

39:4-50 ET AL.

LEGISLATIVE HISTORY CHECKLIST

NJSA 39:4-50 et al. (Drunk driving)

Laws of 1977 Chapter 29

Bill No. S1423

Sponsor(s) Maressa & Vreeland

Date Introduced April 26, 1976

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Law, Public Safety & Defense

Amended during passage Yes No Amendments during passage denoted by asterisks.

Date of passage: Assembly January 31, 1977

Senate July 22, 1976

Date of approval February 24, 1977

Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly Yes

Senate Yes

Fiscal Note No

Veto message No

Message on signing Yes

Following were printed:

Reports Yes

Hearings No

Report mentioned in sponsors' statement:

New Jersey. Motor Vehicle Study Commission. Report.

Trenton, 1975, pages 133-168 (attached)

974.90
A939
1975

See also: New Jersey. Judicial Conference. Proceedings.

974.901
C88
10/4/76
Report of the Committee on Municipal Courts.

1975-pp. 43-50 (Enclosed)

1976-pp. 3-4 (Enclosed)

kg 5/77

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APPROVED 2-24-77

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SENATE, No. 1423

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators MARESSA and VREELAND

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning motor vehicles and traffic regulation with respect to operation of a motor vehicle while under the influence of intoxicating liquor or certain drugs and revising parts of the statutory law.

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

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

2 39:4-50. (a) A person who operates a motor vehicle while under
3 the influence of intoxicating liquor, narcotic, hallucinogenic or
4 habit-producing drug, or permits another person who is under the
5 influence of intoxicating liquor, narcotic, hallucinogenic or habit-
6 producing drug to operate a motor vehicle owned by him or in his
7 custody or control, shall be subject, for the first offense, to a fine
8 of not less than \$200.00 nor more than **[\$500.00]** *\$400.00* or im-
9 prisonment for a term of not **[less than 30 days nor more than**
10 **3 months]** *more than 30 days* or both, in the discretion of the
11 **[magistrate]** *court*, and shall forthwith forfeit his right to operate
12 a motor vehicle over the highways of this State for a period of
13 **[2 years from the date of his conviction or until he reaches the**
14 **age of 21, years, whichever is the greater period of time, in the**
15 **case of a person who at the time of his conviction is under the age**
16 **of 21 years.]** *not less than* ***[2 months]*** **60 days** *nor more than*
17 **[6 months]** **180 days**. Except as hereinafter provided, for a
18 **[subsequent]** *second* violation, he shall be *subject to a fine of not*
19 *less than \$500.00 nor more than \$1,000.00,* **[imprisoned]** *or im-*
20 *prisonment* for a term of **[3 months]** *no more than 90 days, or*
21 *both,* and shall forfeit his right to operate a motor vehicle over

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

22 the highways of this State for a period of [10 years] *not less*
23 *than 1 year nor more than 3 years* [from the date of his] *upon*
24 *conviction, and, after the expiration of said period, he may make*
25 *application to the Director of the Division of Motor Vehicles for*
26 *a license to operate a motor vehicle, which application may be*
27 *granted at the discretion of the director, consistent with subsec-*
28 *tion b. of this section. Except as hereinafter provided, for a third*
29 *or subsequent violation, he shall be subject to a fine of \$1,000.00,*
30 *or imprisonment for a term of not less than 30 days nor more*
31 *than 180 days, or both, in the discretion of the court, and shall*
32 *forfeit his right to operate a motor vehicle over the highways of*
32A *this State for a period of 5 years upon conviction, and, after*
32B *the expiration of said period, he may make application to the*
33 *Director of the Division of Motor Vehicles for a license to operate*
34 *a motor vehicle, which application may be granted at the discretion*
35 *of the director, consistent with subsection (b) of this section. If the*
36 *driving privilege of any person is under revocation or suspension*
37 *for a violation of any provision of this Title at the time of any*
38 *conviction for a violation of this section, the revocation or suspen-*
39 *sion period imposed shall commence as of the date of termination*
40 *of the existing revocation or suspension period. A [magistrate*
41 *who] court that imposes a term of imprisonment under this section*
42 *may sentence the person so convicted [either] to the county jail**,***
43 *[or] to the workhouse of the county wherein the offense was*
44 *committed, or to an in-patient rehabilitation program approved*
45 *by the Director of the Division of Motor Vehicles.*

