

2C:11-5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C: 11-5

(Death by auto--  
sentence--clarify)

**LAWS OF:** 1989

**CHAPTER:** 211

**Bill No:** S422

**Sponsor(s):** Lynch

**Date Introduced:** Pre-filed

**Committee: Assembly:** Law, Public Safety & Corrections

**Senate:** Judiciary

**Amended during passage:** Yes      Amendments during passage  
denoted by asterisks.

**Date of Passage: Assembly:** December 14, 1989

**Senate:** June 30, 1988

**Date of Approval:** December 29, 1989

**Following statements are attached if available:**

**Sponsor statement:** Yes

**Committee Statement: Assembly:** Yes

**Senate:** Yes

**Fiscal Note:** No

**Veto Message:** No

**Message on signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** No

[FIRST REPRINT]

SENATE, No. 422

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator LYNCH

1 AN ACT concerning death by auto and amending N.J.S.2C:11-5.

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

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

6 2C:11-5. Death by auto. a. Criminal homicide constitutes  
7 death by auto when it is caused by driving a vehicle recklessly.

8 b. Death by auto is a crime of the third degree and,  
9 notwithstanding the provisions of 2C:43-2, the court may not  
10 suspend the imposition of sentence on any defendant convicted  
11 under this section, who was operating the vehicle under the  
12 influence of an intoxicating liquor, narcotic, hallucinogenic or  
13 habit-producing drug or with a blood alcohol concentration of  
14 0.10% or more by weight of alcohol in his blood, and any  
15 sentence imposed under this section shall include either a fixed  
16 minimum term of 270 days imprisonment, during which the  
17 defendant shall be ineligible for parole, or a requirement that  
18 the defendant perform a community related service for a  
19 minimum of 270 days.

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

23 1d. Nothing herein shall be deemed to preclude, if the  
24 evidence so warrants, an indictment and conviction for  
25 manslaughter under the provisions of N.J.S.2C:11-4. If an  
26 indictment for manslaughter is brought in a case involving the  
27 operation of a motor vehicle, death by auto shall be considered a  
28 lesser-included offense.<sup>1</sup>

29 (cf: P.L.1988, c.75)

2. This act shall take effect immediately.

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:  
<sup>1</sup> Assembly ALP committee amendments adopted December 12, 1988.

1

CRIMINAL JUSTICE

Criminal Sentences and Bail

3

Clarifies the sentence for death by auto in certain  
5 circumstances.

SENATE, No. 422

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STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator LYNCH

1 AN ACT concerning death by auto and amending N.J.S. 2C:11-5.

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

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

7 2C:11-5. Death by auto. a. Criminal homicide constitutes  
death by auto when it is caused by driving a vehicle recklessly.

9 b. Death by auto is a crime of the third degree and,  
notwithstanding the provisions of 2C:43-2, the court may not  
suspend the imposition of sentence on any defendant convicted  
11 under this section, who was operating the vehicle under the  
influence of an intoxicating liquor, narcotic, hallucinogenic or  
13 habit-producing drug or with a blood alcohol concentration of  
0.10% or more by weight of alcohol in his blood, and any  
15 sentence imposed under this section shall include either a fixed  
minimum term of 270 days imprisonment, during which the  
17 defendant shall be ineligible for parole, or a requirement that  
the defendant perform a community related service for a  
19 minimum of 270 days.

21 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.

23 2. This act shall take effect immediately.

25

STATEMENT

27

29 Under the provisions of N.J.S.A. 2C:11-5, a person who is  
convicted of death by auto must serve 270 days in prison or  
perform 270 days of community service if the person was  
31 operating the vehicle while under the influence of an

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 intoxicating liquor or drug. This bill would clarify that this  
2 enhanced penalty for death by auto would also be applicable  
3 when the defendant was operating the vehicle with a blood  
4 alcohol concentration of 0.10% or more. Enactment of this bill  
5 would conform the language of the death by auto statute with  
6 the language of New Jersey's "drunk driving" statute (N.J.S.A.  
7 39:4-50).

9

### CRIMINAL JUSTICE

11

#### Criminal Sentences and Bail

13 Clarifies the sentence for death by auto in certain  
circumstances.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 422

STATE OF NEW JERSEY

DATED: FEBRUARY 29, 1988

The Senate Judiciary Committee reports favorably Senate Bill No. 422.

Under N.J.S. 2C:11-5, a person convicted of death by auto must serve 270 days in prison or perform 270 days of community service if the person was operating the vehicle while under the influence of an intoxicating liquor or drug. This bill would clarify that this mandatory penalty would also be imposable if the person was operating the vehicle with a blood alcohol concentration of 0.10% or more. This is the same standard set forth for "drunk driving" under R.S. 39:4-50.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

ASSEMBLY LAW, PUBLIC SAFETY AND CORRECTIONS  
COMMITTEE

STATEMENT TO

**SENATE, No. 422**

With Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 1, 1988

The Assembly Law, Public Safety and Corrections Committee favorably reports Senate Bill No. 422 with Committee amendments.

Senate Bill 422 amends N.J.S.2C:11-5 to include the statutory standard for "driving under the influence" among the grounds for which the court must impose a mandatory sentence upon a person who is convicted of death by auto.

Under current law, a person convicted of death by auto must serve 270 days in prison or perform 270 days of community service if he was operating the vehicle while under the influence of an intoxicating liquor or drug.

The statutory standard for a person being deemed "under the influence of intoxicating liquor" is set forth in R.S.39:4-50 as having "a blood alcohol concentration of 0.10% or more by weight of alcohol" in his blood.

It is the Committee's understanding that the inclusion of this standard will assist in the prosecution of such death by auto cases, since the prosecutor will be able to cite the chemical analysis of the defendant's blood, urine, breath or other bodily substances conducted at the time of the crime. Presently, a greater burden of proof is imposed upon the prosecution because the prosecutor must, by other competent evidence, prove that the defendant was under the influence of intoxicating liquor.

The Committee amendment is purely technical in nature. It was adopted to bring the provisions of the bill into conformance with P.L.1988, c.75.