

**Staff Memorandum 2024-05**  
**Driving Under the Influence of Alcohol or Drugs**  
**Updates on Staff Research and Preliminary Proposals**

At its March 2024 meeting, the Committee considered driving under the influence of alcohol or drugs and related matters. This memorandum presents brief research updates and three proposals for further Committee discussion.

**Research Update**

**Lowering the blood alcohol content (BAC) limit to 0.05%**

In Staff Memorandum 2024-01, staff recommended lowering the per se DUI BAC from 0.08% to 0.05%. Committee members expressed interest in this idea because of the increases to road safety it could bring, but also reservations because of potential equity impacts, including racial disparities in enforcement.

Staff has created a research plan with the California Policy Lab to evaluate the effects of lowering the BAC level to 0.05%. The evaluation, which will consider road safety and racial disparities, will be presented at the September 2024 Committee meeting.

As further background, a summary of research into the possible effects of lowering the BAC level is presented below.

**1. Public safety**

While the current limit in California before someone is per se DUI is 0.08%,<sup>1</sup> a large body of empirical research demonstrates that most drivers are significantly impaired at 0.05% BAC.<sup>2</sup>

Several international studies — including in Australia, Canada, France, and Germany — have found that reducing the BAC limit to 0.05% is effective in decreasing alcohol-related crashes and driving fatalities.<sup>3</sup> Applying the results of these studies to the United States, researchers estimate that lowering the BAC

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<sup>1</sup> Vehicle Code § 23152(b).

<sup>2</sup> National Academies of Sciences, Engineering, and Medicine, *Getting to Zero Alcohol-Impaired Driving Fatalities: A Comprehensive Approach to a Persistent Problem*, The National Academies Press, 182–183 (2018). While the risk of being involved in a crash increases at each positive BAC level, the risk becomes statistically significant at 0.05 BAC and above. Richard P. Compton and Amy Berning, *Drug and Alcohol Crash Risk*, National Highway Traffic Safety Administration, 8 (February 2015).

<sup>3</sup> *Getting to Zero*, at 188–190.

limit to 0.05% would result in an 11% reduction in alcohol-related crash fatalities.<sup>4</sup>

Still, there is little direct evidence demonstrating the impact of lowering the per se BAC limit to 0.05% in the United States because only one state (Utah) has done so. Research conducted by the National Highway Traffic Safety Administration found that Utah's lowering of the BAC limit to 0.05% resulted in a 20% decline in the fatal crash rate and no significant increase in alcohol-impaired-driving arrests.<sup>5</sup>

California's prior experience with lowering the per se BAC limit from 0.10% to 0.08% in 1990 provides some evidence of the impact of reducing the BAC limit. A 1997 report from the California DMV found that lowering the BAC limit from 0.10% to 0.08% helped reduce alcohol-involved crashes and DUI recidivism.<sup>6</sup> However, because the law changing the BAC limit also established administrative per se license suspensions, the study was unable to specifically evaluate the impact of each aspect of the law.<sup>7</sup>

## 2. Equity

The equity impacts of lowering the per se BAC limit are uncertain. For all traffic stops, data from the most recent Racial and Identity Profiling Advisory (RIPA) Board Report continue to show alarming racial disparities in stops made by law enforcement, with Black and Hispanic individuals stopped more frequently than expected relative to their proportion of California's population.<sup>8</sup>

Data from the California DMV show that Black and Hispanic people are overrepresented in DUI arrests when compared to the residential population of those groups.<sup>9</sup> The data also show that the overrepresentation of each group has been increasing over the last several years.<sup>10</sup>

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<sup>4</sup> James Fell and Michael Scherer, *Estimation of the Potential Effectiveness of Lowering the Blood Alcohol Concentration (BAC) Limit for Driving from 0.08 to 0.05 Grams per Deciliter in the United States*, *Alcoholism, Clinical and Experimental Research*, 41(12) 2128–2139 (December 2017).

