

39:4-50.2a

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 8
NJSA: 39:4-50.2a (Sentencing for drunk driving offenses)
BILL NO: A2259 (Substituted for S863)
SPONSOR(S): Smith and Weinberg

DATE INTRODUCED: February 9, 2004

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

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 15, 2004

SENATE: March 29, 2004

DATE OF APPROVAL: April 26, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)

A2259

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

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

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S863

[SPONSOR'S STATEMENT:](#) (Begins on page 4 off original bill) [Yes](#)

Bill and Sponsors Statement identical to A2259

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

Identical to Assembly Statement to A2259

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

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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No

P.L. 2004, CHAPTER 8, *approved April 26, 2004*
Assembly, No. 2259 (*First Reprint*)

1 **AN ACT** concerning refusal to submit to a breath test, amending
2 P.L.1981, c.512 and ¹R.S.39:4-50, and¹ supplementing chapter 4
3 of Title 39 of the Revised Statutes.

4

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

7

8 1. Section 2 of P.L.1981, c.512 (C.39:4-50.4a) is amended to read
9 as follows:

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

25 The municipal court shall determine by a preponderance of the
26 evidence whether the arresting officer had probable cause to believe
27 that the person had been driving or was in actual physical control of
28 a motor vehicle on the public highways or quasi-public areas of this
29 State while the person was under the influence of intoxicating liquor
30 or a narcotic, hallucinogenic, or habit-producing drug or marijuana;
31 whether the person was placed under arrest, if appropriate, and
32 whether he refused to submit to the test upon request of the officer;
33 and if these elements of the violation are not established, no conviction
34 shall issue. In addition to any other requirements provided by law, a
35 person whose operator's license is revoked for refusing to submit to a
36 test shall be referred to an Intoxicated Driver Resource Center
37 established by subsection (f.) of R.S.39:4-50 and shall satisfy the same
38 requirements of the center for refusal to submit to a test as provided
39 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with

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 Assembly ALP committee amendments adopted February 26, 2004.

1 a first, second, third or subsequent offense under this section that must
2 be satisfied by a person convicted of a commensurate violation of this
3 section, or be subject to the same penalties as such a person for failure
4 to do so. ~~【The】~~ For a first offense, the revocation may be concurrent
5 with or consecutive to any revocation imposed for a conviction under
6 the provisions of R.S.39:4-50 arising out of the same incident. For a
7 second or subsequent offense, the revocation shall be 【independent
8 of】 consecutive to any revocation imposed 【by virtue of】 for a
9 conviction under the provisions of R.S.39:4-50. In addition to issuing
10 a revocation, except as provided in subsection b. of this section, the
11 municipal court shall fine a person convicted under this section, a fine
12 of not less than ~~【\$250.00 nor】~~ \$300 or more than ~~【\$500.00】~~ \$500 for
13 a first offense; a fine of not less than \$500 or more than \$1,000 for a
14 second offense; and a fine of \$1,000 for a third or subsequent offense.

15 b. ~~【The】~~ For a first offense, the fine imposed upon the convicted
16 person shall be not less than ~~【\$500】~~ \$600 or more than \$1,000 and the
17 period of license suspension shall be not less than one year ~~【for a first~~
18 ~~offense, four years for a second offense and 20 years for a third or~~
19 ~~subsequent offense, which period shall commence upon the completion~~
20 ~~of any prison sentence imposed upon that person】~~ ¹or more than two
21 years¹; for a second offense, a fine of not less than \$1,000 or more
22 than \$2,000 and a license suspension for a period of ¹【not less than】¹
23 four years; and for a third or subsequent offense, a fine of \$2,000 and
24 a license suspension for a period of 20 years when a violation of this
25 section occurs while:

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

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

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

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

41 It shall not be relevant to the imposition of sentence pursuant to
42 paragraph (1) or (2) of this subsection that the defendant was unaware
43 that the prohibited conduct took place while on or within 1,000 feet
44 of any school property or while driving through a school crossing.
45 Nor shall it be relevant to the imposition of sentence that no juveniles

1 were present on the school property or crossing zone at the time of the
2 offense or that the school was not in session.

