

**ASSEMBLY BILL**

**No. 1985**

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**Introduced by Assembly Member Speier**

(Principal coauthor: Senator Leslie)

**(Coauthors: Assembly Members Baldwin, Conroy, Cortese,  
Gallegos, Harvey, Hawkins, Margett, Rainey, Sweeney, and  
Woods)**

(Coauthors: Senators Ayala, Leonard, O'Connell, and  
Petris)

January 3, 1996

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An act to amend Sections 191.5, 193, and 1170.12 of the Penal Code, and to amend Sections 2800.3, 23104, 23180, and 23190 of, and to repeal Section 23185 of, the Vehicle Code, relating to driving under the influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1985, as introduced, Speier. Driving under the influence: reckless driving.

(1) Under existing law, gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

This bill would provide that if it is charged and admitted or found to be true that the defendant fled the scene of this crime, upon conviction for the crime, the defendant shall receive an additional sentence of 5 years in the state prison. The bill also would provide that if the defendant previously had been convicted of an offense involving driving under the influence, he or she shall receive an additional sentence of 2 years in the state prison for each prior conviction.

(2) Under existing law, vehicular manslaughter with gross negligence, or without gross negligence while under the influence, is punishable by imprisonment in a county jail or in the state prison.

This bill would eliminate punishment by imprisonment in a county jail for those crimes. The bill would further provide that if it is charged and admitted or found to be true that the defendant fled the scene of the crime of vehicular manslaughter without gross negligence while under the influence, upon conviction for this crime, he or she shall receive an additional sentence of 5 years in the state prison.

(3) Existing law, amended by initiative statute, provides for an enhanced punishment for persons who are convicted of a felony who have one or more prior violent or serious felony convictions. The initiative statute provides that any amendment of its provisions by the Legislature shall require a  $\frac{2}{3}$  vote of the membership of each house.

This bill would apply that enhanced punishment to persons who also have one or more prior convictions for gross vehicular manslaughter, vehicular manslaughter with gross negligence, or while under the influence without gross negligence, driving under the influence and causing bodily injury under specified circumstances, or those crimes specified in (4) below. Because it would amend an initiative statute, the bill would require a  $\frac{2}{3}$  vote.

(4) Under existing law, the punishment for a person who is convicted of willfully fleeing or attempting to elude a pursuing peace officer and thereby causing death or serious bodily injury to any person, or for a person convicted of reckless driving which causes great bodily injury who previously has been convicted of reckless driving or driving under the influence, is imprisonment in the state prison or in a county jail for not more than one year, or by a fine or both the fine and imprisonment.

This bill would eliminate punishment by imprisonment in a county jail for those crimes, thereby making those crimes felonies.

(5) Under existing law, the punishment for a conviction of driving under the influence and causing bodily injury is



imprisonment in the state prison or in a county jail and by a fine.

This bill would provide that if that act caused serious bodily injury, as defined, the offender shall be punished by imprisonment in the state prison for 2, 3, or 10 years.

(6) Under existing law, if a person who is convicted of driving under the influence and causing bodily injury previously has been convicted of a separate violation of that offense or other offenses involving driving under the influence within 7 years, the person shall be punished by imprisonment in the state prison or in a county jail and by a fine. If the person previously has been convicted of 2 or more separate violations of that offense or other offenses involving driving under the influence within 7 years, the punishment is imprisonment in the state prison for 2, 3, or 4 years and by a fine.

This bill would provide that if a person previously has been convicted of one or more of any of those offenses within any time period, he or she shall be punished by an additional term of 4 years and by a fine.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. This act shall be known and may be cited  
2 as "Courtney's Law," in memory of Courtney Cheney of  
3 Roseville, who was killed by a drunken driver with a long  
4 history of driving under the influence.

5 SEC. 2. Section 191.5 of the Penal Code is amended to  
6 read:

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



1 which might produce death, in an unlawful manner, and  
2 with gross negligence.

