

Date of Hearing: April 6, 2021
Counsel: Nikki Moore

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 582 (Patterson) – As Introduced February 11, 2021

SUMMARY: Increases the penalties for “hit and run” resulting in death to another. Specifically, **this bill:** Increases the punishment for fleeing the scene of an accident resulting in the death of another from a “wobbler” having a maximum punishment of four years in state prison, to a “wobbler” having a maximum punishment of three, four, or six years in the state prison.

EXISTING LAW:

- 1) 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, subd. (a).)
- 2) 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, subd. (b)(1).)
- 3) 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, subd. (b).)
- 4) 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, subd. (b).)
- 5) 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, subd. (c).)
- 6) 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, subd. (c)(1).)

- 7) 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, subd. (a).)
- 8) 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.)
- 9) 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.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, “Last year, this Public Safety Committee realized that there is currently a perverse loophole in the law, that inadvertently encourages drivers to flee the scene of an accident – particularly if they are under the influence – rather than stay at the scene to render aid or call 911. I am so appreciative of all of the committee’s work on this bill, and have brought back AB 582, Gavin’s Law, to get it to the finish line this year, COVID-19 notwithstanding.

“As with 2019’s AB 582, this bill is a result of the tragic hit-and-run death of Gavin Gladding, a beloved member of the Clovis community. The driver of the vehicle that killed Gavin was seen drinking at a party before the accident; however, because he fled the scene, law enforcement was unable to determine if he was under the influence at the time of the accident. He received a short sentence of 3 years in prison and served less than half of that time.

“Often, drivers who leave the scene of an accident do so because they are under the influence of alcohol or drugs at the time and fear the consequences. To deter drivers from leaving the scene, AB 582 will increase the possible penalty for hit-and-runs resulting in great bodily injury or death. By bringing this code more into line with the penalties assessed for vehicular manslaughter and making them greater than a DUI sentence, AB 582 will encourage drivers to stay at the scene of a crime, even if they may be under the influence, as opposed to fleeing the scene. This will help ensure that justice is served in a timely and appropriate manner.”

- 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 up to four years in prison. (Veh. Code, § 20001, subd. (b).) This bill would increase the punishment to a maximum of six years in prison where the accident results in death.

- 3) **Prison Overcrowding and COVID-19:** In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

In March 2020, Gov. Gavin Newsom and then-CDCR Secretary Ralph Diaz announced plans to reduce the prison population due to COVID-19. By August 2020, California's prison population dropped below 100,000, representing the smallest prison population since 1990. (Anna Bauman, *California Prison Population Drops Below 100,000 for First Time in 30 Years*, July 30, 2020, San Francisco Chronicle, available at [sfchronicle.com/crime/article/California-prison-population-drops-below-100-000-15448043.php](https://www.sfchronicle.com/crime/article/California-prison-population-drops-below-100-000-15448043.php).) As of Feb. 28, 2021, the current CDCR population is 94,607, a decrease of 28,516 from last year. (<https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/03/Tpop1d2102.pdf>)

CDCR has informed this Committee that from November 2018 through October 2019 there were 97 new admissions for a hit and run resulting in permanent, serious injury or death. For the 2020 calendar year, there were 35 counts of a new admission or parole violator for a hit and run resulting in permanent, serious injury or death. As of December 31, 2020, the total number of felony counts for CDCR's in-custody population was for principle and subordinate offenses for a hit and run resulting in permanent, serious injury or death was 263.

As noted above, this bill would increase only the punishment for hit and run causing death. Because, as drafted, the statute does not distinguish between permanent, serious injury or death, it not possible to tell exactly how many of the new admissions to CDCR involve a hit and run resulting in death.

- 4) **Argument in Support:** According to the *Streets Are For Everyone*, “AB 582 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 resulting 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 a crash is not enough to deter drivers, especially those who may be under the influence, from leaving the scene. When these drivers leave the scene, 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.

“Conversely, if someone under the influence were to stay at the scene, that person could (and likely would) then be given a longer prison sentence (possibly even twelve years or more) and/or a higher fine, than an individual who fled the scene.

“As noted by the Assembly Public Safety Committee members in 2019, there is currently a loophole in the law as it is written that inadvertently encourages someone to flee the scene of an accident, and it needs to be addressed.

“AB 582 addresses this loophole and will increase the possible penalty for hit-and-runs resulting in death to a maximum possible penalty of six years in jail. By bringing this code more in line with the penalties assessed for vehicular manslaughter, AB 582 will encourage drivers to stay at the scene of a crime, even if they may be under the influence.”

- 5) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, “This bill would unnecessarily increase the punishment for fleeing the scene of an accident that resulted in someone’s death to 3, 4 or 6 years in state prison.

“Current law already imposes significant penalties for fleeing the scene of an accident that causes serious injury or death; 2, 3, or 4 years in state prison. Fundamental legal principles require any sentence to be anchored in the underlying offense. Here, the act of leaving the scene is not the cause of the injury. Instead, most of these cases involve unintentional accidents as opposed to deliberate actions with the intent to cause injuries or death.

“No one should flee the scene of an accident; however, current law sufficiently and appropriately punishes this behavior.”

6) **Prior Legislation:**

- a) AB 582 (Patterson), Statutes of 2019-2020, would have increased the punishment for fleeing the scene of an accident resulting in the death of another from a “wobbler” having a maximum punishment of four years in state prison, to a “wobbler” having a maximum

punishment of three, four, or six years in the state prison. AB 582 failed passage in the Senate.

- b) AB 2014 (E. Garcia), of the 2017-2018 Legislative Session, would have increased the penalty for fleeing the scene of an accident resulting in death or serious bodily injury from 16 months, two or three years in state prison to two, four, or six years in state prison. AB 2014 was heard in committee for testimony, but the final hearing for vote only was cancelled at the request of the author.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of Highway Patrolmen
California District Attorneys Association
California State Sheriffs' Association
Fresno County District Attorney's Office
Fresno Police Department
Fresno Police Officers Association (FPOA)
Peace Officers Research Association of California (PORAC)
Streets are For Everyone (SAFE)

Opposition

American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties
California Attorneys for Criminal Justice
San Francisco Public Defender

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