3 (cf: P.L.1999, c.185, s.5)

4

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

6 39:4-50. (a) Except as provided in subsection (g) of this section, a
7 person who operates a motor vehicle while under the influence of
8 intoxicating liquor, narcotic, hallucinogenic or habit-producing drug,
9 or operates a motor vehicle with a blood alcohol concentration of
10 0.08% or more by weight of alcohol in the defendant's blood or
11 permits another person who is under the influence of intoxicating
12 liquor, narcotic, hallucinogenic or habit-producing drug to operate a
13 motor vehicle owned by him or in his custody or control or permits
14 another to operate a motor vehicle with a blood alcohol concentration
15 of 0.08% or more by weight of alcohol in the defendant's blood shall
16 be subject:

17 (1) For the first offense:

18 (i) if the person's blood alcohol concentration is 0.08% or higher
19 but less than 0.10%, or the person operates a motor vehicle while
20 under the influence of intoxicating liquor, or the person permits
21 another person who is under the influence of intoxicating liquor to
22 operate a motor vehicle owned by him or in his custody or control or
23 permits another person with a blood alcohol concentration of 0.08%
24 or higher but less than 0.10% to operate a motor vehicle, to a fine of
25 not less than \$250 nor more than \$400 and a period of detainment of
26 not less than 12 hours nor more than 48 hours spent during two
27 consecutive days of not less than six hours each day and served as
28 prescribed by the program requirements of the Intoxicated Driver
29 Resource Centers established under subsection (f) of this section and,
30 in the discretion of the court, a term of imprisonment of not more than
31 30 days and shall forthwith forfeit his right to operate a motor vehicle
32 over the highways of this State for a period of three months;

33 (ii) if the person's blood alcohol concentration is 0.10% or higher,
34 or the person operates a motor vehicle while under the influence of
35 narcotic, hallucinogenic or habit-producing drug, or the person permits
36 another person who is under the influence of narcotic, hallucinogenic
37 or habit-producing drug to operate a motor vehicle owned by him or
38 in his custody or control, or permits another person with a blood
39 alcohol concentration of 0.10% or more to operate a motor vehicle, to
40 a fine of not less than \$300 nor more than \$500 and a period of
41 detainment of not less than 12 hours nor more than 48 hours spent
42 during two consecutive days of not less than six hours each day and
43 served as prescribed by the program requirements of the Intoxicated
44 Driver Resource Centers established under subsection (f) of this
45 section and, in the discretion of the court, a term of imprisonment of
46 not more than 30 days and shall forthwith forfeit his right to operate

1 a motor vehicle over the highways of this State for a period of not less
2 than seven months nor more than one year;

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

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

23 (3) For a third or subsequent violation, a person shall be subject to
24 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
25 of not less than 180 days in a county jail or workhouse, except that the
26 court may lower such term for each day, not exceeding 90 days,
27 served participating in a drug or alcohol inpatient rehabilitation
28 program approved by the Intoxicated Driver Resource Center and shall
29 thereafter forfeit his right to operate a motor vehicle over the
30 highways of this State for 10 years. For a third or subsequent
31 violation, a person also shall be required to install an ignition interlock
32 device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)
33 or shall have his registration certificate and registration plates revoked
34 for 10 years under the provisions of section 2 of P.L.1995, c.286
35 (C.39:3-40.1).

36 As used in this section, the phrase "narcotic, hallucinogenic or
37 habit-producing drug" includes an inhalant or other substance
38 containing a chemical capable of releasing any toxic vapors or fumes
39 for the purpose of inducing a condition of intoxication, such as any
40 glue, cement or any other substance containing one or more of the
41 following chemical compounds: acetone and acetate, amyl nitrite or
42 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,
43 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite
44 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl
45 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl
46 alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl

1 nitrate or their isomers, toluene, toluol or xylene or any other chemical
2 substance capable of causing a condition of intoxication, inebriation,
3 excitement, stupefaction or the dulling of the brain or nervous system
4 as a result of the inhalation of the fumes or vapors of such chemical
5 substance.

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

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

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

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

1 10 years after the second offense, the court shall treat the third
2 conviction as a second offense for sentencing purposes.

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

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

45 (d) The chief administrator shall promulgate rules and regulations
46 pursuant to the "Administrative Procedure Act," P.L.1968, c.410

1 (C.52:14B-1 et seq.) in order to establish a program of alcohol
2 education and highway safety, as prescribed by this act.