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

13 (c) Gross vehicular manslaughter while intoxicated is  
14 punishable by imprisonment in the state prison for 4, 6,  
15 or 10 years. *If it is charged and admitted or found to be*  
16 *true by the trier of fact that the defendant fled the scene*  
17 *of the crime, the defendant shall receive an additional*  
18 *sentence of five years in the state prison.*

19 (d) *If the defendant is convicted of a violation of this*  
20 *section and has previously been convicted of a violation*  
21 *of Section 23103.5, 23152, or 23153, whether as a*  
22 *misdemeanor or felony, the defendant shall receive an*  
23 *additional sentence of two years in the state prison for*  
24 *each prior conviction.*

25 (e) This section shall not be construed as prohibiting  
26 or precluding a charge of murder under Section 188 upon  
27 facts exhibiting wantonness and a conscious disregard for  
28 life to support a finding of implied malice, or upon facts  
29 showing malice consistent with the holding of the  
30 California Supreme Court in *People v. Watson*, 30 Cal. 3d  
31 290.

32 ~~(e)~~

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

39 SEC. 3. Section 193 of the Penal Code is amended to  
40 read:



1 193. (a) Voluntary manslaughter is punishable by  
2 imprisonment in the state prison for ~~three, six, or eleven~~  
3 *3, 6, or 11* years.

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

7 (c) Vehicular manslaughter is punishable as follows:

8 (1) A violation of paragraph (1) of subdivision (c) of  
9 Section 192 is punishable ~~either by imprisonment in the~~  
10 ~~county jail for not more than one year or by~~  
11 ~~imprisonment~~ in the state prison for two, four, or six years.

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

15 (3) A violation of paragraph (3) of subdivision (c) of  
16 Section 192 is punishable ~~either by imprisonment in the~~  
17 ~~county jail for not more than one year or by~~  
18 ~~imprisonment~~ in the state prison for 16 months or two or  
19 four years. *If it is charged and admitted or found to be*  
20 *true by the trier of fact that the defendant fled the scene*  
21 *of the crime, the defendant shall receive an additional*  
22 *sentence of five years in the state prison.*

23 SEC. 4. Section 1170.12 of the Penal Code is amended  
24 to read:

25 1170.12. (a) Notwithstanding any other provision of  
26 law, if a defendant has been convicted of a felony and it  
27 has been pled and proved that the defendant has one or  
28 more prior felony convictions, as defined in subdivision  
29 (b), the court shall adhere to each of the following:

30 (1) There shall not be an aggregate term limitation for  
31 purposes of consecutive sentencing for any subsequent  
32 felony conviction.

33 (2) Probation for the current offense shall not be  
34 granted, nor shall execution or imposition of the sentence  
35 be suspended for any prior offense.

36 (3) The length of time between the prior felony  
37 conviction and the current felony conviction shall not  
38 affect the imposition of sentence.

39 (4) There shall not be a commitment to any other  
40 facility other than the state prison. Diversion shall not be



1 granted nor shall the defendant be eligible for  
2 commitment to the California Rehabilitation Center as  
3 provided in Article 2 (commencing with Section 3050) of  
4 Chapter 1 of Division 3 of the Welfare and Institutions  
5 Code.

6 (5) The total amount of credits awarded pursuant to  
7 Article 2.5 (commencing with Section 2930) of Chapter  
8 7 of Title 1 of Part 3 shall not exceed one-fifth of the total  
9 term of imprisonment imposed and shall not accrue until  
10 the defendant is physically placed in the state prison.

11 (6) If there is a current conviction for more than one  
12 felony count not committed on the same occasion, and  
13 not arising from the same set of operative facts, the court  
14 shall sentence the defendant consecutively on each count  
15 pursuant to this section.

16 (7) If there is a current conviction for more than one  
17 serious or violent felony as described in paragraph (6) of  
18 this subdivision, the court shall impose the sentence for  
19 each conviction consecutive to the sentence for any other  
20 conviction for which the defendant may be consecutively  
21 sentenced in the manner prescribed by law.

22 (8) Any sentence imposed pursuant to this section will  
23 be imposed consecutive to any other sentence which the  
24 defendant is already serving, unless otherwise provided  
25 by law.

