

2C:11-5
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2017 **CHAPTER:** 372

NJSA: 2C:11-5 (Establishes failure to maintain lane may constitute recklessness under reckless vehicular homicide statute; designated as Eileen's Law)

BILL NO: A4062 (Substituted for S2342)

SPONSOR(S) Wisniewski and others

DATE INTRODUCED: 9/15/2016

COMMITTEE: **ASSEMBLY:** Transportation & Independent Authorities

SENATE: Law & Public Safety
 Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 1/8/2018

SENATE: 1/8/2018

DATE OF APPROVAL: 1/16/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted) Yes

A4062

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

(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 NOTE: Yes 12/13/2017
 1/11/2018

S2342

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Law & Public Safety
 Budget & Appropriations

(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)

(continued)

FLOOR AMENDMENT STATEMENT:

No

LEGISLATIVE FISCAL NOTE:

Yes 12/13/2017
1/11/2018

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"On his final day, Christie signs over 100 bills," Burlington County Times, January 16, 2018

P.L. 2017, CHAPTER 372, *approved January 16, 2018*
Assembly, No. 4062 (*Second Reprint*)

1 AN ACT concerning ²reckless² vehicular homicide¹, designated as
2 Eileen's Law,¹ and amending N.J.S.2C:11-5.

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

6
7 1. N.J.S.2C:11-5 is amended to read as follows:
8 2C:11-5. Death by auto or vessel.

9 a. Criminal homicide constitutes ²reckless² vehicular homicide
10 when it is caused by driving a vehicle or vessel recklessly.

11 Proof that the defendant fell asleep while driving or was driving
12 after having been without sleep for a period in excess of 24
13 consecutive hours may give rise to an inference that the defendant
14 was driving recklessly. Proof that the defendant was driving while
15 intoxicated in violation of R.S.39:4-50 or was operating a vessel
16 under the influence of alcohol or drugs in violation of section 3 of
17 P.L.1952, c.157 (C.12:7-46) shall give rise to an inference that the
18 defendant was driving recklessly. Proof that the defendant was
19 operating a hand-held wireless telephone while driving a motor
20 vehicle in violation of section 1 of P.L.2003, c.310 (C.39:4-97.3)
21 may give rise to an inference that the defendant was driving
22 recklessly. ¹**At the discretion of the prosecutor, proof** ¹Proof¹ that
23 the defendant failed to maintain a lane in violation of R.S.39:4-88
24 ¹**while engaging in distracted driving**¹ may give rise to an
25 inference that the defendant was driving recklessly. ¹**For purposes**
26 of this section, "distracted driving" means inattentive driving while
27 operating a motor vehicle that results in the unsafe operation of the
28 vehicle where the inattention is caused by reading, writing,
29 performing personal grooming, eating, drinking, interacting with
30 passengers, pets, or unsecured cargo, or engaging in any other
31 activities that cause distraction, other than operating a hand-held
32 wireless telephone.¹ Nothing in this section shall be construed to
33 in any way limit the conduct or conditions that may be found to
34 constitute driving a vehicle or vessel recklessly.

35 b. Except as provided in ¹**paragraph** ¹paragraphs¹ (3) and (5)
36 of this subsection, ²reckless² vehicular homicide is a crime of the
37 second degree.

38 (1) If the defendant was operating the auto or vessel while under
39 the influence of any intoxicating liquor, narcotic, hallucinogenic or
40 habit-producing drug, or with a blood alcohol concentration at or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATR committee amendments adopted January 19, 2017.

²Senate SBA committee amendments adopted January 5, 2018.

1 above the prohibited level as prescribed in R.S.39:4-50, or if the
2 defendant was operating the auto or vessel while his driver's license
3 or reciprocity privilege was suspended or revoked for any violation
4 of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
5 **【Director of the Division of Motor Vehicles】** Chief Administrator
6 of the New Jersey Motor Vehicle Commission pursuant to
7 P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a violation
8 of R.S.39:4-96, the defendant shall be sentenced to a term of
9 imprisonment by the court. The term of imprisonment shall include
10 the imposition of a minimum term. The minimum term shall be
11 fixed at, or between, one-third and one-half of the sentence imposed
12 by the court or three years, whichever is greater, during which the
13 defendant shall be ineligible for parole.

