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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2088                      **Hearing Date:** June 21, 2016  
**Author:** Linder  
**Version:** June 6, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Vehicles: Hit-and-Run Accidents: Pleas*

## HISTORY

Source: Author

Prior Legislation: AB 534 (Linder) – failed ACoPS, 2015  
AB 1532 (Gatto) – Vetoed, 2014  
AB 2337 (Linder) – Vetoed, 2014

Support: American Motorcycle Association; The Association for Los Angeles Deputy Sheriffs; California Association of Highway Patrol; Crime Victims United; Forged By Fire Foundation; Los Angeles Walks

Opposition: American Civil Liberties Union; California Public Defenders Association

Assembly Floor Vote: 76 - 2

## PURPOSE

*The purpose of this bill is to require the court to suspend the driving privilege for six months or impose an appropriate period of community service for any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death.*

*Existing law* provides that a court may suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction of any of the following offenses: a) Failure of a driver involved in an accident where property is damaged to stop and exchange specified information; b) Reckless driving proximately causing bodily injury; c) Failure of a driver to stop at a railroad crossing as required; d) Evading or fleeing from a peace officer in a motor vehicle or upon a bicycle; and, e) Knowingly causing or participating in a vehicular collision, or any other vehicular accident, for the purpose of presenting or causing to be presented any false or fraudulent insurance claim. (Vehicle Code, §13201)

*Existing law* states that the Department of Motor Vehicles (DMV) immediately shall revoke the privilege of a person to operate a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person has been convicted of any of the following crimes or offenses: a) Failure of the driver of a vehicle involved in an accident resulting in injury or death

to stop or otherwise comply, as specified; b) A felony in which a motor vehicle is used, except as specified; and, c) Reckless driving causing bodily injury. (Vehicle Code, § 13350 (a).)

*Existing law* provides that the driver of any vehicle involved in an accident resulting in damage to any property, including a vehicle, shall immediately stop the vehicle and exchange information, as specified, or leave in a conspicuous place on the vehicle or other property damaged written notice giving the name and address of the driver of the vehicle involved. The failure to comply with these requirements is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or by both a fine and imprisonment. (Vehicle Code, § 20002.)

*Existing law* requires the driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person to immediately stop the vehicle at the scene of the accident and to fulfill specified requirements. The failure to comply is punishable by imprisonment in the state prison for 16 months, two, or three years, 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. If the accident results in death or permanent, serious injury, the offense 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 of not less than \$1,000 nor more than \$10,000, or by both a fine and imprisonment. (Vehicle Code, § 20001 (a) & (b).)

*Existing law* provides that a person who flees the scene of the crime after committing vehicular manslaughter with gross negligence or vehicular manslaughter while intoxicated, upon conviction for that offense, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. Existing law provides that this additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. (Vehicle Code, § 20001 (c).)

*Existing law* provides that every person convicted of vandalism or affixing graffiti, as specified, may be ordered by the court as a condition of probation to perform community service not to exceed 300 hours over a period not to exceed one year during a time other than his or hers hours of school attendance or employment. (Pen Code, § 594.6 (a).)

*This bill* provides that if the prosecution agrees to a plea of guilty or nolo contendere to a charge of fleeing the scene of an accident in satisfaction or substitution for a charge of fleeing the scene the prosecution shall state for the record the factual basis for the satisfaction or substitution including whether the defendant was involved in an accident in which a person was injured.

*This bill* provides that the prosecution's statement shall occur prior to the defendant's waiver of the right to a jury trial.

*This bill* provides that the judges shall inform the defendant of the specified consequences before accepting the defendant's plea of guilty.

*This bill* provides that if the court accepts the defendant's plea under the above circumstances and the prosecutor's statement stipulates or does not contest the fact that the defendant was driving the vehicle that caused the injury, the court shall immediately issue an order to impose one of the following consequences:

- Suspend the convicted driver's privilege to operate a motor vehicle for a period of six months.
- Restrict the convicted driver's privilege to operate a motor vehicle to necessary travel to and from that person's place of employment and for work, if driving is necessary, for not more than six months.
- Require the convicted driver to complete community service as the court deems appropriate.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

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 December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;

- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Hit-and-runs have reached epidemic proportions in California and unfortunately there's no sign of them slowing down. CHP has cited an increase in hit-and-run incidents from 73,000 in 2014 to 79,000 in 2015. CHP stats attached.

Current penalties for hit-and-runs do not reflect the seriousness of the crime and do not act as an effective deterrent. Hit-and-run drivers are seldom held accountable for their crimes—either they are handed lenient sentences or never even identified by police. From 2009 through 2012, 87% of drivers who “left victims dead or injured by the side of the road” escaped conviction. Of those who were convicted, the majority served less than a 2-month jail sentence.<sup>1</sup>

Under current law, it is possible for a driver who commits a hit-and-run with injury to enter into a plea bargain agreement and only have to pay a couple hundred dollar fine. Driving a motor vehicle is a serious responsibility and should be viewed as a privilege rather than a right. Hit-and-run drivers abuse this privilege and should be held fully accountable for their actions.

### 2. Limits Court Discretion in a Plea Bargain

This bill requires the court to suspend the driving privilege for six months with or without a two and from work restriction or impose a an appropriate period of community service for any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death.

Vehicle Code Section 13201 authorizes a court to suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction for failure of a driver involved in an accident where property is damaged to stop and exchange specified information.

Additionally, the court may impose any condition of probation reasonably related to the offense and aimed at discouraging such conduct in the future. (See *People v. Lent* (1975) 15 Cal. 3d 481, 486.) The imposition of a period of community service would be considered a valid condition of probation and well within the courts discretion.

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<sup>1</sup> Mario Karon, “If You Hit Someone With a Car and Drive Away, You’re Probably Not Getting Punished,” *Voice of San Diego*, 8 August 2014, <http://voiceofsandiego.org/2014/08/08/if-you-hit-someone-with-a-car-and-drive-away-youre-probably-not-getting-punished/>

This bill limits the court's discretion in that it requires the court to either suspend the defendant's driving privilege for six months or impose a period of community service. Both of which options the court may already exercise, in appropriate cases, in its discretion.

### 3. *Apprendi v. New Jersey*

In this bill, in order for the court to impose the additional sanction of, either, a six month license suspension or community service, the prosecution must state on the record the factual basis for the substitution for the original charge, including whether the defendant was involved in an accident in which a person was injured.

The Sixth Amendment right to a jury trial applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-304.)

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the offender's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

In this bill, the additional punishment of a license suspension or community service is triggered by a factual finding by the court, based on a statement by the prosecution that the defendant was involved in an accident and a person was injured appears to violate the defendant's Sixth Amendment right to a jury trial as to the finding of that particular fact.

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