

## Staff Memorandum 2024-01

### Driving Under the Influence of Alcohol or Drugs and Related Matters

At its March 2024 meeting, the Committee on Revision of the Penal Code will consider driving under the influence of alcohol or drugs with the goal of proposing recommendations that improve road and public safety while reducing unnecessary incarceration and improving equity.

This memorandum gives general background and staff recommendations for the Committee’s consideration. A supplement to this memorandum, which will be released shortly, will present written submissions from invited panelists.

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### Introduction

Each year around 100,000 people in California are arrested for driving under the influence of alcohol or drugs. As large as this number is, it is less than half the number of DUI arrests made in 2010, when nearly 200,000 people were arrested, and even less than the peak of over 270,000 arrests in 1990.<sup>1</sup> There has also been a 51% reduction in the reoffense rate for people convicted of their first DUI since 1990.<sup>2</sup> This data shows that California has made significant improvements in how it treats this offense. However, research explored below shows that additional changes to California law can continue to reduce DUIs, improve road safety, and provide a more equitable process for resolving these cases.

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<sup>1</sup> See California Department of Motor Vehicles, 2022 *Annual Report of the California DUI Management Information System*, DUI Summary Statistics: 2010–2020 (April 2023) (“DUI MIS Report”).

<sup>2</sup> *Id.* at 51.

## A. California DUI data

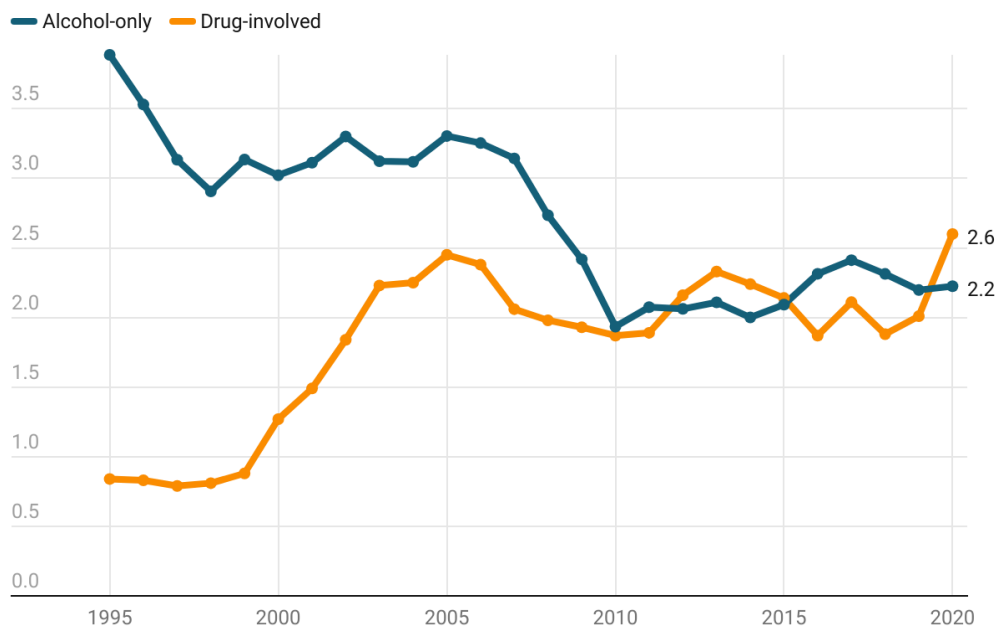
### Crash injuries and fatalities involving drugs and alcohol

According to data maintained by the Department of Motor Vehicles (DMV), since 2004, about half of all crash fatalities in California involved drugs or alcohol.<sup>3</sup> In 2020, there were more than 1,900 alcohol- or drug-involved crash fatalities — an increase of 1.4% for fatalities involving only alcohol but a 29% increase for fatalities involving drugs or alcohol-and-drugs compared to 2019.<sup>4</sup> While the rate of fatalities involving only alcohol declined by about 43% between 1995 and 2020, the rate of drug-involved fatalities more than tripled over the same period.<sup>5</sup> In 2019, 77% of drivers in alcohol and drug-involved fatal crashes had no prior DUI or alcohol or drug-related reckless driving conviction.<sup>6</sup>

In 2020, there were at least 24,000 crash injuries involving alcohol and drugs.<sup>7</sup>

### Alcohol- and drug-involved crash fatality rate, 1995–2020

Rate is crash fatalities per 100,000 population



*Drug-involved rate includes fatalities that involved only drugs and those that involved drugs-and-alcohol.*

Source: California Department of Motor Vehicles, 2022 Annual Report Of The California DUI Management Information System, Figure 11; California Department of Finance, Population Estimates • Created with Datawrapper

<sup>3</sup> California Department of Motor Vehicles, DUI Summary Statistics Dashboard. Alcohol- or drug-involved crash fatalities are those in which the investigating law enforcement officer indicates in their crash report that the driver had been drinking. DUI MIS Report.