46 A person who has been convicted of a previous violation of this
47 section need not be charged as a second *or subsequent* offender in
48 the complaint made against him in order to render him liable to
49 the punishment imposed by this section on a second *or subsequent*
50 offender, but if the second offense occurs [10] 15 or more years
51 after the [previous] *first* conviction the court [may,] *shall* [in its
52 discretion, suspend the sentence of imprisonment, impose a fine
53 of not less than \$300.00 nor more than \$1,000.00 and place the
54 person on probation] *treat the conviction as a first offense, and*
55 *if a third or subsequent offense occurs 10 or more years after the*
56 *first conviction, the court shall treat the conviction as a second*
57 *offense.*

58 (b) [A person who operates a motor vehicle while his ability to
59 operate such motor vehicle is impaired by the consumption of
60 alcohol shall be subject, for a first offense, to a fine of not less
61 than \$50.00 nor more than \$100.00 and shall forthwith forfeit his
62 right to operate a motor vehicle over the highways of this State

63 for a period of 6 months from the date of his conviction. For a
64 subsequent violation, he shall be fined not less than \$100.00 nor
65 more than \$300.00 and shall forthwith forfeit his right to operate
66 a motor vehicle over the highways of this State for a period of
67 2 years from the date of his conviction. After the expiration of said
68 period of forfeiture, he may make application to the Director of
69 the Division of Motor Vehicles for a license to operate a motor
70 vehicle which application may be granted at the discretion of the
71 director.] *In addition to any other requirements provided by law,*
72 *a person convicted under this section must satisfy the requirements*
73 *of a program of alcohol education or rehabilitation approved by*
74 *the Director of the Division of Motor Vehicles. Failure to satisfy*
75 *such requirements shall result in a driver license revocation or*
76 *suspension or continuation of revocation or suspension until such*
77 *requirements are satisfied, unless stayed by court order in accord-*
78 *ance with Rule 7:8-2 of the N. J. Court Rules, 1969, or R. S.*
79 *39:5-22. A fee, not to exceed \$30.00, shall be payable to the director*
80 *from every person required to satisfy the requirements of a pro-*
81 *gram of alcohol education or rehabilitation under the provisions*
82 *of this section.*

83 *(c) Upon conviction of a violation of this section, the court shall*
84 *collect forthwith the New Jersey drivers' license or licenses of the*
85 *person so convicted and forward such license or licenses to the*
86 *Director of the Division of Motor Vehicles. In the event that*
87 *a person convicted under this section is the holder of any out-of-*
88 *state driver's license, the court shall not collect the license but*
89 *shall notify forthwith the director who shall, in turn, notify appro-*
90 *prate officials in the licensing jurisdiction. The court shall,*
91 *however, revoke the nonresident's driving privilege to operate a*
92 *motor vehicle in this State in accordance with this section.*

93 *(d) The Director of the Division of Motor Vehicles shall pro-*
94 *mulgate administrative rules and regulations in order to effectuate*
95 *the purposes of this act.*

1 2. Section 30 of P. L. 1951, c. 23 (C. 39:4-50.1) is amended to
2 read as follows:

3 30. In any prosecution for a violation of R. S. 39:4-50 relating
4 to driving a vehicle while under the influence of intoxicating liquor,
5 the amount of alcohol in the defendant's blood at the time alleged
6 as shown by chemical analysis of the defendant's blood, urine,
7 breath, or other bodily substance shall give rise to the following
8 presumptions:

9 (1) If there was at that time 0.05% or less by weight of alcohol
10 in the defendant's blood, it shall be presumed that the defendant
11 was not under the influence of intoxicating liquor;

12 (2) If there was at that time in excess of 0.05% but less than
13 **[0.15%]** 0.10% by weight of alcohol in the defendant's blood, such
14 fact shall not give rise to any presumption that the defendant was
15 or was not under the influence of intoxicating liquor, but such fact
16 may be considered with other competent evidence in determining
17 the guilt or innocence of the defendant;

18 (3) If there was at that time **[0.15%]** 0.10% or more by weight
19 of alcohol in the defendant's blood, it shall be presumed that the
20 defendant was under the influence of intoxicating liquor.

