

Introduced by Senator Alarcon

February 24, 1999

An act to amend Section 23558 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 772, as introduced, Alarcon. Enhancement: driving under the influence.

(1) Existing law makes it a crime to drive a vehicle while under the influence of any alcoholic beverage or drug, or both, and to do any act that proximately causes bodily injury to any person.

(2) Existing law defines gross vehicular manslaughter while intoxicated as the unlawful killing of a human being without malice, while driving a vehicle, if the person is in violation of specified provisions making it unlawful to drive under the influence of an alcoholic beverage or drug, or both, and the death results from gross negligence.

(3) Existing law also defines vehicular manslaughter as the unlawful killing of a human being without malice while driving a vehicle, if the person is in violation of specified provisions making it unlawful to drive under the influence of an alcoholic beverage or drug, but the death does not result from gross negligence.

Existing law requires the enhancement of the sentence of any person who is convicted of a felony of any of the foregoing offenses if bodily injury to additional victims is charged and found to be true by the trier of fact, as specified. The enhancement is required to be one year of imprisonment in

the state prison for each additional injured victim, not to exceed a total enhancement of 3 years. Existing law also authorizes a court to strike the enhancements for more than one victim if it makes specified findings and states its reasons on the record.

This bill would recast these provisions as follows:

It would provide for an enhancement of one year in state prison for each additional injured victim for a felony conviction of driving under the influence of alcohol or drugs, or both, if that act proximately causes bodily injury.

The bill would provide a one-year additional county jail enhancement for each additional injured victim, if the person proximately causes bodily injury or death to more than one victim in any one instance of driving as described in either (1) or (3) if the person is convicted of a misdemeanor. Because this bill would increase the county jail sentence, the bill would impose a state-mandated local program.

The bill would also provide a 3, 4, or 5 year enhancement in state prison for each additional injured or deceased victim if the person proximately causes death or great bodily injury, as defined, to any person other than the defendant who drives in the manner described in (1), (2), or (3).

The bill would place no limitation on the number of enhancements that may be imposed under these changes.

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 23558 of the Vehicle Code is
 2 amended to read:
 3 23558. (a) Any person who proximately causes bodily
 4 injury ~~or death~~ to more than one victim in any one
 5 instance of driving in violation of Section 23153 ~~of this~~



1 ~~code or in violation of Section 191.5 of, or paragraph (3)~~
2 ~~of subdivision (c) of Section 192 of, the Penal Code, shall,~~
3 ~~upon a felony conviction, shall receive an enhancement~~
4 ~~of one year in the state prison for each additional injured~~
5 ~~victim. The enhanced sentence provided for in this~~
6 ~~section shall not be imposed unless the fact of the bodily~~
7 ~~injury to each additional victim is charged in the~~
8 ~~accusatory pleading and admitted or found to be true by~~
9 ~~the trier of fact. The maximum number of one year~~
10 ~~enhancements which may be imposed pursuant to this~~
11 ~~section is three.~~

12 ~~Notwithstanding~~

13 *(b) Any person who proximately causes bodily injury*
14 *or death to more than one victim in any one instance of*
15 *driving in violation of Section 23153 or in violation of*
16 *paragraph (3) of subdivision (c) of Section 192 of the*
17 *Penal Code, upon a misdemeanor conviction, shall*
18 *receive one additional year in the county jail for each*
19 *additional injured victim.*

20 *(c) Any person who proximately causes death or great*
21 *bodily injury to any person other than the defendant in*
22 *any one instance of driving in violation of Section 23153*
23 *or in violation of Section 191.5 or paragraph (3) of*
24 *subdivision (c) of Section 192 of the Penal Code, upon a*
25 *felony conviction, shall receive an enhancement of three,*
26 *four, or five years in the state prison for each additional*
27 *injured or deceased victim. This subdivision does not*
28 *prohibit or preclude charging the defendant with*
29 *violating Section 23190, murder pursuant to Section 188*
30 *of the Penal Code, or manslaughter pursuant to Section*
31 *191.5 or paragraph (3) of subdivision (c) of Section 192 of*
32 *the Penal Code.*

33 *(d) The allegation giving rise to enhanced and*
34 *additional sentences as provided in this section shall be set*
35 *forth in the accusatory pleading and either admitted by*
36 *the defendant in open court or found to be true by the*
37 *trier of fact.*

38 *(e) There is no limitation on the number of*
39 *enhancements that may be imposed on a defendant*
40 *pursuant to this section.*



1 (f) *Notwithstanding* any other provision of law, the
2 court ~~may—strike~~ *need not impose* the sentence
3 enhancements provided for in ~~this section~~ *subdivision (a)*
4 *or (c) and the additional jail sentence provided for in*
5 *subdivision (b) if it determines that there are*
6 *circumstances in mitigation of the additional punishment*
7 *and states on the record its reasons for ~~striking~~ not*
8 *imposing* the additional punishment.

9 (g) *For the purposes of this section “great bodily*
10 *injury” has the same meaning as defined in subdivision*
11 *(e) of Section 12022.7 of the Penal Code.*

12 SEC. 2. No reimbursement is required by this act
13 pursuant to Section 6 of Article XIII B of the California
14 Constitution because the only costs that may be incurred
15 by a local agency or school district will be incurred
16 because this act creates a new crime or infraction,
17 eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition
20 of a crime within the meaning of Section 6 of Article
21 XIII B of the California Constitution.

