

2C:11-5 & 2C:12-1
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2012 **CHAPTER:** 22

NJSA: 2C:11-5 & 2C:12-1 ("Kulesh and Kubert's, and Bolis Law;" establishes violation of hands-free cell phone law as reckless under vehicular homicide and assault by auto statutes)

BILL NO: A1074/2199 (Substituted for S1616)

SPONSOR(S) Quijano and others

DATE INTRODUCED: January 10, 2012

COMMITTEE: **ASSEMBLY:** Law and Public Safety
Appropriations

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 21, 2012

SENATE: June 28, 2012

DATE OF APPROVAL: July 18, 2012

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Assembly Committee Substitute enacted)

A1074/SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill) Yes

A2199/SPONSOR'S STATEMENT: (Begins on page 11 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Law and Public Appropriations

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S1616

SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"New Law Cracks Down On Reckless Drivers Using Cell Phones," NewJersey101.5, 7-19-12

"Law toughens penalties for fatal distracted driving," The Record, 7-19-12

"New law takes aim at distracted drivers," Asbury Park Press, 7-19-12

"Law ups penalties for phone use in crashes," The Star-Ledger, 7-19-12

"Tougher driver cellphone rules signed into law," Courier-Post, 7-19-12

"Family of Toni Donato-Bolis relieved to see 'Kulesh, Kubert and Bolis' bill against distract driving signed into law," Gloucester County Times, 7-19-12

"N.J. distracted driving legislation, partly name for Washington Twp. woman, unborn child, killed in crash, passes statehouse," Gloucester County Times, 7-19-12

"Tougher driver cellphone rules signed into law," The Press of Atlantic City, 7-19-12

"N.J. law revised: Text and drive, get charged with vehicular homicide," NewJerseyNewsroom.com, 7-19-12

LAW/RWH

P.L.2012, CHAPTER 22, *approved July 18, 2012*
Assembly Committee Substitute for
Assembly, Nos. 1074 and 2199

1 AN ACT concerning the use of wireless telephones in motor
2 vehicles, designated as Kulesh's, Kuberts', and Bolis' Law, and
3 amending N.J.S.2C:11-5 and N.J.S.2C:12-1.
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 vehicular homicide when it is
11 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. Nothing in this section shall be construed to in any way
24 limit the conduct or conditions that may be found to constitute
25 driving a vehicle or vessel recklessly.

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

28 (1) If the defendant was operating the auto or vessel while under
29 the influence of any intoxicating liquor, narcotic, hallucinogenic or
30 habit-producing drug, or with a blood alcohol concentration at or
31 above the prohibited level as prescribed in R.S.39:4-50, or if the
32 defendant was operating the auto or vessel while his driver's license
33 or reciprocity privilege was suspended or revoked for any violation
34 of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
35 Director of the Division of Motor Vehicles pursuant to P.L.1982,
36 c.85 (C.39:5-30a et seq.), or by the court for a violation of
37 R.S.39:4-96, the defendant shall be sentenced to a term of
38 imprisonment by the court. The term of imprisonment shall include
39 the imposition of a minimum term. The minimum term shall be
40 fixed at, or between, one-third and one-half of the sentence imposed

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 by the court or three years, whichever is greater, during which the
2 defendant shall be ineligible for parole.

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

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

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

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

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

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

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

47 (4) If the defendant was operating the auto or vessel in violation
48 of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the

1 defendant's license to operate a motor vehicle shall be suspended
2 for a period of between five years and life, which period shall
3 commence upon completion of any prison sentence imposed upon
4 that person.

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

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

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

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

26 (cf: P.L.2003, c.143, s.1)

27

28 2. N.J.S.2C:12-1 is amended to read as follows:

29 2C:12-1. Assault. a. Simple assault. A person is guilty of
30 assault if he:

31 2C:12-1. Assault. a. Simple assault. A person is guilty of
32 assault if he:

33 (1) Attempts to cause or purposely, knowingly or recklessly
34 causes bodily injury to another; or

35 (2) Negligently causes bodily injury to another with a deadly
36 weapon; or

37 (3) Attempts by physical menace to put another in fear of
38 imminent serious bodily injury.

39 Simple assault is a disorderly persons offense unless committed
40 in a fight or scuffle entered into by mutual consent, in which case it
41 is a petty disorderly persons offense.

42 b. Aggravated assault. A person is guilty of aggravated assault
43 if he:

44 (1) Attempts to cause serious bodily injury to another, or causes
45 such injury purposely or knowingly or under circumstances
46 manifesting extreme indifference to the value of human life
47 recklessly causes such injury; or

- 1 (2) Attempts to cause or purposely or knowingly causes bodily
2 injury to another with a deadly weapon; or
- 3 (3) Recklessly causes bodily injury to another with a deadly
4 weapon; or
- 5 (4) Knowingly under circumstances manifesting extreme
6 indifference to the value of human life points a firearm, as defined
7 in section 2C:39-1f., at or in the direction of another, whether or not
8 the actor believes it to be loaded; or
- 9 (5) Commits a simple assault as defined in subsection a. (1), (2)
10 or (3) of this section upon:
- 11 (a) Any law enforcement officer acting in the performance of
12 his duties while in uniform or exhibiting evidence of his authority
13 or because of his status as a law enforcement officer; or
- 14 (b) Any paid or volunteer fireman acting in the performance of
15 his duties while in uniform or otherwise clearly identifiable as being
16 engaged in the performance of the duties of a fireman; or
- 17 (c) Any person engaged in emergency first-aid or medical
18 services acting in the performance of his duties while in uniform or
19 otherwise clearly identifiable as being engaged in the performance
20 of emergency first-aid or medical services; or
- 21 (d) Any school board member, school administrator, teacher,
22 school bus driver or other employee of a public or nonpublic school
23 or school board while clearly identifiable as being engaged in the
24 performance of his duties or because of his status as a member or
25 employee of a public or nonpublic school or school board or any
26 school bus driver employed by an operator under contract to a
27 public or nonpublic school or school board while clearly
28 identifiable as being engaged in the performance of his duties or
29 because of his status as a school bus driver; or
- 30 (e) Any employee of the Division of Youth and Family Services
31 while clearly identifiable as being engaged in the performance of
32 his duties or because of his status as an employee of the division; or
- 33 (f) Any justice of the Supreme Court, judge of the Superior
34 Court, judge of the Tax Court or municipal judge while clearly
35 identifiable as being engaged in the performance of judicial duties
36 or because of his status as a member of the judiciary; or
- 37 (g) Any operator of a motorbus or the operator's supervisor or
38 any employee of a rail passenger service while clearly identifiable
39 as being engaged in the performance of his duties or because of his
40 status as an operator of a motorbus or as the operator's supervisor or
41 as an employee of a rail passenger service; or
- 42 (h) Any Department of Corrections employee, county
43 corrections officer, juvenile corrections officer, State juvenile
44 facility employee, juvenile detention staff member, juvenile
45 detention officer, probation officer or any sheriff, undersheriff, or
46 sheriff's officer acting in the performance of his duties while in
47 uniform or exhibiting evidence of his authority; or

- 1 (i) Any employee, including any person employed under
2 contract, of a utility company as defined in section 2 of P.L.1971,
3 c.224 (C.2A:42-86) or a cable television company subject to the
4 provisions of the "Cable Television Act," P.L.1972, c.186
5 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in
6 the performance of his duties in regard to connecting, disconnecting
7 or repairing or attempting to connect, disconnect or repair any gas,
8 electric or water utility, or cable television or telecommunication
9 service; or
- 10 (j) Any health care worker employed by a licensed health care
11 facility to provide direct patient care, any health care professional
12 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
13 the Revised Statutes to practice a health care profession, except a
14 direct care worker at a State or county psychiatric hospital or State
15 developmental center or veterans' memorial home, while clearly
16 identifiable as being engaged in the duties of providing direct
17 patient care or practicing the health care profession; or
- 18 (k) Any direct care worker at a State or county psychiatric
19 hospital or State developmental center or veterans' memorial home,
20 while clearly identifiable as being engaged in the duties of
21 providing direct patient care or practicing the health care
22 profession, provided that the actor is not a patient or resident at the
23 facility who is classified by the facility as having a mental illness or
24 developmental disability; or
- 25 (6) Causes bodily injury to another person while fleeing or
26 attempting to elude a law enforcement officer in violation of
27 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
28 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
29 other provision of law to the contrary, a person shall be strictly
30 liable for a violation of this subsection upon proof of a violation of
31 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
32 violation of subsection c. of N.J.S.2C:20-10 which resulted in
33 bodily injury to another person; or
- 34 (7) Attempts to cause significant bodily injury to another or
35 causes significant bodily injury purposely or knowingly or, under
36 circumstances manifesting extreme indifference to the value of
37 human life recklessly causes such significant bodily injury; or
- 38 (8) Causes bodily injury by knowingly or purposely starting a
39 fire or causing an explosion in violation of N.J.S.2C:17-1 which
40 results in bodily injury to any emergency services personnel
41 involved in fire suppression activities, rendering emergency
42 medical services resulting from the fire or explosion or rescue
43 operations, or rendering any necessary assistance at the scene of the
44 fire or explosion, including any bodily injury sustained while
45 responding to the scene of a reported fire or explosion. For
46 purposes of this subsection, "emergency services personnel" shall
47 include, but not be limited to, any paid or volunteer fireman, any
48 person engaged in emergency first-aid or medical services and any

1 law enforcement officer. Notwithstanding any other provision of
2 law to the contrary, a person shall be strictly liable for a violation of
3 this paragraph upon proof of a violation of N.J.S.2C:17-1 which
4 resulted in bodily injury to any emergency services personnel; or

5 (9) Knowingly, under circumstances manifesting extreme
6 indifference to the value of human life, points or displays a firearm,
7 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of
8 a law enforcement officer; or

9 (10) Knowingly points, displays or uses an imitation firearm, as
10 defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a
11 law enforcement officer with the purpose to intimidate, threaten or
12 attempt to put the officer in fear of bodily injury or for any unlawful
13 purpose; or

14 (11) Uses or activates a laser sighting system or device, or a
15 system or device which, in the manner used, would cause a
16 reasonable person to believe that it is a laser sighting system or
17 device, against a law enforcement officer acting in the performance
18 of his duties while in uniform or exhibiting evidence of his
19 authority. As used in this paragraph, "laser sighting system or
20 device" means any system or device that is integrated with or
21 affixed to a firearm and emits a laser light beam that is used to
22 assist in the sight alignment or aiming of the firearm.

23 Aggravated assault under subsections b. (1) and b. (6) is a crime
24 of the second degree; under subsections b. (2), b. (7), b. (9) and b.
25 (10) is a crime of the third degree; under subsections b. (3) and b.
26 (4) is a crime of the fourth degree; and under subsection b. (5) is a
27 crime of the third degree if the victim suffers bodily injury,
28 otherwise it is a crime of the fourth degree. Aggravated assault
29 under subsection b.(8) is a crime of the third degree if the victim
30 suffers bodily injury; if the victim suffers significant bodily injury
31 or serious bodily injury it is a crime of the second degree.
32 Aggravated assault under subsection b. (11) is a crime of the third
33 degree.

34 c. (1) A person is guilty of assault by auto or vessel when the
35 person drives a vehicle or vessel recklessly and causes either
36 serious bodily injury or bodily injury to another. Assault by auto or
37 vessel is a crime of the fourth degree if serious bodily injury results
38 and is a disorderly persons offense if bodily injury results. Proof
39 that the defendant was operating a hand-held wireless telephone
40 while driving a motor vehicle in violation of section 1 of P.L.2003,
41 c.310 (C.39:4-97.3) may give rise to an inference that the defendant
42 was driving recklessly.

43 (2) Assault by auto or vessel is a crime of the third degree if the
44 person drives the vehicle while in violation of R.S.39:4-50 or
45 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily
46 injury results and is a crime of the fourth degree if the person drives
47 the vehicle while in violation of R.S.39:4-50 or section 2 of
48 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

1 (3) Assault by auto or vessel is a crime of the second degree if
2 serious bodily injury results from the defendant operating the auto
3 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,
4 c.512 (C.39:4-50.4a) while:

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

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

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

14 Assault by auto or vessel is a crime of the third degree if bodily
15 injury results from the defendant operating the auto or vessel in
16 violation of this paragraph.

17 A map or true copy of a map depicting the location and
18 boundaries of the area on or within 1,000 feet of any property used
19 for school purposes which is owned by or leased to any elementary
20 or secondary school or school board produced pursuant to section 1
21 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
22 subparagraph (a) of paragraph (3) of this subsection.

23 It shall be no defense to a prosecution for a violation of
24 subparagraph (a) or (b) of paragraph (3) of this subsection that the
25 defendant was unaware that the prohibited conduct took place while
26 on or within 1,000 feet of any school property or while driving
27 through a school crossing. Nor shall it be a defense to a prosecution
28 under subparagraph (a) or (b) of paragraph (3) of this subsection
29 that no juveniles were present on the school property or crossing
30 zone at the time of the offense or that the school was not in session.

31 (4) Assault by auto or vessel is a crime of the third degree if the
32 person purposely drives a vehicle in an aggressive manner directed
33 at another vehicle and serious bodily injury results and is a crime of
34 the fourth degree if the person purposely drives a vehicle in an
35 aggressive manner directed at another vehicle and bodily injury
36 results. For purposes of this paragraph, "driving a vehicle in an
37 aggressive manner" shall include, but is not limited to,
38 unexpectedly altering the speed of the vehicle, making improper or
39 erratic traffic lane changes, disregarding traffic control devices,
40 failing to yield the right of way, or following another vehicle too
41 closely.

42 As used in this section, "vessel" means a means of conveyance
43 for travel on water and propelled otherwise than by muscular
44 power.

45 d. A person who is employed by a facility as defined in section
46 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
47 defined in paragraph (1) or (2) of subsection a. of this section upon
48 an institutionalized elderly person as defined in section 2 of

1 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
2 degree.

3 e. (Deleted by amendment, P.L.2001, c.443).

4 f. A person who commits a simple assault as defined in
5 paragraph (1), (2) or (3) of subsection a. of this section in the
6 presence of a child under 16 years of age at a school or community
7 sponsored youth sports event is guilty of a crime of the fourth
8 degree. The defendant shall be strictly liable upon proof that the
9 offense occurred, in fact, in the presence of a child under 16 years
10 of age. It shall not be a defense that the defendant did not know
11 that the child was present or reasonably believed that the child was
12 16 years of age or older. The provisions of this subsection shall not
13 be construed to create any liability on the part of a participant in a
14 youth sports event or to abrogate any immunity or defense available
15 to a participant in a youth sports event. As used in this act, "school
16 or community sponsored youth sports event" means a competition,
17 practice or instructional event involving one or more interscholastic
18 sports teams or youth sports teams organized pursuant to a
19 nonprofit or similar charter or which are member teams in a youth
20 league organized by or affiliated with a county or municipal
21 recreation department and shall not include collegiate, semi-
22 professional or professional sporting events.

23 (cf: P.L.2012, c.3, s.1)

24

25 3. This act shall take effect immediately.

26

27

28

29

30 "Kulesh, Kuberts', and Bolis' Law;" establishes violation of
31 hands-free cell phone law as reckless under vehicular homicide and
32 assault by auto statutes.

ASSEMBLY, No. 1074

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman ALBERT COUTINHO

District 29 (Essex)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris and Somerset)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris and Somerset)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Co-Sponsored by:

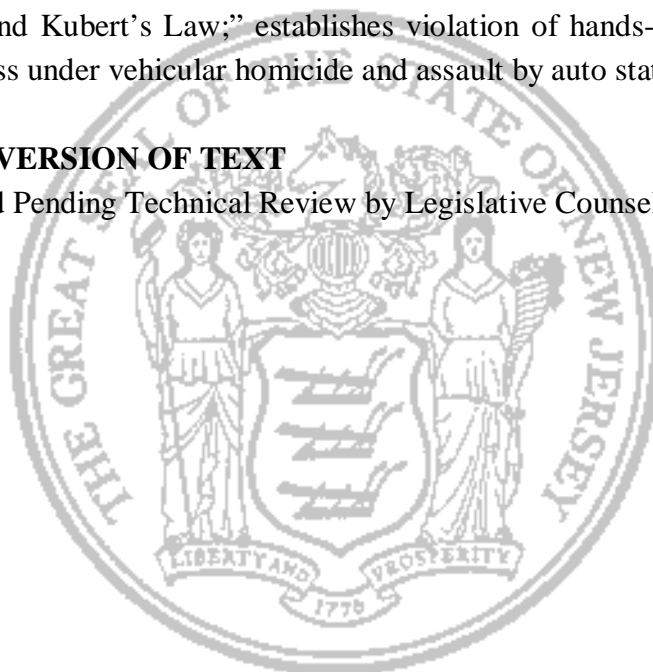
Assemblywomen Handlin and N.Munoz

SYNOPSIS

“Kulesh and Kubert’s Law;” establishes violation of hands-free cell phone law as reckless under vehicular homicide and assault by auto statutes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/22/2012)

1 AN ACT concerning the use of wireless telephones in motor
2 vehicles, designated as Kulesh and Kubert's Law, and amending
3 N.J.S.2C:11-5 and N.J.S.2C:12-1.
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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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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 vehicular homicide when it is
11 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 shall give rise to an inference that the defendant was driving
23 recklessly. Nothing in this section shall be construed to in any way
24 limit the conduct or conditions that may be found to constitute
25 driving a vehicle or vessel recklessly.

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

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

43 (2) The court shall not impose a mandatory sentence pursuant to
44 paragraph (1) of this subsection unless the grounds therefor have
45 been established at a hearing. At the hearing, which may occur at

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

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

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

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

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

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

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

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

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

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

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

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

22 (cf: P.L.2003, c.143, s.1)

23

24 2. N.J.S.2C:12-1 is amended to read as follows:

25 2C:12-1. Assault. a. Simple assault. A person is guilty of
26 assault if he:

27 (1) Attempts to cause or purposely, knowingly or recklessly
28 causes bodily injury to another; or

29 (2) Negligently causes bodily injury to another with a deadly
30 weapon; or

31 (3) Attempts by physical menace to put another in fear of
32 imminent serious bodily injury.

33 Simple assault is a disorderly persons offense unless committed
34 in a fight or scuffle entered into by mutual consent, in which case it
35 is a petty disorderly persons offense.

36 b. Aggravated assault. A person is guilty of aggravated assault
37 if he:

38 (1) Attempts to cause serious bodily injury to another, or causes
39 such injury purposely or knowingly or under circumstances
40 manifesting extreme indifference to the value of human life
41 recklessly causes such injury; or

42 (2) Attempts to cause or purposely or knowingly causes bodily
43 injury to another with a deadly weapon; or

44 (3) Recklessly causes bodily injury to another with a deadly
45 weapon; or

46 (4) Knowingly under circumstances manifesting extreme
47 indifference to the value of human life points a firearm, as defined

1 in section 2C:39-1f., at or in the direction of another, whether or not
2 the actor believes it to be loaded; or
3 (5) Commits a simple assault as defined in subsection a. (1), (2)
4 or (3) of this section upon:
5 (a) Any law enforcement officer acting in the performance of
6 his duties while in uniform or exhibiting evidence of his authority
7 or because of his status as a law enforcement officer; or
8 (b) Any paid or volunteer fireman acting in the performance of
9 his duties while in uniform or otherwise clearly identifiable as being
10 engaged in the performance of the duties of a fireman; or
11 (c) Any person engaged in emergency first-aid or medical
12 services acting in the performance of his duties while in uniform or
13 otherwise clearly identifiable as being engaged in the performance
14 of emergency first-aid or medical services; or
15 (d) Any school board member, school administrator, teacher,
16 school bus driver or other employee of a public or nonpublic school
17 or school board while clearly identifiable as being engaged in the
18 performance of his duties or because of his status as a member or
19 employee of a public or nonpublic school or school board or any
20 school bus driver employed by an operator under contract to a
21 public or nonpublic school or school board while clearly
22 identifiable as being engaged in the performance of his duties or
23 because of his status as a school bus driver; or
24 (e) Any employee of the Division of Youth and Family Services
25 while clearly identifiable as being engaged in the performance of
26 his duties or because of his status as an employee of the division; or
27 (f) Any justice of the Supreme Court, judge of the Superior
28 Court, judge of the Tax Court or municipal judge while clearly
29 identifiable as being engaged in the performance of judicial duties
30 or because of his status as a member of the judiciary; or
31 (g) Any operator of a motorbus or the operator's supervisor or
32 any employee of a rail passenger service while clearly identifiable
33 as being engaged in the performance of his duties or because of his
34 status as an operator of a motorbus or as the operator's supervisor or
35 as an employee of a rail passenger service; or
36 (h) Any Department of Corrections employee, county
37 corrections officer, juvenile corrections officer, State juvenile
38 facility employee, juvenile detention staff member, juvenile
39 detention officer, probation officer or any sheriff, undersheriff, or
40 sheriff's officer acting in the performance of his duties while in
41 uniform or exhibiting evidence of his authority; or
42 (i) Any employee, including any person employed under
43 contract, of a utility company as defined in section 2 of P.L.1971,
44 c.224 (C.2A:42-86) or a cable television company subject to the
45 provisions of the "Cable Television Act," P.L.1972, c.186
46 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in
47 the performance of his duties in regard to connecting, disconnecting

1 or repairing or attempting to connect, disconnect or repair any gas,
2 electric or water utility, or cable television or telecommunication
3 service; or

4 (j) Any health care worker employed by a licensed health care
5 facility to provide direct patient care, any health care professional
6 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
7 the Revised Statutes to practice a health care profession, except a
8 direct care worker at a State or county psychiatric hospital or State
9 developmental center or veterans' memorial home, while clearly
10 identifiable as being engaged in the duties of providing direct
11 patient care or practicing the health care profession; or

12 (k) Any direct care worker at a State or county psychiatric
13 hospital or State developmental center or veterans' memorial home,
14 while clearly identifiable as being engaged in the duties of
15 providing direct patient care or practicing the health care
16 profession, provided that the actor is not a patient or resident at the
17 facility who is classified by the facility as having a mental illness or
18 developmental disability; or

19 (6) Causes bodily injury to another person while fleeing or
20 attempting to elude a law enforcement officer in violation of
21 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
22 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
23 other provision of law to the contrary, a person shall be strictly
24 liable for a violation of this subsection upon proof of a violation of
25 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
26 violation of subsection c. of N.J.S.2C:20-10 which resulted in
27 bodily injury to another person; or

28 (7) Attempts to cause significant bodily injury to another or
29 causes significant bodily injury purposely or knowingly or, under
30 circumstances manifesting extreme indifference to the value of
31 human life recklessly causes such significant bodily injury; or

32 (8) Causes bodily injury by knowingly or purposely starting a
33 fire or causing an explosion in violation of N.J.S.2C:17-1 which
34 results in bodily injury to any emergency services personnel
35 involved in fire suppression activities, rendering emergency
36 medical services resulting from the fire or explosion or rescue
37 operations, or rendering any necessary assistance at the scene of the
38 fire or explosion, including any bodily injury sustained while
39 responding to the scene of a reported fire or explosion. For
40 purposes of this subsection, "emergency services personnel" shall
41 include, but not be limited to, any paid or volunteer fireman, any
42 person engaged in emergency first-aid or medical services and any
43 law enforcement officer. Notwithstanding any other provision of
44 law to the contrary, a person shall be strictly liable for a violation of
45 this paragraph upon proof of a violation of N.J.S.2C:17-1 which
46 resulted in bodily injury to any emergency services personnel; or

1 (9) Knowingly, under circumstances manifesting extreme
2 indifference to the value of human life, points or displays a firearm,
3 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of
4 a law enforcement officer; or

5 (10) Knowingly points, displays or uses an imitation firearm, as
6 defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a
7 law enforcement officer with the purpose to intimidate, threaten or
8 attempt to put the officer in fear of bodily injury or for any unlawful
9 purpose; or

10 (11) Uses or activates a laser sighting system or device, or a
11 system or device which, in the manner used, would cause a
12 reasonable person to believe that it is a laser sighting system or
13 device, against a law enforcement officer acting in the performance
14 of his duties while in uniform or exhibiting evidence of his
15 authority. As used in this paragraph, "laser sighting system or
16 device" means any system or device that is integrated with or
17 affixed to a firearm and emits a laser light beam that is used to
18 assist in the sight alignment or aiming of the firearm.

19 Aggravated assault under subsections b. (1) and b. (6) is a crime
20 of the second degree; under subsections b. (2), b. (7), b. (9) and b.
21 (10) is a crime of the third degree; under subsections b. (3) and b.
22 (4) is a crime of the fourth degree; and under subsection b. (5) is a
23 crime of the third degree if the victim suffers bodily injury,
24 otherwise it is a crime of the fourth degree. Aggravated assault
25 under subsection b.(8) is a crime of the third degree if the victim
26 suffers bodily injury; if the victim suffers significant bodily injury
27 or serious bodily injury it is a crime of the second degree.
28 Aggravated assault under subsection b. (11) is a crime of the third
29 degree.

30 c. (1) A person is guilty of assault by auto or vessel when the
31 person drives a vehicle or vessel recklessly and causes either
32 serious bodily injury or bodily injury to another. Assault by auto or
33 vessel is a crime of the fourth degree if serious bodily injury results
34 and is a disorderly persons offense if bodily injury results.

35 (2) Assault by auto or vessel is a crime of the third degree if the
36 person drives the vehicle while in violation of R.S.39:4-50 or
37 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily
38 injury results and is a crime of the fourth degree if the person drives
39 the vehicle while in violation of R.S.39:4-50 or section 2 of
40 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

41 (3) Assault by auto or vessel is a crime of the second degree if
42 serious bodily injury results from the defendant operating the auto
43 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,
44 c.512 (C.39:4-50.4a) while:

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

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

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

7 Assault by auto or vessel is a crime of the third degree if bodily
8 injury results from the defendant operating the auto or vessel in
9 violation of this paragraph.

10 A map or true copy of a map depicting the location and
11 boundaries of the area on or within 1,000 feet of any property used
12 for school purposes which is owned by or leased to any elementary
13 or secondary school or school board produced pursuant to section 1
14 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
15 subparagraph (a) of paragraph (3) of this subsection.

16 It shall be no defense to a prosecution for a violation of
17 subparagraph (a) or (b) of paragraph (3) of this subsection that the
18 defendant was unaware that the prohibited conduct took place while
19 on or within 1,000 feet of any school property or while driving
20 through a school crossing. Nor shall it be a defense to a prosecution
21 under subparagraph (a) or (b) of paragraph (3) of this subsection
22 that no juveniles were present on the school property or crossing
23 zone at the time of the offense or that the school was not in session.

24 As used in this section, "vessel" means a means of conveyance
25 for travel on water and propelled otherwise than by muscular
26 power.

27 d. A person who is employed by a facility as defined in section
28 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
29 defined in paragraph (1) or (2) of subsection a. of this section upon
30 an institutionalized elderly person as defined in section 2 of
31 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
32 degree.

33 e. (Deleted by amendment, P.L.2001, c.443).

34 f. A person who commits a simple assault as defined in
35 paragraph (1), (2) or (3) of subsection a. of this section in the
36 presence of a child under 16 years of age at a school or community
37 sponsored youth sports event is guilty of a crime of the fourth
38 degree. The defendant shall be strictly liable upon proof that the
39 offense occurred, in fact, in the presence of a child under 16 years
40 of age. It shall not be a defense that the defendant did not know
41 that the child was present or reasonably believed that the child was
42 16 years of age or older. The provisions of this subsection shall not
43 be construed to create any liability on the part of a participant in a
44 youth sports event or to abrogate any immunity or defense available
45 to a participant in a youth sports event. As used in this act, "school
46 or community sponsored youth sports event" means a competition,
47 practice or instructional event involving one or more interscholastic

1 sports teams or youth sports teams organized pursuant to a
2 nonprofit or similar charter or which are member teams in a youth
3 league organized by or affiliated with a county or municipal
4 recreation department and shall not include collegiate, semi-
5 professional or professional sporting events.

6 (cf: P.L.2010, c.109, s.1)

7

8 3. This act shall take effect immediately.

9

10

11

STATEMENT

12

13

14 This bill would make it easier for prosecutors to obtain
15 convictions for vehicular homicide or assault by auto against a
16 person who illegally uses a cell phone while driving and, as a result,
17 kills or injures someone.

18 A person is guilty of death by auto or assault by auto when it is
19 proven that he or she drove a motor vehicle recklessly. This bill
20 specifically provides that the illegal use of a cell phone while
21 driving would give rise to an inference that the defendant was
22 driving recklessly.

23 Vehicular homicide is generally a crime of the second degree,
24 punishable by imprisonment of five to ten years, a fine of up to
25 \$150,000, or both. Assault by auto is a crime of the fourth degree
26 if serious bodily injury occurs and a disorderly persons offense if
27 bodily injury occurs. A fourth degree crime is punishable by up to
28 18 months imprisonment, a fine of up to \$10,000, or both. The
29 penalty for a disorderly persons offense is imprisonment for up to
30 six months, a fine of up to \$1,000, or both.

31 The bill is designated as “Kulesh and Kubert’s Law” after Helen
32 Kulesh who was tragically killed by a person who was using a cell
33 phone while driving, and David and Linda Kubert who were both
34 severely injured by a driver who was illegally using a cell phone.

ASSEMBLY, No. 2199

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 2, 2012

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman CHARLES MAINOR

District 31 (Hudson)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

SYNOPSIS

“Kulesh, Kubert, and Bolis’ Law;” establishes violation of hands-free cell phone law as reckless under vehicular homicide and assault by auto statutes; enhances penalties for illegal cell phone use while driving.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/25/2012)

A2199 MORIARTY, MAINOR

2

1 AN ACT concerning the use of wireless telephones in motor
2 vehicles, designated as “Kulesh, Kubert, and Bolis’ Law,” and
3 amending N.J.S.2C:11-5, N.J.S.2C:12-1, and P.L.2003, c.310
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 vehicular homicide when it is
11 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 vehicle
21 in violation of section 1 of P.L.2003, c.310 (C.39:4-97.3) shall give
22 rise to an inference that the defendant was driving recklessly. Nothing
23 in this section shall be construed to in any way limit the conduct or
24 conditions that may be found to constitute driving a vehicle or
25 vessel recklessly.

