

40:48-1.3

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2003 **CHAPTER:** 164
NJSA: 40:48-1.3 (Driving under the influence—protective custody)
BILL NO: S1868 (Substituted for A2867)

SPONSOR(S): Cafiero and others

DATE INTRODUCED: September 19, 2002

COMMITTEE: **ASSEMBLY:** Judiciary
 SENATE: Law and Public Safety

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 23, 2003
 SENATE: June 30, 2003

DATE OF APPROVAL: August 27, 2003

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (3rd reprint enacted)
(Amendments during passage denoted by superscript numbers)

S1868

[SPONSORS STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: [Yes](#)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

A2867

[SPONSORS STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

[FINAL VERSION](#) (Assembly Substitute, 1st reprint): [Yes](#)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Municipalities can hold drunken drivers until they're sober," 8-28-2003 The Press, pA5.

"Elliot's fulfill their lifesaving promise," 8-28-2003 The Press, p.A1

"Law puts drunken drivers in jail," 8-28-2003 Courier News, p.A1

"New law plugs DUI loophole," 8-28-2003 Courier-Post, p.B1

"Police can delay release of drunk drivers," 8-28-2003 Star Ledger, p.27

"DWI law lets towns keep hold of drivers" 8-28-2003 Philadelphia Inquirer, p.B1

"Law allows cops to temporarily jail drunken drivers" 8-28-2003 The Times, p.A4

"Drunk drivers face lockup till sober," 8-28-2003 The Record, p.A3

P.L. 2003, CHAPTER 164, *approved August 27, 2003*
Senate, No. 1868 (*Third Reprint*)

1 AN ACT concerning driving under the influence, ³supplementing Title
2 40 of the Revised Statutes and³ amending R.S.40:48-1 ³[and
3 P.L.1966, c.142 and supplementing Title 40 of the Revised
4 Statutes] ³.

5

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

8

9 1. (New section) ¹a.¹ A municipality may enact an ordinance
10 providing that a person who is arrested for a violation of the
11 provisions of R.S.39:4-50 shall ²[not be released from] ³[remain in²]
12 be held in protective³ custody ³[²or be taken by a law enforcement
13 officer to a screening center in a facility licensed and approved by the
14 Department of Health and Senior Services for inpatient, hospital-
15 based, medically monitored detoxification. The ordinance shall specify
16 that the person shall remain in custody or at the facility²] at an
17 appropriate police or other facility where the person's condition may
18 be monitored³ until the person is no longer ³[under the influence of
19 alcoholic beverages, any chemical substance or any controlled
20 dangerous substance. For purposes of the ordinance, a person shall be
21 deemed to not be under the influence if the person's blood alcohol
22 content has been determined to be less than 0.07%, or if eight hours
23 have elapsed from the time the person was arrested] a danger to
24 himself or others. The municipal ordinance shall provide for the
25 release of the person from protective custody when that person is no
26 longer a danger to himself or others. The municipal ordinance may
27 provide that a person is no longer a danger to himself or others when
28 the person's blood alcohol concentration is less than 0.05% and the
29 person is no longer under the influence of any intoxicating liquor or
30 narcotic or hallucinogenic or habit-forming drug to the extent that the
31 person's faculties are impaired. In no event shall a municipality hold a
32 person in protective custody for a period of longer than eight hours
33 without providing an appropriate hearing³.

34 ¹b. ²[The ordinance] Notwithstanding the provisions of any
35 ordinance enacted pursuant to subsection a. of this section, ³provided
36 that it is not a detriment to the public safety,³ the ³arresting³ law
37 enforcement agency² may ²[permit the municipality to] ³, because of
38 the age, health or safety of the arrested person,³ release the

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted January 9, 2003.

² Senate floor amendments adopted January 23, 2003.

³ Assembly AJU committee amendments adopted June 5, 2003.

1 ³[arrested]³ person pursuant to the provisions of P.L.2001, c.69
2 (C.39:4-50.22 et seq.) or² provide an appropriate alternative to
3 ³protective³ custody ³[because of the age, health or safety of the
4 individual, provided there are reasonable assurances that the release of
5 the person is not a detriment to the public safety]³. The municipality
6 shall not be subject to liability if a person is released from custody
7 pursuant to the provisions of this subsection.¹

8 ²c. ³[Pursuant to the provisions of the "Administrative Procedure
9 Act, P.L.1968, c.410 (C.52:14B-1 et seq.), the Attorney General, in
10 consultation with the Commissioner of Health and Senior Services,
11 may promulgate regulations to effectuate the provisions of this act.²]
12 Nothing in this section shall be construed as requiring the use of State
13 Police facilities by a municipality for the purposes of this act.³

14

15 2. R.S.40:48-1 is amended to read as follows:

16 40:48-1. Ordinances; general purpose. The governing body of
17 every municipality may make, amend, repeal and enforce ordinances
18 to:

19 Finances and property. 1. Manage, regulate and control the
20 finances and property, real and personal, of the municipality;

21 Contracts and contractor's bonds. 2. Prescribe the form and
22 manner of execution and approval of all contracts to be executed by
23 the municipality and of all bonds to be given to it;

24 Officers and employees; duties, terms and salaries. 3. Prescribe
25 and define, except as otherwise provided by law, the duties and terms
26 of office or employment, of all officers and employees; and to
27 provide for the employment and compensation of such officials and
28 employees, in addition to those provided for by statute, as may be
29 deemed necessary for the efficient conduct of the affairs of the
30 municipality;

31 Fees. 4. Fix the fees of any officer or employee of the municipality
32 for any service rendered in connection with his office or position, for
33 which no specific fee or compensation is provided. In the case of
34 salaried officers or employees, such fee shall be paid into the municipal
35 treasury;

36 Salaries instead of fees; disposition of fees. 5. Provide that any
37 officer or employee receiving compensation for his services, in whole
38 or in part by fees, whether paid by the municipality or otherwise, shall
39 be paid a salary to be fixed in the ordinance, and thereafter all fees
40 received by such officer or employee shall be paid into the municipal
41 treasury;

42 Maintain order. 6. Prevent vice, drunkenness and immorality; to
43 preserve the public peace and order; to prevent and quell riots,
44 disturbances and disorderly assemblages; to prohibit the consumption
45 of alcoholic beverages by underage persons on private property
46 pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

1 Punish beggars; prevention of loitering. 7. Restrain and punish
2 drunkards, vagrants, mendicants and street beggars; to prevent
3 loitering, lounging or sleeping in the streets, parks or public places;
4 Auctions and noises. 8. Regulate the ringing of bells and the
5 crying of goods and other commodities for sale at auction or
6 otherwise, and to prevent disturbing noises;
7 Swimming; bathing costume; prohibition of public nudity. 9.
8 Regulate or prohibit swimming or bathing in the waters of, in, or
9 bounding the municipality, and to regulate or prohibit persons from
10 appearing upon the public streets, parks and places clad in bathing
11 costumes or robes, or costumes of a similar character; regulate or
12 prohibit persons from appearing in a state of nudity upon all lands
13 within its borders which are under the jurisdiction of the State
14 including, without limitation, all lands owned by, controlled by,
15 managed by or leased by the State;
16 Prohibit annoyance of persons or animals. 10. Regulate or prohibit
17 any practice tending to frighten animals, or to annoy or injure persons
18 in the public streets;
19 Animals; pounds; establishment and regulation. 11. Establish and
20 regulate one or more pounds, and to prohibit or regulate the running
21 at large of horses, cattle, dogs, swine, goats and other animals, and to
22 authorize their impounding and sale for the penalty incurred, and the
23 costs of impounding, keeping and sale; to regulate or prohibit the
24 keeping of cattle, goats or swine in any part of the municipality; to
25 authorize the destruction of dogs running at large therein;
26 Hucksters. 12. Prescribe and regulate the place of vending or
27 exposing for sale articles of merchandise from vehicles;
28 Building regulations; wooden structures. 13. Regulate and control
29 the construction, erection, alteration and repair of buildings and
30 structures of every kind within the municipality; and to prohibit,
31 within certain limits, the construction, erection or alteration of
32 buildings or structures of wood or other combustible material;
33 Inflammable materials; inspect docks and buildings. 14. Regulate
34 the use, storage, sale and disposal of inflammable or combustible
35 materials, and to provide for the protection of life and property from
36 fire, explosions and other dangers; to provide for inspections of
37 buildings, docks, wharves, warehouses and other places, and of goods
38 and materials contained therein, to secure the proper enforcement of
39 such ordinance;
40 Dangerous structures; removal or destruction; procedure. 15.
41 Provide for the removal or destruction of any building, wall or
42 structure which is or may become dangerous to life or health, or might
43 tend to extend a conflagration; and to assess the cost thereof as a
44 municipal lien against the premises;
45 Chimneys and boilers. 16. Regulate the construction and setting
46 up of chimneys, furnaces, stoves, boilers, ovens and other contrivances

