

## State DUI Laws: New Jersey

**Legal Blood Alcohol Content Level: .08**

**Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes**

**Ignition Interlock Requirement upon Conviction: Yes**

**Felony Conviction for Repeat Offenses: Yes**

### New Jersey Statutes

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

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

Proof that the defendant fell asleep while driving or was driving after having been without sleep for a period in excess of 24 consecutive hours may give rise to an inference that the defendant was driving recklessly. Proof that the defendant was driving while intoxicated in violation of R.S. 39:4-50 or was operating a vessel under the influence of alcohol or drugs in violation of section 3 of P.L. 1952, c. 157 (C. 12:7-46) shall give rise to an inference that the defendant was driving recklessly. Nothing in this section shall be construed to in any way limit the conduct or conditions that may be found to constitute driving a vehicle or vessel recklessly.

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

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

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

presentence report and any other relevant information.

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

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

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

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

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

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

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

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

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

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

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

**§ 39:4-50. Driving while intoxicated.**

(a) Except as provided in subsection (g) of this section, a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject:

(1) For the first offense:

(i) if the person's blood alcohol concentration is 0.08% or higher but less than 0.10%, or the person operates a motor vehicle while under the influence of intoxicating liquor, or the person permits another person who is under the influence of intoxicating liquor to operate a motor vehicle owned by him or in his custody or control or permits another person with a blood alcohol concentration of 0.08% or higher but less than 0.10% to operate a motor vehicle, to a fine of not less than \$ 250 nor more than \$ 400 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of three months;

(ii) if the person's blood alcohol concentration is 0.10% or higher, or the person operates a motor vehicle while under the influence of narcotic, hallucinogenic or habit-producing drug, or the person permits another person who is under the influence of narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control, or permits another person with a blood alcohol concentration of 0.10% or more to operate a motor vehicle, to a fine of not less than \$ 300 nor more than \$ 500 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than seven months nor more than one year;

(iii) For a first offense, a person also shall be subject to the provisions of P.L. 1999, c. 417 (C. 39:4-50.16 et al.).

(2) For a second violation, a person shall be subject to a fine of not less than \$ 500.00 nor more than \$ 1,000.00, and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of two years upon conviction, and, after the expiration of said period, he may make application to the Chief Administrator of the New Jersey Motor Vehicle Commission for a license to operate a motor vehicle, which application may be granted at the discretion of the chief administrator, consistent with subsection (b) of this section. For a second violation, a person also shall be required to install an ignition interlock device under the provisions of P.L. 1999, c. 417 (C. 39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked for two years under the provisions of section 2 of P.L. 1995, c. 286 (C. 39:3-40.1).

(3) For a third or subsequent violation, a person shall be subject to a fine of \$ 1,000.00, and shall be sentenced to

imprisonment for a term of not less than 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years. For a third or subsequent violation, a person also shall be required to install an ignition interlock device under the provisions of P.L. 1999, c. 417 (C. 39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked for 10 years under the provisions of section 2 of P.L. 1995, c. 286 (C. 39:3-40.1).

As used in this section, the phrase "narcotic, hallucinogenic or habit-producing drug" includes an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as any glue, cement or any other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene, toluol or xylene or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

Whenever an operator of a motor vehicle has been involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L. 1966, c. 73 (C. 39:5D-1 et seq.), shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the forfeiture, suspension or revocation of the driving privilege imposed by the court under this section shall commence immediately, run through the offender's seventeenth birthday and continue from that date for the period set by the court pursuant to paragraphs (1) through (3) of this subsection. A court that imposes a term of imprisonment for a first or second offense under this section may sentence the person so convicted to the county jail, to the workhouse of the county wherein the offense was committed, to an inpatient rehabilitation program or to an Intoxicated Driver Resource Center or other facility approved by the chief of the Intoxicated Driving Program Unit in the Department of Health and Senior Services. For a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

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

(b) A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol and drug education and highway safety, as prescribed by the chief administrator. The sentencing court shall inform the person convicted that failure to satisfy such requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance with the Rules Governing the Courts of the State of New Jersey, or R.S. 39:5-22. Upon sentencing, the court shall forward to the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of \$ 100.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3 of P.L. 1983, c. 531 (C. 26:2B-32) to support the Intoxicated Driving Program Unit.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the chief administrator. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S. 39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S. 39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the chief administrator, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(d) The chief administrator shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) in order to establish a program of alcohol education and highway safety, as prescribed by this act.