<sup>4</sup> *DUI MIS Report*, DUI Summary Statistics: 2010–2020.

<sup>5</sup> *Id.*, Figure 11. The rate was calculated using population data from the Department of Finance.

<sup>6</sup> *Id.* at vii.

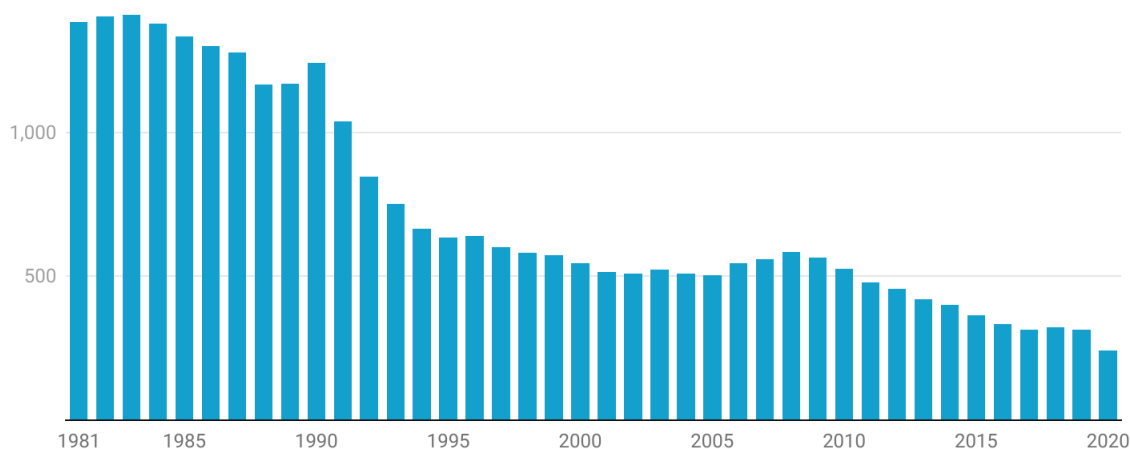
<sup>7</sup> *Id.* at DUI Summary Statistics: 2010–2020. About 12% of all crash injuries in California involved alcohol or drugs. *Id.* The majority (56%) of drivers in alcohol- and drug-involved injury crashes had at least one prior DUI or alcohol- or drug-related reckless driving conviction. *Id.* at vii.

## DUI arrest rates and demographics

The DUI arrest rate has seen a steady decline over the last decade and decreased by 23% in 2020 compared to 2019, likely due to the COVID-19 pandemic.<sup>8</sup> Still, in 2020, there were nearly 100,000 DUI arrests made in California.

### DUI arrest rate, 1981–2020

Rate is per 100,000 population



Source: California Department of Motor Vehicles, DUI Summary Statistics Dashboard; California Department of Finance, Population • Created with Datawrapper

Almost half of the people arrested for DUI were age 30 or younger and almost three-quarters were age 40 or younger.<sup>9</sup> Men made up nearly 80% of all DUI arrests in 2020. Black and Hispanic people are overrepresented in DUI arrests. Despite accounting for 37% of the population in 2020, arrests of Hispanic people represented 54% of all DUI arrests, and 10% of all DUI arrests were of Black people while Black people account for 6% of California's population.<sup>10</sup>

### DUI conviction data

The number of DUI convictions per year has also been declining over the last decade.<sup>11</sup> In 2019, there were approximately 88,000 DUI convictions; in 2009 there were more than 160,000.<sup>12</sup> Nearly 70% of DUI arrests resulted in convictions for DUI offenses.<sup>13</sup> Approximately 6% of DUI convictions among those arrested in 2019 were convicted of driving under the influence of drugs.<sup>14</sup>

<sup>8</sup> *DUI MIS Report*, Figure 2.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.*, Figure 4.

<sup>12</sup> California Department of Motor Vehicles, DUI Summary Statistics Dashboard.

<sup>13</sup> *DUI MIS Report*, Table 6.

<sup>14</sup> *Id.* at 19.

