

4168

2009-2010 Regular Sessions

I N S E N A T E

April 15, 2009

Introduced by Sens. FLANAGAN, LANZA, MORAHAN, VOLKER -- 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.

LBD06683-01-9

(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 746 of the laws of 2006, 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; or

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.

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

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

52 (2) CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON BY OPERATION OF A
53 VEHICLE IN VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE
54 AND TRAFFIC LAW WHILE SUCH PERSON HAS .20 OF ONE PER CENTUM OR MORE BY
55 WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD AS SHOWN BY CHEMICAL ANALYSIS OF
56 SUCH PERSON'S BLOOD, URINE OR SALIVA, OR

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

IN ANY PROSECUTION UNDER SUBDIVISION ONE OR TWO 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 INTOXICATION OR THE MANNER IN WHICH THE ACTOR OPERATED THE VEHICLE.

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

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

S 125.12-A VEHICULAR MANSLAUGHTER IN THE THIRD DEGREE.

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

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

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

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

IN ANY PROSECUTION UNDER SUBDIVISION THREE OF THIS SECTION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT SUCH DEATH 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 MANSLAUGHTER IN THE THIRD DEGREE IS A CLASS D FELONY.

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

S 125.12 Vehicular manslaughter in the second degree.

A person is guilty of vehicular manslaughter in the second degree when he or she causes the death of 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 the death of 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,

1 radioactive materials or explosives in violation of subdivision one of
2 section eleven hundred ninety-two of the vehicle and traffic law, and
3 such flammable gas, radioactive materials or explosives is the cause of
4 such death, and as a result of such impairment by the use of alcohol,
5 operates such motor vehicle in a manner that causes the death of such
6 other person, or

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

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

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

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

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

47 S 6. This act shall take effect immediately.