for three years, and participation in an approved alcohol rehabilitation program for at least one year.<sup>48</sup> In addition, if the convicted person is granted probation upon the condition that he or she participate in the approved program, failure to successfully complete the program will result in revocation or termination of probation.<sup>49</sup> Upon failure of the condition, the court is to either revoke the suspension of the sentence or grant a new term of probation on the condition that the person be confined in a county jail for a minimum of ninety days.<sup>50</sup> In addition, regardless of the court's decision, the court must order the Department to suspend the driving privilege of the person who violated the condition of probation.<sup>51</sup>

*6. Persons Convicted of Felony DUI Offenses With Two or More Previous DUI Convictions*

Under Chapter 940, a convicted person with two or more previous convictions of misdemeanor or felony DUI offenses within the preced-

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45. *Id.* §23181.

46. *Id.* §23185.

47. Since the penalty imposed as a condition of probation is the same as that of the prescribed sentence, persons granted probation under this alternative will face a harsher penalty than the original sentence if the person violates any condition of probation. In addition, any fine or sentence of imprisonment imposed as a condition of probation that has the same maximum limits may subject the convicted person to a harsher penalty than the original sentence.

48. *Id.* §23186.

49. *Id.* §23187.

50. *Id.*

51. *Id.* §§13352(a)(4), 23187.

ing five years is subject to confinement in *state prison* for a term of two, three, or four years and payment of a fine ranging from \$1000 to \$5000.<sup>52</sup> In addition, Chapter 940 requires the convicted person to be subject to a *mandatory* revocation of the driving privilege for a minimum of five years.<sup>53</sup> If the court grants probation to the convicted person, however, the court must impose as a condition to probation that the person be subject to confinement in the county jail for at least one year, payment of a fine ranging from \$375 to \$5000 and participation in an approved alcohol rehabilitation program for at least one year if the person has not previously successfully completed this type of program.<sup>54</sup>

### *B. Revocation and Suspension of The Driving Privilege*

Chapter 940 increases the applicability of suspensions and revocations of the driving privilege for persons convicted of a misdemeanor DUI offense.<sup>55</sup> Under prior law, the Department was not permitted to suspend or revoke the driving privilege of persons convicted of a misdemeanor DUI offense if the court had certified to the Department that the convicted person consented to and participated in a public or private program for problem drinking for at least one year.<sup>56</sup> With the enactment of Chapter 940, the Department is now prohibited from suspending or revoking the driving privilege of those convicted persons willing to participate in problem drinking programs *only* in those instances where the convicted person has one prior conviction of *either* a misdemeanor DUI or a felony DUI offense within the preceding five years.<sup>57</sup> In addition, Chapter 940 provides for longer periods of the suspension of the driving privilege for persons convicted of misdemeanor DUI offenses involving the addiction or use of drugs only by removing the maximum six month limit for these suspensions.<sup>58</sup>

Chapter 940 also increases the penalties and conditions of probation on persons who violate the suspension of their driving privilege.<sup>59</sup>

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52. *Id.* §23190.

53. *See id.* §§13352(a)(6) (the privilege will not be reinstated until the person files proof of ability to respond in damages to any person injured from the operation of the motor vehicle), 23190. *See generally id.* §23191(b).

54. *Id.* §23191.

55. *Compare id.* §13201 with CAL. STATS. 1975, c. 1133, §1, at 2804 (amending CAL. VEH. CODE §13201); CAL. VEH. CODE §13352.5 with CAL. STATS. 1978, c. 954, §2, at 2954.

56. CAL. STATS. 1978, c. 954, §2, at 2954.

57. *See* CAL. VEH. CODE §13352.5(a). *See generally id.* §13352(a)(3), (4).

58. *Compare id.* §13201 with CAL. STATS. 1975, c. 1133, §1, at 2804 and CAL. STATS. 1977, c. 890, §1, at 2663 (amending CAL. VEH. CODE §13201.5).

59. *Compare* CAL. VEH. CODE §14601.2(d)(1), (2) with CAL. STATS. 1972, c. 618, §140, at 1148 (amending CAL. VEH. CODE §14601).