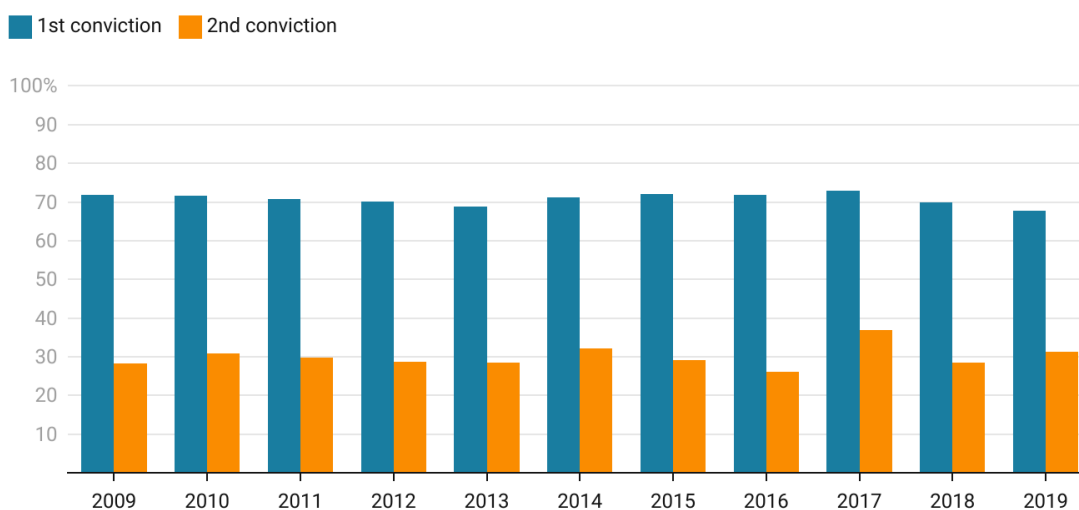
Among people convicted of DUI in 2019, 73% were convicted of a first offense, 20% were convicted of a second offense, 5% were convicted of a third offense, and 2% were convicted of a fourth or more offense.<sup>15</sup> The median blood alcohol concentration among people convicted of DUI in 2019 was 0.16%, which is double the legal limit in California.<sup>16</sup>

Almost all people convicted of DUI offenses are sentenced to probation (96%) and a large majority (74%) are also required to serve a jail sentence.<sup>17</sup>

### Post-conviction DUI programs and recidivism rates

Almost all people convicted of DUI are ordered to complete a state-approved DUI education program (91%).<sup>18</sup> Of those arrested for DUI in 2019 who were ordered by a court to enroll in a DUI program, 68% of people with a first conviction completed their program, but only 31% of people with a second conviction did.<sup>19</sup>

### Completion rate of people referred to DUI programs, 2009–2019



Year is date of arrest.

Source: California Department of Motor Vehicles, Annual Reports of the California DUI Management Information System, Table 13 · Created with Datawrapper

The 1-year DUI reoffense rate for people arrested in 2019 and convicted of their first DUI was 3.7% compared to 7.6% in 1990, a 51% decrease.<sup>20</sup> The 1-year reoffense rate for people convicted of their second DUI was 5.4% compared to 9.7% in 1990, a 44% decrease.<sup>21</sup>

<sup>15</sup> *Id.* at 21.

<sup>16</sup> *Id.* at 20. See also Vehicle Code § 23152(b).

<sup>17</sup> *DUI MIS Report* at 32.

<sup>18</sup> *Id.*, Figure 5.

<sup>19</sup> *Id.*, Table 13.

<sup>20</sup> *Id.*, Table 11a.

<sup>21</sup> *Id.*

## B. Current DUI law

Under California law, it is illegal for a person to drive while under the influence of alcohol, any drug, or a combination of drugs and alcohol.<sup>22</sup>

A person is guilty of this offense if their drug or alcohol consumption impaired their ability to drive.<sup>23</sup> Additionally, California's per se DUI law provides that anyone who drives with a blood alcohol concentration of 0.08% or more is guilty of this offense, regardless of whether they were actually impaired.<sup>24</sup> The per se limit of 0.08% has been the law since 1990, when it was lowered from 0.10%.<sup>25</sup>

In addition, it is illegal for people under the age of 21 to drive with any alcohol in their system and the per se limit is 0.04% for drivers of commercial vehicles.<sup>26</sup>

While it is illegal to drive under the influence of any drug, including prescription medications, there is no per se illegal limit for the amount of drugs a person can have in their system while driving.<sup>27</sup> Unlike blood alcohol content, the relationship between blood levels of drugs and driving impairment is not well-established and is largely dependent on the type of drug, the dose, and the drug user.<sup>28</sup> Additionally, the amount of drugs in a person's system can accumulate with repeated use and may be detected even when the person is no longer impaired.<sup>29</sup> And though alcohol can be reliably measured through breath tests, drugs can only be measured through tests of blood, urine, or saliva.<sup>30</sup>

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<sup>22</sup> Vehicle Code § 23152(a), (f), (g).

<sup>23</sup> See CALCRIM 2010. See also *People v. Bui*, 86 Cal.App.4th 1187, 1194 (2001). While prosecutors are not required to prove a person's blood alcohol level to convict a person under this section, evidence that a person's blood alcohol level was above 0.08% gives rise to a rebuttable presumption of intoxication, while evidence that the person's blood alcohol level was below 0.05% creates a rebuttable presumption that the person was not intoxicated. Vehicle Code § 23610(a)(3).

<sup>24</sup> Vehicle Code § 23152(b).

<sup>25</sup> See SB 310 (Seymour 1989). See also *Burg v. Municipal Court*, 35 Cal.3d 257, 262–263 (1983); *People v. Bransford*, 8 Cal.4th 885, 892–893 (1994).

<sup>26</sup> Vehicle Code §§ 23136, 23140, 23152(d), (e). An earlier version of this memorandum incorrectly said that the BAC limit for drivers of commercial vehicles was 0.05%.