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

8 (f) The counties, in cooperation with the Division of Alcoholism
9 and Drug Abuse and the commission, but subject to the approval of
10 the Division of Alcoholism and Drug Abuse, shall designate and
11 establish on a county or regional basis Intoxicated Driver Resource
12 Centers. These centers shall have the capability of serving as
13 community treatment referral centers and as court monitors of a
14 person's compliance with the ordered treatment, service alternative or
15 community service. All centers established pursuant to this subsection
16 shall be administered by a counselor certified by the Alcohol and Drug
17 Counselor Certification Board of New Jersey or other professional
18 with a minimum of five years' experience in the treatment of
19 alcoholism. All centers shall be required to develop individualized
20 treatment plans for all persons attending the centers; provided that the
21 duration of any ordered treatment or referral shall not exceed one
22 year. It shall be the center's responsibility to establish networks with
23 the community alcohol and drug education, treatment and
24 rehabilitation resources and to receive monthly reports from the
25 referral agencies regarding a person's participation and compliance
26 with the program. Nothing in this subsection shall bar these centers
27 from developing their own education and treatment programs;
28 provided that they are approved by the Division of Alcoholism and
29 Drug Abuse.

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

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

46 The centers shall conduct a program of alcohol and drug education

1 and highway safety, as prescribed by the chief administrator.

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

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

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

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

13 (3) driving through a school crossing as defined in R.S.39:1-1
14 knowing that juveniles are present if the municipality has not
15 designated the school crossing as such by ordinance or resolution, the
16 convicted person shall: for a first offense, be fined not less than \$500
17 or more than \$800, be imprisoned for not more than 60 days and have
18 his license to operate a motor vehicle suspended for a period of not
19 less than one year or more than two years; for a second offense, be
20 fined not less than \$1,000 or more than \$2,000, perform community
21 service for a period of 60 days, be imprisoned for not less than 96
22 consecutive hours, which shall not be suspended or served on
23 probation, nor more than 180 days, except that the court may lower
24 such term for each day, not exceeding 90 days, served performing
25 community service in such form and on such terms as the court shall
26 deem appropriate under the circumstances and have his license to
27 operate a motor vehicle suspended for a period of [not less than] four
28 years; and, for a third offense, be fined \$2,000, imprisoned for 180
29 days in a county jail or workhouse, except that the court may lower
30 such term for each day, not exceeding 90 days, served participating in
31 a drug or alcohol inpatient rehabilitation program approved by the
32 Intoxicated Driver Resource Center, and have his license to operate a
33 motor vehicle suspended for a period of 20 years; the period of license
34 suspension shall commence upon the completion of any prison
35 sentence imposed upon that person.

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

42 It shall not be relevant to the imposition of sentence pursuant to
43 paragraph (1) or (2) of this subsection that the defendant was unaware
44 that the prohibited conduct took place while on or within 1,000 feet
45 of any school property or while driving through a school crossing.
46 Nor shall it be relevant to the imposition of sentence that no juveniles

1 were present on the school property or crossing zone at the time of the
2 offense or that the school was not in session.

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

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

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

25 (3) if approved by a county medical examiner, the office of the
26 county medical examiner or a public morgue to observe appropriate
27 victims of vehicle accidents involving drunk drivers.

28 As used in this section, "appropriate victim" means a victim whose
29 condition is determined by the facility's supervisory personnel and the
30 probation officer to be appropriate for demonstrating the results of
31 accidents involving drunk drivers without being unnecessarily
32 gruesome or traumatic to the defendant.

33 If at any time before or during a visitation the facility's supervisory
34 personnel and the probation officer determine that the visitation may
35 be or is traumatic or otherwise inappropriate for that defendant, the
36 visitation shall be terminated without prejudice to the defendant. The
37 program may include a personal conference after the visitation, which
38 may include the sentencing judge or the judge who coordinates the
39 program for the court, the defendant, defendant's counsel, and, if
40 available, the defendant's parents to discuss the visitation and its effect
41 on the defendant's future conduct. If a personal conference is not
42 practicable because of the defendant's absence from the jurisdiction,
43 conflicting time schedules, or any other reason, the court shall require
44 the defendant to submit a written report concerning the visitation
45 experience and its impact on the defendant. The county, a court, any
46 facility visited pursuant to the program, any agents, employees, or

1 independent contractors of the court, county, or facility visited
2 pursuant to the program, and any person supervising a defendant
3 during the visitation, are not liable for any civil damages resulting from
4 injury to the defendant, or for civil damages associated with the
5 visitation which are caused by the defendant, except for willful or
6 grossly negligent acts intended to, or reasonably expected to result in,
7 that injury or damage.

