

53:1-20.20

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2000 **CHAPTER:** 118
NJSA: 53:1-20.20 (DNA testing - defendants)
BILL NO: S439 (Substituted for A779)
SPONSOR(S): Sacco and Sinagra
DATE INTRODUCED: Pre-filed
COMMITTEE: **ASSEMBLY:** Appropriations
 SENATE: Judiciary
AMENDED DURING PASSAGE: Yes
DATE OF PASSAGE: **ASSEMBLY:** May 25, 2000
 SENATE: June 8, 2000
DATE OF APPROVAL: September 13, 2000

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (2nd reprint)

(Amendments during passage denoted by superscript numbers)

S439

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A779

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 2/7/00 (Judiciary)

3/2/00 (Approp.)

Statement dated 3/2/00 Identical to Assembly Statement to S439

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

Identical to fiscal estimate to S439

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Whitman signs bill to expand DNA testing of violent criminals, 9-14-2000 The Times, p.A6

"New law broadens DNA testing of criminals," 9-14-2000 Star Ledger, p.24

SENATE, No. 67

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris)

Senator LOUIS F. KOSCO

District 38 (Bergen)

Co-Sponsored by:

Senator Sinagra

SYNOPSIS

Prohibits driving while under the influence of inhalants or other substances containing toxic fumes or vapors.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S67 BUCCO, KOSCO

2

1 AN ACT concerning driving while under influence of inhalants or other
2 substances and amending R.S.39:4-50.

3

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

6

7 1. R.S.39:4-50 is amended to read as follows:

8 39:4-50. (a) Except as provided in subsection (g) of this section,
9 a person who operates a motor vehicle while under the influence of
10 intoxicating liquor, narcotic, hallucinogenic or habit-producing drug,
11 or operates a motor vehicle with a blood alcohol concentration of
12 0.10% or more by weight of alcohol in the defendant's blood or a
13 person who operates a motor vehicle while under the influence of an
14 inhalant or other substance containing a chemical capable of releasing
15 any toxic vapors or fumes, or permits another person who is under the
16 influence of intoxicating liquor, narcotic, hallucinogenic or
17 habit-producing drug to operate a motor vehicle owned by him or in
18 his custody or control or permits another to operate a motor vehicle
19 with a blood alcohol concentration of 0.10% or more by weight of
20 alcohol in the defendant's blood, or permits another person who is
21 under the influence of an inhalant or other substance containing a
22 chemical capable of releasing any toxic vapors or fumes to operate a
23 motor vehicle owned by him or in his custody or control, shall be
24 subject:

25 (1) For the first offense, to a fine of not less than \$250.00 nor
26 more than \$400.00 and a period of detainment of not less than 12
27 hours nor more than 48 hours spent during two consecutive days of
28 not less than six hours each day and served as prescribed by the
29 program requirements of the Intoxicated Driver Resource Centers
30 established under subsection (f) of this section and, in the discretion
31 of the court, a term of imprisonment of not more than 30 days and
32 shall forthwith forfeit his right to operate a motor vehicle over the
33 highways of this State for a period of not less than six months nor
34 more than one year.

35 (2) For a second violation, a person shall be subject to a fine of not
36 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
37 the court to perform community service for a period of 30 days, which
38 shall be of such form and on such terms as the court shall deem
39 appropriate under the circumstances, and shall be sentenced to
40 imprisonment for a term of not less than 48 consecutive hours, which
41 shall not be suspended or served on probation, nor more than 90 days,
42 and shall forfeit his right to operate a motor vehicle over the highways
43 of this State for a period of two years upon conviction, and, after the

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

Matter underlined thus is new matter.

1 expiration of said period, he may make application to the Director of
2 the Division of Motor Vehicles for a license to operate a motor
3 vehicle, which application may be granted at the discretion of the
4 director, consistent with subsection (b) of this section.

5 (3) For a third or subsequent violation, a person shall be subject to
6 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
7 of not less than 180 days, except that the court may lower such term
8 for each day, not exceeding 90 days, served performing community
9 service in such form and on such terms as the court shall deem
10 appropriate under the circumstances and shall thereafter forfeit his
11 right to operate a motor vehicle over the highways of this State for 10
12 years.

13 As used in this section, the phrase "inhalant or other substance
14 containing a chemical capable of releasing any toxic vapors or fumes
15 for the purpose of inducing a condition of intoxication" means and
16 includes, but is not limited to, any glue, cement or any other substance
17 containing one or more of the following chemical compounds: acetone
18 and acetate, amyl nitrite or amyl nitrate or their isomers, benzene,
19 butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate,
20 ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl
21 alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone,
22 nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether,
23 propyl nitrate or propyl nitrate or their isomers, toluene, toluol or
24 xylene or any other chemical substance capable of causing a condition
25 of intoxication, inebriation, excitement, stupefaction or the dulling of
26 the brain or nervous system as a result of the inhalation of the fumes
27 or vapors of such chemical substance.

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

34 A conviction of a violation of a law of a substantially similar nature
35 in another jurisdiction, regardless of whether that jurisdiction is a
36 signatory to the Interstate Driver License Compact pursuant to
37 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction
38 under this subsection unless the defendant can demonstrate by clear
39 and convincing evidence that the conviction in the other jurisdiction
40 was based exclusively upon a violation of a proscribed blood alcohol
41 concentration of less than.10%.

