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SENATE, No. 1644

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JUNE 13, 2002

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SYNOPSIS

Establishes driving while fatigued as recklessness under vehicular homicide statute.

CURRENT VERSION OF TEXT

As amended by the Senate on November 14, 2002.

(Sponsorship Updated As Of: 6/24/2003)

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 hours² [., unless justified by salutary public
16 purpose, shall] may² give rise to an inference that the defendant was
17 driving recklessly. Proof that the defendant was driving while
18 intoxicated in violation of R.S.39:4-50 or was operating a vessel
19 under the influence of alcohol or drugs in violation of section 3 of
20 P.L.1952, c.157 (C.12:7-46) shall give rise to an inference that the
21 defendant was driving recklessly. Nothing in this section shall be
22 construed to in any way limit the conduct or conditions that may be
23 found to constitute 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.

41 (2) The court shall not impose a mandatory sentence pursuant to

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.

² Senate floor amendments adopted November 14, 2002.

1 paragraph (1) of this subsection unless the grounds therefor have been
2 established at a hearing. At the hearing, which may occur at the time
3 of sentencing, the prosecutor shall establish by a preponderance of the
4 evidence that the defendant was operating the auto or vessel while
5 under the influence of any intoxicating liquor, narcotic, hallucinogenic
6 or habit-producing drug, or with a blood alcohol concentration at or
7 above the level prescribed in R.S.39:4-50 or that the defendant was
8 operating the auto or vessel while his driver's license or reciprocity
9 privilege was suspended or revoked for any violation of R.S.39:4-50,
10 section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the
11 Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et
12 seq.), or by the court for a violation of R.S.39:4-96. In making its
13 findings, the court shall take judicial notice of any evidence, testimony
14 or information adduced at the trial, plea hearing, or other court
15 proceedings and shall also consider the presentence report and any
16 other relevant information.

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

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

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

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

29 A map or true copy of a map depicting the location and boundaries
30 of the area on or within 1,000 feet of any property used for school
31 purposes which is owned by or leased to any elementary or secondary
32 school or school board produced pursuant to section 1 of P.L.1987,
33 c.101 (C.2C:35-7) may be used in a prosecution under subparagraph
34 (a) of this paragraph.

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

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

1 upon completion of any prison sentence imposed upon that person.

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

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

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

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

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

23

24 2. This act shall take effect immediately.