STATE OF NEW YORK

947--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. GAUGHRAN, COMRIE, KAMINSKY, KAPLAN, REICHLIN-MELNICK, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- 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:

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

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

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

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

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

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

5-a. Sentencing; previous convictions. When sentencing a person for a violation of paragraph (b), (c), (d) [~~or~~], (e) **or (e-1)** of subdivision two of this section pursuant to subparagraph two of paragraph (f) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years. When sentencing a person for a violation of paragraph (b), (c), (d) [~~or~~], (e) **or (e-1)** of subdivision two of this section pursuant to subparagraph three of paragraph (f) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years. When sentencing a person for a violation of subparagraph two of paragraph (a) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law within the preceding five years. When sentencing a person for a violation of subparagraph three of paragraph (a) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years.

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

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

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

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

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

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

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

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

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

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

(5) has previously been convicted of violating any provision of this article or article one hundred twenty 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 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 the death of such child[~~.~~]**; or**

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

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