42 If the driving privilege of any person is under revocation or
43 suspension for a violation of any provision of this Title or Title 2C of
44 the New Jersey Statutes at the time of any conviction for a violation
45 of this section, the revocation or suspension period imposed shall
46 commence as of the date of termination of the existing revocation or

1 suspension period. In the case of any person who at the time of the
2 imposition of sentence is less than 17 years of age, the forfeiture,
3 suspension or revocation of the driving privilege imposed by the court
4 under this section shall commence immediately, run through the
5 offender's seventeenth birthday and continue from that date for the
6 period set by the court pursuant to paragraphs (1) through (3) of this
7 subsection. A court that imposes a term of imprisonment under this
8 section may sentence the person so convicted to the county jail, to the
9 workhouse of the county wherein the offense was committed, to an
10 inpatient rehabilitation program or to an Intoxicated Driver Resource
11 Center or other facility approved by the chief of the Intoxicated
12 Driving Program Unit in the Department of Health and Senior
13 Services; provided that for a third or subsequent offense a person shall
14 not serve a term of imprisonment at an Intoxicated Driver Resource
15 Center as provided in subsection (f).

16 A person who has been convicted of a previous violation of this
17 section need not be charged as a second or subsequent offender in the
18 complaint made against him in order to render him liable to the
19 punishment imposed by this section on a second or subsequent
20 offender, but if the second offense occurs more than 10 years after the
21 first offense, the court shall treat the second conviction as a first
22 offense for sentencing purposes and if a third offense occurs more than
23 10 years after the second offense, the court shall treat the third
24 conviction as a second offense for sentencing purposes.

25 (b) A person convicted under this section must satisfy the
26 screening, evaluation, referral, program and fee requirements of the
27 Division of Alcoholism and Drug Abuse's Intoxicated Driving Program
28 Unit, and of the Intoxicated Driver Resource Centers and a program
29 of alcohol and drug education and highway safety, as prescribed by the
30 Director of the Division of Motor Vehicles. The sentencing court shall
31 inform the person convicted that failure to satisfy such requirements
32 shall result in a mandatory two-day term of imprisonment in a county
33 jail and a driver license revocation or suspension and continuation of
34 revocation or suspension until such requirements are satisfied, unless
35 stayed by court order in accordance with Rule 7:8-2 of the Rules
36 Governing the Courts of the State of New Jersey, or R.S.39:5-22.
37 Upon sentencing, the court shall forward to the Division of Alcoholism
38 and Drug Abuse's Intoxicated Driving Program Unit a copy of a
39 person's conviction record. A fee of \$100.00 shall be payable to the
40 Alcohol Education, Rehabilitation and Enforcement Fund established
41 pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
42 Intoxicated Driving Program Unit.

43 (c) Upon conviction of a violation of this section, the court shall
44 collect forthwith the New Jersey driver's license or licenses of the
45 person so convicted and forward such license or licenses to the
46 Director of the Division of Motor Vehicles. The court shall inform the

1 person convicted that if he is convicted of personally operating a
2 motor vehicle during the period of license suspension imposed
3 pursuant to subsection (a) of this section, he shall, upon conviction, be
4 subject to the penalties established in R.S.39:3-40. The person
5 convicted shall be informed orally and in writing. A person shall be
6 required to acknowledge receipt of that written notice in writing.
7 Failure to receive a written notice or failure to acknowledge in writing
8 the receipt of a written notice shall not be a defense to a subsequent
9 charge of a violation of R.S.39:3-40. In the event that a person
10 convicted under this section is the holder of any out-of-State driver's
11 license, the court shall not collect the license but shall notify forthwith
12 the director, who shall, in turn, notify appropriate officials in the
13 licensing jurisdiction. The court shall, however, revoke the
14 nonresident's driving privilege to operate a motor vehicle in this State,
15 in accordance with this section. Upon conviction of a violation of this
16 section, the court shall notify the person convicted, orally and in
17 writing, of the penalties for a second, third or subsequent violation of
18 this section. A person shall be required to acknowledge receipt of that
19 written notice in writing. Failure to receive a written notice or failure
20 to acknowledge in writing the receipt of a written notice shall not be
21 a defense to a subsequent charge of a violation of this section.

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

27 (e) Any person accused of a violation of this section who is liable
28 to punishment imposed by this section as a second or subsequent
29 offender shall be entitled to the same rights of discovery as allowed
30 defendants pursuant to the Rules Governing Criminal Practice, as set
31 forth in the Rules Governing the Courts of the State of New Jersey.

32 (f) The counties, in cooperation with the Division of Alcoholism
33 and Drug Abuse and the Division of Motor Vehicles, but subject to the
34 approval of the Division of Alcoholism and Drug Abuse, shall
35 designate and establish on a county or regional basis Intoxicated
36 Driver Resource Centers. These centers shall have the capability of
37 serving as community treatment referral centers and as court monitors
38 of a person's compliance with the ordered treatment, service
39 alternative or community service. All centers established pursuant to
40 this subsection shall be administered by a counselor certified by the
41 Alcohol and Drug Counselor Certification Board of New Jersey or
42 other professional with a minimum of five years' experience in the
43 treatment of alcoholism. All centers shall be required to develop
44 individualized treatment plans for all persons attending the centers;
45 provided that the duration of any ordered treatment or referral shall
46 not exceed one year. It shall be the center's responsibility to establish

1 networks with the community alcohol and drug education, treatment
2 and rehabilitation resources and to receive monthly reports from the
3 referral agencies regarding a person's participation and compliance
4 with the program. Nothing in this subsection shall bar these centers
5 from developing their own education and treatment programs;
6 provided that they are approved by the Division of Alcoholism and
7 Drug Abuse.

