

5948

2013-2014 Regular Sessions

I N S E N A T E

October 9, 2013

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

AN ACT to amend the penal law, in relation to expanding the definitions
of vehicular assault in the first degree and vehicular assault in the
second degree to include offenses involving use of a portable elec-
tronic device while driving; and to amend the vehicle and traffic law,
in relation to expanding the definition of reckless driving to include
offenses involving use of a portable electronic device while driving

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

1 Section 1. Section 120.03 of the penal law, as amended by chapter 732
2 of the laws of 2006, is amended to read as follows:
3 S 120.03 Vehicular assault in the second degree.
4 A person is guilty of vehicular assault in the second degree when he
5 or she causes serious physical injury to another person, and [either]:
6 (1) operates a motor vehicle in violation of subdivision two, three,
7 four or four-a of section eleven hundred ninety-two of the vehicle and
8 traffic law or operates a vessel or public vessel in violation of para-
9 graph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of
10 the navigation law, and as a result of such intoxication or impairment
11 by the use of a drug, or by the combined influence of drugs or of alco-
12 hol and any drug or drugs, operates such motor vehicle, vessel or public
13 vessel in a manner that causes such serious physical injury to such
14 other person[,]; or
15 (2) operates a motor vehicle with a gross vehicle weight rating of
16 more than eighteen thousand pounds which contains flammable gas, radio-
17 active materials or explosives in violation of subdivision one of
18 section eleven hundred ninety-two of the vehicle and traffic law, and
19 such flammable gas, radioactive materials or explosives is the cause of
20 such serious physical injury, and as a result of such impairment by the

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

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1 use of alcohol, operates such motor vehicle in a manner that causes such
2 serious physical injury to such other person[,]; or

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

13 (4) OPERATES A MOTOR VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED
14 TWENTY-FIVE-D OF THE VEHICLE AND TRAFFIC LAW, AND OPERATES SUCH MOTOR
15 VEHICLE IN A MANNER THAT CAUSES SUCH SERIOUS PHYSICAL INJURY TO SUCH
16 OTHER PERSON.

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

26 Vehicular assault in the second degree is a class E felony.

27 S 2. Section 120.04 of the penal law, as amended by chapter 496 of the
28 laws of 2009, is amended to read as follows:

29 S 120.04 Vehicular assault in the first degree.

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

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

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

39 (a) his or her license or his or her privilege of operating a motor
40 vehicle in another state or his or her privilege of obtaining a license
41 to operate a motor vehicle in another state is suspended or revoked and
42 such suspension or revocation is based upon a conviction in such other
43 state for an offense which would, if committed in this state, constitute
44 a violation of any of the provisions of section eleven hundred ninety-
45 two of the vehicle and traffic law; or (b) his or her license or his or
46 her privilege of operating a motor vehicle in the state or his or her
47 privilege of obtaining a license issued by the commissioner of motor
48 vehicles is suspended or revoked and such suspension or revocation is
49 based upon either a refusal to submit to a chemical test pursuant to
50 section eleven hundred ninety-four of the vehicle and traffic law or
51 following a conviction for a violation of any of the provisions of
52 section eleven hundred ninety-two of the vehicle and traffic law;

53 (3) has previously been convicted of violating any of the provisions
54 of section eleven hundred ninety-two of the vehicle and traffic law
55 within the preceding ten years, provided that, for the purposes of this
56 subdivision, a conviction in any other state or jurisdiction for an

1 offense which, if committed in this state, would constitute a violation
2 of section eleven hundred ninety-two of the vehicle and traffic law,
3 shall be treated as a violation of such law;

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

5 (5) has previously been convicted of violating any provision of this
6 article or article one hundred twenty-five of this title involving the
7 operation of a motor vehicle, or was convicted in any other state or
8 jurisdiction of an offense involving the operation of a motor vehicle
9 which, if committed in this state, would constitute a violation of this
10 article or article one hundred twenty-five of this title; [or]

11 (6) commits such crime while operating a motor vehicle while a child
12 who is fifteen years of age or less is a passenger in such motor vehicle
13 and causes serious physical injury to such child; OR

14 (7) HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING ANY PROVISION OF
15 SECTION TWELVE HUNDRED TWENTY-FIVE-D OF THE VEHICLE AND TRAFFIC LAW, OR
16 WAS CONVICTED IN ANY OTHER STATE OR JURISDICTION OF AN OFFENSE INVOLVING
17 THE OPERATION OF A MOTOR VEHICLE WHILE USING A PORTABLE ELECTRONIC
18 DEVICE WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A VIOLATION
19 OF SECTION TWELVE HUNDRED TWENTY-FIVE-D OF THE VEHICLE AND TRAFFIC LAW.

20 If it is established that the person operating such motor vehicle
21 caused such serious physical injury or injuries while unlawfully intoxi-
22 cated or impaired by the use of alcohol or a drug, or by the combined
23 influence of drugs or of alcohol and any drug or drugs, then there shall
24 be a rebuttable presumption that, as a result of such intoxication or
25 impairment by the use of alcohol or a drug, or by the combined influence
26 of drugs or of alcohol and any drug or drugs, such person operated the
27 motor vehicle in a manner that caused such serious physical injury or
28 injuries, as required by this section and section 120.03 of this arti-
29 cle.

30 Vehicular assault in the first degree is a class D felony.

31 S 3. Section 1212 of the vehicle and traffic law, as added by chapter
32 47 of the laws of 1988, is amended to read as follows:

33 S 1212. Reckless driving. Reckless driving shall mean:

34 (1) driving or using any motor vehicle, motorcycle or any other vehi-
35 cle propelled by any power other than muscular power or any appliance or
36 accessory thereof in a manner which unreasonably interferes with the
37 free and proper use of the public highway, or unreasonably endangers
38 users of the public highway; OR

39 (2) DRIVING OR USING ANY MOTOR VEHICLE, MOTORCYCLE OR ANY OTHER VEHI-
40 CLE PROPELLED BY ANY POWER OTHER THAN MUSCULAR POWER OR ANY APPLIANCE OR
41 ACCESSORY THEREOF WHILE USING A PORTABLE ELECTRONIC DEVICE IN VIOLATION
42 OF THE PROVISIONS OF SECTION TWELVE HUNDRED TWENTY-FIVE-D OF THIS ARTI-
43 CLE. Reckless driving is prohibited. Every person violating this
44 provision shall be guilty of a misdemeanor.

45 S 4. This act shall take effect on the first of November next succeed-
46 ing the date upon which it shall have become a law.