(e) Any person accused of a violation of this section who is liable to punishment imposed by this section as a second or subsequent offender shall be entitled to the same rights of discovery as allowed defendants pursuant to the Rules Governing the Courts of the State of New Jersey.

(f) The counties, in cooperation with the Division of Alcoholism and Drug Abuse and the commission, but subject to the approval of the Division of Alcoholism and Drug Abuse, shall designate and establish on a county or regional basis Intoxicated Driver Resource Centers. These centers shall have the capability of serving as community treatment referral centers and as court monitors of a person's compliance with the ordered treatment, service alternative or community service. All centers established pursuant to this subsection shall be administered by a counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending the centers; provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol and drug education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's participation and

compliance with the program. Nothing in this subsection shall bar these centers from developing their own education and treatment programs; provided that they are approved by the Division of Alcoholism and Drug Abuse.

Upon a person's failure to report to the initial screening or any subsequent ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an Intoxicated Driver Resource Center, a person shall be required to pay a per diem fee of \$ 75.00 for the first offender program or a per diem fee of \$ 100.00 for the second offender program, as appropriate. Any increases in the per diem fees after the first full year shall be determined pursuant to rules and regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

The centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the chief administrator.

The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), in order to effectuate the purposes of this subsection.

(g) When a violation of this section occurs while:

- (1) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;
- (2) driving through a school crossing as defined in R.S.39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or
- (3) driving through a school crossing as defined in R.S. 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution, the convicted person shall: for a first offense, be fined not less than \$ 500 or more than \$ 800, be imprisoned for not more than 60 days and have his license to operate a motor vehicle suspended for a period of not less than one year or more than two years; for a second offense, be fined not less than \$ 1,000 or more than \$ 2,000, perform community service for a period of 60 days, be imprisoned for not less than 96 consecutive hours, which shall not be suspended or served on probation, nor more than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and have his license to operate a motor vehicle suspended for a period of four years; and, for a third offense, be fined \$ 2,000, imprisoned for 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center, and have his license to operate a motor vehicle suspended for a period of 20 years; the period of license suspension shall commence upon the completion of any prison sentence imposed upon that person.

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

It shall not be relevant to the imposition of sentence pursuant to paragraph (1) or (2) of this subsection that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be relevant to the imposition of sentence that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

(h) A court also may order a person convicted pursuant to subsection a. of this section, to participate in a supervised visitation program as either a condition of probation or a form of community service, giving preference to those who were under the age of 21 at the time of the offense. Prior to ordering a person to participate in such a program, the court may consult with any person who may provide useful information on the defendant's physical, emotional and mental suitability for the visit to ensure that it will not cause any injury to the defendant. The court also may order that the defendant participate in a counseling session under the supervision of the Intoxicated Driving Program Unit prior to participating in the supervised visitation program. The supervised visitation program shall be at one or more of the following facilities which have agreed to participate in the program under the supervision of the facility's personnel and the probation department:

(1) a trauma center, critical care center or acute care hospital having basic emergency services, which receives victims of motor vehicle accidents for the purpose of observing appropriate victims of drunk drivers and victims who are, themselves, drunk drivers;

(2) a facility which cares for advanced alcoholics or drug abusers, to observe persons in the advanced stages of alcoholism or drug abuse; or

(3) if approved by a county medical examiner, the office of the county medical examiner or a public morgue to observe appropriate victims of vehicle accidents involving drunk drivers. As used in this section, "appropriate victim" means a victim whose condition is determined by the facility's supervisory personnel and the probation officer to be appropriate for demonstrating the results of accidents involving drunk drivers without being unnecessarily gruesome or traumatic to the defendant.

If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine that the visitation may be or is traumatic or otherwise inappropriate for that defendant, the visitation shall be terminated without prejudice to the defendant. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant, defendant's counsel, and, if available, the defendant's parents to discuss the visitation and its effect on the defendant's future conduct. If a personal conference is not practicable because of the defendant's absence from the jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant to submit a written report concerning the visitation experience and its impact on the defendant. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a defendant during the visitation, are not liable for any civil damages resulting from injury to the defendant, or for civil damages associated with the visitation which are caused by the defendant, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage.

The Supreme Court may adopt court rules or directives to effectuate the purposes of this subsection.

