

ASSEMBLY BILL

No. 1462

Introduced by Assembly Member Mendoza

January 10, 2012

An act to amend Sections 191.5, 193, 667.5, and 1192.7 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1462, as introduced, Mendoza. Vehicular manslaughter.

Existing law defines gross vehicular manslaughter while intoxicated and vehicular manslaughter while intoxicated and prescribes penalties of imprisonment in the state prison for 4, 6, or 10 years and 16 months, 2 years, or 4 years, respectively, as specified.

This bill would instead make the penalty for gross vehicular manslaughter while intoxicated imprisonment in the state prison for 6, 10, or 15 years and a fine of not less than \$2,000 and the penalty for vehicular manslaughter while intoxicated imprisonment in the state prison for 3, 6, or 9 years and a fine of not less than \$1,000 but not more than \$10,000, as specified.

Existing law defines vehicular manslaughter and prescribes specified terms in prison.

This bill would add to the penalty for vehicular manslaughter a fine of not less than \$1,000 but not more than \$10,000.

Existing law, as added by Proposition 8, an initiative act known as the Victims' Bill of Rights Act, among other things, defines a serious felony. Existing law, as amended by Proposition 21, another initiative act, further defines a violent felony. Under existing law, a person who is convicted of or who has a prior conviction for a serious or violent felony is subject to additional years of imprisonment in the state prison,

as specified. The Legislature may amend either of those initiative acts by a statute passed in each house by a $\frac{2}{3}$ vote, or by a statute that becomes effective only when approved by the voters.

This bill would include within the definition of violent felony specified instances of vehicular manslaughter and fleeing the scene of an accident that results in death or permanent, serious injury. The bill would include within the definition of a serious felony fleeing the scene of an accident that results in death or permanent, serious injury. Because this bill would amend those initiative acts described above, it would require a $\frac{2}{3}$ vote. Because the bill would impose additional duties on local prosecutors, it would impose a state-mandated local program.

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: $\frac{2}{3}$. 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 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 aforethought,
 5 in the driving of a vehicle, where the driving was in violation of
 6 Section 23140, 23152, or 23153 of the Vehicle Code, and the
 7 killing was either the proximate result of the commission of an
 8 unlawful act, not amounting to a felony, and with gross negligence,
 9 or the proximate result of the commission of a lawful act that might
 10 produce death, in an unlawful manner, and with gross negligence.
 11 (b) Vehicular manslaughter while intoxicated is the unlawful
 12 killing of a human being without malice aforethought, in the
 13 driving of a vehicle, where the driving was in violation of Section
 14 23140, 23152, or 23153 of the Vehicle Code, and the killing was
 15 either the proximate result of the commission of an unlawful act,
 16 not amounting to a felony, but without gross negligence, or the
 17 proximate result of the commission of a lawful act that might
 18 produce death, in an unlawful manner, but without gross
 19 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~~ 6,
4 *10, or 15 years and by a fine of not less than two thousand dollars*
5 *(\$2,000).*

6 (2) Vehicular manslaughter while intoxicated in violation of
7 subdivision (b) is punishable by imprisonment in a county jail for
8 not more than one year or by imprisonment pursuant to subdivision
9 (h) of Section 1170 for ~~16 months or two or four~~ 3, 6, or 9 years
10 *and by a fine of not less than one thousand dollars (\$1,000) but*
11 *not more than ten thousand dollars (\$10,000).*

12 (d) A person convicted of violating subdivision (a) who has one
13 or more prior convictions of this section or of paragraph (1) of
14 subdivision (c) of Section 192, subdivision (a) or (b) of Section
15 192.5 of this code, or of violating Section 23152 punishable under
16 Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or
17 convicted of Section 23153 of, the Vehicle Code, shall be punished
18 by imprisonment in the state prison for a term of 15 years to life.
19 Article 2.5 (commencing with Section 2930) of Chapter 7 of Title
20 1 of Part 3 shall apply to reduce the term imposed pursuant to this
21 subdivision.

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

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

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

37 SEC. 2. Section 193 of the Penal Code is amended to read:

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

1 (b) Involuntary manslaughter is punishable by imprisonment
2 pursuant to subdivision (h) of Section 1170 for two, three, or four
3 years.