<sup>27</sup> Vehicle Code § 23152 (f), (g).

<sup>28</sup> B.B. Kirley et al., *Countermeasures that Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices*, National Highway Traffic Safety Administration, 2-1 (2023) (citing studies).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* California's implied consent law requires drivers to submit to chemical testing of their blood or breath to determine its alcohol or drug content when lawfully arrested for a DUI. Vehicle Code §§ 23612(a)(1). Refusal to take a breath or urine test will result in a fine and mandatory imprisonment if the person is convicted of DUI and the administrative suspension or revocation of the person's driving privileges by the DMV regardless of whether the person is convicted. Vehicle Code §§ 23612(a)(1)(D), 23577(a). While police do not need a warrant to administer a breath test incident to a drunk driving arrest, absent exigent circumstances, a warrant is required for nonconsensual blood testing. *Birchfield v. North Dakota*, 579 US 438 (2016). *Missouri v. McNeely*, 569 US 141, 152 (2013).

In some cases, a person charged with a misdemeanor DUI may be able to enter a plea to the lesser related charge of alcohol-related reckless driving, commonly known as a “wet reckless”.<sup>31</sup> A conviction for this offense has similar but less severe penalties as a misdemeanor DUI and is often negotiated for by noncitizen defendants to avoid the more serious immigration consequences of a DUI conviction.<sup>32</sup>

California law uses parallel administrative and criminal systems after someone has been arrested for DUI, as detailed below.

### **Administrative DMV process and license suspensions**

Upon arresting a person for DUI, police officers are required to give the arrested person an order of suspension/revocation and to seize the person’s driver’s license.<sup>33</sup> The order of suspension/revocation includes a temporary driver’s license valid for 30 days from the issue date.<sup>34</sup> When the DMV receives the order of suspension and accompanying arrest report, they conduct an administrative review to determine if the allegations support the suspension.<sup>35</sup> At the end of the 30 days and after the administrative review, the suspension becomes effective.<sup>36</sup>

People who have no prior DUI arrests, did not refuse a chemical test, and had a blood alcohol content less than 0.15% have their license suspended for 4 months.<sup>37</sup> People with one or more prior convictions, who refused a chemical test, or had a blood alcohol content of 0.15% or more have their license suspended for 1 year.<sup>38</sup>

People can apply for a restricted license that allows them to drive immediately and for any purpose if they enroll in a DUI program and install an ignition interlock device (IID) on their vehicle.<sup>39</sup> An ignition interlock device (IID) is a breathalyzer that when installed on a vehicle, prevents it from starting if a certain amount of alcohol is detected in the driver’s breath. People arrested for a first DUI can choose to apply for a restricted license without installing an IID but if granted, the restricted license will only allow them to drive to, from, and during the course of employment.<sup>40</sup>

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<sup>31</sup> Vehicle Code §§ 23103, 23103.5.

<sup>32</sup> See Kathy Brady, *Immigration Consequences of Driving Under the Influence*, Immigrant Legal Resource Center (August 2017).

<sup>33</sup> Vehicle Code §§ 13382, 13388.

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

<sup>35</sup> Vehicle Code §§ 13553, 13553.1, 13553.2.

<sup>36</sup> Vehicle Code § 13353.3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Vehicle Code §§ 13353.7, 13353.75.

<sup>40</sup> Vehicle Code § 13353.6.

Notably, even after applying the administrative license suspension, the DMV is required to suspend a person's license again upon conviction in criminal court.<sup>41</sup> This means that a person can have their license suspended shortly after a DUI arrest, have it restored, and then suspended again upon conviction.

### **Criminal punishments**

Driving under the influence can be punished as a misdemeanor or a felony, depending on the number of prior convictions for DUI that a person has. Of people arrested for DUI in 2019 and convicted of a DUI offense, 96% were convicted of a misdemeanor offense.<sup>42</sup>

Prosecutors have the discretion to charge DUI as a felony if the charged person has three or more separate DUI convictions within 10 years of the current offense.<sup>43</sup> Driving while under the influence of alcohol or drugs that causes injury to a person other than the driver can always be charged as a felony.<sup>44</sup>

The Vehicle Code specifies several mandatory sentencing elements for people convicted of DUI including probation terms longer than standard probation terms, jail time for repeat offenses, and other sanctions.<sup>45</sup> Courts have the discretion to deny probation solely because the person has a prior DUI conviction.<sup>46</sup> Courts are required to order that a person's license be suspended or revoked for a period of time ranging from 6 months for a first conviction to 4 years for a fourth or subsequent conviction.<sup>47</sup> As noted, this is in addition to the administrative license suspension imposed by the DMV shortly after arrest.

Courts are also required to order people convicted of a second or subsequent DUIs to install an ignition interlock device for 12, 24, or 36 months, depending on the number of prior convictions and have the discretion to do so for first-time offenses.<sup>48</sup> Additionally, courts must order convicted people to complete a 3, 9, 18, or 30-month DUI program, depending on the number of their prior convictions.<sup>49</sup>

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<sup>41</sup> Vehicle Code §§ 13351.85, 13353.6(h), 13353.7(b), 13353.75(c).

