

AMENDED IN SENATE JUNE 30, 1998
AMENDED IN SENATE JUNE 3, 1998
AMENDED IN SENATE MARCH 12, 1998
AMENDED IN SENATE AUGUST 25, 1997
AMENDED IN SENATE JULY 10, 1997
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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1204

Introduced by Assembly Member Keeley
(Coauthor: Senator McPherson)

February 28, 1997

An act to amend Section 25658 of the Business and Professions Code, and to amend Sections 192 and 193 of the Penal Code, relating to crimes against the person.

LEGISLATIVE COUNSEL'S DIGEST

AB 1204, as amended, Keeley. Alcoholic beverages: minors.

(1) The Alcoholic Beverage Control Act makes it a misdemeanor for any person to sell, furnish, give, or cause to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years.

This bill would impose a state-mandated local program by making a violation of that provision a ~~felony or a~~ misdemeanor, punishable as specified, if, after the defendant purchases an alcoholic beverage for a minor, the minor consumes the alcohol, and thereby proximately causes great bodily injury *or death* to himself, herself, or any other person. ~~The bill would require that, for the purchase of an alcoholic beverage to be punishable as a felony under these provisions; (a) the purchaser must have known or reasonably should have known that the person for whom he or she was purchasing was under the age of 21 years, and (b) the great bodily injury must have occurred as a result of the minor consuming the alcohol and thereafter driving under the influence of alcohol with a blood alcohol content of 0.05% or more.~~

(2) Under existing law, manslaughter, defined as the unlawful killing of a human being without malice, includes involuntary manslaughter, which is defined to occur under the following 2 circumstances: (a) in the commission of an unlawful act, not amounting to a felony, or (b) in the commission of a lawful act that might produce death, in an unlawful manner, or without due caution and circumspection. Involuntary manslaughter is punishable by imprisonment in the state prison for 2, 3, or 4 years.

This bill would instead define involuntary manslaughter to occur under the following 5 circumstances: (a) in the commission of a felony that is dangerous to human life or safety, (b) in the commission of a felony where it is committed without due caution or circumspection, (c) in the commission of an unlawful act inherently dangerous to human life, not amounting to a felony, (d) in the commission of an unlawful act not amounting to a felony without due caution or circumspection, and (e) in the commission of an lawful act that might produce death, in a unlawful manner, or without due caution and circumspection. A violation under (a) would be punishable by imprisonment in the state prison for 4, 6, or 10 years; a violation under (b) or (c) would be punishable by imprisonment in the state prison for 2, 4, or 6 years; a violation under (d) and (e) would be punishable under existing law (by imprisonment in the state prison for 2, 3, or 4 years). By



expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) 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 25658 of the Business and
2 Professions Code is amended to read:

3 25658. (a) Except as otherwise provided in
4 subdivision (c), every person who sells, furnishes, gives,
5 or causes to be sold, furnished, or given away, any
6 alcoholic beverage to any person under the age of 21 years
7 is guilty of a misdemeanor.

8 (b) Any person under the age of 21 years who
9 purchases any alcoholic beverage, or any person under
10 the age of 21 years who consumes any alcoholic beverage
11 in any on-sale premises, is guilty of a misdemeanor.

12 (c) Any person who violates subdivision (a) by
13 purchasing an alcoholic beverage for a person under the
14 age of 21 years and the person under the age of 21 years
15 thereafter consumes the alcohol and thereby proximately
16 causes great bodily injury *or death* to himself, herself, or
17 any other person, is guilty of a ~~public offense punishable~~
18 ~~by imprisonment in a county jail not to exceed one year~~
19 ~~or in the state prison. In order to be punishable by~~
20 ~~imprisonment in the state prison pursuant to this~~
21 ~~subdivision:~~

22 (1) ~~The purchaser shall have known or reasonably~~
23 ~~should have known that the person for whom he or she~~
24 ~~was purchasing was under the age of 21 years; and~~

25 (2) ~~Great bodily injury shall have occurred as a result~~
26 ~~of the person under the age of 21 years consuming the~~
27 ~~alcohol and thereafter driving under the influence of~~



1 ~~alcohol and with a blood alcohol content of 0.05 percent~~
2 ~~or more, misdemeanor.~~

3 (d) Any on-sale licensee who knowingly permits a
4 person under the age of 21 years to consume any alcoholic
5 beverage in the on-sale premises, whether or not the
6 licensee has knowledge that the person is under the age
7 of 21 years, is guilty of a misdemeanor.

8 (e) (1) Except as otherwise provided in paragraph
9 (2) or (3), any person who violates this section shall be
10 punished by a fine of two hundred fifty dollars (\$250), no
11 part of which shall be suspended, or the person shall be
12 required to perform not less than 24 hours or more than
13 32 hours of community service during hours when the
14 person is not employed and is not attending school, or a
15 combination of fine and community service as
16 determined by the court.

