

# ASSEMBLY, No. 2716

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

**Sponsored by:**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Co-Sponsored by:**

**Assemblywoman Speight and Assemblyman Scharfenberger**

**SYNOPSIS**

“Marissa’s Law”; provides for mandatory minimum term of imprisonment for leaving scene of accident resulting in death or serious bodily injury, except if operator reports accident; increases mandatory minimum term for reckless vehicular homicide.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/12/2021)**

1 AN ACT concerning certain crimes by motor vehicle or vessel  
2 operators, designated as “Marissa’s Law,” and amending various  
3 sections of the statutory law.

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

7  
8 1. N.J.S.2C:11-5 is amended to read as follows:

9 2C:11-5. Death by auto or vessel.

10 a. Criminal homicide constitutes reckless vehicular homicide  
11 when it is caused by driving a vehicle or vessel recklessly.

12 Proof that the defendant fell asleep while driving or was driving  
13 after having been without sleep for a period in excess of 24  
14 consecutive hours may give rise to an inference that the defendant  
15 was driving recklessly. Proof that the defendant was driving while  
16 intoxicated in violation of R.S.39:4-50 or was operating a vessel  
17 under the influence of alcohol or drugs in violation of section 3 of  
18 P.L.1952, c.157 (C.12:7-46) shall give rise to an inference that the  
19 defendant was driving recklessly. Proof that the defendant was  
20 operating a hand-held wireless telephone while driving a motor  
21 vehicle in violation of section 1 of P.L.2003, c.310 (C.39:4-97.3)  
22 may give rise to an inference that the defendant was driving  
23 recklessly. Proof that the defendant failed to maintain a lane in  
24 violation of R.S.39:4-88 may give rise to an inference that the  
25 defendant was driving recklessly. Nothing in this section shall be  
26 construed to in any way limit the conduct or conditions that may be  
27 found to constitute driving a vehicle or vessel recklessly.

28 b. Except as provided in paragraphs (3) and (5) of this  
29 subsection, reckless vehicular homicide is a crime of the second  
30 degree.

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

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

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

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

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

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

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

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

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

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

3 (5) Reckless Vehicular homicide is a crime of the third degree if  
4 the defendant proves by a preponderance of the evidence that the  
5 defendant did not commit any conduct constituting driving a vehicle  
6 or vessel recklessly other than failing to maintain a lane in violation  
7 of R.S.39:4-88.

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

11 d. Nothing herein shall be deemed to preclude, if the evidence  
12 so warrants, an indictment and conviction for aggravated  
13 manslaughter under the provisions of subsection a. of N.J.S.2C:11-  
14 4.

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

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

30 (cf: P.L.2017, c.372, s.1)

31

32 2. Section 1 of P.L.1997, c.111 (C.2C:11-5.1) is amended to  
33 read as follows:

34 1. A motor vehicle operator who knows he is involved in an  
35 accident and knowingly leaves the scene of that accident under  
36 circumstances that violate the provisions of R.S.39:4-129 shall be  
37 guilty of a crime of the second degree if the accident results in the  
38 death of another person. A person convicted under this section for  
39 a crime of the second degree shall be sentenced to a minimum term  
40 of imprisonment by the court. Notwithstanding the provisions of  
41 N.J.S.2C:43-6, the minimum term shall be fixed at, or between,  
42 one-third and one-half of the sentence imposed by the court or five  
43 years, whichever is greater, during which the defendant shall be  
44 ineligible for parole.

45 If the motor vehicle operator reports the accident to the nearest  
46 police department or to the State Police within 24 hours of the  
47 accident or prior to the authorities identifying him as the operator

1 involved in the accident, the operator shall be sentenced to an  
2 ordinary term of imprisonment between five to 10 years.

3 If the evidence so warrants, nothing in this section shall be  
4 deemed to preclude an indictment and conviction for aggravated  
5 manslaughter under the provisions of N.J.S.2C:11-4, reckless  
6 vehicular homicide under the provisions of N.J.S.2C:11-5 or strict  
7 liability vehicular homicide under the provisions of section 1 of  
8 P.L.2017, c.165 (C.2C:11-5.3).

