

1835

2011-2012 Regular Sessions

I N   S E N A T E

January 13, 2011

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Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to vehicular assault and vehicular manslaughter

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The penal law is amended by adding a new section 120.03-a  
2     to read as follows:

3     S 120.03-A VEHICULAR ASSAULT IN THE THIRD DEGREE.

4     A PERSON IS GUILTY OF VEHICULAR ASSAULT IN THE THIRD DEGREE WHEN HE OR  
5     SHE:

6     (1) CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON BY OPERATION OF A  
7     VEHICLE, AND KNOWS OR HAS REASON TO KNOW THAT: (A) HIS OR HER LICENSE OR  
8     PRIVILEGE OF OPERATING A MOTOR VEHICLE IN ANOTHER STATE OR HIS OR HER  
9     PRIVILEGE OF OBTAINING A LICENSE TO OPERATE A MOTOR VEHICLE IN ANOTHER  
10    STATE IS SUSPENDED OR REVOKED; (B) HIS OR HER LICENSE OR PRIVILEGE OF  
11    OPERATING A MOTOR VEHICLE IN THE STATE, OR HIS OR HER PRIVILEGE OF  
12    OBTAINING A LICENSE ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES IS  
13    SUSPENDED OR REVOKED; OR (C) HE OR SHE IS NOT DULY LICENSED PURSUANT TO  
14    SECTION FIVE HUNDRED TWO OF THE VEHICLE AND TRAFFIC LAW, OR

15    (2) CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON BY OPERATION OF A  
16    VEHICLE WHEN: (A) SUCH SERIOUS PHYSICAL INJURY WAS CAUSED IN WHOLE OR  
17    SUBSTANTIAL PART BY THE ACTOR'S VIOLATION OF ANY SECTION OR SECTIONS  
18    CONTAINED WITHIN TITLE SEVEN OF THE VEHICLE AND TRAFFIC LAW, OTHER THAN  
19    SECTION ELEVEN HUNDRED NINETY-TWO OF SUCH TITLE, AND (B) THE ACTOR HAS  
20    PREVIOUSLY BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF ANY SECTION OR  
21    SECTIONS CONTAINED WITHIN TITLE SEVEN OF THE VEHICLE AND TRAFFIC LAW ON  
22    AT LEAST TWO SEPARATE DATES WITHIN THE IMMEDIATELY PRECEDING EIGHTEEN  
23    MONTHS, OR

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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(3) CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON BY OPERATION OF A VEHICLE IN VIOLATION OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINE-TY-TWO OF THE VEHICLE AND TRAFFIC LAW.

IN ANY PROSECUTION UNDER SUBDIVISION THREE OF THIS SECTION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT SUCH SERIOUS PHYSICAL INJURY WAS CAUSED IN WHOLE OR IN SUBSTANTIAL PART BY SOME FACTOR OTHER THAN THE ACTOR'S IMPAIRMENT BY THE USE OF ALCOHOL OR THE MANNER IN WHICH THE ACTOR OPERATED THE VEHICLE.

VEHICULAR ASSAULT IN THE THIRD DEGREE IS A CLASS E FELONY.

S 2. Section 120.03 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

S 120.03 Vehicular assault in the second degree.

A person is guilty of vehicular assault in the second degree when he or she causes serious physical injury to another person, and either:

(1) operates a motor vehicle in violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, operates such motor vehicle, vessel or public vessel in a manner that causes such serious physical injury to such other person, or

(2) operates a motor vehicle with a gross vehicle weight rating of more than [eighteen] TEN thousand pounds which contains flammable gas, radioactive materials or explosives in violation of subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, and such flammable gas, radioactive materials or explosives is the cause of such serious physical injury, and as a result of such impairment by the use of alcohol, operates such motor vehicle in a manner that causes such serious physical injury to such other person, or

(3) operates a snowmobile in violation of paragraph (b), (c) or (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law or operates an all terrain vehicle as defined in paragraph (a) of subdivision one of section twenty-two hundred eighty-one of the vehicle and traffic law and in violation of subdivision two, three, four, or four-a of section eleven hundred ninety-two of the vehicle and traffic law, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, operates such snowmobile or all terrain vehicle in a manner that causes such serious physical injury to such other person.

If it is established that the person operating such motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle caused such serious physical injury while unlawfully intoxicated or impaired by the use of alcohol or a drug, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle in a manner that caused such serious physical injury, as required by this section.