Under Chapter 940, persons convicted of driving with knowledge of a current suspension of their driving privilege will be subject to imprisonment in the county jail for a period ranging from ten days to six months for a first violation, and from thirty days to one year for a second and subsequent violations.<sup>60</sup> In addition, Chapter 940 requires, as a condition of probation, that the convicted person serve a *mandatory* jail sentence of at least ten days.<sup>61</sup>

### *C. Impoundment*

Under prior law, if a person under the age of twenty-one was convicted of a misdemeanor DUI offense and the vehicle used in the violation was registered to that person, the vehicle was to be impounded at the owner's expense for a period of time ranging from one to thirty days.<sup>62</sup> Chapter 941 authorizes the court in its discretion to impound any vehicle registered to *any* person convicted of either a misdemeanor or a felony DUI offense that was used in the violation.<sup>63</sup> The vehicle may still be impounded at the registered owner's expense for a period ranging from one to thirty days.<sup>64</sup>

### *Absolvement, Suspension of Sentence, and Striking of Prior Convictions*

Chapter 940 limits a court's ability to relieve a person of a sentence imposed upon a conviction of either a misdemeanor DUI or a felony DUI offense.<sup>65</sup> Under prior law, a court was prohibited from absolving any person convicted of a DUI offense of the obligation of serving the minimum time in jail or paying the minimum fine if the person was convicted of any DUI offense within the preceding five years.<sup>66</sup> Chapter 940 further limits the court's power by prohibiting the court to absolve any person convicted of a DUI offense, *regardless of the person's previous conviction record*.<sup>67</sup> Chapter 940 also prohibits a court from suspending the execution of a sentence imposed on persons convicted

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60. CAL. VEH. CODE §14601.2(d)(1), (2) (the penalty applies to a second or subsequent conviction within *seven* years of the preceding conviction).

61. *Id.* §14601.2(e).

62. CAL. STATS. 1980, c. 1004, §§4(i), 8(j), at — (amending CAL. VEH. CODE §§23102, 23105).

63. *See* CAL. VEH. CODE §23195 (the person's age is no longer significant in this impoundment order).

64. *Compare id. with* CAL. STATS. 1980, c. 1004, §§4(i), 8(j), at —.

65. *Compare* CAL. VEH. CODE §§23161, 23166, 23171, 23181, 23186, 23191 *with* CAL. STATS. 1980, c. 1004, §§2(e), 4(f), 8(g), 10(e), at — (amending CAL. VEH. CODE §§23101, 23102, 23105, 23106). *See generally* CAL. VEH. CODE §§23200, 23202, 23206.

66. CAL. STATS. 1980, c. 1004, §§2(e), 4(f), 8(g), 10(e), at —.

67. *See* CAL. VEH. CODE §23206(c).

of any DUI offense.<sup>68</sup> In addition, Chapter 940 removes *all* exceptions that might grant a court the authority to strike any prior conviction of a DUI offense for the purpose of determining a sentence.<sup>69</sup>

### *Alcohol-Blood Level*

Under prior law, persons who had, by weight, one-tenth of one percent or more of alcohol in their blood were presumed to be under the influence of an alcoholic beverage while driving.<sup>70</sup> Chapter 939 eliminates *this* presumption<sup>71</sup> and elevates the significance of the findings of the alcohol-blood test by declaring it unlawful for any person to drive a vehicle with one-tenth of one percent or more, by weight, of alcohol in his or her blood.<sup>72</sup> Any person convicted of this offense will be subject to the same penalty of fines and imprisonment as a person convicted of driving under the influence of an alcoholic beverage or a combination of an alcoholic beverage and any drug.<sup>73</sup> Thus, the enactment of Chapter 939 eliminates the prosecutor's burden of proof when the accused is found to have one-tenth of one percent, by weight, of alcohol in their blood.

Under existing law, any person who drives upon the highway<sup>74</sup> or in areas open to the general public is deemed to have consented to a chemical test of blood, breath, or urine for the purpose of determining the alcoholic content of the person's blood if that person is lawfully arrested for allegedly violating either a misdemeanor DUI or a felony DUI offense.<sup>75</sup> The chemical test is incidental to a lawful arrest and may be administered by a police officer when the officer has reasonable cause to believe that the person committed a DUI offense.<sup>76</sup> The arrested person, however, has a right to choose the particular chemical test to be administered.<sup>77</sup> Chapter 939 limits that choice in situations where the arrested person is first transported to a medical facility for needed medical treatment.<sup>78</sup> In these situations, the arrested person's choice of chemical tests is limited to only those tests which are avail-

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68. Compare *id.* §23206(a) with CAL. STATS. 1980, c. 1004, §7, at — (amending CAL. VEH. CODE §23102.1). See generally CAL. VEH. CODE §23202.