21 The foregoing provisions of this section shall not be construed
22 as requiring that evidence of the amount of alcohol in the defend-
23 ant's blood must be presented, nor shall they be construed as
24 limiting the introduction of any other competent evidence bearing
25 upon the question whether or not the defendant was under the
26 influence of intoxicating liquor.

1 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 taking
8 of samples is made in accordance with the provisions of this act
9 and at the request of a police officer who has reasonable grounds
10 to believe that such person has been operating a motor vehicle in
11 violation of the provisions of R. S. 39:4-50.

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

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

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

23 (e) No chemical test, as provided in this section, or specimen
24 necessary thereto, may be made or taken forcibly and against

25 physical resistance thereto by the defendant, *the police officer shall,*
26 *however, inform the person arrested of the consequences of re-*
27 *fusing to submit to such test under section 4 of P. L. 1966, c. 142*
28 *(C. 39:4-50.4). A standard statement, prepared by the director,*
29 *shall be read by the police officer to the person under arrest.*

1 4. Section 4 of P. L. 1966, c. 142 (C. 39:4-50.4) is amended to
2 read as follows:

3 4. (a) If an operator of a motor vehicle, after being arrested
4 for a violation of R. S. 39:4-50, shall refuse to submit to the chemi-
5 cal test provided for in section 2 of this act when requested to do
6 so, the arresting officer shall cause to be delivered to the Director
7 of Motor Vehicles his sworn report of such refusal in which report
8 he shall specify the circumstances surrounding the arrest and the
9 grounds upon which his belief was based that the person was driv-
10 ing or operating a motor vehicle in violation of the provisions of
11 R. S. 39:4-50. Upon receipt of such a report, if the director shall
12 find that the arresting officer acted in accordance with the provi-
13 sions of this act, he shall, upon written notice, suspend the person's
14 license or permit to drive or operate a motor vehicle, or if such
15 person is a nonresident, the privilege to drive or operate a motor
16 vehicle within this State, unless such person, within 10 days of the
17 date of such notice, shall have requested, in writing, a hearing be-
18 fore the director. Upon such request, the director shall hold a
19 hearing on the issues of whether the arresting officer had reason-
20 able grounds to believe the person had been driving or was in
21 actual physical control of a motor vehicle on the public highways
22 or quasi-public areas of this State while under the influence of in-
23 toxicating liquor, whether the person was placed under arrest, and
24 whether he refused to submit to the test upon request of the officer.
25 If no such hearing is requested within the time allowed, or if after
26 a hearing the director shall find against the person on such issues,
27 he shall revoke such person's license or permit to drive or operate
28 a motor vehicle, or the privilege to drive or operate a motor ve-
29 hicle within this State if such person is a nonresident for a period
30 **[of 6 months]** *as prescribed in paragraph (b) to be calculated*
31 *from the date of the director's determination, or if such person*
32 *is a resident without a license or permit to drive or operate a motor*
33 *vehicle in this State, the director shall deny to such person the*
34 *issuance of any such license or permit **[within 6 months]** during*
35 *the period prescribed from the date of the director's determination.*
36 Such revocation shall be independent of any revocation imposed
37 by virtue of a conviction under the provisions of R. S. 39:4-50.

38 (b) Any revocation of the right to operate a motor vehicle over
 39 the highways of this State for refusing to submit to a chemical
 40 test shall be for ~~*[6 months]*~~ *90 days* unless the refusal was
 41 in connection with a subsequent offense of this section, in which
 42 case, the revocation period shall be for 1 year. *In addition to
 43 any other requirements provided by law, a person whose operator's
 44 license is revoked for refusing to submit to a chemical test must
 45 satisfy the requirements of a program of alcohol education or
 46 rehabilitation pursuant to the provisions of R. S. 39:4-50.*

1 5. R. S. 39:4-51 is amended to read as follows:

2 39:4-51. A person who has been convicted of violating section
 3 39:4-50 of this Title, and in pursuance thereof has been imprisoned
 4 in a county jail or workhouse in the county in which the offense
 5 was committed, shall not, after commitment, be released therefrom
 6 until the term of imprisonment imposed has been served. *A person
 7 imprisoned in the county jail or workhouse may in the discretion
 8 of the court, be released on a work release program.*