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

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

43 (2) The court shall not impose a mandatory sentence pursuant to
44 paragraph (1) of this subsection unless the grounds therefor have
45 been established at a hearing. At the hearing, which may occur at

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

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

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

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

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

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

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

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

A2199 MORIARTY, MAINOR

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

4 d. Nothing herein shall be deemed to preclude, if the evidence
5 so warrants, an indictment and conviction for aggravated
6 manslaughter under the provisions of subsection a. of N.J.S.2C:11-
7 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
11 this section shall forfeit the auto or vessel used in the commission
12 of the offense, unless the defendant can establish at a hearing,
13 which may occur at the time of sentencing, by a preponderance of
14 the evidence that such forfeiture would constitute a serious hardship
15 to the family of the defendant that outweighs the need to deter such
16 conduct by the defendant and others. In making its findings, the
17 court shall take judicial notice of any evidence, testimony or
18 information adduced at the trial, plea hearing, or other court
19 proceedings and shall also consider the presentence report and any
20 other relevant information. Forfeiture pursuant to this subsection
21 shall be in addition to, and not in lieu of, civil forfeiture pursuant to
22 chapter 64 of this title.

23 (cf: P.L.2003, c.143, s.1)

24

25 2. N.J.S.2C:12-1 is amended to read as follows:

26 2C:12-1. Assault. a. Simple assault. A person is guilty of
27 assault if he:

28 (1) Attempts to cause or purposely, knowingly or recklessly
29 causes bodily injury to another; or

30 (2) Negligently causes bodily injury to another with a deadly
31 weapon; or

32 (3) Attempts by physical menace to put another in fear of
33 imminent serious bodily injury.

34 Simple assault is a disorderly persons offense unless committed
35 in a fight or scuffle entered into by mutual consent, in which case it
36 is a petty disorderly persons offense.

37 b. Aggravated assault. A person is guilty of aggravated assault
38 if he:

39 (1) Attempts to cause serious bodily injury to another, or causes
40 such injury purposely or knowingly or under circumstances
41 manifesting extreme indifference to the value of human life
42 recklessly causes such injury; or

43 (2) Attempts to cause or purposely or knowingly causes bodily
44 injury to another with a deadly weapon; or

45 (3) Recklessly causes bodily injury to another with a deadly
46 weapon; or

47 (4) Knowingly under circumstances manifesting extreme
48 indifference to the value of human life points a firearm, as defined

1 in section 2C:39-1f., at or in the direction of another, whether or not
2 the actor believes it to be loaded; or
3 (5) Commits a simple assault as defined in subsection a. (1), (2)
4 or (3) of this section upon:
5 (a) Any law enforcement officer acting in the performance of
6 his duties while in uniform or exhibiting evidence of his authority
7 or because of his status as a law enforcement officer; or
8 (b) Any paid or volunteer fireman acting in the performance of
9 his duties while in uniform or otherwise clearly identifiable as being
10 engaged in the performance of the duties of a fireman; or
11 (c) Any person engaged in emergency first-aid or medical
12 services acting in the performance of his duties while in uniform or
13 otherwise clearly identifiable as being engaged in the performance
14 of emergency first-aid or medical services; or
15 (d) Any school board member, school administrator, teacher,
16 school bus driver or other employee of a public or nonpublic school
17 or school board while clearly identifiable as being engaged in the
18 performance of his duties or because of his status as a member or
19 employee of a public or nonpublic school or school board or any
20 school bus driver employed by an operator under contract to a
21 public or nonpublic school or school board while clearly
22 identifiable as being engaged in the performance of his duties or
23 because of his status as a school bus driver; or
24 (e) Any employee of the Division of Youth and Family Services
25 while clearly identifiable as being engaged in the performance of
26 his duties or because of his status as an employee of the division; or
27 (f) Any justice of the Supreme Court, judge of the Superior
28 Court, judge of the Tax Court or municipal judge while clearly
29 identifiable as being engaged in the performance of judicial duties
30 or because of his status as a member of the judiciary; or
31 (g) Any operator of a motorbus or the operator's supervisor or
32 any employee of a rail passenger service while clearly identifiable
33 as being engaged in the performance of his duties or because of his
34 status as an operator of a motorbus or as the operator's supervisor or
35 as an employee of a rail passenger service; or
36 (h) Any Department of Corrections employee, county
37 corrections officer, juvenile corrections officer, State juvenile
38 facility employee, juvenile detention staff member, juvenile
39 detention officer, probation officer or any sheriff, undersheriff, or
40 sheriff's officer acting in the performance of his duties while in
41 uniform or exhibiting evidence of his authority; or
42 (i) Any employee, including any person employed under
43 contract, of a utility company as defined in section 2 of P.L.1971,
44 c.224 (C.2A:42-86) or a cable television company subject to the
45 provisions of the "Cable Television Act," P.L.1972, c.186
46 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in
47 the performance of his duties in regard to connecting, disconnecting
48 or repairing or attempting to connect, disconnect or repair any gas,

1 electric or water utility, or cable television or telecommunication
2 service; or

3 (j) Any health care worker employed by a licensed health care
4 facility to provide direct patient care, any health care professional
5 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
6 the Revised Statutes to practice a health care profession, except a
7 direct care worker at a State or county psychiatric hospital or State
8 developmental center or veterans' memorial home, while clearly
9 identifiable as being engaged in the duties of providing direct
10 patient care or practicing the health care profession; or

11 (k) Any direct care worker at a State or county psychiatric
12 hospital or State developmental center or veterans' memorial home,
13 while clearly identifiable as being engaged in the duties of
14 providing direct patient care or practicing the health care
15 profession, provided that the actor is not a patient or resident at the
16 facility who is classified by the facility as having a mental illness or
17 developmental disability; or

18 (6) Causes bodily injury to another person while fleeing or
19 attempting to elude a law enforcement officer in violation of
20 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
21 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
22 other provision of law to the contrary, a person shall be strictly
23 liable for a violation of this subsection upon proof of a violation of
24 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
25 violation of subsection c. of N.J.S.2C:20-10 which resulted in
26 bodily injury to another person; or

27 (7) Attempts to cause significant bodily injury to another or
28 causes significant bodily injury purposely or knowingly or, under
29 circumstances manifesting extreme indifference to the value of
30 human life recklessly causes such significant bodily injury; or

31 (8) Causes bodily injury by knowingly or purposely starting a
32 fire or causing an explosion in violation of N.J.S.2C:17-1 which
33 results in bodily injury to any emergency services personnel
34 involved in fire suppression activities, rendering emergency
35 medical services resulting from the fire or explosion or rescue
36 operations, or rendering any necessary assistance at the scene of the
37 fire or explosion, including any bodily injury sustained while
38 responding to the scene of a reported fire or explosion. For
39 purposes of this subsection, "emergency services personnel" shall
40 include, but not be limited to, any paid or volunteer fireman, any
41 person engaged in emergency first-aid or medical services and any
42 law enforcement officer. Notwithstanding any other provision of
43 law to the contrary, a person shall be strictly liable for a violation of
44 this paragraph upon proof of a violation of N.J.S.2C:17-1 which
45 resulted in bodily injury to any emergency services personnel; or

46 (9) Knowingly, under circumstances manifesting extreme
47 indifference to the value of human life, points or displays a firearm,

1 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of
2 a law enforcement officer; or

3 (10) Knowingly points, displays or uses an imitation firearm, as
4 defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a
5 law enforcement officer with the purpose to intimidate, threaten or
6 attempt to put the officer in fear of bodily injury or for any unlawful
7 purpose; or

8 (11) Uses or activates a laser sighting system or device, or a
9 system or device which, in the manner used, would cause a
10 reasonable person to believe that it is a laser sighting system or
11 device, against a law enforcement officer acting in the performance
12 of his duties while in uniform or exhibiting evidence of his
13 authority. As used in this paragraph, "laser sighting system or
14 device" means any system or device that is integrated with or
15 affixed to a firearm and emits a laser light beam that is used to
16 assist in the sight alignment or aiming of the firearm.

17 Aggravated assault under subsections b. (1) and b. (6) is a crime
18 of the second degree; under subsections b. (2), b. (7), b. (9) and b.
19 (10) is a crime of the third degree; under subsections b. (3) and b.
20 (4) is a crime of the fourth degree; and under subsection b. (5) is a
21 crime of the third degree if the victim suffers bodily injury,
22 otherwise it is a crime of the fourth degree. Aggravated assault
23 under subsection b.(8) is a crime of the third degree if the victim
24 suffers bodily injury; if the victim suffers significant bodily injury
25 or serious bodily injury it is a crime of the second degree.
26 Aggravated assault under subsection b. (11) is a crime of the third
27 degree.

28 c. (1) A person is guilty of assault by auto or vessel when the
29 person drives a vehicle or vessel recklessly and causes either
30 serious bodily injury or bodily injury to another. Assault by auto or
31 vessel is a crime of the fourth degree if serious bodily injury results
32 and is a disorderly persons offense if bodily injury results. Proof
33 that the defendant was operating a hand-held wireless telephone while
34 driving a motor vehicle in violation of section 1 of P.L.2003, c.310
35 (C.39:4-97.3) shall give rise to an inference that the defendant was
36 driving recklessly.

37 (2) Assault by auto or vessel is a crime of the third degree if the
38 person drives the vehicle while in violation of R.S.39:4-50 or
39 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily
40 injury results and is a crime of the fourth degree if the person drives
41 the vehicle while in violation of R.S.39:4-50 or section 2 of
42 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

43 (3) Assault by auto or vessel is a crime of the second degree if
44 serious bodily injury results from the defendant operating the auto
45 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,
46 c.512 (C.39:4-50.4a) while:

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

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

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

10 Assault by auto or vessel is a crime of the third degree if bodily
11 injury results from the defendant operating the auto or vessel in
12 violation of this paragraph.

13 A map or true copy of a map depicting the location and
14 boundaries of the area on or within 1,000 feet of any property used
15 for school purposes which is owned by or leased to any elementary
16 or secondary school or school board produced pursuant to section 1
17 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
18 subparagraph (a) of paragraph (3) of this subsection.

19 It shall be no defense to a prosecution for a violation of
20 subparagraph (a) or (b) of paragraph (3) of this subsection that the
21 defendant was unaware that the prohibited conduct took place while
22 on or within 1,000 feet of any school property or while driving
23 through a school crossing. Nor shall it be a defense to a prosecution
24 under subparagraph (a) or (b) of paragraph (3) of this subsection
25 that no juveniles were present on the school property or crossing
26 zone at the time of the offense or that the school was not in session.

27 As used in this section, "vessel" means a means of conveyance
28 for travel on water and propelled otherwise than by muscular
29 power.

30 d. A person who is employed by a facility as defined in section
31 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
32 defined in paragraph (1) or (2) of subsection a. of this section upon
33 an institutionalized elderly person as defined in section 2 of
34 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
35 degree.

36 e. (Deleted by amendment, P.L.2001, c.443).

37 f. A person who commits a simple assault as defined in
38 paragraph (1), (2) or (3) of subsection a. of this section in the
39 presence of a child under 16 years of age at a school or community
40 sponsored youth sports event is guilty of a crime of the fourth
41 degree. The defendant shall be strictly liable upon proof that the
42 offense occurred, in fact, in the presence of a child under 16 years
43 of age. It shall not be a defense that the defendant did not know
44 that the child was present or reasonably believed that the child was
45 16 years of age or older. The provisions of this subsection shall not
46 be construed to create any liability on the part of a participant in a
47 youth sports event or to abrogate any immunity or defense available
48 to a participant in a youth sports event. As used in this act, "school

1 or community sponsored youth sports event" means a competition,
2 practice or instructional event involving one or more interscholastic
3 sports teams or youth sports teams organized pursuant to a
4 nonprofit or similar charter or which are member teams in a youth
5 league organized by or affiliated with a county or municipal
6 recreation department and shall not include collegiate, semi-
7 professional or professional sporting events.

8 (cf: P.L.2010, c.109, s.1)

9

10 3. Section 1 of P.L.2003, c.310 (C.39:4-97.3) is amended to read
11 as follows:

12 1. a. The use of a wireless telephone or electronic
13 communication device by an operator of a moving motor vehicle on
14 a public road or highway shall be unlawful except when the
15 telephone is a hands-free wireless telephone or the electronic
16 communication device is used hands-free, provided that its
17 placement does not interfere with the operation of federally required
18 safety equipment and the operator exercises a high degree of
19 caution in the operation of the motor vehicle. For the purposes of
20 this section, an "electronic communication device" shall not include
21 an amateur radio.

22 Nothing in P.L.2003, c.310 (C.39:4-97.3 et seq.) shall apply to
23 the use of a citizen's band radio or two-way radio by an operator of
24 a moving commercial motor vehicle or authorized emergency
25 vehicle on a public road or highway.

26 b. The operator of a motor vehicle may use a hand-held
27 wireless telephone while driving with one hand on the steering
28 wheel only if:

29 (1) The operator has reason to fear for his life or safety, or
30 believes that a criminal act may be perpetrated against himself or
31 another person; or

32 (2) The operator is using the telephone to report to appropriate
33 authorities a fire, a traffic accident, a serious road hazard or medical
34 or hazardous materials emergency, or to report the operator of
35 another motor vehicle who is driving in a reckless, careless or
36 otherwise unsafe manner or who appears to be driving under the
37 influence of alcohol or drugs. A hand-held wireless telephone
38 user's telephone records or the testimony or written statements from
39 appropriate authorities receiving such calls shall be deemed
40 sufficient evidence of the existence of all lawful calls made under
41 this paragraph.

42 As used in this act:

43 "Citizen's band radio" means a mobile communication device
44 designed to allow for the transmission and receipt of radio
45 communications on frequencies allocated for citizen's band radio
46 service use.

47 "Hands-free wireless telephone" means a mobile telephone that
48 has an internal feature or function, or that is equipped with an

1 attachment or addition, whether or not permanently part of such
2 mobile telephone, by which a user engages in a conversation
3 without the use of either hand; provided, however, this definition
4 shall not preclude the use of either hand to activate, deactivate, or
5 initiate a function of the telephone.

6 "Two-way radio" means two-way communications equipment
7 that uses VHF frequencies approved by the Federal
8 Communications Commission.

9 "Use" of a wireless telephone or electronic communication
10 device shall include, but not be limited to, talking or listening to
11 another person on the telephone, text messaging, or sending an
12 electronic message via the wireless telephone or electronic
13 communication device.

14 c. (Deleted by amendment, P.L.2007, c.198).

15 d. A person who violates this section shall be fined **[\$100]**
16 \$200 for a first offense, \$400 for a second offense, and \$600 for a third
17 or subsequent offense. For a third or subsequent violation, the court, in
18 its discretion, may order the person to forfeit the right to operate a
19 motor vehicle over the highways of this State for a period of 90 days.
20 In addition, a person convicted of a third or subsequent violation shall
21 be assessed three motor vehicle penalty points pursuant to section 1 of
22 P.L.1982, c.43 (C.39:5-30.5).

23 A person who has been convicted of a previous violation of this
24 section need not be charged as a second or subsequent offender in the
25 complaint made against him in order to render him liable to the
26 punishment imposed by this section on a second or subsequent
27 offender, but if the second offense occurs more than 10 years after the
28 first offense, the court shall treat the second conviction as a first
29 offense for sentencing purposes and if a third offense occurs more than
30 10 years after the second offense, the court shall treat the third
31 conviction as a second offense for sentencing purposes.

32 e. **[No]** Except as provided in subsection d. of this section, no
33 motor vehicle penalty points or automobile insurance eligibility
34 points pursuant to section 26 of P.L.1990, c.8 (C.17:33B-14) shall
35 be assessed for this offense.

36 f. The Chief Administrator of the New Jersey Motor Vehicle
37 Commission shall develop and undertake a program to notify and
38 inform the public as to the provisions of this act.

39 g. Whenever this section is used as an alternative offense in a
40 plea agreement to any other offense in Title 39 of the Revised
41 Statutes that would result in the assessment of motor vehicle points,
42 the penalty shall be the same as the penalty for a violation of
43 section 1 of P.L.2000, c.75 (C.39:4-97.2), including the surcharge
44 imposed pursuant to subsection f. of that section, and a conviction
45 under this section shall be considered a conviction under section 1
46 of P.L.2000, c.75 (C.39:4-97.2) for the purpose of determining
47 subsequent enhanced penalties under that section.

48 (cf: P.L.2010, c.40, s.1)

1 4. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill would make it easier for prosecutors to obtain
7 convictions for vehicular homicide or assault by auto against a
8 person who illegally uses a cell phone while driving and, as a result,
9 kills or injures someone. In addition, the bill imposes increased
10 fines for illegally talking or texting while driving.

11 A person is guilty of death by auto or assault by auto when it is
12 proven that he or she drove a motor vehicle recklessly. This bill
13 specifically provides that the illegal use of a cell phone while driving
14 would give rise to an inference that the defendant was driving
15 recklessly.

16 Vehicular homicide is generally a crime of the second degree,
17 punishable by imprisonment of five to ten years, a fine of up to
18 \$150,000, or both. Assault by auto is a crime of the fourth degree if
19 serious bodily injury occurs and a disorderly persons offense if bodily
20 injury occurs. A fourth degree crime is punishable by up to 18 months
21 imprisonment, a fine of up to \$10,000, or both. The penalty for a
22 disorderly persons offense is imprisonment for up to six months, a fine
23 of up to \$1,000, or both.

24 In addition, this bill imposes increased fines for multiple
25 offenses of talking on a hand-held wireless telephone or texting a
26 message with a hand held wireless electronic communication device
27 while driving. Under current law, the fine for this motor vehicle
28 violation is \$100. This bill would increase that fine to \$200 for a
29 first offense, \$400 for a second offense, and \$600 for third or
30 subsequent offenses. The bill also permits the court at its discretion
31 to impose a 90-day driver's license suspension for persons
32 convicted of the offense for a third or subsequent time. In addition,
33 third and subsequent offenders would receive three motor vehicle
34 penalty points.

35 Under the bill, a person convicted of a second offense of driving
36 while talking or texting on a hand-held device would be treated as a
37 first time offender for sentencing purposes if the second offense
38 occurs more than 10 years after the first offense. Similarly, a person
39 convicted of a third offense would be treated as a second time
40 offender for sentencing purposes if the third offense occurs more
41 than ten years after the second offense.

42 The bill is designated as "Kulesh, Kubert, and Bolis' Law" after
43 Helen Kulesh who was tragically killed by a person who was using
44 a cell phone while driving, and David and Linda Kubert who were
45 both severely injured by a driver who was illegally using a cell
46 phone. This bill is also designated for Toni Bolis and her son, Ryan
47 Jeffrey Bolis, who died in a motor vehicle accident that was

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- 1 allegedly caused by a person who was using a cell phone while
- 2 driving.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1074 and 2199

STATE OF NEW JERSEY

DATED: JUNE 7, 2012

The Assembly Law and Public Safety Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 1074 and 2199.

This committee substitute provides prosecutors with a means to more easily obtain convictions for vehicular homicide or assault by auto against a person who illegally uses a cell phone while driving and, as a result, kills or injures someone.

A person is guilty of vehicular homicide or assault by auto when it is proven that he or she drove a motor vehicle recklessly. This committee substitute specifically provides that the illegal use of a cell phone while driving may give rise to an inference that the defendant was driving recklessly.

Vehicular homicide is generally a crime of the second degree, punishable by imprisonment of five to ten years, a fine of up to \$150,000, or both. Assault by auto is a crime of the fourth degree if serious bodily injury occurs, and a disorderly persons offense if bodily injury occurs. A fourth degree crime is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both. The penalty for a disorderly persons offense is imprisonment for up to six months, a fine of up to \$1,000, or both.

The committee substitute is designated as “Kulesh’s, Kuberts’, and Bolis’ Law” after Helen Kulesh, who was tragically killed by a person who was using a cell phone while driving; David and Linda Kubert, who were both severely injured by a driver who was illegally using a cell phone; and Toni Bolis and her son Ryan Jeffery Bolis, who died in a motor vehicle accident that was allegedly caused by a person who was using a cell phone while driving.

As reported, this Assembly committee substitute is identical to Senate Bill No. 1616 (1R) which was reported by the Senate Law and Public Safety Committee on May 14, 2012.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1074 and 2199
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: JUNE 15, 2012

SUMMARY

Synopsis: "Kulesh, Kubert's and Bolis' Law;" establishes violation of hands-free cell phone law as reckless under vehicular homicide statute and assault by auto statutes.

Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary, Department of Corrections.

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See Comments Below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate, and adds that for each offender who is imprisoned under this bill, the average cost to house that offender at a State prison facility would total about of \$43,000 annually. The OLS also notes that there is a presumption of non-incarceration for first time fourth degree offenders.
- The bill would make it easier for prosecutors to obtain convictions for vehicular homicide or assault by auto against a person who illegally uses a cell phone while driving and, as a result, kills or injures someone.
- The Administrative Office of the Courts (AOC) states that the Judiciary is unable to determine if any of the 259 defendants convicted of Death by Auto or Vessel or Assault by Auto or Vessel were also charged or convicted of Operation of a Hand-held Wireless Telephone While Driving a Motor Vehicle. Consequently, the Judiciary cannot estimate the number of cases that might fall under the provisions of this bill nor estimate the fiscal impact the proposed legislation would have on Judiciary resources or expenditures.
- The AOC states that as it is likely that by creating an inference that a defendant was driving recklessly because he or she was operating a hand-held wireless telephone while driving, it would be somewhat easier to prove a case of Death by Auto or Vessel or Assault by Auto or Vessel and a defendant would be less likely to opt to go to trial. Given that current cases involving Death by Auto or Vessel or Assault by Auto or Vessel rarely proceed to trial, it is anticipated that this bill would only have a negligible fiscal impact on the Judiciary.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill Nos. 1074 and 2199 of 2012 would make it easier for prosecutors to obtain convictions for vehicular homicide or assault by auto against a person who illegally uses a cell phone while driving and, as a result, kills or injures someone.

A person is guilty of death by auto or assault by auto when it is proven that he or she drove a motor vehicle recklessly. This bill specifically provides that the illegal use of a cell phone while driving would give rise to an inference that the defendant was driving recklessly.

Vehicular homicide is generally a crime of the second degree, punishable by imprisonment of five to 10 years, a fine of up to \$150,000, or both. Assault by auto is a crime of the fourth degree if serious bodily injury occurs and a disorderly persons offense if bodily injury occurs. A fourth degree crime is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both. The penalty for a disorderly persons offense is imprisonment for up to six months, a fine of up to \$1,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

In a fiscal note for this bill in a prior legislative session, the AOC stated that for the period from January 1, 2009 through December 31, 2009, there were a total of 259 defendants convicted of Death by Auto or Vessel under N.J.S.A. 2C:11-5 or Assault by Auto or Vessel under N.J.S.A. 2C:12-1c. Of those 259 defendants, 254 pled guilty to the stated offense and 5 were convicted after a jury trial. For the same period, there were 107,112 convictions of Operation of a Hand-held Wireless Telephone While Driving a Motor Vehicle under N.J.S.A. 39:4-97.3.

The AOC notes that the Judiciary is unable to determine if any of the 259 defendants convicted of Death by Auto or Vessel or Assault by Auto or Vessel were also charged or convicted of Operation of a Hand-held Wireless Telephone While Driving a Motor Vehicle. Consequently, the Judiciary cannot estimate the number of cases that might fall under the provisions of this bill nor estimate the fiscal impact the proposed legislation would have on Judiciary resources or expenditures.

The AOC states that as it is likely that by creating an inference that a defendant was driving recklessly because he or she was operating a hand-held wireless telephone while driving, it would be somewhat easier to prove a case of Death by Auto or Vessel or Assault by Auto or Vessel and a defendant would be less likely to opt to go to trial. Given that current cases involving Death by Auto or Vessel or Assault by Auto or Vessel rarely proceed to trial, it is anticipated that this bill would only have a negligible fiscal impact on the Judiciary.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate, and adds that for each offender who is imprisoned under this bill, the average cost to house that offender at a State prison facility would total about of \$43,000 annually. The OLS also notes that there is a presumption of non-incarceration for first time fourth degree offenders. For those offenders who are incarcerated, the inmate usually serves about one-third of the sentence imposed.

ACS for A1074

3

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1074 and 2199

STATE OF NEW JERSEY

DATED: JUNE 18, 2012

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 1074 and 2199 (ACS).

This bill provides prosecutors with a means to more easily obtain convictions for vehicular homicide or assault by auto against a person who illegally uses a cell phone while driving and, as a result, kills or injures someone.

A person is guilty of vehicular homicide or assault by auto when it is proven that the accused drove a motor vehicle recklessly. This bill specifically provides that the illegal use of a cell phone while driving may give rise to an inference that the defendant was driving recklessly.

Vehicular homicide is generally a crime of the second degree, punishable by imprisonment of five to ten years, a fine of up to \$150,000, or both. Assault by auto is a crime of the fourth degree if serious bodily injury occurs, and a disorderly persons offense if bodily injury occurs. A fourth-degree crime is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both. The penalty for a disorderly persons offense is imprisonment for up to six months, a fine of up to \$1,000, or both.

The bill is designated as “Kulesh’s, Kuberts’, and Bolis’ Law” after Helen Kulesh, who was tragically killed by a person who was using a cell phone while driving; David and Linda Kubert, who were both severely injured by a driver who was illegally using a cell phone; and Toni Bolis and her son Ryan Jeffery Bolis, who died in a motor vehicle accident that was allegedly caused by a person who was using a cell phone while driving.

FISCAL IMPACT:

The Administrative Office of the Courts (AOC) noted in a fiscal note for similar legislation in the prior session, Assembly Bill No. 2816 of 2011, that of the 259 defendants convicted of Death by Auto or Vessel or of Assault by Auto or Vessel, 254 pled guilty and 5 were convicted after trial. The AOC stated that while it is likely that by creating an inference that a defendant was driving recklessly because the defendant was operating a hand-held wireless telephone while driving, it would be somewhat easier to prove a case and a defendant

would be less likely to opt to go to trial, given that current cases rarely proceed to trial, it is anticipated that this bill would only have a negligible fiscal impact on the Judiciary.

The Office of Legislative Services (OLS) notes that for each offender who is imprisoned under this bill, the average cost to house that offender at a State prison facility would total about of \$43,000 annually. The OLS also notes that there is a presumption of non-incarceration for first-time fourth-degree offenders. For those offenders who are incarcerated, the inmate usually serves about one-third of the sentence imposed.

SENATE, No. 1616

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 16, 2012

Sponsored by:

Senator FRED H. MADDEN, JR.
District 4 (Camden and Gloucester)
Senator RAYMOND J. LESNIAK
District 20 (Union)

Co-Sponsored by:

Senator A.R.Bucco

SYNOPSIS

“Kulesh and Kubert’s Law;” establishes violation of hands-free cell phone law as reckless under vehicular homicide and assault by auto statutes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/6/2012)

1 AN ACT concerning the use of wireless telephones in motor
2 vehicles, designated as Kulesh and Kubert's Law, and amending
3 N.J.S.2C:11-5 and N.J.S.2C:12-1.

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 vehicular homicide when it is
11 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. Nothing in this section shall be construed to in any way
24 limit the conduct or conditions that may be found to constitute
25 driving a vehicle or vessel recklessly.

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

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

43 (2) The court shall not impose a mandatory sentence pursuant to
44 paragraph (1) of this subsection unless the grounds therefor have
45 been established at a hearing. At the hearing, which may occur at

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

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

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

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

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

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

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

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

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

4 d. Nothing herein shall be deemed to preclude, if the evidence
5 so warrants, an indictment and conviction for aggravated
6 manslaughter under the provisions of subsection a. of N.J.S.2C:11-4
7 As used in this section, "auto or vessel" means all means of
8 conveyance propelled otherwise than by muscular power.

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

22 (cf: P.L.2003, c.143, s.1)

23

24 2. N.J.S.2C:12-1 is amended to read as follows:

25 2C:12-1. Assault. a. Simple assault. A person is guilty of
26 assault if he:

27 (1) Attempts to cause or purposely, knowingly or recklessly
28 causes bodily injury to another; or

29 (2) Negligently causes bodily injury to another with a deadly
30 weapon; or

31 (3) Attempts by physical menace to put another in fear of
32 imminent serious bodily injury.

33 Simple assault is a disorderly persons offense unless committed
34 in a fight or scuffle entered into by mutual consent, in which case it
35 is a petty disorderly persons offense.