9 Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
10 provisions of law, a conviction arising under this section shall not  
11 merge with a conviction for aggravated manslaughter under the  
12 provisions of N.J.S.2C:11-4, reckless vehicular homicide under the  
13 provisions of N.J.S.2C:11-5 or strict liability vehicular homicide  
14 under the provisions of section 1 of P.L.2017, c.165 (C.2C:11-5.3)  
15 and a separate sentence shall be imposed upon each such  
16 conviction.

17 Notwithstanding the provisions of N.J.S.2C:44-5 or any other  
18 provisions of law, when the court imposes multiple sentences of  
19 imprisonment for more than one offense, those sentences shall run  
20 consecutively.

21 For the purposes of this section, neither knowledge of the death  
22 nor knowledge of the violation are elements of the offense and it  
23 shall not be a defense that the operator of the motor vehicle was  
24 unaware of the death or of the provisions of R.S.39:4-129.

25 (cf: P.L.2017, c.165, s.4)

26  
27 3. Section 1 of P.L.2014, c.17 (C.2C:11-5.2) is amended to  
28 read as follows:

29 1. a. (1) Whenever any vessel, as defined in section 2 of  
30 P.L.1995, c.401 (C.12:7-71), is involved in an accident upon the  
31 waters of this State, and the operator of that vessel knows he is  
32 involved in an accident and knowingly leaves the scene of that  
33 accident under circumstances that violate the provisions of section  
34 11 of P.L.1962, c.73 (C.12:7-34.46), that operator shall be guilty of  
35 a crime of the second degree if the accident results in the death of  
36 another person], and shall be guilty of]. A person convicted under  
37 this section for a crime of the second degree shall be sentenced to a  
38 minimum term of imprisonment by the court. Notwithstanding the  
39 provisions of N.J.S.2C:43-6, the minimum term shall be fixed at, or  
40 between, one-third and one-half of the sentence imposed by the  
41 court or five years, whichever is greater, during which the  
42 defendant shall be ineligible for parole. If the operator reports the  
43 accident to the nearest police department or to the State Police  
44 within 24 hours of the accident or prior to the authorities identifying  
45 him as the operator involved in the accident, the operator shall be  
46 sentenced to an ordinary term of imprisonment between five and 10  
47 years.

1       (2) A violation of this section is a crime of the third degree if  
2 the accident results in serious bodily injury to another person. The  
3 presumption of nonimprisonment set forth in N.J.S.2C:44-1 shall  
4 not apply to persons convicted under the provisions of this section.  
5 A person convicted under this section for a crime of the third degree  
6 shall be sentenced to a minimum term of imprisonment by the court.  
7 Notwithstanding the provisions of N.J.S.2C:43-6, the minimum  
8 term shall be three years, during which time the defendant shall not  
9 be eligible for parole. The court may not suspend or make any other  
10 non-custodial disposition of any person sentenced pursuant to this  
11 section. If the operator reports the accident to the nearest police  
12 department or to the State Police within 24 hours of the accident or  
13 prior to the authorities identifying him as the operator involved in  
14 the accident, the operator shall be sentenced to an ordinary term of  
15 imprisonment between three and five years.

16       b. If the evidence so warrants, nothing in this section shall be  
17 deemed to preclude an indictment and conviction for aggravated  
18 manslaughter under the provisions of N.J.S.2C:11-4, reckless  
19 vehicular homicide under the provisions of N.J.S.2C:11-5 or strict  
20 liability vehicular homicide under the provisions of section 1 of  
21 P.L.2017, c.165 (C.2C:11-5.3).

22       c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
23 provisions of law, a conviction arising under this section shall not  
24 merge with a conviction for aggravated manslaughter under the  
25 provisions of N.J.S.2C:11-4, reckless vehicular homicide under the  
26 provisions of N.J.S.2C:11-5 or strict liability vehicular homicide  
27 under the provisions of section 1 of P.L.2017, c.165 (C.2C:11-5.3)  
28 and a separate sentence shall be imposed upon each such  
29 conviction.

