

SENATE, No. 713

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator DAWN MARIE ADDIEGO
District 8 (Atlantic, Burlington and Camden)
Senator PATRICK J. DIEGNAN, JR.
District 18 (Middlesex)

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Senators Bateman and Holzapfel

SYNOPSIS

Establishes that failure to maintain lane may constitute recklessness under vehicular homicide statute; designated as Eileen's Law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning vehicular homicide, designated as Eileen's Law,
2 and amending N.J.S.2C:11-5.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.2C:11-5 is amended to read as follows:

8 2C:11-5. Death by auto or vessel.

9 a. Criminal homicide constitutes vehicular homicide when it is
10 caused by driving a vehicle or vessel recklessly.

11 Proof that the defendant fell asleep while driving or was driving
12 after having been without sleep for a period in excess of 24
13 consecutive hours may give rise to an inference that the defendant
14 was driving recklessly. Proof that the defendant was driving while
15 intoxicated in violation of R.S.39:4-50 or was operating a vessel
16 under the influence of alcohol or drugs in violation of section 3 of
17 P.L.1952, c.157 (C.12:7-46) shall give rise to an inference that the
18 defendant was driving recklessly. Proof that the defendant was
19 operating a hand-held wireless telephone while driving a motor
20 vehicle in violation of section 1 of P.L.2003, c.310 (C.39:4-97.3)
21 may give rise to an inference that the defendant was driving
22 recklessly. Proof that the defendant failed to maintain a lane in
23 violation of R.S.39:4-88 may give rise to an inference that the
24 defendant was driving recklessly. Nothing in this section shall be
25 construed to in any way limit the conduct or conditions that may be
26 found to constitute driving a vehicle or vessel recklessly.

27 b. Except as provided in paragraph (3) and (5) of this
28 subsection, vehicular homicide is a crime of the second degree.

29 (1) If the defendant was operating the auto or vessel while under
30 the influence of any intoxicating liquor, narcotic, hallucinogenic or
31 habit-producing drug, or with a blood alcohol concentration at or
32 above the prohibited level as prescribed in R.S.39:4-50, or if the
33 defendant was operating the auto or vessel while his driver's license
34 or reciprocity privilege was suspended or revoked for any violation
35 of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
36 **【Director of the Division of Motor Vehicles】** Chief Administrator
37 of the New Jersey Motor Vehicle Commission pursuant to
38 P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a violation
39 of R.S.39:4-96, the defendant shall be sentenced to a term of
40 imprisonment by the court. The term of imprisonment shall include
41 the imposition of a minimum term. The minimum term shall be
42 fixed at, or between, one-third and one-half of the sentence imposed
43 by the court or three years, whichever is greater, during which the
44 defendant shall be ineligible for parole.

45 (2) The court shall not impose a mandatory sentence pursuant to

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 paragraph (1) of this subsection unless the grounds therefor have
2 been established at a hearing. At the hearing, which may occur at
3 the time of sentencing, the prosecutor shall establish by a
4 preponderance of the evidence that the defendant was operating the
5 auto or vessel while under the influence of any intoxicating liquor,
6 narcotic, hallucinogenic or habit-producing drug, or with a blood
7 alcohol concentration at or above the level prescribed in R.S.39:4-
8 50 or that the defendant was operating the auto or vessel while his
9 driver's license or reciprocity privilege was suspended or revoked
10 for any violation of R.S.39:4-50, section 2 of P.L.1981, c.512
11 (C.39:4-50.4a), by the **Director of the Division of Motor Vehicles**
12 Chief Administrator of the New Jersey Motor Vehicle Commission
13 pursuant to P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a
14 violation of R.S.39:4-96. In making its findings, the court shall
15 take judicial notice of any evidence, testimony or information
16 adduced at the trial, plea hearing, or other court proceedings and
17 shall also consider the presentence report and any other relevant
18 information.

