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OPINION	:	No. 81-1203
	:	
of	:	<u>APRIL 7, 1982</u>
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HONORABLE HERB JACKSON, DISTRICT ATTORNEY,
SACRAMENTO COUNTY, has requested an opinion on a question which we have
phrased as follows:

Is a county, under Vehicle Code section 23161(b), required to certify and
approve a driver improvement program or treatment program for first-offender drunk
drivers who are habitual users of alcohol or drugs?

CONCLUSION

Vehicle Code section 23161(b) does not require a county to certify and
approve a driver improvement program or treatment program for first-offender drunk
drivers who are habitual users of alcohol or drugs.

ANALYSIS

Assembly Bill No. 542 (Stats. 1982, ch. 53), effective February 18, 1982, has made various revisions in the Vehicle Code.¹ Vehicle Code section 23152 (Stats. 1982, ch. 53, § 26) defines the crime of drunk driving:

"(a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

"(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

"For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

"(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code."

Section 23160 (Stats. 1982, ch. 53, § 29) provides the punishment for first-offenders guilty of drunk driving:

"(a) If any person is convicted of a first violation of Section 23152, that person shall be punished by imprisonment in the county jail for not less than 96 hours nor more than six months and by a fine of not less than three hundred seventy-five (\$375) nor more than five hundred dollars (\$500).

"(b) The court may order that any person punished under this section, who is to be punished by imprisonment in the county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

"(c) Except as provided in Section 23161, the court shall order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle of a person punished under this section for six months pursuant to paragraph (1) of subdivision (a) of Section 13352."

¹ Unless otherwise indicated, all future statutory references will be to the Vehicle Code.

Section 23161 (Stats. 1982, ch. 53, § 30) provides for probation for first-offenders:

"(a) If the court grants probation to any person punished under Section 23160, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

"(1) Be confined in the county jail for at least 48 hours but not more than six months and pay a fine of at least three hundred seventy-five dollars (\$375) but not more than five hundred dollars (\$500). The court may order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle pursuant to paragraph (1) of subdivision (a) of Section 13352 when this condition of probation is imposed.

"(2) Pay a fine of at least three hundred seventy-five dollars (\$375) but not more than five hundred dollars (\$500) and have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from the treatment program described in subdivision (b) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

"(b) In any county where the county alcohol program administrator has certified and the board of supervisors has approved such a program or programs, the court shall also impose as a condition of probation that the driver shall participate in, and successfully complete, a driver improvement program or a treatment program for persons who are habitual users of alcohol or drugs, or both of these programs, as designated by the court."

We are asked whether the language in section 23161(b), above, requiring a court, if it grants probation, to impose a condition that the driver participate in and successfully complete "a driver improvement program or a treatment program for persons who are habitual users of alcohol or drugs" mandates that a county certify and approve such program or programs for first-offender drunk drivers. We conclude that the statute does not compel establishment of either program.

We must consider the plain meaning of section 23161(b). Where the language of a statute is clear, its plain meaning should be followed. (*People v. Belleci* (1979) 24 Cal.3d 879, 888.) The statute directs the sentencing court to impose the program attendance condition upon a probationer in "any county where the county alcohol program administrator has certified and the board of supervisors has approved such a program or

programs. . . ." The indefinite adjective "any" may mean one or more and does not necessarily mean "all." (*Northwest Casualty Co. v. Legg* (1949) 91 Cal.App.2d 19, 25.) "Any county" is further qualified to mean those counties where a program has been certified and approved. Neither this statute nor any companion statute contains language compelling counties to institute such program or programs.

Section 23231 (Stats. 1981, ch. 940, § 42, (Deer. Adv. Leg. Serv., p. 678)) calls for the creation of a First Offender Program Task Force, members being appointed by the governor. In turn, section 23232 (Stats. 1981, ch. 940, § 42, (Deer. Adv. Leg. Serv., p. 678)) provides:

"On or before April 30, 1982, the First Offender Program Task Force shall determine and report to the Legislature the statewide advisory guidelines for first offender programs. For the purposes of this article, 'first offender' means a person convicted of an offense punished under Section 23160 or 23180."

Certainly the Legislature did not intend counties immediately to set up first-offender programs when the task force designated to consider guidelines for such programs might not convene until some time in the future to begin discussing the matter.

Local programs designed to offer services to persons convicted for driving while under the influence of alcohol are provided for under provisions of the Health and Safety Code. (Health & Saf. Code §§ 11837-11838.2.) These programs are not mandatory. (Health & Saf. Code §§ 11810, 11838; 61 Ops.Cal.Atty.Gen. 550, 554 (1978).) We discern no legislative intent, in the enactment of § 23161(b), to compel counties to establish such programs for first-offenders only.

If the alcohol program administrator and the board of supervisors in one county certify and approve a program for that county, this occurrence would not deny equal protection of the laws to first-offender probationers in that county vis-a-vis those in counties without such programs. (See *Talley v. Municipal Court* (1978) 87 Cal.App.3d 109, 114-116 (limiting alcohol program to those committing offense after a certain date not a denial of equal protection to others); *McGlothlen v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 1005, 1026-1027 (authorizing pilot alcohol rehabilitation programs in four counties not denial of equal protection to those in other counties).) The authority of the Legislature to "experiment with alcoholism treatment programs" on a local basis has been judicially approved. (*Department of Motor Vehicles v. Superior Court (Hardin)* (1976) 58 Cal.App.3d 936, 941-942.)

We conclude that Vehicle Code section 23161(b) does not require a county to certify and approve a driver improvement program or treatment program for first-offender drunk drivers who are habitual users of alcohol or drugs.
