

[First Reprint]

SENATE, No. 1644

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JUNE 13, 2002

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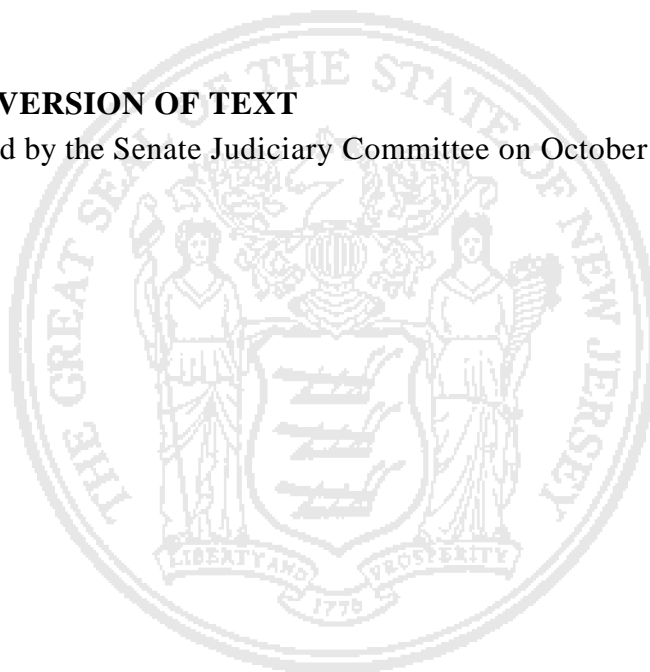
Senator Baer

SYNOPSIS

Establishes driving while fatigued as recklessness under vehicular homicide statute.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on October 28, 2002, with amendments.



(Sponsorship Updated As Of: 11/15/2002)

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:

5

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 ¹[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.] Proof that the defendant fell asleep while
14 driving or was driving after having been without sleep for a period in
15 excess of 24 consecutive hours, unless justified by salutary public
16 purpose, shall give rise to an inference that the defendant was driving
17 recklessly. Proof that the defendant was driving while intoxicated in
18 violation of R.S.39:4-50 or was operating a vessel under the influence
19 of alcohol or drugs in violation of section 3 of P.L.1952, c.157
20 (C.12:7-46) shall give rise to an inference that the defendant was
21 driving recklessly. Nothing in this section shall be construed to in any
22 way limit the conduct or conditions that may be found to constitute
23 driving a vehicle or vessel recklessly.¹

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted October 28, 2002.

1 (2) The court shall not impose a mandatory sentence pursuant to
2 paragraph (1) of this subsection unless the grounds therefor have been
3 established at a hearing. At the hearing, which may occur at the time
4 of sentencing, the prosecutor shall establish by a preponderance of the
5 evidence that the defendant was operating the auto or vessel while
6 under the influence of any intoxicating liquor, narcotic, hallucinogenic
7 or habit-producing drug, or with a blood alcohol concentration at or
8 above the level prescribed in R.S.39:4-50 or that the defendant was
9 operating the auto or vessel while his driver's license or reciprocity
10 privilege was suspended or revoked for any violation of R.S.39:4-50,
11 section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the
12 Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et
13 seq.), or by the court for a violation of R.S.39:4-96. In making its
14 findings, the court shall take judicial notice of any evidence, testimony
15 or information adduced at the trial, plea hearing, or other court
16 proceedings and shall also consider the presentence report and any
17 other relevant information.

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

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

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

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

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

36 It shall be no defense to a prosecution for a violation of
37 subparagraph (a) or (b) of this paragraph that the defendant was
38 unaware that the prohibited conduct took place while on or within
39 1,000 feet of any school property or while driving through a school
40 crossing. Nor shall it be a defense to a prosecution under
41 subparagraph (a) or (b) of this paragraph that no juveniles were
42 present on the school property or crossing zone at the time of the
43 offense or that the school was not in session.

44 (4) If the defendant was operating the auto or vessel in violation
45 of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the
46 defendant's license to operate a motor vehicle shall be suspended for

1 a period of between five years and life, which period shall commence
2 upon completion of any prison sentence imposed upon that person.

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

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

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

11 e. Any person who violates paragraph (3) of subsection b. of this
12 section shall forfeit the auto or vessel used in the commission of the
13 offense, unless the defendant can establish at a hearing, which may
14 occur at the time of sentencing, by a preponderance of the evidence
15 that such forfeiture would constitute a serious hardship to the family
16 of the defendant that outweighs the need to deter such conduct by the
17 defendant and others. In making its findings, the court shall take
18 judicial notice of any evidence, testimony or information adduced at
19 the trial, plea hearing, or other court proceedings and shall also
20 consider the presentence report and any other relevant information.
21 Forfeiture pursuant to this subsection shall be in addition to, and not
22 in lieu of, civil forfeiture pursuant to chapter 64 of this title.

23 (cf: P.L.1999, c.185, s.1)

24

25 2. This act shall take effect immediately.