69. Compare CAL. VEH. CODE §23200(a) with CAL. STATS. 1980, c. 1004, §§2(f), 4(g), 8(h), 10(f), at —.

70. CAL. STATS. 1969, c. 231, §1(a)(3), at 565 (enacting CAL. VEH. CODE §23126).

71. Compare *id.* with CAL. VEH. CODE §23155.

72. CAL. VEH. CODE §§23152(b), 23153(b).

73. *Id.*

74. See *id.* §360 (definition of highway). See generally *id.* §§591, 592 (highway exceptions).

75. *Id.* §13353(a)(1).

76. *Id.*

77. See *id.* §13353(a)(2).

78. See *id.* §13353(a)(3).

able at the facility.<sup>79</sup> In addition, Chapter 939 declares that a person who is dead is deemed not to have withdrawn consent to the chemical tests.<sup>80</sup>

*Substitution of Lesser Offenses*

Chapter 941, in establishing procedures for the substitution of lesser offenses for DUI charges, increases the possible consequences for a conviction of the lesser offense.<sup>81</sup> The additional consequences imposed by Chapter 941 apparently will make the use of plea bargaining for a lesser offense less desirable than under prior law. Under existing law, persons accused of a DUI offense are often permitted to avoid conviction of that offense by pleading guilty or *nolo contendere*<sup>82</sup> to a charge of reckless driving.<sup>83</sup> With the enactment of Chapter 941, the prosecution, upon agreement to the accused's plea of guilty or *nolo contendere* to a charge of misdemeanor reckless driving, must submit a written statement that presents facts, as an offer of proof, to show whether the defendant had consumed any alcoholic beverage, ingested or administered any drug, or both in connection with the offense.<sup>84</sup> If the statement is uncontested<sup>85</sup> or if the court finds that the defendant did consume an alcoholic beverage, ingest or administer a drug, or both in connection with the offense, the resulting conviction will be treated as a prior DUI conviction for the purposes of (1) imposing fines and sentences of imprisonment in *subsequent* misdemeanor DUI offenses<sup>86</sup> and (2) prohibiting the court to strike any prior DUI convictions of misdemeanor or felony DUI offenses.<sup>87</sup> In addition, if the prosecutor makes a motion to dismiss or a motion to substitute a lesser offense for a charge of a DUI offense, Chapter 941 requires the prosecutor to fully explain the reasons for these actions in a written statement that will become part of the court record.<sup>88</sup> The court, in dismissing a DUI

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79. *See id.*

80. *See id.* §13353(a)(5).

81. *See generally id.* §§23103.5, 23152, 23153.

82. *See* BLACK'S LAW DICTIONARY 945 (5th ed. 1979) (definition of *nolo contendere*).

83. Telephone conversation with John Rueda, Legislative Assistant to Assemblyman Levine, (Sept. 17, 1981) (notes on file at the *Pacific Law Journal*). *See generally* CAL. VEH. CODE §23103.

84. *See* CAL. VEH. CODE §23103.5(a).

85. *See generally id.* §23103.5(b), (c) (the defendant has the right to contest the written statement of the prosecution and must be advised of the consequences of the conviction should he or she be found to have consumed an alcoholic beverage, ingested or administered a drug, or both in connection with the offense).

86. *Id.* §§23103.5(c), 23165.

87. *Id.* §§23103.5(c), 23200(a) (the court is prohibited from striking only those prior DUI convictions which occurred within the past five years).

