

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2559**

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**Introduced by Assembly Member Benoit**

February 23, 2006

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An act to amend Sections 191.5, 192, 192.5, 193, and 193.5 of the Penal Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2559, as amended, Benoit. Vehicles: driving under the influence: gross manslaughter.

*Existing law defines as one type of vehicular manslaughter, the unlawful killing of a human being while driving a vehicle in violation of specified driving under the influence of alcohol or drugs (DUI) provisions and in the commission of an unlawful act, not amounting to a felony, but without gross negligence. Existing law defines as another type of vehicular manslaughter, the unlawful killing of a human being while driving a vehicle in violation of those specified DUI provisions and in the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.*

*This bill would require the killing to be the proximate result of the commission of the unlawful act or the proximate result of the commission of the lawful act.*

*This bill would also reorganize the provisions relating to vehicular manslaughter, including provisions relating to manslaughter involving vessels and specified water devices.*

~~(1) Existing law defines vehicular manslaughter as, among other things, driving a vehicle or operating a vessel in violation of specified provisions relating to driving or operating under the influence of alcohol, drugs, or both alcohol and drugs, driving with an excessive blood alcohol concentration, or driving while addicted to any drug (DUI), in the commission of an unlawful act, not amounting to a felony, but without gross negligence; or driving or operating in violation of the DUI provisions, in the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence. Vehicular manslaughter, as specified, is a misdemeanor or a felony punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months or 2 or 4 years.~~

~~This bill would increase the term of imprisonment for vehicular manslaughter where intoxication is a contributing factor to 2, 4, or 6 years.~~

~~(2) Existing law defines vehicular manslaughter as, among other things, the unlawful killing of a human being without malice aforethought in the operation of a vessel or manipulating or a water ski, an aquaplane, or a similar device while intoxicated, in the commission of an unlawful act, not amounting to a felony, or operated these devices while intoxicated, in the commission of a lawful act that might produce death. Existing law provides that these types of vehicular manslaughter with gross negligence are punishable by imprisonment in the state prison for 2, 4, or 6 years; and those without gross negligence are punishable either by imprisonment in county jail for not more than one year or by imprisonment in the state prison for 16 months, or 2 or 4 years.~~

~~This bill would increase the term of imprisonment in the state prison for these types of vehicular manslaughter with gross negligence to 4, 6, or 10 years; and would provide that these types of vehicular manslaughter without gross negligence are punishable by imprisonment in the state prison for 2, 4, or 6 years.~~

~~(3) Existing law defines vehicular manslaughter as, among other things, the unlawful killing of a human being without malice aforethought in the operation of a vessel in the commission of an unlawful act, not amounting to a felony, or operating a vessel in the commission of a lawful act that might produce death.~~

~~This bill would provide that the described vehicular manslaughter with gross negligence is punishable by imprisonment in county jail for~~

not more than one year or by imprisonment in the state prison for 2, 4, or 6 years.

~~(4) The bill would make conforming changes in related provisions of law.~~

~~(5) Because the bill would expand the scope of existing crime and increase the penalties for existing crime, thereby increasing the level of services imposed on local law enforcement agencies, it would create a state-mandated local program.~~

~~(6) 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~~*no*. State-mandated local program: ~~yes~~*no*.

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

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

3 191.5. (a) Gross vehicular manslaughter while intoxicated is  
4 the unlawful killing of a human being without malice  
5 aforethought, in the driving of a vehicle, where the driving was in  
6 violation of Section 23140, 23152, or 23153 of the Vehicle Code,  
7 and the killing was either the proximate result of the commission  
8 of an unlawful act, not amounting to a felony, and with gross  
9 negligence, or the proximate result of the commission of a lawful  
10 act that might produce death, in an unlawful manner, and with  
11 gross negligence.

12 (b) Vehicular manslaughter while intoxicated is the unlawful  
13 killing of a human being without malice aforethought, in the  
14 driving of a vehicle, where the driving was in violation of  
15 Section 23140, 23152, or 23153 of the Vehicle Code, and the  
16 killing was either the proximate result of the commission of an  
17 unlawful act, not amounting to a felony, but without gross  
18 negligence, or the proximate result of the commission of a lawful  
19 act that might produce death, in an unlawful manner, but without  
20 gross negligence.

1 (c) (1) Except as provided in subdivision (d), gross vehicular  
 2 manslaughter while intoxicated in violation of subdivision (a) is  
 3 punishable by imprisonment in the state prison for 4, 6, or 10  
 4 years.

5 (2) Vehicular manslaughter while intoxicated in violation of  
 6 subdivision (b) is punishable by imprisonment ~~in the state prison~~  
 7 ~~for 2, 4, or 6 years~~; *a county jail for not more than one year or by*  
 8 *imprisonment in the state prison for 16 months or two or four*  
 9 *years.*

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

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

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

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

35 SEC. 2. Section 192 of the Penal Code is amended to read:

36 192. Manslaughter is the unlawful killing of a human being  
 37 without malice. It is of three kinds:

38 (a) Voluntary—upon a sudden quarrel or heat of passion.

39 (b) Involuntary—in the commission of an unlawful act, not  
 40 amounting to felony; or in the commission of a lawful act which

1 might produce death, in an unlawful manner, or without due  
2 caution and circumspection. This subdivision shall not apply to  
3 acts committed in the driving of a vehicle.

4 (c) Vehicular—

5 (1) Except as provided in subdivision (a) of Section 191.5,  
6 driving a vehicle in the commission of an unlawful act, not  
7 amounting to felony, and with gross negligence; or driving a  
8 vehicle in the commission of a lawful act which might produce  
9 death, in an unlawful manner, and with gross negligence.

10 (2) Driving a vehicle in the commission of an unlawful act, not  
11 amounting to felony, but without gross negligence; or driving a  
12 vehicle in the commission of a lawful act which might produce  
13 death, in an unlawful manner, but without gross negligence.

14 (3) Driving a vehicle in connection with a violation of  
15 paragraph (3) of subdivision (a) of Section 550, where the  
16 vehicular collision or vehicular accident was knowingly caused  
17 for financial gain and proximately resulted in the death of any  
18 person. This provision shall not be construed to prevent  
19 prosecution of a defendant for the crime of murder.

20 This section shall not be construed as making any homicide in  
21 the driving of a vehicle punishable that is not a proximate result  
22 of the commission of an unlawful act, not amounting to felony,  
23 or of the commission of a lawful act which might produce death,  
24 in an unlawful manner.

25 “Gross negligence,” as used in this section, shall not be  
26 construed as prohibiting or precluding a charge of murder under  
27 Section 188 upon facts exhibiting wantonness and a conscious  
28 disregard for life to support a finding of implied malice, or upon  
29 facts showing malice, consistent with the holding of the  
30 California Supreme Court in *People v. Watson*, 30 Cal. 3d 290.

31 SEC. 3. Section 192.5 of the Penal Code is amended to read:

32 192.5. Vehicular manslaughter pursuant to subdivision (b) of  
33 Section 191.5 and subdivision (c) of Section 192 is the unlawful  
34 killing of a human being without malice aforethought, and  
35 includes:

36 (a) Operating a vessel in violation of subdivision (b), (c), (d),  
37 (e), or (f) of Section 655 of the Harbors and Navigation Code,  
38 and in the commission of an unlawful act, not amounting to  
39 felony, and with gross negligence; or operating a vessel in  
40 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of

1 the Harbors and Navigation Code, and in the commission of a  
2 lawful act that might produce death, in an unlawful manner, and  
3 with gross negligence.

4 (b) Operating a vessel in violation of subdivision (b), (c), (d),  
5 (e), or (f) of Section 655 of the Harbors and Navigation Code,  
6 and in the commission of an unlawful act, not amounting to  
7 felony, but without gross negligence; or operating a vessel in  
8 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of  
9 the Harbors and Navigation Code, and in the commission of a  
10 lawful act that might produce death, in an unlawful manner, but  
11 without gross negligence.

12 (c) Operating a vessel in the commission of an unlawful act,  
13 not amounting to a felony, and with gross negligence; or  
14 operating a vessel in the commission of a lawful act that might  
15 produce death, in an unlawful manner, and with gross  
16 negligence.

17 (d) Operating a vessel in the commission of an unlawful act,  
18 not amounting to a felony, but without gross negligence; or  
19 operating a vessel in the commission of a lawful act that might  
20 produce death, in an unlawful manner, but without gross  
21 negligence.

22 SEC. 4. Section 193 of the Penal Code is amended to read:

23 193. (a) Voluntary manslaughter is punishable by  
24 imprisonment in the state prison for 3, 6, or 11 years.

25 (b) Involuntary manslaughter is punishable by imprisonment  
26 in the state prison for two, three, or four years.

27 (c) Vehicular manslaughter is punishable as follows:

28 (1) A violation of paragraph (1) of subdivision (c) of Section  
29 192 is punishable either by imprisonment in the county jail for  
30 not more than one year or by imprisonment in the state prison for  
31 two, four, or six years.

32 (2) A violation of paragraph (2) of subdivision (c) of Section  
33 192 is punishable by imprisonment in the county jail for not more  
34 than one year.

35 (3) A violation of paragraph (3) of subdivision (c) of Section  
36 192 is punishable by imprisonment in the state prison for 4, 6, or  
37 10 years.

38 SEC. 5. Section 193.5 of the Penal Code is amended to read:

39 193.5. Manslaughter committed during the operation of a  
40 vessel is punishable as follows:

1 (a) A violation of subdivision (a) of Section 192.5 is  
2 punishable by imprisonment in the state prison for 4, 6, or ten  
3 years.

4 (b) A violation of subdivision (b) of Section 192.5 is  
5 punishable by imprisonment in the state prison for two, four, or  
6 ~~six~~ years. *a county jail for not more than one year or by*  
7 *imprisonment in the state prison for 16 months or two or four*  
8 *years.*

9 (c) A violation of subdivision (c) of Section 192.5 is  
10 punishable either by imprisonment in the county jail for not more  
11 than one year or by imprisonment in the state prison for two,  
12 four, or six years.

13 (d) A violation of subdivision (d) of Section 192.5 is  
14 punishable by imprisonment in the county jail for not more than  
15 one year.

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