<sup>42</sup> *DUI MIS Report* at 25, Table 5b (combining misdemeanor and "wet reckless" convictions).

<sup>43</sup> Vehicle Code § 23550. Prosecutors can also charge DUI as a felony if the person has a prior felony DUI conviction within 10 years of the current offense, or a prior conviction for certain vehicular manslaughter offenses within 10 years of the current offense.

<sup>44</sup> Vehicle Code § 23153. See *People v. Oyaas*, 173 Cal.App.3d 663, 669 (1985). The prosecutor must prove the driver committed an unlawful act or omission while driving and the unlawful act cannot be the DUI itself. *People v. Thurston*, 212 Cal.App.2d 713, 714–715 (1963). Minor injuries will satisfy the statutory requirement. See, e.g., *People v. Guzman*, 77 Cal.App.4th 761, 765 (2000).

<sup>45</sup> Vehicle Code §§ 23538, 23542, 23548, 23550 (jail sentence), 23600 (probation term).

<sup>46</sup> *People v. Bowen*, 11 CA4th 102, 105–106 (1992).

<sup>47</sup> Vehicle Code §§ 13352, 13352.1.

<sup>48</sup> Vehicle Code § 23575.3. Judges can, but are not required to, order a person convicted of a first DUI to install an IID for up to 6 months.

<sup>49</sup> Vehicle Code §§ 23538(b), 23542(b), 23548(b).

There are also several sentencing enhancements that can be applied to a DUI conviction, including for driving at an excessive speed, having an excessive blood alcohol content, refusing to take a chemical test, having a passenger under 14 years old in the vehicle, or causing injury or death to multiple victims.<sup>50</sup>

If a victim is killed while someone was driving under the influence, the driver can be convicted of vehicular manslaughter, which includes a prison sentence of up to 10 years.<sup>51</sup> If the specific facts about the circumstances of the DUI and death show that the driver acted with implied malice, such as evidence that they drove in a particularly reckless fashion or were aware of the dangerousness of DUI driving because of a prior conviction, the person can be convicted of second-degree murder and sentenced to an indeterminate term.<sup>52</sup>

### **C. Insights from research**

There are several evidence-based strategies to reduce alcohol-impaired driving including policy and law changes.

#### **Blood alcohol concentration (BAC) levels**

Blood alcohol concentration is a measurement of the number of grams of alcohol per every 100 milliliters of blood, and is used to quantify a person's level of impairment.<sup>53</sup> Alcohol consumption leads to a loss of inhibition or judgment, a decrease in self-awareness, and coordination, with the deficits becoming more pronounced as the amount of alcohol ingested increases.<sup>54</sup> Each increase in BAC is accompanied by physiological effects and predictable effects on a person's driving ability.<sup>55</sup> Several laboratory studies on the effects of alcohol on a person's ability to drive show that impairment begins at levels below 0.08%, the current legal limit in California.<sup>56</sup> For example, a person with a blood alcohol content of 0.05% will typically experience reduced coordination and ability to track moving objects, difficulty steering, and reduced response to emergency driving situations.<sup>57</sup>

A large proportion of alcohol-related crashes and fatalities in the United States occur when drivers have a BAC that is less than 0.08%. In 2015, there were 10,265 alcohol-impaired (over 0.08% BAC) driving fatalities in the United States and

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<sup>50</sup> See Vehicle Code §§ 23582(a) (excessive speed), 23578 (high BAC or refusal), 23572(a) (passenger under 14), 23558 (multiple victims).

<sup>51</sup> Penal Code § 191.5.

<sup>52</sup> Penal Code §§ 197, 188, 189, 190. See also *People v. Watson*, 30 Cal. 3d 290 (1981).

<sup>53</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, 175 (2018).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 182 (citing studies).

<sup>57</sup> National Highway Traffic Safety Administration, *Drunk Driving Statistics and Resources*.



1,808 fatalities involving a driver with a BAC between 0.01% and 0.07% (15% of the total).<sup>58</sup> Studies that compare the BAC levels of drivers involved in crashes with the BAC levels of drivers not involved in crashes consistently show an increased risk of fatal crashes among drivers with BAC levels from 0.05% to 0.079% compared to having a BAC of zero.<sup>59</sup> Researchers have estimated that reducing the BAC limit in the United States from 0.08% to 0.05% would result in an 11% decrease in fatal alcohol-related crashes.<sup>60</sup>

According to the National Academy of Sciences, as of 2015, 34 countries had laws limiting a driver's BAC to 0.05% or less.<sup>61</sup> The National Transportation Safety Board,<sup>62</sup> Mothers Against Drunk Driving,<sup>63</sup> and the National Academy of Sciences<sup>64</sup> have recommended states reduce the legal limit to 0.05%.

