
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 1472 **Hearing Date:** April 26, 2022
Author: Stern
Version: April 19, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicle manslaughter: speeding and reckless driving*

HISTORY

Source: Author

Prior Legislation: SB 350 (Melendez) failed Senate Public Safety 2021/2022
AB 3 (Fong) Chapter 611, Stats.
AB 410 (Nazarian) failed Assem. Public Safety 2019
SB 699 (Galgiani) amended out in Assembly 2017
SB 67 (Perata) Chapter 727, Stats. 2007
AB 1325 (Vargas) Chapter 475, Stats. 2005
SB 1541 (Margett) Chapter 595, Stats. 2004
AB 985 (Vargas) - failed Senate Public Safety 2004
AB 1341 (Para) - 6/9/04 version, failed Sen Public Safety 2004
AB 2440 (Shirley Horton) - held Assembly Appropriations 2004
SB 1489 (Perata) Chapter 411, Stats. 2002
SB 2087 (Soto) - died on inactive file Senate Floor 2002
AB 2288 (Aguiar) Chapter 884, Stats. 1996
SB 833 Chapter 922, Stats. 1995
SB 1738 Chapter 1221, Stats. 1994
AB 5 Chapter 3, Stats. 1959

Support: (to prior version of the bill) California Association of Highway Patrolmen; City of Paramount; Conor Lynch Foundation; Hang Up and Drive; Peace Officers Research Association of California (PORAC); Plumas County Office of Education/unified School District; Social Families for Safe Streets; Street Racing Kills; Streets are For Everyone (SAFE)

Opposition: ACLU California Action; California District Attorneys Association (to prior version of the bill); California Public Defenders Association

PURPOSE

The purpose of this bill is to state that certain behavior can constitute gross negligence for wobblers vehicle manslaughter and to create advisements for certain behavior so that driver's are aware their behavior could lead to a manslaughter or other conviction.

Existing law provides that a person who drives a vehicle upon a highway at a speed greater than 100 miles per hour is guilty of infraction punishable, as follows:

- a) Upon a first conviction by a fine not to exceed \$500, plus penalty assessments and the court may suspend the driver's license for up to 30 days.
- b) Upon a second conviction within 3 years of a prior offense, a fine not to exceed \$750, plus penalty assessments, and the driver's license shall be suspended for 6 months.
- c) Upon a third conviction within 5 years, a fine of \$1,000, plus penalty assessments, and the person's driver's license shall be suspended for one year.(VC §§ 22348 and 13355)

Existing law provides that a person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving and a person who drives a vehicle in an offstreet parking facility, as defined in subdivision (c) of Section 12500, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. A person convicted of the offense of reckless driving shall be punished by a misdemeanor for not less than five days nor more than 90 days and/or by a fine of not less than one hundred forty-five dollars nor more than one thousand dollars plus penalty assessments. (VC §23103)

Existing law prohibits engaging in a motor vehicle speed contest (VC 23109(a)), and provides for punishment of between 24 hours and 90 days imprisonment and/or a fine of between \$355 and \$1,000 and 40 hours of community service. A driver's license suspension of from 90 days to six months may also be ordered. (VC 23109(e)). The vehicle may be immediately impounded by a peace officer for up to 30 days (VC 23109.2(a)).

Existing law prohibits engaging in a motor vehicle exhibition of speed (VC 23109(c)), and provides for punishment by imprisonment of up to 90 days and/or a fine of up to \$500 (VC 23109(i)). The vehicle may be immediately impounded by a peace officer for up to 30 days (VC 23109.2(a)).

Existing law defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code § 187 (a).)

Existing law defines malice for this purpose as either express or implied and defines those terms. (Pen. Code § 188.)

- It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.
- It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

Existing law provides that when it is shown that the killing resulted from an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice. (Pen. Code, § 188.)