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

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

24 The centers shall conduct a program of alcohol and drug education
25 and highway safety, as prescribed by the Director of the Division of
26 Motor Vehicles.

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

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

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

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

38 (3) driving through a school crossing as defined in R.S.39:1-1
39 knowing that juveniles are present if the municipality has not
40 designated the school crossing as such by ordinance or resolution, the
41 convicted person shall: for a first offense, be fined not less than \$500
42 or more than \$800, be imprisoned for not more than 60 days and have
43 his license to operate a motor vehicle suspended for a period of not
44 less than one year or more than two years; for a second offense, be
45 fined not less than \$1,000 or more than \$2000, perform community
46 service for a period of 60 days, be imprisoned for not less than 96

1 consecutive hours, which shall not be suspended or served on
2 probation, nor more than 180 days, except that the court may lower
3 such term for each day, not exceeding 90 days, served performing
4 community service in such form and on such terms as the court shall
5 deem appropriate under the circumstances and have his license to
6 operate a motor vehicle suspended for a period of not less than four
7 years; and, for a third offense, be fined \$2,000, imprisoned for 180
8 days and have his license to operate a motor vehicle suspended for a
9 period of 20 years; the period of license suspension shall commence
10 upon the completion of any prison sentence imposed upon that person.

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

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

24 (cf: P.L.1999, c.185, s.4)

25

26 2. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 According to the National Institute on Drug Abuse (NIDA)
32 approximately 17 percent of adolescents in the United States have
33 deliberately sniffed inhalants, such as spray paint, glue or other easily
34 obtainable household products. The NIDA reports that such "huffing"
35 can cause severe brain and nervous system damage and can ultimately
36 cause death. This bill was prompted by the rise in the use of inhalants
37 by teenagers and the obvious dangers posed by persons who drive
38 motor vehicles while under the influence of inhalants.

39 New Jersey has taken steps to prohibit the use and sale of these
40 inhalants (N.J.S.A.2C:35-10.4). This bill would augment this existing
41 prohibition against the use of inhalants by amending N.J.S.A.39:4-50,
42 which prohibits driving while under the influence of drugs or alcohol,
43 to include driving while under the influence of inhalants or other
44 substances containing any chemical materials capable of releasing toxic
45 vapors or fumes.

46 The bill would make it unlawful for any person to operate a motor

1 vehicle while under the influence of an inhalant or other substance
2 containing a chemical capable of releasing any toxic or fumes or for
3 any person to permit another who is under the influence of these
4 inhalants from operating the motor vehicle. The bill defines the phrase
5 "inhalant or other substance containing a chemical capable of
6 releasing any toxic vapors or fumes for the purpose of inducing a
7 condition of intoxication" meaning and including, but not being
8 limited to, any glue, cement or any other substance containing one or
9 more of the following chemical compounds: acetone and acetate, amyl
10 nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl
11 nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl
12 nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or
13 isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide,
14 n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrate
15 or propyl nitrate or their isomers, toluene, toluol or xylene or any
16 other chemical substance capable of causing a condition of
17 intoxication, inebriation, excitement, stupefaction or the dulling of the
18 brain or nervous system as a result of the inhalation of the fumes or
19 vapors of such chemical substance. Under the provisions of the bill,
20 the current penalties now applicable for driving under the influence of
21 drugs and alcohol would apply with regard to inhalants.

22 In addition since a violation of N.J.S.A.39:4-50 is an element in
23 both the statute concerning death by auto or vessel statute
24 (N.J.S.A.2C:11-5) and in the recently amended statute concerning
25 assault by auto or vessel (P.L.1999, c.185), by amending
26 N.J.S.39:4-50 to prohibit the use of inhalants while driving, a person
27 who causes death, serious bodily or bodily injury while driving under
28 the influence of an inhalant could also be charged with death by auto
29 or vessel or assault by auto or vessel.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 67

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 10, 2000

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No.67.

New Jersey has taken steps to prohibit the use and sale of inhalants (Section 1 of P.L.1999, c.90; C.2C:35-10.4). The bill would make it unlawful for any person to operate a motor vehicle while under the influence of an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes or for any person to permit another who is under the influence of these inhalants from operating the motor vehicle.

As amended and released by the committee, the bill clarifies that the offense of driving while under the influence of intoxicating liquor or a narcotic or habit-producing drug (R.S.39:4-50) includes driving while under the influence of an inhalant or other substance containing any chemical materials capable of releasing toxic vapors or fumes. As introduced, the bill amended current law to create an additional intoxicated driving offense for inhalants.

Under the bill's provisions, "narcotic, hallucinogenic or habit-producing drug" is defined to include 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 nitrate or propyl nitrite 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.

