

AMENDED IN ASSEMBLY APRIL 20, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2190**

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**Introduced by Assembly Member ~~Benoit~~ Members *Benoit and Vargas***

**(~~Coauthor: Assembly Member Spitzer~~ *Coauthors: Assembly Members Bogh, Chan, Cogdill, Daucher, Harman, Shirley Horton, Huff, La Suer, Maze, Mountjoy, Saldana, Spitzer, and Walters*)**

*(Coauthors: Senators Cox and Margett)*

February 22, 2006

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An act to amend Sections 23104 and 23109 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2190, as amended, Benoit. Vehicles: reckless driving and motor vehicle speed contests.

(1) ~~Existing law requires, if reckless driving of a vehicle proximately causes bodily injury to a person other than the driver, the driver, upon conviction, to be punished by imprisonment in a county jail for not less than 30 days nor more than 6 months, or by a fine of not less than \$200 nor more than \$1,000, or by both the fine and imprisonment.~~ Existing law requires a person convicted of reckless driving that proximately causes great bodily injury, as defined, to a person other than the driver, who has previously been convicted of a violation of *one of* specified provisions related to reckless driving, motor vehicle speed contests, and driving under the influence of an

alcoholic beverage or drug or the combined influence of an alcoholic beverage and drug, to be punished by imprisonment in the state prison, by imprisonment in a county jail for not less than 30 days nor more than 6 months, or by a fine of not less than \$220 nor more than \$1,000, or by both the fine and imprisonment.

~~This bill instead would require, if reckless driving of a vehicle proximately causes bodily injury to another person, the driver, upon conviction, to be punished by imprisonment in the state prison, or by imprisonment in a county jail for not less than 30 days nor more than one year delete the condition that the person previously have been convicted of a violation of one of those specified provisions. By changing the punishment for expanding the scope of a crime, the bill would impose a state-mandated local program.~~

(2) Existing law provides that if a person is convicted of engaging in a motor vehicle speed contest on a highway and the motor vehicle speed contest proximately causes bodily injury to a person other than the driver, the person is punishable by imprisonment in a county jail for not less than 30 days nor more than 6 months or by a fine of not less than \$500 nor more than \$1,000, or by both the fine and imprisonment. *Existing law requires the convicted person's privilege to operate a motor vehicle be suspended for 90 days to 6 months, if ordered by the court.* Existing law requires, if that conviction is for engaging in a motor vehicle speed contest within 5 years of the date of the commission of that same offense that resulted in a conviction, and the most recent offense proximately causes bodily injury to another person, the person to be punished by both that imprisonment and that fine. ~~Existing law requires, if the conviction is for engaging in a motor vehicle speed contest within 5 years of the date of the commission of that same offense that resulted in a conviction, the person to be punished by imprisonment in a county jail for not less than 4 days nor more than 6 months, and by a specified fine. Existing~~

*This bill would delete the separate punishment for the offense of engaging in a motor vehicle speed contest that occurred within 5 years of committing the same offense and proximately causes bodily injury to another person. With respect to the punishment for engaging in a motor vehicle speed contest that proximately causes bodily injury to a person other than the driver, the bill would increase to 6 months the time that the person's privilege to operate a motor vehicle's required to be suspended, if ordered by the court.*

(3) Existing law requires, if the most recent offense in that 5-year period proximately causes serious bodily injury, as defined, to another person, the convicted person to be punished by imprisonment in the state prison, or in a county jail for not less than 30 days nor more than one year, and by a specified fine.

~~The bill instead would require a person that proximately causes bodily injury to another person while engaging in a motor vehicle speed contest to be punished by imprisonment in the state prison, or by imprisonment in a county jail for not less than 30 days nor more than one year. The bill additionally would require, if the person proximately causes the death of another person while engaging in a motor vehicle speed contest, the convicted person to be punished by imprisonment in the state prison for 4, 6, or 10 years. If the offense of engaging in a motor vehicle speed contest occurred within 5 years of committing that same offense, for which the person was convicted, the bill would require the person to be punished by imprisonment in a county jail for not less than 30 days nor more than one year. The bill would limit credit for time served, as specified. The bill would increase the amount of time a court may order a person to serve for a grant of probation, and make other specified changes related to probation.~~ *would require, instead, that if a person is convicted of engaging in a motor vehicle speed contest on a highway, without regard to prior convictions, and the motor vehicle speed contest proximately causes great bodily injury, as the bill would define that term, to a person other than the driver, the convicted person be imprisoned in the state prison, or in a county jail for not less than 30 days nor more than one year, and by a specified fine.* By changing the punishment for a crime, the bill would impose a state-mandated local program.