(i) In addition to any other fine, fee, or other charge imposed pursuant to law, the court shall assess a person convicted of a violation of the provisions of this section a surcharge of \$ 100, of which amount \$ 50 shall be payable to the

municipality in which the conviction was obtained and \$ 50 shall be payable to the Treasurer of the State of New Jersey for deposit into the General Fund.

**§ 39:4-50.2. Consent to taking of samples of breath; record of test; independent test; prohibition of use of force; informing accused**

(a) Any person who operates a motor vehicle on any public road, street or highway or quasi-public area in this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood; provided, however, that the taking of samples is made in accordance with the provisions of this act and at the request of a police officer who has reasonable grounds to believe that such person has been operating a motor vehicle in violation of the provisions of R.S. 39:4-50.

(b) A record of the taking of any such sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy thereof, upon his request, shall be furnished or made available to the person so tested.

(c) In addition to the samples taken and tests made at the direction of a police officer hereunder, the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.

(d) The police officer shall inform the person tested of his rights under subsections (b) and (c) of this section.

(e) No chemical test, as provided in this section, or specimen necessary thereto, may be made or taken forcibly and against physical resistance thereto by the defendant. The police officer shall, however, inform the person arrested of the consequences of refusing to submit to such test in accordance with section 2 of this amendatory and supplementary act. A standard statement, prepared by the director, shall be read by the police officer to the person under arrest.

**§ 39:4-50.4a. Revocation for refusal to submit to breath test; penalties.**

a. Except as provided in subsection b. of this section, the municipal court shall revoke the right to operate a motor vehicle of any operator who, after being arrested for a violation of R.S. 39:4-50, shall refuse to submit to a test provided for in section 2 of P.L. 1966, c. 142 (C. 39:4-50.2) when requested to do so, for not less than seven months or more than one year unless the refusal was in connection with a second offense under this section, in which case the revocation period shall be for two years or unless the refusal was in connection with a third or subsequent offense under this section in which case the revocation shall be for ten years. A conviction or administrative determination of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L. 1966, c. 73 (C. 39:5D-1 et seq.), shall constitute a prior conviction under this section.

The municipal court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while the person was under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marijuana; whether the person was placed under arrest, if appropriate, and whether he refused to submit to the test upon request of the officer; and if these elements of the violation are not established, no conviction shall issue. In addition to any other requirements provided by law, a person whose operator's license is revoked for refusing to submit to a test shall be referred to an Intoxicated Driver Resource Center established by subsection (f.) of R.S. 39:4-50 and shall satisfy the same requirements of the center for refusal to submit to a test as

provided for in section 2 of P.L. 1966, c. 142 (C. 39:4-50.2) in connection with a first, second, third or subsequent offense under this section that must be satisfied by a person convicted of a commensurate violation of this section, or be subject to the same penalties as such a person for failure to do so. For a first offense, the revocation may be concurrent with or consecutive to any revocation imposed for a conviction under the provisions of R.S.39:4-50 arising out of the same incident. For a second or subsequent offense, the revocation shall be consecutive to any revocation imposed for a conviction under the provisions of R.S. 39:4-50. In addition to issuing a revocation, except as provided in subsection b. of this section, the municipal court shall fine a person convicted under this section, a fine of not less than \$ 300 or more than \$ 500 for a first offense; a fine of not less than \$ 500 or more than \$ 1,000 for a second offense; and a fine of \$ 1,000 for a third or subsequent offense.

b. For a first offense, the fine imposed upon the convicted person shall be not less than \$ 600 or more than \$ 1,000 and the period of license suspension shall be not less than one year or more than two years; for a second offense, a fine of not less than \$ 1,000 or more than \$ 2,000 and a license suspension for a period of four years; and for a third or subsequent offense, a fine of \$ 2,000 and a license suspension for a period of 20 years when a violation of this section occurs while:

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

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

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

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L. 1997, c. 101 (C. 2C:35-7) may be used in a prosecution under paragraph (1) of this subsection.

