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§5 INTERSTATE IMPLICATIONS OF DRUNK DRIVING CONVICTIONS

5(A) Bibliography

- Sankey, Michael, *The MVR Book - Public Records Research Library* (Tempe, AZ: BRB Publications (FEP), updated annually) - "The national reference, detailing in practical terms, the privacy restrictions, access, procedures, regulations, and systems of all state held driver and vehicle records." Includes tables showing membership in various interstate compacts and agreements and how various states record, or fail to record, violations in other states.
- Sankey, Michael, *The MVR Decoder Digest - Public Records Research Library* (Tempe, AZ: BRB Publications (FEP), updated annually) - "The companion to *The MVR Book*, translating the codes and abbreviations of violations and licensing categories that appear on motor vehicle records."
- Chapter 1 (1 of 2) - Understanding the [Driver's License] Record [Printout], in *Driver Safety Manual (DSM)* (Sacramento, CA: D.M.V.). (See page 11-1 for more information on ordering this publication.)
- Chapter N, "Printout Terms and Definitions", in *Abstract Reporting Manual (ARM)*, 1998 ed. (Sacramento, CA: D.M.V.). (See page 11-1 for more information on ordering this publication.)
- Chapter C, "DUI Reporting", in *Abstract Reporting Manual (ARM)*, 1998 ed. (Sacramento, CA: D.M.V.). (See page 11-1 for more information on ordering this publication.)
- American Prosecutors Research Institute, National Traffic Law Center, *Prior Convictions in DUI Prosecutions—A Prosecutor's Guide to Prove Out-of-State DUI/DWI Convictions* (Charlottesville, VA: Michie, 1997) (reviewed in, Lillie, Richard G., "Prior Convictions in DUI Prosecutions—A Prosecutor's Guide to Prove Out-of-State DUI/DWI Convictions", *the Champion*, XXI No. 10, Dec. 1997 (Washington, D.C.: N.A.C.D.L.) 50).
- Menaster, Albert J., and Ricciardulli, Alex, Chapter 10 in *3 Strikes Manual* (Woodland Hills, CA: Compendium Press, 1996).

5(B) Veh. C. §§ 15000 et seq.: The Interstate Driver's License Compact

Veh. C. §§ 15000 et seq. are the California statutes which enact the Interstate Driver's License Compact.

5(B)(a) How Out-of-State Convictions Appear On A California Driving Record

Veh. C. §15022 states in part,

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. . . .

In accordance with §15022, an out-of-state conviction of drunk driving appears on the California driver's license record as either "O/S 17", equivalent to §23152, or "O/S 18", equivalent to §23153. Or the record may simply identify the offense as "DWI".

5(C) Lawyers With Practical Experience

Barry Simons of Laguna Beach (949 497 1729) has lectured on this topic at the Harvard summer session of the National College for DUI Defense.

Stateline, Nevada, attorney William "Loophole" Cole (775 588 2800) is licensed to practice law in both Nevada and California and has a great deal of familiarity with equivalency issues related to Nevada drunk driving convictions. In June 2000, Cole won a writ against the D.M.V. in connection with their attempt to require his client, a California resident, to attend a DUI Program as the result of a Nevada drunk driving conviction. Cole reports,

. . . In this case, as the ruling states, while the record indicates that the defendant was convicted of "driving" under the influence, the record submitted by the D.M.V. did not "clearly show," as required by *Draeger v. Reed*, that the conviction was for "driving" as opposed to "being in actual physical control" of a vehicle.

Susan K. McGuire of Grass Valley (916 273 7446; Fax: 916 273 6559) handled *Draeger v. Reed*, which is discussed below. This case concerns the equivalency of a Florida drunk driving conviction.

5(D) To Be Useable By California The Out-of-State Conviction Must Pass An Equivalency Test

5(D)(a) Chargeable As A Prior Conviction In California Courts If Equivalent

Probably the only time an out-of-state conviction for drunk driving is of any concern in the California courts would be when such a conviction is alleged as a prior conviction sentence enhancement in a later drunk driving case in California.

Conceivably a court could revoke probation for an out-of-state offense, but that's not very likely because courts usually don't check driving records before the expiration of the probationary period. Instead they generally rely on Veh. C. §23622, subdivision (c). That subdivision requires courts **in this state** to report drunk driving convictions to other courts where the defendant is on probation.