~~(3)~~

(4) 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1     SECTION 1. Section 23104 of the Vehicle Code is amended  
2 to read:

3     23104. (a) Except as provided in subdivision (b), whenever  
4 reckless driving of a vehicle *in violation of Section 23103*  
5 proximately causes bodily injury to ~~any~~ a person other than the  
6 driver, the person driving the vehicle shall, upon conviction  
7 ~~thereof of reckless driving~~, be punished by imprisonment in ~~the a~~  
8 county jail for not less than 30 days nor more than six months or  
9 by a fine of not less than two hundred twenty dollars (\$220) nor  
10 more than one thousand dollars (\$1,000), or by both the fine and  
11 imprisonment.

12     (b) ~~Any~~ A person convicted of reckless driving ~~which in~~  
13 *violation of Section 23103 that proximately causes great bodily*  
14 *injury, as defined in Section 12022.7 of the Penal Code, to any a*  
15 *person other than the driver, who previously has been convicted*  
16 *of a violation of Section 23103, 23104, 23109, 23152, or 23153,*  
17 shall be punished by imprisonment in the state prison, by  
18 imprisonment in ~~the a~~ county jail for not less than 30 days nor  
19 more than six months, or by a fine of not less than two hundred  
20 twenty dollars (\$220) nor more than one thousand dollars  
21 (\$1,000), or by both the fine and imprisonment.

22     SEC. 2. Section 23109 of the Vehicle Code is amended to  
23 read:

24     23109. (a) A person shall not engage in a motor vehicle  
25 speed contest on a highway. As used in this section, a motor  
26 vehicle speed contest includes a motor vehicle race against  
27 another vehicle, a clock, or other timing device. For purposes of  
28 this section, an event in which the time to cover a prescribed  
29 route of more than 20 miles is measured, but where the vehicle  
30 does not exceed the speed limits, is not a speed contest.

31     (b) A person shall not aid or abet in ~~any a~~ motor vehicle speed  
32 contest on ~~any a~~ highway.

33     (c) A person shall not engage in ~~any a~~ motor vehicle  
34 exhibition of speed on a highway, and ~~no a~~ person shall *not* aid  
35 or abet in a motor vehicle exhibition of speed on ~~any a~~ highway.

36     (d) A person shall not for the purpose of facilitating or aiding  
37 or as an incident to ~~any a~~ motor vehicle speed contest or  
38 exhibition upon a highway in any manner obstruct or place a

1 barricade or obstruction or assist or participate in placing a  
2 barricade or obstruction upon ~~any~~ a highway.

3 (e) ~~(1)~~—A person convicted of a violation of subdivision (a)  
4 shall be punished by imprisonment in a county jail for not less  
5 than 24 hours nor more than 90 days or by a fine of not less than  
6 three hundred fifty-five dollars (\$355) nor more than one  
7 thousand dollars (\$1,000), or by both that fine and imprisonment.  
8 That person shall also be required to perform 40 hours of  
9 community service. The court may order the privilege to operate  
10 a motor vehicle suspended for 90 days to six months, as provided  
11 in paragraph (8) of subdivision (a) of Section 13352. The  
12 person's privilege to operate a motor vehicle may be restricted  
13 for 90 days to six months to necessary travel to and from that  
14 person's place of employment and, if driving a motor vehicle is  
15 necessary to perform the duties of the person's employment,  
16 restricted to driving in that person's scope of employment. This  
17 subdivision does not interfere with the court's power to grant  
18 probation in a suitable case.

19 ~~(2)~~

20 (f) (1) If a person is convicted of a violation of subdivision (a)  
21 and that violation proximately causes bodily injury to a person  
22 other than the driver, the person convicted is punishable by  
23 imprisonment in a county jail for not less than 30 days nor more  
24 than six months or by a fine of not less than five hundred dollars  
25 (\$500) nor more than one thousand dollars (\$1,000), or by both  
26 the fine and imprisonment.

