

39:3-40; 39:3-50

LEGISLATIVE HISTORY CHECKLIST

NJSA: 39:3-40; 39:3-50 (Driving while intoxicated - while license is suspended - increases penalty for operating vehicle)

LAWS OF: 1983

CHAPTER: 90

Bill No: S3072

Sponsor(s): Orechio, Russo and Lynch

Date Introduced: Jan. 27, 1983

Committee: Assembly: \_\_\_\_\_

Senate: \_\_\_\_\_

Amended during passage: Yes // Amendments during passage denoted by asterisks

Date of Passage: Assembly: Feb. 14, 1983

Senate: Jan. 31, 1983

Date of Approval: March 7, 1983

Following statements are attached if available:

Sponsor statement: Yes // Also attached: Senate amendments, adopted 1-31-83 (with statement)

Committee statement: Assembly /// No  
Senate /// No

Fiscal Note: /// No

Veto Message: /// No

Message on Signing: /// No

Following were printed:

Reports: /// No

Hearings: /// No

DEPOSITORY COPY  
Do Not Remove From Library

3-7-83

[OFFICIAL COPY REPRINT]

SENATE, No. 3072

**STATE OF NEW JERSEY**

INTRODUCED JANUARY 27, 1983

By Senators ORECHIO, RUSSO and LYNCH

(Without Reference)

AN ACT concerning motor vehicles **\*[and]\*** **\***, amending R. S. 39:3-40 and R. S. 39:4-50 *and supplementing chapter 3 of Title 39 of the Revised Statutes*.

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

1 1. R. S. 39:3-40 is amended to read as follows:

2 39:3-40. No person to whom a driver's license has been refused  
3 or whose driver's license or reciprocity privilege has been suspended  
4 or revoked, or who has been prohibited from obtaining a driver's  
5 license, shall personally operate a motor vehicle during the period  
6 of refusal, suspension, revocation, or prohibition.

7 No person whose motor vehicle registration has been revoked  
8 shall operate or permit the operation of such motor vehicle during  
9 the period of such revocation.

10 A person violating this section shall be subject to the following  
11 penalties:

12 a. Upon conviction for a first offense, a fine of \$500.00;

13 b. Upon conviction for a second offense, a fine of \$750.00 and im-  
14 prisonment in the county jail for not more than five days;

15 c. Upon conviction for a third offense, a fine of \$1,000.00 and im-  
16 prisonment in the county jail for 10 days;

17 d. Upon conviction, the court shall impose or extend a period of  
18 suspension not to exceed six months;

19 e. Upon conviction, the court shall impose a period of imprison-  
20 ment for not less than 45 days if while operating a vehicle in viola-  
21 tion of this section a person is involved in an accident resulting in  
22 personal injury.

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate amendments adopted January 31, 1983.

23 Notwithstanding paragraphs a. through e., any person violating  
24 this section while under a suspension issued pursuant to R. S.  
25 39:4-50 [shall be subject upon conviction to a fine of \$500.00, im-  
26 prisonment in the county jail for 90 days, and an additional sus-  
27 pension of the license to operate a motor vehicle for a period of 5  
28 years], *upon conviction, shall be fined \$500.00, shall have his license*  
29 *to operate a motor vehicle suspended for an additional period of*  
30 *not less than one year nor more than two years, and may be im-*  
31 *prisoned in the county jail for not more than 90 days.*

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

2 39:4-50. (a) A person who operates a motor vehicle while under  
3 the influence of intoxicating liquor, narcotic, hallucinogenic or  
4 habit-producing drug, or permits another person who is under the  
5 influence of intoxicating liquor, narcotic, hallucinogenic or habit-  
6 producing drug to operate a motor vehicle owned by him or in his  
7 custody or control, shall be subject, for the first offense, to a fine  
8 of not less than \$250.00 nor more than \$400.00 or imprisonment for  
9 a term of not more than 30 days or both, in the discretion of the  
10 court, and shall forthwith forfeit his right to operate a motor vehicle  
11 over the highways of this State for a period of not less than six  
12 months nor more than one year. Except as hereinafter provided,  
13 for a second violation, he shall be subject to a fine of not less than  
14 \$500.00 nor more than \$1,000.00, and shall be ordered by the court to  
15 perform community service for a period of 30 days, which shall be  
16 of such form and on such terms as the court shall deem appropriate  
17 under the circumstances or may be sentenced to imprisonment for a  
18 term of not more than 90 days, and shall forfeit his right to operate  
19 a motor vehicle over the highways of this State for a period of two  
20 years upon conviction, and, after the expiration of said period, he  
21 may make application to the Director of the Division of Motor  
22 Vehicles for a license to operate a motor vehicle, which application  
23 may be granted at the discretion of the director, consistent with  
24 subsection (b) of this section. Except as hereinafter provided, for  
25 a third or subsequent violation, he shall be subject to a fine of  
26 \$1,000.00, and shall be sentenced to imprisonment for a term of not  
27 less than 180 days, except that the court may lower such term for  
28 each day, not exceeding 90 days, served performing community  
29 service in such form and on such terms as the court shall deem  
30 appropriate under the circumstances and shall thereafter forfeit  
31 his right to operate a motor vehicle over the highways of this State  
32 for 10 years. If the driving privilege of any person is under revoca-  
33 tion or suspension for a violation of any provision of this Title  
34 at the time of any conviction for a violation of this section, the

35 revocation or suspension period imposed shall commence as of the  
36 date of termination of the existing revocation or suspension period.  
37 A court that imposes a term of imprisonment under this section  
38 may sentence the person so convicted to the county jail, to the  
39 workhouse of the county wherein the offense was committed, or to  
40 an inpatient rehabilitation program approved by the Director of  
41 the Division of Motor Vehicles.