Existing law provides that manslaughter is the unlawful killing of a human being without malice and is divided into three kinds: voluntary, involuntary and vehicular. (Pen. Code § 192)

Existing law provides that vehicular manslaughter is:

- a) Driving a vehicle in the commission of an unlawful act, not amounting to a felony and with gross negligence, or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence. This is punishable by a wobbler with up to one year in county jail or state prison for two, four, or six years.
- b) Driving a vehicle in the commission of an unlawful act, not amounting to a felony, but with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence. This is punishable by imprisonment in the county jail by not more than one year.
- c) Driving a vehicle in connection with faking a vehicle accident or a vehicle accident was knowingly caused for financial gain and proximately resulted in the death of any person. This is punishable by imprisonment in the state prison for 4, 6 or 10 years.
- d) This section shall not be construed as making any homicide in the driving of a vehicle punishable that is not the proximate result of the commission of an unlawful act, not amounting to a felony, or of the commission of a lawful act which might produce death in an unlawful manner. (Pen. Code §§ 192(c) and 193(c))

This bill provides that for the purposes of vehicular manslaughter, “gross negligence” may include but is not limited to any of the following:

- Participating in a sideshow.
- An exhibition of speed.
- Being convicted of reckless driving two times or more within the prior three years.
- Being convicted of speeding over 100 miles per hour.
- Being convicted of speeding in excess double the legal limit on any highway, country highway, or street.

This bill creates an advisement that must be read anytime a person drives a vehicle at a speed double or greater than the posted speed limit or 100 miles per hour or more, and is found guilty of an infraction, and convicted, shall be advised by the court as follows:

You are hereby advised that driving at a speed double or greater than the posted speeds of 100 miles per hour or more, inhibits your ability to safely operate a motor vehicle. Therefore it is extremely dangerous to human life to drive at a speed double or greater than the posted speed limit, or at speeds of 100 miles per hour or more. If you continue to drive at such speeds, and as a result of that driving, someone is killed you can be charged with manslaughter. You are not precluded from being prosecuted for any other crime.

This bill provides that a person who is convicted of a violation of reckless driving for a second or subsequent time shall be advised as follows:

You are hereby advised that driving in a reckless manner inhibits your ability to safely operate a motor vehicle. Therefore it is extremely dangerous to human life to drive in a reckless manner in violation of Section 23103 of the Vehicle Code. If you continue to drive in such a reckless manner within the next three years, and as a result of that reckless driving, someone is killed, you can be charged with manslaughter pursuant to Section 191.7 of the Penal Code.”

COMMENTS

1. Need for This Bill

According to the author:

Last year, the United States Department of Transportation's National Highway Traffic Safety Administration issued findings that showed while Americans drove far less in 2020 due to the pandemic, motor vehicle crashes resulting in fatalities increased 7.2% (approx. 39,000 fatalities) compared to 2019 (36,096 fatalities).

In 2021, traffic collisions killed 294 individuals in the City of Los Angeles, a 24-percent increase from 2020, and in 2021, traffic accidents in Los Angeles involving serious injury to pedestrians were up by 45 percent and serious injury to bicyclists was up by 34 percent from 2020.

Exacerbating these fatalities and serious injuries is the growing prevalence of reckless driving and speeding. According to the Department of the California Highway Patrol, in 2021, CHP responded to almost 6,000 street races and sideshows, issuing 2,500 citations statewide, making 87 arrests, and recovering 17 firearms.

Repeat reckless driving and excessive speeding offenders fail to see the potential consequences of their actions and do not believe their behavior possess a threat to those around them, feeling instead they have everything under control, until their reckless behavior turns their vehicle into a deadly weapon "accidentally" harming other motorists and pedestrians. The State must strive to reduce repeat reckless driving and excessive speeding violations and hopefully save lives with stronger preventative laws.

2. Manslaughter Generally

Manslaughter is the killing of another without the element of "malice." Manslaughter can be divided into three types, voluntary manslaughter, involuntary manslaughter, and vehicular manslaughter.

