
CONSENT

Bill No: AB 2502
Author: Pellerin (D), et al.
Amended: 7/2/26 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 6/30/26

AYES: Arreguín, Seyarto, Caballero, Cortese, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 74-0, 4/23/26 (Consent) - See last page for vote

SUBJECT: Vehicles: driving under the influence: driving automation

SOURCE: Author

DIGEST: This bill specifies, for purposes of the crimes of gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, DUI, DUI causing bodily injury to another, and “wet reckless,” “drive” includes the volitional movement of a vehicle with driver support features engaged that require a person to supervise the vehicle in order to steer, brake, or accelerate, as needed to maintain safety.

ANALYSIS:

Existing law:

- 1) Defines “driver” for purposes of the Vehicle Code to mean a person who drives or is in actual physical control of a vehicle. (Veh. Code, § 305.)
- 2) Defines “vehicle” for purposes of the Vehicle Code to mean a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. (Veh. Code, § 670.)

- 3) Defines “motor vehicle” to mean a vehicle that is self-propelled. (Veh. Code, § 415.)
- 4) Defines “autonomous vehicle” to mean any vehicle equipped with autonomous technology that has been integrated into that vehicle that meets the definition of Level 3, Level 4, or Level 5 of the Society of Automotive Engineers (SAE) International’s “Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, standard J3016 (APR2021), as may be revised. (Veh. Code, § 38750, subd. (a)(2)(A).)
- 5) Defines an “operator” of an autonomous vehicle to mean the person who is seated in the driver’s seat, or, if there is no person in the driver’s seat, causes the autonomous technology to engage. (Veh. Code, § 38750, subd. (a)(4).)
- 6) Makes it unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, or who has 0.08 percent or more, by weight, of alcohol (BAC) in their blood, “to drive a vehicle” (hereafter DUI). (Veh. Code, § 23152 subds. (a), (b) (f), & (g).)
- 7) Makes it unlawful for any person who is under the influence of any alcoholic beverage or drug, or the combined influence of the two, or who has a BAC of .08 or more, “to drive a vehicle,” and concurrently do any act forbidden by law or neglect any duty imposed by law in driving the vehicle, which proximately causes bodily injury to any person other than the driver (hereafter DUI causing bodily injury). (Veh. Code, § 23153 subds. (a), (b), (f), & (g).)
- 8) Defines gross vehicular manslaughter while intoxicated to mean the unlawful killing of a human being without malice aforethought, “in the driving of a vehicle” where the driving was in violation of specified DUI laws, 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, and makes this crime a felony punishable by imprisonment in state prison for four, six, or 10 years. (Penal (Pen.) Code, § 191.5, subds. (a) & (c)(1).)
- 9) Defines intoxicated vehicular manslaughter without gross negligence to mean the unlawful killing of a human being without malice aforethought, “in the driving of a vehicle” where the driving was in violation of specified DUI laws,

and the killing was either the proximate result of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of a lawful act that might produce death, in an unlawful manner, but without gross negligence, punishable by up to one year in county jail or by imprisonment for 16 months, or two or four years. (Pen. Code, § 191.5, subds. (b) & (c)(2).)

- 10) 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 punishable by five to 90 days in county jail and a fine of \$145 to \$1,000, or by both that fine and imprisonment. (Veh. Code, § 23103, subds. (a) & (c).)
- 11) Provides that if the prosecution agrees to a plea of guilty or nolo contendere to a charge of reckless driving, in satisfaction of, or as a substitute for, an original DUI charge, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of an alcoholic beverage or ingestion or administration of a drug, or both, by the defendant in connection with the offense. (Veh. Code, § 23103.5, subd. (a).)

This bill:

- 1) Specifies, for purposes of the crimes of gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, DUI, DUI causing bodily injury to another, and “wet reckless,” “drive” includes the volitional movement of a vehicle with driver support features engaged that require a person to supervise the vehicle in order to steer, brake, or accelerate, as needed to maintain safety.
- 2) Provides that the above provision includes driver support features that require constant supervision and those that require a person to take direct control of the vehicle upon the request of the driver support feature.

Background

DUI offenses. Existing law makes it unlawful for a person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, or who has 0.08 percent or more, by weight, of alcohol (BAC) in their blood, to drive a vehicle (known as DUI with no injury). (Veh. Code, § 23152, subds. (a), (b) (f), & (g).) It is also unlawful to drive

impaired while concurrently doing an act forbidden by law or neglecting a duty imposed by law, which proximately causes bodily injury to another (known as DUI causing bodily injury). (Veh. Code, § 23153, subds. (a), (f), & (g).)