Veh. C. §23626 (previously Veh. C. §23210) is the statute which determines whether or not such an out-of-state offense is useable by a California court. It reads:

A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152 or 23153 of this code, or Section 191.5 of, 191.5 or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, is a conviction of Section 23152 or 23153 of this code, or Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code for the purposes of this code.

Thus, the out-of-state conviction has to meet the “would be a violation of” test. In other words, it must be equivalent to the California offense. If the California offense is not the same, or necessarily included (driving 0.10% or more includes driving 0.08% or more), the offense is not useable under §23626 in California.

Use the information in the subsections below to determine what the elements of the out-of-state offense are.

For more information:

Chapter M, “Appendix”, in *Abstract Reporting Manual (ARM)*, 1998 ed. (Sacramento, CA: D.M.V.)- Point counts, violation codes at p.M-2. (See page 11-1 for more information on ordering this publication.)

People v. Johnson (1991) 233 CA3d 1541, 285 CR 394 - General discussion on how out-of-state offense is found equivalent to California offense.

U.S. v. Matthews (2000) 226 F3d 1075 (9th Cir 2000)- Court must examine statutes or copies of convictions when defendant challenges sentence enhancement on basis that previous convictions are not qualifying offenses.

5(D)(b) Useable by California D.M.V. If Equivalent

See page 11-21 regarding the effect on a California driver’s license of a Stop ‘n Snatch action in another state for chemical test refusal (Veh. C. §13353) or excessive B.A.C. (Veh. C. §13353.2).

Veh. C. §15023 reads:

(a) The licensing authority in the home state, for the purposes of suspending, revoking, or limiting the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Section 15022 of this compact, as it would if such conduct had occurred in the home state, in the case of a conviction for:

- (1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
- (2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

- (3) Any felony in the commission of which a motor vehicle is used;
 - (4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.
- (b) As to any other conviction, reported pursuant to Section 15022, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.
- (c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this section, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this section.

This statute requires the California D.M.V. to take the same driver's license action on a drunk driving conviction in another state as it would if the person were convicted of drunk driving in California. However, § 15023 has an equivalency requirement. Under the terms of Veh. C. § 15025, that equivalency requirement is permitted to be supplemented by the equivalency requirements in Veh. C. § 23626 (discussed in the previous subsection), Veh. C. § 13352, subdivision (d), and Veh. C. § 13363.

Section 13352, subdivision (d), is actually very similar to Veh. C. § 23626. It reads:

- (d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense which, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

A notable difference between this statute and Veh. C. § 23626 is that this statute does not mention the vehicular manslaughter intoxicated offenses (Pen. C. §§ 191.5 and 192(c)(3)). But not only is Veh. C. § 23626 applicable to the entire Vehicle Code, those offenses are also made equivalent to a § 23153 conviction for purposes of Veh. C. § 13352 by the language of Veh. C. § 23620.

Finally, Veh. C. § 13363 gives the D.M.V. broad authority related to out-of-state convictions. However that broad authority is tempered by the fact that in *Moomjian v. Zolin* (1993) 12 CA4th 1606, 16 CR2d 335, the court held that Veh. C. § 13352, subdivision (d) is more specific. Section 13363 reads:

- (a) The department may, in its discretion, except as provided in Chapter 6 (commencing with Section 15000) of Division 6, of this code, suspend or revoke the privilege of any resident or nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of the person in a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada of

an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the privilege to operate a motor vehicle.

- (b) Whenever any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada reports the conviction of a violation in such place by a person licensed in this State, the department shall not give effect to such report pursuant to subdivision (a) of this section or Section 15023 unless the department is satisfied that the law of such other place pertaining to the conviction is substantially the same as the law of this State pertaining to such conviction and that the description of the violation from which the conviction arose, is sufficient and that the interpretation and enforcement of such law are substantially the same in such other place as they are in this State.

But one way in which Veh. C. §13352, subdivision (d), is not more specific is that it says nothing related to the Veh. C. §13363 requirement of substantially similar enforcement. And that's important because one has the right to presume that a civil finding of drunk driving would not be reportable as a "conviction" under Veh. C. §15022. However, if it were so reported, and even if the elements are identical, it isn't equivalent to §23152 because, it fails the "enforcement of such law [is] substantially the same" test.

Again, like the situation for court use of foreign-state convictions, the out-of-state conviction has to meet an equivalency test. If the California offense is not the same, or necessarily included (driving 0.10% or more includes driving 0.08% or more), the offense is not useable by the D.M.V.

Use the information in the subsections below to determine what the elements of the out-of-state offense are.