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

10 (i) In addition to any other fine, fee, or other charge imposed
11 pursuant to law, the court shall assess a person convicted of a
12 violation of the provisions of this section a surcharge of \$100, of
13 which amount \$50 shall be payable to the municipality in which the
14 conviction was obtained and \$50 shall be payable to the Treasurer of
15 the State of New Jersey for deposit into the General Fund.¹
16 (cf: P.L.2003, c.315, s.2)

17
18 ¹[2.] 3.¹ (New section) In order to promote the uniform
19 enforcement of R.S.39:4-50 and section 2 of P.L.1966, c.142 (C.39:4-
20 50.2), the Attorney General shall promulgate guidelines concerning the
21 prosecution of such violations. The guidelines shall be disseminated
22 to county and municipal prosecutors within 120 days of the effective
23 date of this act.

24
25 ¹[3.] 4.¹ This act shall take effect immediately.

26

27

28

29

30 Clarifies sentencing provisions for certain drunk driving offenses.

ASSEMBLY, No. 2259

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 9, 2004

Sponsored by:

Assemblyman ROBERT J. SMITH

District 4 (Camden and Gloucester)

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Clarifies sentencing provisions for certain drunk driving offenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/10/2004)

1 AN ACT concerning refusal to submit to a breath test, amending
2 P.L.1981, c.512 and supplementing chapter 4 of Title 39 of the
3 Revised Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
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12 any operator who, after being arrested for a violation of R.S.39:4-50,
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14 c.142 (C.39:4-50.2) when requested to do so, for **[six months]** not
15 less than seven months or more than one year unless the refusal was
16 in connection with a second offense under this section, in which case
17 the revocation period shall be for two years or unless the refusal was
18 in connection with a third or subsequent offense under this section in
19 which case the revocation shall be for ten years. A conviction or
20 administrative determination of a violation of a law of a substantially
21 similar nature in another jurisdiction, regardless of whether that
22 jurisdiction is a signatory to the Interstate Driver License Compact
23 pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior
24 conviction under this section.

25 The municipal court shall determine by a preponderance of the
26 evidence whether the arresting officer had probable cause to believe
27 that the person had been driving or was in actual physical control of
28 a motor vehicle on the public highways or quasi-public areas of this
29 State while the person was under the influence of intoxicating liquor
30 or a narcotic, hallucinogenic, or habit-producing drug or marijuana;
31 whether the person was placed under arrest, if appropriate, and
32 whether he refused to submit to the test upon request of the officer;
33 and if these elements of the violation are not established, no conviction
34 shall issue. In addition to any other requirements provided by law, a
35 person whose operator's license is revoked for refusing to submit to a
36 test shall be referred to an Intoxicated Driver Resource Center
37 established by subsection (f.) of R.S.39:4-50 and shall satisfy the same
38 requirements of the center for refusal to submit to a test as provided
39 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with
40 a first, second, third or subsequent offense under this section that must
41 be satisfied by a person convicted of a commensurate violation of this
42 section, or be subject to the same penalties as such a person for failure
43 to do so. **[The]** For a first offense, the revocation may be concurrent

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 with or consecutive to any revocation imposed for a conviction under
2 the provisions of R.S.39:4-50 arising out of the same incident. For a
3 second or subsequent offense, the revocation shall be [~~independent~~
4 ~~of~~] consecutive to any revocation imposed [~~by virtue of~~] for a
5 conviction under the provisions of R.S.39:4-50. In addition to issuing
6 a revocation, except as provided in subsection b. of this section, the
7 municipal court shall fine a person convicted under this section, a fine
8 of not less than [~~\$250.00 nor~~] ~~\$300~~ or more than [~~\$500.00~~] \$500 for
9 a first offense; a fine of not less than \$500 or more than \$1,000 for a
10 second offense; and a fine of \$1,000 for a third or subsequent offense.