Voluntary manslaughter is generally the killing of another person during a sudden quarrel, in the heat of passion, or based on an honest but unreasonable belief in the need to defend oneself. Voluntary manslaughter is a lesser included offense to murder and it is often the subject of a plea bargain in murder cases in exchange for a dismissal of a murder charge. The punishment for voluntary manslaughter is 3, 6, or 11 years in state prison as opposed to an indeterminate term for first or second-degree murder.

Involuntary manslaughter is the unintentional killing of a person while committing a crime that is not inherently dangerous or a lawful act that might produce death. A conviction for involuntary manslaughter is up to 4 years in jail. Involuntary manslaughter does not require intent to kill.

Vehicular Manslaughter is further divided into three types:

- Driving a vehicle in the commission of an unlawful act, not amounting to a felony , and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence, which is a wobblers.
- Driving a vehicle in the commission of an unlawful act, not amounting to a felony, but without gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner , but without gross negligence, which is a misdemeanor.
- Driving a vehicle and knowingly participating in a fake vehicular accident that was done for financial gain which is a felony.

3. Gross Negligence

In the existing manslaughter section, it expressly states that “gross negligence” does not preclude a charge of murder upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice.

This bill would further state that for purposes of this section “gross negligence” may include but is not limited to a number of vehicular violations. The finding of gross negligence could result in a conviction for wobblers vehicular manslaughter. The included violations are:

- a) “Participating in a sideshow.” This requires only participating but not a conviction—shouldn’t the person be convicted of the activity?
- b) An exhibition of speed. An exhibition of speed is very inclusive and can even be wheels spinning out after a stop sign or light—whether because the person was trying to speed away or that conditions of the tires and road caused the sound. Should this be enough to be gross negligence? And should a conviction be required?
- c) Being convicted of reckless driving two or more times within the prior three years. Should this clearly require a current conviction of reckless driving? Under this scenario a person could be driving down the street at or below the speed limit and hit a person and be found guilty of a wobblers vehicular manslaughter because of past convictions.
- d) Being convicted of speeding over 100 miles per hour. Is this always gross negligence?
- e) Being convicted of speeding in excess of double the speed limit. Is speeding in excess of double the speed limit always going to be gross negligence?

4. Advisement

This bill creates two separate advisements, one for a person convicted of the infractions of driving more than double the speed limit or an infraction of driving 100 miles or more and a similar advisement for a person convicted of reckless driving for second or subsequent time. The advisements alert the person that their driving behavior could result in a manslaughter conviction or any other crime.

The advisories in this bill is modeled after the DUI advisory codified in the Vehicle Code. With respect to deaths resulting from DUIs, the California Supreme Court held in *People v. Watson* (1981), 30 Cal.3d 290, 298, in affirming a second-degree murder conviction, that “when the conduct in question can be characterized as a wanton disregard for life, and the facts demonstrate a subjective awareness of the risk created, malice may be implied.” The stated intent of AB 2173

(Parra), Chapter 502, Statutes 2004, was to help prosecutors prove implied malice in second-degree murder cases arising out of DUI cases resulting in death by “making it clear that those individuals were aware of the danger they posed to others by drinking and driving as a result of the statement required by this bill which they signed after the original DUI conviction.” (Assem. Com. on Pub. Safety, Analysis of Assem. Bill 2173 (2003-2004 Reg. Sess.) as introduced February 18, 2004, p. 4.)

As is the case with a DUI in which an intoxicated driver kills another person, a person engaged in driving behavior that results in the death of another person may be charged under current law with vehicular manslaughter, or if the facts are appropriate, second degree murder. Murder is defined as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187.) First-degree murder is a murder committed by specified lethal means, or by any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate various specified felonies, or that is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death. (Pen. Code, § 189, subd. (a).) All other murder is murder of the second degree. (Pen. Code, § 189, subd. (b).) Malice may be express or implied. (Pen. Code, § 188, subd. (a).) Malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (*Id.*) If it is shown that the killing resulted from an intentional act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. (Pen. Code, § 188, subd. (b).)