<sup>5</sup> F. D. Thomas, et al., *Evaluation of Utah's .05 BAC Per Se Law*, viii, National Highway Traffic Safety Administration (February 2022). Other research has cast some doubt on that conclusion. Javier Portillo, Wisnu Sugiarto, and Kevin Willardsen, *Drink ... then Drive Away: The Effects of Lowering the BAC in Utah* (March 15, 2022) (finding that underreporting of accidents after the law impacted the measurement of the reduction in accidents).

<sup>6</sup> Patrice Rogers, *The Specific Deterrent Impact of California's 0.08% Blood Alcohol Concentration Limit and Administrative Per Se License Suspension Laws*, California Department of Motor Vehicles (January 1997).

<sup>7</sup> *Id.* at 29–30. The analysis suggested that license suspensions were more impactful.

<sup>8</sup> Racial and Identity Profiling Advisory Board, *2024 Annual Report*, 6, January 1, 2024.

<sup>9</sup> California Department of Motor Vehicles, *2022 Annual Report of the California DUI Management Information System*, Table 3 (April 2023) (“*DUI MIS Report*”).

<sup>10</sup> This data can be found in Table 3 of each annual *DUI MIS Report*.

## Preliminary Staff Proposals

After witness testimony at the March 2024 meeting, the Committee discussed several areas in which to make proposals to revise laws related to DUI. Presented below are three preliminary proposals from staff for further discussion and analysis by the Committee.

### 1. Create presumptive judicial diversion for many first-time DUI offenses

#### *Summary Staff Proposal*

Direct judges to grant diversion for first-time DUI misdemeanor offenses as early in the court process as possible unless there are aggravating factors such as injury or having a minor in the vehicle.

#### *Current Law*

Courts are prohibited from ordering diversion for almost all people charged with driving under the influence.

#### *Background*

Diversion programs defer criminal proceedings while the charged person completes a set of obligations to earn dismissal of the charges. While California law allows courts to divert most misdemeanor offenses,<sup>11</sup> DUIs are not eligible for diversion, with the exception being diversion for current or former members of the military.<sup>12</sup> In 2019, there were nearly 65,000 people convicted of a first-time DUI in California.<sup>13</sup> A law allowing many of these cases to be diverted would free up court resources while improving public and road safety.

As explored at the March Committee meeting, research shows that diversion for DUI can be more effective at reducing recidivism than the traditional criminal process,<sup>14</sup> and that an arrest is enough to deter most people convicted of a first-time DUI from reoffending.<sup>15</sup>

California data confirm that most people convicted of a first-time DUI do not commit another DUI offense. In the DMV's most recent analysis of DUI

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<sup>11</sup> Penal Code §§ 1001.95–97.

<sup>12</sup> Vehicle Code § 23640(a); Penal Code § 1001.80(l) (military diversion). See *Tellez v. Superior Court*, 56 Cal.App.5th 439 (2020) (mental health diversion not allowed). For decisions forbidding court-initiated misdemeanor diversion, see *Grassi v. Superior Court*, 73 Cal.App.5th 283 (2021); *People v. Superior Court of Riverside County*, 81 Cal.App.5th 851 (2022); *Tan v. Superior Court of San Mateo County*, 76 Cal.App.5th 130 (2022).

<sup>13</sup> *DUI MIS Report*, 21, Table 5a.

<sup>14</sup> Lauren Knoth and R. Barry Ruback, *Conviction or Diversion and the Labeling of First-Time DUI Offenders: An Analysis of Sentencing and Recidivism in Pennsylvania*, *Justice Quarterly*, 38:1, 72-100 (2021).

<sup>15</sup> *Id.* See also *Getting to Zero* at 267.

recidivism, over 70% of people convicted of a first-time DUI did not have another DUI within 15 years.<sup>16</sup>

Many of the current criminal penalties for a first-time DUI conviction including license suspension, orders to complete a DUI program, install an IID, or pay a fine could apply as conditions of diversion.