1 in which fire is used;

2 Explosives. 17. Regulate, in conformity with the statutes of this
3 State, the manufacture, storage, sale, keeping or conveying of
4 gunpowder, nitroglycerine, dynamite and other explosives;

5 Firearms and fireworks. 18. Regulate and prohibit the sale and use
6 of guns, pistols, firearms, and fireworks of all descriptions;

7 Soft coal. 19. Regulate the use of soft coal in locomotives,
8 factories, power houses and other places;

9 Theaters, schools, churches and public places. 20. Regulate the
10 use of theaters, cinema houses, public halls, schools, churches, and
11 other places where numbers of people assemble, and the exits
12 therefrom, so that escape therefrom may be easily and safely made in
13 case of fire or panic; and to regulate any machinery, scenery, lights,
14 wires and other apparatus, equipment or appliances used in all places
15 of public amusement;

16 Excavations. 21. Regulate excavations below the established grade
17 or curb line of any street, not greater than eight feet, which the owner
18 of any land may make, in the erection of any building upon his own
19 property; and to provide for the giving of notice, in writing, of such
20 intended excavation to any adjoining owner or owners, and that they
21 will be required to protect and care for their several foundation walls
22 that may be endangered by such excavation; and to provide that in
23 case of the neglect or refusal, for 10 days, of such adjoining owner or
24 owners to take proper action to secure and protect the foundations of
25 any adjacent building or other structure, that the party or parties
26 giving such notice, or their agents, contractors or employees, may
27 enter into and upon such adjoining property and do all necessary work
28 to make such foundations secure, and may recover the cost of such
29 work and labor in so protecting such adjacent property; and to make
30 such further and other provisions in relation to the proper conduct and
31 performance of said work as the governing body or board of the
32 municipality may deem necessary and proper;

33 Sample medicines. 22. Regulate and prohibit the distribution,
34 depositing or leaving on the public streets or highways, public places
35 or private property, or at any private place or places within any such
36 municipality, any medicine, medicinal preparation or preparations
37 represented to cure ailments or diseases of the body or mind, or any
38 samples thereof, or any advertisements or circulars relating thereto,
39 but no ordinance shall prohibit a delivery of any such article to any
40 person above the age of 12 years willing to receive the same;

41 Boating. 23. Regulate the use of motor and other boats upon
42 waters within or bounding the municipality;

43 Fire escapes. 24. Provide for the erection of fire escapes on
44 buildings in the municipality, and to provide rules and regulations
45 concerning the construction and maintenance of the same, and for the
46 prevention of any obstruction thereof or thereon;

1 Care of injured employees. 25. Provide for the payment of
2 compensation and for medical attendance to any officer or employee
3 of the municipality injured in the performance of his duty;

4 Bulkheads and other structures. 26. Fix and determine the lines of
5 bulkheads or other works or structures to be erected, constructed or
6 maintained by the owners of lands facing upon any navigable water in
7 front of their lands, and in front of or along any highway or public
8 lands of said municipality, and to designate the materials to be used,
9 and the type, height and dimensions thereof;

10 Lifeguard. 27. Establish, maintain, regulate and control a lifeguard
11 upon any beach within or bordering on the municipality;

12 Appropriation for life-saving apparatus. 28. Appropriate moneys
13 to safeguard people from drowning within its borders, by location of
14 apparatus or conduct of educational work in harmony with the plans
15 of the United States volunteer life-saving corps in this State;

16 Fences. 29. Regulate the size, height and dimensions of any fences
17 between the lands of adjoining owners, whether built or erected as
18 division or partition fences between such lands, and whether the same
19 exist or be erected entirely or only partly upon the lands of any such
20 adjoining owners, or along or immediately adjacent to any division or
21 partition line of such lands. To provide, in such ordinance, the manner
22 of securing, fastening or shoring such fences, and for surveying the
23 land when required by statute, and to prohibit in any such ordinance
24 the use at a height of under 10 feet from the ground, of any device,
25 such as wire or cable, that would be dangerous to pedestrians,
26 equestrians, bicyclists, or drivers of off-the-road vehicles, unless that
27 device is clearly visible to pedestrians, equestrians, bicyclists or drivers
28 of off-the-road vehicles. In the case of fences thereafter erected
29 contrary to the provisions thereof, the governing body may provide for
30 a penalty for the violation of such ordinance, and in the case of such
31 fence or fences erected or existing at the time of the passage of any
32 such ordinance, may provide therein for the removal, change or
33 alteration thereof, so as to make such fence or fences comply with the
34 provisions of any such ordinance;

35 Advertise municipality. 30. Appropriate funds for advertising the
36 advantages of the municipality;

37 Government Energy Aggregation Programs. 31. Establish
38 programs and procedures pursuant to which the municipality may act
39 as a government aggregator pursuant to ³[sections 40 through 45 of
40 P.L.1999, c.23 (C.48:3-89 through C.48:3-94)] sections 40 through
41 43 of P.L.1999,c.23 (C.48:3-89 through C.48:3-92), section 45 of
42 P.L.1999, c.23 (C.48:3-94), and sections 1, 2 and 6 of P.L.2003, c.24
43 (C.48:3-93.1 through C.48:3-93.3)³. Notwithstanding the provisions
44 of any other law, rule or regulation to the contrary, a municipality
45 acting as a government aggregator pursuant to P.L.1999, c.23
46 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant

1 to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating
 2 any form of public utility service pursuant to R.S.40:62-1 et seq., to
 3 the extent such municipality is solely engaged in the provision of such
 4 aggregation service and not otherwise owning or operating any plant
 5 or facility for the production or distribution of gas, electricity, steam
 6 or other product as provided in R.S.40:62-12³;

7 Joint municipal action on consent for the provision of cable
 8 television service. 32. Establish programs and procedures pursuant to
 9 which a municipality may act together with one or more municipalities
 10 in granting municipal consent for the provision of cable television
 11 service pursuant to the provisions of the "Cable Television Act,"
 12 P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented.
 13 Notwithstanding the provisions of any other law, rule or regulation to
 14 the contrary, two or more municipalities acting jointly pursuant to the
 15 provisions of P.L.1972, c.186 (C.48:5A-1 et seq.) shall not be deemed
 16 a public utility pursuant to R.S.48:1-1 et seq., to the extent those
 17 municipalities are solely engaged in granting municipal consent jointly
 18 and are not otherwise owning or operating any facility for the
 19 provision of cable television service as provided in P.L.1972, c.186
 20 (C.48:5A-1 et seq.) ;

21 Private cable television service aggregation programs. 33.
 22 Establish programs and procedures pursuant to which a municipality
 23 may employ the services of a private aggregator for the purpose of
 24 facilitating the joint action of two or more municipalities in granting
 25 municipal consent for the provision of cable television service
 26 provided that any such municipality shall adhere to the provisions of
 27 the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as
 28 amended and supplemented, and to the provisions of the "Local Public
 29 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as amended
 30 and supplemented. Notwithstanding the provisions of any other law,
 31 rule or regulation to the contrary, a municipality that employs the
 32 services of a private aggregator pursuant to the provisions of
 33 P.L.1972, c.186 (C.48:5A-1 et seq.) shall not be deemed a public
 34 utility pursuant to R.S.48:1-1 et seq., to the extent that the
 35 municipality is solely engaged in employing the services of a private
 36 aggregator for the purpose of facilitating the joint action of two or
 37 more municipalities in granting municipal consent and is not otherwise
 38 owning or operating any facility for the provision of cable television
 39 service as provided in P.L.1972, c.186 (C.48:5A-1 et seq.)³.

40 ³[Detain intoxicated drivers. Detain] Protective Custody. 34.
 41 Provide protective custody to³ persons³ arrested for³ operating a
 42 motor vehicle under the influence of alcoholic beverages, any chemical
 43 substance, or any controlled dangerous substance³ in violation of
 44 R.S.39:4-50 as provided in section 1 of P.L. , c. (C.)(now
 45 pending before the Legislature as this bill)³ .