The advisement in this bill specifically references manslaughter, since involuntary manslaughter does not apply to an action in a vehicle, this would be vehicular manslaughter, which unlike second degree murder, does not require malice. So it is unclear why an advisement would be necessary or how a prior advisement would assist a district attorney in prosecuting, since they do not have to show a state of mind. You can be driving with gross negligence for the first time ever and still be convicted of wobbler vehicular manslaughter.

It is also unclear how an advisement would work after an infraction. Generally, a person just pays an infraction. How exactly will they they be advised?

The advisement after reckless driving requires it to be on a second or subsequent conviction. However, a first conviction for reckless driving where a person is killed can result in a conviction for vehicular manslaughter, either the wobbler or misdemeanor type, depending on whether there was gross negligence. So what does an advisement after a second conviction signal to the courts, that we don't think there should be a conviction on a first or even second offense no matter the facts?

5. Argument in Support

The Conor Lynch Foundation supports this bill stating:

We support SB 1472 which would curb dangerous driving activity and by raising match the penalties for the exhibition of speed, or participating in reckless driving activities including sideshows and street races.

A “motor vehicle speed contest” includes engaging in a motor vehicle race against another vehicle, a clock, or other timing devices. However, many illegal street races

stem from “motor vehicle exhibition of speed,” which includes burning out tires, revving engines, circling, and other activity intended for an audience or “sideshow” that ultimately leads to a speed contest.

According to the National Highway Traffic Safety Association (NHTSA), most fatal crashes are directly linked to this type of risky driving. While “motor vehicle exhibition of speed” is prohibited, violations do not result in the same penalties as those engaging in a speed contest. AB 3 matches the penalties for the two dangerous activities and will allow intervention before a fatal or devastating crash occurs.

On October 1st, 2020, the California Highway Patrol launched the Communities Against Racing and Side Shows campaign. This campaign will focus on statewide public awareness campaigns on speed-related crashes and focused enforcement. As illegal street racing becomes a more prevalent problem statewide, the NHTSA has reported that this dangerous activity is often associated with other risky behavior including driving under the influence of drugs or alcohol and driving without a seatbelt.

6. Argument in Opposition

The California Public Defenders Association opposes this bill stating:

SB 1472 would expand the definition of gross negligence for vehicular manslaughter by allowing speed contests, exhibition of speed, driving over 100 mph or double the posted speed to constitute gross negligence. Additionally, SB 1472 would require the court to give an admonition warning an individual convicted of driving double the speed limit or 100 mph, infractions, or convicted reckless driving that they could be convicted of vehicular manslaughter if they continue to drive in such a manner and cause someone’s death.

While seeking to stop traffic deaths is a laudable goal, SB 1472 is flawed.

SB 1472 would constructively remove the normal felony requirement of gross negligence thus leading to unjust and inconsistent results. In effect, it would redefine gross negligence to include any situation where the driver has prior convictions of speeding or reckless driving, if the current offense involves speeding or reckless driving.

Gross negligence, by its very nature, is a "totality of the circumstances" test, to be applied at the time of the accident leading to death. Side show or exhibition of speed may be indicative of gross negligence, but not under all circumstances. It cannot be a "per se" indication of gross negligence. Using prior convictions of reckless driving, 100mph speeding, or double the speed limit say nothing about the driving at the time of the accident, and may not even be relevant, let alone dispositive of the issue of gross negligence or other mens rea, such as implied malice.

The proposed admonition is overbroad and serves no basis except to make it easier for prosecutors to charge and convict individuals. 100 mph may be gross

negligence, but not if you are on a 70 mph Interstate with unlimited visibility and the few other cars on the road are all going 80-90 mph. Similarly, this is true for driving double the speed limit. The basic speed law says that the speed limit is just a presumptive violation, not per se unless it is over 65 mph. For speed limits under 65 mph, you are guilty only if the speed is unsafe under all surrounding conditions. Thus, if you are going 50 mph in a 25 mph zone you are not guilty of speeding if it is safe under all surrounding conditions. How can it be gross negligence per se if it isn't unsafe under all surrounding circumstances as set forth by the basic speed law (VC 22350)?

-- END --