Vehicular assault in the second degree is a class [E] D felony.

S 3. Section 120.04 of the penal law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

S 120.04 Vehicular assault in the first degree.

1 A person is guilty of vehicular assault in the first degree when he or  
2 she [commits the crime of vehicular assault in the second degree as  
3 defined in section 120.03 of this article, and either:

4 (1) commits such crime while operating a motor vehicle while such  
5 person has .18 of one per centum or more by weight of alcohol in such  
6 person's blood as shown by chemical analysis of such person's blood,  
7 breath, urine or saliva made pursuant to the provisions of section elev-  
8 en hundred ninety-four of the vehicle and traffic law;

9 (2) commits such crime while knowing or having reason to know that:

10 (a) his or her license or his or her privilege of operating a motor  
11 vehicle in another state or his or her privilege of obtaining a license  
12 to operate a motor vehicle in another state is suspended or revoked and  
13 such suspension or revocation is based upon a conviction in such other  
14 state for an offense which would, if committed in this state, constitute  
15 a violation of any of the provisions of section eleven hundred ninety-  
16 two of the vehicle and traffic law; or (b) his or her license or his or  
17 her privilege of operating a motor vehicle in the state or his or her  
18 privilege of obtaining a license issued by the commissioner of motor  
19 vehicles is suspended or revoked and such suspension or revocation is  
20 based upon either a refusal to submit to a chemical test pursuant to  
21 section eleven hundred ninety-four of the vehicle and traffic law or  
22 following a conviction for a violation of any of the provisions of  
23 section eleven hundred ninety-two of the vehicle and traffic law;

24 (3) has previously been convicted of violating any of the provisions  
25 of section eleven hundred ninety-two of the vehicle and traffic law  
26 within the preceding ten years, provided that, for the purposes of this  
27 subdivision, a conviction in any other state or jurisdiction for an  
28 offense which, if committed in this state, would constitute a violation  
29 of section eleven hundred ninety-two of the vehicle and traffic law,  
30 shall be treated as a violation of such law;

31 (4) causes serious physical injury to more than one other person;

32 (5) has previously been convicted of violating any provision of this  
33 article or article one hundred twenty-five of this title involving the  
34 operation of a motor vehicle, or was convicted in any other state or  
35 jurisdiction of an offense involving the operation of a motor vehicle  
36 which, if committed in this state, would constitute a violation of this  
37 article or article one hundred twenty-five of this title; or

38 (6) commits such crime while operating a motor vehicle while a child  
39 who is fifteen years of age or less is a passenger in such motor vehicle  
40 and causes serious physical injury to such child.

41 If it is established that the person operating such motor vehicle  
42 caused such serious physical injury or injuries while unlawfully intoxi-  
43 cated or impaired by the use of alcohol or a drug, or by the combined  
44 influence of drugs or of alcohol and any drug or drugs, then there shall  
45 be a rebuttable presumption that, as a result of such intoxication or  
46 impairment by the use of alcohol or a drug, or by the combined influence  
47 of drugs or of alcohol and any drug or drugs, such person operated the  
48 motor vehicle in a manner that caused such serious physical injury or  
49 injuries, as required by this section and section 120.03 of this arti-  
50 cle]:

51 (1) WITH KNOWLEDGE THAT HE OR SHE IS BEING PURSUED BY A POLICE OFFI-  
52 CER, OPERATES A MOTOR VEHICLE IN VIOLATION OF ANY SECTION OR SECTIONS  
53 CONTAINED WITHIN TITLE SEVEN OF THE VEHICLE AND TRAFFIC LAW AND THEREBY  
54 CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON, OR

55 (2) CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON BY OPERATION OF A  
56 VEHICLE IN VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE

1 AND TRAFFIC LAW WHILE SUCH PERSON HAS .20 OF ONE PER CENTUM OR MORE BY  
2 WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD AS SHOWN BY CHEMICAL ANALYSIS OF  
3 SUCH PERSON'S BLOOD, URINE OR SALIVA, OR

4 (3) COMMITS THE CRIME OF VEHICULAR ASSAULT IN THE SECOND OR THIRD  
5 DEGREE AND HAS BEEN PREVIOUSLY CONVICTED OF VEHICULAR ASSAULT IN THE  
6 FIRST, SECOND OR THIRD DEGREE; OR VEHICULAR MANSLAUGHTER IN THE FIRST,  
7 SECOND OR THIRD DEGREE; OR CRIMINALLY NEGLIGENT HOMICIDE INVOLVING THE  
8 OPERATION OF A VEHICLE.