30       d. Notwithstanding the provisions of N.J.S.2C:44-5 or any  
31 other provisions of law, when the court imposes multiple sentences  
32 of imprisonment for more than one offense, those sentences shall  
33 run consecutively.

34       e. For the purposes of this section, knowledge of the death,  
35 knowledge of the serious bodily injury, or knowledge of the  
36 violation shall not be elements of the offense and it shall not be a  
37 defense that the operator of the vessel was unaware of the death or  
38 of the provisions of section 11 of P.L.1962, c.73 (C.12:7-34.46).  
39 (cf: P.L.2017, c.165, s.5)

40

41       4. Section 2 of P.L.1997, c.111 (C.2C:12-1.1) is amended to  
42 read as follows:

43       2. A motor vehicle operator who knows he is involved in an  
44 accident and knowingly leaves the scene of that accident under  
45 circumstances that violate the provisions of R.S.39:4-129 shall be  
46 guilty of a crime of the third degree if the accident results in serious  
47 bodily injury to another person. The presumption of

1 nonimprisonment set forth in N.J.S.2C:44-1 shall not apply to  
2 persons convicted under the provisions of this section.

3 A person convicted under this section for a crime of the third  
4 degree shall be sentenced to a minimum term of imprisonment by  
5 the court. Notwithstanding the provisions of N.J.S.2C:43-6, the  
6 minimum term shall be three years, during which time the  
7 defendant shall not be eligible for parole. The court may not  
8 suspend or make any other non-custodial disposition of any person  
9 sentenced pursuant to this section. If the operator reports the  
10 accident to the nearest police department or to the State Police  
11 within 24 hours of the accident or prior to the authorities identifying  
12 him as the operator involved in the accident, the operator shall be  
13 sentenced to an ordinary term of imprisonment between three to  
14 five years.

15 If the evidence so warrants, nothing in this section shall be  
16 deemed to preclude an indictment and conviction for aggravated  
17 assault or assault by auto under the provisions of N.J.S.2C:12-1.

18 Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
19 provisions of law, a conviction arising under this section shall not  
20 merge with a conviction for aggravated assault or assault by auto  
21 under the provisions of N.J.S.2C:12-1 and a separate sentence shall  
22 be imposed upon each conviction.

23 Notwithstanding the provisions of N.J.S.2C:44-5 or any other  
24 provisions of law, whenever in the case of such multiple  
25 convictions the court imposes multiple sentences of imprisonment  
26 for more than one offense, those sentences shall run consecutively.

27 For the purposes of this section, neither knowledge of the serious  
28 bodily injury nor knowledge of the violation are elements of the  
29 offense and it shall not be a defense that the driver of the motor  
30 vehicle was unaware of the serious bodily injury or provisions of  
31 R.S.39:4-129.

32 (cf: P.L.2007, c.83, s.2)

33  
34 5. This act shall take effect immediately.  
35  
36

### 37 STATEMENT

38  
39 This bill would provide for mandatory terms of imprisonment for  
40 the crimes of knowingly leaving the scene of an accident resulting  
41 in death or serious bodily injury and for reckless vehicular homicide  
42 (death by auto or vessel). The mandatory term of imprisonment  
43 would not apply if the operator reports the accident to the police  
44 within 24 hours, and the operator would be sentenced to an ordinary  
45 term of imprisonment.

#### 46 MOTOR VEHICLE ACCIDENT RESULTING IN DEATH.

47 Currently, a person is guilty of a crime of the second degree if  
48 he knowingly leaves the scene of a motor vehicle accident resulting

1 in the death of another person pursuant to section 1 of P.L.1997,  
2 c.111 (2C:11-5.1). A crime of the second degree is punishable by a  
3 term of imprisonment of five to ten years, a fine of up to \$150,000,  
4 or both.