4 (c) Vehicular manslaughter is punishable as follows:

5 (1) A violation of paragraph (1) of subdivision (c) of Section
6 192 is punishable either by imprisonment in the county jail for not
7 more than one year or by imprisonment in the state prison for two,
8 four, or six years *and by a fine of not less than one thousand dollars*
9 *(\$1,000) but not more than ten thousand dollars (\$10,000).*

10 (2) A violation of paragraph (2) of subdivision (c) of Section
11 192 is punishable by imprisonment in the county jail for not more
12 than one year *and by a fine of not more than ten thousand dollars*
13 *(\$10,000).*

14 (3) A violation of paragraph (3) of subdivision (c) of Section
15 192 is punishable by imprisonment in the state prison for 4, 6, or
16 10 years *and by a fine of not less than one thousand dollars*
17 *(\$1,000) but not more than ten thousand dollars (\$10,000).*

18 SEC. 3. Section 667.5 of the Penal Code, as amended by
19 Section 10 of Chapter 12 of the First Extraordinary Session of the
20 Statutes of 2011, is amended to read:

21 667.5. Enhancement of prison terms for new offenses because
22 of prior prison terms shall be imposed as follows:

23 (a) Where one of the new offenses is one of the violent felonies
24 specified in subdivision (c), in addition to and consecutive to any
25 other prison terms therefor, the court shall impose a three-year
26 term for each prior separate prison term served by the defendant
27 where the prior offense was one of the violent felonies specified
28 in subdivision (c). However, no additional term shall be imposed
29 under this subdivision for any prison term served prior to a period
30 of 10 years in which the defendant remained free of both prison
31 custody and the commission of an offense which results in a felony
32 conviction.

33 (b) Except where subdivision (a) applies, where the new offense
34 is any felony for which a prison sentence or a sentence of
35 imprisonment in a county jail under subdivision (h) of Section
36 1170 is imposed or is not suspended, in addition and consecutive
37 to any other sentence therefor, the court shall impose a one-year
38 term for each prior separate prison term or county jail term imposed
39 under subdivision (h) of Section 1170 or when sentence is not
40 suspended for any felony; provided that no additional term shall

1 be imposed under this subdivision for any prison term or county
2 jail term imposed under subdivision (h) of Section 1170 or when
3 sentence is not suspended prior to a period of five years in which
4 the defendant remained free of both the commission of an offense
5 which results in a felony conviction, and prison custody or the
6 imposition of a term of jail custody imposed under subdivision (h)
7 of Section 1170 or any felony sentence that is not suspended. A
8 term imposed under the provisions of paragraph (5) of subdivision
9 (h) of Section 1170, wherein a portion of the term is suspended
10 by the court to allow postrelease supervision, shall qualify as a
11 prior county jail term for the purposes of the one-year enhancement.

12 (c) For the purpose of this section, “violent felony” shall mean
13 any of the following:

14 (1) Murder or voluntary manslaughter.

15 (2) Mayhem.

16 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
17 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
18 262.

19 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

20 (5) Oral copulation as defined in subdivision (c) or (d) of Section
21 288a.

22 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
23 of Section 288.

24 (7) Any felony punishable by death or imprisonment in the state
25 prison for life.

26 (8) Any felony in which the defendant inflicts great bodily injury
27 on any person other than an accomplice which has been charged
28 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
29 on or after July 1, 1977, or as specified prior to July 1, 1977, in
30 Sections 213, 264, and 461, or any felony in which the defendant
31 uses a firearm which use has been charged and proved as provided
32 in subdivision (a) of Section 12022.3, or Section 12022.5 or
33 12022.55.

34 (9) Any robbery.

35 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

36 (11) Sexual penetration as defined in subdivision (a) or (j) of
37 Section 289.

38 (12) Attempted murder.

39 (13) A violation of Section 18745, 18750, or 18755.

40 (14) Kidnapping.

- 1 (15) Assault with the intent to commit a specified felony, in
2 violation of Section 220.
- 3 (16) Continuous sexual abuse of a child, in violation of Section
4 288.5.
- 5 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 6 (18) Rape, spousal rape, or sexual penetration, in concert, in
7 violation of Section 264.1.
- 8 (19) Extortion, as defined in Section 518, which would constitute
9 a felony violation of Section 186.22 of the Penal Code.
- 10 (20) Threats to victims or witnesses, as defined in Section 136.1,
11 which would constitute a felony violation of Section 186.22 of the
12 Penal Code.
- 13 (21) Any burglary of the first degree, as defined in subdivision
14 (a) of Section 460, wherein it is charged and proved that another
15 person, other than an accomplice, was present in the residence
16 during the commission of the burglary.
- 17 (22) Any violation of Section 12022.53.
- 18 (23) A violation of subdivision (b) or (c) of Section 11418. The
19 Legislature finds and declares that these specified crimes merit
20 special consideration when imposing a sentence to display society's
21 condemnation for these extraordinary crimes of violence against
22 the person.
- 23 (24) *Vehicular manslaughter, in violation of Section 191.5 or*
24 *paragraph (1) or (3) of subdivision (c) of Section 192.*
- 25 (25) *Violation of paragraph (2) of subdivision (b) of Section*
26 *20001 of the Vehicle Code.*
- 27 (d) For the purposes of this section, the defendant shall be
28 deemed to remain in prison custody for an offense until the official
29 discharge from custody or until release on parole, whichever first
30 occurs, including any time during which the defendant remains
31 subject to reimprisonment for escape from custody or is
32 reimprisoned on revocation of parole. The additional penalties
33 provided for prior prison terms shall not be imposed unless they
34 are charged and admitted or found true in the action for the new
35 offense.
- 36 (e) The additional penalties provided for prior prison terms shall
37 not be imposed for any felony for which the defendant did not
38 serve a prior separate term in state prison or in county jail under
39 subdivision (h) of Section 1170.