27 ~~(f) (1)~~

28 (2) If a person is convicted of a violation of subdivision (a) for  
29 an offense that occurred within five years of the date of a prior  
30 offense that resulted in a conviction of a violation of subdivision  
31 (a), that person shall be punished by imprisonment in a county  
32 jail for not less than four days nor more than six months, and by  
33 a fine of not less than five hundred dollars (\$500) nor more than  
34 one thousand dollars (\$1,000).

35 ~~(2) If the perpetration of the most recent offense within the~~  
36 ~~five-year period described in paragraph (1) proximately causes~~  
37 ~~bodily injury to a person other than the driver, a person convicted~~  
38 ~~of that second violation shall be imprisoned in a county jail for~~  
39 ~~not less than 30 days nor more than six months and by a fine of~~

1 ~~not less than five hundred dollars (\$500) nor more than one~~  
2 ~~thousand dollars (\$1,000).~~

3 (3) ~~If the perpetration of the most recent offense within the~~  
4 ~~five-year period described in paragraph (1) a person is convicted~~  
5 ~~of a violation of subdivision (a) and in the commission of that~~  
6 ~~violation proximately causes serious great bodily injury, as~~  
7 ~~defined in paragraph (4) of subdivision (f) of Section 243~~  
8 ~~12022.7 of the Penal Code, to a person other than the driver, a~~  
9 ~~the person convicted of that second violation shall be imprisoned~~  
10 ~~in the state prison, or in a county jail for not less than 30 days nor~~  
11 ~~more than one year, and by a fine of not less than five hundred~~  
12 ~~dollars (\$500) nor more than one thousand dollars (\$1,000).~~

13 (4) The court shall order the privilege of a person convicted  
14 under paragraph (1), (2), or (3), to operate a motor vehicle  
15 suspended for a period of six months, as provided in paragraph  
16 (9) of subdivision (a) of Section 13352. In lieu of the suspension,  
17 the person's privilege to operate a motor vehicle may be  
18 restricted for six months to necessary travel to and from that  
19 person's place of employment and, if driving a motor vehicle is  
20 necessary to perform the duties of the person's employment,  
21 restricted to driving in that person's scope of employment. This  
22 subdivision does not interfere with the court's power to grant  
23 probation in a suitable case.

24 (g) If the court grants probation to ~~any~~ a person punishable  
25 under subdivision (f), in addition to the provisions of subdivision  
26 (f) and any other terms and conditions imposed by the court,  
27 ~~which~~ that may include a fine, the court shall impose as a  
28 condition of probation that the person be confined in a county jail  
29 for not less than 48 hours nor more than six months. The court  
30 shall order the person's privilege to operate a motor vehicle to be  
31 suspended for a period of six months, as provided in paragraph  
32 (9) of subdivision (a) of Section 13352 or restricted pursuant to  
33 subdivision (f).

34 (h) If a person is convicted of a violation of subdivision (a)  
35 and the vehicle used in the violation is registered to that person,  
36 the vehicle may be impounded at the registered owner's expense  
37 for not less than one day nor more than 30 days.

38 (i) ~~Any~~ A person who violates subdivision (b), (c), or (d) ~~of~~  
39 ~~this section~~ shall upon conviction thereof be punished by  
40 imprisonment in a county jail for not more than 90 days or by a

1 fine of not more than five hundred dollars (\$500), or by both that  
2 fine and imprisonment.

3 (j) If a person's privilege to operate a motor vehicle is  
4 restricted by a court pursuant to this section, the court shall  
5 clearly mark the restriction and the dates of the restriction on that  
6 person's driver's license and promptly notify the Department of  
7 Motor Vehicles of the terms of the restriction in a manner  
8 prescribed by the department. The Department of Motor Vehicles  
9 shall place that restriction in the person's records in the  
10 Department of Motor Vehicles and enter the restriction on any  
11 license subsequently issued by the Department of Motor Vehicles  
12 to that person during the period of the restriction.