14 (2) The court shall not impose a mandatory sentence pursuant to
15 paragraph (1) of this subsection unless the grounds therefor have
16 been established at a hearing. At the hearing, which may occur at
17 the time of sentencing, the prosecutor shall establish by a
18 preponderance of the evidence that the defendant was operating the
19 auto or vessel while under the influence of any intoxicating liquor,
20 narcotic, hallucinogenic or habit-producing drug, or with a blood
21 alcohol concentration at or above the level prescribed in R.S.39:4-
22 50 or that the defendant was operating the auto or vessel while his
23 driver's license or reciprocity privilege was suspended or revoked
24 for any violation of R.S.39:4-50, section 2 of P.L.1981, c.512
25 (C.39:4-50.4a), by the **【Director of the Division of Motor Vehicles】**
26 Chief Administrator of the New Jersey Motor Vehicle Commission
27 pursuant to P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a
28 violation of R.S.39:4-96. In making its findings, the court shall
29 take judicial notice of any evidence, testimony or information
30 adduced at the trial, plea hearing, or other court proceedings and
31 shall also consider the presentence report and any other relevant
32 information.

33 (3) ²**【Vehicular】** Reckless vehicular² homicide is a crime of the
34 first degree if the defendant was operating the auto or vessel while
35 in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-
36 50.4a) while:

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

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

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

46 A map or true copy of a map depicting the location and
47 boundaries of the area on or within 1,000 feet of any property used
48 for school purposes which is owned by or leased to any elementary

1 or secondary school or school board produced pursuant to section 1
2 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
3 subparagraph (a) of this paragraph.

4 It shall be no defense to a prosecution for a violation of
5 subparagraph (a) or (b) of this paragraph that the defendant was
6 unaware that the prohibited conduct took place while on or within
7 1,000 feet of any school property or while driving through a school
8 crossing. Nor shall it be a defense to a prosecution under
9 subparagraph (a) or (b) of this paragraph that no juveniles were
10 present on the school property or crossing zone at the time of the
11 offense or that the school was not in session.

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

18 (5) ²【Vehicular】 Reckless Vehicular² homicide is a crime of the
19 third degree if the defendant ¹【failed】 proves by a preponderance of
20 the evidence that the defendant did not commit any conduct
21 constituting driving a vehicle or vessel recklessly other than failing¹ to
22 maintain a lane in violation of R.S.39:4-88 ¹【while engaging in
23 distracted driving, as defined in subsection a. of this section】^{1 2 2}

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

27 d. Nothing herein shall be deemed to preclude, if the evidence
28 so warrants, an indictment and conviction for aggravated
29 manslaughter under the provisions of subsection a. of N.J.S.2C:11-
30 4.

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

33 e. Any person who violates paragraph (3) of subsection b. of
34 this section shall forfeit the auto or vessel used in the commission
35 of the offense, unless the defendant can establish at a hearing,
36 which may occur at the time of sentencing, by a preponderance of
37 the evidence that such forfeiture would constitute a serious hardship
38 to the family of the defendant that outweighs the need to deter such
39 conduct by the defendant and others. In making its findings, the
40 court shall take judicial notice of any evidence, testimony^{1,1} or
41 information adduced at the trial, plea hearing, or other court
42 proceedings and shall also consider the presentence report and any
43 other relevant information. Forfeiture pursuant to this subsection
44 shall be in addition to, and not in lieu of, civil forfeiture pursuant to
45 chapter 64 of this ¹【title】 Title¹.

46 (cf: P.L.2017, c.165 s.3)

47

48 2. This act shall take effect immediately.

A4062 [2R]

4

1

2

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

ASSEMBLY, No. 4062

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2016

Sponsored by:

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblyman NICHOLAS CHIARAVALLOTTI

District 31 (Hudson)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblywoman Rodriguez-Gregg and Assemblyman Howarth

SYNOPSIS

Establishes failure to maintain lane while engaging in distracted driving as reckless under vehicular homicide statute

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/20/2017)

1 AN ACT concerning vehicular homicide and amending N.J.S.2C:11-
2 5.

3

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

6

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

8 2C:11-5. Death by auto or vessel.