With the exception of Utah, which recently changed its illegal per se blood alcohol content limit to 0.05%, all states apply a per se limit of 0.08%.<sup>65</sup> Research conducted by the National Highway Traffic Safety Administration (NHTSA) — a federal agency focused on enhancing road safety — found that Utah's fatal crash rate dropped by 20% in the first year after the lower legal limit was adopted in 2019, and the fatality rate decreased by 18%.<sup>66</sup> Utah's crash rate reduction exceeded that of the United States overall, which saw approximately 6% reductions in the crash and fatality rates that same year.<sup>67</sup> The research also found that lowering the legal limit did not result in a significant increase in alcohol-impaired-driving arrests.<sup>68</sup> However, research on an identical change in the BAC level in Scotland in 2014 showed no effect on accident rates.<sup>69</sup>

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<sup>58</sup> National Highway Traffic Safety Administration, *Traffic Safety Facts 2015*.

<sup>59</sup> *Getting to Zero* at 184–185 (citing studies).

<sup>60</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>61</sup> *Getting to Zero* at 181.

<sup>62</sup> National Transportation Safety Board, *.05 BAC Safety Briefing Facts* (March 2023).

<sup>63</sup> Mothers Against Drunk Driving, *MADD Calls for .05 BAC, Ignition Interlocks for All Offenders in California*, April 3, 2019.

<sup>64</sup> *Getting to Zero* at 192.

<sup>65</sup> *Id.* at 15. A 2019 bill to lower the BAC limit in California to 0.05 was unsuccessful. AB 1713 (Burke and Flora 2019).

<sup>66</sup> F. D. Thomas et al., *Evaluation of Utah's .05 BAC Per Se Law*, viii, National Highway Traffic Safety Administration (February 2022).

<sup>67</sup> *Id.* at 46.

<sup>68</sup> *Id.* The data in the NHTSA study ended in 2019, but more recent data on the DUI arrest rate in Utah for Fiscal Years 2020–2022 show that it was lower than before the 0.05 BAC limit became effective in 2019. Utah Commission on Criminal and Juvenile Justice, *20th Annual DUI Report to the Utah Legislature*, 9 (2022).

<sup>69</sup> Marco Francesconi and Jonathan James, *None for the Road? Stricter Drink Driving Laws and Road Accidents*, *Journal of Health Economics* 79 (2021). The authors conclude that failure to make

### Ignition interlock devices

An ignition interlock device (IID) is a breathalyzer that prevents a car from starting if a certain amount of alcohol is detected in the driver's breath. An IID requires the driver to blow into a mouthpiece before starting the vehicle.

NHTSA rates the use of ignition interlock devices as one of the most effective measures states can take to reduce DUI crashes<sup>70</sup> and encourages states to adopt IID laws for all people convicted of DUI.<sup>71</sup> However, according to NHTSA, as of 2021, only 36 states and the District of Columbia, require ignition interlocks for all people convicted of DUI.<sup>72</sup> California requires IIDs for people convicted of a second or subsequent DUI, but courts have discretion whether to order people convicted of a first DUI to install one.<sup>73</sup> A bill requiring all people convicted of a DUI to install an IID is currently pending in the Legislature.<sup>74</sup>

Studies have shown, unsurprisingly, that IIDs reduce DUI recidivism and alcohol-related fatal crashes while they are installed. A review by the Centers for Disease Control and Prevention of 15 studies that examined the effectiveness of interlock devices found that people who had the devices installed on their vehicles had recidivism rates that were 67% lower than drivers who did not.<sup>75</sup> However, the study found that once the devices were removed, re-arrest rates reverted to levels similar to the comparison group.<sup>76</sup>

Similarly, a 2021 study found that states that require ignition interlock devices for all people convicted of a DUI had 26% fewer alcohol-involved fatal crashes than states with no interlock laws.<sup>77</sup> States that require interlocks for people with multiple convictions or who had a high-BAC at the time of arrest had 20% fewer fatal alcohol-related crashes.<sup>78</sup>

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alternative transportation options such as taxis and buses more accessible and failure to increase enforcement of the law explain why there was no effect on road safety.

<sup>70</sup> *Countermeasures that Work* at 1-39.

<sup>71</sup> National Highway Traffic Safety Administration, *Model Guideline for State Ignition Interlock Programs*, 3 (December 2013).

<sup>72</sup> Robyn D. Robertson, Hannah Barrett, and Ward G.M. Vanlaar, *State of the Practice of State Alcohol Ignition Interlock Programs*, National Highway Traffic Safety Administration (January 2023).

<sup>73</sup> Vehicle Code § 23575.3.

<sup>74</sup> AB 2210 (Petrie-Norris 2024).

<sup>75</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).

<sup>76</sup> *Id.*

<sup>77</sup> James Fell, Michael Scherer, and Danielle Wolfe, *State Alcohol Ignition Interlock Laws and Fatal Crashes*, *Traffic Injury Prevention*, 22:8, 589-592 (October 2021).

