



## Legislation Text

**File #:** Res 0873-2003, **Version:** \*

Res. No. 873

Resolution calling upon the New York State Legislature and the Governor to adopt amendments to the penal law, to ensure that drunk drivers are held fully accountable for the consequences of their actions, including removal of criminal negligence as an element of proof borne by the prosecution to prove vehicular manslaughter and vehicular assault in the case of a driver who is legally intoxicated.

By Council Members DeBlasio, Avella, Baez, Barron, Clarke, Fidler, Foster, Gennaro, Jackson, Jennings, Monserrate, Nelson, Quinn, Recchia, Reed, Sanders, Seabrook, Sears, Stewart, Vallone, Vann and Espada

Whereas, Statistics indicate that drunk driving is one of the nation's most frequently committed crimes; according to the National Highway Traffic Safety Administration, about forty percent of all motor vehicle deaths occur in crashes in which alcohol is a factor; and

Whereas, New York City, of course, is not immune from the tragedy of drunk driving; for example, on August 4th, 2001, New York City Police Officer Joseph Gray operated his motor vehicle while intoxicated and killed four members of the Herrera family when he drove his car into the family as they crossed a street in Sunset Park; and

Whereas, In another tragedy, on January 25, 2002, Sean Thompson, a drunk hit-and-run driver, killed 17 year-old Dennis Monahan just a few blocks from his Seeley Street home in Windsor Terrace, Brooklyn; and

Whereas, To confront these crimes that result in devastating tragedies, state law must reflect the seriousness of driving while intoxicated; to reach this goal, the State Legislature must allow in a Vehicular Assault or Vehicular Manslaughter case that proof of intoxication, in and of itself, is criminal negligence; and

Whereas, Under current law, in order to secure such a conviction, it must be demonstrated that (1) there was a death or serious injury; (2) the person who caused the injury or death was driving while intoxicated (DWI) or driving while ability impaired (DWAI); and (3) the person who caused the death or serious injury was criminally negligent, that is, failed to perceive a substantial and unjustifiable risk that such injury or death would occur or that such a risk existed; and

Whereas, The third criterion requiring proof of criminal negligence is sometimes difficult to prove, depending on the facts of the case, yet proof of intoxication alone is not enough to prove criminal negligence; and

Whereas, The injustice of this evidentiary issue is amply demonstrated by Sean Thompson's case; despite the death of Dennis Monahan, and despite Thompson's intoxication, Thompson was able to accept a plea-bargain of only six months in prison because prosecutors were hard pressed to prove the additional element of criminal negligence in order to serve a conviction for Second Degree Vehicular Manslaughter; and

Whereas, To remedy this injustice, the element of criminal negligence should be removed as an additional criterion to prove vehicular manslaughter and assault, so that an individual who kills or injures another while driving under the influence would automatically be considered criminally negligent based on intoxication; and

Whereas, This legislative change would make New York a safer state by increasing penalties for DWI, vehicular manslaughter and vehicular assault, thus making people more accountable when they get behind the wheel of a car, and thereby preventing unnecessary injury and deaths; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature and the Governor to adopt amendments to the penal law, to ensure that drunk drivers are held fully accountable for the consequences of their actions, including removal of criminal negligence as an element of proof borne by the prosecution to prove vehicular manslaughter and vehicular assault in the case of a driver who is legally intoxicated.

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