36 b. Aggravated assault. A person is guilty of aggravated assault
37 if he:

38 (1) Attempts to cause serious bodily injury to another, or causes
39 such injury purposely or knowingly or under circumstances
40 manifesting extreme indifference to the value of human life
41 recklessly causes such injury; or

42 (2) Attempts to cause or purposely or knowingly causes bodily
43 injury to another with a deadly weapon; or

44 (3) Recklessly causes bodily injury to another with a deadly
45 weapon; or

46 (4) Knowingly under circumstances manifesting extreme
47 indifference to the value of human life points a firearm, as defined

1 in section 2C:39-1f., at or in the direction of another, whether or not
2 the actor believes it to be loaded; or
3 (5) Commits a simple assault as defined in subsection a. (1), (2)
4 or (3) of this section upon:
5 (a) Any law enforcement officer acting in the performance of
6 his duties while in uniform or exhibiting evidence of his authority
7 or because of his status as a law enforcement officer; or
8 (b) Any paid or volunteer fireman acting in the performance of
9 his duties while in uniform or otherwise clearly identifiable as being
10 engaged in the performance of the duties of a fireman; or
11 (c) Any person engaged in emergency first-aid or medical
12 services acting in the performance of his duties while in uniform or
13 otherwise clearly identifiable as being engaged in the performance
14 of emergency first-aid or medical services; or
15 (d) Any school board member, school administrator, teacher,
16 school bus driver or other employee of a public or nonpublic school
17 or school board while clearly identifiable as being engaged in the
18 performance of his duties or because of his status as a member or
19 employee of a public or nonpublic school or school board or any
20 school bus driver employed by an operator under contract to a
21 public or nonpublic school or school board while clearly
22 identifiable as being engaged in the performance of his duties or
23 because of his status as a school bus driver; or
24 (e) Any employee of the Division of Youth and Family Services
25 while clearly identifiable as being engaged in the performance of
26 his duties or because of his status as an employee of the division; or
27 (f) Any justice of the Supreme Court, judge of the Superior
28 Court, judge of the Tax Court or municipal judge while clearly
29 identifiable as being engaged in the performance of judicial duties
30 or because of his status as a member of the judiciary; or
31 (g) Any operator of a motorbus or the operator's supervisor or
32 any employee of a rail passenger service while clearly identifiable
33 as being engaged in the performance of his duties or because of his
34 status as an operator of a motorbus or as the operator's supervisor or
35 as an employee of a rail passenger service; or
36 (h) Any Department of Corrections employee, county
37 corrections officer, juvenile corrections officer, State juvenile
38 facility employee, juvenile detention staff member, juvenile
39 detention officer, probation officer or any sheriff, undersheriff, or
40 sheriff's officer acting in the performance of his duties while in
41 uniform or exhibiting evidence of his authority; or
42 (i) Any employee, including any person employed under
43 contract, of a utility company as defined in section 2 of P.L.1971,
44 c.224 (C.2A:42-86) or a cable television company subject to the
45 provisions of the "Cable Television Act," P.L.1972, c.186
46 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in
47 the performance of his duties in regard to connecting, disconnecting
48 or repairing or attempting to connect, disconnect or repair any gas,

- 1 electric or water utility, or cable television or telecommunication
2 service; or
- 3 (j) Any health care worker employed by a licensed health care
4 facility to provide direct patient care, any health care professional
5 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
6 the Revised Statutes to practice a health care profession, except a
7 direct care worker at a State or county psychiatric hospital or State
8 developmental center or veterans' memorial home, while clearly
9 identifiable as being engaged in the duties of providing direct
10 patient care or practicing the health care profession; or
- 11 (k) Any direct care worker at a State or county psychiatric
12 hospital or State developmental center or veterans' memorial home,
13 while clearly identifiable as being engaged in the duties of
14 providing direct patient care or practicing the health care
15 profession, provided that the actor is not a patient or resident at the
16 facility who is classified by the facility as having a mental illness or
17 developmental disability; or
- 18 (6) Causes bodily injury to another person while fleeing or
19 attempting to elude a law enforcement officer in violation of
20 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
21 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
22 other provision of law to the contrary, a person shall be strictly
23 liable for a violation of this subsection upon proof of a violation of
24 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
25 violation of subsection c. of N.J.S.2C:20-10 which resulted in
26 bodily injury to another person; or
- 27 (7) Attempts to cause significant bodily injury to another or
28 causes significant bodily injury purposely or knowingly or, under
29 circumstances manifesting extreme indifference to the value of
30 human life recklessly causes such significant bodily injury; or
- 31 (8) Causes bodily injury by knowingly or purposely starting a
32 fire or causing an explosion in violation of N.J.S.2C:17-1 which
33 results in bodily injury to any emergency services personnel
34 involved in fire suppression activities, rendering emergency
35 medical services resulting from the fire or explosion or rescue
36 operations, or rendering any necessary assistance at the scene of the
37 fire or explosion, including any bodily injury sustained while
38 responding to the scene of a reported fire or explosion. For
39 purposes of this subsection, "emergency services personnel" shall
40 include, but not be limited to, any paid or volunteer fireman, any
41 person engaged in emergency first-aid or medical services and any
42 law enforcement officer. Notwithstanding any other provision of
43 law to the contrary, a person shall be strictly liable for a violation of
44 this paragraph upon proof of a violation of N.J.S.2C:17-1 which
45 resulted in bodily injury to any emergency services personnel; or
- 46 (9) Knowingly, under circumstances manifesting extreme
47 indifference to the value of human life, points or displays a firearm,

1 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of
2 a law enforcement officer; or

3 (10) Knowingly points, displays or uses an imitation firearm, as
4 defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a
5 law enforcement officer with the purpose to intimidate, threaten or
6 attempt to put the officer in fear of bodily injury or for any unlawful
7 purpose; or

8 (11) Uses or activates a laser sighting system or device, or a
9 system or device which, in the manner used, would cause a
10 reasonable person to believe that it is a laser sighting system or
11 device, against a law enforcement officer acting in the performance
12 of his duties while in uniform or exhibiting evidence of his
13 authority. As used in this paragraph, "laser sighting system or
14 device" means any system or device that is integrated with or
15 affixed to a firearm and emits a laser light beam that is used to
16 assist in the sight alignment or aiming of the firearm.

17 Aggravated assault under subsections b. (1) and b. (6) is a crime
18 of the second degree; under subsections b. (2), b. (7), b. (9) and b.
19 (10) is a crime of the third degree; under subsections b. (3) and b.
20 (4) is a crime of the fourth degree; and under subsection b. (5) is a
21 crime of the third degree if the victim suffers bodily injury,
22 otherwise it is a crime of the fourth degree. Aggravated assault
23 under subsection b.(8) is a crime of the third degree if the victim
24 suffers bodily injury; if the victim suffers significant bodily injury
25 or serious bodily injury it is a crime of the second degree.
26 Aggravated assault under subsection b. (11) is a crime of the third
27 degree.

28 c. (1) A person is guilty of assault by auto or vessel when the
29 person drives a vehicle or vessel recklessly and causes either
30 serious bodily injury or bodily injury to another. Assault by auto or
31 vessel is a crime of the fourth degree if serious bodily injury results
32 and is a disorderly persons offense if bodily injury results. Proof
33 that the defendant was operating a hand-held wireless telephone
34 while driving a motor vehicle in violation of section 1 of P.L.2003,
35 c.310 (C.39:4-97.3) may give rise to an inference that the defendant
36 was driving recklessly.

37 (2) Assault by auto or vessel is a crime of the third degree if the
38 person drives the vehicle while in violation of R.S.39:4-50 or
39 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily
40 injury results and is a crime of the fourth degree if the person drives
41 the vehicle while in violation of R.S.39:4-50 or section 2 of
42 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

43 (3) Assault by auto or vessel is a crime of the second degree if
44 serious bodily injury results from the defendant operating the auto
45 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,
46 c.512 (C.39:4-50.4a) while:

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

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

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

10 Assault by auto or vessel is a crime of the third degree if bodily
11 injury results from the defendant operating the auto or vessel in
12 violation of this paragraph.

13 A map or true copy of a map depicting the location and
14 boundaries of the area on or within 1,000 feet of any property used
15 for school purposes which is owned by or leased to any elementary
16 or secondary school or school board produced pursuant to section 1
17 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
18 subparagraph (a) of paragraph (3) of this subsection.

19 It shall be no defense to a prosecution for a violation of
20 subparagraph (a) or (b) of paragraph (3) of this subsection that the
21 defendant was unaware that the prohibited conduct took place while
22 on or within 1,000 feet of any school property or while driving
23 through a school crossing. Nor shall it be a defense to a prosecution
24 under subparagraph (a) or (b) of paragraph (3) of this subsection
25 that no juveniles were present on the school property or crossing
26 zone at the time of the offense or that the school was not in session.

27 As used in this section, "vessel" means a means of conveyance
28 for travel on water and propelled otherwise than by muscular
29 power.

30 d. A person who is employed by a facility as defined in section
31 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
32 defined in paragraph (1) or (2) of subsection a. of this section upon
33 an institutionalized elderly person as defined in section 2 of
34 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
35 degree.

36 e. (Deleted by amendment, P.L.2001, c.443).

37 f. A person who commits a simple assault as defined in
38 paragraph (1), (2) or (3) of subsection a. of this section in the
39 presence of a child under 16 years of age at a school or community
40 sponsored youth sports event is guilty of a crime of the fourth
41 degree. The defendant shall be strictly liable upon proof that the
42 offense occurred, in fact, in the presence of a child under 16 years
43 of age. It shall not be a defense that the defendant did not know
44 that the child was present or reasonably believed that the child was
45 16 years of age or older. The provisions of this subsection shall not
46 be construed to create any liability on the part of a participant in a
47 youth sports event or to abrogate any immunity or defense available
48 to a participant in a youth sports event. As used in this act, "school

1 or community sponsored youth sports event" means a competition,
2 practice or instructional event involving one or more interscholastic
3 sports teams or youth sports teams organized pursuant to a
4 nonprofit or similar charter or which are member teams in a youth
5 league organized by or affiliated with a county or municipal
6 recreation department and shall not include collegiate, semi-
7 professional or professional sporting events.

8 (cf: P.L.2010, c.109, s.1)

9
10 3. This act shall take effect immediately.

11
12
13 STATEMENT

14
15 This bill would make it easier for prosecutors to obtain
16 convictions for vehicular homicide or assault by auto against a
17 person who illegally uses a cell phone while driving and, as a result,
18 kills or injures someone.

19 A person is guilty of death by auto or assault by auto when it is
20 proven that he or she drove a motor vehicle recklessly. This bill
21 specifically provides that the illegal use of a cell phone while
22 driving may give rise to an inference that the defendant was driving
23 recklessly.

24 Vehicular homicide is generally a crime of the second degree,
25 punishable by imprisonment of five to ten years, a fine of up to
26 \$150,000, or both. Assault by auto is a crime of the fourth degree if
27 serious bodily injury occurs and a disorderly persons offense if
28 bodily injury occurs. A fourth degree crime is punishable by up to
29 18 months imprisonment, a fine of up to \$10,000, or both. The
30 penalty for a disorderly persons offense is imprisonment for up to
31 six months, a fine of up to \$1,000, or both.

32 The bill is designated as "Kulesh and Kubert's Law" after Helen
33 Kulesh who was tragically killed by a person who was using a cell
34 phone while driving, and David and Linda Kubert who were both
35 severely injured by a driver who was illegally using a cell phone.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 1616

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 14, 2012

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1616.

