

# STATE OF NEW YORK

7894

## IN SENATE

February 28, 2020

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

AN ACT to amend the vehicle and traffic law, the insurance law, the penal law, the uniform district court act, and the administrative code of the city of New York, in relation to redefining reckless driving as dangerous driving

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The Legislature recognizes the height-  
2 ened responsibility of operating a multi-ton car or truck and that such  
3 motor vehicle is a dangerous instrument under state law that, in an  
4 instant, can cause lethal physical harm. For example, when operating a  
5 car at 30 miles per hour the average risk of a pedestrian dying upon  
6 impact with such car is 40%, at 40 miles per hour the risk of death is  
7 80%, and at speeds greater than 50 miles per hour the likelihood of  
8 death is near certain at nearly 100%.

9 When deaths resulting from alcohol-impaired driving were reduced from  
10 approximately 30,000 annually in the early 1980s across the United  
11 States to approximately 10,000 annually in recent years, that remarkable  
12 reduction was achieved in part by the certainty experienced by drivers  
13 that they would suffer legal consequences for driving impaired and risk-  
14 ing the lives of themselves and others, resulting from changes in laws  
15 prohibiting impaired driving. However, that certainty does not exist for  
16 other types of dangerous driving. A 2016 survey by the National Safety  
17 Council showed that "[e]lthough 83% of drivers surveyed believe driving  
18 is a safety concern, a startling number say they are comfortable speed-  
19 ing (64%) [and] texting either manually or through voice controls  
20 (47%)," whereas far fewer (10%) say they are comfortable driving after  
21 they feel they've had too much alcohol. This shows that, while drunk  
22 driving has become socially unacceptable, most other forms of dangerous  
23 driving have not, and New Yorkers are paying the price with lives lost  
24 and bodies and families shattered. Moreover, the New York City Depart-  
25 ment of Transportation estimated in 2010 that the annual cost of all

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

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1 traffic crashes just in New York City to be \$4.29 billion annually,  
2 about 1% of the Gross City Product.

3 As evidenced by our country's experience combatting drunk driving,  
4 research has shown that perceived certainty of legal consequences is  
5 necessary to deter or prevent harmful acts, including dangerous driving.  
6 The original statutory language of the New York vehicle and traffic law  
7 section 1212 (VTL 1212), in and of itself, is favorable to a reasonable  
8 standard for reckless or dangerous driving, specifying that driving in a  
9 manner that "unreasonably interferes with" or "unreasonably endangers  
10 [~~others~~]" constitutes a violation of that section and is an unclassified  
11 misdemeanor. However, that reasonableness standard has subsequently been  
12 heightened, to an extreme level by New York judicial interpretations  
13 that require factors such as a finding of seriously blameworthy conduct  
14 (People v. Boutin and People v. Cabrera), an "affirmative act" by the  
15 driver (People v. Cabrera), a "gross deviation" from the standard of  
16 conduct a reasonable person would observe, and additional "aggravating  
17 factors" on behalf of the driver -- all judicial interpretations and  
18 elevated mens rea requirements not required by the original statutory  
19 text for vehicle and traffic law section 1212 Reckless Driving. This  
20 judicially imposed higher mens rea requirement fails to recognize the  
21 awesome responsibility that operating a multi-ton car or truck is and as  
22 a consequence, evidenced in part by the staggering injuries and deaths  
23 in our state, the statute has failed to achieve what it intended. Cars  
24 and trucks are dangerous instruments under state law and should be  
25 recognized as such when applying vehicle and traffic law section 1212.  
26 For these reasons the Legislature is disapproving of the holdings with  
27 regards to a motor vehicle operator's culpability and state of mind in  
28 People v. Boutin, 75 N.Y.2d 692 (N.Y. 1990); People v. Grogan, 260 N.Y.  
29 138, 183 N.E. 273 (N.Y. 1932); People v. Cabrera, 10 N.Y.3d 370 (N.Y.  
30 2008) and People v. Goldblatt, 98 A.D.3d 817 N.Y.S.2d 210 (3d Dept.  
31 2012); and this legislation would correct the misapplication of vehicle  
32 and traffic law section 1212 in these rulings and restore the statute to  
33 its original intent, namely to deter and prevent dangerous operation of  
34 heavy motor vehicles that pose a daily threat to public health and risk  
35 the lives of New Yorkers throughout our state.