11 b. [~~The~~] For a first offense, the fine imposed upon the convicted
12 person shall be not less than [~~\$500~~] ~~\$600~~ or more than \$1,000 and the
13 period of license suspension shall be not less than one year [~~for a first~~
14 ~~offense, four years for a second offense and 20 years for a third or~~
15 ~~subsequent offense, which period shall commence upon the completion~~
16 ~~of any prison sentence imposed upon that person~~]; for a second
17 offense, a fine of not less than \$1,000 or more than \$2,000 and a
18 license suspension for a period of not less than four years; and for a
19 third or subsequent offense, a fine of \$2,000 and a license suspension
20 for a period of 20 years when a violation of this section occurs while:

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

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

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

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

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

43 (cf: P.L.1999, c.185, s.5)

44

45 2. (New section) In order to promote the uniform enforcement of
46 R.S.39:4-50 and section 2 of P.L.1966, c.142 (C.39:4-50.2), the

1 Attorney General shall promulgate guidelines concerning the
2 prosecution of such violations. The guidelines shall be disseminated
3 to county and municipal prosecutors within 120 days of the effective
4 date of this act.

5
6 3. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill would clarify the penalties for refusing to submit to a
12 breathalyzer test after being arrested for drunk driving. Under the bill,
13 persons who refuse to submit to such a test would lose their driver's
14 license for seven months to one year for a first offense.

15 The State's drunk driving law was recently amended by P.L.2003,
16 c.314 to reduce the blood alcohol content (BAC) at which a person is
17 guilty of drunk driving from 0.10% to .08%. Under this new law, first
18 time offenders whose BAC is 0.08% or higher but less than 0.10% will
19 lose their driver's license for three months; if their BAC is 0.10% or
20 higher, they will lose their license for seven months to one year.

21 Currently, persons who commit a first offense of refusing to submit
22 to a breathalyzer test after being arrested for drunk driving lose their
23 license for six months. This bill would increase this period of license
24 suspension to seven months to one year so that a first time offender
25 would receive the same penalties that a drunk driver with a BAC of
26 0.10% receives.

27 The bill also amends the refusal statute to specify that the period of
28 license suspension imposed for a first offense of refusing to submit to
29 a breathalyzer test may be concurrent or consecutive to a license
30 suspension imposed for a drunk driving offense arising out of the same
31 incident. The bill also clarifies the language concerning consecutive
32 license suspensions for second or subsequent refusal convictions and
33 convictions for drunk driving.

34 The bill revises the penalties imposed for refusing to submit to a
35 breathalyzer test when that offense occurs in a school zone.

36 In order to promote uniform enforcement of the drunk driving and
37 the refusal statutes, the bill requires the Attorney General to
38 promulgate guidelines concerning the prosecution of violations of
39 those statutes. The guidelines are to be disseminated to county and
40 municipal prosecutors within 120 days of the bill's effective date.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2259

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2004

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2259.

Assembly Bill No. 2259 clarifies the penalties for refusing to submit to a breathalyzer test after being arrested for drunk driving. Under the bill, persons who refuse to submit to such a test would lose their driver's license for seven months to one year for a first offense.

The State's drunk driving law was recently amended by P.L.2003, c.314 to reduce the blood alcohol content (BAC) at which a person is guilty of drunk driving from 0.10% to .08%. Under this new law, first time offenders whose BAC is 0.08% or higher but less than 0.10% will lose their driver's license for three months; if their BAC is 0.10% or higher, they will lose their license for seven months to one year.

Currently, persons who commit a first offense of refusing to submit to a breathalyzer test after being arrested for drunk driving lose their license for six months. This bill would increase this period of license suspension to seven months to one year so that a first time offender would receive the same penalties that a drunk driver with a BAC of 0.10% receives.

The bill also amends the refusal statute to specify that the period of license suspension imposed for a first offense of refusing to submit to a breathalyzer test may be concurrent or consecutive to a license suspension imposed for a drunk driving offense arising out of the same incident. The bill also clarifies the language concerning consecutive license suspensions for second or subsequent refusal convictions and convictions for drunk driving.

The bill revises the penalties imposed for refusing to submit to a breathalyzer test when that offense occurs in a school zone.

In order to promote uniform enforcement of the drunk driving and the refusal statutes, the bill requires the Attorney General to promulgate guidelines concerning the prosecution of violations of those statutes. The guidelines are to be disseminated to county and municipal prosecutors within 120 days of the bill's effective date.

