

SUPERIOR COURT OF CALIFORNIA
San Luis Obispo
Revised Sentencing Guidelines – Effective June 10, 2010

These sentencing guidelines have been adopted as reference guidelines for sentencing in the Superior Courts of San Luis Obispo. They are only guidelines and are only to be used as such. Each case is to be decided and sentenced on its own merits, aggravating and mitigating factors.

23152 (a) & (b) V.C. (DUI-First Offense)

NO PROBATION - VC§23536

- 4 days County Jail (minimum)
(Either immediately remand or continue sentencing date.)
- pay or serve fine of **\$1,950** --6 month suspension of drivers license VC 13352(a)(1)

Treatment not required, but DMV will not reinstate license until proof of completion of a program is provided VC 13352(a)(1)

23152 (a) & (b) (DUI-First Offense)

WITH PROBATION - VC 23538

May not absolve from obligation to pay fine, serve time or minimum probation term of 3 years VC 23600

3-5 Years Probation

- obey all laws
- not drive unless licensed/insured
- not drive with any alcohol
- submit to chemical testing blood, breath or urine
- fine **\$1,950**

[If BA less than .15%]

- enroll in DWI School w/in 21 days
- complete at least a 3 month program w/in 180 days program cost =\$615
- 2 days in County Jail

[If BA .15% or more]

- enroll in at least a 3 month program w/in 180 days program cost =\$615
- 5 days in County Jail

[If BA .20 or more or test refused]

- enroll in 9 month program w/in 21 days and complete w/in 230 days
- **must state B/A on record (minute order)
- **if under 21 years suspend drivers license for 1 year per VC 13202.5
- 10 days if BA .20 or test refused

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Enhancements

- Defendant (13-21 years): The court shall order a 1 year suspension of the DL instead of a restricted license. Exception based on critical need.
VC13202.5
- Minor passenger
(Under 14 years): 48 continuous hours CJ. VC 13572
- Excessive speed: Additional and consecutive 60 days in CJ if speed exceeds limit by 30+ mph on freeway or 20+ mph on other street or highway. VC 23582

23152(a) &(b) V.C. (DUI-Second Offense) VC 23540
NO PROBATION

- pay fine of **\$2,190**
- serve not less than 90 days County Jail
- suspend drivers license for two years VC 13352 (a)(3)
- **advise defendant DMV will not issue license unless DDP completed
- impound or find unusual circumstances per VC 23594(a)

23152(a)&(b) (DUI-Second Offense) VC 23542
WITH PROBATION

3-5 years probation

- obey all laws
 - not drive unless licensed/insured
 - not drive with any alcohol
 - submit to chemical testing blood, breath or urine
 - fine **\$2,190**
 - .08- .14: 10/20/30 days in County Jail (Over 5 yrs, 1-5 yrs, w/in 1yr)
 - .15-.19: 45 days
 - .20 above or refusal: 60 days
- Drinking Driver Program** (18 months SB 38 program)
enroll w/in 21 days complete w/in 21 months [program cost = \$1803]
- impound vehicle for up to 30 days if prior w/in 5 years unless “interests of justice” exception is placed on record and in minutes. VC§23594(a)

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23152(a)&(b) (DUI-Third Offense) VC 23546
NO PROBATION

- fine **\$2,190**
- 180 days County Jail (min)
- designate habitual offender for 3 yrs. per VC 23546(b) and advise defendant who must sign an affidavit (DMV form) in court per VC 13350(b)
- 3 year license revocation VC 13352(a)(5)
- impound or find unusual circumstances on record/minutes VC 23594(a)
- **advise DMV will not issue license w/o completion of DDP (18 month SB 38 program)

23152(a)(b) (DUI-Third Offense) VC 23548
WITH PROBATION

- 3-5 years probation
 - obey all laws VC 23600
 - not drive unless licensed/insured
 - not drive with any alcohol
 - consent to chemical testing of blood, breath or urine
 - fine **\$2,190**
 - 3 year license revocation VC 13352(a)(5)
 - DDP (18 month SB 38 program) enroll w/in 12 months - complete 30 months
 - .08-.14: 120 days County Jail
 - .15-.19: 150 days
 - .20 above or refusal: 180 days
 - Designate habitual traffic offender for 3 years
 - impound or find unusual circumstances on record/minutes VC 23594(a)

23152(a)&(b) (DUI - Fourth Offense or more) VC 23550
NO PROBATION

- same as third except:
 - 180 days County Jail
 - 4 year license revocation per VC 13352(a)(7)

23103(a)/23103.5 (Wet Reckless)

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18 month probation

- not drive unless licensed/insured
- not drive with any alcohol

- submit to chemical testing (blood, breath or urine)
- obey all laws
- pay fine of **\$864**
- enroll w/in 21 days - complete w/in 180 days...alcohol related reckless school [i.e., educational portion of SWI - VC 23502(a)]
- **under 21 years suspend driver's license for 1 year per VC 13202.5

Priors: 1-5 days CJ (or 7 or 10); 2=30 days; 3=60 days; 4+=90 days.