A diversion law should include:

- **Presumption for diversion and exclusions or restrictions for aggravated cases.** While many first-time DUIs are suitable for diversion, diversion should not be available when the driver had a minor in the vehicle or injured someone.<sup>17</sup>
- **Priorability.** A DUI charge dismissed because of diversion should count as a prior in subsequent prosecutions for DUI. This would allow law enforcement and others to appropriately identify people who have a prior DUI and present a greater risk to public safety.<sup>18</sup>
- **Watson advisement.** Similarly, people granted DUI diversion should be given a “Watson advisement,” a warning courts are required to give to people convicted of DUI that a future DUI causing the death of another person could result in murder charges.<sup>19</sup>
- **Discretionary ignition interlock devices.** Research on the effectiveness of requiring all people convicted of a DUI to install an IID is mixed. While several studies conducted in other states have found that installation of the devices reduced DUI recidivism during the period in which they were installed,<sup>20</sup> studies on the impact of a mandatory IID pilot program in California concluded that mandatory IID installation did not have a general or specific deterrent impact and that more research was needed

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<sup>16</sup> *DUI MIS Report*, Table 12.

<sup>17</sup> Staff previously recommended that people with a high BAC be excluded from presumptive judicial diversion. Based on research indicating that a high BAC does not equate to a higher recidivism risk, staff is no longer recommending that people be excluded from diversion for having a high BAC. See Lauren Knoth and R. Barry Ruback, *Conviction or Diversion and the Labeling of First-Time DUI Offenders: An Analysis of Sentencing and Recidivism in Pennsylvania*, Justice Quarterly, 38:1, 90 (2021).

<sup>18</sup> The National Highway Traffic Safety Administration has cautioned that diversion programs resulting in no record of an offense could prevent the identification of people with repeat DUIs. See B.B. Kirley, et al., *Countermeasures that Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices*, National Highway Traffic Safety Administration, 1–54 (2023).

<sup>19</sup> See Vehicle Code § 23593; *People v. Watson*, 30 Cal.3d. 290 (1981).

<sup>20</sup> R. W. Elder, et al., *Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes: A Community Guide Systematic Review*, American Journal of Preventive Medicine, 40(3), 362–376 (2011).

to determine whether a mandatory IID law would be effective.<sup>21</sup> Current law gives judges discretion to impose an IID upon a person convicted of a first-time DUI based on the facts of the case.<sup>22</sup> A DUI diversion law should leave judges with this discretion.

### *Staff Proposal*

The Committee should consider recommending presumptive diversion for first-time DUI offenses as specified above.

## **2. DUI Classes**

### *Summary Staff Proposal*

Require free or reduced-fee DUI classes and require evaluations of the effectiveness of the classes.

### *Current Law*

People convicted of a first DUI are required to complete a 3 or 9-month DUI program. People convicted of the lesser-related charge of alcohol-related reckless driving must complete a 12-hour class.

### *Background*

While 90% of people convicted of a first DUI are ordered to complete a DUI program, only 61% of those ordered to actually complete it.<sup>23</sup> For many people, the high cost of the classes is a barrier to completion.<sup>24</sup>

Currently, none of the DUI program providers in the state offer a reduced fee for low-income participants.<sup>25</sup> As noted in the Committee's 2023 report, people who are unable to pay for court-ordered programs often face continued legal involvement and additional sanctions,<sup>26</sup> which in this case can include prolonged or permanent license suspension.<sup>27</sup> To address these concerns, the state should require programs to offer reduced fees for low-income participants.

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<sup>21</sup> Eric Chapman, Sladjana Oulad Daoud, and Scott Masten, *General Deterrent Evaluation of the Ignition Interlock Pilot Program in California*, California Department of Motor Vehicles (January 2015). See also California Department of Motor Vehicles, *Specific Deterrent Evaluation of the Ignition Interlock Pilot Program in California* (June 2016).

<sup>22</sup> Vehicle Code § 23725.3.

<sup>23</sup> *DUI MIS Report*, Table 13.