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

11 Proof that the defendant fell asleep while driving or was driving
12 after having been without sleep for a period in excess of 24
13 consecutive hours may give rise to an inference that the defendant
14 was driving recklessly. Proof that the defendant was driving while
15 intoxicated in violation of R.S.39:4-50 or was operating a vessel
16 under the influence of alcohol or drugs in violation of section 3 of
17 P.L.1952, c.157 (C.12:7-46) shall give rise to an inference that the
18 defendant was driving recklessly. Proof that the defendant was
19 operating a hand-held wireless telephone while driving a motor
20 vehicle in violation of section 1 of P.L.2003, c.310 (C.39:4-97.3)
21 may give rise to an inference that the defendant was driving
22 recklessly. At the discretion of the prosecutor, proof that the
23 defendant failed to maintain a lane in violation of R.S.39:4-88 while
24 engaging in distracted driving may give rise to an inference that the
25 defendant was driving recklessly. For purposes of this section,
26 “distracted driving” means inattentive driving while operating a
27 motor vehicle that results in the unsafe operation of the vehicle
28 where the inattention is caused by reading, writing, performing
29 personal grooming, eating, drinking, interacting with passengers,
30 pets or unsecured cargo, or engaging in any other activities that
31 cause distraction, other than operating a hand-held wireless
32 telephone. Nothing in this section shall be construed to in any way
33 limit the conduct or conditions that may be found to constitute
34 driving a vehicle or vessel recklessly.

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

37 (1) If the defendant was operating the auto or vessel while under
38 the influence of any intoxicating liquor, narcotic, hallucinogenic or
39 habit-producing drug, or with a blood alcohol concentration at or
40 above the prohibited level as prescribed in R.S.39:4-50, or if the
41 defendant was operating the auto or vessel while his driver's license
42 or reciprocity privilege was suspended or revoked for any violation
43 of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
44 **[Director of the Division of Motor Vehicles]** Chief Administrator
45 of the New Jersey Motor Vehicle Commission pursuant to

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a violation
2 of R.S.39:4-96, the defendant shall be sentenced to a term of
3 imprisonment by the court. The term of imprisonment shall include
4 the imposition of a minimum term. The minimum term shall be
5 fixed at, or between, one-third and one-half of the sentence imposed
6 by the court or three years, whichever is greater, during which the
7 defendant shall be ineligible for parole.

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

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

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

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

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

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

45 It shall be no defense to a prosecution for a violation of
46 subparagraph (a) or (b) of this paragraph that the defendant was
47 unaware that the prohibited conduct took place while on or within
48 1,000 feet of any school property or while driving through a school

1 crossing. Nor shall it be a defense to a prosecution under
2 subparagraph (a) or (b) of this paragraph that no juveniles were
3 present on the school property or crossing zone at the time of the
4 offense or that the school was not in session.

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

11 (5) Vehicular homicide is a crime of the third degree if the
12 defendant failed to maintain a lane in violation of R.S.39:4-88 while
13 engaging in distracted driving, as defined in subsection a. of this
14 section.

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

18 d. Nothing herein shall be deemed to preclude, if the evidence
19 so warrants, an indictment and conviction for aggravated
20 manslaughter under the provisions of subsection a. of N.J.S.2C:11-
21 4.

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

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

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

38

39 2. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill would allow prosecutors to more easily obtain a
45 conviction for vehicular homicide against a person who failed to
46 maintain a lane due to distracted driving.

47 Under current law, a person is guilty of death by auto when it is
48 proven that he or she drove a motor vehicle recklessly. This bill

1 specifically provides that, at the discretion of the prosecutor, failure to
2 maintain a lane while engaging in distracted driving may give rise to
3 an inference that the defendant was driving recklessly.

4 The bill defines distracted driving as "inattentive driving while
5 operating a motor vehicle that results in the unsafe operation of the
6 vehicle where the inattention is caused by reading, writing,
7 performing personal grooming, eating, drinking, interacting with
8 passengers, pets or unsecured cargo, or engaging in any other
9 activity that causes distractions, other than operating a hand-held
10 wireless telephone." Current law already provides that operating a
11 hand-held wireless telephone while driving a motor vehicle gives
12 rise to an inference of reckless driving.

13 The bill provides that a person who commits vehicular homicide
14 under these conditions is guilty of a second degree crime. Third
15 degree crimes are punishable by imprisonment of three to five years, a
16 fine of up to \$15,000, or both.

ASSEMBLY TRANSPORTATION AND INDEPENDENT
AUTHORITIES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4062

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 19, 2017

The Assembly Transportation and Independent Authorities Committee reports favorably and with committee amendments Assembly Bill No. 4062.

As amended and reported, this bill is designated as “Eileen’s Law” and provides that proof that a defendant failed to maintain a lane may give rise to an inference that the defendant was driving recklessly.

Under existing law, vehicular homicide is a crime of the second degree, with limited exceptions.

Under the bill, vehicular homicide is a crime of the third degree if the defendant proves by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane. A crime of the third degree is punishable by imprisonment of three to five years, a maximum fine of \$15,000, or both.