13 (k) The court may order that ~~any~~ a person convicted under this  
14 section, who is to be punished by imprisonment in a county jail,  
15 be imprisoned on days other than days of regular employment of  
16 the person, as determined by the court.

17 (l) This section shall be known and may be cited as the Louis  
18 Friend Memorial Act.

19 *SEC. 3. No reimbursement is required by this act pursuant to*  
20 *Section 6 of Article XIII B of the California Constitution because*  
21 *the only costs that may be incurred by a local agency or school*  
22 *district will be incurred because this act creates a new crime or*  
23 *infraction, eliminates a crime or infraction, or changes the*  
24 *penalty for a crime or infraction, within the meaning of Section*  
25 *17556 of the Government Code, or changes the definition of a*  
26 *crime within the meaning of Section 6 of Article XIII B of the*  
27 *California Constitution.*

28 ~~SECTION 1. Section 23104 of the Vehicle Code is amended~~  
29 ~~to read:~~

30 ~~23104. A person who, in the commission of a violation of~~  
31 ~~Section 23103, proximately causes bodily injury to another~~  
32 ~~person shall, upon conviction thereof, be punished by~~  
33 ~~imprisonment in the state prison, or by imprisonment in a county~~  
34 ~~jail for not less than 30 days nor more than one year.~~

35 ~~SEC. 2. Section 23109 of the Vehicle Code is amended to~~  
36 ~~read:~~

37 ~~23109. (a) A person shall not engage in a motor vehicle~~  
38 ~~speed contest on a highway. As used in this section, a motor~~  
39 ~~vehicle speed contest includes a motor vehicle race against~~  
40 ~~another vehicle, a clock, or other timing device. For purposes of~~

1 this section, an event in which the time to cover a prescribed  
2 route of more than 20 miles is measured, but where the vehicle  
3 does not exceed the speed limits, is not a speed contest.

4 (b) A person shall not aid or abet in a motor vehicle speed  
5 contest on a highway.

6 (c) A person shall not engage in a motor vehicle exhibition of  
7 speed on a highway, and a person shall not aid or abet in a motor  
8 vehicle exhibition of speed on a highway.

9 (d) A person shall not for the purpose of facilitating or aiding  
10 or as an incident to a motor vehicle speed contest or exhibition  
11 upon a highway in any manner obstruct or place a barricade or  
12 obstruction or assist or participate in placing a barricade or  
13 obstruction upon a highway.

14 (e) (1) A person convicted of a violation of subdivision (a)  
15 shall be punished by imprisonment in a county jail for not less  
16 than 24 hours nor more than 90 days or by a fine of not less than  
17 three hundred fifty-five dollars (\$355) nor more than one  
18 thousand dollars (\$1,000), or by both that fine and imprisonment.  
19 That person shall also be required to perform 40 hours of  
20 community service. The court may order a person convicted  
21 pursuant to this paragraph, who is to be punished by  
22 imprisonment in a county jail, to be imprisoned on days other  
23 than days of regular employment of the person, as determined by  
24 the court.

25 (2) A person who is convicted of a violation of subdivision (a)  
26 for an offense that occurred within five years of the date of a  
27 prior offense that resulted in a conviction of a violation of  
28 subdivision (a) shall be punished by imprisonment in a county  
29 jail for not less than 30 days nor more than one year.

30 (3) A person who is convicted of a violation of subdivision (a),  
31 and in commission of that violation proximately causes bodily  
32 injury to another person, shall be punished by imprisonment in  
33 the state prison, or by imprisonment in a county jail for not less  
34 than 30 days nor more than one year.

35 (4) (A) A person who is convicted of a violation of  
36 subdivision (a), and in commission of that violation proximately  
37 causes the death of another person, shall be punished by  
38 imprisonment in the state prison for 4, 6, or 10 years.

39 (B) This paragraph shall not be construed as prohibiting or  
40 precluding a charge of murder under Section 188 of the Penal

1 Code upon facts exhibiting wantonness and a conscious disregard  
2 for life to support a finding of implied malice, or upon facts  
3 showing malice consistent with the holding of the California  
4 Supreme Court in *People v. Watson* (1981) 30 Cal.3d 290.