<sup>78</sup> *Id.*

In 2009, AB 91 (Feuer) created an IID pilot project in four counties which required that anyone convicted of a DUI install an IID. The California DMV evaluated the general deterrent impact of this law by comparing recidivism rates in the four counties that participated in the pilot program to recidivism rates in all other California counties.<sup>79</sup> The research found that mandatory ignition interlock installation did not reduce county-wide DUI recidivism below that of comparison counties.<sup>80</sup>

While the cost of program enrollment and participation can be a barrier to the use of ignition interlock devices for people with low incomes,<sup>81</sup> California law requires IID manufacturers to reduce program costs based on a person's income.<sup>82</sup> The law allows the state to impose civil assessments of up to \$1,000 against IID manufacturers for failure to apply or inform people of the fee reductions.<sup>83</sup>

### **Diversions programs**

DUI diversion programs defer criminal proceedings while the charged person completes education or treatment and can result in the dismissal of the charges. While diversion for DUIs is available in some states in some circumstances, including Texas, Florida, Louisiana, and Kansas,<sup>84</sup> California law prohibits courts from ordering diversion for almost all people charged with driving under the influence.<sup>85</sup> A bill that would have allowed misdemeanor diversion for DUI stalled in the legislature in 2022.<sup>86</sup>

Research suggests that DUI diversion may be an effective strategy to reduce recidivism for people arrested for a first offense. In a 2021 study, researchers assessed the impacts of DUI diversion for first-time DUI offenses in Pennsylvania

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<sup>79</sup> Eric Chapman, Sladjana Daoud, and Scott Masten, *General Deterrent Evaluation of the Ignition Interlock Pilot Program in California*, California Department of Motor Vehicles (January 2015).

<sup>80</sup> *Id.* In 2016, SB 1046 deleted the four-county pilot project when it created a statewide IID pilot program for people convicted of a second or subsequent DUI. SB 1046 (Hill 2016).

<sup>81</sup> Robyn D. Robertson, Hannah Barrett, and Ward G.M. Vanlaar, *State of the Practice of State Alcohol Ignition Interlock Programs*, National Highway Traffic Safety Administration, 16 (January 2023).

<sup>82</sup> Vehicle Code § 23575.3(k).

<sup>83</sup> Vehicle Code § 2375.3(l).

<sup>84</sup> Traffic Resource Center for Judges, *Pre-Trial Diversion Programs for DUIs* (February 2015).

<sup>85</sup> Vehicle Code § 23640(a). One exception is diversion for current or former members of the military. Penal Code § 1001.80(l). See *Tellez v. Superior Court*, 56 CA5th 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>86</sup> SB 1021 (Bradford).

by examining nearly 35,000 cases in which diversion was granted.<sup>87</sup> The research found that 4-year recidivism rates were significantly lower for people who were diverted compared to people who were not.<sup>88</sup> The researchers concluded that the lower recidivism rates for people who received diversion suggested that for most people, an arrest for DUI is enough of a specific deterrent to prevent reoffending.<sup>89</sup>

### **DUI collaborative courts**

Collaborative courts aim to reduce recidivism through intensive monitoring and substance abuse treatment for people convicted of multiple DUIs in lieu of standard punishments. Many use clinical assessments to screen for alcohol dependence and develop a treatment plan.<sup>90</sup> While most DUI court programs are grant-funded, DUI courts cost less to administer than court processing because of the shortened supervision time and reduced incarceration.<sup>91</sup>

The National Highway Traffic Safety Administration rates DUI courts as a highly effective measure to reduce DUI crashes.<sup>92</sup> The National Academy of Sciences recommends that every state implement DUI courts that use evidence-based standards and include evaluation by an addiction-trained clinician.<sup>93</sup> According to the Judicial Council of California, only 20 counties in the state operate DUI courts.<sup>94</sup> While some large counties including Fresno, Orange, and Sacramento operate DUI courts, others, including Los Angeles, Riverside, and San Bernardino, do not.<sup>95</sup>

### **Other punishments**

There is no strong evidence supporting the effectiveness of court-imposed sanctions such as license suspension, fines, and incarceration.<sup>96</sup> A 2023 NHTSA review of available research found that:<sup>97</sup>

- License suspensions are effective when imposed administratively, but less so when imposed by the court. Lengthy suspensions have not been shown to reduce DUI recidivism.

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<sup>87</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>88</sup> *Id.* at 89–94.

<sup>89</sup> *Id.* at 94.

<sup>90</sup> *Id.* at 268.

<sup>91</sup> Ashley Harron and Michael Kavanaugh, *Research Update on DWI Courts*, National Center for DWI Courts, 5 (January 2015) (citing studies).

<sup>92</sup> *Countermeasures that Work* at 1–52.

<sup>93</sup> *Getting to Zero* at 269.

<sup>94</sup> Judicial Council of California, *Collaborative Justice Courts Fact Sheet* (January 2024).