17 (2) Any person who violates subdivision (a) by
18 furnishing an alcoholic beverage, or causing an alcoholic
19 beverage to be furnished, to a minor shall be punished by
20 a fine of one thousand dollars (\$1,000), no part of which
21 shall be suspended, and the person shall be required to
22 perform not less than 24 hours of community service
23 during hours when the person is not employed and is not
24 attending school.

25 (3) Any person who violates subdivision (c) shall be
26 ~~punished by imprisonment in the state prison or by~~
27 ~~imprisonment in a county jail not exceeding one year for~~
28 ~~a minimum term of six months not to exceed one year,~~ by
29 a fine not exceeding one thousand dollars (\$1,000), or by
30 both imprisonment and fine.

31 (f) Persons under the age of 21 years may be used by
32 peace officers in the enforcement of this section to
33 apprehend licensees, or employees or agents of licensees,
34 who sell alcoholic beverages to minors. Notwithstanding
35 subdivision (b), any person under the age of 21 years who
36 purchases or attempts to purchase any alcoholic beverage
37 while under the direction of a peace officer is immune
38 from prosecution for that purchase or attempt to
39 purchase an alcoholic beverage. Guidelines with respect
40 to the use of persons under the age of 21 years as decoys



1 shall be adopted and published by the department in
2 accordance with the rulemaking portion of the
3 Administrative Procedure Act (Chapter 3.5
4 (commencing with Section 11340) of Part 1 of Division 3
5 of Title 2 of the Government Code). Law
6 enforcement-initiated minor decoy programs in
7 operation prior to the effective date of regulatory
8 guidelines adopted by the department shall be
9 authorized as long as the minor decoy displays to the
10 seller of alcoholic beverages the appearance of a person
11 under the age of 21 years. This subdivision shall not be
12 construed to prevent the department from taking
13 disciplinary action against a licensee who sells alcoholic
14 beverages to a minor decoy prior to the department's
15 final adoption of regulatory guidelines.

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

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

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

22 (b) Involuntary—

23 (1) (A) In the commission of a felony that is
24 dangerous to human life or safety.

25 (B) In the commission of a felony where it is
26 committed without due caution or circumspection.

27 (C) In the commission of an unlawful act inherently
28 dangerous to human life, not amounting to a felony.

29 (D) In the commission of an unlawful act not
30 amounting to a felony without due caution or
31 circumspection.

32 (E) In the commission of a lawful act that might
33 produce death, in an unlawful manner, or without due
34 caution and circumspection.

35 (2) This subdivision shall not apply to acts committed
36 in the driving of a vehicle.

37 (c) Vehicular—

38 (1) Except as provided in Section 191.5, driving a
39 vehicle in the commission of an unlawful act, not
40 amounting to a felony, and with gross negligence; or



1 driving a vehicle in the commission of a lawful act which
2 might produce death, in an unlawful manner, and with
3 gross negligence.

4 (2) Except as provided in paragraph (3), driving a
5 vehicle in the commission of an unlawful act, not
6 amounting to a felony, but without gross negligence; or
7 driving a vehicle in the commission of a lawful act which
8 might produce death, in an unlawful manner, but without
9 gross negligence.

10 (3) Driving a vehicle in violation of Section 23140,
11 23152, or 23153 of the Vehicle Code and in the commission
12 of an unlawful act, not amounting to a felony, but without
13 gross negligence; or driving a vehicle in violation of
14 Section 23140, 23152, or 23153 of the Vehicle Code and in
15 the commission of a lawful act which might produce
16 death, in an unlawful manner, but without gross
17 negligence.

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

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

31 SEC. 3. Section 193 of the Penal Code is amended to
32 read:

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

35 (b) Involuntary manslaughter is punishable as follows:

36 (1) A violation of subparagraph (A) of paragraph (1)
37 of subdivision (b) of Section 192, by imprisonment in the
38 state prison for 4, 6, or 10 years.



1 (2) A violation of subparagraph (B) or (C) of
2 paragraph (1) of subdivision (b) of Section 192, by
3 imprisonment in the state prison for two, four, or six years.

4 (3) In all cases other than that specified in paragraph
5 (1) or (2), by imprisonment in the state prison for two,
6 three, or four 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 a
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 a county jail
14 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 a
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.

20 SEC. 4. Nothing in Section 2 of this act shall be
21 construed as overruling decisional law which holds that
22 a person who kills another individual in the perpetration
23 or attempted perpetration of a felony inherently
24 dangerous to human life acts with “implied malice”
25 within the meaning of Section 188 of the Penal Code.

26 SEC. 5. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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