

SENATE, No. 3050

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 22, 2020

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

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.



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.

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

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

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

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

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

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

2. A motor vehicle operator who knows he is involved in an accident and knowingly leaves the scene of that accident under circumstances that violate the provisions of R.S.39:4-129 shall be guilty of a crime of the third degree if the accident results in serious 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.