26 (b) Notwithstanding any other provision of law and  
27 for the purposes of this section, a prior conviction of a  
28 felony shall be defined as:

29 (1) Any offense defined in subdivision (c) of Section  
30 667.5 as a violent felony ~~or~~ any offense defined in  
31 subdivision (c) of Section 1192.7 as a serious felony ~~in this~~  
32 ~~state~~, or any act in violation of Section 191.5 or paragraph  
33 (1) or (3) of subdivision (c) of Section 192 of this code,  
34 Section 2800.3 of, or subdivision (b) of Section 23104 of,  
35 the Vehicle Code, Section 23153 of the Vehicle Code if the  
36 act involved serious bodily injury as defined in subdivision  
37 (a) of Section 417.6, or Section 23153 of the Vehicle Code  
38 if the act involved any bodily injury and the offender  
39 previously was convicted under Section 23103.5, 23152, or  
40 23153 of the Vehicle Code. The determination of whether



1 a prior conviction is a prior felony conviction for purposes  
2 of this section shall be made upon the date of that prior  
3 conviction and is not affected by the sentence imposed  
4 unless the sentence automatically, upon the initial  
5 sentencing, converts the felony to a misdemeanor. None  
6 of the following dispositions shall affect the  
7 determination that a prior conviction is a prior felony for  
8 purposes of this section:

9 (A) The suspension of imposition of judgment or  
10 sentence.

11 (B) The stay of execution of sentence.

12 (C) The commitment to the State Department of  
13 Health Services as a mentally disordered sex offender  
14 following a conviction of a felony.

15 (D) The commitment to the California Rehabilitation  
16 Center or any other facility whose function is  
17 rehabilitative diversion from the state prison.

18 (2) A conviction in another jurisdiction for an offense  
19 that, if committed in California, is punishable by  
20 imprisonment in the state prison. A prior conviction of a  
21 particular felony shall include a conviction in another  
22 jurisdiction for an offense that includes all of the elements  
23 of the particular felony as defined in subdivision (c) of  
24 Section 667.5 or subdivision (c) of Section 1192.7.

25 (3) A prior juvenile adjudication shall constitute a  
26 prior felony conviction for purposes of sentence  
27 enhancement if:

28 (A) The juvenile was ~~sixteen~~ 16 years of age or older  
29 at the time he or she committed the prior offense, and

30 (B) The prior offense is

31 (i) listed in subdivision (b) of Section 707 of the  
32 Welfare and Institutions Code, or

33 (ii) listed in this subdivision as a felony, and

34 (C) The juvenile was found to be a fit and proper  
35 subject to be dealt with under the juvenile court law, and

36 (D) The juvenile was adjudged a ward of the juvenile  
37 court within the meaning of Section 602 of the Welfare  
38 and Institutions Code because the person committed an  
39 offense listed in subdivision (b) of Section 707 of the  
40 Welfare and Institutions Code.



1 (c) For purposes of this section, and in addition to any  
2 other enhancements or punishment provisions which  
3 may apply, the following shall apply where a defendant  
4 has a prior felony conviction:

5 (1) If a defendant has one prior felony conviction that  
6 has been pled and proved, the determinate term or  
7 minimum term for an indeterminate term shall be twice  
8 the term otherwise provided as punishment for the  
9 current felony conviction.

10 (2) (A) If a defendant has two or more prior felony  
11 convictions, as defined in paragraph (1) of subdivision  
12 (b), that have been pled and proved, the term for the  
13 current felony conviction shall be an indeterminate term  
14 of life imprisonment with a minimum term of the  
15 indeterminate sentence calculated as the greater of

16 (i) three times the term otherwise provided as  
17 punishment for each current felony conviction  
18 subsequent to the two or more prior felony convictions,  
19 or

20 (ii) twenty-five years or

21 (iii) the term determined by the court pursuant to  
22 Section 1170 for the underlying conviction, including any  
23 enhancement applicable under Chapter 4.5  
24 (commencing with Section 1170) of Title 7 of Part 2, or  
25 any period prescribed by Section 190 or 3046.

26 (B) The indeterminate term described in  
27 subparagraph (A) of paragraph (2) of this subdivision  
28 shall be served consecutive to any other term of  
29 imprisonment for which a consecutive term may be  
30 imposed by law. Any other term imposed subsequent to  
31 any indeterminate term described in subparagraph (A)  
32 of paragraph (2) of this subdivision shall not be merged  
33 therein but shall commence at the time the person would  
34 otherwise have been released from prison.