88. *Id.* §23212 (the reasons may include, but need not be limited to, problems of proof, the interests of justice, the appropriateness of other charges and any other pertinent reasons).

charge, substituting the DUI charge with an allegation of a lesser offense, or dismissing or striking an allegation of a prior DUI conviction, must also specify the reasons for its action on the court record.<sup>89</sup>

### *Miscellaneous*

Under prior law, the misdemeanor and felony offenses of driving under the influence of an intoxicating liquor or under the combined influence of an intoxicating liquor<sup>90</sup> and any drug were distinguished from the misdemeanor and felony offenses of driving under the influence of any drug.<sup>91</sup> Chapter 940 replaces the term intoxicating liquor with the term alcoholic beverage<sup>92</sup> and consolidates the separate offenses into the misdemeanor and felony offenses of DUI.<sup>93</sup> Under prior law, before a person could be convicted of a felony DUI offense, the accused person first had to be found to have committed an act forbidden by law or to have neglected a duty imposed by law in the driving of the vehicle which was the proximate cause of death or bodily injury to another.<sup>94</sup> Chapter 940 lessens the prosecution's burden of proof by stating that in proving the person neglected any duty imposed by law, it is not necessary to prove that any specific section of the Vehicle Code was violated.<sup>95</sup> In addition, Chapter 940 declares that a conviction of any offense, which would be considered a DUI offense in this state, committed in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada will be treated as a DUI conviction under the Vehicle Code.<sup>96</sup>

### *Conclusion*

Chapters 939, 940, and 941 make many significant changes in the Vehicle Code that may be effective in reducing the number of drinking drivers. Chapters 940 and 941 increase the penalties in convictions of DUI offenses by increasing the fines and sentences of imprisonment

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89. *Id.*

90. *People v. Rosseau*, 100 Cal. App. 245, 247, 279 P. 819, 820 (1929) (definition of intoxicating liquor).

91. Compare CAL. STATS. 1980, c. 1004, §§2, 10, at — (amending CAL. VEH. CODE §§23101, 23106) with CAL. STATS. 1980, c. 1004, §§4, 8, at — (amending CAL. VEH. CODE §§23102, 23105).

92. Compare CAL. VEH. CODE §§23152(a), 23153(a) with CAL. STATS. 1980, c. 1004, §§2, 4, 8, 10, at —.

93. Compare CAL. VEH. CODE §§23152(a), 23153(a) with CAL. STATS. 1980, c. 1004, §§2, 4, 8, 10, at —. (Chapter 940 also amends and renumbers many sections of the Vehicle Code to conform with this consolidation and to reorganize that portion of the Vehicle Code which deals with DUI offenses).

94. See CAL. STATS. 1980, c. 1004, §§2, 10, at —.

95. Compare *id.* with CAL. VEH. CODE §23153(c).

96. CAL. VEH. CODE §23210.

imposed upon the convicted person,<sup>97</sup> increasing the applicability and effectiveness of revocations and suspensions of the convicted person's driving privilege,<sup>98</sup> and by granting the court authority to impound any vehicle registered to the convicted person that was used in the violation.<sup>99</sup> In addition, Chapter 940 increases the fines and sentences of imprisonment as a condition of probation<sup>100</sup> and prohibits the court from absolving any person convicted of a DUI offense,<sup>101</sup> from suspending the convicted person's execution of sentence,<sup>102</sup> and from striking any prior convictions of DUI offenses for the purpose of sentencing.<sup>103</sup>

Chapters 939 and 941 make it difficult for persons who drive under the influence to escape a conviction of a DUI offense and its consequences.<sup>104</sup> Furthermore, Chapter 939 declares it unlawful for any person to be driving when the person has one-tenth of one percent or more, by weight of alcohol in his or her blood without requiring further proof that the person was under the influence.<sup>105</sup> While Chapter 941 does not forbid plea bargaining to lesser offenses, it permits the conviction of a misdemeanor reckless driving offense to be treated as a prior DUI conviction for certain purposes if the court determines that the defendant consumed an alcoholic beverage, ingested or administered a drug, or both in connection with the offense.<sup>106</sup> Chapter 940 also consolidates and reorganizes many sections of the Vehicle Code,<sup>107</sup> requires less proof for convictions of felony DUI offenses,<sup>108</sup> and declares that convictions of DUI type offenses in other states will be treated as DUI convictions under the Vehicle Code.<sup>109</sup>

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97. Compare *id.* §§23160(a), 23165, 23170, 23180, 23185, 23190 with CAL. STATS. 1980, c. 1004, §§2, 4, 8, 10, at — (amending CAL. VEH. CODE §§23101, 23102, 23105, 23106).