1 (f) A prior conviction of a felony shall include a conviction in
2 another jurisdiction for an offense which, if committed in
3 California, is punishable by imprisonment in the state prison or in
4 county jail under subdivision (h) of Section 1170 if the defendant
5 served one year or more in prison for the offense in the other
6 jurisdiction. A prior conviction of a particular felony shall include
7 a conviction in another jurisdiction for an offense which includes
8 all of the elements of the particular felony as defined under
9 California law if the defendant served one year or more in prison
10 for the offense in the other jurisdiction.

11 (g) A prior separate prison term for the purposes of this section
12 shall mean a continuous completed period of prison incarceration
13 imposed for the particular offense alone or in combination with
14 concurrent or consecutive sentences for other crimes, including
15 any reimprisonment on revocation of parole which is not
16 accompanied by a new commitment to prison, and including any
17 reimprisonment after an escape from incarceration.

18 (h) Serving a prison term includes any confinement time in any
19 state prison or federal penal institution as punishment for
20 commission of an offense, including confinement in a hospital or
21 other institution or facility credited as service of prison time in the
22 jurisdiction of the confinement.

23 (i) For the purposes of this section, a commitment to the State
24 Department of Mental Health as a mentally disordered sex offender
25 following a conviction of a felony, which commitment exceeds
26 one year in duration, shall be deemed a prior prison term.

27 (j) For the purposes of this section, when a person subject to
28 the custody, control, and discipline of the Director of Corrections
29 is incarcerated at a facility operated by the Department of the Youth
30 Authority, that incarceration shall be deemed to be a term served
31 in state prison.

32 (k) (1) Notwithstanding subdivisions (d) and (g) or any other
33 provision of law, where one of the new offenses is committed
34 while the defendant is temporarily removed from prison pursuant
35 to Section 2690 or while the defendant is transferred to a
36 community facility pursuant to Section 3416, 6253, or 6263, or
37 while the defendant is on furlough pursuant to Section 6254, the
38 defendant shall be subject to the full enhancements provided for
39 in this section.

1 (2) This subdivision shall not apply when a full, separate, and
2 consecutive term is imposed pursuant to any other provision of
3 law.

4 SEC. 4. Section 1192.7 of the Penal Code, as amended by
5 Section 73 of Chapter 178 of the Statutes of 2010, is amended to
6 read:

7 1192.7. (a) (1) It is the intent of the Legislature that district
8 attorneys prosecute violent sex crimes under statutes that provide
9 sentencing under a “one strike,” “three strikes” or habitual sex
10 offender statute instead of engaging in plea bargaining over those
11 offenses.

12 (2) Plea bargaining in any case in which the indictment or
13 information charges any serious felony, any felony in which it is
14 alleged that a firearm was personally used by the defendant, or
15 any offense of driving while under the influence of alcohol, drugs,
16 narcotics, or any other intoxicating substance, or any combination
17 thereof, is prohibited, unless there is insufficient evidence to prove
18 the people’s case, or testimony of a material witness cannot be
19 obtained, or a reduction or dismissal would not result in a
20 substantial change in sentence.

21 (3) If the indictment or information charges the defendant with
22 a violent sex crime, as listed in subdivision (c) of Section 667.61,
23 that could be prosecuted under Sections 269, 288.7, subdivisions
24 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
25 bargaining is prohibited unless there is insufficient evidence to
26 prove the people’s case, or testimony of a material witness cannot
27 be obtained, or a reduction or dismissal would not result in a
28 substantial change in sentence. At the time of presenting the
29 agreement to the court, the district attorney shall state on the record
30 why a sentence under one of those sections was not sought.

31 (b) As used in this section “plea bargaining” means any
32 bargaining, negotiation, or discussion between a criminal
33 defendant, or his or her counsel, and a prosecuting attorney or
34 judge, whereby the defendant agrees to plead guilty or nolo
35 contendere, in exchange for any promises, commitments,
36 concessions, assurances, or consideration by the prosecuting
37 attorney or judge relating to any charge against the defendant or
38 to the sentencing of the defendant.