***PRACTICE TIP:* Where the D.M.V. is attempting to act on an out-of-state offense which is not statutorily useable for that purpose, ask the D.M.V. for Form DL-207 - REPORT OF INCORRECT DRIVER'S LICENSE RECORD (referred to in the *Driver Safety Manual* (see page 11-1) at Chapter 8, §8.341). Fill it out and send it to the D.M.V. If the correction is denied there's no right to a hearing. One must instead file a writ for judicial review (see page 11-162) (*Draeger v. Reed* (1999) 69 CA4th 1511, 82 CR2d 378).**

For more information:

People v. Johnson (1991) 233 CA3d 1541, 285 CR 394.

Pollack v. D.M.V. (1985) 38 C3d 367, 211 CR 748 - Driver entitled to a prompt hearing before the D.M.V. to correct inaccurate record.

5(D)(c) Equivalency Of Out-of-State Prior Convictions

Drunk driving laws vary widely from state to state. For instance, in some states, no proof of driving is required. Mere operation or even just physical control of the vehicle is sufficient (see page 1-7). And in Illinois, the entire offense can be committed by sleeping in a van while drunk.

In addition, at least one other state doesn't treat a first time drunk driving as a crime at all. Rather it's a civil proceeding and the defendant is not given any advice of rights at all. Wisconsin requires the defendant to pay for a jury if he wants a trial in the civil case. A conviction allegation based on one of these out-of-state "convictions" is not only not provable factually, it's also unconstitutional if it's treated as a conviction.

Colorado outlaws driving under the influence of alcohol, presuming intoxication at a B.A.C. of 0.10% or more. But Colorado also has an offense which is committed by driving while the ability to drive is *affected to the slightest degree* by alcohol. This less serious offense uses a presumption of a B.A.C. of 0.05% or more.

In *McDonald v. D.M.V.* (2000) 77 CA4th 677, 91 CR2d 826, the question was whether or not the Colorado offense is "substantially similar" to California's Veh. C. §23152(a), which prohibits driving under the influence of alcohol and uses a 0.08% or more presumption. According to Veh. C. §15023(c), only if the two offenses meet the "substantially similar" test, is the Colorado conviction of driving with ability slightly impaired useable by California as a driving under the influence conviction.

Obviously, the two offenses are not substantially similar - California requires impairment to an appreciable degree (*People v. Schoonover* (1970) 5 CA3d 101, 85 CR 69; *People v. Weathington* (1991) 231 CA3d 69, 282 CR 170). Nevertheless the court found the two crimes substantially similar. And they did so without any knowledge of the defendant's blood alcohol level in the Colorado case. The author's guess is that the court was aware of neither *Schoonover* nor *Weathington*.

Predictably, *McDonald* barely mentions *Draeger v. Reed* (1999) 69 CA4th 1511, 82 CR2d 378, which held that a Florida conviction was not useable by California to enhance a sentence for a drunk driving conviction under Veh. C. §13352. *Draeger* was based upon Veh. C. §23210 (now Veh. C. §23626), which is more specific than §15023 and which clearly requires that the out-of-state offense have the same elements as §23152. Under the more specific §23626, the Colorado conviction would not be useable.

In Florida, drunk driving is outlawed as either driving or being in actual physical control of a vehicle while under the influence of alcohol. The California offense is limited to driving only. With a great deal of reliance on the Driver's License Compact statutes (Veh. C. §§ 15000 et seq.), the court held this difference is substantial, and ordered the D.M.V. to remove the conviction from their records, or gather additional information, limited to the Florida conviction record, showing that the driver actually drove the vehicle, and that the conviction was not based upon mere physical control. The opinion specifically ruled out use of the police report or citation for this purpose.

The opinion also held that there is no right to a hearing if the D.M.V. mistakenly classifies an out-of-state offense as a §23152 equivalent, but rather, one informs the D.M.V. of the erroneous record and, if they fail to correct it, one files a writ in Superior Court.

Pragmatically putting the two cases together, and ignoring the fact that *McDonald* ignores the more specific §23626, and ignoring the court's ignorance of *Schoonove* and *Weathington* the rule may be temporarily stated as: for an out-of-state offense to be useable by the California D.M.V. as a conviction of driving under the influence, there must be actual driving, but impairment need only be slight.

PRACTICE TIP: It's essential to not only check the elements of a foreign state's drunk driving statute, but also the cases interpreting the elements of the foreign state offense.