36 § 2. Section 1212 of the vehicle and traffic law, as added by chapter  
37 47 of the laws of 1988, is amended to read as follows:

38 § 1212. [~~Reckless~~] Dangerous driving. [~~Reckless~~] Dangerous driving  
39 shall mean [~~driving~~] operating or using any motor vehicle, motorcycle or  
40 any other vehicle capable only of being propelled by any power other  
41 than muscular power or any appliance or accessory thereof in a manner  
42 which unreasonably interferes with the free and [~~proper~~] safe use of the  
43 public highway, [~~or~~] unreasonably endangers users of the public highway,  
44 or fails to exercise ordinary due care. [~~Reckless~~] Dangerous driving is  
45 prohibited. Every person violating this provision shall be guilty of a  
46 misdemeanor. Notwithstanding any other provision of this chapter or the  
47 penal law, every person violating this section and who causes physical  
48 injury to another person shall be found to have acted with criminal  
49 negligence under section 15.05 of the penal law and shall be guilty of a  
50 class A misdemeanor. A violation of this section does not require a  
51 finding of a minimum number of violations of law or a finding that a  
52 person was aware of, had perceived, or had created the risk of harm to  
53 another person.

54 § 3. Section 509-e of the vehicle and traffic law, as amended by chap-  
55 ter 853 of the laws of 1975, is amended to read as follows:

1 § 509-e. Annual review of driving record. Each motor carrier shall, at  
2 least once every twelve months, review the driving record of each bus  
3 driver it employs to determine whether that driver meets minimum  
4 requirements for safe driving and is qualified to drive a bus pursuant  
5 to section five hundred nine-b of this article. In reviewing a driving  
6 record, the motor carrier must consider any evidence that the bus driver  
7 has violated applicable provisions of the vehicle and traffic law. The  
8 motor carrier must also consider the driver's accident record and any  
9 evidence that the driver has violated laws governing the operation of  
10 motor vehicles, such as speeding, [~~reckless~~ dangerous driving, and  
11 operating while under the influence of alcohol or drugs, that indicate  
12 that the driver has exhibited a disregard for the safety of the public.  
13 Such information shall be recorded in the employer's record.

14 § 4. Subparagraph (ii) of paragraph (a) of subdivision 4 of section  
15 510-a of the vehicle and traffic law, as amended by section 1 of part C  
16 of chapter 58 of the laws of 2013, is amended to read as follows:

17 (ii) is defined as reckless or dangerous driving by state or local law  
18 or regulation;

19 § 5. Paragraph 10 of subdivision (c) of section 516-b of the vehicle  
20 and traffic law, as added by chapter 731 of the laws of 1986 and as  
21 renumbered by chapter 298 of the laws of 1991, is amended to read as  
22 follows:

23 (10) [~~Reckless~~ Dangerous driving; and

24 § 6. Subdivision 2 of section 530 of the vehicle and traffic law, as  
25 separately amended by chapters 571 and 732 of the laws of 2006, is  
26 amended to read as follows:

27 (2) Such license or privilege shall not be issued to a person who,  
28 within the four year period immediately preceding the date of applica-  
29 tion, has been convicted within or without the state of homicide or  
30 assault arising out of the operation of a motor vehicle, of criminally  
31 negligent homicide or criminal negligence in the operation of a motor  
32 vehicle resulting in death, or has been convicted within the state of a  
33 violation of subdivision two of section six hundred of this chapter or  
34 of [~~reckless~~ dangerous driving. Such license or privilege shall not be  
35 issued to a person whose license or privilege, at the time of applica-  
36 tion, is revoked pursuant to the provisions of subparagraph (x) or (xi)  
37 of paragraph a of subdivision two of section five hundred ten of this  
38 chapter. Such license or privilege shall not be issued to a person whose  
39 license or privilege is suspended or revoked because of a conviction of  
40 a violation of subdivision one, two, two-a, three, four or four-a of  
41 section eleven hundred ninety-two of this chapter or a similar offense  
42 in another jurisdiction, or whose license or privilege is revoked by the  
43 commissioner for refusal to submit to a chemical test pursuant to subdi-  
44 vision two of section eleven hundred ninety-four of this chapter. Such  
45 license or privilege shall not be issued to a person who within the five  
46 year period immediately preceding the date of application for such  
47 license or privilege has been convicted of a violation of subdivision  
48 one, two, two-a, three, four or four-a of section eleven hundred nine-  
49 ty-two of this chapter or a similar alcohol-related offense in another  
50 jurisdiction, or whose license or privilege has been revoked by the  
51 commissioner for refusal to submit to a chemical test pursuant to subdi-  
52 vision two of section eleven hundred ninety-four of this chapter, except  
53 that such a license or privilege may be issued to such a person if,  
54 after such conviction or revocation, such person successfully completed  
55 an alcohol and drug rehabilitation program established pursuant to arti-  
56 cle thirty-one of this chapter in conjunction with such conviction or

1 revocation. Provided, however, that nothing herein shall be construed as  
2 prohibiting an operator from being issued a limited or conditional  
3 license or privilege pursuant to any alcohol rehabilitation program  
4 established pursuant to this chapter.

5 § 7. Item (B) of subparagraph (i) of paragraph (d) of subdivision 1 of  
6 section 1696 of the vehicle and traffic law, as added by section 2 of  
7 part AAA of chapter 59 of the laws of 2017, is amended to read as  
8 follows:

9 (B) [~~reckless~~] dangerous driving in violation of section one thousand  
10 two hundred twelve of this chapter;

11 § 8. Subparagraph (i) of paragraph (b) of subdivision 2 of section  
12 1699 of the vehicle and traffic law, as amended by chapter 60 of the  
13 laws of 2017, is amended to read as follows:

14 (i) stands convicted in the last three years of: unlawful fleeing a  
15 police officer in a motor vehicle in violation of sections 270.35,  
16 270.30 or 270.25 of the penal law, [~~reckless~~] dangerous driving in  
17 violation of section twelve hundred twelve of this chapter, operating  
18 while license or privilege is suspended or revoked in violation of  
19 section five hundred eleven of this chapter, excluding subdivision seven  
20 of such section, a misdemeanor offense of operating a motor vehicle  
21 while under the influence of alcohol or drugs in violation of section  
22 eleven hundred ninety-two of this chapter, or leaving the scene of an  
23 accident in violation of subdivision two of section six hundred of this  
24 chapter. In calculating the three year period under this subparagraph,  
25 any period of time during which the person was incarcerated after the  
26 commission of such offense shall be excluded and such three year period  
27 shall be extended by a period or periods equal to the time spent incar-  
28 cerated;

29 § 9. Section 1810 of the vehicle and traffic law, as added by chapter  
30 47 of the laws of 1988, is amended to read as follows:

31 § 1810. Compensation of officers shall not depend upon apprehension or  
32 arrests. (a) No city or village shall employ any officer, agent or  
33 person whose compensation shall in any way depend upon the apprehension  
34 or arrest of any person or persons for violating any ordinance adopted  
35 pursuant to section sixteen hundred four of this chapter or for [~~reck-~~  
36 ~~less~~] dangerous driving as defined in section twelve hundred twelve of  
37 this chapter. If any person be apprehended or arrested or haled before a  
38 magistrate for a violation of a local ordinance adopted pursuant to  
39 section sixteen hundred four or for [~~reckless~~] dangerous driving as  
40 defined by section twelve hundred twelve of this chapter by any officer,  
41 agent or employee of any city or village who is so employed, the fact of  
42 such employment at the time shall be a defense to any charge made for  
43 violation of such ordinance or for [~~reckless~~] dangerous driving.

44 (b) No county or town shall employ any officer, agent or person,  
45 whether such employee be elected or appointed, whose compensation shall  
46 in any way depend upon the apprehension or arrest of any person for  
47 [~~reckless~~] dangerous driving as defined in section twelve hundred twelve  
48 of this chapter. If any person be apprehended or arrested or haled  
49 before a magistrate for [~~reckless~~] dangerous driving as so defined, by  
50 any officer, agent or employee of any county or town who is so employed,  
51 the fact of such employment at the time shall be a defense to any charge  
52 made for [~~reckless~~] dangerous driving as defined in section twelve  
53 hundred twelve of this chapter.

54 § 10. Paragraph 3 of subsection (b) of section 2335 of the insurance  
55 law, as amended by chapter 277 of the laws of 2010, is amended to read  
56 as follows:

1 (3) operating a motor vehicle in excess of the speed limit, or [~~reck-~~  
2 ~~less~~] dangerous driving, or any combination thereof, on three or more  
3 occasions;

4 § 11. Item (v) of subparagraph (A) of paragraph 3 of subsection (m) of  
5 section 3425 of the insurance law is amended to read as follows:

6 (v) operating a motor vehicle in excess of the speed limit, or [~~reck-~~  
7 ~~less~~] dangerous driving, or any combination thereof, on three or more  
8 occasions; or

9 § 12. The opening paragraph of section 120.04-a of the penal law, as  
10 amended by chapter 496 of the laws of 2009, is amended to read as  
11 follows:

12 A person is guilty of aggravated vehicular assault when he or she  
13 engages in [~~reckless~~] dangerous driving as defined by section twelve  
14 hundred twelve of the vehicle and traffic law, and commits the crime of  
15 vehicular assault in the second degree as defined in section 120.03 of  
16 this article, and either:

17 § 13. The opening paragraph of section 125.14 of the penal law, as  
18 amended by chapter 496 of the laws of 2009, is amended to read as  
19 follows:

20 A person is guilty of aggravated vehicular homicide when he or she  
21 engages in [~~reckless~~] dangerous driving as defined by section twelve  
22 hundred twelve of the vehicle and traffic law, and commits the crime of  
23 vehicular manslaughter in the second degree as defined in section 125.12  
24 of this article, and either:

25 § 14. Section 270.25 of the penal law, as added by chapter 738 of the  
26 laws of 2006, is amended to read as follows:

27 § 270.25 Unlawful fleeing a police officer in a motor vehicle in the  
28 third degree.

29 A person is guilty of unlawful fleeing a police officer in a motor  
30 vehicle in the third degree when, knowing that he or she has been  
31 directed to stop his or her motor vehicle by a uniformed police officer  
32 or a marked police vehicle by the activation of either the lights or the  
33 lights and siren of such vehicle, he or she thereafter attempts to flee  
34 such officer or such vehicle by driving at speeds which equal or exceed  
35 twenty-five miles per hour above the speed limit or engaging in [~~reck-~~  
36 ~~less~~] dangerous driving as defined by section twelve hundred twelve of  
37 the vehicle and traffic law.

38 Unlawful fleeing a police officer in a motor vehicle in the third  
39 degree is a class A misdemeanor.

40 § 15. Subdivision 1 of section 2408 of the uniform district court act,  
41 as added by chapter 276 of the laws of 1952, is amended to read as  
42 follows:

43 1. The board of judges shall have power to provide, by resolution, a  
44 procedure to govern the payment of fines by any person accused of  
45 violating any provision of any law, ordinance, rule or regulation relat-  
46 ing to vehicular or pedestrian traffic, without appearing in person,  
47 except in cases of speeding, [~~reckless~~] dangerous driving, leaving scene  
48 of an accident or any charge of a misdemeanor or felony or any charge  
49 which may for reasons of public policy require the personal appearance  
50 of the accused, for such period of time as shall be deemed in the public  
51 interest; to fix the fine to be paid in each class of case within the  
52 minimum and maximum amount set by law, ordinance, rule or regulation; to  
53 designate the place or places where such fines may be paid; to prescribe  
54 the form of the summonses to be used and the manner in which the plea of  
55 guilty shall be made; and the manner in which the money shall be paid.

1 § 16. Subdivision 1 of section 2411 of the uniform district court act,  
2 as amended by chapter 570 of the laws of 1963, is amended to read as  
3 follows:

4 1. The board of judges shall have power to provide, by resolution, a  
5 procedure to govern the payment of fines by any person accused of  
6 violating any provision of any law, ordinance, rule or regulation relat-  
7 ing to vehicular or pedestrian traffic, without appearing in person,  
8 except in cases of speeding, [~~reckless~~ dangerous driving, leaving scene  
9 of an accident or any charge of a misdemeanor or felony or any charge  
10 which may for reasons of public policy require the personal appearance  
11 of the accused, for such period of time as shall be deemed in the public  
12 interest; to fix the fine to be paid in each class of case within the  
13 minimum and maximum amount set by law, ordinance, rule or regulation; to  
14 designate the place or places where such fines may be paid; to prescribe  
15 the form of the summonses to be used and the manner in which the plea of  
16 guilty shall be made; and the manner in which the money shall be paid.

17 § 17. Subdivision 1 of section 19-506 of the administrative code of  
18 the city of New York, as added by chapter 9 of the laws of 2012, is  
19 amended to read as follows:

20 1. A person is guilty of unlawful fleeing a New York city taxi and  
21 limousine enforcement officer or police officer when, knowing that he or  
22 she has been directed to remain stopped by a New York city taxi and  
23 limousine enforcement officer or police officer, the driver of a vehicle  
24 operating pursuant to a HAIL license who is stopped in a zone where he  
25 or she is not permitted to pick up street hails thereafter attempts to  
26 flee such officer by setting the vehicle in motion and either travels  
27 over three hundred feet without stopping or engages in conduct consti-  
28 tuting [~~reckless~~ dangerous driving as defined in section twelve hundred  
29 twelve of the vehicle and traffic law. Unlawful fleeing a New York city  
30 taxi and limousine enforcement officer or police officer is a misdemea-  
31 nor punishable by a fine of not less than seven hundred fifty dollars  
32 nor more than one thousand dollars, or by imprisonment of not more than  
33 ninety days or by both such fine and imprisonment. Notwithstanding any  
34 contrary provision of law, any charge alleging a violation of this  
35 subdivision shall be returnable before a court having jurisdiction over  
36 misdemeanors.

37 § 18. This act shall take effect immediately provided, however, that  
38 the amendments to section 2335 of the insurance law made by section ten  
39 of this act shall not affect the expiration of such section and shall be  
40 deemed to expire therewith.