5 (f) (1) The court may order the privilege of a person punished  
6 pursuant to paragraph (1) of subdivision (e), to operate a motor  
7 vehicle, suspended for 90 days to six months, as provided in  
8 paragraph (8) of subdivision (a) of Section 13352. The person's  
9 privilege to operate a motor vehicle may be restricted for 90 days  
10 to six months to necessary travel to and from that person's place  
11 of employment and, if driving a motor vehicle is necessary to  
12 perform the duties of the person's employment, restricted to  
13 driving in that person's scope of employment. This paragraph  
14 does not interfere with the court's power to grant probation in a  
15 suitable case.

16 (2) The court shall order the privilege of a person punished  
17 pursuant to paragraph (2) or (3) of subdivision (e), to operate a  
18 motor vehicle, suspended for a period of six months, as provided  
19 in paragraph (9) of subdivision (a) of Section 13352. In lieu of  
20 the suspension, the person's privilege to operate a motor vehicle  
21 may be restricted for six months to necessary travel to and from  
22 that person's place of employment and, if driving a motor vehicle  
23 is necessary to perform the duties of the person's employment,  
24 restricted to driving in that person's scope of employment. This  
25 paragraph does not interfere with the court's power to grant  
26 probation in a suitable case.

27 (g) If the court grants probation to a person punishable  
28 pursuant to subdivision (e), in addition to the provisions of  
29 subdivisions (e) and (f) and any other terms and conditions  
30 imposed by the court, the court shall impose as a condition of  
31 probation that the person be confined in a county jail for not less  
32 than 48 hours nor more than one year. The court shall order the  
33 person's privilege to operate a motor vehicle to be suspended for  
34 a period of six months, as provided in paragraph (9) of  
35 subdivision (a) of Section 13352 or restricted pursuant to  
36 subdivision (f).

37 (h) If a person is convicted of a violation of subdivision (a)  
38 and the vehicle used in the violation is registered to that person,  
39 the vehicle may be impounded at the registered owner's expense  
40 for not less than one day nor more than 30 days.

1 (i) ~~A person who violates subdivision (b), (c), or (d) of this~~  
2 ~~section shall upon conviction thereof be punished by~~  
3 ~~imprisonment in a county jail for not more than 90 days or by a~~  
4 ~~fine of not more than five hundred dollars (\$500) or by both that~~  
5 ~~fine and imprisonment.~~

6 (j) ~~If a person's privilege to operate a motor vehicle is~~  
7 ~~restricted by a court pursuant to this section, the court shall~~  
8 ~~clearly mark the restriction and the dates of the restriction on that~~  
9 ~~person's driver's license and promptly notify the Department of~~  
10 ~~Motor Vehicles of the terms of the restriction in a manner~~  
11 ~~prescribed by the department. The Department of Motor Vehicles~~  
12 ~~shall place that restriction in the person's records in the~~  
13 ~~Department of Motor Vehicles and enter the restriction on any~~  
14 ~~license subsequently issued by the Department of Motor Vehicles~~  
15 ~~to that person during the period of the restriction.~~

16 (k) ~~Notwithstanding Section 4019 of the Penal Code or any~~  
17 ~~other provision of law, the maximum credit that may be earned~~  
18 ~~against a period of confinement in, or commitment to, a county~~  
19 ~~jail, industrial farm, or road camp, or a city jail, industrial farm,~~  
20 ~~or road camp, following arrest and prior to placement in the~~  
21 ~~custody of the Director of Corrections, shall not exceed 15~~  
22 ~~percent of the actual period of confinement.~~

23 (l) ~~This section shall be known and may be cited as the Louis~~  
24 ~~Friend Memorial Act.~~

25 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
26 ~~Section 6 of Article XIII B of the California Constitution because~~  
27 ~~the only costs that may be incurred by a local agency or school~~  
28 ~~district will be incurred because this act creates a new crime or~~  
29 ~~infraction, eliminates a crime or infraction, or changes the~~  
30 ~~penalty for a crime or infraction, within the meaning of Section~~  
31 ~~17556 of the Government Code, or changes the definition of a~~  
32 ~~crime within the meaning of Section 6 of Article XIII B of the~~  
33 ~~California Constitution.~~