It is the committee's understanding that the current penalties now applicable for driving under the influence of drugs and alcohol would apply with regard to inhalants. In addition, driving under the influence

of an inhalant would qualify as a requisite element for offenses such as death by auto or vessel (N.J.S.2C:11-5) and assault by auto or vessel statute (N.J.S.2C:12-1).

According to the sponsor, the National Institute on Drug Abuse (NIDA) has found that approximately 17 percent of adolescents in the United States have deliberately sniffed inhalants, such as spray paint, glue or other easily obtainable household products. The NIDA reports that such "huffing" can cause severe brain and nervous system damage and can ultimately cause death. This bill was prompted by the rise in the use of inhalants by teenagers and the obvious dangers posed by persons who drive motor vehicles while under the influence of inhalants.

This bill was prefiled for introduction in the 2000 legislative session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 67
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: MARCH 21, 2000

SUMMARY

Synopsis: Prohibits driving while under the influence of inhalants or other substances containing toxic fumes or vapors.

Type of Impact: Unknown cost to municipal courts as well as unknown fine revenue

Agencies Affected: Local Municipal Courts, Judiciary

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Local Cost	Unknown	Unknown	Unknown
Local Revenue	Unknown	Unknown	Unknown

- ! This bill would make it unlawful for any person to operate a motor vehicle while under the influence of an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes or for any person to permit another who is under the influence of these inhalants from operating the motor vehicle.
- ! The Office of Legislative Services notes that there will be an unknown cost to the courts for conducting hearings against offenders as well as unknown amount of fine revenue collected from convicted offenders.

BILL DESCRIPTION

Senate Bill No. 67 of 2000 would make it unlawful for any person to operate a motor vehicle while under the influence of an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes or for any person to permit another who is under the influence of these inhalants from operating the motor vehicle. The penalties that are currently applicable for driving under the influence of drugs and alcohol would apply with regards to inhalants.

FISCAL ANALYSIS***EXECUTIVE BRANCH***

The Administrative Office of the Courts (AOC) states that because this is a new offense, there are no data available to determine the number of individuals who would be tried under this provision. As a result, although it is likely that there would be the need for additional municipal court hearings, the number of such hearings could not be determined. In addition, the amount of revenue to be generated from this bill could not be determined.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 67

STATE OF NEW JERSEY

DATED: MAY 22, 2000

The Assembly Law and Public Safety Committee reports favorably Senate Bill No. 67 (1R).

Senate Bill No. 67 (1R) revises the definition of a "narcotic, hallucinogenic or habit-producing drug" in the State's drunk driving law, R.S.39:4-50, which prohibits the operation of a motor vehicle while under the influence of one of these substances.

Under the bill, "narcotics, hallucinogenic or habit-producing drugs" include inhalants or other substances 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 nitrate 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.

Senate Bill 67 (1R) is identical to Assembly Bill No. 2234, also reported by the committee on this same date.

[First Reprint]
SENATE, No. 67

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris)

Senator LOUIS F. KOSCO

District 38 (Bergen)

Co-Sponsored by:

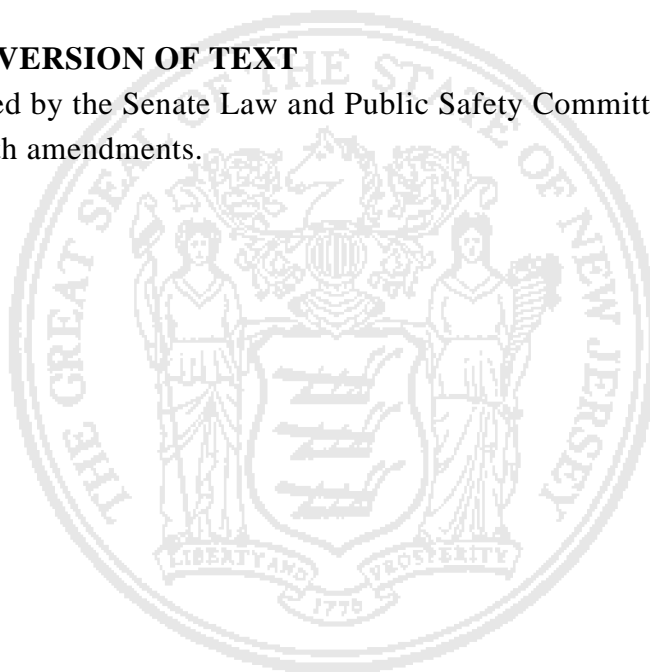
**Senator Sinagra, Assemblymen Merkt, DeCroce, Azzolina and
Assemblywoman Heck**

SYNOPSIS

Prohibits driving while under the influence of inhalants or other substances containing toxic fumes or vapors.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on February 10, 2000, with amendments.