It shall not be relevant to the imposition of sentence pursuant to paragraph (1) or (2) of this subsection that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be relevant to the imposition of sentence that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

#### **§ 39:4-50.8. Drunk Driving Enforcement Fund**

Upon a conviction of a violation of R.S. 39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the court shall collect from the defendant a surcharge of \$ 100.00 in addition to and independently of any fine imposed on that defendant. The court shall forward the surcharge to the Director of the Division of Motor Vehicles who shall deposit \$ 95.00 of the surcharge into a "Drunk Driving Enforcement Fund" (hereinafter referred to as the "fund"). This fund shall be used to establish a Statewide drunk driving enforcement program to be supervised by the director. The remaining \$ 5.00 of each surcharge shall be deposited by the director into a separate fund for administrative expenses.

A municipality shall be entitled to periodic grants from the "Drunk Driving Enforcement Fund" in amounts representing its proportionate contribution to the fund. A municipality shall be deemed to have contributed to the fund the portion of the

surcharge allocated to the fund, collected pursuant to this section if the violation of R.S. 39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) occurred within the municipality and the arrest resulting in conviction was made by the member of a municipal police force. The grants from the fund shall be used by the municipality to increase enforcement of R.S. 39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the director. The Division of State Police, interstate law enforcement agencies and county law enforcement agencies shall be entitled to periodic grants from the fund in amounts representing their proportionate contribution to the fund. The Division of State Police or county or interstate law enforcement agency shall be deemed to have contributed to the fund the portion of the surcharge allocated to the fund collected pursuant to this section if the arrest resulting in a conviction was made by a member of the Division of State Police or county or interstate law enforcement agency. The grants from the fund shall be used by the Division of State Police or county or interstate law enforcement agency to increase enforcement of R.S. 39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the director.

The surcharge described herein shall not be considered a fine, penalty or forfeiture to be distributed pursuant to R.S. 39:5-41.

The director shall promulgate rules and regulations in order to effectuate the purposes of this section.

#### **§ 39:4-50.14. Penalties for underage person operating motor vehicle after consuming alcohol**

Any person under the legal age to purchase alcoholic beverages who operates a motor vehicle with a blood alcohol concentration of 0.01% or more, but less than 0.08%, by weight of alcohol in his blood, shall forfeit his right to operate a motor vehicle over the highways of this State or shall be prohibited from obtaining a license to operate a motor vehicle in this State for a period of not less than 30 or more than 90 days beginning on the date he becomes eligible to obtain a license or on the day of conviction, whichever is later, and shall perform community service for a period of not less than 15 or more than 30 days.

In addition, the person shall satisfy the program and fee requirements of an Intoxicated Driver Resource Center or participate in a program of alcohol education and highway safety as prescribed by the chief administrator.

The penalties provided under the provisions of this section shall be in addition to the penalties which the court may impose under N.J.S. 2C:33-15, R.S. 33:1-81, R.S. 39:4-50 or any other law.

#### **§ 39:4-50.15. Additional penalty for driving under the influence with a minor as a passenger**

a. As used in this act:

"Minor" means a person who is 17 years of age or younger.

"Parent or guardian" means any natural parent, adoptive parent, resource family parent, stepparent, or any person temporarily responsible for the care, custody or control of a minor or upon whom there is a legal duty for such care, custody or control.

b. A parent or guardian who is convicted of a violation of R.S. 39:4-50 and who, at the time of the violation, has a minor as a passenger in the motor vehicle is guilty of a disorderly persons offense.

c. In addition to the penalties otherwise prescribed by law, a person who is convicted under subsection b. of this section

shall forfeit the right to operate a motor vehicle over the highways of this State for a period of not more than six months and shall be ordered to perform community service for a period of not more than five days.

**§ 39:4-50.16. Findings, declarations relative to ignition interlock devices**

The Legislature finds and declares:

- a. This State's penalties for drunk driving, including the mandatory suspension of driver's licenses and counseling for offenders, are among the strongest in the nation. However, despite the severity of existing penalties, far too many persons who have been convicted under the drunk driving law continue to imperil the lives of their fellow citizens by driving while intoxicated.
- b. Ignition interlock devices, which permit a motor vehicle to be started only when the driver is sober, offer a technically feasible and effective means of further reducing the incidence of drunk driving. The use of these devices was initiated in California in 1986 and, according to the National Highway Traffic Safety Administration, they are presently being used or tested in at least 37 states.
- c. The judicious deployment of ignition interlock devices, as provided under this act, will enhance and strengthen this State's existing efforts to keep drunk drivers off the highways.

