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IN SENATE

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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 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

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.