9 No warden or other officer having custody of the county jail or
 10 workhouse shall release therefrom a person so committed, *unless
 11 the person has been released by the court on a work release pro-
 12 gram, until the sentence has been served. A person sentenced to
 13 an inpatient rehabilitation program may upon petition by the treat-
 14 ing agency be released, by the court, to an outpatient rehabilitation
 15 program for the duration of the original sentence.*

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

19 *The director shall adopt such rules and regulations to effectuate
 20 the provisions of this section as he shall deem necessary.*

1 6. (New section) (a) Any person who, ~~**[on]**~~ ***prior to*** the
 2 effective date of this amendatory and supplementary act, ~~**[has
 3 served]**~~ ***had been convicted of an alcohol-related offense, may,
 4 after service of*** at least 6 months of a driver license suspension
 5 imposed by reason of ~~**[an alcohol-related traffic offense, may]**~~
 6 ***such conviction*** apply to the Director of the Division of Motor
 7 Vehicles for restoration of his license to operate a motor vehicle
 8 which application may be granted upon the condition that the person
 9 agrees to pursue and satisfy the requirements of a program of
 10 alcohol education or rehabilitation approved by the director.

11 (b) Any person who, ~~**[on]**~~ ***prior to*** the effective date of
 12 this amendatory and supplementary act, ~~**[has served]**~~ ***had
 13 been convicted of an alcohol-related offense, may, after service of,***

14 at least 30 days of a sentence of imprisonment ****[for an alcohol-**
15 **related traffic offense, may]** ****imposed therefor**** apply to
16 the court for release and cancellation of any further period of
17 imprisonment, which application may be granted upon the con-
18 dition that the person agrees to pursue and satisfy the require-
19 ments of a program of alcohol education or rehabilitation approved
20 by the director.

20A (c) *Any person who agrees to satisfy the requirements of an*
20B *approved alcohol education or rehabilitation program and who*
20C *fails to satisfactorily complete said program shall be suspended*
21 *forthwith until said program is completed.*

22 (d) *A fee, not to exceed \$30.00, shall be payable to the division*
23 *from every person required to satisfy the requirements of a pro-*
24 *gram of alcohol education or rehabilitation under the provisions*
25 *of this section.*

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

1 *****[7.]***** *****8.***** Sections 2 and 3 of P. L. 1966, c. 141
2 (C. 39:4-50.6 and 39:4-50.7) are repealed.

1 *****[8.]***** *****9.***** Section 6 of this act shall take effect immedi-
2 ately; the remainder of this act shall take effect 90 days after
3 enactment.

SENATE, No. 1423

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators MARESSA and VREELAND

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning motor vehicles and traffic regulation with respect to operation of a motor vehicle while under the influence of intoxicating liquor or certain drugs and revising parts of the statutory law.

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

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

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3 the influence of intoxicating liquor, narcotic, hallucinogenic or
4 habit-producing drug, or permits another person who is under the
5 influence of intoxicating liquor, narcotic, hallucinogenic or habit-
6 producing drug to operate a motor vehicle owned by him or in his
7 custody or control, shall be subject, for the first offense, to a fine
8 of not less than \$200.00 nor more than **[\$500.00]** \$400.00 or im-
9 prisonment for a term of not **[less than 30 days nor more than**
10 **3 months]** *more than 30 days* or both, in the discretion of the
11 **[magistrate]** *court*, and shall forthwith forfeit his right to operate
12 a motor vehicle over the highways of this State for a period of
13 **[2 years from the date of his conviction or until he reaches the**
14 **age of 21, years, whichever is the greater period of time, in the**
15 **case of a person who at the time of his conviction is under the age**
16 **of 21 years.]** *not less than 2 months nor more than 6 months.*
17 Except as hereinafter provided, for a **[subsequent]** *second* viola-
18 tion, he shall be *subject to a fine of not less than \$500.00 nor more*
19 *than \$1,000.00, [imprisoned] or imprisonment* for a term of **[3**
20 **months]** *no more than 90 days, or both*, and shall forfeit his right
21 to operate a motor vehicle over the highways of this State for a
22 period of **[10 years]** *not less than 1 year nor more than 3 years*
22A **[from the date of his]** *upon* conviction, and, after the expiration of
23 said period, he may make application to the Director of 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.