Note:

*DA must file written statement re reasons for substituting any offense for DUI (VC 23635). If VC 23103 is substituted for VC 23152, the statement must say whether alcohol and/or drugs were consumed in connection with the offense and, if so, the court must advise the defendant that the VC 23103 conviction will be a prior for future DUI violations.

VC 23103.5(a)

V.C. 23140 (Minor Driving with Alcohol .05% or more (infraction only))

1 year probation - **must grant probation** if defendant will request restricted license after license suspension.

Probation terms:

- obey all laws
- drivers license suspended 1 year VC 13202.5(d)(4)
- must attend educational (wet reckless) portion of DWI school – VC 23501(a)

HN655

Same penalties as for Wet Reckless.

***** NON-ALCOHOL OFFENSES *****

4462.5 V.C. (False Tab/License)

- **\$770** fine (if from own vehicle)
- **\$890** fine (if from another's vehicle)

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14601 V.C. (Driving with Suspended Drivers License-First Offense)

Applies when DL **suspended for reckless driving** (VC 23103)

1 year probation

Conditions:

--not drive unless licensed/insured w/prior = 10 days CJ
--\$570

Without probation minimum is 5 days CJ plus minimum \$300 fine plus \$840 PA + \$60 surcharge + \$30 Conviction Assessment + \$30 Security + \$10 prior + \$100 restitution fine = **\$1,370** Second offense w/in 5 yrs. min. 10 days CJ \$500 fine = **\$2,170**.

14601.1 V.C. (Driving with suspended driver's license including FTA suspensions)

1 year probation

Conditions:

--not drive unless licensed/insured
--\$570 fine (**\$364** if defendant gets his license).

If prior 14601.1 (or 14601, 14601.2 or 14601.5) within 5 years:

1 prior = 2 days CJ
2 priors = 6 days CJ
3 priors = 15 days CJ
4 priors = 30 days CJ
5 priors = 45 days CJ
6 priors = 60 days CJ

Without probation: minimum \$300 fine + \$840 PA + \$60 surcharge + \$30 Conviction Assessment + \$30 Security + \$10 prior + \$100 restitution fine = **\$1,370**.

Suspend \$640 = **\$730 fine**

If defendant gets his license, suspend \$851 = **\$519 fine**

If one or more prior 14601.1 (or 14601, 14601.2 or 14601.5) offenses within 5 years minimum jail of 5 days and minimum \$300 fine + \$840 PA + \$60 surcharge + \$30 Conviction Assessment + \$30 Security + \$10 prior + \$100 restitution fine = **\$1,370**. VC 14601(b)(2).

14601.2 V.C. (Driving with suspended drivers' license; alcohol-related suspension)

1 year probation

Conditions:

--not drive unless licensed/insured

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- 10 days County Jail mandatory minimum on probation [VC 14601.2(2)(e)]
- \$570** fine (**\$364** if defendant gets his license)
- *--IID required [VC 14601.2(h)] for period not to exceed 3 years (VC 23575) on any vehicle defendant owns or operates.

1 prior within 5 years= 30 days CJ (mandatory 10 days)
2 priors= 60 days CJ (mandatory 30 days)

Note:

If prior 14601.1 (or 14601, 14601.2 or 14601.5) within **7 years, with probation** there is a mandatory minimum of 10 days CJ. For two or more priors the mandatory minimum is 30 days. For a prior offense 5 - 7 years before the current offense, the mandatory minimum is 10 days CJ. [VC 14601.2(2)(g)]

Without probation: minimum \$300 fine + \$840 PA + \$60 surcharge + \$30 Conviction Assessment + \$30 Security + \$10 prior + \$100 restitution fine = **\$1,370.**

Suspend \$640 = **\$730 fine**

If defendant gets his license, suspend \$851 = **\$519 fine**

If one or more prior 14601.1 (or 14601, 14601.2 or 14601.5) within 5 years, minimum jail of 30 days and minimum fine of \$500 plus penalty assessment (\$1,400) and restitution fine (\$100) plus surcharge (\$100) security (\$30) conviction assessment (\$30) plus prior (\$10) = **\$2,170.** VC 14601.2(d)(2).