(Sponsorship Updated As Of: 6/6/2000)

S67 [1R] BUCCO, KOSCO

2

1 AN ACT concerning driving while under influence of inhalants or other
2 substances and amending R.S.39:4-50.

3

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

6

7 1. R.S.39:4-50 is amended to read as follows:

8 39:4-50. (a) Except as provided in subsection (g) of this section,
9 a person who operates a motor vehicle while under the influence of
10 intoxicating liquor, narcotic, hallucinogenic or habit-producing drug,
11 or operates a motor vehicle with a blood alcohol concentration of
12 0.10% or more by weight of alcohol in the defendant's blood ¹~~[or a~~
13 person who operates a motor vehicle while under the influence of an
14 inhalant or other substance containing a chemical capable of releasing
15 any toxic vapors or fumes.]¹ or permits another person who is under
16 the influence of intoxicating liquor, narcotic, hallucinogenic or
17 habit-producing drug to operate a motor vehicle owned by him or in
18 his custody or control or permits another to operate a motor vehicle
19 with a blood alcohol concentration of 0.10% or more by weight of
20 alcohol in the defendant's blood ¹~~[, or permits another person who is~~
21 under the influence of an inhalant or other substance containing a
22 chemical capable of releasing any toxic vapors or fumes to operate a
23 motor vehicle owned by him or in his custody or control.]¹ shall be
24 subject:

25 (1) For the first offense, to a fine of not less than \$250.00 nor
26 more than \$400.00 and a period of detainment of not less than 12
27 hours nor more than 48 hours spent during two consecutive days of
28 not less than six hours each day and served as prescribed by the
29 program requirements of the Intoxicated Driver Resource Centers
30 established under subsection (f) of this section and, in the discretion
31 of the court, a term of imprisonment of not more than 30 days and
32 shall forthwith forfeit his right to operate a motor vehicle over the
33 highways of this State for a period of not less than six months nor
34 more than one year.

35 (2) For a second violation, a person shall be subject to a fine of not
36 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
37 the court to perform community service for a period of 30 days, which
38 shall be of such form and on such terms as the court shall deem
39 appropriate under the circumstances, and shall be sentenced to
40 imprisonment for a term of not less than 48 consecutive hours, which
41 shall not be suspended or served on probation, nor more than 90 days,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted February 10, 2000.

1 and shall forfeit his right to operate a motor vehicle over the highways
2 of this State for a period of two years upon conviction, and, after the
3 expiration of said period, he may make application to the Director of
4 the Division of Motor Vehicles for a license to operate a motor
5 vehicle, which application may be granted at the discretion of the
6 director, consistent with subsection (b) of this section.

7 (3) For a third or subsequent violation, a person shall be subject to
8 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
9 of not less than 180 days, except that the court may lower such term
10 for each day, not exceeding 90 days, served performing community
11 service in such form and on such terms as the court shall deem
12 appropriate under the circumstances and shall thereafter forfeit his
13 right to operate a motor vehicle over the highways of this State for 10
14 years.

15 As used in this section, the phrase ¹["inhalant] "narcotic,
16 hallucinogenic or habit-producing drug" includes an inhalant¹ or other
17 substance containing a chemical capable of releasing any toxic vapors
18 or fumes for the purpose of inducing a condition of ¹[intoxication"
19 means and includes, but is not limited to,]intoxication, such as¹ any
20 glue, cement or any other substance containing one or more of the
21 following chemical compounds: acetone and acetate, amyl nitrite or
22 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,
23 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite
24 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl
25 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl
26 alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl
27 nitrate or their isomers, toluene, toluol or xylene or any other chemical
28 substance capable of causing a condition of intoxication, inebriation,
29 excitement, stupefaction or the dulling of the brain or nervous system
30 as a result of the inhalation of the fumes or vapors of such chemical
31 substance.

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

38 A conviction of a violation of a law of a substantially similar nature
39 in another jurisdiction, regardless of whether that jurisdiction is a
40 signatory to the Interstate Driver License Compact pursuant to
41 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction
42 under this subsection unless the defendant can demonstrate by clear
43 and convincing evidence that the conviction in the other jurisdiction
44 was based exclusively upon a violation of a proscribed blood alcohol
45 concentration of less than ¹[.10%] 0.10%¹.

46 If the driving privilege of any person is under revocation or

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

20 A person who has been convicted of a previous violation of this
21 section need not be charged as a second or subsequent offender in the
22 complaint made against him in order to render him liable to the
23 punishment imposed by this section on a second or subsequent
24 offender, but if the second offense occurs more than 10 years after the
25 first offense, the court shall treat the second conviction as a first
26 offense for sentencing purposes and if a third offense occurs more than
27 10 years after the second offense, the court shall treat the third
28 conviction as a second offense for sentencing purposes.

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

1 (c) Upon conviction of a violation of this section, the court shall
2 collect forthwith the New Jersey driver's license or licenses of the
3 person so convicted and forward such license or licenses to the
4 Director of the Division of Motor Vehicles. The court shall inform the
5 person convicted that if he is convicted of personally operating a
6 motor vehicle during the period of license suspension imposed
7 pursuant to subsection (a) of this section, he shall, upon conviction, be
8 subject to the penalties established in R.S.39:3-40. The person
9 convicted shall be informed orally and in writing. A person shall be
10 required to acknowledge receipt of that written notice in writing.
11 Failure to receive a written notice or failure to acknowledge in writing
12 the receipt of a written notice shall not be a defense to a subsequent
13 charge of a violation of R.S.39:3-40. In the event that a person
14 convicted under this section is the holder of any out-of-State driver's
15 license, the court shall not collect the license but shall notify forthwith
16 the director, who shall, in turn, notify appropriate officials in the
17 licensing jurisdiction. The court shall, however, revoke the
18 nonresident's driving privilege to operate a motor vehicle in this State,
19 in accordance with this section. Upon conviction of a violation of this
20 section, the court shall notify the person convicted, orally and in
21 writing, of the penalties for a second, third or subsequent violation of
22 this section. A person shall be required to acknowledge receipt of that
23 written notice in writing. Failure to receive a written notice or failure
24 to acknowledge in writing the receipt of a written notice shall not be
25 a defense to a subsequent charge of a violation of this section.

