
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 195 **Hearing Date:** August 7, 2020
Author: Patterson
Version: June 26, 2020
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicle Accidents: Fleeing the Scene of an Accident*

HISTORY

Source: Author

Prior Legislation: AB 582 (E. Garcia) Gut and Amended in Senate 2020
AB 2014 (E. Garcia) not heard Assembly Public Safety 2014

Support: City of Alameda; California Association of Highway Patrolmen; Fresno County District Attorney's Office; Fresno County Sheriff; Fresno Deputy Sheriff's Association; Fresno Police Department; Fresno Police Officers Association (FPOA); Mothers Against Drunk Driving; Peace Officers Research Association of California (PORAC); Streets are For Everyone (SAFE)

Opposition: American Civil Liberties Union of California; California Attorneys for Criminal Justice; San Francisco Public Defender

Assembly Floor Vote: Not Relevant

PURPOSE

The purpose of this bill is to increase the penalty for hit and run resulting in the death of another.

Existing law requires the driver of a vehicle involved in an accident resulting in injury to another person to stop at the scene of the accident and to fulfill specified requirements, including providing identifying information and rendering assistance. (Veh. Code, § 20001 (a).)

Existing law provides that, except as specified, fleeing the scene of an accident resulting in injury to another, is punishable by 16 months, two, or three years in state prison or, by imprisonment in a county jail not to exceed one year, or by a fine of not less than \$1,000 nor more than \$10,000, or by both a fine and imprisonment. (Veh. Code, § 20001 (b)(1).)

Existing law provides that fleeing the scene of an accident which results in permanent, serious injury or death to another, is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine

ranging between \$1,000 and \$10,000, or by both a fine and imprisonment. (Veh. Code, § 20001 (b).)

Existing law allows the court, in the interests of justice, to reduce or eliminate the minimum term of imprisonment required for a conviction of fleeing the scene of an accident causing death or permanent, serious injury. (Veh. Code, § 20001 (b).)

Existing law states that a person who flees the scene of an accident after committing gross vehicular manslaughter or gross vehicular manslaughter while intoxicated, upon conviction for that offense, shall be punished by an additional term of five years in the state prison. This additional term runs consecutive to the punishment for the vehicular manslaughter. (Veh. Code, § 20001(c).)

Existing law defines “gross vehicular manslaughter” as the unlawful killing of a human being, in the driving of a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or with driving a vehicle in the commission of a lawful act which might produce death, in an unlawful act, and with gross negligence. Gross vehicular manslaughter is punishable by either imprisonment in a county jail for not more than one year, or in the state prison for two, four, or six years. (Pen. Code, § 191 (c)(1).) 7)

Existing law defines “gross vehicular manslaughter” while intoxicated as the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driver was under the influence of drugs or alcohol, and the killing was either the proximate result of an unlawful act not amounting to a felony, and with gross negligence, or the proximate result of a lawful act that might produce death, in an unlawful manner, and with gross negligence. Gross vehicle manslaughter while intoxicated is punishable by imprisonment in the state prison for four, six, or ten years. (Pen. Code, § 191.5 (a).)

Existing law provides for additional punishment when great bodily injury is inflicted during the commission of a felony not having bodily harm as an element of the offense. (Pen. Code, § 12022.7.)

Existing law provides that an act or omission that is punishable in different ways by different provisions of law shall be punished under the law providing for the longest term of punishment, but in no case can the act or omission be punished under more than one law. (Pen. Code, § 654.)

This bill increases the punishment for fleeing the scene of an accident resulting in the death of another from a “wobbler” having a punishment of two, three, or four years in state prison, to a “wobbler” having a maximum punishment of three, four, or six years in the state prison.

COMMENTS

1. Need for This Bill

According to the author:

Currently, the penalty for an individual who leaves the scene of a vehicle accident that results in permanent, serious injury or death is a *maximum* of four years and/or a fine of \$1,000-\$10,000. The potential sentence for leaving the scene of an

accident is not enough to deter drivers, especially those who may be under the influence, from leaving the scene. This is especially true when considered that if an intoxicated driver were to stay at the scene, he/she could be facing up to twelve years in prison. Because of this, there is an incentive for drivers who may be under the influence of alcohol or drugs to leave the scene.

When drivers leave the scene of an accident, not only are they failing to render aid to any injured victim, but they are also removing evidence from the scene of a crime. Law enforcement officials are not able to conduct field sobriety tests of the driver, document his/her statement, or collect any other pertinent information and evidence, therefore hamstringing the entire investigation.

