

"P" 18 (2016)

"M" 15 (2016)

Albany, New York

October 18, 2016

TO: All Enforcement Agencies and Magistrates

SUBJECT: Chapter 239 of the Laws of 2016 – Prior Convictions for Operation of a Vessel or Motor Vehicle While Intoxicated or Impaired

Effective November 1, 2016, Chapter 239 of the Laws of 2016 amends Section 49-a of the Navigation Law by adding a new subdivision 5-a, to require a court sentencing a person for a boating while intoxicated conviction to consider prior convictions of Vehicle and Traffic Law section 1192(2), (2-a), (3),(4) and (4-a), alcohol-related convictions committed in a motor vehicle. The law provides as follows:

5-a. Sentencing; previous convictions. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section pursuant to subparagraph two of paragraph (f) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a three, four, or four-a of section eleven hundred ninety-two of the Vehicle and Traffic Law within the preceding ten years. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section pursuant to subparagraph three of paragraph (f) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of the Vehicle and Traffic Law within the preceding ten years. When sentencing a person for a violation of subparagraph two of paragraph (a) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of the Vehicle and Traffic Law within the preceding five years. When sentencing a person for a violation of subparagraph three of paragraph (a) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of the Vehicle and Traffic Law within the preceding ten years.

A copy of Chapter 239 is attached for your reference. Please share this information with appropriate staff. Thank you.

Theresa L. Egan
Executive Deputy Commissioner

Attachment

STATE OF NEW YORK

1597--A

2015-2016 Regular Sessions

IN ASSEMBLY

January 12, 2015

Introduced by M. of A. MAGNARELLI, JAFFEE, SCHIMMINGER, LAVINE, ZEBROW-SKI, GUNTHER, ROSENTHAL, GALEF, SCHIMEL, HOOPER -- Multi-Sponsored by -- M. of A. GOTTFRIED -- read once and referred to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the navigation law, in relation to the effect of prior conviction for operation of certain vehicles while intoxicated upon imposition of penalties for boating while intoxicated

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 "Tiffany Heitkamp's law".

3 § 2. Paragraphs (a) and (f) of subdivision 2 of section 49-a of the
4 navigation law, as amended by chapter 151 of the laws of 2006, are
5 amended to read as follows:

6 (a) No person shall operate a vessel upon the waters of the state
7 while his or her ability to operate such vessel is impaired by the
8 consumption of alcohol. **(1)** A violation of this subdivision shall be an
9 offense and shall be punishable by a fine of not less than three hundred
10 dollars nor more than five hundred dollars, or by imprisonment in a
11 penitentiary or county jail for not more than fifteen days, or by both
12 such fine and imprisonment. **(2)** A person who operates a vessel in
13 violation of this subdivision after being convicted of a violation of
14 any subdivision of this section within the preceding five years shall be
15 punished by a fine of not less than five hundred dollars nor more than
16 seven hundred fifty dollars, or by imprisonment of not more than thirty
17 days in a penitentiary or county jail or by both such fine and imprison-
18 ment. **(3)** A person who operates a vessel in violation of this subdivi-
19 sion after being convicted two or more times of a violation of any

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 subdivision of this section within the preceding ten years shall be
2 guilty of a misdemeanor, and shall be punished by a fine of not less
3 than seven hundred fifty dollars nor more than fifteen hundred dollars,
4 or by imprisonment of not more than one hundred eighty days in a peni-

5 tentiary or county jail or by both such fine and imprisonment.

6 (f)(1) A violation of paragraph (b), (c), (d) or (e) of this subdivi-
7 sion shall be a misdemeanor and shall be punishable by imprisonment in a
8 penitentiary or county jail for not more than one year, or by a fine of
9 not less than five hundred dollars nor more than one thousand dollars,
10 or by both such fine and imprisonment. (2) A person who operates a
11 vessel in violation of paragraph (b), (c), (d) or (e) of this subdivi-
12 sion after having been convicted of a violation of paragraph (b), (c),
13 (d) or (e) of this subdivision, or of operating a vessel or public
14 vessel while intoxicated or while under the influence of drugs, within
15 the preceding ten years, shall be guilty of a class E felony and shall
16 be punished by a period of imprisonment as provided in the penal law, or
17 by a fine of not less than one thousand dollars nor more than five thou-
18 sand dollars, or by both such fine and imprisonment. (3) A person who
19 operates a vessel in violation of paragraph (b), (c), (d) or (e) of this
20 subdivision after having been twice convicted of a violation of any of
21 such paragraph (b), (c), (d) or (e) of this subdivision or of operating
22 a vessel or public vessel while intoxicated or under the influence of
23 drugs, within the preceding ten years, shall be guilty of a class D
24 felony and shall be punished by a fine of not less than two thousand
25 dollars nor more than ten thousand dollars or by a period of imprison-
26 ment as provided in the penal law, or by both such fine and imprison-
27 ment.

28 § 3. Section 49-a of the navigation law is amended by adding a new
29 subdivision 5-a to read as follows:

30 5-a. Sentencing; previous convictions. When sentencing a person for a
31 violation of paragraph (b), (c), (d) or (e) of subdivision two of this
32 section pursuant to subparagraph two of paragraph (f) of subdivision two
33 of this section, the court shall consider any prior convictions the
34 person may have for a violation of subdivision two, two-a three, four,
35 or four-a of section eleven hundred ninety-two of the vehicle and traf-
36 fic law within the preceding ten years. When sentencing a person for a
37 violation of paragraph (b), (c), (d) or (e) of subdivision two of this
38 section pursuant to subparagraph three of paragraph (f) of subdivision
39 two of this section, the court shall consider any prior convictions the
40 person may have for a violation of subdivision two, two-a, three, four,
41 or four-a of section eleven hundred ninety-two of the vehicle and traf-
42 fic law within the preceding ten years. When sentencing a person for a
43 violation of subparagraph two of paragraph (a) of subdivision two of
44 this section, the court shall consider any prior convictions the person
45 may have for a violation of any subdivision of section eleven hundred
46 ninety-two of the vehicle and traffic law within the preceding five
47 years. When sentencing a person for a violation of subparagraph three of
48 paragraph (a) of subdivision two of this section, the court shall
49 consider any prior convictions the person may have for a violation of
50 any subdivision of section eleven hundred ninety-two of the vehicle and
51 traffic law within the preceding ten years.

52 § 4. This act shall take effect on the first of November next succeed-
53 ing the date on which it shall have become a law.