<sup>24</sup> RJ Vogt, et al., *So Many Roadblocks: How California's Program Fees System Traps Low-Income Drivers*, ACLU SoCal (September 2022).

<sup>25</sup> California Code of Regulations § 9878(f)(3); Committee on Revision of the Penal Code meeting on March 26, 2024, Part 3 of 4, 0:31:06–0:31:33.

<sup>26</sup> Committee on Revision of the Penal Code, *2023 Annual Report*, 48–51 (December 2023).

<sup>27</sup> RJ Vogt, et al., *So Many Roadblocks: How California's Program Fees System Traps Low-Income Drivers*, ACLU SoCal (September 2022).

Additionally, there is no strong evidence that the DUI classes ordered by courts are effective in reducing DUI recidivism. The DMV has been unable to evaluate the effectiveness of these programs because of issues with data availability, accuracy, and completeness.<sup>28</sup> The state should continue to regularly evaluate the effectiveness of these programs.

#### *Staff Proposal*

The Committee should consider recommending that DUI programs be required to offer reduced fees to people who cannot afford them and that further evaluation of the effectiveness of these programs be conducted.

### **3. Expand the use of DUI Collaborative Courts**

#### *Summary Staff Proposal*

Establish a statutory framework for DUI Collaborative Courts and offer additional funding to encourage counties to utilize them.

#### *Current Law*

There are no guidelines in the Penal Code for DUI Collaborative Courts. Judges in each county decide whether to establish these courts and how they work.

#### *Background*

While most people who are convicted of a DUI in California do not reoffend, of the nearly 90,000 DUI convictions in 2019, 27%— approximately 24,000 convictions — were for repeat offenses.<sup>29</sup>

People convicted of multiple DUIs pose a higher risk of recidivating and are less likely to complete court-ordered DUI programs.<sup>30</sup> They are also more likely to have an underlying alcohol or drug problem that is more effectively addressed through treatment than traditional criminal punishment.<sup>31</sup> While current law requires courts to order people convicted of DUI to complete state-approved DUI programs,<sup>32</sup> these programs typically provide education, evaluation, and supervision services, not treatment for underlying substance abuse disorders.<sup>33</sup>

Collaborative courts provide substance abuse treatment and case monitoring in place of standard punishments for people convicted of repeat DUI.<sup>34</sup> Many use clinical assessments to screen for alcohol dependence and develop a treatment plan that is implemented and monitored by a multidisciplinary, nonadversarial

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<sup>28</sup> *DUI MIS Report* at 68.

<sup>29</sup> *DUI MIS Report*, 21, Table 5a.

<sup>30</sup> *DUI MIS Report*, 52, Figure 8b, Table 13.

<sup>31</sup> *Getting to Zero* at 263, 267. See also California Office of Traffic Safety, *California Impaired Driving Plan*, 62 (2022).

<sup>32</sup> Vehicle Code §§ 23538(b), 23542(b), 23548(b).

<sup>33</sup> See California Office of Traffic Safety, *California Impaired Driving Plan*, 63 (2022).

<sup>34</sup> *Id.*

team that includes the court, attorneys, law enforcement, and community treatment and service agencies.<sup>35</sup> Collaborative courts incentivize the successful completion of substance abuse programs by reducing or eliminating jail sentences, fines, and in some cases, the length of probation terms.<sup>36</sup>

Research has shown that DUI collaborative courts are highly effective at reducing recidivism and the National Highway Traffic Safety Administration and the National Academy of Sciences have recommended that all states implement them.<sup>37</sup>

While most counties in California operate drug, mental health, and veterans collaborative courts, only 20 counties operate DUI courts.<sup>38</sup> At the March Committee meeting, judges presiding over DUI collaborative courts noted that the lack of funding needed to establish or maintain these specialty courts can be a significant barrier to counties. While the California Office of Traffic Safety provides grants to support DUI courts, only 3 counties were provided funding in 2023.<sup>39</sup>

Additionally, unlike similar programs,<sup>40</sup> there is currently no statutory framework for DUI collaborative courts and the parties involved in a collaborative court must often find creative solutions to avoid mandatory punishments otherwise required by law. Establishing such a framework would encourage counties not currently utilizing DUI collaborative courts to do so and create a clearer target for funding.

