

Assembly Bill No. 2471

CHAPTER 622

An act to amend Sections 191.5 and 3075 of the Penal Code, relating to criminal punishment.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2471, Robert Pacheco. Criminal punishment.

Existing law defines the offense of gross vehicular manslaughter and provides punishment therefor.

This bill would require that certain facts be alleged in the information or indictment and admitted by the defendant in open court, or found true by the trier of fact in order for specified enhancements to apply.

By imposing additional duties on local prosecuting authorities, this bill would impose a state-mandated local program.

Existing law establishes in each county a board of parole commissioners, consisting of, among others, the sheriff, or, in a county with a department of corrections, the director of that department, and the probation officer.

This bill would, in addition, authorize as members of the board, the designee of the sheriff, as applicable, or the designee of the probation officer.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the



commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Gross vehicular manslaughter while intoxicated also includes operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(c) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(d) Any person convicted of violating this section who has one or more prior convictions of this section or of paragraph (1) or (3) of subdivision (c) of Section 192, subdivision (a) or (c) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code, shall be punished by imprisonment in the state prison for a term of 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term imposed pursuant to this subdivision.

(e) This section shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice consistent with the holding of the California Supreme Court in *People v. Watson*, 30 Cal. 3d 290.

(f) This section shall not be construed as making any homicide in the driving of a vehicle or the operation of a vessel punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

(g) For the penalties in subdivision (d) to apply, the existence of any fact required under subdivision (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 2. Section 3075 of the Penal Code is amended to read:

3075. (a) There is in each county a board of parole commissioners, consisting of each of the following:

(1) The sheriff, or his or her designee, or, in a county with a department of corrections, the director of that department.

(2) The probation officer, or his or her designee.



(3) A member, not a public official, to be selected from the public by the presiding judge, if any, or, if none, by the senior judge in point of service, of the superior court.

(b) The public member of the county board of parole commissioners or his or her alternate shall be entitled to his or her actual traveling and other necessary expenses incurred in the discharge of his or her duties. In addition, the public member or his or her alternate shall be entitled to per diem at any rate that may be provided by the board of supervisors. The public member or his or her alternate shall hold office for a term of one year and in no event for a period exceeding three consecutive years. The term shall commence on the date of appointment.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