46 (cf: P.L.2003, c.38, s.1)

1 ³[3. Section 2 of P.L.1966, c.142 (C.39:4-50.2) is amended to
2 read as follows:

3 2. (a) Any person who operates a motor vehicle on any public
4 road, street or highway or quasi-public area in this State shall be
5 deemed to have given his consent to the taking of samples of his
6 breath for the purpose of making chemical tests to determine the
7 content of alcohol in his blood [; provided, however, that the] and
8 to remaining in custody pursuant to the provisions of an ordinance
9 enacted pursuant to P.L. , c. (C.) (now pending before the
10 Legislature as this bill). The taking of samples [is] pursuant to this
11 section shall be made in accordance with the provisions of this act and
12 at the request of a police officer who has reasonable grounds to
13 believe that such person has been operating a motor vehicle in
14 violation of the provisions of R.S.39:4-50.

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

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

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

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

32 (cf: P.L.1981, c.512, s.1)]³

33

34 ³[4.] 3.³ This act shall take effect immediately.

35

36

37

38

39 Permits municipalities to enact ordinance to hold DUI arrestees in
40 protective custody.

SENATE, No. 1868

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2002

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Co-Sponsored by:

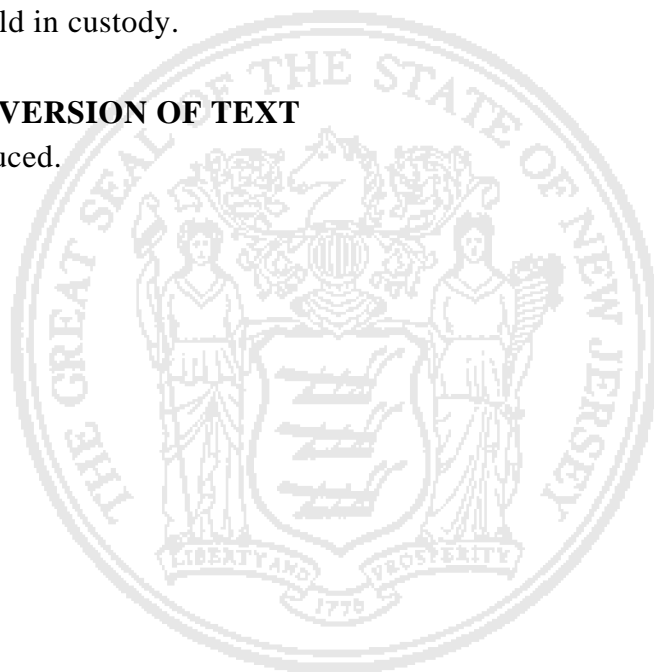
Senators Connors, Bucco, Inverso, Singer, Bark, McNamara, Cardinale, Ciesla, Lance, Kavanaugh, Bennett, Allen, Martin, Turner, Rice, Littell, Palaia, Bagger, Sweeney, Lesniak, Coniglio, Adler, B.Smith, Buono, Vitale, Furnari, Girgenti, Baer, Kenny and Codey

SYNOPSIS

Permits municipalities to enact an ordinance requiring drivers arrested for DUI to be held in custody.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning driving under the influence, amending R.S.40:48-
2 1 and P.L.1966, c.142 and supplementing Title 40 of the Revised
3 Statutes.

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

7
8 1. (New section) A municipality may enact an ordinance providing
9 that a person who is arrested for a violation of the provisions of
10 R.S.39:4-50 shall not be released from custody until the person is no
11 longer under the influence of alcoholic beverages, any chemical
12 substance or any controlled dangerous substance. For purposes of the
13 ordinance, a person shall be deemed to not be under the influence if
14 the person's blood alcohol content has been determined to be less than
15 0.07%, or if eight hours have elapsed from the time the person was
16 arrested.

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18 2. R.S.40:48-1 is amended to read as follows:

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32 deemed necessary for the efficient conduct of the affairs of the
33 municipality;

34 Fees. 4. Fix the fees of any officer or employee of the municipality
35 for any service rendered in connection with his office or position, for
36 which no specific fee or compensation is provided. In the case of
37 salaried officers or employees, such fee shall be paid into the municipal
38 treasury;

39 Salaries instead of fees; disposition of fees. 5. Provide that any
40 officer or employee receiving compensation for his services, in whole
41 or in part by fees, whether paid by the municipality or otherwise, shall
42 be paid a salary to be fixed in the ordinance, and thereafter all fees

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1 received by such officer or employee shall be paid into the municipal
2 treasury;

3 Maintain order. 6. Prevent vice, drunkenness and immorality; to
4 preserve the public peace and order; to prevent and quell riots,
5 disturbances and disorderly assemblages; to prohibit the consumption
6 of alcoholic beverages by underage persons on private property
7 pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

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15 Regulate or prohibit swimming or bathing in the waters of, in, or
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17 appearing upon the public streets, parks and places clad in bathing
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19 prohibit persons from appearing in a state of nudity upon all lands
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28 at large of horses, cattle, dogs, swine, goats and other animals, and to
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30 costs of impounding, keeping and sale; to regulate or prohibit the
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37 structures of every kind within the municipality; and to prohibit,
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39 buildings or structures of wood or other combustible material;

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26 property; and to provide for the giving of notice, in writing, of such
27 intended excavation to any adjoining owner or owners, and that they
28 will be required to protect and care for their several foundation walls
29 that may be endangered by such excavation; and to provide that in
30 case of the neglect or refusal, for 10 days, of such adjoining owner or
31 owners to take proper action to secure and protect the foundations of
32 any adjacent building or other structure, that the party or parties
33 giving such notice, or their agents, contractors or employees, may
34 enter into and upon such adjoining property and do all necessary work
35 to make such foundations secure, and may recover the cost of such
36 work and labor in so protecting such adjacent property; and to make
37 such further and other provisions in relation to the proper conduct and
38 performance of said work as the governing body or board of the
39 municipality may deem necessary and proper;

40 Sample medicines. 22. Regulate and prohibit the distribution,
41 depositing or leaving on the public streets or highways, public places
42 or private property, or at any private place or places within any such
43 municipality, any medicine, medicinal preparation or preparations
44 represented to cure ailments or diseases of the body or mind, or any
45 samples thereof, or any advertisements or circulars relating thereto,
46 but no ordinance shall prohibit a delivery of any such article to any

1 person above the age of 12 years willing to receive the same;

2 Boating. 23. Regulate the use of motor and other boats upon
3 waters within or bounding the municipality;

4 Fire escapes. 24. Provide for the erection of fire escapes on
5 buildings in the municipality, and to provide rules and regulations
6 concerning the construction and maintenance of the same, and for the
7 prevention of any obstruction thereof or thereon;

8 Care of injured employees. 25. Provide for the payment of
9 compensation and for medical attendance to any officer or employee
10 of the municipality injured in the performance of his duty;

11 Bulkheads and other structures. 26. Fix and determine the lines of
12 bulkheads or other works or structures to be erected, constructed or
13 maintained by the owners of lands facing upon any navigable water in
14 front of their lands, and in front of or along any highway or public
15 lands of said municipality, and to designate the materials to be used,
16 and the type, height and dimensions thereof;

17 Lifeguard. 27. Establish, maintain, regulate and control a lifeguard
18 upon any beach within or bordering on the municipality;

19 Appropriation for life-saving apparatus. 28. Appropriate moneys
20 to safeguard people from drowning within its borders, by location of
21 apparatus or conduct of educational work in harmony with the plans
22 of the United States volunteer life-saving corps in this State;

23 Fences. 29. Regulate the size, height and dimensions of any fences
24 between the lands of adjoining owners, whether built or erected as
25 division or partition fences between such lands, and whether the same
26 exist or be erected entirely or only partly upon the lands of any such
27 adjoining owners, or along or immediately adjacent to any division or
28 partition line of such lands. To provide, in such ordinance, the manner
29 of securing, fastening or shoring such fences, and for surveying the
30 land when required by statute, and to prohibit in any such ordinance
31 the use at a height of under 10 feet from the ground, of any device,
32 such as wire or cable, that would be dangerous to pedestrians,
33 equestrians, bicyclists, or drivers of off-the-road vehicles, unless that
34 device is clearly visible to pedestrians, equestrians, bicyclists or drivers
35 of off-the-road vehicles. In the case of fences thereafter erected
36 contrary to the provisions thereof, the governing body may provide for
37 a penalty for the violation of such ordinance, and in the case of such
38 fence or fences erected or existing at the time of the passage of any
39 such ordinance, may provide therein for the removal, change or
40 alteration thereof, so as to make such fence or fences comply with the
41 provisions of any such ordinance;

42 Advertise municipality. 30. Appropriate funds for advertising the
43 advantages of the municipality;

44 Government Energy Aggregation Programs. 31. Establish
45 programs and procedures pursuant to which the municipality may act
46 as a government aggregator pursuant to sections 40 through 45 of

1 P.L.1999, c.23 (C.48:3-89 through C.48:3-94). Notwithstanding the
2 provisions of any other law, rule or regulation to the contrary, a
3 municipality acting as a government aggregator pursuant to P.L.1999,
4 c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility
5 pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be
6 operating any form of public utility service pursuant to R.S.40:62-1 et
7 seq., to the extent such municipality is solely engaged in the provision
8 of such aggregation service and not otherwise owning or operating any
9 plant or facility for the production or distribution of gas, electricity,
10 steam or other product as provided in R.S.40:62-12.

11 Detain intoxicated drivers. Detain persons operating a motor
12 vehicle under the influence of alcoholic beverages, any chemical
13 substance, or any controlled dangerous substance.

14 (cf: P.L.2001, c.36, s.1)

15

16 3. Section 2 of P.L.1966, c.142 (C.39:4-50.2) is amended to read
17 as follows:

18 2. (a) Any person who operates a motor vehicle on any public
19 road, street or highway or quasi-public area in this State shall be
20 deemed to have given his consent to the taking of samples of his
21 breath for the purpose of making chemical tests to determine the
22 content of alcohol in his blood [; provided, however, that the] and
23 to remaining in custody pursuant to the provisions of an ordinance
24 enacted pursuant to P.L. , c. (C.) (now pending before the
25 Legislature as this bill). The taking of samples [is] pursuant to this
26 section shall be made in accordance with the provisions of this act and
27 at the request of a police officer who has reasonable grounds to
28 believe that such person has been operating a motor vehicle in
29 violation of the provisions of R.S. 39:4-50.

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

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

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

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

1 shall be read by the police officer to the person under arrest.
2 (cf: P.L.1981, c.512, s.1)

3

4 4. This act shall take effect immediately.

5

6

7

STATEMENT

8

9 This bill permits municipalities to enact an ordinance providing that
10 a person who is arrested for drunk driving shall not be released from
11 custody until the person is no longer under the influence of alcoholic
12 beverages, any chemical substance or any controlled dangerous
13 substance. For purposes of the ordinance, a person is deemed to not
14 be under the influence if the person's blood alcohol content has been
15 determined to be less than 0.07%, or if eight hours have elapsed from
16 the time the person was arrested. In addition, the bill amends the
17 implied consent statute to provide that a person who operates a motor
18 vehicle on the highways of this State has consented to remaining in
19 custody pursuant to an ordinance enacted under the provisions of this
20 bill.

21 This bill would permit municipalities to enact additional procedures
22 to protect the public and prevent suspected drunk drivers from
23 operating a motor vehicle. As currently required pursuant to the
24 provisions of "John's Law" (P.L.2001, c.69; 39:4-50.23),
25 municipalities would continue to 1) provide warnings to persons who
26 transport arrested drunk drivers concerning their liability if the drunk
27 driver operates a motor vehicle while still intoxicated and 2) impound
28 the motor vehicles of suspected drunk drivers for 12 hours.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 1868

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2003

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1868 (2R).

As amended by committee, the bill would permit municipalities to enact an ordinance providing that a person who has been arrested for driving under the influence, pursuant to R.S.39:4-50, shall be held in protective custody at an appropriate police or other facility where the person's condition may be monitored until he no longer is a danger to himself or others. Once this is determined the person would be released from custody. The ordinance may provide that a person would not be considered a danger to himself or others when the person's blood alcohol concentration is less than 0.05% and the person is no longer under the influence of any intoxicating liquor or narcotic or hallucinogenic or habit forming drug to the extent that the person's faculties are impaired. However, the bill would provide that in no event can the municipality hold a person in protective custody for a period of longer than eight hours without providing an appropriate hearing.

Under the provisions of the bill, the arresting law enforcement agency would be permitted to release the arrested person being held in protective custody based upon the person's age, health or safety, provided there are reasonable assurances that the release of the person is not a detriment to the public safety, in accordance with the provisions of "John's Law," P.L.2001, c.69 (N.J.S.A.39:4-50.22 et seq.). N.J.S.A. 39:4-50.22 authorizes the law enforcement agency to impound the vehicle and requires the agency to notify persons who accompany a drunk driver from the premises that they can be held criminally or civilly liable if they permit the drunk driver to operate a motor vehicle.

In addition, the bill would provide that a municipality could not be held liable for releasing the defendant. Nothing in the bill shall be construed as requiring the use of State Police facilities by a municipality for the purposes of this act.

COMMITTEE AMENDMENTS

1. Subsection a. of section 1 of the bill is amended by deleting the provision which provided that the law enforcement agency would have the option of taking the arrested person to a screening unit in a facility licensed and approved by the Department of Health and Senior Services for inpatient, hospital-based, medically monitored detoxification.

2. Subsection a. of section 1 of the bill is amended by deleting the language which provided that a person would not be deemed to be under the influence if the person's blood alcohol content had been less than 0.07% or if eight hours had elapsed from the time of the arrest. (The committee amendments provide that an ordinance may provide that a person is no longer a danger to himself or others when that person's blood alcohol content is less than 0.05%).

3. Subsection c. which authorized the Attorney General to promulgate rules and regulations in consultation with the Commissioner of Health and Senior Services was deleted in its entirety. (Subsection c., as amended by the committee, provides that nothing in section 1 of the bill shall be construed as requiring the use of State Police facilities by a municipality for the purposes of this act.)

4. Section 2 of the bill contains a technical amendment to reflect recently enacted legislation P.L. 2003, c. 38 which authorized municipalities to enter into joint consent agreements concerning cable television service and authorizing municipalities to employ private aggregators to act on behalf of the municipalities in granting municipal consent for the provision of cable television service.

5. Section 2 of the bill was also amended to correct an internal citation reference to P.L.2003, c.24 which supplements N.J.S.48:3-89 et seq. regarding aggregator contracts.

6. The remaining amendments were technical in nature.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1868

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 2003

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably and with committee amendments Senate Bill No. 1868.

This bill permits municipalities to enact an ordinance providing that a person who is arrested for drunk driving shall not be released from custody until the person is no longer under the influence of alcoholic beverages, any chemical substance or any controlled dangerous substance. For purposes of the ordinance, a person is deemed to not be under the influence if the person's blood alcohol content has been determined to be less than 0.07%, or if eight hours have elapsed from the time the person was arrested. In addition, the bill amends the implied consent statute to provide that a person who operates a motor vehicle on the highways of this State has consented to remaining in custody pursuant to an ordinance enacted under the provisions of this bill.

The committee amended the bill to provide that the ordinance may permit the municipality to provide an appropriate alternative to custody because of the age, health or safety of the individual, provided there are reasonable assurances that the release of the person is not a detriment to the public safety. The municipality would not be subject to liability if a person is released from custody under such circumstances.

This bill would permit municipalities to enact additional procedures to protect the public and prevent suspected drunk drivers from operating a motor vehicle. As currently required pursuant to the provisions of "John's Law" (P.L.2001, c.69; C.39:4-50.22 et seq.), municipalities would continue to 1) provide warnings to persons who transport arrested drunk drivers concerning their liability if the drunk driver operates a motor vehicle while still intoxicated and 2) impound the motor vehicles of suspected drunk drivers for 12 hours.

STATEMENT TO
[First Reprint]
SENATE, No. 1868

with Senate Floor Amendments
(Proposed By Senator ADLER)

ADOPTED: JANUARY 23, 2003

Senate Bill No. 1868 (1R) permits municipalities to enact an ordinance providing that a person who is arrested for drunk driving shall not be released from custody until the person is no longer under the influence of alcoholic beverages, any chemical substance or any controlled dangerous substance. For purposes of the ordinance, a person is deemed to not be under the influence if the person's blood alcohol content has been determined to be less than 0.07%, or if eight hours have elapsed from the time the person was arrested.

As reported by the Senate Law and Public Safety and Veteran's Affairs Committee, the bill provided that the ordinance may permit the municipality to provide an appropriate alternative to custody because of the age, health or safety of the individual, provided there are reasonable assurances that the release of the person is not a detriment to the public safety. The municipality would not be subject to liability if a person is released from custody under such circumstances.

Under this Senate amendment, the ordinance would provide that the law enforcement agency also would have the option of taking the arrested person to a screening unit in a facility licensed and approved by the Department of Health and Senior Services for inpatient, hospital-based, medically monitored detoxification. The person shall remain at the facility until the person is no longer under the influence as defined in the bill. Notwithstanding the provisions of any ordinance, the arresting law enforcement agency would be permitted to release the arrested person pursuant to the provisions of "John's Law" (P.L.2001, c.69; C.39:4-50.22 et seq.) or provide an appropriate alternative to custody because of the age, health or safety of the individual, provided there are reasonable assurances that the release of the person is not a detriment to the public safety. The amendments also provide for the promulgation of regulations by the Attorney General, in consultation with the Commissioner of Health and Senior Services.

ASSEMBLY, No. 2867

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED OCTOBER 10, 2002

Sponsored by:

Assemblywoman MARY T. PREVITE

District 6 (Camden)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

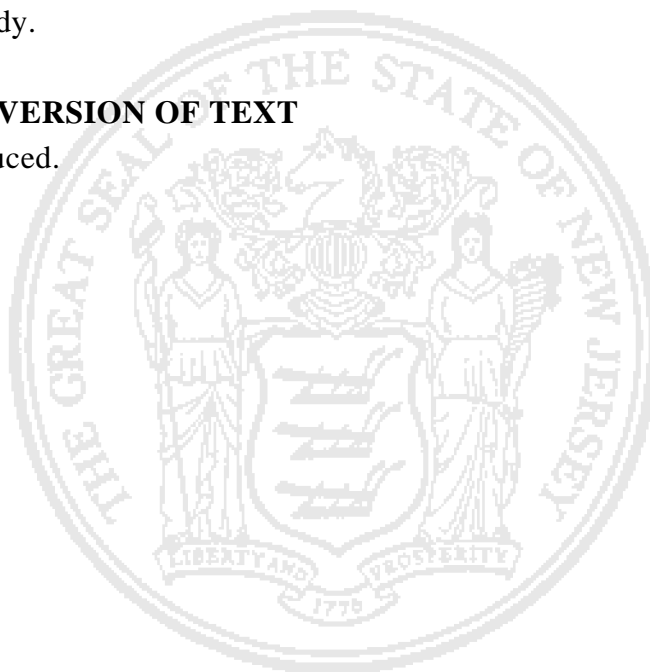
Assemblymen Barnes, Diegnan, Chivukula, Egan, Payne, Stanley, Caraballo, Fisher, Tucker, Johnson, Assemblywomen Weinberg, Cruz-Perez, Assemblymen R.Smith, Roberts, Connors and Eagler

SYNOPSIS

Permits municipalities to enact an ordinance requiring DUI arrestees to be held in custody.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/15/2003)

1 **AN ACT** concerning driving under the influence, amending R.S.40:48-
2 1 and P.L.1966, c.142 and supplementing Title 40 of the Revised
3 Statutes.

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

7
8 1. (New section) A municipality may enact an ordinance providing
9 that a person who is arrested for a violation of the provisions of
10 R.S.39:4-50 shall not be released from custody until the person is no
11 longer under the influence of an intoxicating liquor, narcotic,
12 hallucinogenic or habit producing drug. For purposes of the
13 ordinance, a person shall be deemed to not be under the influence if
14 the person's blood alcohol content has been determined to be less than
15 0.05%, or if eight hours have elapsed from the time the person was
16 arrested.

17
18 2. R.S.40:48-1 is amended to read as follows:

19 40:48-1. Ordinances; general purpose. The governing body of
20 every municipality may make, amend, repeal and enforce ordinances
21 to:

22 Finances and property. 1. Manage, regulate and control the
23 finances and property, real and personal, of the municipality;

24 Contracts and contractor's bonds. 2. Prescribe the form and
25 manner of execution and approval of all contracts to be executed by
26 the municipality and of all bonds to be given to it;

27 Officers and employees; duties, terms and salaries. 3. Prescribe
28 and define, except as otherwise provided by law, the duties and terms
29 of office or employment, of all officers and employees; and to
30 provide for the employment and compensation of such officials and
31 employees, in addition to those provided for by statute, as may be
32 deemed necessary for the efficient conduct of the affairs of the
33 municipality;

34 Fees. 4. Fix the fees of any officer or employee of the municipality
35 for any service rendered in connection with his office or position, for
36 which no specific fee or compensation is provided. In the case of
37 salaried officers or employees, such fee shall be paid into the municipal
38 treasury;

39 Salaries instead of fees; disposition of fees. 5. Provide that any
40 officer or employee receiving compensation for his services, in whole
41 or in part by fees, whether paid by the municipality or otherwise, shall
42 be paid a salary to be fixed in the ordinance, and thereafter all fees
43 received by such officer or employee shall be paid into the municipal
44 treasury;

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 underlined thus is new matter.

1 Maintain order. 6. Prevent vice, drunkenness and immorality; to
2 preserve the public peace and order; to prevent and quell riots,
3 disturbances and disorderly assemblages; to prohibit the consumption
4 of alcoholic beverages by underage persons on private property
5 pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

6 Punish beggars; prevention of loitering. 7. Restrain and punish
7 drunkards, vagrants, mendicants and street beggars; to prevent
8 loitering, lounging or sleeping in the streets, parks or public places;

9 Auctions and noises. 8. Regulate the ringing of bells and the
10 crying of goods and other commodities for sale at auction or
11 otherwise, and to prevent disturbing noises;

12 Swimming; bathing costume; prohibition of public nudity. 9.
13 Regulate or prohibit swimming or bathing in the waters of, in, or
14 bounding the municipality, and to regulate or prohibit persons from
15 appearing upon the public streets, parks and places clad in bathing
16 costumes or robes, or costumes of a similar character; regulate or
17 prohibit persons from appearing in a state of nudity upon all lands
18 within its borders which are under the jurisdiction of the State
19 including, without limitation, all lands owned by, controlled by,
20 managed by or leased by the State;

21 Prohibit annoyance of persons or animals. 10. Regulate or prohibit
22 any practice tending to frighten animals, or to annoy or injure persons
23 in the public streets;

24 Animals; pounds; establishment and regulation. 11. Establish and
25 regulate one or more pounds, and to prohibit or regulate the running
26 at large of horses, cattle, dogs, swine, goats and other animals, and to
27 authorize their impounding and sale for the penalty incurred, and the
28 costs of impounding, keeping and sale; to regulate or prohibit the
29 keeping of cattle, goats or swine in any part of the municipality; to
30 authorize the destruction of dogs running at large therein;

31 Hucksters. 12. Prescribe and regulate the place of vending or
32 exposing for sale articles of merchandise from vehicles;

33 Building regulations; wooden structures. 13. Regulate and control
34 the construction, erection, alteration and repair of buildings and
35 structures of every kind within the municipality; and to prohibit,
36 within certain limits, the construction, erection or alteration of
37 buildings or structures of wood or other combustible material;

38 Inflammable materials; inspect docks and buildings. 14. Regulate
39 the use, storage, sale and disposal of inflammable or combustible
40 materials, and to provide for the protection of life and property from
41 fire, explosions and other dangers; to provide for inspections of
42 buildings, docks, wharves, warehouses and other places, and of goods
43 and materials contained therein, to secure the proper enforcement of
44 such ordinance;

45 Dangerous structures; removal or destruction; procedure. 15.
46 Provide for the removal or destruction of any building, wall or

1 structure which is or may become dangerous to life or health, or might
2 tend to extend a conflagration; and to assess the cost thereof as a
3 municipal lien against the premises;

4 Chimneys and boilers. 16. Regulate the construction and setting
5 up of chimneys, furnaces, stoves, boilers, ovens and other contrivances
6 in which fire is used;

7 Explosives. 17. Regulate, in conformity with the statutes of this
8 State, the manufacture, storage, sale, keeping or conveying of
9 gunpowder, nitroglycerine, dynamite and other explosives;

10 Firearms and fireworks. 18. Regulate and prohibit the sale and use
11 of guns, pistols, firearms, and fireworks of all descriptions;

12 Soft coal. 19. Regulate the use of soft coal in locomotives,
13 factories, power houses and other places;

14 Theaters, schools, churches and public places. 20. Regulate the
15 use of theaters, cinema houses, public halls, schools, churches, and
16 other places where numbers of people assemble, and the exits
17 therefrom, so that escape therefrom may be easily and safely made in
18 case of fire or panic; and to regulate any machinery, scenery, lights,
19 wires and other apparatus, equipment or appliances used in all places
20 of public amusement;

21 Excavations. 21. Regulate excavations below the established grade
22 or curb line of any street, not greater than eight feet, which the owner
23 of any land may make, in the erection of any building upon his own
24 property; and to provide for the giving of notice, in writing, of such
25 intended excavation to any adjoining owner or owners, and that they
26 will be required to protect and care for their several foundation walls
27 that may be endangered by such excavation; and to provide that in
28 case of the neglect or refusal, for 10 days, of such adjoining owner or
29 owners to take proper action to secure and protect the foundations of
30 any adjacent building or other structure, that the party or parties
31 giving such notice, or their agents, contractors or employees, may
32 enter into and upon such adjoining property and do all necessary work
33 to make such foundations secure, and may recover the cost of such
34 work and labor in so protecting such adjacent property; and to make
35 such further and other provisions in relation to the proper conduct and
36 performance of said work as the governing body or board of the
37 municipality may deem necessary and proper;

38 Sample medicines. 22. Regulate and prohibit the distribution,
39 depositing or leaving on the public streets or highways, public places
40 or private property, or at any private place or places within any such
41 municipality, any medicine, medicinal preparation or preparations
42 represented to cure ailments or diseases of the body or mind, or any
43 samples thereof, or any advertisements or circulars relating thereto,
44 but no ordinance shall prohibit a delivery of any such article to any
45 person above the age of 12 years willing to receive the same;

1 Boating. 23. Regulate the use of motor and other boats upon
2 waters within or bounding the municipality;

3 Fire escapes. 24. Provide for the erection of fire escapes on
4 buildings in the municipality, and to provide rules and regulations
5 concerning the construction and maintenance of the same, and for the
6 prevention of any obstruction thereof or thereon;

7 Care of injured employees. 25. Provide for the payment of
8 compensation and for medical attendance to any officer or employee
9 of the municipality injured in the performance of his duty;

10 Bulkheads and other structures. 26. Fix and determine the lines of
11 bulkheads or other works or structures to be erected, constructed or
12 maintained by the owners of lands facing upon any navigable water in
13 front of their lands, and in front of or along any highway or public
14 lands of said municipality, and to designate the materials to be used,
15 and the type, height and dimensions thereof;

16 Lifeguard. 27. Establish, maintain, regulate and control a lifeguard
17 upon any beach within or bordering on the municipality;

18 Appropriation for life-saving apparatus. 28. Appropriate moneys
19 to safeguard people from drowning within its borders, by location of
20 apparatus or conduct of educational work in harmony with the plans
21 of the United States volunteer life-saving corps in this State;

22 Fences. 29. Regulate the size, height and dimensions of any fences
23 between the lands of adjoining owners, whether built or erected as
24 division or partition fences between such lands, and whether the same
25 exist or be erected entirely or only partly upon the lands of any such
26 adjoining owners, or along or immediately adjacent to any division or
27 partition line of such lands. To provide, in such ordinance, the manner
28 of securing, fastening or shoring such fences, and for surveying the
29 land when required by statute, and to prohibit in any such ordinance
30 the use at a height of under 10 feet from the ground, of any device,
31 such as wire or cable, that would be dangerous to pedestrians,
32 equestrians, bicyclists, or drivers of off-the-road vehicles, unless that
33 device is clearly visible to pedestrians, equestrians, bicyclists or drivers
34 of off-the-road vehicles. In the case of fences thereafter erected
35 contrary to the provisions thereof, the governing body may provide for
36 a penalty for the violation of such ordinance, and in the case of such
37 fence or fences erected or existing at the time of the passage of any
38 such ordinance, may provide therein for the removal, change or
39 alteration thereof, so as to make such fence or fences comply with the
40 provisions of any such ordinance;

41 Advertise municipality. 30. Appropriate funds for advertising the
42 advantages of the municipality;

43 Government Energy Aggregation Programs. 31. Establish programs
44 and procedures pursuant to which the municipality may act as a
45 government aggregator pursuant to sections 40 through 45 of
46 P.L.1999, c.23 (C.48:3-89 through C.48:3-94). Notwithstanding the

1 provisions of any other law, rule or regulation to the contrary, a
2 municipality acting as a government aggregator pursuant to P.L.1999,
3 c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility
4 pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be
5 operating any form of public utility service pursuant to R.S.40:62-1 et
6 seq., to the extent such municipality is solely engaged in the provision
7 of such aggregation service and not otherwise owning or operating any
8 plant or facility for the production or distribution of gas, electricity,
9 steam or other product as provided in R.S.40:62-12.

10 Detain intoxicated drivers. 32. Detain persons arrested for
11 operating a motor vehicle under the influence of intoxicating liquor,
12 narcotic, hallucinogenic or habit-producing drug.

13 (cf: P.L.2001, c.36, s.1)

14
15 3. Section 2 of P.L.1966, c.142 (C.39:4-50.2) is amended to read
16 as follows:

17 2. (a) Any person who operates a motor vehicle on any public
18 road, street or highway or quasi-public area in this State shall be
19 deemed to have given his consent to the taking of samples of his
20 breath for the purpose of making chemical tests to determine the
21 content of alcohol in his blood[; provided, however, that the], and to
22 remain in custody pursuant to the provisions of an ordinance enacted
23 pursuant to P.L. , c. (C.) (now pending before the Legislature
24 as this bill). The taking of samples [is] pursuant to this section shall
25 be made in accordance with the provisions of this act and at the
26 request of a police officer who has reasonable grounds to believe that
27 such person has been operating a motor vehicle in violation of the
28 provisions of R.S. 39:4-50.

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

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

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

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

46 (cf: P.L.1981, c.512, s.1)

1 4. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill permits municipalities to enact an ordinance providing that
7 a person who is arrested for driving under the influence (R.S.39:4-50)
8 shall not be released from custody until the person is no longer under
9 the influence of an intoxicating liquor, narcotic, hallucinogenic or
10 habit-producing drug. For purposes of the ordinance, a person is
11 deemed to not be under the influence if the person's blood alcohol
12 content has been determined to be less than 0.05%, or if eight hours
13 have elapsed from the time the person was arrested. In addition, the
14 bill amends the implied consent statute to provide that a person who
15 operates a motor vehicle on the highways of this State has consented
16 to remain in custody pursuant to an ordinance enacted under the
17 provisions of this bill.

18 This bill would permit municipalities to enact additional procedures
19 to protect the public and prevent suspected intoxicated drivers from
20 operating a motor vehicle. As currently required pursuant to the
21 provisions of "John's Law" (P.L.2001, c.69; 39:4-50.23),
22 municipalities would continue to 1) provide warnings to persons who
23 transport arrested drunk drivers concerning their liability if the drunk
24 driver operates a motor vehicle while still intoxicated and 2) impound
25 the motor vehicles of suspected drunk drivers for 12 hours.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2867

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 2003

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2867.

As amended and released by the committee, Assembly Bill No. 2867 permits municipalities to enact an ordinance providing that a person who is arrested for driving under the influence (R.S.39:4-50) shall not be released from custody until the person is no longer under the influence of an intoxicating liquor, narcotic, hallucinogenic or habit-producing drug. For purposes of the ordinance, a person is deemed to not be under the influence if the person's blood alcohol content has been determined to be less than 0.10%, or if eight hours have elapsed from the time the person was arrested. In addition, the bill amends the implied consent statute to provide that a person who operates a motor vehicle on the highways of this State has consented to remain in custody pursuant to an ordinance enacted under the provisions of this bill.

The bill permits municipalities to enact additional procedures to protect the public and prevent suspected intoxicated drivers from operating a motor vehicle. As currently required pursuant to the provisions of "John's Law," P.L.2001, c.69 (C.39:4-50.22 et seq.), municipalities would continue to 1) provide warnings to persons who transport arrested drunk drivers concerning their liability if the drunk driver operates a motor vehicle while still intoxicated and 2) impound the motor vehicles of suspected drunk drivers for 12 hours.

COMMITTEE AMENDMENTS:

The committee amended the bill to provide that a person is deemed to not be under the influence if the person's blood alcohol content has been determined to be less than 0.10%. As introduced, the bill provided that a person would be deemed to not be under the influence if the person's blood alcohol content had been determined to be less than 0.05%.