For instance, without looking at the cases interpreting the driving element of the drunk driving offenses in Colorado, one would not know that state allows the driving element to be proved by mere proof of actual physical control of the vehicle (*Motor Vehicle Division, State of Colorado v. Warman* 763 P2d 558 (Colo. SupCt, 1988); *People v. Swain* 959 P2d 426 (Colo. SupCt, 1998). This happens in Colorado because, unlike California, Colorado law does not define the term "driving" anywhere, leaving the courts free to make up any definition they desire.

5(E) Full Faith and Credit

Another approach with out-of-state priors involves the Full Faith and Credit clause, used in some mysterious manner by Mike Angeloff (909 652 2000). It had something to do with Arizona priors only being useable for five years.

5(F) Handling Case For A California Resident With An Out-Of-State Conviction

See page 4-7 for more information about challenging an out-of-state conviction on the ground that it is unconstitutional.

See page 11-21 regarding the effect on a California driver's license of a Stop 'n Snatch action in another state for chemical test refusal (Veh. C. §13353) or excessive B.A.C. (Veh. C. §13353.2).

Anyone convicted of drunk driving or a related offense in another state must contend with all the requirements of Veh. C. §13352, subdivision (d), Veh. C. §13363, and Veh. C. §23626, and particularly, Veh. C. §15023.

These statutes mandate a suspension or revocation of the California driving privilege by the D.M.V. in the same manner as if the offense had been committed in California, if the offense is equivalent to a California offense, as described in the subsections above.

The specific action taken depends upon the number of other useable convictions appearing on the record at the time information about a current conviction is received. Such convictions can be

either (1) a current conviction that the D.M.V. is taking action on, or (2) a prior conviction that is used to enhance the action taken on the current conviction by a court and the D.M.V.

PRACTICE TIP Lawyers dealing with the California consequences of a drunk driving conviction of a California resident in another state need to have the sentencing court there impose all of the California-required probation conditions, in accordance with the holding in *Moomjian v. Zolin* (1993) 12 CA4th 1606, 16 CR2d 335 (see the punishment charts at page 10-7 for details).

The most important probation conditions to order are completion of a California state licensed DUI Program (if that is not ordered the defendant will never again drive in California (see page 10-63)) and any appropriate driver's license restrictions.

In a first-offense case the 90-day license restriction will allow the defendant to avoid a mandatory six-month suspension. For a second offender the license restriction will allow restricted driving while he or she attends the multiple offender DUI Program (see page 10-104).

5(G) Handling Case Of An Out-Of-State Resident Suspended In Home State Because Of A California Drunk Driving Conviction

5(G)(a) Veh. C. §15023: Home State Must Suspend If Its Laws Require Suspension For An Equivalent Offense

Each state that is a signatory to the Driver's License Compact (Veh. C. §§ 15000 et seq.) has a statute like Veh. C. §15023, requiring that state to suspend or revoke driving privileges for any **conviction of an offense** for which California has suspended or revoked the person's driving privilege, if that offense passes the equivalency test in §15023. **In accordance with the provisions of the home state's statute like §15023, the suspension or revocation will be for the period of time required by the home state's laws for the equivalent offense.**

Since California's drunk driving offenses are arranged in such a way that most other states' laws will allow a finding of equivalency (low B.A.C., defendant must have driven), odds are that a drunk driving conviction in California will result in a suspension in the home state, if that state has a suspension statute for the equivalent offense.

5(G)(b) Proof of Insurance

See page 10-82.

5(H) Handling Case For An Out-of-State Resident Suspended In California For Failure to Enroll In Or Complete A California Licensed DUI Program

5(H)(a) Person Not a California Resident on DATE OF CONVICTION Should NOT be Suspended or Revoked for Not Doing a DUI Program

The legislature foresaw problems with requiring DUI Programs for persons who reside in another state **at the time of their drunk driving convictions** and they created solutions for these problems.

For example, Veh. C. §23538(b) requires the court to order completion of a California licensed DUI Program “in the driver’s county of residence or employment” as a condition of granting probation to a first offender under §23152. Veh. C. § 13352(a)(1) refers to this §23538(b) program, i.e., one in the person’s county of residence or employment, and requires that it be completed before full driving privileges can be returned. Punishment statutes for other drunk driving offenses have similar provisions. Obviously, none of this is possible if the person resides in another state and there are no California licensed DUI Programs there.

In addition, Health & Safety C. §11837.2(a) says:

The court may refer persons only to licensed programs. Subject to these provisions, a person is eligible to participate in the program if it is operating in (1) the county where the person is convicted, or (2) the county where the person resides, or (3) a county that has an agreement with such person’s county of residence pursuant to Section 11838, or (4) a county to which a person may request transfer pursuant to subdivision (d).