The bill is named for Eileen Marmino who was killed after being struck by a motorist who veered into the bike lane in which she was riding.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- designate the bill as “Eileen’s Law”;
- remove a provision of the bill providing that the inference that the defendant was driving recklessly due to failure to maintain a lane is at the discretion of the prosecutor;
- remove the requirement that a defendant engage in distracted driving in order for the defendant’s failure to maintain a lane to give rise to an inference that the defendant was driving recklessly;
- provide that vehicular homicide is a crime of the third degree if the defendant proves by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane;

- change the synopsis to clarify that the bill establishes that failure to maintain a lane may constitute recklessness under the vehicular homicide statute; and
- make certain grammatical corrections and technical corrections to statutory references in the bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4062

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2018

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 4062 (1R), with committee amendments.

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

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

Under the bill, a person who commits reckless vehicular homicide by failing to maintain a lane is guilty of a third degree crime. Under the bill, reckless vehicular homicide is a crime of the third degree if the defendant proves by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane. Third degree crimes are punishable by imprisonment of three to five years, a maximum fine of \$15,000, or both.

The bill is named for Eileen Marmino who was killed after being struck by a motorist who veered into the bike lane in which she was riding.

As amended and reported, this bill is identical to Senate Bill No. 2342 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments update the name of the offense of vehicular homicide to reckless vehicular homicide as recently changed by P.L.2017, c.16. The committee also made technical changes.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill could increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the new third degree crime. The OLS, however, lacks sufficient information to quantify the fiscal impacts, as it is unclear how many individuals would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

The bill would increase State operating expenditures if: a) the Department of Law and Public Safety prosecutes additional defendants under the provisions of this bill; b) the Judiciary adjudicates additional cases related to the new criminal offense; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with having violated the prohibitions of the bill; d) the Department of Corrections houses and cares for individuals sentenced to prison terms for having violated the prohibitions of the bill; and e) the State Parole Board supervises the return to society of those convicted.

The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies but notes that it is unlikely that defendants convicted of the new third degree crime would be sentenced to prison terms. This is because a presumption of non-incarceration generally applies to first-time offenders of crimes of the third degree. To the extent that convicted defendants receive prison sentences, however, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

Any additional State cost from allowing for the criminalization of the failure to maintain a lane if such failure results in the death of another person may be offset, in full or in part, by fines and penalties imposed by the courts on persons convicted of having committed the new crime. Fines could be as high as \$15,000 per violation; however, the State's ability to collect criminal fines and penalties has historically been limited.

FISCAL NOTE
 [First Reprint]
ASSEMBLY, No. 4062
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: DECEMBER 13, 2017

SUMMARY

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

Type of Impact: Annual expenditure and revenue increases to State General Fund.

Agencies Affected: Department of Law and Public Safety; Judiciary; Office of the Public Defender; Department of Corrections; State Parole Board.

Judicial Estimate

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

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Expenditure Increase	Indeterminate – See Comments Below		
Annual State Revenue Increase	Indeterminate – See Comments Below		

- The Office of Legislative Services (OLS) **concurs** with the Administrative Office of the Courts’ (AOC) assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases. The AOC cannot quantify the number of defendants who would be charged or convicted under this bill.
- The OLS adds that the bill could also increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the bill’s new third degree crime. The OLS, however, lacks sufficient information to quantify the bill’s



fiscal impacts, as it is unclear how many persons would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

BILL DESCRIPTION

Assembly Bill No. 4062 (1R) of 2016 allows for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person when the motorist does not commit another contemporaneous criminal offense. A crime of the third degree is punishable by imprisonment of three to five years, a maximum fine of \$15,000, or both.

Under current law, the failure to maintain a traffic lane is a moving violation that carries a penalty ranging from \$100 to \$300 and a \$50 surcharge (N.J.S.A.39:4-88.1).

FISCAL ANALYSIS

JUDICIAL BRANCH

The AOC states that in calendar year 2016, there were 38 violations of N.J.S.A.2C:11-5 (death by auto or vessel) that might have been impacted by the provisions of this bill, if they had been in effect at the time. Although the Judiciary does not anticipate incurring any new costs because of the legislation, the Judiciary is unable to determine the impact this bill would have on the number of defendants charged or convicted. As a result, the Judiciary cannot estimate the fiscal impact the bill would have on the courts.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the AOC's assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases.