COMMITTEE AMENDMENTS:

The committee amended the bill to further revise the penalties for a conviction of refusing to submit to a breathalyzer when the offense was committed in a school zone. Under the amended bill, the maximum period of license suspension for a first offense in a school zone would be two years. As introduced, the bill required that the period of license suspension for a first offense be at least one year, but that time period was not capped. The committee amendments also establish a four year license suspension for a second offense of refusal in a school zone. As introduced, the bill provided that the period of license suspension would be for "not less than" four years.

To make the penalties for drunk driving in a school zone consistent with the penalties for refusal, the committee also amended the drunk driving statute, R.S.39:4-50, to make the period of license suspension for a second offense of drunk driving in a school zone four years. The current penalty is license suspension for "not less than" four years.

These committee amendments make this bill identical to Senate Bill No. 863 (1R).

SENATE, No. 863

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 9, 2004

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator ELLEN KARCHER

District 12 (Mercer and Monmouth)

Co-Sponsored by:

Senator Cunningham

SYNOPSIS

Clarifies sentencing provisions for certain drunk driving offenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2004)

1 AN ACT concerning refusal to submit to a breath test, amending
2 P.L.1981, c.512 and supplementing chapter 4 of Title 39 of the
3 Revised Statutes.

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

7
8 1. Section 2 of P.L.1981, c.512 (C.39:4-50.4a) is amended to read
9 as follows:

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

25 The municipal court shall determine by a preponderance of the
26 evidence whether the arresting officer had probable cause to believe
27 that the person had been driving or was in actual physical control of
28 a motor vehicle on the public highways or quasi-public areas of this
29 State while the person was under the influence of intoxicating liquor
30 or a narcotic, hallucinogenic, or habit-producing drug or marijuana;
31 whether the person was placed under arrest, if appropriate, and
32 whether he refused to submit to the test upon request of the officer;
33 and if these elements of the violation are not established, no conviction
34 shall issue. In addition to any other requirements provided by law, a
35 person whose operator's license is revoked for refusing to submit to a
36 test shall be referred to an Intoxicated Driver Resource Center
37 established by subsection (f.) of R.S.39:4-50 and shall satisfy the same
38 requirements of the center for refusal to submit to a test as provided
39 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with
40 a first, second, third or subsequent offense under this section that must
41 be satisfied by a person convicted of a commensurate violation of this
42 section, or be subject to the same penalties as such a person for failure
43 to do so. **[The]** For a first offense, the revocation may be concurrent

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 with or consecutive to any revocation imposed for a conviction under
2 the provisions of R.S.39:4-50 arising out of the same incident. For a
3 second or subsequent offense, the revocation shall be [~~independent~~
4 ~~of~~] consecutive to any revocation imposed [~~by virtue of~~] for a
5 conviction under the provisions of R.S.39:4-50. In addition to issuing
6 a revocation, except as provided in subsection b. of this section, the
7 municipal court shall fine a person convicted under this section, a fine
8 of not less than [~~\$250.00 nor~~] ~~\$300~~ or more than [~~\$500.00~~] \$500 for
9 a first offense; a fine of not less than \$500 or more than \$1,000 for a
10 second offense; and a fine of \$1,000 for a third or subsequent offense.

11 b. [~~The~~] For a first offense, the fine imposed upon the convicted
12 person shall be not less than [~~\$500~~] \$600 or more than \$1,000 and the
13 period of license suspension shall be not less than one year [~~for a first~~
14 ~~offense, four years for a second offense and 20 years for a third or~~
15 ~~subsequent offense, which period shall commence upon the completion~~
16 ~~of any prison sentence imposed upon that person~~]; for a second
17 offense, a fine of not less than \$1,000 or more than \$2,000 and a
18 license suspension for a period of not less than four years; and for a
19 third or subsequent offense, a fine of \$2,000 and a license suspension
20 for a period of 20 years when a violation of this section occurs while:

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

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

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

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

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

43 (cf: P.L.1999, c.185, s.5)

44

45 2. (New section) In order to promote the uniform enforcement of
46 R.S.39:4-50 and section 2 of P.L.1966, c.142 (C.39:4-50.2), the

1 Attorney General shall promulgate guidelines concerning the
2 prosecution of such violations. The guidelines shall be disseminated
3 to county and municipal prosecutors within 120 days of the effective
4 date of this act.

5
6 3. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill would clarify the penalties for refusing to submit to a
12 breathalyzer test after being arrested for drunk driving. Under the bill,
13 persons who refuse to submit to such a test would lose their driver's
14 license for seven months to one year for a first offense.