24 Division of Motor Vehicles for a license to operate a motor vehicle,
25 which application may be granted at the discretion of the director,
26 *consistent with subsection b. of this section. Except as hereinafter*
27 *provided, for a third or subsequent violation, he shall be subject to a*
28 *fine of \$1,000.00, or imprisonment for a term of not less than 30*
29 *days nor more than 180 days, or both, in the discretion of the court,*
30 *and shall forfeit his right to operate a motor vehicle over the*
31 *highways of this State for a period of 5 years upon conviction, and,*
32 *after the expiration of said period, he may make application to the*
33 *Director of the Division of Motor Vehicles for a license to operate*
34 *a motor vehicle, which application may be granted at the discretion*
35 *of the director, consistent with subsection (b) of this section. If the*
36 *driving privilege of any person is under revocation or suspension*
37 *for a violation of any provision of this Title at the time of any*
38 *conviction for a violation of this section, the revocation or suspen-*
39 *sion period imposed shall commence as of the date of termination*
40 *of the existing revocation or suspension period. A [magistrate*
41 *who] court that imposes a term of imprisonment under this section*
42 *may sentence the person so convicted [either] to the county jail*
43 *[or] to the workhouse of the county wherein the offense was*
44 *committed, or to an in-patient rehabilitation program approved*
45 *by the Director of the Division of Motor Vehicles.*

46 A person who has been convicted of a previous violation of this
47 section need not be charged as a second *or subsequent* offender in
48 the complaint made against him in order to render him liable to
49 the punishment imposed by this section on a second *or subsequent*
50 offender, but if the second offense occurs [10] 15 or more years
51 after the [previous] *first* conviction the court [may,] shall [in its
52 discretion, suspend the sentence of imprisonment, impose a fine
53 of not less than \$300.00 nor more than \$1,000.00 and place the
54 person on probation] *treat the conviction as a first offense, and*
55 *if a third or subsequent offense occurs 10 or more years after the*
56 *first conviction, the court shall treat the conviction as a second*
57 *offense.*

58 (b) [A person who operates a motor vehicle while his ability to
59 operate such motor vehicle is impaired by the consumption of
60 alcohol shall be subject, for a first offense, to a fine of not less
61 than \$50.00 nor more than \$100.00 and shall forthwith forfeit his
62 right to operate a motor vehicle over the highways of this State
63 for a period of 6 months from the date of his conviction. For a
64 subsequent violation, he shall be fined not less than \$100.00 nor
65 more than \$300.00 and shall forthwith forfeit his right to operate
66 a motor vehicle over the highways of this State for a period of

67 2 years from the date of his conviction. After the expiration of said
 68 period of forfeiture, he may make application to the Director of
 69 the Division of Motor Vehicles for a license to operate a motor
 70 vehicle which application may be granted at the discretion of the
 71 director.】 *In addition to any other requirements provided by law,*
 72 *a person convicted under this section must satisfy the requirements*
 73 *of a program of alcohol education or rehabilitation approved by*
 74 *the Director of the Division of Motor Vehicles. Failure to satisfy*
 75 *such requirements shall result in a driver license revocation or*
 76 *suspension or continuation of revocation or suspension until such*
 77 *requirements are satisfied, unless stayed by court order in accord-*
 78 *ance with Rule 7:8-2 of the N. J. Court Rules, 1969, or R. S.*
 79 *39:5-22. A fee, not to exceed \$30.00, shall be payable to the director*
 80 *from every person required to satisfy the requirements of a pro-*
 81 *gram of alcohol education or rehabilitation under the provisions*
 82 *of this section.*

83 (c) *Upon conviction of a violation of this section, the court shall*
 84 *collect forthwith the New Jersey drivers' license or licenses of the*
 85 *person so convicted and forward such license or licenses to the*
 86 *Director of the Division of Motor Vehicles. In the event that*
 87 *a person convicted under this section is the holder of any out-of-*
 88 *state driver's license, the court shall not collect the license but*
 89 *shall notify forthwith the director who shall, in turn, notify appro-*
 90 *priate officials in the licensing jurisdiction. The court shall,*
 91 *however, revoke the nonresident's driving privilege to operate a*
 92 *motor vehicle in this State in accordance with this section.*

