
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 67 **Hearing Date:** April 4, 2017
Author: Bates
Version: January 5, 2017
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Sentencing: Driving Under the Influence*

HISTORY

Source: Orange County District Attorney

Prior Legislation: AB 2690 (Mullin) Chapter 590, Stats. 2014
AB 1601(Hill) Chapter 301, Stats. 2010
AB 1078 (Jackson) Chapter 849, Statutes 2001
AB 130 (Battin) Chapter 901, Stats. 1997
AB 2240 (Battin) 1996, failed Sen. Criminal Procedure
AB 1162 (Leslie) placed on inactive file at the request of the author

Support: Alcohol Justice; Anaheim Police Department; California District Attorneys Association; California Police Chiefs Association; California State University, Fullerton; Cathedral City Police Department; Crime Victims United of California; Garden Grove Police Department; Kern County District Attorney; La Palma Police Department; Long Beach Police Officers Association; Los Alamitos Police Department; MADD, Southern California; Peace Officers Research Association of California; San Bernardino District Attorney; San Diego District Attorney; Westminster Police Department

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association

ANALYSIS REFLECTS AUTHORS AMENDMENTS TO BE OFFERED IN COMMITTEE
(see Comment 3)

PURPOSE

The purpose of this bill is to clarify that a felony DUI remains a felony for the purpose of acting as a prior even if the court subsequently reduces the felony to a misdemeanor for other purposes.

Existing law states that it is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle. (Vehicle Code § 23152 (a).)

Existing law states that it is unlawful for a person who has 0.08 % or more, by weight, of alcohol in his or her blood to drive a vehicle. (Vehicle Code § 23152 (b).)

Existing law provides that it is unlawful for a person who is under the influence of any drug, or a combined influence of any alcoholic beverage and drug to drive a vehicle. (Vehicle Code § 23152 (e) & (f).)

Existing law prohibits any person, while under the influence of any alcoholic beverage to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, and consequently proximately causing bodily injury to any person other than the driver. (Vehicle Code § 23153 (a).)

Existing law prohibits any person, while having 0.08% or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, and consequently proximately causing bodily injury to any person other than the driver. (Vehicle Code § 23153 (b).)

Existing law requires a person who is convicted of a DUI and the offense occurred within 10 years of three or more separate violations of specified DUI related offenses, as specified, to be punished as a county jail-eligible felony, or as a misdemeanor in county jail for not less than 180 days nor more than one year, and by a fine of not less than \$390 nor more than \$1000. The person's driving privilege shall be revoked by the Department of Motor Vehicles (DMV). (Vehicle Code § 23550 (a).)

Existing law provides that gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years, except as provided. (Penal Code § 191.5, (c)(1).)

Existing law provides that vehicular manslaughter while intoxicated is punishable as a misdemeanor by imprisonment in the county jail for not more than one year or as a felony by imprisonment in the county jail for 16 months or 2 or 4 years. (Penal Code § 191.5 (c)(2).)

Existing law states the Legislative finding and declaration that the timing of court proceedings should not permit a person to avoid aggravated mandatory minimum penalties for multiple separate offenses occurring within a 10-year period. It is the intent of the Legislature to provide that a person be subject to the enhanced mandatory minimum penalties for multiple offenses within a period of 10 years, regardless of whether the convictions are obtained in the same sequence as the offenses had been committed. (Vehicle Code § 23217.)

Existing law states that a person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than \$390 nor more than \$1,000 if that person is convicted of a violation of DUI offenses, and the offense occurred within 10 years of any of the following:

- A prior violation of a DUI offense punished as a felony, as provided;
- A prior violation of a DUI causing injury that was punished as a felony; or,
- A prior violation of vehicular manslaughter with gross negligence that was punished as a felony. (Vehicle Code § 23550.5 (a))

Existing law provides each person who, having previously been convicted of gross vehicular manslaughter while intoxicated, a felony violation vehicular manslaughter while intoxicated, or vehicular manslaughter committed during operation of a vessel, is subsequently convicted of a

DUI or DUI causing injury, is guilty of a public offense punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than \$390 nor more than \$1,000. (Vehicle Code § 23550.5 (b).)

Existing law requires the DMV to revoke the driving privilege of a person convicted of one of the offenses described above. (Vehicle Code § 23550.5 (c).)