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

51 (b) In addition to any other requirements provided by law, a  
52 person convicted under this section must satisfy the requirements  
53 of a program of alcohol education or rehabilitation approved by  
54 the Director of the Division of Motor Vehicles. Failure to satisfy  
55 such requirements shall result in a driver license revocation or  
56 suspension or continuation of revocation or suspension until such  
57 requirements are satisfied, unless stayed by court order in accord-  
58 ance with Rule 7:8-2 of the N. J. Court Rules, 1969, or R. S.  
59 39:5-22. A fee, not to exceed \$40.00, shall be payable to the director  
60 from every person required to satisfy the requirements of a pro-  
61 gram of alcohol education or rehabilitation under the provisions of  
62 this section.

63 (c) Upon conviction of a violation of this section, the court shall  
64 collect forthwith the New Jersey driver's license or licenses of the  
65 person so convicted and forward such license or licenses to the  
66 Director of the Division of Motor Vehicles. *The court shall inform*  
67 *the person convicted that if he is convicted of personally operating*  
68 *a motor vehicle during the period of license suspension imposed*  
69 *pursuant to subsection (a) of this section, he shall, upon conviction,*  
70 *be subject to the penalties established in R. S. 39:3-40.* In the event  
71 that a person convicted under this section is the holder of any out-  
72 of-state driver's license, the court shall not collect the license but  
73 shall notify forthwith the director who shall, in turn, notify appro-  
74 priate officials in the licensing jurisdiction. The court shall, how-  
75 ever, revoke the nonresident's driving privilege to operate a motor  
76 vehicle in this State in accordance with this section.

77 (d) The Director of the Division of Motor Vehicles shall pro-  
78 mulgate administrative rules and regulations in order to effectuate  
79 the purposes of this act.

80 (e) Any person accused of a violation of this section who is liable  
81 to punishment imposed by this section as a second or subsequent  
82 offender shall be entitled to the same rights of discovery as allowed  
83 defendants pursuant to the Rules Governing Criminal Practice as  
84 set forth in the Rules Governing the Courts of the State of New  
85 Jersey.

1 \*3. (New section) A person who, prior to the effective date of this  
2 amendatory and supplementary act, was sentenced for violating  
3 R. S. 39:3-40 while under a suspension issued pursuant to R. S.  
4 39:4-50 may apply to the court to have his sentence reduced in  
5 accordance with the provisions of this act.

1 4. (New section) In any case pending on or initiated after the  
2 effective date of this act involving an offense committed prior to  
3 that date, the court, with the consent of the defendant, shall impose  
4 sentence under the provisions of this act. If the defendant does  
5 not consent to the imposition of sentence under the provisions of  
6 this act, the court shall impose sentence under the law which was in  
7 effect at the time of the commission of the offense.\*

1 \***[3.]**\* \*5.\* This act shall take effect immediately.

77 (d) The Director of the Division of Motor Vehicles shall pro-  
78 mulgate administrative rules and regulations in order to effectuate  
79 the purposes of this act.

80 (e) Any person accused of a violation of this section who is liable  
81 to punishment imposed by this section as a second or subsequent  
82 offender shall be entitled to the same rights of discovery as allowed  
83 defendants pursuant to the Rules Governing Criminal Practice as  
84 set forth in the Rules Governing the Courts of the State of New  
85 Jersey.

1 3. This act shall take effect immediately.

---

#### STATEMENT

The purpose of this bill is to permit greater flexibility in the penalties that can be imposed upon a person for driving while his license has been suspended for driving while intoxicated.

Under current law, a person who is convicted of driving during the time his license is suspended for driving while intoxicated is fined \$500.00, imprisoned for 90 days in the county jail, and has his license suspended for an additional period of five years. According to this bill, the person's driver's license would be suspended for an additional period of one year to two years, and the person may be imprisoned for not more than 90 days. The mandatory fine of \$500.00 would remain the same.

This bill would also amend the drunken driving law so that the court would be required to inform a person whose driver's license was suspended as part of a penalty for drunken driving, that if he were convicted of driving during the time his license was suspended, he would be subject to the penalties established above.

53072 (1983)

JAN 31 1983

Senate Bill No. 3072 (Typed Copy)  
(Proposed by Senator Orechio, 1/31/83)

Amend:

Page	Sec.	Line	
1	Title	1	After "vehicles" omit "and" insert ", "
1	Title	2	After "R.S. 39:4-50" insert "and supplementing chapter 3 of Title 39 of the Revised Statutes"
3	2	After 85	<p>Insert new sections 3 and 4 as follows:</p> <p>"3. (New section) Any person who, prior to the effective date of this amendatory and supplementary act, was sentenced for violating R.S. 39:3-40 while under a suspension issued pursuant to R.S. 39:4-50 may apply to the court to have his sentence reduced in accordance with the provisions of this act.</p> <p>4. (New section) In any case pending on or initiated after the effective date of this act involving an offense committed prior to that date, the court, with the consent of the defendant, shall impose sentence under the provisions of this act. If the defendant does not consent to the imposition of sentence under the provisions of this act, the court shall impose sentence under the law which was in effect at the time of the commission of the offense.</p>
3	3	1	Omit "3." insert "5."

STATEMENT

These amendments permit the court to reconsider sentences imposed under the law in effect prior to the law as amended by the bill, and to apply the sentencing provisions of this bill to pending cases.