39 (c) As used in this section, “serious felony” means any of the
40 following:

1 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
2 (4) sodomy by force, violence, duress, menace, threat of great
3 bodily injury, or fear of immediate and unlawful bodily injury on
4 the victim or another person; (5) oral copulation by force, violence,
5 duress, menace, threat of great bodily injury, or fear of immediate
6 and unlawful bodily injury on the victim or another person; (6)
7 lewd or lascivious act on a child under 14 years of age; (7) any
8 felony punishable by death or imprisonment in the state prison for
9 life; (8) any felony in which the defendant personally inflicts great
10 bodily injury on any person, other than an accomplice, or any
11 felony in which the defendant personally uses a firearm; (9)
12 attempted murder; (10) assault with intent to commit rape or
13 robbery; (11) assault with a deadly weapon or instrument on a
14 peace officer; (12) assault by a life prisoner on a noninmate; (13)
15 assault with a deadly weapon by an inmate; (14) arson; (15)
16 exploding a destructive device or any explosive with intent to
17 injure; (16) exploding a destructive device or any explosive causing
18 bodily injury, great bodily injury, or mayhem; (17) exploding a
19 destructive device or any explosive with intent to murder; (18) any
20 burglary of the first degree; (19) robbery or bank robbery; (20)
21 kidnapping; (21) holding of a hostage by a person confined in a
22 state prison; (22) attempt to commit a felony punishable by death
23 or imprisonment in the state prison for life; (23) any felony in
24 which the defendant personally used a dangerous or deadly weapon;
25 (24) selling, furnishing, administering, giving, or offering to sell,
26 furnish, administer, or give to a minor any heroin, cocaine,
27 phencyclidine (PCP), or any methamphetamine-related drug, as
28 described in paragraph (2) of subdivision (d) of Section 11055 of
29 the Health and Safety Code, or any of the precursors of
30 methamphetamines, as described in subparagraph (A) of paragraph
31 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
32 11100 of the Health and Safety Code; (25) any violation of
33 subdivision (a) of Section 289 where the act is accomplished
34 against the victim's will by force, violence, duress, menace, or
35 fear of immediate and unlawful bodily injury on the victim or
36 another person; (26) grand theft involving a firearm; (27)
37 carjacking; (28) any felony offense, which would also constitute
38 a felony violation of Section 186.22; (29) assault with the intent
39 to commit mayhem, rape, sodomy, or oral copulation, in violation
40 of Section 220; (30) throwing acid or flammable substances, in

1 violation of Section 244; (31) assault with a deadly weapon,
2 firearm, machinegun, assault weapon, or semiautomatic firearm
3 or assault on a peace officer or firefighter, in violation of Section
4 245; (32) assault with a deadly weapon against a public transit
5 employee, custodial officer, or school employee, in violation of
6 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
7 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
8 (34) commission of rape or sexual penetration in concert with
9 another person, in violation of Section 264.1; (35) continuous
10 sexual abuse of a child, in violation of Section 288.5; (36) shooting
11 from a vehicle, in violation of subdivision (c) or (d) of Section
12 26100; (37) intimidation of victims or witnesses, in violation of
13 Section 136.1; (38) criminal threats, in violation of Section 422;
14 (39) any attempt to commit a crime listed in this subdivision other
15 than an assault; (40) any violation of Section 12022.53; (41) a
16 violation of subdivision (b) or (c) of Section 11418; ~~and~~ (42) any
17 conspiracy to commit an offense described in this subdivision;
18 *and (43) violation of paragraph (2) of subdivision (b) of Section*
19 *20001 of the Vehicle Code.*

20 (d) As used in this section, “bank robbery” means to take or
21 attempt to take, by force or violence, or by intimidation from the
22 person or presence of another any property or money or any other
23 thing of value belonging to, or in the care, custody, control,
24 management, or possession of, any bank, credit union, or any
25 savings and loan association.

26 As used in this subdivision, the following terms have the
27 following meanings:

28 (1) “Bank” means any member of the Federal Reserve System,
29 and any bank, banking association, trust company, savings bank,
30 or other banking institution organized or operating under the laws
31 of the United States, and any bank the deposits of which are insured
32 by the Federal Deposit Insurance Corporation.

33 (2) “Savings and loan association” means any federal savings
34 and loan association and any “insured institution” as defined in
35 Section 401 of the *federal* National Housing Act, as amended, and
36 any federal credit union as defined in Section 2 of the Federal
37 Credit Union Act.

38 (3) “Credit union” means any federal credit union and any
39 state-chartered credit union the accounts of which are insured by
40 the Administrator of the National Credit Union administration.

1 (e) The provisions of this section shall not be amended by the
2 Legislature except by statute passed in each house by rollcall vote
3 entered in the journal, two-thirds of the membership concurring,
4 or by a statute that becomes effective only when approved by the
5 electors.

6 SEC. 5. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

O