2. Fleeing the Scene of an Accident Resulting in Injury

Vehicle Code section 20001 is commonly known as “hit and run.” To prove a violation of hit and run resulting in permanent, serious injury or death the prosecution must establish that: (1) the defendant was involved in a vehicle accident while driving; (2) the accident caused permanent, serious injury or death to another; (3) the defendant knew that he or she was involved in an accident that injured another person, or knew from the nature of the accident that it was probable that another person had been injured; and, (4) the defendant willfully failed to perform one or more duties, including immediately stopping at the scene, providing reasonable assistance to any injured person, to provide specified identifying information, and showing driver’s license upon request. (See CALCRIM No. 2140.)

“The purpose of [the statute] is to prevent the driver of an automobile from leaving the scene of an accident in which he participates or is involved without proper identification and to compel necessary assistance to those who may be injured. The requirements of the statute are operative and binding on all drivers involved in an accident regardless of any question of their negligence respectively.” (*People v. Scofield* (1928) 203 Cal. 703, 708.) In other words, it is not necessary to drive impaired, recklessly or negligently. These duties apply regardless of the fault of the accident. Currently, the crime of hit and run resulting in death or permanent, serious injury is a wobbler. The crime is punishable by up to one year in jail, or 2, 3 or 4 years in prison. (Veh. Code § 20001(b).) This bill would increase the punishment to a wobbler with a felony penalty of 3, 4 or 6 years in prison where the accident results in death and the \$1,000 to \$10,000 fine (\$4,000 to \$41,000 with penalty assessments). An additional 5 year enhancement can be imposed if a person is found to have been guilty of vehicular manslaughter while intoxicated.

3. Argument in Support

According to the California Association of Highway Patrolmen:

AB 195 is named after Gavin Gladding, a beloved Clovis Unified School District Vice Principal who was tragically killed in a hit-and-run incident in 2018. Currently, the penalty for an individual who leaves the scene of a vehicle accident that result in permanent, serious injury or death is a maximum of four years and/or a fine of \$1,000-\$10,000. The potential sentence for leaving the scene of an accident is not enough to deter drivers, especially those who may be under the influence, from leaving the scene.

Hit and runs involving injury or death are seemingly on the rise; 42% of fatal collisions in Fresno in the past three months have involved a driver who left the scene. Right now there is an inadvertent loophole in the law which encourages drivers under the influence to flee the scene of an accident – not stay and help. By fleeing, they can avoid additional charges for driving under the influence causing injury or death.

AB 195 addresses this loophole by increasing the penalty for hit-and-runs that result in great bodily injury or death and will incentivize drivers to stay at the scene of a crime, even if they may be under the influence, as opposed to fleeing the scene.

4. Argument in Opposition

The San Francisco Public Defender opposes this bill stating:

Although Vehicle Code Section 20001 is commonly known as “hit-and-run”, it is not necessary for the individual to have caused the motor vehicle accident or injury, but only to have been involved and then failed to remain at the scene and provide aid as needed.

20001. (a) The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004. (California Vehicle Code Section 20001(a).)

Indeed, not infrequently in accidents caused by others, the individual may leave the scene for reasons that have nothing to do with avoiding liability for the accident but instead for any number of other grounds, including fear of losing their employment or deportation, lack of insurance, an expired license and traffic warrants due to unpaid traffic tickets.

Over penalizing such harmless reasons with increased prison sentences and imposed additional fines is a waste of scarce societal resources.

As reported in 2014 by the National Research Council, the United States imprisons a greater percentage of its population than any other democracy at 707 people per 100,000. This is dramatically more than even Russia at second place with 474. By way of comparison, our neighbor Canada imprisons 118 people per 100,000. (Source: International Centre for Prison Studies, 2011-2013 as cited in Report: U.S. Prison Rates an “Injustice” Anthony Zurcher, Editor, Echo Chambers (BBC News, May 2, 2014.))

Increasing sentences requires additional expenditures for state prisons. Currently, it costs the state over \$50,000 annually per prisoner. Costs are higher for physically or mentally disabled inmates.

This bill adds to the danger that California will return to prison overcrowding, potentially facing contempt of a federal court order and huge fines that it confronted only two years ago. After obtaining several extensions in order to

comply, California remains under a federal court order (*Plata v. Schwarzenegger*) to reduce its inmate population to 110,000. The United States Supreme Court found that California was in violation of the Eighth Amendment against cruel and unusual punishment because prison overcrowding was so severe that inmates were being housed in “telephone booth-size cages without toilets.” It was uncontested that a prisoner in California died every week due to “constitutional deficiencies.” Moreover, this proposed legislation would also undermine the Department of Corrections and Rehabilitation’s already expended efforts to comply with the federal court order.

This bill flies in the face of evidence based practices regarding criminal justice and rehabilitation. Repeated studies have shown that it is cheaper and more cost effective, not to mention humane, to treat the underlying causes of most criminality, drug addiction, homelessness, and mental illnesses, rather than incarcerate people in state prisons.

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