The punishment for a DUI or DUI causing bodily injury generally depends on the defendant's number of separate prior convictions within 10 years of the current offense. Convictions that are considered "priors" are convictions for DUI with no injury, DUI causing bodily injury, and "wet reckless." (Veh. Code, §§ 23550, 23152, 23153, 23103.5.) A wet reckless occurs when the prosecution agrees to allow the defendant plead guilty to a charge of reckless driving under Vehicle Code section 23103, in satisfaction of, or as a substitute for, an original DUI charge, as specified. (Veh. Code, § 23103.5.)

Vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of one of several specified DUI laws, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence. (Pen. Code, § 191.5, subd. (b).) Vehicular manslaughter while intoxicated is a wobbler, and it is punishable by imprisonment in a county jail for not more than one year or by imprisonment in a county jail as a realigned felony for 16 months, two years, or four years. (Pen. Code, § 191.5, subd. (c)(2).)

Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code (i.e., person under 21 with a BAC between .05-.07, DUI with no injury, or DUI with bodily injury) and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence. (Pen. Code, § 191.5, subd. (a).) Gross vehicular manslaughter while intoxicated is a felony punishable by imprisonment in the state prison for 4, 6, or 10 years. (Pen. Code, § 191.5, subd. (c)(1).) However, if the person has one or more specified prior convictions (i.e., a prior conviction for gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, gross vehicular manslaughter, or DUI), the punishment is imprisonment in the state prison for a term of 15 years to life.

Definition of driving. Most of the guidance on what constitutes driving, for purposes of when a person is driving a vehicle in violation of specified impaired driving laws, comes from case law. Driving a vehicle requires “evidence of volitional movement of a vehicle.” (*Mercer v. Department of Motor Vehicles* (1991) 53 Cal.3d 753, 763.) As stated by the California Criminal Jury Instructions, “a person drives a vehicle when he or she intentionally causes it to move by exercising actual physical control over it.” (2 CALCRIM 2241 (2026).) “The person must cause the vehicle to move, but the movement may be slight.” (*Ibid.*) The term “drive” is distinct from a person who “operates” or “is in actual physical control of” a vehicle. (*Mercer, supra*, 53 Cal.3d at pp. 763-764.) Driving may be established through circumstantial evidence of the movement of a vehicle. (*Id.* at p. 770.) For example, one court found that there was sufficient evidence of driving when a vehicle was parked with the engine running on the freeway more than a mile from the on-ramp, and the defendant was sitting in the driver’s seat and was the sole occupant of the vehicle. (*People v. Wilson* (1985) 176 Cal.App.3d Supp. 1, 9); 2 CALCRIM 2241 (2026).) A front passenger may be found to “drive” for purposes of a DUI prosecution if, while impaired, they grab the steering wheel, causing the car to move. (*In re F.H.* (2011) 192 Cal.App.4th 1465, 1472.) A vehicle may be driven even if the engine is not in use. (*In re Queen T.* (1993) 14 Cal.App.4th 1143, 1145; *People v. Hernandez* (1990) 219 Cal.App.3d 1177, 1184.)

As applied to autonomous vehicles, a person operating a vehicle with certain autonomous functions, who sits in the driver’s seat, and willfully steers or accelerates, or undertakes any other intentional action to move the vehicle, will likely be considered to be driving that vehicle for purposes of California’s impaired driving laws. However, evidence of volitional movement of a vehicle may be very difficult to establish if a person is riding in the backseat of a fully autonomous vehicle and the person never interacts with a steering wheel, gas, or brakes, or any other control that moves the vehicle.

This bill specifies, for purposes of the crimes of gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, DUI, DUI causing bodily injury to another, and “wet reckless,” “drive” includes the volitional movement of a vehicle with driver support features engaged that require a person to supervise the vehicle in order to steer, brake, or accelerate, as needed to maintain safety. Driver support features include those that require constant supervision and those that require a person to take direct control of the vehicle upon the request of the driver support feature.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/3/26)

Los Angeles County District Attorney's Office
SAFE California Roads Coalition
Streets are for Everyone
Streets for All

OPPOSITION: (Verified 8/3/26)

None received

ASSEMBLY FLOOR: 74-0, 4/23/26

AYES: Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Johnson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Solache, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wilson, Zbur, Rivas
NO VOTE RECORDED: Addis, Hadwick, Celeste Rodriguez, Sharp-Collins, Soria, Wicks

Prepared by: Stephanie Jordan / PUB. S. /
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**** **END** ****