**§ 39:4-50.17. Sentencing drunk driving offenders; device defined**

- a. In sentencing a first offender under R.S.39:4-50, the court may order, in addition to any other penalty imposed by that section, the installation of an interlock device in every motor vehicle owned, leased or regularly operated by the offender following the expiration of the period of license suspension imposed under that section. The device shall remain installed for not less than six months or more than one year, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served.
- b. In sentencing a second or subsequent offender under R.S.39:4-50, the court may order, in addition to any other penalty imposed by that section, the installation of an interlock device in every motor vehicle owned, leased or regularly operated by the offender. The device shall remain installed for not less than one year or more than three years, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served.
- c. The court shall require that, for the duration of its order, an offender shall drive no vehicle other than one in which an interlock device has been installed pursuant to the order.
- d. As used in this act, "ignition interlock device" or "device" means a blood alcohol equivalence measuring device which will prevent a motor vehicle from starting if the operator's blood alcohol content exceeds a predetermined level when the operator blows into the device.

**§ 39:4-50.18. DMV notation of interlock device installation**

The court shall notify the Director of the Division of Motor Vehicles when a person has been ordered to install an interlock device in a vehicle owned, leased or regularly operated by the person. The division shall require that the device be installed before reinstatement of the person's driver's license that has been suspended pursuant to R.S.39:4-50. The

division shall imprint a notation on the driver's license stating that the person shall not operate a motor vehicle unless it is equipped with an interlock device and shall enter this requirement in the person's driving record.

#### **§ 39:4-50.19. Violation of law; penalties**

a. A person who fails to install an interlock device ordered by the court in a motor vehicle owned, leased or regularly operated by him shall have his driver's license suspended for one year, in addition to any other suspension or revocation imposed under R.S.39:4-50, unless the court determines a valid reason exists for the failure to comply. A person in whose vehicle an interlock device is installed pursuant to a court order who drives that vehicle after it has been started by any means other than his own blowing into the device or who drives a vehicle that is not equipped with such a device shall have his driver's license suspended for one year, in addition to any other penalty applicable by law.

b. A person is a disorderly person who:

(1) Blows into an interlock device or otherwise starts a motor vehicle equipped with such a device for the purpose of providing an operable motor vehicle to a person who has been ordered by the court to install the device in the vehicle.

(2) Tamper or in any way circumvents the operation of an interlock device.

(3) Knowingly rents, leases or lends a motor vehicle not equipped with an interlock device to a person who has been ordered by the court to install an interlock device in a vehicle he owns, leases or regularly operates.

#### **§ 39:4-50.22. Written statement of potential civil or criminal liability for permitting an intoxicated arrestee's operation of motor vehicle**

Whenever a person is summoned by or on behalf of a person who has been arrested for a violation of [R.S. 39:4-50](#) or section 2 of P.L. 1981, c. 512 (C. 39:4-50.4a) in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising him of his potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment.

Nothing in this section shall impose any obligation on a physician or other health care provider involved in the treatment or evaluation of the arrestee.

The Attorney General shall establish the content and form of the written statement and acknowledgment to be used by law enforcement agencies throughout the State and may issue directives to ensure the uniform implementation of this act.

#### **§ 39:4-50.23. Impoundment of vehicle operated by arrestee; conditions of release; fee for towing and storage**

a. Whenever a person has been arrested for a violation of R.S. 39:4-50 or section 2 of P.L. 1981, c. 512 (C. 39:4-50.4a), the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of arrest.

b. A vehicle impounded pursuant to this section shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in subsection d. of this section.

c. A vehicle impounded pursuant to this section may be released to a person other than the arrestee prior to the end of the impoundment period only if:

(1) The vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in subsection d. of this section; or

(2) The vehicle is owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the statement required in section 1 of P.L. 2001, c. 69 (C. 39:4-50a [39:4-50.22] et seq.) to operate the vehicle and the conditions for release in subsection d. of this section are met.

d. A vehicle impounded pursuant to this section shall not be released unless the person claiming the vehicle:

(1) presents a valid operator's license, proof of ownership or lawful authority to operate the motor vehicle, and proof of valid motor vehicle insurance for that vehicle;

(2) is able to operate the vehicle in a safe manner and would not be in violation of Title 39 of the Revised Statutes; and

(3) meets any other conditions for release established by the law enforcement agency.

e. A law enforcement agency impounding a vehicle pursuant to this section is authorized to charge a reasonable fee for towing and storage of the vehicle. The law enforcement agency is further authorized to retain custody of the vehicle until that fee is paid.

