

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State  
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## New Law Removes “Criminal Negligence” Element in Vehicular Assault and Vehicular Manslaughter Cases

On November 1, 2005, a new law takes effect eliminating the need for prosecutors to prove “criminal negligence” as an element of the offenses of Vehicular Assault and Vehicular Manslaughter.

In May of 2005, Governor Pataki signed “Vasean’s Law.” Named for Vasean Alleyne, an eleven year old who died in 2004 in an accident involving a drunk driver, this law amends the language set forth in Penal Law sections 120.03 (Vehicular Assault in the Second Degree, a class E felony), 120.04 (Vehicular Assault in the First Degree, a class D felony), 125.12 (Vehicular Manslaughter in the Second Degree, a class D felony), and 125.13 (Vehicular Manslaughter in the First Degree, a class C felony) by removing all references to criminal negligence and creating a “rebuttable presumption” that if a driver was intoxicated or impaired by drugs, he or she operated the vehicle in a manner that caused either serious physical injury or death, depending on the charge.

As an example of these amendments, Vehicular Assault in the Second Degree will read as follows (relevant additions have been highlighted):

A person is guilty of vehicular assault in the second degree when he or she causes serious physical injury to another person, and either:

(1) Operates a motor vehicle in violation of subdivision two, three or four of section 3 eleven hundred ninety-two of the vehicle and

traffic law or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law, *and as a result of such intoxication or impairment by the use of a drug, operates such motor vehicle, vessel or public vessel in a manner that causes such serious physical injury to such other person,*

(2) Operates a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives in violation of subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, and such flammable gas, radioactive materials or explosives is the cause of such serious physical injury, *and as a result of such intoxication or impairment by the use of a drug, operates such motor vehicle, vessel or public vessel in a manner that causes such serious physical injury to such other person,*

(3) Operates a snowmobile in violation of paragraph (b), (c) or (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law or operates an all terrain vehicle as defined in paragraph (a) of subdivision one of section twenty-two hundred eighty-one of the vehicle and traffic law and in violation of subdivision two, three, or four of section eleven hundred ninety-two of the vehicle and traffic law, *and as a result of such intoxication or impairment by the use of a drug, operates such motor vehicle, vessel or public vessel in a manner that causes such serious physical injury to such other person.*

*If it is established that the person operating such motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle caused such serious physical injury while unlawfully intoxicated or impaired by the use of a drug,*

*then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of a drug, such person operated the motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle in a manner that caused such serious physical injury, as required by this section.*

Vehicular assault in the second degree is a class E felony.

Note that all reference to “criminal negligence” has been removed. Similar changes have been made to the other statutes to remove any reference to “criminal negligence.” Instead, these statutes have been amended to include the same “rebuttable presumption” language included in the above statute.

These changes were made to eliminate the need to fulfill the so-called “rule of two” that has largely been adopted by prosecutors when deciding whether to charge an intoxicated driver with Vehicular Assault or Vehicular Manslaughter. Because of the need to prove criminal negligence prior to these amendments, the “rule of two” required that the intoxicated driver be charged with a second traffic infraction, such as being in the wrong lane or running a red light, before the prosecutor would consider bringing higher charges. By eliminating the need to prove criminal negligence, it is anticipated that prosecutors will be much more willing to bring Vehicular Assault and Vehicular Manslaughter charges in cases where an accident involving an intoxicated driver

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact Michael S. Taheri, Esq., or Peter J. Todoro, Esq., at Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, telephone no. (716) 633-0374, e-mail: [lawyers@taheriandtodoro.com](mailto:lawyers@taheriandtodoro.com).

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resulted in serious physical injury or death.