The law does not require impossibilities (Civil C. §3531). If the person resides in another state on the date of their California drunk driving conviction they cannot attend a licensed California DUI Program. Probation must be granted without the court ordering a DUI Program and the person should not suffer any suspension penalty as a result of not attending the DUI Program.

5(H)(b) Person Not a California Resident on DATE OF REINSTATEMENT is Eligible for Reinstatement Without Doing a DUI Program

Veh. C. §13353.5 and Title 13, Cal. C. of Regs., §124.92 (reproduced in full in Appendix B) provide a measure of relief for a person who is suspended or revoked under §13352 and is not a **California resident on the date that driving privileges are scheduled to be reinstated** They also provide relief for persons illegally suspended or revoked who were not California residents of the date of conviction (see above).

Veh. C. §13353.5(a) reads:

(a) Notwithstanding subdivision (c) or (d) of Section 13353.4, if a person whose driving privilege is suspended or revoked under Section 13352 or 13352.4 is a resident of another state at the time the mandatory period of suspension or revocation expires, the department may, upon written application of the person, terminate the suspension or revocation for the purpose of allowing the person to apply for a license in his or her state of residence. The application shall include, but not be limited to, evidence satisfactory to the department that the applicant now resides in another state.

This statute conditions termination of the suspension or revocation on being a resident of another state "at the time the mandatory period of suspension or revocation expires". That requires waiting till that date to see where the person lives, so assuming the D.M.V. does not follow the law described in the subsection above, the person will be suspended or revoked in California for the full time required by Veh. C. §13352.

If the D.M.V. ignores the law, only on the date the suspension or revocation under §13352 is scheduled to end is the person eligible for a waiver of the DUI Program requirement. At that time, they must present *evidence satisfactory to the department that the applicant now resides in another state*. If they want to later move back to California they can do so with full driving privileges after either three more years have passed, or they have completed a DUI Program (Veh. C. §13353.5(b)).

The only evidence the D.M.V. requires in support of the reinstatement request is the sworn statement of the driver that he or she resides outside of California. Use form DL 589, or you could send a letter like that in FORM 10-1 below, which may suffice.

5(H)(c) FORM 10-1: Letter Requesting Termination of Suspension or Revocation for Out-of-State Resident

Form 10-1: LETTER REQUESTING TERMINATION OF SUSPENSION OR REVOCATION FOR OUT-OF-STATE RESIDENT

STOP!

Don't retype this form. Call us about FastDeuce 4.0. It has this form in a computer file.

Department of Motor Vehicles
Consolidated Processing Area
P.O. Box 942890
Sacramento CA 94290

Date: _____

Request To Terminate Suspension Or Revocation

Pursuant to California Vehicle Code (CVC) §13353.5, I request termination of the suspension or revocation taken under CVC §13352 for the purpose of applying for a driver's license in my current state of residence. I also understand that my California driver's license is canceled pursuant to CVC §13100.

I currently maintain my principal residence in the state of _____, and I am unable to comply with the requirement to complete a drinking driver program as required by California law.

I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct. I have read and understand the terms and conditions regarding the termination of this action pursuant to CVC §13353.5 by the California Department of Motor Vehicles, and the residency requirements as defined in §12505.

Executed at (city): _____
state: _____ on (date): _____

(signature) (date)

(residence address) (city, state, zip)

(mailing address, if different) (city, state, zip)

5(H)(d) Other Solutions

Where the person who was ordered to attend a program cannot fit into one of the exceptions above, there may be problems. Prior to the enactment of §13353.5, experience showed that many judges would permit an out-of-state defendant with a California drunk driving conviction to do some reasonable substitute for a DUI Program in their home state. If driving privileges are not suspended after a first offense, and if the D.M.V. follows the directives of Veh. C. §13352.4 (see above) the only person who has to be satisfied with completion is the judge.

But, where the judge is unwilling to be flexible, or a completion certificate is required in order to obtain a return of California driving privileges, the out-of-state defendant has to either quit his job and sell his home and move to California to attend a program, or find some reasonable substitute for that. The provisions of Title 9, Cal. C. of Regs., §§ 9795 et seq., that relate to program requirements, especially §9852, are of little help to such persons. However, some programs are willing to work things out with the defendant. (See, e.g., <http://www.dui.com>.)