STATEMENT TO
ASSEMBLY SUBSTITUTE FOR
ASSEMBLY, No. 2867

with Assembly Floor Amendments
(Proposed By Assemblywoman PREVITE)

ADOPTED: JUNE 12, 2003

The Assembly substitute for Assembly Bill No. 2867 permits municipalities to enact an ordinance authorizing persons who have been arrested for driving under the influence (R.S.39:4-50) to be held in protective custody at an appropriate police or other facility where the person's condition may be monitored until they no longer pose a danger to themselves or others, at which time they are to be released.

These Assembly amendments to the substitute authorize the municipality to provide in such an ordinance that a person is no longer a danger to himself or others when that person's blood alcohol content is less than 0.05%. The remaining amendments are technical in nature.

[First Reprint]

ASSEMBLY SUBSTITUTE FOR
ASSEMBLY, No. 2867

STATE OF NEW JERSEY
210th LEGISLATURE

ADOPTED MAY 22, 2003

Sponsored by:

Assemblywoman MARY T. PREVITE

District 6 (Camden)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

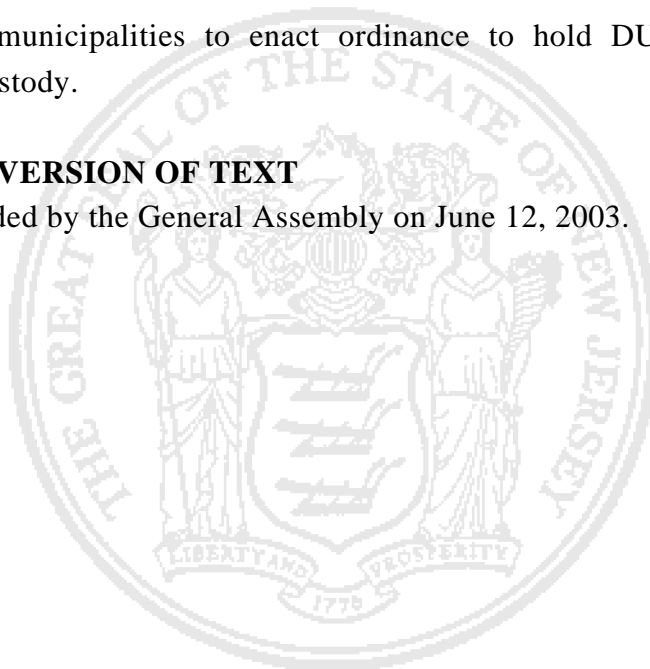
Assemblymen Barnes, Diegnan, Chivukula, Egan, Payne, Stanley, Caraballo, Fisher, Tucker, Johnson, Assemblywomen Weinberg, Cruz-Perez, Assemblymen R.Smith, Roberts, Conners, Eagler, Conaway and Assemblywoman Greenstein

SYNOPSIS

Permits municipalities to enact ordinance to hold DUI arrestees in protective custody.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 12, 2003.



(Sponsorship Updated As Of: 6/24/2003)

1 AN ACT concerning driving under the influence, supplementing Title
2 40 of the Revised Statutes and amending R.S.40:48-1.

3

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

6

7 1. (New section) a. A municipality may enact an ordinance
8 providing that a person who is arrested for a violation of the
9 provisions of R.S.39:4-50 shall be held in protective custody at an
10 appropriate police or other facility where the person's condition may
11 be monitored until the person is no longer a danger to himself or
12 others. The municipal ordinance shall provide for the release of the
13 person from protective custody when that person is no longer a danger
14 to himself or others. ¹The municipal ordinance may provide that a
15 person is no longer a danger to himself or others when the person's
16 blood alcohol concentration is less than 0.05% and the person is no
17 longer under the influence of any intoxicating liquor or narcotic or
18 hallucinogenic or habit-forming drug to the extent that the person's
19 facilities are impaired.¹ In no event shall a municipality hold a person
20 in protective custody for a period of longer than eight hours without
21 providing an appropriate hearing.

22 b. Notwithstanding the provisions of any ordinance enacted
23 pursuant to subsection a. of this section, provided that it is not a
24 detriment to the public safety, the arresting law enforcement agency
25 may, because of the age, health or safety of the arrested person,
26 release the person pursuant to the provisions of P.L.2001, c.69
27 (C.39:4-50.22 et seq.) or provide an appropriate alternative to
28 protective custody. The municipality shall not be subject to liability if
29 a person is released from custody pursuant to the provisions of this
30 subsection.

31 c. Nothing in this section shall be construed as requiring the use
32 of State Police facilities by a municipality for the purposes of this act.

33

34 2. R.S.40:48-1 is amended to read as follows:

35 40:48-1. Ordinances; general purpose. The governing body of
36 every municipality may make, amend, repeal and enforce ordinances
37 to:

38 Finances and property. 1. Manage, regulate and control the
39 finances and property, real and personal, of the municipality;

40 Contracts and contractor's bonds. 2. Prescribe the form and
41 manner of execution and approval of all contracts to be executed by
42 the municipality and of all bonds to be given to it;

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 Assembly floor amendments adopted June 12, 2003.

1 Officers and employees; duties, terms and salaries. 3. Prescribe
2 and define, except as otherwise provided by law, the duties and terms
3 of office or employment, of all officers and employees; and to provide
4 for the employment and compensation of such officials and employees,
5 in addition to those provided for by statute, as may be deemed
6 necessary for the efficient conduct of the affairs of the municipality;

7 Fees. 4. Fix the fees of any officer or employee of the
8 municipality for any service rendered in connection with his office or
9 position, for which no specific fee or compensation is provided. In the
10 case of salaried officers or employees, such fee shall be paid into the
11 municipal treasury;

12 Salaries instead of fees; disposition of fees. 5. Provide that any
13 officer or employee receiving compensation for his services, in whole
14 or in part by fees, whether paid by the municipality or otherwise, shall
15 be paid a salary to be fixed in the ordinance, and thereafter all fees
16 received by such officer or employee shall be paid into the municipal
17 treasury;

18 Maintain order. 6. Prevent vice, drunkenness and immorality; to
19 preserve the public peace and order; to prevent and quell riots,
20 disturbances and disorderly assemblages; to prohibit the consumption
21 of alcoholic beverages by underage persons on private property
22 pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

23 Punish beggars; prevention of loitering. 7. Restrain and punish
24 drunkards, vagrants, mendicants and street beggars; to prevent
25 loitering, lounging or sleeping in the streets, parks or public places;

26 Auctions and noises. 8. Regulate the ringing of bells and the
27 crying of goods and other commodities for sale at auction or
28 otherwise, and to prevent disturbing noises;

29 Swimming; bathing costume; prohibition of public nudity. 9.
30 Regulate or prohibit swimming or bathing in the waters of, in, or
31 bounding the municipality, and to regulate or prohibit persons from
32 appearing upon the public streets, parks and places clad in bathing
33 costumes or robes, or costumes of a similar character; regulate or
34 prohibit persons from appearing in a state of nudity upon all lands
35 within its borders which are under the jurisdiction of the State
36 including, without limitation, all lands owned by, controlled by,
37 managed by or leased by the State;

38 Prohibit annoyance of persons or animals. 10. Regulate or
39 prohibit any practice tending to frighten animals, or to annoy or injure
40 persons in the public streets;

41 Animals; pounds; establishment and regulation. 11. Establish and
42 regulate one or more pounds, and to prohibit or regulate the running
43 at large of horses, cattle, dogs, swine, goats and other animals, and to
44 authorize their impounding and sale for the penalty incurred, and the
45 costs of impounding, keeping and sale; to regulate or prohibit the
46 keeping of cattle, goats or swine in any part of the municipality; to

