

AMENDED IN ASSEMBLY MAY 10, 2006

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2559

Introduced by Assembly Member Benoit

February 23, 2006

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.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: 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.

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

25 (2) Vehicular manslaughter while intoxicated in violation of
26 subdivision (b) is punishable by imprisonment *in* a county jail for
27 not more than one year or by imprisonment in the state prison for
28 16 months or two or four years.

29 (d) A person convicted of violating subdivision (a) who has
30 one or more prior convictions of this section or of paragraph (1)
31 of subdivision (c) of Section 192, subdivision (a) or (b) of
32 Section 192.5 of this code, or of violating Section 23152
33 punishable under Sections 23540, 23542, 23546, 23548, 23550,
34 or 23552 of, or convicted of Section 23153 of, the Vehicle Code,
35 shall be punished by imprisonment in the state prison for a term

1 of 15 years to life. Article 2.5 (commencing with Section 2930)
2 of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term
3 imposed pursuant to this subdivision.

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

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

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

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

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

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

23 (b) Involuntary—in the commission of an unlawful act, not
24 amounting to felony; or in the commission of a lawful act which
25 might produce death, in an unlawful manner, or without due
26 caution and circumspection. This subdivision shall not apply to
27 acts committed in the driving of a vehicle.

28 (c) Vehicular—

29 (1) Except as provided in subdivision (a) of Section 191.5,
30 driving a vehicle in the commission of an unlawful act, not
31 amounting to felony, and with gross negligence; or driving a
32 vehicle in the commission of a lawful act which might produce
33 death, in an unlawful manner, and with gross negligence.

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

38 (3) Driving a vehicle in connection with a violation of
39 paragraph (3) of subdivision (a) of Section 550, where the
40 vehicular collision or vehicular accident was knowingly caused

1 for financial gain and proximately resulted in the death of any
2 person. This provision shall not be construed to prevent
3 prosecution of a defendant for the crime of murder.

4 This section shall not be construed as making any homicide in
5 the driving of a vehicle punishable that is not a proximate result
6 of the commission of an unlawful act, not amounting to felony,
7 or of the commission of a lawful act which might produce death,
8 in an unlawful manner.

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

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

16 192.5. Vehicular manslaughter pursuant to subdivision (b) of
17 Section 191.5 and subdivision (c) of Section 192 is the unlawful
18 killing of a human being without malice aforethought, and
19 includes:

20 (a) Operating a vessel in violation of subdivision (b), (c), (d),
21 (e), or (f) of Section 655 of the Harbors and Navigation Code,
22 and in the commission of an unlawful act, not amounting to
23 felony, and with gross negligence; or operating a vessel in
24 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of
25 the Harbors and Navigation Code, and in the commission of a
26 lawful act that might produce death, in an unlawful manner, and
27 with gross negligence.

28 (b) Operating a vessel in violation of subdivision (b), (c), (d),
29 (e), or (f) of Section 655 of the Harbors and Navigation Code,
30 and in the commission of an unlawful act, not amounting to
31 felony, but without gross negligence; or operating a vessel in
32 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of
33 the Harbors and Navigation Code, and in the commission of a
34 lawful act that might produce death, in an unlawful manner, but
35 without gross negligence.

36 (c) Operating a vessel in the commission of an unlawful act,
37 not amounting to a felony, and with gross negligence; or
38 operating a vessel in the commission of a lawful act that might
39 produce death, in an unlawful manner, and with gross
40 negligence.

1 (d) Operating a vessel in the commission of an unlawful act,
2 not amounting to a felony, but without gross negligence; or
3 operating a vessel in the commission of a lawful act that might
4 produce death, in an unlawful manner, but without gross
5 negligence.

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

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

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

11 (c) Vehicular manslaughter is punishable as follows:

12 (1) A violation of paragraph (1) of subdivision (c) of Section
13 192 is punishable either by imprisonment in the county jail for
14 not more than one year or by imprisonment in the state prison for
15 two, four, or six years.

16 (2) A violation of paragraph (2) of subdivision (c) of Section
17 192 is punishable by imprisonment in the county jail for not more
18 than one year.

19 (3) A violation of paragraph (3) of subdivision (c) of Section
20 192 is punishable by imprisonment in the state prison for 4, 6, or
21 10 years.

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

23 193.5. Manslaughter committed during the operation of a
24 vessel is punishable as follows:

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

28 (b) A violation of subdivision (b) of Section 192.5 is
29 punishable by imprisonment in a county jail for not more than
30 one year or by imprisonment in the state prison for 16 months or
31 two or four years.

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

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

39 ~~SEC. 6. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~
2 ~~district will be incurred because this act creates a new crime or~~
3 ~~infraction, eliminates a crime or infraction, or changes the~~
4 ~~penalty for a crime or infraction, within the meaning of Section~~
5 ~~17556 of the Government Code, or changes the definition of a~~
6 ~~crime within the meaning of Section 6 of Article XIII B of the~~
7 ~~California Constitution.~~

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