<sup>95</sup> *Id.*

<sup>96</sup> *Countermeasures that Work* at 1–62 (citing studies); *Getting to Zero* at 267.

<sup>97</sup> *Id.*

- Fines are just one component of the substantial financial costs associated with a DUI conviction — including higher insurance rates<sup>98</sup> — but have little effect on reducing impaired driving.
- Research on the effectiveness of jail is equivocal at best and numerous studies indicate that mandatory jail sentences might actually increase alcohol-related crashes.

### **Equity issues**

Many DUI sanctions create important equity concerns related to costs and continued criminal legal involvement. For example, some people are unable to pay for court-ordered DUI programs and ignition interlock devices.<sup>99</sup> Failure to complete a program or maintain an IID can lead to probation violations or new charges.<sup>100</sup> Convicted people cannot get their license reinstated if they do not complete their requirements and driving with a revoked or suspended license is a separate offense that can lead to more fines and a longer suspension.<sup>101</sup> A 2012 study by the DMV found that many people who have their license suspended for a DUI delay reinstatement of their license for years due to the inability to complete program requirements and pay fines, and that those who delay reinstatement have higher recidivism rates.<sup>102</sup>

As discussed above, there are mandatory reduced fees for IID costs based on the person's income.<sup>103</sup> However, DUI programs, which are regulated and approved by the California Department of Healthcare Services (DHCS),<sup>104</sup> have the option of offering reduced fees for low-income people or offering the standard fee but extending the payment plan.<sup>105</sup> There is no indication that fee reduction programs are widely available.

### **Driving under the influence of drugs**

As explained above, while drug DUIs make up a relatively small proportion of all DUIs in the state, the rate of drug-involved crash fatalities saw a 29% rise from 2019 to 2020 and has more than tripled over the past 25 years.<sup>106</sup>

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<sup>98</sup> See Jess Ullrich, *Here's How a DUI Impacts Your Car Insurance*, Yahoo Finance (December 15, 2023). See also Progressive, *Auto Insurance After a DUI*.

<sup>99</sup> RJ Vogt et al., *So Many Roadblocks: How California's Program Fees System Traps Low-Income Drivers*, ACLU SoCal (September 2022). See also *Countermeasures that Work* at 1–42.

<sup>100</sup> Vehicle Code § 23538(c)(1).

<sup>101</sup> Vehicle Code §§ 14601.2, 23538(b)(3), 23542(c), 23548(d), 23552(d).

<sup>102</sup> Patrice Rogers, *Identifying Barriers to Driving Privilege Reinstatement Among California DUI Offenders*, California Department of Motor Vehicles (May 2012).

<sup>103</sup> Vehicle Code § 23575.3(k).

<sup>104</sup> Health & Safety Code § 11836.

<sup>105</sup> California Code of Regulations § 9878(f)(3).

<sup>106</sup> *DUI MIS Report* at 75. As in the figures above, the rate was calculated using population numbers from the Department of Finance.

While there is no available data from the DMV on what drugs are involved in DUI incidents, the DMV is currently conducting a study in partnership with the California Highway Patrol and the University of California, San Diego to test various methods to detect cannabis-impaired driving.<sup>107</sup> However, there is little evidence to support a direct relationship between marijuana consumption, blood-THC concentration, and driver impairment.<sup>108</sup>

According to NHTSA, many of the evidence-based countermeasures for alcohol-impaired driving may be effective tools to address drug-impaired driving.<sup>109</sup>

### **Staff Recommendations**

The Committee may wish to consider the following recommendations to address the issues explored in this memorandum.

- **Reduce the per se BAC limit to 0.05% and create presumptive judicial diversion for many first-time offenses.**  
Align California law with research showing that impaired driving begins at a lower BAC level (0.05%) than currently specified in the law (0.08%). To address equity concerns about expanding criminal liability and to improve public safety, direct judges to grant diversion for first-time DUI misdemeanor offenses as early in the court process as possible unless excluded by aggravating factors such as a high BAC, injury, or having a minor in the vehicle. Allow a successful DUI diversion to be considered as equivalent to a prior DUI offense if the person has a second or subsequent DUI arrest.
- **Expand the use of DUI collaborative courts.**  
Expand DUI collaborative courts or other intensive supervision so that almost all people being prosecuted for a second or subsequent DUI must participate in them.
- **Streamline license suspension.**  
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.

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<sup>107</sup> California Department of Motor Vehicles, *DMV and CHP Partner with UC San Diego to Launch Groundbreaking Study to Improve Public Safety and Develop Best Practices to Detect Driving Impairment in Cannabis Users*, July 18, 2023.

<sup>108</sup> *Countermeasures that Work* at 2–3.

<sup>109</sup> *Countermeasures that Work* at 2–3.

**Conclusion**

Driving under the influence of drugs or alcohol presents extremely serious public safety issues. California has made significant progress in the last decades in reducing these offenses and the Committee should consider the data and proposals here in making recommendations that will continue that progress.

Respectfully submitted,

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