As amended by the committee, this bill provides prosecutors with a means to more easily obtain convictions for vehicular homicide or assault by auto against a person who illegally uses a cell phone while driving and, as a result, kills or injures someone.

A person is guilty of vehicular homicide or assault by auto when it is proven that he or she drove a motor vehicle recklessly. This bill specifically provides that the illegal use of a cell phone while driving may give rise to an inference that the defendant was driving recklessly.

Vehicular homicide is generally a crime of the second degree, punishable by imprisonment of five to ten years, a fine of up to \$150,000, or both. Assault by auto is a crime of the fourth degree if serious bodily injury occurs, and a disorderly persons offense if bodily injury occurs. A fourth degree crime is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both. The penalty for a disorderly persons offense is imprisonment for up to six months, a fine of up to \$1,000, or both.

The committee amended the bill so that it is designated as “Kulesh, Kubert, and Bolis’ Law” after Helen Kulesh, who was tragically killed by a person who was using a cell phone while driving; David and Linda Kubert, who were both severely injured by a driver who was illegally using a cell phone; and, pursuant to the committee amendments, Toni Bolis and her son Ryan Jeffery Bolis, who died in a motor vehicle accident that was allegedly caused by a person who was using a cell phone while driving.

The committee also amended the bill to incorporate the provisions of P.L.2012, c.3 into the assault by auto statute, N.J.S.2C:12-1 (section 2 of the bill).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1616 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 15, 2012

SUMMARY

- Synopsis:** "Kulesh, Kubert's and Bolis' Law;" establishes violation of hands-free cell phone law as reckless under vehicular homicide statute and assault by auto statutes.
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Judiciary, Department of Corrections.

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See Comments Below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate, and adds that for each offender who is imprisoned under this bill, the average cost to house that offender at a State prison facility would total about of \$43,000 annually. The OLS also notes that there is a presumption of non-incarceration for first time fourth degree offenders.
- The bill would make it easier for prosecutors to obtain convictions for vehicular homicide or assault by auto against a person who illegally uses a cell phone while driving and, as a result, kills or injures someone.
- The Administrative Office of the Courts (AOC) states that the Judiciary is unable to determine if any of the 259 defendants convicted of Death by Auto or Vessel or Assault by Auto or Vessel were also charged or convicted of Operation of a Hand-held Wireless Telephone While Driving a Motor Vehicle. Consequently, the Judiciary cannot estimate the number of cases that might fall under the provisions of this bill nor estimate the fiscal impact the proposed legislation would have on Judiciary resources or expenditures.
- The AOC states that as it is likely that by creating an inference that a defendant was driving recklessly because he or she was operating a hand-held wireless telephone while driving, it would be somewhat easier to prove a case of Death by Auto or Vessel or Assault by Auto or Vessel and a defendant would be less likely to opt to go to trial. Given that current cases involving Death by Auto or Vessel or Assault by Auto or Vessel rarely proceed to trial, it is anticipated that this bill would only have a negligible fiscal impact on the Judiciary.

BILL DESCRIPTION

Senate Bill No. 1616 (1R) of 2012 would make it easier for prosecutors to obtain convictions for vehicular homicide or assault by auto against a person who illegally uses a cell phone while driving and, as a result, kills or injures someone.

A person is guilty of death by auto or assault by auto when it is proven that he or she drove a motor vehicle recklessly. This bill specifically provides that the illegal use of a cell phone while driving would give rise to an inference that the defendant was driving recklessly.

Vehicular homicide is generally a crime of the second degree, punishable by imprisonment of five to 10 years, a fine of up to \$150,000, or both. Assault by auto is a crime of the fourth degree if serious bodily injury occurs and a disorderly persons offense if bodily injury occurs. A fourth degree crime is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both. The penalty for a disorderly persons offense is imprisonment for up to six months, a fine of up to \$1,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

In a fiscal note for this bill in a prior legislative session, the AOC stated that for the period from January 1, 2009 through December 31, 2009, there were a total of 259 defendants convicted of Death by Auto or Vessel under N.J.S.A. 2C:11-5 or Assault by Auto or Vessel under N.J.S.A. 2C:12-1c. Of those 259 defendants, 254 pled guilty to the stated offense and 5 were convicted after a jury trial. For the same period, there were 107,112 convictions of Operation of a Hand-held Wireless Telephone While Driving a Motor Vehicle under N.J.S.A. 39:4-97.3.

The AOC notes that the Judiciary is unable to determine if any of the 259 defendants convicted of Death by Auto or Vessel or Assault by Auto or Vessel were also charged or convicted of Operation of a Hand-held Wireless Telephone While Driving a Motor Vehicle. Consequently, the Judiciary cannot estimate the number of cases that might fall under the provisions of this bill nor estimate the fiscal impact the proposed legislation would have on Judiciary resources or expenditures.

The AOC states that as it is likely that by creating an inference that a defendant was driving recklessly because he or she was operating a hand-held wireless telephone while driving, it would be somewhat easier to prove a case of Death by Auto or Vessel or Assault by Auto or Vessel and a defendant would be less likely to opt to go to trial. Given that current cases involving Death by Auto or Vessel or Assault by Auto or Vessel rarely proceed to trial, it is anticipated that this bill would only have a negligible fiscal impact on the Judiciary.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate, and adds that for each offender who is imprisoned under this bill, the average cost to house that offender at a State prison facility would total about of \$43,000 annually. The OLS also notes that there is a presumption of non-incarceration for first time fourth degree offenders. For those offenders who are incarcerated, the inmate usually serves about one-third of the sentence imposed.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Ch. 27

Acting Governor Kim Guadagno Signs Legislation to Assist in Criminal Prosecution of Hands-Free Cell Phone Law Violators

Wednesday, July 18, 2012 Tags: [Other](#)

Violators Causing Serious Crashes Face Prosecution Under Criminal Homicide or Assault-By-Vehicle Laws

Trenton, NJ – Taking action to protect motorists, passengers and pedestrians, Acting Governor Kim Guadagno today signed legislation, A-1074, that will assist in the criminal prosecution of violators of the hands-free law who cause serious crashes.

Known as the "Kulesh, Kubert and Bolis' Law," the measure is named after New Jersey residents who were killed or severely injured in a crash caused by someone using a handheld cell phone while driving. Elderly Elizabeth resident Helen Kulesh was crossing the street when she was killed by a driver illegally using a cell phone. David and Linda Kubert, formerly of Dover, are now amputees after a man who was texting crashed into their motorcycle. Washington Township resident Toni Bolis, nine months pregnant with her son Ryan Jeffrey Bolis, was killed in a motor vehicle accident caused by a driver using a cell phone.

"The consequences of distracted driving are devastating. It's baffling why otherwise law abiding citizens, who would never get behind the wheel holding an open beer, will text or talk on their cell phones while driving and ignore the danger," said Acting Governor Guadagno. "This new law sends a clear and serious message to people who dare to talk or text on their cell phone while driving."

Under the new law, proof that a defendant was operating a hand-held wireless telephone while driving a motor vehicle may give rise to the presumption that the defendant was engaged in reckless driving. Prosecutors are empowered to charge the offender with committing vehicular homicide or assault when such type of accident occurs from reckless driving. Vehicular homicide is generally a crime of the second degree, punishable by imprisonment of five to ten years, a fine of up to \$150,000, or both. Assault by auto is a crime of the fourth degree if serious bodily injury occurs and a disorderly persons offense if bodily injury occurs. A fourth degree crime is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both. The penalty for a disorderly persons offense is imprisonment for up to six months, a fine of up to \$1,000, or both.

"The irresponsible use of a cell phone while driving can have tragic consequences as evidenced by the stories of Ms. Kulesh, Mr. and Mrs. Kubert and Toni and Ryan Bolis," said Assemblyman Anthony Bucco, a primary sponsor of the bill. "Because of the distraction of a cell phone, two people lost limbs, and three others died. Driving is a responsibility, not a right. Everyone must take that responsibility seriously. These are three cases of what heartbreak inattentive driving can cause. There is now a price to pay for such capricious acts."

"No call or text is more important than a person's life or limb," said Assemblywoman Annette Quijano, also a primary sponsor of the bill. "Tragedies like the ones the Kulesh, Kuthbert and Bolis families endured are more heartbreaking because they could have been avoided. This law will hopefully make people more accountable for their actions and minimize injuries and deaths caused by cell phone distractions."

"There is no question that illegally using a cell phone causes distractions for those out on the road," said Senator Fred Madden, a Democratic sponsor of the bill. "Sometimes those distractions can have tragic results. That is why it is important that we send a message that such behavior must cease. This is about saving lives and protecting people."

According to the New Jersey Division of Highway Traffic Safety, since 2008, over 10,000 drivers have been involved in crashes while using a cell phone.

A recent study conducted by the National Highway Traffic Safety Administration (NHTSA) showed that not only do people tend to answer the phone and keep driving, but almost half of the people polled (45 percent) hold the phone in their hand while driving. When asked how they thought their own driving changed when sending text messages, 25 percent of the respondents said the distraction made no difference in their driving yet almost all of the men and women asked (86 percent of the men and 90 percent of the women) said they felt unsafe as a passenger in a car while the driver was sending a text message or email.

In Massachusetts in June, Aaron Deveau, 18, was convicted of homicide for texting while driving, which led to a crash killing a 55-year-old New Hampshire man. Deveau is believed to be the first person in the country convicted of vehicular

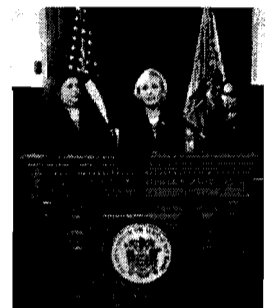
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Kulesh's, Kuberts' and Bolis' Law
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homicide for texting while driving.

Primary sponsors of the legislation are Assemblyman Anthony M. Bucco (R-Morris and Somerset), Assemblyman Michael Patrick Carroll (R-Morris and Somerset), Assemblywoman Annette Quijano (D-Union), Assemblyman Paul Moriarity (D-Camden and Gloucester), Assemblywoman Gabriela Mosquera, (D-Camden and Gloucester), Assemblyman Charles Mainor (D-Hudson) and Assemblyman Albert Coutinho, (D-Essex).

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