The OLS adds that the bill could also increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the bill's new third degree crime. The OLS, however, lacks sufficient information to quantify the bill's fiscal impacts, as it is unclear how many persons would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

The bill would increase State operating expenditures if: a) the Department of Law and Public Safety prosecutes additional defendants under the provisions of this bill; b) the Judiciary adjudicates additional cases related to the new criminal offense; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with having violated the bill's prohibitions; d) the Department of Corrections houses and cares for individuals sentenced to prison terms for having violated the bill's prohibitions; and e) the State Parole Board supervises the return to society of those convicts.

The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies but notes that it is unlikely that defendants convicted of the new third degree crime would be sentenced to prison terms. This is so because a presumption of non-incarceration generally applies to first-time offenders of crimes of the third degree. To the extent that convicted defendants receive prison sentences, however, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

Any additional State cost from allowing for the criminalization of the failure to maintain a lane if such failure results in the death of another person may be offset, in full or in part, by fines and penalties imposed by the courts on persons convicted of having committed the new crime. Fines could be as high as \$15,000 per violation; however, the State's ability to collect criminal fines and penalties has historically been limited.

Section: Judiciary

*Analyst: Anne C. Raughley
Principal Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

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

FISCAL NOTE
 [Second Reprint]
ASSEMBLY, No. 4062
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JANUARY 11, 2018

SUMMARY

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

Type of Impact: Annual expenditure and revenue increases to State General Fund.

Agencies Affected: Department of Law and Public Safety; Judiciary; Office of the Public Defender; Department of Corrections; State Parole Board.

Judicial Estimate

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

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Expenditure Increase	Indeterminate – See Comments Below		
Annual State Revenue Increase	Indeterminate – See Comments Below		

- The Office of Legislative Services (OLS) **concurs** with the Administrative Office of the Courts’ (AOC) assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases. The AOC cannot quantify the number of defendants who would be charged or convicted under this bill.
- The OLS adds that the bill could also increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the bill’s new third degree crime. The OLS, however, lacks sufficient information to quantify the bill’s

fiscal impacts, as it is unclear how many persons would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

BILL DESCRIPTION

Assembly Bill No. 4062 (2R) of 2016 allows for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person when the motorist does not commit another contemporaneous criminal offense. A crime of the third degree is punishable by imprisonment of three to five years, a maximum fine of \$15,000, or both.

Under current law, the failure to maintain a traffic lane is a moving violation that carries a penalty ranging from \$100 to \$300 and a \$50 surcharge (N.J.S.A.39:4-88.1).

FISCAL ANALYSIS

JUDICIAL BRANCH

The AOC states that in calendar year 2016, there were 38 violations of N.J.S.A.2C:11-5 (death by auto or vessel) that might have been impacted by the provisions of this bill, if they had been in effect at the time. Although the Judiciary does not anticipate incurring any new costs because of the legislation, the Judiciary is unable to determine the impact this bill would have on the number of defendants charged or convicted. As a result, the Judiciary cannot estimate the fiscal impact the bill would have on the courts.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the AOC's assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases.

The OLS adds that the bill could also increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the bill's new third degree crime. The OLS, however, lacks sufficient information to quantify the bill's fiscal impacts, as it is unclear how many persons would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

The bill would increase State operating expenditures if: a) the Department of Law and Public Safety prosecutes additional defendants under the provisions of this bill; b) the Judiciary adjudicates additional cases related to the new criminal offense; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with having violated the bill's prohibitions; d) the Department of Corrections houses and cares for individuals sentenced to prison terms for having violated the bill's prohibitions; and e) the State Parole Board supervises the return to society of those convicts.

The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies but notes that it is unlikely that defendants

convicted of the new third degree crime would be sentenced to prison terms. This is so because a presumption of non-incarceration generally applies to first-time offenders of crimes of the third degree. To the extent that convicted defendants receive prison sentences, however, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

Any additional State cost from allowing for the criminalization of the failure to maintain a lane if such failure results in the death of another person may be offset, in full or in part, by fines and penalties imposed by the courts on persons convicted of having committed the new crime. Fines could be as high as \$15,000 per violation; however, the State's ability to collect criminal fines and penalties has historically been limited.

Section: Judiciary

*Analyst: Anne C. Raughley
Principal Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

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

SENATE, No. 2342

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JUNE 9, 2016

Sponsored by:

Senator DAWN MARIE ADDIEGO
District 8 (Atlantic, Burlington and Camden)
Senator PATRICK J. DIEGNAN, JR.
District 18 (Middlesex)

SYNOPSIS

Establishes failure to maintain lane while engaging in distracted driving as reckless under vehicular homicide statute.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/2/2016)

1 AN ACT concerning vehicular homicide and amending N.J.S.2C:11-
2 5.

3

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

6

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

8 2C:11-5. Death by auto or vessel.