35 (d) (1) Notwithstanding any other provision of law,  
36 this section shall be applied in every case in which a  
37 defendant has a prior felony conviction as defined in this  
38 section. The prosecuting attorney shall plead and prove  
39 each prior felony conviction except as provided in  
40 paragraph (2).



1 (2) The prosecuting attorney may move to dismiss or  
2 strike a prior felony conviction allegation in the  
3 furtherance of justice pursuant to Section 1385, or if there  
4 is insufficient evidence to prove the prior conviction. If  
5 upon the satisfaction of the court that there is insufficient  
6 evidence to prove the prior felony conviction, the court  
7 may dismiss or strike the allegation.

8 (e) Prior felony convictions shall not be used in plea  
9 bargaining, as defined in subdivision (b) of Section 1192.7.  
10 The prosecution shall plead and prove all known prior  
11 felony convictions and shall not enter into any agreement  
12 to strike or seek the dismissal of any prior felony  
13 conviction allegation except as provided in paragraph (2)  
14 of subdivision (d).

15 SEC. 5. Section 2800.3 of the Vehicle Code is amended  
16 to read:

17 2800.3. Whenever willful flight or attempt to elude a  
18 pursuing peace officer in violation of Section 2800.1  
19 proximately causes death or serious bodily injury to any  
20 person, the person driving the pursued vehicle, upon  
21 conviction, shall be punished by imprisonment in the  
22 state prison for two, three, or four years ~~or by~~  
23 ~~imprisonment in the county jail for not more than one~~  
24 ~~year, or and~~ by a fine of not less than one thousand dollars  
25 (\$1,000) nor more than ten thousand dollars (\$10,000), ~~or~~  
26 ~~by both that fine and imprisonment.~~

27 For purposes of this section, “serious bodily injury” has  
28 the same meaning as defined in paragraph (5) of  
29 subdivision (f) of Section 243 of the Penal Code.

30 SEC. 6. Section 23104 of the Vehicle Code is amended  
31 to read:

32 23104. (a) Except as provided in subdivision (b),  
33 whenever reckless driving of a vehicle proximately  
34 causes bodily injury to any person other than the driver,  
35 the person driving the vehicle shall, upon conviction  
36 thereof, be punished by imprisonment in the county jail  
37 for not less than 30 days nor more than six months or by  
38 a fine of not less than two hundred twenty dollars (\$220)  
39 nor more than one thousand dollars (\$1,000), or by both  
40 the fine and imprisonment.



1 (b) Any person convicted of reckless driving which  
2 proximately causes great bodily injury, as defined in  
3 Section 12022.7 of the Penal Code, to any person other  
4 than the driver, who previously has been convicted of a  
5 violation of Section 23103, ~~23103~~ as specified in Section  
6 23103.5, 23104, 23109, 23152, or 23153, shall be punished by  
7 imprisonment in the state prison, ~~by imprisonment in the~~  
8 ~~county jail for not less than 30 days nor more than six~~  
9 ~~months or~~ and by a fine of not less than two hundred  
10 twenty dollars (\$220) nor more than one thousand dollars  
11 (\$1,000) ~~or by both the fine and imprisonment.~~

12 SEC. 7. Section 23180 of the Vehicle Code is amended  
13 to read:

14 23180. If any person is convicted of a first violation of  
15 Section 23153, that person shall be punished by  
16 imprisonment in the state prison, or in ~~the~~ a county jail  
17 for not less than 90 days nor more than one year, and by  
18 a fine of not less than three hundred ninety dollars (\$390)  
19 nor more than one thousand dollars (\$1,000). *If the*  
20 *violation caused serious bodily injury, as defined in*  
21 *subdivision (a) of Section 417.6 of the Penal Code, the*  
22 *person shall be punished by imprisonment in the state*  
23 *prison for 2, 3, or 10 years.* The person's privilege to  
24 operate a motor vehicle shall be suspended by the  
25 Department of Motor Vehicles pursuant to paragraph (2)  
26 of subdivision (a) of Section 13352.

