STATE OF NEW YORK

3087

2019-2020 Regular Sessions

IN ASSEMBLY

January 28, 2019

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Codes

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 electronic 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 Assembly, do enact as follows:

Section 1. Section 120.03 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

§ 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 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

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

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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; or

(4) operates a motor vehicle in violation of section twelve hundred twenty-five-d of the vehicle and traffic law, and operates such motor 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 felony.

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

§ 120.04 Vehicular assault in the first degree.

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

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

(2) commits such crime while knowing or having reason to know that: (a) his or her license or his or her 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 and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her 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 and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

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

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

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

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

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

(7) has previously been convicted of violating any provision of section twelve hundred twenty-five-d of the vehicle and traffic law, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle while using a portable electronic device which, if committed in this state, would constitute a violation of section twelve hundred twenty-five-d of the vehicle and traffic law.

If it is established that the person operating such motor vehicle caused such serious physical injury or injuries while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, 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 in a manner that caused such serious physical injury or injuries, as required by this section and section 120.03 of this article.

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

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

§ 1212. Reckless driving. Reckless driving shall mean**:**

(1) driving or using any motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway**; or**

(2) driving or using any motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof while using a portable electronic device in violation of the provisions of section twelve hundred twenty-five-d of this article. Reckless driving is prohibited. Every person violating this provision shall be guilty of a misdemeanor.

§ 4. This act shall take effect on the first of November next succeeding the date upon which it shall have become a law.