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

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

35 (f) The counties, in cooperation with the Division of Alcoholism
36 and Drug Abuse and the Division of Motor Vehicles, but subject to the
37 approval of the Division of Alcoholism and Drug Abuse, shall
38 designate and establish on a county or regional basis Intoxicated
39 Driver Resource Centers. These centers shall have the capability of
40 serving as community treatment referral centers and as court monitors
41 of a person's compliance with the ordered treatment, service
42 alternative or community service. All centers established pursuant to
43 this subsection shall be administered by a counselor certified by the
44 Alcohol and Drug Counselor Certification Board of New Jersey or
45 other professional with a minimum of five years' experience in the
46 treatment of alcoholism. All centers shall be required to develop

1 individualized treatment plans for all persons attending the centers;
2 provided that the duration of any ordered treatment or referral shall
3 not exceed one year. It shall be the center's responsibility to establish
4 networks with the community alcohol and drug education, treatment
5 and rehabilitation resources and to receive monthly reports from the
6 referral agencies regarding a person's participation and compliance
7 with the program. Nothing in this subsection shall bar these centers
8 from developing their own education and treatment programs;
9 provided that they are approved by the Division of Alcoholism and
10 Drug Abuse.

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

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

27 The centers shall conduct a program of alcohol and drug education
28 and highway safety, as prescribed by the Director of the Division of
29 Motor Vehicles.

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

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

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

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

41 (3) driving through a school crossing as defined in R.S.39:1-1
42 knowing that juveniles are present if the municipality has not
43 designated the school crossing as such by ordinance or resolution, the
44 convicted person shall: for a first offense, be fined not less than \$500
45 or more than \$800, be imprisoned for not more than 60 days and have
46 his license to operate a motor vehicle suspended for a period of not

1 less than one year or more than two years; for a second offense, be
2 fined not less than \$1,000 or more than \$2,000, perform community
3 service for a period of 60 days, be imprisoned for not less than 96
4 consecutive hours, which shall not be suspended or served on
5 probation, nor more than 180 days, except that the court may lower
6 such term for each day, not exceeding 90 days, served performing
7 community service in such form and on such terms as the court shall
8 deem appropriate under the circumstances and have his license to
9 operate a motor vehicle suspended for a period of not less than four
10 years; and, for a third offense, be fined \$2,000, imprisoned for 180
11 days and have his license to operate a motor vehicle suspended for a
12 period of 20 years; the period of license suspension shall commence
13 upon the completion of any prison sentence imposed upon that person.

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

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

27 (h) In addition to any penalty or condition imposed by law or
28 regulation, a person who is subject to the provisions of this section
29 shall also be subject to the provisions of P.L.1999, c.417
30 (C.39:4-50.16 et al.).

31 (cf: P.L.1999, c.417, s.7)

32

33 2. This act shall take effect immediately.

P.L. 2000, CHAPTER 117, *approved September 13, 2000*
Senate, No. 67 (*First Reprint*)

1 AN ACT concerning driving while under influence of inhalants or other
2 substances and amending R.S.39:4-50.

3

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

6

7 1. R.S.39:4-50 is amended to read as follows:

8 39:4-50. (a) Except as provided in subsection (g) of this section,
9 a person who operates a motor vehicle while under the influence of
10 intoxicating liquor, narcotic, hallucinogenic or habit-producing drug,
11 or operates a motor vehicle with a blood alcohol concentration of
12 0.10% or more by weight of alcohol in the defendant's blood ¹ [or a
13 person who operates a motor vehicle while under the influence of an
14 inhalant or other substance containing a chemical capable of releasing
15 any toxic vapors or fumes,]¹ or permits another person who is under
16 the influence of intoxicating liquor, narcotic, hallucinogenic or
17 habit-producing drug to operate a motor vehicle owned by him or in
18 his custody or control or permits another to operate a motor vehicle
19 with a blood alcohol concentration of 0.10% or more by weight of
20 alcohol in the defendant's blood ¹ [, or permits another person who is
21 under the influence of an inhalant or other substance containing a
22 chemical capable of releasing any toxic vapors or fumes to operate a
23 motor vehicle owned by him or in his custody or control,]¹ shall be
24 subject:

25 (1) For the first offense, to a fine of not less than \$250.00 nor
26 more than \$400.00 and a period of detainment of not less than 12
27 hours nor more than 48 hours spent during two consecutive days of
28 not less than six hours each day and served as prescribed by the
29 program requirements of the Intoxicated Driver Resource Centers
30 established under subsection (f) of this section and, in the discretion
31 of the court, a term of imprisonment of not more than 30 days and
32 shall forthwith forfeit his right to operate a motor vehicle over the
33 highways of this State for a period of not less than six months nor
34 more than one year.

35 (2) For a second violation, a person shall be subject to a fine of not
36 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
37 the court to perform community service for a period of 30 days, which
38 shall be of such form and on such terms as the court shall deem
39 appropriate under the circumstances, and shall be sentenced to
40 imprisonment for a term of not less than 48 consecutive hours, which

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted February 10, 2000.