9 IN ANY PROSECUTION UNDER SUBDIVISION ONE OR TWO OF THIS SECTION, IT  
10 SHALL BE AN AFFIRMATIVE DEFENSE THAT SUCH SERIOUS PHYSICAL INJURY WAS  
11 CAUSED IN WHOLE OR IN SUBSTANTIAL PART BY SOME FACTOR OTHER THAN THE  
12 ACTOR'S INTOXICATION OR THE MANNER IN WHICH THE ACTOR OPERATED THE VEHI-  
13 CLE.

14 Vehicular assault in the first degree is a class [D] C felony.

15 S 4. The penal law is amended by adding a new section 125.12-a to read  
16 as follows:

17 S 125.12-A VEHICULAR MANSLAUGHTER IN THE THIRD DEGREE.

18 A PERSON IS GUILTY OF VEHICULAR MANSLAUGHTER IN THE THIRD DEGREE WHEN  
19 HE OR SHE:

20 (1) CAUSES THE DEATH OF ANOTHER PERSON BY OPERATION OF A VEHICLE, AND  
21 KNOWS OR HAS REASON TO KNOW THAT: (A) HIS OR HER LICENSE OR PRIVILEGE OF  
22 OPERATING A MOTOR VEHICLE IN ANOTHER STATE OR HIS OR HER PRIVILEGE OF  
23 OBTAINING A LICENSE TO OPERATE A MOTOR VEHICLE IN ANOTHER STATE IS  
24 SUSPENDED OR REVOKED; (B) HIS OR HER LICENSE OR PRIVILEGE OF OPERATING A  
25 MOTOR VEHICLE IN THE STATE, OR HIS OR HER PRIVILEGE OF OBTAINING A  
26 LICENSE ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES IS SUSPENDED OR  
27 REVOKED; OR (C) HE OR SHE IS NOT DULY LICENSED PURSUANT TO SECTION FIVE  
28 HUNDRED TWO OF THE VEHICLE AND TRAFFIC LAW, OR

29 (2) CAUSES THE DEATH OF ANOTHER PERSON BY OPERATION OF A VEHICLE WHEN:  
30 (A) SUCH SERIOUS PHYSICAL INJURY WAS CAUSED IN WHOLE OR SUBSTANTIAL PART  
31 BY THE ACTOR'S VIOLATION OF ANY SECTION OR SECTIONS CONTAINED WITHIN  
32 TITLE SEVEN OF THE VEHICLE AND TRAFFIC LAW, OTHER THAN SECTION ELEVEN  
33 HUNDRED NINETY-TWO OF SUCH TITLE, AND (B) THE ACTOR HAS PREVIOUSLY BEEN  
34 CONVICTED OF TWO OR MORE VIOLATIONS OF ANY SECTION OR SECTIONS CONTAINED  
35 WITHIN TITLE SEVEN OF THE VEHICLE AND TRAFFIC LAW ON AT LEAST TWO SEPA-  
36 RATE DATES WITHIN THE IMMEDIATELY PRECEDING EIGHTEEN MONTHS, OR

37 (3) CAUSES THE DEATH OF ANOTHER PERSON BY OPERATION OF A VEHICLE IN  
38 VIOLATION OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE  
39 VEHICLE AND TRAFFIC LAW.

40 IN ANY PROSECUTION UNDER SUBDIVISION THREE OF THIS SECTION, IT SHALL  
41 BE AN AFFIRMATIVE DEFENSE THAT SUCH DEATH WAS CAUSED IN WHOLE OR IN  
42 SUBSTANTIAL PART BY SOME FACTOR OTHER THAN THE ACTOR'S IMPAIRMENT BY THE  
43 USE OF ALCOHOL OR THE MANNER IN WHICH THE ACTOR OPERATED THE VEHICLE.