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

11 Proof that the defendant fell asleep while driving or was driving
12 after having been without sleep for a period in excess of 24
13 consecutive hours may give rise to an inference that the defendant
14 was driving recklessly. Proof that the defendant was driving while
15 intoxicated in violation of R.S.39:4-50 or was operating a vessel
16 under the influence of alcohol or drugs in violation of section 3 of
17 P.L.1952, c.157 (C.12:7-46) shall give rise to an inference that the
18 defendant was driving recklessly. Proof that the defendant was
19 operating a hand-held wireless telephone while driving a motor
20 vehicle in violation of section 1 of P.L.2003, c.310 (C.39:4-97.3)
21 may give rise to an inference that the defendant was driving
22 recklessly. At the discretion of the prosecutor, proof that the
23 defendant failed to maintain a lane in violation of R.S.39:4-88 while
24 engaging in distracted driving may give rise to an inference that the
25 defendant was driving recklessly. For purposes of this section,
26 “distracted driving” means inattentive driving while operating a
27 motor vehicle that results in the unsafe operation of the vehicle
28 where the inattention is caused by reading, writing, performing
29 personal grooming, eating, drinking, interacting with passengers,
30 pets or unsecured cargo, or engaging in any other activities that
31 cause distraction, other than operating a hand-held wireless
32 telephone. Nothing in this section shall be construed to in any way
33 limit the conduct or conditions that may be found to constitute
34 driving a vehicle or vessel recklessly.

35 b. Except as provided in paragraph (3) and (4) of this
36 subsection, vehicular homicide is a crime of the second degree.

37 (1) If the defendant was operating the auto or vessel while under
38 the influence of any intoxicating liquor, narcotic, hallucinogenic or
39 habit-producing drug, or with a blood alcohol concentration at or
40 above the prohibited level as prescribed in R.S.39:4-50, or if the
41 defendant was operating the auto or vessel while his driver's license
42 or reciprocity privilege was suspended or revoked for any violation
43 of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
44 **[Director of the Division of Motor Vehicles]** Chief Administrator
45 of the New Jersey Motor Vehicle Commission pursuant to

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a violation
2 of R.S.39:4-96, the defendant shall be sentenced to a term of
3 imprisonment by the court. The term of imprisonment shall include
4 the imposition of a minimum term. The minimum term shall be
5 fixed at, or between, one-third and one-half of the sentence imposed
6 by the court or three years, whichever is greater, during which the
7 defendant shall be ineligible for parole.

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

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

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

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

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

39 (4) Vehicular homicide is a crime of the third degree if the
40 defendant failed to maintain a lane in violation of R.S.39:4-88 while
41 engaging in distracted driving, as defined in subsection a. of this
42 section.

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

1 It shall be no defense to a prosecution for a violation of
2 subparagraph (a) or (b) of this paragraph that the defendant was
3 unaware that the prohibited conduct took place while on or within
4 1,000 feet of any school property or while driving through a school
5 crossing. Nor shall it be a defense to a prosecution under
6 subparagraph (a) or (b) of this paragraph that no juveniles were
7 present on the school property or crossing zone at the time of the
8 offense or that the school was not in session.

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

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

18 d. Nothing herein shall be deemed to preclude, if the evidence
19 so warrants, an indictment and conviction for aggravated
20 manslaughter under the provisions of subsection a. of N.J.S.2C:11-
21 4.

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

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

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

38

39 2. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill would allow prosecutors to more easily obtain a
45 conviction for vehicular homicide against a person who failed to
46 maintain a lane due to distracted driving.

47 Under current law, a person is guilty of death by auto when it is
48 proven that he or she drove a motor vehicle recklessly. This bill

1 specifically provides that, at the discretion of the prosecutor, failure to
2 maintain a lane while engaging in distracted driving may give rise to
3 an inference that the defendant was driving recklessly.

4 The bill defines distracted driving as "inattentive driving while
5 operating a motor vehicle that results in the unsafe operation of the
6 vehicle where the inattention is caused by reading, writing,
7 performing personal grooming, eating, drinking, interacting with
8 passengers, pets or unsecured cargo, or engaging in any other
9 activity that causes distractions, other than operating a hand-held
10 wireless telephone." Current law already provides that operating a
11 hand-held wireless telephone while driving a motor vehicle gives
12 rise to an inference of reckless driving.

