

# STATE OF NEW YORK

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717

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

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Introduced by Sens. GOUNARDES, HARCKHAM, HOYLMAN, KAMINSKY -- 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 Assem-  
bly, 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 "[a]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

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

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1 driving has become socially unacceptable, most other forms of dangerous  
2 driving have not, and New Yorkers are paying the price with lives lost  
3 and bodies and families shattered. Moreover, the New York City Depart-  
4 ment of Transportation estimated in 2010 that the annual cost of all  
5 traffic crashes just in New York City to be \$4.29 billion annually,  
6 about 1% of the Gross City Product.

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

40 § 2. Section 1212 of the vehicle and traffic law, as added by chapter  
41 47 of the laws of 1988, is amended to read as follows:

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

1 person was aware of, had perceived, or had created the risk of harm to  
2 another person.

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

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

18 § 4. Subparagraph (ii) of paragraph (a) of subdivision 4 of section  
19 510-a of the vehicle and traffic law, as amended by section 1 of part C  
20 of chapter 58 of the laws of 2013, is amended to read as follows:

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

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

27 (10) [~~Reckless~~] Dangerous driving; and

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

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

1 that such a license or privilege may be issued to such a person if,  
2 after such conviction or revocation, such person successfully completed  
3 an alcohol and drug rehabilitation program established pursuant to arti-  
4 cle thirty-one of this chapter in conjunction with such conviction or  
5 revocation. Provided, however, that nothing herein shall be construed as  
6 prohibiting an operator from being issued a limited or conditional  
7 license or privilege pursuant to any alcohol rehabilitation program  
8 established pursuant to this chapter.

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

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

15 § 8. Subparagraph (i) of paragraph (b) of subdivision 2 of section  
16 1699 of the vehicle and traffic law, as amended by chapter 60 of the  
17 laws of 2017, is amended to read as follows:

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

33 § 9. Section 1810 of the vehicle and traffic law, as added by chapter  
34 47 of the laws of 1988, is amended to read as follows:

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

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

1 made for [~~reckless~~] **dangerous** driving as defined in section twelve  
2 hundred twelve of this chapter.

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

6 (3) 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;

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

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

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

17 A person is guilty of aggravated vehicular assault when he or she  
18 engages in [~~reckless~~] **dangerous** driving as defined by section twelve  
19 hundred twelve of the vehicle and traffic law, and commits the crime of  
20 vehicular assault in the second degree as defined in section 120.03 of  
21 this article, and either:

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

25 A person is guilty of aggravated vehicular homicide when he or she  
26 engages in [~~reckless~~] **dangerous** driving as defined by section twelve  
27 hundred twelve of the vehicle and traffic law, and commits the crime of  
28 vehicular manslaughter in the second degree as defined in section 125.12  
29 of this article, and either:

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

32 § 270.25 Unlawful fleeing a police officer in a motor vehicle in the  
33 third degree.

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

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

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

48 1. The board of judges shall have power to provide, by resolution, a  
49 procedure to govern the payment of fines by any person accused of  
50 violating any provision of any law, ordinance, rule or regulation relat-  
51 ing to vehicular or pedestrian traffic, without appearing in person,  
52 except in cases of speeding, [~~reckless~~] **dangerous** driving, leaving scene  
53 of an accident or any charge of a misdemeanor or felony or any charge  
54 which may for reasons of public policy require the personal appearance  
55 of the accused, for such period of time as shall be deemed in the public  
56 interest; to fix the fine to be paid in each class of case within the

1 minimum and maximum amount set by law, ordinance, rule or regulation; to  
2 designate the place or places where such fines may be paid; to prescribe  
3 the form of the summonses to be used and the manner in which the plea of  
4 guilty shall be made; and the manner in which the money shall be paid.

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

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

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

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

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