1 authorize the destruction of dogs running at large therein;
2 Hucksters. 12. Prescribe and regulate the place of vending or
3 exposing for sale articles of merchandise from vehicles;
4 Building regulations; wooden structures. 13. Regulate and control
5 the construction, erection, alteration and repair of buildings and
6 structures of every kind within the municipality; and to prohibit, within
7 certain limits, the construction, erection or alteration of buildings or
8 structures of wood or other combustible material;
9 Inflammable materials; inspect docks and buildings. 14. Regulate
10 the use, storage, sale and disposal of inflammable or combustible
11 materials, and to provide for the protection of life and property from
12 fire, explosions and other dangers; to provide for inspections of
13 buildings, docks, wharves, warehouses and other places, and of goods
14 and materials contained therein, to secure the proper enforcement of
15 such ordinance;
16 Dangerous structures; removal or destruction; procedure. 15.
17 Provide for the removal or destruction of any building, wall or
18 structure which is or may become dangerous to life or health, or might
19 tend to extend a conflagration; and to assess the cost thereof as a
20 municipal lien against the premises;
21 Chimneys and boilers. 16. Regulate the construction and setting
22 up of chimneys, furnaces, stoves, boilers, ovens and other contrivances
23 in which fire is used;
24 Explosives. 17. Regulate, in conformity with the statutes of this
25 State, the manufacture, storage, sale, keeping or conveying of
26 gunpowder, nitroglycerine, dynamite and other explosives;
27 Firearms and fireworks. 18. Regulate and prohibit the sale and
28 use of guns, pistols, firearms, and fireworks of all descriptions;
29 Soft coal. 19. Regulate the use of soft coal in locomotives,
30 factories, power houses and other places;
31 Theatres, schools, churches and public places. 20. Regulate the
32 use of theatres, cinema houses, public halls, schools, churches, and
33 other places where numbers of people assemble, and the exits
34 therefrom, so that escape therefrom may be easily and safely made in
35 case of fire or panic; and to regulate any machinery, scenery, lights,
36 wires and other apparatus, equipment or appliances used in all places
37 of public amusement;
38 Excavations. 21. Regulate excavations below the established
39 grade or curb line of any street, not greater than eight feet, which the
40 owner of any land may make, in the erection of any building upon his
41 own property; and to provide for the giving of notice, in writing, of
42 such intended excavation to any adjoining owner or owners, and that
43 they will be required to protect and care for their several foundation
44 walls that may be endangered by such excavation; and to provide that
45 in case of the neglect or refusal, for 10 days, of such adjoining owner
46 or owners to take proper action to secure and protect the foundations

1 of any adjacent building or other structure, that the party or parties
2 giving such notice, or their agents, contractors or employees, may
3 enter into and upon such adjoining property and do all necessary work
4 to make such foundations secure, and may recover the cost of such
5 work and labor in so protecting such adjacent property; and to make
6 such further and other provisions in relation to the proper conduct and
7 performance of said work as the governing body or board of the
8 municipality may deem necessary and proper;

9 Sample medicines. 22. Regulate and prohibit the distribution,
10 depositing or leaving on the public streets or highways, public places
11 or private property, or at any private place or places within any such
12 municipality, any medicine, medicinal preparation or preparations
13 represented to cure ailments or diseases of the body or mind, or any
14 samples thereof, or any advertisements or circulars relating thereto,
15 but no ordinance shall prohibit a delivery of any such article to any
16 person above the age of 12 years willing to receive the same;

17 Boating. 23. Regulate the use of motor and other boats upon
18 waters within or bounding the municipality;

19 Fire escapes. 24. Provide for the erection of fire escapes on
20 buildings in the municipality, and to provide rules and regulations
21 concerning the construction and maintenance of the same, and for the
22 prevention of any obstruction thereof or thereon;

23 Care of injured employees. 25. Provide for the payment of
24 compensation and for medical attendance to any officer or employee
25 of the municipality injured in the performance of his duty;

26 Bulkheads and other structures. 26. Fix and determine the lines
27 of bulkheads or other works or structures to be erected, constructed
28 or maintained by the owners of lands facing upon any navigable water
29 in front of their lands, and in front of or along any highway or public
30 lands of said municipality, and to designate the materials to be used,
31 and the type, height and dimensions thereof;

32 Lifeguard. 27. Establish, maintain, regulate and control a
33 lifeguard upon any beach within or bordering on the municipality;

34 Appropriation for life-saving apparatus. 28. Appropriate moneys
35 to safeguard people from drowning within its borders, by location of
36 apparatus or conduct of educational work in harmony with the plans
37 of the United States volunteer life-saving corps in this State;

38 Fences. 29. Regulate the size, height and dimensions of any
39 fences between the lands of adjoining owners, whether built or erected
40 as division or partition fences between such lands, and whether the
41 same exist or be erected entirely or only partly upon the lands of any
42 such adjoining owners, or along or immediately adjacent to any
43 division or partition line of such lands. To provide, in such ordinance,
44 the manner of securing, fastening or shoring such fences, and for
45 surveying the land when required by statute, and to prohibit in any
46 such ordinance the use at a height of under 10 feet from the ground,

1 of any device, such as wire or cable, that would be dangerous to
2 pedestrians, equestrians, bicyclists, or drivers of off-the-road vehicles,
3 unless that device is clearly visible to pedestrians, equestrians,
4 bicyclists or drivers of off-the-road vehicles. In the case of fences
5 thereafter erected contrary to the provisions thereof, the governing
6 body may provide for a penalty for the violation of such ordinance,
7 and in the case of such fence or fences erected or existing at the time
8 of the passage of any such ordinance, may provide therein for the
9 removal, change or alteration thereof, so as to make such fence or
10 fences comply with the provisions of any such ordinance;

11 Advertise municipality. 30. Appropriate funds for advertising the
12 advantages of the municipality;

13 Government Energy Aggregation Programs. 31. Establish
14 programs and procedures pursuant to which the municipality may act
15 as a government aggregator pursuant to ¹[sections 40 through 45 of
16 P.L.1999, c.23 (C.48:3-89 through C.48:3-94)] sections 40 through
17 43 of P.L.1999, c.23 (C.48:3-89 through C.48:3-92), section 45 of
18 P.L.1999, c.23 (C.48:3-94), and sections 1, 2 and 6 of P.L.2003, c.24
19 (C.48:3-93.1 through C.48:3-93.3)¹. Notwithstanding the provisions
20 of any other law, rule or regulation to the contrary, a municipality
21 acting as a government aggregator pursuant to P.L.1999, c.23
22 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant
23 to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating
24 any form of public utility service pursuant to R.S.40:62-1 et seq., to
25 the extent such municipality is solely engaged in the provision of such
26 aggregation service and not otherwise owning or operating any plant
27 or facility for the production or distribution of gas, electricity, steam
28 or other product as provided in R.S.40:62-12;

29 Joint municipal action on consent for the provision of cable
30 television service. 32. Establish programs and procedures pursuant
31 to which a municipality may act together with one or more
32 municipalities in granting municipal consent for the provision of cable
33 television service pursuant to the provisions of the "Cable Television
34 Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and
35 supplemented. Notwithstanding the provisions of any other law, rule
36 or regulation to the contrary, two or more municipalities acting jointly
37 pursuant to the provisions of P.L.1972, c.186 ¹(C.48:5A-1 et seq.)¹
38 shall not be deemed a public utility pursuant to R.S.48:1-1 et seq., to
39 the extent those municipalities are solely engaged in granting municipal
40 consent jointly and are not otherwise owning or operating any facility
41 for the provision of cable television service as provided in P.L.1972,
42 c.186 ¹(C.48:5A-1 et seq.)¹;

43 Private cable television service aggregation programs. 33.
44 Establish programs and procedures pursuant to which a municipality
45 may employ the services of a private aggregator for the purpose of
46 facilitating the joint action of two or more municipalities in granting

1 municipal consent for the provision of cable television service
2 provided that any such municipality shall adhere to the provisions of
3 the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as
4 amended and supplemented, and to the provisions of the "Local Public
5 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as amended
6 and supplemented. Notwithstanding the provisions of any other law,
7 rule or regulation to the contrary, a municipality that employs the
8 services of a private aggregator pursuant to the provisions of
9 P.L.1972, c.186 ¹(C.48:5A-1 et seq.)¹ shall not be deemed a public
10 utility pursuant to R.S.48:1-1 et seq., to the extent that the
11 municipality is solely engaged in employing the services of a private
12 aggregator for the purpose of facilitating the joint action of two or
13 more municipalities in granting municipal consent and is not otherwise
14 owning or operating any facility for the provision of cable television
15 service as provided in P.L.1972, c.186 ¹(C.48:5A-1 et seq.)¹.

16 Protective Custody. 34. Provide protective custody to persons
17 arrested for operating a motor vehicle under the influence of alcoholic
18 beverages, any chemical substance, or any controlled dangerous
19 substance in violation of R.S.39:4-50 as provided in section 1 of
20 P.L. , c. , (C.) (now pending before the Legislature as this bill).
21 (cf: P.L.2003, c.38, s.1)

22
23

3. This act shall take effect immediately.