California law could also be updated to explicitly allow courts to stay or eliminate some of the mandatory punishments that apply to people convicted of repeat DUIs. These include probation terms longer than standard probation terms, fines, and jail time.<sup>41</sup> Collaborative court judges should be given discretion to decide the extent of any reduction in penalties based on the facts and circumstances of each case.

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<sup>35</sup> *Getting to Zero* at 265–268. See also Judicial Council of California, *Collaborative Justice Courts Fact Sheet* (January 2024).

<sup>36</sup> *Getting to Zero* at 269. See also Judicial Council of California, *Collaborative Justice Courts Fact Sheet* (January 2024).

<sup>37</sup> *Getting to Zero* at 269. See also B.B. Kirley, et al., *Countermeasures that Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices*, National Highway Traffic Safety Administration, 1–53 (2023).

<sup>38</sup> Judicial Council of California, *Collaborative Justice Courts Fact Sheet* (January 2024).

<sup>39</sup> California Office of Traffic Safety, *California Highway Safety Plan 2023*, 43–44 (2022).

<sup>40</sup> See Penal Code §§ 1000–1000.65, 1001.36, 1170.9.

<sup>41</sup> Vehicle Code §§ 23538, 23542, 23548, 23550 (jail sentence), 23575.3 (IID), 23600 (probation term).

*Staff Proposal*

The Committee should consider recommending that a statutory framework for DUI collaborative courts be established and that the state offer additional funding to encourage counties to utilize DUI collaborative courts.

**4. Streamline license suspensions related to DUI***Summary Staff Proposal*

Update the license suspension rules for DUIs so that a license is suspended only once and not multiple times during the course of a case.

*Current Law*

The DMV can suspend a person's license shortly after a person is arrested for DUI and again after the person is convicted of the offense.

*Background*

California law uses parallel administrative and criminal systems after someone has been arrested and convicted of DUI. The use of the two systems can result in duplicative license suspensions that are excessively punitive and not geared toward improving public safety.

Using the administrative system, the California DMV suspends a person's license shortly after they are arrested for DUI, and in most cases, before the criminal case has been resolved.<sup>42</sup> These suspensions last 4 months for a first DUI and 1 year for a second or subsequent DUI.<sup>43</sup> When a person is convicted in criminal court, which can be several months after the arrest,<sup>44</sup> the DMV is required to suspend a person's license again, even though the administrative license suspension was already applied.<sup>45</sup>

A 2023 review of available research by the National Highway Safety Administration found that lengthy suspensions have not been shown to reduce DUI recidivism.<sup>46</sup> However, license suspensions can create significant barriers to employment, lead to incarceration, and prolong involvement with the criminal legal system.<sup>47</sup>

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<sup>42</sup> Vehicle Code § 13353.3.

<sup>43</sup> *Id.*

<sup>44</sup> DMV data show that the statewide median time from DUI arrest to conviction is approximately 4 months. See *DMV MIS Report*, Table 5b.

<sup>45</sup> Vehicle Code §§ 13351.85, 13353.6(h), 13353.7(b), 13353.75(c).

<sup>46</sup> *Countermeasures that Work* at 1–62 (citing studies).

<sup>47</sup> Back on the Road California, *Stopped, Fined Arrested: Racial Bias in Policing and Traffic Courts in California*, 25–30 (April 2016). See also RJ Vogt, et al., *So Many Roadblocks: How California's Program Fees System Traps Low-Income Drivers*, ACLU SoCal (September 2022).



*Staff Proposal*

The Committee should consider recommending that a person who is issued an administrative license suspension not have their license suspended again after a criminal conviction in the same matter.

**Conclusion**

Staff looks forward to discussing with the Committee the research and proposals presented in this memorandum.

Respectfully submitted,

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