1 shall not be suspended or served on probation, nor more than 90 days,
2 and shall forfeit his right to operate a motor vehicle over the highways
3 of this State for a period of two years upon conviction, and, after the
4 expiration of said period, he may make application to the Director of
5 the Division of Motor Vehicles for a license to operate a motor
6 vehicle, which application may be granted at the discretion of the
7 director, consistent with subsection (b) of this section.

8 (3) For a third or subsequent violation, a person shall be subject to
9 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
10 of not less than 180 days, except that the court may lower such term
11 for each day, not exceeding 90 days, served performing community
12 service in such form and on such terms as the court shall deem
13 appropriate under the circumstances and shall thereafter forfeit his
14 right to operate a motor vehicle over the highways of this State for 10
15 years.

16 As used in this section, the phrase ¹["inhalant"] "narcotic,
17 hallucinogenic or habit-producing drug" includes an inhalant¹ or other
18 substance containing a chemical capable of releasing any toxic vapors
19 or fumes for the purpose of inducing a condition of ¹["intoxication"
20 means and includes, but is not limited to,]intoxication, such as¹ any
21 glue, cement or any other substance containing one or more of the
22 following chemical compounds: acetone and acetate, amyl nitrite or
23 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,
24 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite
25 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl
26 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl
27 alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl
28 nitrate or their isomers, toluene, toluol or xylene or any other chemical
29 substance capable of causing a condition of intoxication, inebriation,
30 excitement, stupefaction or the dulling of the brain or nervous system
31 as a result of the inhalation of the fumes or vapors of such chemical
32 substance.

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

39 A conviction of a violation of a law of a substantially similar nature
40 in another jurisdiction, regardless of whether that jurisdiction is a
41 signatory to the Interstate Driver License Compact pursuant to
42 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction
43 under this subsection unless the defendant can demonstrate by clear
44 and convincing evidence that the conviction in the other jurisdiction
45 was based exclusively upon a violation of a proscribed blood alcohol
46 concentration of less than ¹[".10%"] 0.10%¹.

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

21 A person who has been convicted of a previous violation of this
22 section need not be charged as a second or subsequent offender in the
23 complaint made against him in order to render him liable to the
24 punishment imposed by this section on a second or subsequent
25 offender, but if the second offense occurs more than 10 years after the
26 first offense, the court shall treat the second conviction as a first
27 offense for sentencing purposes and if a third offense occurs more than
28 10 years after the second offense, the court shall treat the third
29 conviction as a second offense for sentencing purposes.

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

1 Intoxicated Driving Program Unit.

2 (c) Upon conviction of a violation of this section, the court shall
3 collect forthwith the New Jersey driver's license or licenses of the
4 person so convicted and forward such license or licenses to the
5 Director of the Division of Motor Vehicles. The court shall inform the
6 person convicted that if he is convicted of personally operating a
7 motor vehicle during the period of license suspension imposed
8 pursuant to subsection (a) of this section, he shall, upon conviction, be
9 subject to the penalties established in R.S.39:3-40. The person
10 convicted shall be informed orally and in writing. A person shall be
11 required to acknowledge receipt of that written notice in writing.
12 Failure to receive a written notice or failure to acknowledge in writing
13 the receipt of a written notice shall not be a defense to a subsequent
14 charge of a violation of R.S.39:3-40. In the event that a person
15 convicted under this section is the holder of any out-of-State driver's
16 license, the court shall not collect the license but shall notify forthwith
17 the director, who shall, in turn, notify appropriate officials in the
18 licensing jurisdiction. The court shall, however, revoke the
19 nonresident's driving privilege to operate a motor vehicle in this State,
20 in accordance with this section. Upon conviction of a violation of this
21 section, the court shall notify the person convicted, orally and in
22 writing, of the penalties for a second, third or subsequent violation of
23 this section. A person shall be required to acknowledge receipt of that
24 written notice in writing. Failure to receive a written notice or failure
25 to acknowledge in writing the receipt of a written notice shall not be
26 a defense to a subsequent charge of a violation of this section.

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

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

36 (f) The counties, in cooperation with the Division of Alcoholism
37 and Drug Abuse and the Division of Motor Vehicles, but subject to the
38 approval of the Division of Alcoholism and Drug Abuse, shall
39 designate and establish on a county or regional basis Intoxicated
40 Driver Resource Centers. These centers shall have the capability of
41 serving as community treatment referral centers and as court monitors
42 of a person's compliance with the ordered treatment, service
43 alternative or community service. All centers established pursuant to
44 this subsection shall be administered by a counselor certified by the
45 Alcohol and Drug Counselor Certification Board of New Jersey or
46 other professional with a minimum of five years' experience in the

1 treatment of alcoholism. All centers shall be required to develop
2 individualized treatment plans for all persons attending the centers;
3 provided that the duration of any ordered treatment or referral shall
4 not exceed one year. It shall be the center's responsibility to establish
5 networks with the community alcohol and drug education, treatment
6 and rehabilitation resources and to receive monthly reports from the
7 referral agencies regarding a person's participation and compliance
8 with the program. Nothing in this subsection shall bar these centers
9 from developing their own education and treatment programs;
10 provided that they are approved by the Division of Alcoholism and
11 Drug Abuse.