**§ 39:4-51. Sentence for violation of section 39:4-50 must be served; release on work release program**

A person who has been convicted of a first or second violation of section 39:4-50 of this Title, and in pursuance thereof has been imprisoned in a county jail or workhouse in the county in which the offense was committed, shall not, after commitment, be released therefrom until the term of imprisonment imposed has been served. A person imprisoned in the county jail or workhouse may in the discretion of the court, be released on a work release program.

No warden or other officer having custody of the county jail or workhouse shall release therefrom a person so committed, unless the person has been released by the court on a work release program, until the sentence has been served. A person sentenced to an inpatient rehabilitation program may upon petition by the treating agency be released, by the court, to an outpatient rehabilitation program for the duration of the original sentence.

Nothing in this section shall be construed to interfere in any way with the operation of a writ of habeas corpus, a proceeding in lieu of the prerogative writs, or an appeal.

The chief administrator shall adopt such rules and regulations to effectuate the provisions of this section as he shall deem necessary.

### **§ 39:4-51a. No consumption of alcoholic beverages in motor vehicles; presumption; penalties**

a. A person shall not consume an alcoholic beverage while operating a motor vehicle. A passenger in a motor vehicle shall not consume an alcoholic beverage while the motor vehicle is being operated. This subsection shall not apply to a passenger of a charter or special bus operated as defined under R.S.48:4-1 or a limousine service.

b. A person shall be presumed to have consumed an alcoholic beverage in violation of this section if an unsealed container of an alcoholic beverage is located in the passenger compartment of the motor vehicle, the contents of the alcoholic beverage have been partially consumed and the physical appearance or conduct of the operator of the motor vehicle or a passenger may be associated with the consumption of an alcoholic beverage. For the purposes of this section, the term "unsealed" shall mean a container with its original seal broken or a container such as a glass or cup.

c. For the first offense, a person convicted of violating this section shall be fined \$ 200.00 and shall be informed by the court of the penalties for a second or subsequent violation of this section. For a second or subsequent offense, a person convicted of violating this section shall be fined \$ 250.00 or shall be ordered by the court to perform community service for a period of 10 days in such form and on such terms as the court shall deem appropriate under the circumstances.

### **§ 39:4-51b. Prohibition of possession of open, unsealed alcoholic beverage container; circumstances**

a. All occupants of a motor vehicle located on a public highway, or the right-of-way of a public highway, shall be prohibited from possessing any open or unsealed alcoholic beverage container. This subsection shall not apply to a passenger of a charter or special bus operated as defined under R.S. 48:4-1 or a limousine service.

b. A person shall not be deemed to be in possession of an opened or unsealed alcoholic beverage container pursuant to this section if such container is located in the trunk of a motor vehicle, behind the last upright seat in a trunkless vehicle, or in the living quarters of a motor home or house trailer. For the purposes of this section, the term "open or unsealed" shall mean a container with its original seal broken or a container such as a glass or cup

c. For a first offense, a person convicted of violating this section shall be fined \$ 200 and shall be informed by the court of the penalties for a second or subsequent violation of this section. For a second or subsequent offense, a person convicted of violating this section shall be fined \$ 250 or shall be ordered by the court to perform community service for a period of 10 days in such form and on such terms as the court shall deem appropriate under the circumstances.

### **§ 39:4-56.2. Violations; penalties**

Any person who has been convicted of a violation of this act shall be subject, for a first offense, to a fine of not less than \$ 200.00 nor more than \$ 500.00 and shall have his license to operate a motor vehicle suspended for a period of not less than 1 year nor more than 5 years. For a subsequent violation, he shall be fined not less than \$ 500.00 nor more than \$ 1,000.00 and shall have his license to operate a motor vehicle suspended for 5 years from the date of his conviction. In fixing the penalty to be imposed, the magistrate shall give consideration to the hazard to the public safety and the public inconvenience created by the conduct of such person.

### **§ 39:4-56.3. Suspension of registration**

The registration of any motor vehicle which is used by any person in violation of section 1 of this act shall be suspended for not less than 90 days nor more than 1 year unless the owner thereof can demonstrate to the satisfaction

of the Director of Motor Vehicles that said vehicle was used in such a manner without his knowledge and consent. In fixing the period of suspension, the director shall give consideration to the threat to public safety and the public inconvenience caused by the use of said vehicle.