13 The bill provides that a person who commits vehicular homicide
14 under these conditions is guilty of a second degree crime. Third
15 degree crimes are punishable by imprisonment of three to five years, a
16 fine of up to \$15,000, or both.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 2342

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 2016

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 2342.

As amended and reported by the committee, this bill assists prosecutors in establishing the element of recklessness required for obtaining a vehicular homicide conviction against a person who failed to maintain a lane.

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

Current law provides that operating a hand-held wireless telephone while driving a motor vehicle may give rise to an inference of reckless driving.

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

As amended, the bill is named for Eileen Marmino who died from head trauma suffered when she was hit by a motorist who veered into the bike lane in which she was riding.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) remove language "at the discretion of the prosecutor";
- (2) remove requirement that failure to maintain lane had to be when engaged in distracted driving;
- (3) designate it as "Eileen's Law"; and
- (4) make technical corrections.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2342

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2342 (1R), with committee amendments.

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

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

Under the bill, a person who commits reckless vehicular homicide by failing to maintain a lane is guilty of a third degree crime. Under the bill, reckless vehicular homicide is a crime of the third degree if the defendant proves by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane. Third degree crimes are punishable by imprisonment of three to five years, a fine of up to \$15,000, or both.

As amended, the bill is named for Eileen Marmino who died from head trauma suffered when she was hit by a motorist who veered into the bike lane in which she was riding.

As amended and reported, this bill is identical to Assembly Bill No. 4062 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments update the name of the offense of vehicular homicide to reckless vehicular homicide as recently changed by P.L.2017, c.165, and clarify that the grading of the offense as a third degree crime requires that the defendant prove by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane. The committee also made technical amendments.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill could increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the new third degree crime. The OLS, however, lacks sufficient information to quantify the fiscal impacts, as it is unclear how many individuals would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

The bill would increase State operating expenditures if: a) the Department of Law and Public Safety prosecutes additional defendants under the provisions of this bill; b) the Judiciary adjudicates additional cases related to the new criminal offense; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with having violated the prohibitions of the bill; d) the Department of Corrections houses and cares for individuals sentenced to prison terms for having violated the prohibitions of the bill; and e) the State Parole Board supervises the return to society of those convicted.

The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies but notes that it is unlikely that defendants convicted of the new third degree crime would be sentenced to prison terms. This is because a presumption of non-incarceration generally applies to first-time offenders of crimes of the third degree. To the extent that convicted defendants receive prison sentences, however, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

Any additional State cost from allowing for the criminalization of the failure to maintain a lane if such failure results in the death of another person may be offset, in full or in part, by fines and penalties imposed by the courts on persons convicted of having committed the new crime. Fines could be as high as \$15,000 per violation; however, the State's ability to collect criminal fines and penalties has historically been limited.

FISCAL NOTE
 [First Reprint]
SENATE, No. 2342
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: DECEMBER 13, 2017

SUMMARY

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

Type of Impact: Annual expenditure and revenue increases to State General Fund.

Agencies Affected: Department of Law and Public Safety; Judiciary; Office of the Public Defender; Department of Corrections; State Parole Board.

Judicial Estimate

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

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Expenditure Increase	Indeterminate – See Comments Below		
Annual State Revenue Increase	Indeterminate – See Comments Below		

- The Office of Legislative Services (OLS) **concurs** with the Administrative Office of the Courts’ (AOC) assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases. The AOC cannot quantify the number of defendants who would be charged or convicted under this bill.
- The OLS adds that the bill could also increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the bill’s new third degree crime. The OLS, however, lacks sufficient information to quantify the bill’s



fiscal impacts, as it is unclear how many persons would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

BILL DESCRIPTION

Senate Bill No. 2342 (1R) of 2016 allows for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person when the motorist does not commit another contemporaneous criminal offense. A crime of the third degree is punishable by imprisonment of three to five years, a maximum fine of \$15,000, or both.

Under current law, the failure to maintain a traffic lane is a moving violation that carries a penalty ranging from \$100 to \$300 and a \$50 surcharge (N.J.S.A.39:4-88.1).

FISCAL ANALYSIS

JUDICIAL BRANCH

The AOC states that in calendar year 2016, there were 38 violations of N.J.S.A.2C:11-5 (death by auto or vessel) that might have been impacted by the provisions of this bill, if they had been in effect at the time. Although the Judiciary does not anticipate incurring any new costs because of the legislation, the Judiciary is unable to determine the impact this bill would have on the number of defendants charged or convicted. As a result, the Judiciary cannot estimate the fiscal impact the bill would have on the courts.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the AOC's assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases.