27 SEC. 8. Section 23185 of the Vehicle Code is repealed.

28 ~~23185. If any person is convicted of a violation of~~  
29 ~~Section 23153 and the offense occurred within seven~~  
30 ~~years of a separate violation of Section 23103 as specified~~  
31 ~~in Section 23103.5, 23152, or 23153 which resulted in a~~  
32 ~~conviction, that person shall be punished by~~  
33 ~~imprisonment in the state prison, or in the county jail for~~  
34 ~~not less than 120 days nor more than one year, and by a~~  
35 ~~fine of not less than three hundred ninety dollars (\$390)~~  
36 ~~nor more than five thousand dollars (\$5,000). The~~  
37 ~~person's privilege to operate a motor vehicle shall be~~  
38 ~~revoked by the Department of Motor Vehicles pursuant~~  
39 ~~to paragraph (4) of subdivision (a) of Section 13352.~~



1 SEC. 9. Section 23190 of the Vehicle Code is amended  
2 to read:

3 23190. (a) If any person is convicted of a violation of  
4 Section 23153 and the ~~offense occurred within seven~~  
5 ~~years~~ *person previously has been convicted* of ~~two~~ *one* or  
6 more separate violations of Section 23103, as specified in  
7 Section 23103.5, or Section 23152 or 23153, or any  
8 combination of these violations, ~~which resulted in~~  
9 ~~convictions~~; that person shall be punished by  
10 imprisonment in the state prison for a ~~term of two, three,~~  
11 ~~or an additional term of~~ four years and by a fine of not less  
12 than one thousand fifteen dollars (\$1,015) nor more than  
13 five thousand dollars (\$5,000). The person's privilege to  
14 operate a motor vehicle shall be revoked by the  
15 Department of Motor Vehicles pursuant to paragraph (6)  
16 of subdivision (a) of Section 13352.

17 (b) ~~If any person is convicted of a violation of Section~~  
18 ~~23153, and the act or neglect proximately causes great~~  
19 ~~bodily injury, as defined in Section 12022.7 of the Penal~~  
20 ~~Code, to any person other than the driver, and the offense~~  
21 ~~occurred within seven years of two or more separate~~  
22 ~~violations of Section 23103, as specified in Section 23103.5,~~  
23 ~~or Section 23152 or 23153, or any combination of these~~  
24 ~~violations, which resulted in convictions, that person shall~~  
25 ~~be punished by imprisonment in the state prison for a~~  
26 ~~term of two, three, or four years and by a fine of not less~~  
27 ~~than one thousand fifteen dollars (\$1,015) nor more than~~  
28 ~~five thousand dollars (\$5,000). The person's privilege to~~  
29 ~~operate a motor vehicle shall be revoked by the~~  
30 ~~Department of Motor Vehicles pursuant to paragraph (6)~~  
31 ~~of subdivision (a) of Section 13352.~~

32 (c) ~~If any person is convicted under subdivision (b)~~  
33 ~~(a), and the offense for which the person is previously has~~  
34 ~~been convicted occurred within seven years of four or~~  
35 more separate violations of Section 23103, as specified in  
36 Section 23103.5, or Section 23152 or 23153, or any  
37 combination of these violations, ~~that resulted in~~  
38 ~~convictions~~; that person shall *be punished*, in addition and  
39 consecutive to the sentences imposed under subdivision



1 ~~(b)~~ (a), ~~be punished~~ by an additional term of  
2 imprisonment in the state prison for three years.

3 The enhancement allegation provided in the  
4 subdivision shall be pleaded and proved as provided by  
5 law.

6 ~~(d)~~

7 (c) Any person convicted of Section 23153 punishable  
8 under this section shall be designated as an habitual traffic  
9 offender for a period of three years, subsequent to the  
10 conviction. The person shall be advised of this designation  
11 pursuant to subdivision (b) of Section 13350.

12 ~~(e)~~

13 (d) Any person confined in state prison under this  
14 section shall be ordered by the court to participate in an  
15 alcohol or drug program, or both, that is available at the  
16 prison during the person's confinement.

