SENATE, No. 713

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

Establishes that failure to maintain lane may constitute recklessness under vehicular homicide statute; designated as Eileen's Law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning vehicular homicide, designated as Eileen's Law, and amending N.J.S.2C:11-5.

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

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

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

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

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

b. Except as provided in paragraph (3) and (5) of this subsection, vehicular homicide is a crime of the second degree.

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

(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.

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

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

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

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

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

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

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

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

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

(5) Vehicular homicide is a crime of the third degree if the defendant failed to maintain a lane in violation of R.S.39:4-88.

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

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

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

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

(cf: P.L.2012, c.22, s.1)

2. This act shall take effect immediately.

STATEMENT

This bill assists prosecutors in establishing the element of recklessness required for obtaining a vehicular homicide conviction against a person who failed to maintain a lane.

Under current law, a person is guilty of vehicular homicide when it is proven that he or she drove a motor vehicle recklessly. Under the State's criminal code, a person acts recklessly when he or she consciously disregards a substantial and unjustifiable risk. This bill specifically provides that failure to maintain a lane may give rise to an inference that the defendant was driving recklessly.

Under the bill, a person who commits vehicular homicide by failing to maintain a lane is guilty of a third degree crime. Third degree crimes are punishable by imprisonment of three to five years, a fine of up to $15,000, or both.

The bill is designated as Eileen's Law in memory of Eileen Marmino who died from head trauma suffered when she was hit by a motorist who veered into the bike lane in which she was riding.