15 The State's drunk driving law was recently amended by P.L.2003,
16 c.314 to reduce the blood alcohol content (BAC) at which a person is
17 guilty of drunk driving from 0.10% to .08%. Under this new law, first
18 time offenders whose BAC is 0.08% or higher but less than 0.10% will
19 lose their driver's license for three months; if their BAC is 0.10% or
20 higher, they will lose their license for seven months to one year.

21 Currently, persons who commit a first offense of refusing to submit
22 to a breathalyzer test after being arrested for drunk driving lose their
23 license for six months. This bill would increase this period of license
24 suspension to seven months to one year so that a first time offender
25 would receive the same penalties that a drunk driver with a BAC of
26 0.10% receives.

27 The bill also amends the refusal statute to specify that the period of
28 license suspension imposed for a first offense of refusing to submit to
29 a breathalyzer test may be concurrent or consecutive to a license
30 suspension imposed for a drunk driving offense arising out of the same
31 incident. The bill also clarifies the language concerning consecutive
32 license suspensions for second or subsequent refusal convictions and
33 convictions for drunk driving.

34 The bill revises the penalties imposed for refusing to submit to a
35 breathalyzer test when that offense occurs in a school zone.

36 In order to promote uniform enforcement of the drunk driving and
37 the refusal statutes, the bill requires the Attorney General to
38 promulgate guidelines concerning the prosecution of violations of
39 those statutes. The guidelines are to be disseminated to county and
40 municipal prosecutors within 120 days of the bill's effective date.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 863

STATE OF NEW JERSEY

DATED: FEBRUARY 9, 2004

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably Senate Bill No. 863.

This bill would clarify the penalties for refusing to submit to a breathalyzer test after being arrested for drunk driving. Under the bill, persons who refuse to submit to such a test would lose their driver's license for seven months to one year for a first offense.

The State's drunk driving law was recently amended by P.L.2003, c.314 to reduce the blood alcohol content (BAC) at which a person is guilty of drunk driving from 0.10% to .08%. Under this new law, first time offenders whose BAC is 0.08% or higher but less than 0.10% will lose their driver's license for three months; if their BAC is 0.10% or higher, they will lose their license for seven months to one year.

Currently, persons who commit a first offense of refusing to submit to a breathalyzer test after being arrested for drunk driving lose their license for six months. This bill would increase this period of license suspension to seven months to one year so that a first time offender would receive the same penalties that a drunk driver with a BAC of 0.10% receives.

The bill also amends the refusal statute to specify that the period of license suspension imposed for a first offense of refusing to submit to a breathalyzer test may be concurrent or consecutive to a license suspension imposed for a drunk driving offense arising out of the same incident. The bill also clarifies the language concerning consecutive license suspensions for second or subsequent refusal convictions and convictions for drunk driving.

The bill revises the penalties imposed for refusing to submit to a breathalyzer test when that offense occurs in a school zone.

In order to promote uniform enforcement of the drunk driving and the refusal statutes, the bill requires the Attorney General to promulgate guidelines concerning the prosecution of violations of those statutes. The guidelines are to be disseminated to county and municipal prosecutors within 120 days of the bill's effective date.

STATEMENT TO
SENATE, No. 863

with Senate Floor Amendments
(Proposed By Senator VITALE)

ADOPTED: FEBRUARY 23, 2004

Senate Bill No. 863 clarifies the penalties for refusing to submit to a breathalyzer test after being arrested for drunk driving. Under the bill, persons who refuse to submit to such a test would lose their driver's license for seven months to one year for a first offense.

As introduced, the bill also revises the penalties imposed for refusing to submit to a breathalyzer test when the drunk driving offense occurs in a school zone. This Senate amendment further clarifies those penalties.

The bill requires that the period of license suspension imposed upon the convicted person for a first offense in a school zone would be at least one year. This Senate amendment provides that the maximum period of license suspension for a first offense in school zone would be two years. For a second offense in a school zone, the bill provides that the period of license suspension would be for "not less than" four years. This Senate amendment provides that the period of license suspension for a second offense in a school zone would be four years.

The amendment also clarifies the period of license suspension for a second offense in a school zone under the drunk driving statute. R.S.39:4-50 currently provides that the period of license suspension would be for "not less than" four years. This Senate amendment provides that the period of license suspension for a second offense in a school zone would be four years.