Another method of dealing with problems might be to use the Federal courts. In *Burgess v. Ryan* 996 F2d 180 (7th Cir 1993), the defendant, an Illinois resident, was convicted of drunk driving in Colorado. When Colorado told Illinois about the conviction, Illinois suspended driving privileges. But the Federal court set aside the suspension because of the failure of the Colorado judge to tell the defendant that it would result from his conviction.

5(l) Handling Case For A Person Moving To California With An Out-of-State Drunk Driving Conviction On Home State Record

No California Driving Privilege if Suspended or Revoked in Home State: Veh. C. §15024 reads:

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

- (1) The applicant has held such a license, but the license has been suspended by reason, in whole or in part, of a violation, and if such suspension period has not terminated.
- (2) The applicant has held such a license, but the license has been revoked by reason, in whole or in part, of a violation, and if such revocation has not terminated; except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.
- (3) The applicant is the holder of a license to drive issued by another party state and currently in force, unless the applicant surrenders such license.

This statute therefore requires California to refuse to issue a driver's license to a person from another state whose driving privilege is suspended or revoked in that other state.

Additional D.M.V. Action Based Upon Veh. C. §13352: In *Moomjian v. Zolin* (1993) 12CA4th 1606, 16 CR2d 335 the driver conceded that the out-of-state offense was equivalent to California's drunk driving offense. She had moved to California from Georgia, where she had gotten convicted of drunk driving twice in the previous seven years. In accordance with Veh. C. §15023 and Veh. C. §13352, the D.M.V. treated her Georgia convictions just the same as if they were in California, and notified her of an 18-month suspension of her California driving privileges pursuant to Veh. C. §13352(a)(3).

Though she was freshly here from Georgia, she was a California resident at the time the D.M.V. acted. **Any California resident who gets an equivalent drunk driving conviction in any state will be dealt by the D.M.V. the same way. They'll act as though the conviction occurred in California.** The person will be suspended or revoked as appropriate, based upon the number of other like convictions on their record, under the authority of Veh. C. §13352.

Moomjian contested the suspension by arguing that Veh. C. §13363(a) gave the D.M.V. discretion to not suspend her for an out-of-state offense, and that such discretion should have been exercised. But the decision held that 13352(a)(3) was more specific and that the D.M.V. had no discretion but to suspend **since the sentencing court failed to impose the necessary California probation conditions**, which included the 18-month California multiple offender treatment program. The opinion further pointed out that Moomjian provided no proof or evidence that she had taken any steps at all to have the Georgia court impose the necessary California probation

conditions, and had made no efforts to inform the California courts as to whether or not that was even possible.

§6 DRIVING-UNDER-THE-INFLUENCE PROGRAM - (DUI PROGRAM)

See page 10-1 for more information about the effectiveness of these programs.

FIGURE 10-2 shows the various DUI Program requirements for multiple offenders after July 1, 1999.

6(A) General Information

6(A)(a) Statutes and Regulations

Health & Safety C. §§ 11836 et seq. (set forth in full in Appendix B) grants the State Department of Alcohol and Drug Programs sole authority to license all driving-under-the-influence programs, which includes programs for both first offenders and multiple offenders (Health & Safety C. §11836).

These programs were previously known as “drinking driver treatment programs”, but that name left out any reference to drug influenced driving, so it was changed, and authority to enroll drug-influenced violators was added (Health & Safety C. §11837(c)). The new name appears in Health & Safety C. §11765(n), which also permits the use of “DUI Program” or simply, “Licensed Program”.

Health and Safety C. §11836 and Health & Safety C. §11837.4, were amended and §11836.16 was added by Stats. 2000, Chap. 1064 (AB 2227), §§ 2.1., 4 and 3, to add authorization for DUI Programs to accept persons “suspended, revoked, or delayed due to a violation of Section 23140” (see page 1-33 for more information), and to add numerous anti-competitive provisions and greater ease in obtaining fee increases. Undoubtedly these latter amendments were bought and paid for by the California Association of Drinking Driver Treatment Programs.

Administrative regulations related to licensing and program requirements for attendees are set forth in Title 9, Cal. C. of Regs. (Department of Alcohol and Drug Programs (D.A.D.P.)) and are set forth in Appendix B. The D.M.V.’s regulations are in Title 13, Cal. C. of Regs., §§ 120.00 et seq. and are set forth in full in Appendix B.

For additional information about the Department of Alcohol Drug Program’s regulations, or for a copy of the complete set of D.A.D.P. regulations for DUI Programs, contact: