

STATE OF NEW YORK

911--A

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. JEAN-PIERRE, ENGLEBRIGHT, DICKENS, GRIFFIN, STIRPE, D. ROSENTHAL, SMITH, DeSTEFANO, McDONOUGH, THIELE, RA, STERN, GOTTFRIED, MONTESANO, WOERNER, B. MILLER -- Multi-Sponsored by -- M. of A. MIKULIN -- read once and referred to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the navigation law and the penal law, in relation to operating a vessel while intoxicated when a child who is fifteen years of age or less is a passenger in such vessel

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

1 Section 1. Subdivision 2 of section 49-a of the navigation law is
2 amended by adding a new paragraph (e-1) to read as follows:

3 (e-1) No person sixteen years of age or older shall operate a vessel
4 in violation of paragraph (b), (d) or (e) of this subdivision while a
5 child who is fifteen years of age or less is a passenger in such vessel.

6 § 2. Subparagraphs 2 and 3 of paragraph (f) of subdivision 2 and
7 subdivision 5-a of section 49-a of the navigation law, subparagraphs 2
8 and 3 of paragraph (f) of subdivision 2 as amended and subdivision 5-a
9 as added by chapter 239 of the laws of 2016, are amended to read as
10 follows:

11 (2) A person who operates a vessel (i) in violation of paragraph (b),
12 (c), (d) [~~or~~], (e) or (e-1) of this subdivision after having been
13 convicted of a violation of paragraph (b), (c), (d) [~~or~~], (e) or (e-1)
14 of this subdivision, or of operating a vessel or public vessel while
15 intoxicated or while under the influence of drugs, within the preceding
16 ten years, or (ii) in violation of paragraph (e-1) of this subdivision,
17 shall be guilty of a class E felony and shall be punished by a period of
18 imprisonment as provided in the penal law, or by a fine of not less than
19 one thousand dollars nor more than five thousand dollars, or by both
20 such fine and imprisonment.

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

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1 (3) A person who operates a vessel in violation of paragraph (b), (c),
2 (d) [~~ex~~], (e) or (e-1) of this subdivision after having been twice
3 convicted of a violation of any of such paragraph (b), (c), (d) [~~ex~~],
4 (e) or (e-1) of this subdivision or of operating a vessel or public
5 vessel while intoxicated or under the influence of drugs, within the
6 preceding ten years, shall be guilty of a class D felony and shall be
7 punished by a fine of not less than two thousand dollars nor more than
8 ten thousand dollars or by a period of imprisonment as provided in the
9 penal law, or by both such fine and imprisonment.

10 5-a. Sentencing; previous convictions. When sentencing a person for a
11 violation of paragraph (b), (c), (d) [~~ex~~], (e) or (e-1) of subdivision
12 two of this section pursuant to subparagraph two of paragraph (f) of
13 subdivision two of this section, the court shall consider any prior
14 convictions the person may have for a violation of subdivision two,
15 two-a, three, four, or four-a of section eleven hundred ninety-two of
16 the vehicle and traffic law within the preceding ten years. When
17 sentencing a person for a violation of paragraph (b), (c), (d) [~~ex~~], (e)
18 or (e-1) of subdivision two of this section pursuant to subparagraph
19 three of paragraph (f) of subdivision two of this section, the court
20 shall consider any prior convictions the person may have for a violation
21 of subdivision two, two-a, three, four, or four-a of section eleven
22 hundred ninety-two of the vehicle and traffic law within the preceding
23 ten years. When sentencing a person for a violation of subparagraph two
24 of paragraph (a) of subdivision two of this section, the court shall
25 consider any prior convictions the person may have for a violation of
26 any subdivision of section eleven hundred ninety-two of the vehicle and
27 traffic law within the preceding five years. When sentencing a person
28 for a violation of subparagraph three of paragraph (a) of subdivision
29 two of this section, the court shall consider any prior convictions the
30 person may have for a violation of any subdivision of section eleven
31 hundred ninety-two of the vehicle and traffic law within the preceding
32 ten years.

33 § 3. Subparagraph 3 of paragraph (a) of subdivision 3, subdivision 5
34 and paragraph (a) of subdivision 7 of section 49-a of the navigation
35 law, as added by chapter 805 of the laws of 1992, are amended to read as
36 follows:

37 (3) a period of twenty-four months where a person is convicted of (i)
38 a violation of paragraph (b), (c), (d) [~~ex~~], (e) or (e-1) of subdivision
39 two of this section after having been convicted of a violation of para-
40 graph (b), (c), (d) [~~ex~~], (e) or (e-1) of subdivision two of this
41 section or of operating a vessel or public vessel while intoxicated or
42 under the influence of drugs within the preceding ten years, or (ii) a
43 violation of paragraph (e-1) of subdivision two of this section.

44 5. Sentencing limitations. Notwithstanding any provision of the penal
45 law, no judge or magistrate shall impose a sentence of unconditional
46 discharge for a violation of paragraph (b), (c), (d) [~~ex~~], (e) or (e-1)
47 of subdivision two of this section nor shall he or she impose a sentence
48 of conditional discharge unless such conditional discharge is accompa-
49 nied by a sentence of a fine as provided in this section.

50 (a) Any person who operates a vessel on the waters of the state shall
51 be requested to consent to a chemical test of one or more of the follow-
52 ing: breath, blood, urine, or saliva for the purpose of determining the
53 alcoholic or drug content of his blood, provided that such test is
54 administered at the direction of a police officer: (1) having reasonable
55 cause to believe such person to have been operating in violation of this
56 subdivision or paragraph (a), (b), (c), (d) [~~ex~~], (e) or (e-1) of subdi-

1 vision two of this section and within two hours after such person has
2 been placed under arrest for any such violation or (2) within two hours
3 after a breath test as provided in paragraph (b) of subdivision six of
4 this section indicates that alcohol has been consumed by such person and
5 in accordance with the rules and regulations established by the police
6 force of which the officer is a member.

7 § 4. Section 49-a of the navigation law is amended by adding a new
8 subdivision 14 to read as follows:

9 14. Report. Where a law enforcement officer alleges a violation of
10 paragraph (e-1) of subdivision two of this section and the operator of
11 the vessel is sixteen years of age or older and is a parent, guardian,
12 custodian of, or other person legally responsible for, a child who is
13 fifteen years of age or less who is a passenger in such vessel, such
14 officer shall report or cause a report to be made in accordance with
15 title six of article six of the social services law, if applicable.

16 § 5. Subdivisions 5 and 6 of section 120.04 of the penal law, subdivi-
17 sion 5 as amended and subdivision 6 as added by chapter 496 of the laws
18 of 2009, are amended and a new subdivision 7 is added to read as
19 follows:

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

26 (6) commits such crime while operating a motor vehicle while a child
27 who is fifteen years of age or less is a passenger in such motor vehicle
28 and causes serious physical injury to such child[~~+~~]; or

29 (7) commits such crime while operating a vessel in violation of para-
30 graph (e-1) of subdivision two of section forty-nine-a of the navigation
31 law while a child who is fifteen years of age or less is a passenger in
32 such vessel and causes serious physical injury to such child.

33 § 6. Subdivisions 5 and 6 of section 125.13 of the penal law, subdivi-
34 sion 5 as amended and subdivision 6 as added by chapter 496 of the
35 laws of 2009, are amended and a new subdivision 7 is added to read as
36 follows:

37 (5) has previously been convicted of violating any provision of this
38 article or article one hundred twenty of this title involving the opera-
39 tion of a motor vehicle, or was convicted in any other state or jurisdic-
40 tion of an offense involving the operation of a motor vehicle which,
41 if committed in this state, would constitute a violation of this article
42 or article one hundred twenty of this title; [~~ex~~]

43 (6) commits such crime while operating a motor vehicle while a child
44 who is fifteen years of age or less is a passenger in such motor vehicle
45 and causes the death of such child[~~+~~]; or

46 (7) commits such crime while operating a vessel in violation of para-
47 graph (e-1) of subdivision two of section forty-nine-a of the navigation
48 law while a child who is fifteen years of age or less is a passenger in
49 such vessel and causes the death of such child.

50 § 7. This act shall take effect on the one hundred eightieth day after
51 it shall have become a law; provided that this act shall not apply to
52 any offense committed before the date of enactment. Effective immediate-
53 ly, the addition, amendment and/or repeal of any rule or regulation
54 necessary for the implementation of this act on its effective date are
55 authorized to be made and completed on or before such effective date.