

Vehicular Manslaughter



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California Penal Code Section 191.5 and Penal Code Section 192(c) are the Vehicular Manslaughter laws in California.

How vehicular manslaughter cases are charged, prosecuted, plead out or convicted may determine the collectability of a civil judgment against the wrongdoer.

This article is designed to give you a general overview of the system and some ideas on what you can do to collect a money judgment from the wrongdoer.

First, I will explain the general charges that can be brought, then I will explain your rights as a victim. Finally, I will address some of the issues that arise in your civil (money) lawsuit against the wrongdoer.

This article is a general overview and not designed to be legal advice. If you want specific advice you must call my office and/or seek legal counsel. So let's get started:

Intoxication

When a person drives a vehicle while under the influence of alcohol or drugs and kills another person, the DUI driver can be charged with "gross vehicular manslaughter while intoxicated" or a less charge of "vehicular manslaughter while intoxicated".

Notice that the first definition has the word "gross" in it. A prosecutor has discretion how to charge a vehicular manslaughter arising from intoxication case...either with gross negligence or without gross negligence. This really can matter as we will discuss more later.

As an example, a person who drinks 10 drinks at a party (over 3-4 hours) and then gets behind the wheel, knowing

that he or she is incapable of driving safely, has demonstrated gross negligence. Whereas, a person who has 1-3 beers over their lunch hour and then drives a car believing that that they are a little buzzed could be charged in a manner that is "without gross negligence". Again, lots of discretion, based on the unique facts of a case.

When alcohol or drugs are involved in a vehicular accident the defendant is almost always charged under Penal Code Section 191.5.

In cases where the defendant has previously been convicted of a DUI and then has a subsequent DUI that results in the death of another person, that defendant may be charged with murder under Penal Code Section 187.

A murder charge can be brought because the first DUI placed the defendant on notice that he or she could be charged with murder if a death occurred from a subsequent DUI accident.

A "gross vehicular manslaughter while intoxicated" case can result in 4-10 years in prison whereas a "vehicular manslaughter while intoxicated" case could mean less than a year in county jail (unbelievable but it can happen).

When intoxication is involved, it generally increases the likelihood of collection of restitution and monetary damages from a legal perspective. From a practical perspective it is still largely dependent on the perpetrator's assets and insurance coverage.

Gross Negligence

Many vehicular accidents do not involve drinking or drugs but they still involve gross negligence. For instance, two people who race each other in a speed contest, one veers off road and

kills a pedestrian. Vehicular manslaughter with gross negligence may be the charge (Penal Code 192(c)).

Another example would be a defendant driving at a rate of 25mph + above the speed limit that resulted in loss of control of the vehicle and the death of a passenger in the vehicle. The speed driven was so excessive the prosecutor believes that the defendant's conduct is gross negligence.

The more egregious the conduct the more likely the prosecutor will charge a felony case. The gross negligence non intoxicated driving case can cause a defendant to face a 2-6 year prison sentence.

The prosecutor may charge the felony and then allow a plea to a misdemeanor depending on the facts of the case. If the case is plead down to a misdemeanor the defendant by only face a one year or less stint in county jail.

Without Gross Negligence

When someone looks down at their phone for a brief second to look at some notification that just went off, and then they run a red light, they may cause the death of another person. When that happens, the prosecutor may believe that the defendant is negligent but that it was the ordinary kind...the kind that we all do from time to time. The prosecutor will likely charge misdemeanor vehicular manslaughter without gross negligence.

When a person speeds 10-15 mph over the speed limit, crosses the center divider and kills your loved one, the charge will likely be misdemeanor vehicular manslaughter without gross negligence. We all exceed the speed limit from time to time. It is a violation of the law but the ordinary kind.

These ordinary negligence cases must be prosecuted as crimes because we as a society must punish people who disregard the safety of others.

Marsy's Law – Victim's Rights

The victims in these cases are often at odds with the prosecutors. The family may feel that the prosecutor is letting the defendant escape the full and fair consequences of their behavior. The family has a right to be heard on these issues.

If your loved one was killed as a result of a vehicular accident, you can have a lawyer represent you in the criminal case against the perpetrator. This is known as Marsy's Law.

As a victim you have the right to confer with the prosecuting agency, regarding the charges filed. You have the right to be heard at any proceeding involving post-arrest release decisions, plea bargains, sentencing hearings, and post-conviction release decisions.

You have the right to be heard...but most of these rights are contingent upon your requesting to be heard.

You may want a lawyer to act on your behalf as "Marsy's counsel" to represent you at these hearings.

As a wrongful death lawyer, I routinely act as Marsy's counsel for my clients in criminal matters. This largely depends on my client's wishes and whether my client is concerned that the prosecutor may just abandon charges are plea a case down to nothing.

The Civil Case

The civil case you bring may be affected by the criminal case in many ways. First, a plea of guilty even to a misdemeanor charge may be used as an admission against interest in the civil case. This means that the defendant can

not plea guilty in the criminal case and then try to deny liability in the civil lawsuit that you bring without the jury hearing that the defendant admitted to criminal fault. This can be a highly contentious matter in a civil suit. Having an experienced wrongful death lawyer acting as Marsy's counsel can improve the likelihood of success in the civil case.

Second, convictions and pleas of guilty to certain charges may affect whether or not you will receive a civil jury instruction that there is a presumption of negligence per se. For instance, in a civil suit you want the jury to hear that defendant contested the violation of the driving while intoxicated law in the criminal court and lost. Then you will ask the civil judge to grant you an instruction that that defendant is presumed negligent.

Finally, there are significant decisions regarding whether to pursue restitution from a criminal defendant versus pursuing a civil judgment against the defendant.

Restitution claims are for pecuniary (financial losses) and don't allow compensation for general damages (non-financial damages). So each case must be evaluated to determine the amount of civil damages that are likely to be awarded and whether those damages fall within the normal restitution award. In some cases wrongful death heirs are best served when they achieve both a civil judgment and a restitution award.

Collecting Money

So let's talk about collecting money from a vehicular manslaughter defendant. First and foremost there has to be a determination of what auto

insurance policies owe the claim and what amount those policies are. That is a starting point only.

Good wrongful death lawyers leave no stone unturned. We try to determine if the defendant was in the course and scope of employment thereby triggering a larger commercial liability policy.

We try to determine if the defendant has assets that exceed the insurance available. We try to determine if those assets would be shielded by the bankruptcy and homestead exemption laws. We assess the likelihood of bankruptcy by the defendant to determine how best to pursue the collection of the damages due wrongful death heirs.

A key issue is whether the defendant can discharge a debt in bankruptcy. Debts caused by driving under the influence of alcohol and/or drugs are generally not dischargeable in a bankruptcy.

Another huge issue is whether the defendant has equity in property or high income flows that would require additional compensation to the wrongful death heirs over and above insurance limits. This has to be reviewed to determine whether or not insurance policy limits should be accepted as payment in full.

Richard Harris is the principal of Rich Harris, A Law Corporation.

His practice is dedicated to helping individuals and families pursue their wrongful death claims against reckless motorists, greedy insurance companies, and careless government agencies. Mr. Harris can be reached at (888) 660-4529 or by visiting www.CalWrongfulDeathLawyer.com