19 (3) Vehicular homicide is a crime of the first degree if the
20 defendant was operating the auto or vessel while in violation of
21 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while:

22 (a) on any school property used for school purposes which is
23 owned by or leased to any elementary or secondary school or school
24 board, or within 1,000 feet of such school property;

25 (b) driving through a school crossing as defined in R.S.39:1-1 if
26 the municipality, by ordinance or resolution, has designated the
27 school crossing as such; or

28 (c) driving through a school crossing as defined in R.S.39:1-1
29 knowing that juveniles are present if the municipality has not
30 designated the school crossing as such by ordinance or resolution.

31 A map or true copy of a map depicting the location and
32 boundaries of the area on or within 1,000 feet of any property used
33 for school purposes which is owned by or leased to any elementary
34 or secondary school or school board produced pursuant to section 1
35 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
36 subparagraph (a) of this paragraph.

37 It shall be no defense to a prosecution for a violation of
38 subparagraph (a) or (b) of this paragraph that the defendant was
39 unaware that the prohibited conduct took place while on or within
40 1,000 feet of any school property or while driving through a school
41 crossing. Nor shall it be a defense to a prosecution under
42 subparagraph (a) or (b) of this paragraph that no juveniles were
43 present on the school property or crossing zone at the time of the
44 offense or that the school was not in session.

45 (4) If the defendant was operating the auto or vessel in violation
46 of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the
47 defendant's license to operate a motor vehicle shall be suspended
48 for a period of between five years and life, which period shall

1 commence upon completion of any prison sentence imposed upon
2 that person.

3 (5) Vehicular homicide is a crime of the third degree if the
4 defendant failed to maintain a lane in violation of R.S.39:4-88.

5 c. For good cause shown, the court may, in accepting a plea of
6 guilty under this section, order that such plea not be evidential in
7 any civil proceeding.

8 d. Nothing herein shall be deemed to preclude, if the evidence
9 so warrants, an indictment and conviction for aggravated
10 manslaughter under the provisions of subsection a. of N.J.S.2C:11-
11 4.

12 As used in this section, "auto or vessel" means all means of
13 conveyance propelled otherwise than by muscular power.

14 e. Any person who violates paragraph (3) of subsection b. of
15 this section shall forfeit the auto or vessel used in the commission
16 of the offense, unless the defendant can establish at a hearing,
17 which may occur at the time of sentencing, by a preponderance of
18 the evidence that such forfeiture would constitute a serious hardship
19 to the family of the defendant that outweighs the need to deter such
20 conduct by the defendant and others. In making its findings, the
21 court shall take judicial notice of any evidence, testimony or
22 information adduced at the trial, plea hearing, or other court
23 proceedings and shall also consider the presentence report and any
24 other relevant information. Forfeiture pursuant to this subsection
25 shall be in addition to, and not in lieu of, civil forfeiture pursuant to
26 chapter 64 of this title.

27 (cf: P.L.2012, c.22, s.1)

28

29 2. This act shall take effect immediately.

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STATEMENT

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34 This bill assists prosecutors in establishing the element of
35 recklessness required for obtaining a vehicular homicide conviction
36 against a person who failed to maintain a lane.

37 Under current law, a person is guilty of vehicular homicide when it
38 is proven that he or she drove a motor vehicle recklessly. Under the
39 State's criminal code, a person acts recklessly when he or she
40 consciously disregards a substantial and unjustifiable risk. This bill
41 specifically provides that failure to maintain a lane may give rise to an
42 inference that the defendant was driving recklessly.

43 Under the bill, a person who commits vehicular homicide by
44 failing to maintain a lane is guilty of a third degree crime. Third
45 degree crimes are punishable by imprisonment of three to five years, a
46 fine of up to \$15,000, or both.

S713 ADDIEGO, DIEGNAN

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- 1 The bill is designated as Eileen's Law in memory of Eileen
- 2 Marmino who died from head trauma suffered when she was hit by a
- 3 motorist who veered into the bike lane in which she was riding.