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The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies but notes that it is unlikely that defendants convicted of the new third degree crime would be sentenced to prison terms. This is so because a presumption of non-incarceration generally applies to first-time offenders of crimes of the third degree. To the extent that convicted defendants receive prison sentences, however, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

Any additional State cost from allowing for the criminalization of the failure to maintain a lane if such failure results in the death of another person may be offset, in full or in part, by fines and penalties imposed by the courts on persons convicted of having committed the new crime. Fines could be as high as \$15,000 per violation; however, the State's ability to collect criminal fines and penalties has historically been limited.

Section: Judiciary

*Analyst: Anne C. Raughley
 Principal Fiscal Analyst*

*Approved: Frank W. Haines III
 Legislative Budget and Finance Officer*

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

FISCAL NOTE
 [Second Reprint]
SENATE, No. 2342
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JANUARY 11, 2018

SUMMARY

- Synopsis:** Establishes that failure to maintain lane may constitute recklessness under reckless vehicular homicide statute; designated as Eileen’s Law.
- Type of Impact:** Annual expenditure and revenue increases to State General Fund.
- Agencies Affected:** Department of Law and Public Safety; Judiciary; Office of the Public Defender; Department of Corrections; State Parole Board.

Judicial Estimate

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

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Expenditure Increase	Indeterminate – See Comments Below		
Annual State Revenue Increase	Indeterminate – See Comments Below		

- The Office of Legislative Services (OLS) **concurs** with the Administrative Office of the Courts’ (AOC) assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases. The AOC cannot quantify the number of defendants who would be charged or convicted under this bill.
- The OLS adds that the bill could also increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the bill’s new third degree crime. The OLS, however, lacks sufficient information to quantify the bill’s



fiscal impacts, as it is unclear how many persons would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

BILL DESCRIPTION

Senate Bill No. 2342 (2R) of 2016 allows for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person when the motorist does not commit another contemporaneous criminal offense. A crime of the third degree is punishable by imprisonment of three to five years, a maximum fine of \$15,000, or both.

Under current law, the failure to maintain a traffic lane is a moving violation that carries a penalty ranging from \$100 to \$300 and a \$50 surcharge (N.J.S.A.39:4-88.1).

FISCAL ANALYSIS

JUDICIAL BRANCH

The AOC states that in calendar year 2016, there were 38 violations of N.J.S.A.2C:11-5 (death by auto or vessel) that might have been impacted by the provisions of this bill, if they had been in effect at the time. Although the Judiciary does not anticipate incurring any new costs because of the legislation, the Judiciary is unable to determine the impact this bill would have on the number of defendants charged or convicted. As a result, the Judiciary cannot estimate the fiscal impact the bill would have on the courts.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the AOC's assessment that allowing for the conviction of a crime of the third degree of any motorist whose failure to maintain a traffic lane results in the death of another person would cause an indeterminate annual expenditure increase to the courts from having to process additional criminal cases.

The OLS adds that the bill could also increase the annual workload and expenditures of the Department of Law and Public Safety, the Office of the Public Defender, the Department of Corrections, and the State Parole Board. The State may also receive indeterminate additional annual revenue from fines and penalties imposed on individuals convicted of the bill's new third degree crime. The OLS, however, lacks sufficient information to quantify the bill's fiscal impacts, as it is unclear how many persons would be prosecuted, tried, and sentenced for having violated the provisions of the bill in any given fiscal year.

The bill would increase State operating expenditures if: a) the Department of Law and Public Safety prosecutes additional defendants under the provisions of this bill; b) the Judiciary adjudicates additional cases related to the new criminal offense; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with having violated the bill's prohibitions; d) the Department of Corrections houses and cares for individuals sentenced to prison terms for having violated the bill's prohibitions; and e) the State Parole Board supervises the return to society of those convicts.

The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies but notes that it is unlikely that defendants convicted of the new third degree crime would be sentenced to prison terms. This is so because

a presumption of non-incarceration generally applies to first-time offenders of crimes of the third degree. To the extent that convicted defendants receive prison sentences, however, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

Any additional State cost from allowing for the criminalization of the failure to maintain a lane if such failure results in the death of another person may be offset, in full or in part, by fines and penalties imposed by the courts on persons convicted of having committed the new crime. Fines could be as high as \$15,000 per violation; however, the State's ability to collect criminal fines and penalties has historically been limited.

Section: Judiciary

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