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14601.5 V.C. (Driving with license suspended because of refusal to take chemical test, or B.A. .08% or more, or minor .01% or more - VC 13353, 13353.1 and 13353.2)

Treat this like a 14601.2

1 year probation

Conditions:

- not drive unless licensed/insured
- \$570** fine (**\$364** if defendant gets his license)

If prior 14601.5 (or 14601, 14601.2 or 14601.3) within 5 years: 10 days CJ

Without probation: No minimum CJ; \$300 fine + \$840 PA + \$60 surcharge + \$30 Conviction Assessment + \$30 Security + \$10 prior + \$100 restitution fine = **\$1,370.** or both fine and jail. [With respect to fine, court can take into account ability to pay and reduce accordingly for reasons stated in the record.]

Suspend \$640 = **\$730 fine**

If defendant gets his license suspend \$851= **\$519 fine**

If one or more prior 14601.5 (or 14601, 14601.1, 14601.2 or 14601.3) offenses within 5 years, minimum jail of 10 days **and** minimum fine of \$500 plus penalty assessment (\$1,400) and restitution fine (\$100) plus surcharge (\$100) security (\$30) conviction assessment (\$30) plus prior (\$10).= **\$2,170.** VC 14601.5(d)(2).

12500 V.C. (Unlicensed Driver -- First Offense)

Reduction from 14601 et. seq.:

- \$475** fine with license, pay or serve – infraction
- \$570** fine without license, pay or serve -- misdemeanor

20002 V.C. (Hit & run - non-injury accident)

1 year probation

Conditions:

- no traffic violations
- restitution
- **\$1,370** fine
- up to 100 hours of community service
- up to 5 days CJ

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PENAL CODE

148 P.C. (Resisting Arrest)

V.C. 2800.1

\$970

\$980

1 year probation

- minimum 10 days County Jail
- \$970 / \$981 fine
- assaultive behavior program w/in 180 days

166 (Violating Court Order)

- minimum 10 days County Jail
- \$600 fine

240 (Assault)

See PC 242 below, but lesser fine and CJ.

Include from PC 242: Assaultive Behavior Program w/in 180 days

Advise: no firearms for 10 years [PC 12021(c)(1)]

242 P.C. (Battery)

1 year probation

Conditions:

- obey all laws
- restitution
- \$760** fine
- 10 days County Jail
- Assaultive Behavior Program w/in 180 days
- Advise: no firearms for 10 years [PC 12021(c)(1)]

273.5 P.C. (Spousal Abuse)

Minimum 3 years probation - refer to Probation Dept. (continue sentencing 3-5 weeks)

- mandatory P.C. 1203.097
- 52 week Batterer's Treatment plus
formal probation

- Min 10 days CJ
- Advise no firearms for 10 years
- See 273.5 if prior violation or violations of 273.5(a)
- 15 days CJ on second conviction within 7 years
- 60 days if 2 or more convictions within 7 years

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415 P.C. (Disturbing the Peace)

\$240 - \$560- \$760

Reduced from 242 P.C.:

1 year probation

Conditions:

--obey all laws

-- **\$560** fine

--10 hours community work service or 1 day County Jail

476a P.C. (Insufficient Fund Checks -- Under \$200)

1 year probation

Conditions:

--obey all laws

--no checking account until finish DA program

--restitution

--community work service: 1 hour for each \$10 worth of checks (min.
\$100 fine)

--DA Bad Check Program w/in 120 days

--\$200 Restitution Fine

484 P.C. (theft) 488 P.C. (Petty theft) -- first offense

18 months probation

Conditions:

--obey all laws

--restitution

--stay 25 feet away from _____store

-- **\$680** fine [can suspend part and/or allow CWS]

--1 day County Jail

487(a)

--10 days CJ

594 P.C. (Vandalism)

1 year probation

Condition:

--obey all laws

--restitution

-- **\$560** fine

--20 hours community work service

--min 1 day CJ

-- suspend drivers license if under 21 (VC13202.6)

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647(a) P.C. (Solicitation to engage in lewd conduct)

1 year probation

Conditions:

--obey all laws

--stay 25 yards away from restrooms of _____park

-- **\$560** fine

--attend AIDS Education Program, complete within 120 days

\$50 AIDS Education Fund

666 P.C. (Petty theft w/prior)

--same as 484 P.C.; add 6-20 days CJ

--**\$680** fine

12025(a)(1) (Concealed Firearm in Vehicle)

FACT A: Unloaded

1 year probation

Conditions:

--obey all laws

--search clause for weapons

-- **\$674** fine

--forfeiture of firearm (PC 12028)

FACT B: Loaded

1 year probation, usual terms

-- **\$674** fine

--20-30 days County Jail

12025(a)(2) (Concealed Firearm on Person)

FACT A: Unloaded

1 year probation, usual terms

-- **\$674** fine

--20 days County Jail

FACT B: Loaded

1 year probation, usual terms

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-- **\$674** fine
--more than 30 days County Jail

12031(a)(1) (Loaded Firearm)

FACT A: In Vehicle, visible

1 year probation, usual terms
-- **\$560** fine
--20 days County Jail

FACT B: In Vehicle, concealed

1 year probation, usual terms
-- **\$674** fine
--20-30 days County Jail

FACT C: On Person, visible

1 year probation, usual terms
-- **\$560** fine
--20 days County Jail

FACT D: On Person, concealed

1 year probation, usual terms
-- **\$674** fine
--more than 30 days County Jail

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BUSINESS & PROFESSIONS CODE

4140 B&P (Possession of Hypodermic Needle or Syringe) *** **Not potential Prop. 36 unless related charge *****

1 year probation

Conditions:

- obey all laws
- search clause
- not use or possess paraphernalia or narcotics
- chemical test
- **\$560** or **\$960** fine
- attend AIDS Education Program, complete within 120 days
- \$50 AIDS Education Fund

Bus & Prof. 25658(a) Sale of Alcohol to Minor

1 year conditional sentence

Conditions:

- obey all laws
- mandatory fine of **\$4,160** (base fine \$1,000, \$200 surcharge, \$2,800 Penalty Assessment, \$30 Security fee \$30 conviction assessment and restitution fine \$100),
- 24 hours CWS (Mandatory B&P 25658(e)(2)).

Note: Under 25658(b) mandatory minimum is **\$900** or 24 hours CWS or combination.

Bus. & Prof. 25661 (fake ID for purpose of purchasing alcohol)

Same statutory penalties as 25662 below including 1 yr. suspension of license per VC 13202.5, but it recites that no part of the fine will be suspended (if probation is not granted) although it allows CWS as an alternative to all/part of the fine.

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25662 B&P (Minor in Possession of Alcohol)

1 year probation

Conditions:

- obey all laws
- not possess alcohol until 21
- **\$1,160** fine
- 1 year license suspension- VC 13202.5

Without probation: minimum fine is \$250 plus surcharge (\$50) plus penalty assessment (\$650) plus Security Fee (\$20) conviction assessment (\$30) and restitution fine (\$100) = **\$1,160**.

Suspend \$495=**\$665** fine or in lieu of fine
24-32 hours CWS when not employed or in school or part fine – part CWS.

Second offense - minimum fine is \$500 plus surcharge (\$100) plus penalty assessment (\$1,400) security (\$30) conviction assessment (\$30) and restitution fine (\$100) =**\$2,160**, or in lieu of fine, 36-48 CWS when not employed or in school, or part fine - part CWS.

WELFARE AND INSTITUTIONS

10980 W&I (Welfare Fraud)

1 year probation

Conditions:

- obey all laws
- restitution
- community service: 10 hours for each month of fraud plus 1 hour for each \$100 of fraud.
- minimum 10 days CJ

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HEALTH & SAFETY CODE

*PC1000 REQUIRES GUILTY PLEAS

11357(b) H&S (Possession of Less than one ounce Marijuana) *** Potential Prop. 36 **

\$575 fine pay or reappear (\$15 goes to 11372.7 H&S Fund)

11364 H&S (possession of drug paraphernalia) *** Not Prop. 36 unless related charge

1 year probation

Conditions:

- obey all laws
- search clause
- not use or possess paraphernalia or narcotics
- chemical test
- **\$575** or **\$775** fine

11377b H&S (Possession of Methamphetamine, Prescription Drug, Cocaine)

***** Potential Prop. 36 *****

18 months probation

Conditions:

- obey all laws
- search clause
- not use or possess narcotics
- chemical test
- **\$575** fine
- 10-30 days County Jail

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11550 H&S (Under the Influence of Narcotic) *** **Potential Prop. 36** ***

For cases which are neither Proposition 36 nor Deferred Judgment:

18 months probation

Conditions:

- obey all laws
- search clause
- not use or possess narcotics
- chemical test
- 90 days County Jail
- attend AIDS Education Program, complete within 120 days (if intravenous)
- \$50 AIDS Education Fund (if intravenous)
- register for H&S 11590
- **\$415** fine (inc. Cr. Lab Fee & Restitution Fine)