

SENATE, No. 1644

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JUNE 13, 2002

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Establishes driving while fatigued as recklessness under vehicular homicide statute.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning vehicular homicide and amending N.J.S.2C:11-5.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. N.J.S.2C:11-5 is amended to read as follows:

7 2C:11-5. Death by auto or vessel.

8 a. Criminal homicide constitutes vehicular homicide when it is
9 caused by driving a vehicle or vessel recklessly.

10 For the purposes of this section, driving a vehicle or vessel while
11 knowingly fatigued shall constitute recklessness. "Fatigued" as used
12 in this section means having been without sleep for a period in excess
13 of 24 consecutive hours.

14 b. Except as provided in paragraph (3) of this subsection, vehicular
15 homicide is a crime of the second degree.

16 (1) If the defendant was operating the auto or vessel while under
17 the influence of any intoxicating liquor, narcotic, hallucinogenic or
18 habit-producing drug, or with a blood alcohol concentration at or
19 above the prohibited level as prescribed in R.S.39:4-50, or if the
20 defendant was operating the auto or vessel while his driver's license or
21 reciprocity privilege was suspended or revoked for any violation of
22 R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
23 Director of the Division of Motor Vehicles pursuant to P.L.1982, c.85
24 (C.39:5-30a et seq.), or by the court for a violation of R.S.39:4-96,
25 the defendant shall be sentenced to a term of imprisonment by the
26 court. The term of imprisonment shall include the imposition of a
27 minimum term. The minimum term shall be fixed at, or between,
28 one-third and one-half of the sentence imposed by the court or three
29 years, whichever is greater, during which the defendant shall be
30 ineligible for parole.

31 (2) The court shall not impose a mandatory sentence pursuant to
32 paragraph (1) of this subsection unless the grounds therefor have been
33 established at a hearing. At the hearing, which may occur at the time
34 of sentencing, the prosecutor shall establish by a preponderance of the
35 evidence that the defendant was operating the auto or vessel while
36 under the influence of any intoxicating liquor, narcotic, hallucinogenic
37 or habit-producing drug, or with a blood alcohol concentration at or
38 above the level prescribed in R.S.39:4-50 or that the defendant was
39 operating the auto or vessel while his driver's license or reciprocity
40 privilege was suspended or revoked for any violation of R.S.39:4-50,
41 section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the
42 Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et
43 seq.), or by the court for a violation of R.S.39:4-96. In making its

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 findings, the court shall take judicial notice of any evidence, testimony
2 or information adduced at the trial, plea hearing, or other court
3 proceedings and shall also consider the presentence report and any
4 other relevant information.

5 (3) Vehicular homicide is a crime of the first degree if the
6 defendant was operating the auto or vessel while in violation of
7 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while:

8 (a) on any school property used for school purposes which is
9 owned by or leased to any elementary or secondary school or school
10 board, or within 1,000 feet of such school property;

11 (b) driving through a school crossing as defined in R.S.39:1-1 if
12 the municipality, by ordinance or resolution, has designated the school
13 crossing as such; or

14 (c) driving through a school crossing as defined in R.S.39:1-1
15 knowing that juveniles are present if the municipality has not
16 designated the school crossing as such by ordinance or resolution.

17 A map or true copy of a map depicting the location and boundaries
18 of the area on or within 1,000 feet of any property used for school
19 purposes which is owned by or leased to any elementary or secondary
20 school or school board produced pursuant to section 1 of P.L.1997,
21 c.101 (C.2C:35-7) may be used in a prosecution under subparagraph
22 (a) of this paragraph.

23 It shall be no defense to a prosecution for a violation of
24 subparagraph (a) or (b) of this paragraph that the defendant was
25 unaware that the prohibited conduct took place while on or within
26 1,000 feet of any school property or while driving through a school
27 crossing. Nor shall it be a defense to a prosecution under
28 subparagraph (a) or (b) of this paragraph that no juveniles were
29 present on the school property or crossing zone at the time of the
30 offense or that the school was not in session.

31 (4) If the defendant was operating the auto or vessel in violation
32 of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the
33 defendant's license to operate a motor vehicle shall be suspended for
34 a period of between five years and life, which period shall commence
35 upon completion of any prison sentence imposed upon that person.

36 c. For good cause shown, the court may, in accepting a plea of
37 guilty under this section, order that such plea not be evidential in any
38 civil proceeding.

39 d. Nothing herein shall be deemed to preclude, if the evidence so
40 warrants, an indictment and conviction for aggravated manslaughter
41 under the provisions of subsection a. of N.J.S.2C:11-4.

42 As used in this section, "auto or vessel" means all means of
43 conveyance propelled otherwise than by muscular power.

44 e. Any person who violates paragraph (3) of subsection b. of this
45 section shall forfeit the auto or vessel used in the commission of the
46 offense, unless the defendant can establish at a hearing, which may

1 occur at the time of sentencing, by a preponderance of the evidence
2 that such forfeiture would constitute a serious hardship to the family
3 of the defendant that outweighs the need to deter such conduct by the
4 defendant and others. In making its findings, the court shall take
5 judicial notice of any evidence, testimony or information adduced at
6 the trial, plea hearing, or other court proceedings and shall also
7 consider the presentence report and any other relevant information.
8 Forfeiture pursuant to this subsection shall be in addition to, and not
9 in lieu of, civil forfeiture pursuant to chapter 64 of this title.
10 (cf: P.L.1999, c.185, s.1).

11

12 2. This act shall take effect immediately.

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STATEMENT

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17 This bill amends N.J.S.2C:11-5, the State's vehicular homicide
18 statute, to establish that driving a vehicle or vessel while knowingly
19 fatigued constitutes recklessness. A person commits vehicular
20 homicide when he causes the death of another by driving a vehicle or
21 vessel recklessly. Vehicular homicide may be a crime of the second or
22 first degree.

23 The bill defines "fatigued" as being without sleep for a period in
24 excess of 24 consecutive hours.

25 It is the sponsor's intent that this bill be known as "Maggie's Law."