5 This bill would amend this section to impose a mandatory  
6 minimum term of imprisonment for this second degree crime fixed  
7 at, or between, one-third and one-half of the sentence imposed by  
8 the court or five years, whichever is greater, during which the  
9 defendant would not be eligible for parole. However, the mandatory  
10 term of imprisonment would not apply if the motor vehicle operator  
11 who left the scene of the accident, reports the accident to the nearest  
12 police department or to the State Police within 24 hours of the  
13 accident or prior to the authorities identifying him as the operator  
14 involved in the accident. In that case, the operator would be  
15 sentenced to an ordinary term of imprisonment for a crime of the  
16 second degree, which is between five and 10 years.

17 BOATING ACCIDENT RESULTING IN DEATH OR SERIOUS BODILY  
18 INJURY.

19 Under the current provisions of section 1 of P.L.2014, c.17  
20 (C.2C:11-5.2), it is a crime of the second degree whenever a vessel  
21 is involved in an accident and the operator leaves the scene of the  
22 boating accident resulting in the death of another person. It is a  
23 crime of the third degree if the accident results in serious bodily  
24 injury to another person.

25 This bill would impose a mandatory minimum term of  
26 imprisonment for the second and third degree crimes of knowingly  
27 leaving the scene of a boating accident. The minimum term of  
28 imprisonment for a crime of the second degree would be fixed at, or  
29 between, one-third and one-half of the sentence imposed by the  
30 court or five years, whichever is greater, during which the  
31 defendant would not be eligible for parole. If the operator reports  
32 the accident to the nearest police department or to the State Police  
33 within 24 hours of the accident or prior to the authorities identifying  
34 him as the operator involved in the accident, the mandatory term of  
35 imprisonment would not apply. The operator would be sentenced to  
36 an ordinary term of imprisonment for a crime of the second degree,  
37 which is between five and 10 years.

38 In addition, this bill would impose a mandatory term of  
39 imprisonment for a crime of the third degree if the accident results  
40 in serious bodily injury. The minimum term of imprisonment for  
41 this third degree crime would be fixed at three years, during which  
42 the defendant would not be eligible for parole. If the operator  
43 reports the accident to the nearest police department or to the State  
44 Police within 24 hours of the accident or prior to the authorities  
45 identifying him as the operator involved in the accident, the  
46 mandatory term of imprisonment would not apply and the operator  
47 would be sentenced to an ordinary term of imprisonment for a crime  
48 of the third degree, which is between three to five years.

1       MOTOR VEHICLE ACCIDENT RESULTING IN SERIOUS BODILY  
2 INJURY. Currently, under the provisions of section 2 of P.L.1997,  
3 c.111 (C.2C:12-1.1) it is a crime of the third degree if an operator  
4 leaves the scene of an accident which results in serious bodily  
5 injury to another person. This bill would impose a mandatory  
6 minimum term of imprisonment of three years, during which the  
7 defendant would not be eligible for parole. If the operator reports  
8 the accident to the nearest police department or to the State Police  
9 within 24 hours of the accident or prior to the authorities identifying  
10 him as the operator involved in the accident, the operator would  
11 sentenced to an ordinary term of imprisonment for a crime of the  
12 third degree, which is between three to five years.

13       DEATH BY AUTO (RECKLESS VEHICULAR HOMICIDE). The bill  
14 would amend N.J.S.2C:11-5 to increase the mandatory term of  
15 imprisonment for death by auto or vessel (reckless vehicular  
16 homicide) from three years to five years, if the defendant was  
17 operating the auto or vessel while under the influence of any  
18 intoxicating liquor or drugs or if the driver was operating the auto  
19 or vessel while his driver's license was suspended or revoked.  
20 Under current law the minimum term is one-third to one-half of the  
21 sentence imposed or three years, whichever is greater.

22       This bill, named "Marissa's Law," is in response to the tragic  
23 death of Marissa Procopio from Atlantic Highlands who was fatally  
24 struck by a car on July 7, 2015. The driver of the car fled the scene  
25 of the crime but was later apprehended, charged and was sentenced  
26 after entering a plea agreement. This bill imposes a mandatory term  
27 of imprisonment for leaving the scene of an accident resulting in  
28 death or serious bodily injury. The mandatory term of  
29 imprisonment would not be available in those cases where the  
30 operator reports the accident to the nearest police department or to  
31 the State Police within 24 hours of the accident.