98. See CAL. VEH. CODE §§14601.2(d)(1), (2), 23180, 23203(a). Compare *id.* §13201 with CAL. STATS. 1975, c. 1133, §1, at 2804; compare CAL. VEH. CODE §13352(a)(1), (2) with CAL. STATS. 1980, c. 1004, §1, at —; compare CAL. VEH. CODE §13352.5 with CAL. STATS. 1978, c. 954, §2, at 2954.

99. CAL. VEH. CODE §23195.

100. Compare *id.* §§23161(a), 23166(a), 23171(a), 23186(a) with CAL. STATS. 1980, c. 1004, §§2, 4, 8, 10, at —.

101. See CAL. VEH. CODE §23206(c).

102. Compare *id.* §23206(a) with CAL. STATS. 1980, c. 1004, §7, at — (amending CAL. VEH. CODE §23102.1). See generally CAL. VEH. CODE §23202.

103. Compare CAL. VEH. CODE §23200(a) with CAL. STATS. 1980, c. 1004, §§2, 4, 8, 10, at —.

104. See generally CAL. VEH. CODE §§23103.5, 23152(b), 23153(b).

105. *Id.* §§23152(b), 23153(b).

106. *Id.* §§23103.5(c), 23165, 23200(a).

107. See *e.g.*, CAL. VEH. CODE §§23152(a), 23153(a); *cf.*, CAL. STATS. 1980, c. 1004, §§2, 4, at — (amending CAL. VEH. CODE §§23201, 23102).

108. Compare CAL. VEH. CODE §23153(c) with CAL. STATS. 1980, c. 1004, §§2, 10, at — (amending CAL. VEH. CODE §§23101, 23106).

109. CAL. VEH. CODE §23210.

## Transportation and Motor Vehicles; violations—suspension of driving privilege

Vehicle Code §§13365, 14904, 40509 (amended).

SB 466 (Russell); STATS. 1981, Ch 584

(Sections 1 and 3 *effective July 1, 1982*)

Support: California Highway Patrol; Department of Finance; Department of Motor Vehicles

Prior law permitted the Department of Motor Vehicles (hereinafter referred to as the Department)<sup>1</sup> to suspend<sup>2</sup> or revoke<sup>3</sup> the driving privilege of any person whose record contained notifications of two or more violations of either (1) a written promise to appear before a court or a person authorized to receive a deposit of bail<sup>4</sup> or (2) an order to appear in court or to pay a fine for conviction of an infraction.<sup>5</sup> Chapter 584 eliminates the Department's authority to *revoke* a person's driver's license in these situations by providing that the Department, upon receipt of a notification of *one* of the specified violations, must *suspend* the driving privilege of any person when his or her record already contains one or more prior notifications.<sup>6</sup> Chapter 584 also prevents the Department from mailing notice of the suspension of the driving privilege until sixty days after its receipt of the notification of the violation.<sup>7</sup> Furthermore, the suspension cannot be effective until ninety days after the date of receipt of the notification by the Department.<sup>8</sup> In addition, under prior law, the magistrate or clerk of the court was required to notify the Department of the specified violation between thirty and sixty days after issuance of an arrest warrant.<sup>9</sup> Chapter 584 now requires the court to give notice to the Department within sixty days of the person's failure to appear.<sup>10</sup> These new provisions will not become operative until July 1, 1982.<sup>11</sup>

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1. See CAL. VEH. CODE §290 (definition of Department).

2. *Id.* §13102 (definition of suspension).

3. *Id.* §13101 (definition of revocation).

4. See CAL. STATS. 1971, c. 1532, §2, at 3037 (amending CAL. VEH. CODE §13365) (this includes a violation of a lawfully granted continuance of a promise to appear before a court or a person authorized to receive a deposit of bail).

5. See CAL. STATS. 1971, c. 1532, §2, at 3037; CAL. VEH. CODE §§40000.1, 40000.3 (any violation of or failure to comply with the Vehicle Code which is not punishable as a felony or a misdemeanor is an infraction), 42003.

6. See CAL. VEH. CODE §13365.

7. See *id.*

8. See *id.*

9. CAL. STATS. 1971, c. 1532, §3, at 3037 (amending CAL. VEH. CODE §40509). See generally CAL. VEH. CODE §40515.

10. See CAL. VEH. CODE §40509(a).

11. *Id.* §§13365, 40509(b).