Existing law designates a person convicted of a DUI or a DUI causing injury that is punishable under the enhanced penalties provided in this section as a habitual traffic offender for a period of three years, subsequent to the conviction, and requires the person to be advised of this designation. (Vehicle Code § 23550.5 (d).)

This bill, as proposed to be amended, provides that a conviction for a violation of 23152 that was punished as a felony under 23550 or this section or both; or, a violation of 2153 that was punished as a felony, shall remain a felony for the determination of a separate violation or prior conviction under this section even if the conviction was subsequently reduced to a misdemeanor under subdivision (b) of Section 17 of the Penal Code.

COMMENTS

1. Need for This Bill

According to the author:

SB 67 clarifies that a felony DUI conviction, regardless of whether the original offense was later reduced to a misdemeanor, can be considered a prior felony offense if a new DUI is committed.

State laws have been established to affirm the seriousness of multiple DUI offenses. Existing law allows some aggravated DUIs to be charged as felonies, including a DUI with a previous felony DUI, a fourth or subsequent DUI offense, a DUI with a serious injury, and a DUI when a person is killed (Vehicle Code § 23550.5). Under the Vehicle Code, a second DUI offense can be considered a felony if the offender has previously been convicted of a felony DUI (Vehicle Code § 23550.5).

Under state law, committing a DUI offense following a prior conviction of a felony DUI is a felony. There is a loophole in existing law in which a prior felony DUI conviction that has been reduced to a misdemeanor at the request of the defendant is prohibited from being used as a prior felony violation necessary to elevate a new DUI to a felony. Without the prior reduction, the offense would qualify as a prior felony offense, allowing a subsequent DUI to be treated as a felony.

The intent of the law to increase the severity of punishment for multiple and serious DUI offenses is not achieved if continued violations following a felony cannot be treated as greater offenses.

There is a large public safety interest in reducing the number of repeat DUI offenders, which currently stands at 26.3% of all offenders according to the DMV.

A necessary component of achieving this goal is ensuring courts have the ability to appropriately evaluate and act upon the full extent of an offender's DUI history.

To ensure that felony DUI convictions are treated with the proper weight during consideration of future DUI violations, SB 67 adds a simple clause to the list of felony DUI qualifications stating that the determination of whether an offense constitutes a prior felony conviction is determined on the date of conviction and is not affected by a later reduction. By allowing original felony convictions to stand as felonies in the light of new DUI violations, SB 67 aims to address only repeat DUI offenders that have already caused serious harm or death to an individual.

2. Prior Felony Remains a Prior Felony

Existing law provides that if a person is found guilty of DUI or a DUI with injury and he or she has had a felony conviction for a DUI, DUI with injury or vehicular manslaughter while DUI then he or she is guilty of a wobbler for the current offense.

The author and sponsor assert there is a loophole in this provision. Penal Code Section 17(b) allows a court to reduce a wobbler that for which a person was originally convicted of a felony to a misdemeanor. In those cases the conviction, even though it was originally a felony, would no longer constitute a felony prior for the purposes of charging a felony for a current violation. This bill would make it clear that a felony that has been reduced to a misdemeanor will still be considered a felony for the purposes of determining a prior conviction.

Keeping a felony conviction a prior for 10 years is consistent with the original intent of the bill that created the 10 year washout. The analysis for AB 130 (Battin) Chapter 901, Stats. 1997 stated in pertinent part:

Under existing law a DUI conviction only acts as a "prior" for sentence purposes for 7 years after the offense was committed. This bill provides that once a person is convicted of a felony DUI, any DUI he/she commits within the next 10 years will also be felony DUI. When a felony DUI is committed the ten year period will begin to run again. If a person has no convictions of the ten year period, then the previous conviction will drop off. (Senate Public Safety Committee Analysis of AB 130 (Battin) as amended March 31, 1997)

3. Author's Amendment

The author will take an amendment in Committee to amend the bill as follows:

Page 3 delete lines 6-11 and insert:

(e) A conviction for a violation of 23152 that was punished as a felony under 23550 or this section or both; or, a violation of 2153 that was punished as a felony, shall remain a felony for the determination of a separate violation or prior conviction under this section even if the conviction was subsequently reduced to a misdemeanor under subdivision (b) of Section 17 of the Penal Code.