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

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

28 The centers shall conduct a program of alcohol and drug education
29 and highway safety, as prescribed by the Director of the Division of
30 Motor Vehicles.

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

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

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

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

42 (3) driving through a school crossing as defined in R.S.39:1-1
43 knowing that juveniles are present if the municipality has not
44 designated the school crossing as such by ordinance or resolution, the
45 convicted person shall: for a first offense, be fined not less than \$500
46 or more than \$800, be imprisoned for not more than 60 days and have

1 his license to operate a motor vehicle suspended for a period of not
2 less than one year or more than two years; for a second offense, be
3 fined not less than \$1,000 or more than \$2,000, perform community
4 service for a period of 60 days, be imprisoned for not less than 96
5 consecutive hours, which shall not be suspended or served on
6 probation, nor more than 180 days, except that the court may lower
7 such term for each day, not exceeding 90 days, served performing
8 community service in such form and on such terms as the court shall
9 deem appropriate under the circumstances and have his license to
10 operate a motor vehicle suspended for a period of not less than four
11 years; and, for a third offense, be fined \$2,000, imprisoned for 180
12 days and have his license to operate a motor vehicle suspended for a
13 period of 20 years; the period of license suspension shall commence
14 upon the completion of any prison sentence imposed upon that person.

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

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

28 (h) In addition to any penalty or condition imposed by law or
29 regulation, a person who is subject to the provisions of this section
30 shall also be subject to the provisions of P.L.1999, c.417
31 (C.39:4-50.16 et al.).

32 (cf: P.L.1999, c.417, s.7)

33

34 2. This act shall take effect immediately.

35

36

37

38

39 Prohibits driving while under the influence of inhalants or other
40 substances containing toxic fumes or vapors.

CHAPTER 117

AN ACT concerning driving while under influence of inhalants or other substances and amending R.S.39:4-50.

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

1. R.S.39:4-50 is amended to read as follows:

Driving while intoxicated.

39:4-50. (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 0.10% 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 0.10% or more by weight of alcohol in the defendant's blood shall be subject:

(1) For the first offense, to a fine of not less than \$250.00 nor more than \$400.00 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 six months nor more than one year. 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 Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director, 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, 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 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 nitrate 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 0.10%.

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 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; provided that 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 Director of the Division of Motor Vehicles. 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 Director of the Division of Motor Vehicles. 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 director, 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 Director of the Division of Motor Vehicles 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 Division of Motor Vehicles, 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 Director of the Division of Motor Vehicles.

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 not less than four years; and, for a third offense, be fined \$2,000, imprisoned for 180 days 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.

2. This act shall take effect immediately.

Approved September 13, 2000.

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Office of the Governor
NEWS RELEASE

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Governor Signs Legislation Mandating Expansion of DNA Usage

Governor Christie Whitman today signed legislation broadening the group of defendants from which blood samples for DNA testing must be drawn.

"With the passage of this bill, I believe that law enforcement will be better able to identify criminal suspects," said Gov. Whitman. "Our latest Uniform Crime Report from 1999 showed a six percent drop in overall crime with the total number of criminal offenses at its lowest level in 27 years, and now the broadening of DNA collection will be yet another tool in helping law enforcement win new battles in the fight against crime in New Jersey."

"We can't take sole responsibility for the decline in crime, but the stronger laws we've enacted and the support we've given the police have surely helped," added the Governor. "This legislation is one more example of how we are working hard, together with our police, to make New Jersey a safer place in which to live, work and raise a family."

The bill, S-439, was sponsored by Senators Sacco (D-Bergen/Hudson) and Sinagra (R-Middlesex) and Assembly Members Holzapfel (R-Monmouth/Ocean) and Moran (R-Atlantic/Burlington/Ocean). It requires that blood samples be drawn from persons convicted or found not guilty by reason of insanity of murder, manslaughter, second-degree aggravated assault, first- and second-degree kidnapping, luring or enticing a child, engaging in sexual conduct which would impair the morals of a child - or attempting to commit one of these offenses. DNA samples will now be able to be collected by other means than a blood test; for instance, by a collection of saliva samples that are gathered with a cotton swab, which is both less invasive and less expensive.

Under current law, New Jersey's DNA Act requires blood samples to be drawn from persons who have been convicted or found not guilty by reason of insanity of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact or attempting to commit one of these offenses. The Division of State Police is responsible for the identification, analysis and storage of the blood samples in a State databank.

Gov. Whitman also today signed these pieces of legislation:

S-67, sponsored by Senators Bucco (R-Morris) and Kosco (R-Bergen) and Assembly Members Merkt (R-Morris) and DeCroce (R-Essex/Morris/Passaic), prohibits driving while under the influence of inhalants or other substances containing toxic fumes or vapors. The penalties for driving under the influence of an inhalant would be the same as those for driving under the influence of alcohol or drugs.

S-924, sponsored by Senators Cardinale (R-Bergen) and Inverso

(R-Mercer/Middlesex) and Assembly Members Moran
(R-Atlantic/Burlington/Ocean) and Impreveduto (D-Bergen/Hudson) , provides
for continuing education for marriage and family therapists. The bill
requires continuing education as a condition of license renewal, to ensure
that marriage and family therapists are knowledgeable about current issues
and methods in their field.