44 VEHICULAR MANSLAUGHTER IN THE THIRD DEGREE IS A CLASS D FELONY.

45 S 5. Section 125.12 of the penal law, as amended by chapter 732 of the  
46 laws of 2006, is amended to read as follows:

47 S 125.12 Vehicular manslaughter in the second degree.

48 A person is guilty of vehicular manslaughter in the second degree when  
49 he or she causes the death of another person, and either:

50 (1) operates a motor vehicle in violation of subdivision two, three,  
51 four or four-a of section eleven hundred ninety-two of the vehicle and  
52 traffic law or operates a vessel or public vessel in violation of para-  
53 graph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of  
54 the navigation law, and as a result of such intoxication or impairment  
55 by the use of a drug, or by the combined influence of drugs or of alco-

1 hol and any drug or drugs, operates such motor vehicle, vessel or public  
2 vessel in a manner that causes the death of such other person, or

3 (2) operates a motor vehicle with a gross vehicle weight rating of  
4 more than [eighteen] TEN thousand pounds which contains flammable gas,  
5 radioactive materials or explosives in violation of subdivision one of  
6 section eleven hundred ninety-two of the vehicle and traffic law, and  
7 such flammable gas, radioactive materials or explosives is the cause of  
8 such death, and as a result of such impairment by the use of alcohol,  
9 operates such motor vehicle in a manner that causes the death of such  
10 other person, or

11 (3) operates a snowmobile in violation of paragraph (b), (c) or (d) of  
12 subdivision one of section 25.24 of the parks, recreation and historic  
13 preservation law or operates an all terrain vehicle as defined in para-  
14 graph (a) of subdivision one of section twenty-two hundred eighty-one of  
15 the vehicle and traffic law in violation of subdivision two, three,  
16 four, or four-a of section eleven hundred ninety-two of the vehicle and  
17 traffic law, and as a result of such intoxication or impairment by the  
18 use of a drug, or by the combined influence of drugs or of alcohol and  
19 any drug or drugs, operates such snowmobile or all terrain vehicle in a  
20 manner that causes the death of such other person[.], OR

21 (4) COMMITS THE CRIME OF CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN  
22 SECTION 125.10 OF THIS ARTICLE BY OPERATION OF A MOTOR VEHICLE, AND  
23 KNOWS OR HAS REASON TO KNOW THAT: (A) HIS OR HER LICENSE OR HIS OR HER  
24 PRIVILEGE OF OPERATING A MOTOR VEHICLE IN ANOTHER STATE OR HIS OR HER  
25 PRIVILEGE OF OBTAINING A LICENSE TO OPERATE A MOTOR VEHICLE IN ANOTHER  
26 STATE IS SUSPENDED OR REVOKED; (B) HIS OR HER LICENSE OR PRIVILEGE OF  
27 OPERATING A MOTOR VEHICLE IN THE STATE OR HIS OR HER PRIVILEGE OF  
28 OBTAINING A LICENSE ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES IS  
29 SUSPENDED OR REVOKED; OR (C) HE OR SHE IS NOT DULY LICENSED PURSUANT TO  
30 SECTION FIVE HUNDRED TWO OF THE VEHICLE AND TRAFFIC LAW, OR

31 (5) COMMITS THE CRIME OF CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN  
32 SECTION 125.10 OF THIS ARTICLE BY OPERATION OF A MOTOR VEHICLE WHEN: (A)  
33 SUCH SERIOUS PHYSICAL INJURY WAS CAUSED IN WHOLE OR SUBSTANTIAL PART BY  
34 THE ACTOR'S VIOLATION OF ANY SECTION OR SECTIONS CONTAINED WITHIN TITLE  
35 SEVEN OF THE VEHICLE AND TRAFFIC LAW, OTHER THAN SUBDIVISIONS TWO, THREE  
36 OR FOUR OF SECTION ELEVEN HUNDRED NINETY-TWO OF SUCH TITLE, AND (B) THE  
37 ACTOR HAS PREVIOUSLY BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF ANY  
38 SECTION OR SECTIONS CONTAINED WITHIN TITLE SEVEN OF THE VEHICLE AND  
39 TRAFFIC LAW ON AT LEAST TWO SEPARATE DATES WITHIN THE IMMEDIATELY  
40 PRECEDING EIGHTEEN MONTHS.

41 If it is established that the person operating such motor vehicle,  
42 vessel, public vessel, snowmobile or all terrain vehicle caused such  
43 death while unlawfully intoxicated or impaired by the use of alcohol or  
44 a drug, then there shall be a rebuttable presumption that, as a result  
45 of such intoxication or impairment by the use of alcohol or a drug, or  
46 by the combined influence of drugs or of alcohol and any drug or drugs,  
47 such person operated the motor vehicle, vessel, public vessel, snowmo-  
48 bile or all terrain vehicle in a manner that caused such death, as  
49 required by this section.

50 Vehicular manslaughter in the second degree is a class D felony.

51 S 6. This act shall take effect immediately.