93 (d) *The Director of the Division of Motor Vehicles shall pro-*
 94 *mulgate administrative rules and regulations in order to effectuate*
 95 *the purposes of this act.*

1 2. Section 30 of P. L. 1951, c. 23 (C. 39:4-50.1) is amended to
 2 read as follows:

3 30. In any prosecution for a violation of R. S. 39:4-50 relating
 4 to driving a vehicle while under the influence of intoxicating liquor,
 5 the amount of alcohol in the defendant's blood at the time alleged
 6 as shown by chemical analysis of the defendant's blood, urine,
 7 breath, or other bodily substance shall give rise to the following
 8 presumptions:

9 (1) If there was at that time 0.05% or less by weight of alcohol
 10 in the defendant's blood, it shall be presumed that the defendant
 11 was not under the influence of intoxicating liquor;

12 (2) If there was at that time in excess of 0.05% but less than
 13 **【0.15%】** 0.10% by weight of alcohol in the defendant's blood, such
 14 fact shall not give rise to any presumption that the defendant was

15 or was not under the influence of intoxicating liquor, but such fact
16 may be considered with other competent evidence in determining
17 the guilt or innocence of the defendant;

18 (3) If there was at that time **[0.15%]** 0.10% or more by weight
19 of alcohol in the defendant's blood, it shall be presumed that the
20 defendant was under the influence of intoxicating liquor.

21 The foregoing provisions of this section shall not be construed
22 as requiring that evidence of the amount of alcohol in the defend-
23 ant's blood must be presented, nor shall they be construed as
24 limiting the introduction of any other competent evidence bearing
25 upon the question whether or not the defendant was under the
26 influence of intoxicating liquor.

1 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 taking
8 of samples is made in accordance with the provisions of this act
9 and at the request of a police officer who has reasonable grounds
10 to believe that such person has been operating a motor vehicle in
11 violation of the provisions of R. S. 39:4-50.

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

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

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

23 (e) No chemical test, as provided in this section, or specimen
24 necessary thereto, may be made or taken forcibly and against
25 physical resistance thereto by the defendant, *the police officer shall,*
26 *however, inform the person arrested of the consequences of re-*
27 *fusing to submit to such test under section 4 of P. L. 1966, c. 142*
28 *(C. 39:4-50.4). A standard statement, prepared by the director,*
29 *shall be read by the police officer to the person under arrest.*

1 4. Section 4 of P. L. 1966, c. 142 (C. 39:4-50.4) is amended to
2 read as follows:

3 4. (a) If an operator of a motor vehicle, after being arrested
4 for a violation of R. S. 39:4-50, shall refuse to submit to the chemi-
5 cal test provided for in section 2 of this act when requested to do
6 so, the arresting officer shall cause to be delivered to the Director
7 of Motor Vehicles his sworn report of such refusal in which report
8 he shall specify the circumstances surrounding the arrest and the
9 grounds upon which his belief was based that the person was driv-
10 ing or operating a motor vehicle in violation of the provisions of
11 R. S. 39:4-50. Upon receipt of such a report, if the director shall
12 find that the arresting officer acted in accordance with the provi-
13 sions of this act, he shall, upon written notice, suspend the person's
14 license or permit to drive or operate a motor vehicle, or if such
15 person is a nonresident, the privilege to drive or operate a motor
16 vehicle within this State, unless such person, within 10 days of the
17 date of such notice, shall have requested, in writing, a hearing be-
18 fore the director. Upon such request, the director shall hold a
19 hearing on the issues of whether the arresting officer had reason-
20 able grounds to believe the person had been driving or was in
21 actual physical control of a motor vehicle on the public highways
22 or quasi-public areas of this State while under the influence of in-
23 toxicating liquor, whether the person was placed under arrest, and
24 whether he refused to submit to the test upon request of the officer.
25 If no such hearing is requested within the time allowed, or if after
26 a hearing the director shall find against the person on such issues,
27 he shall revoke such person's license or permit to drive or operate
28 a motor vehicle, or the privilege to drive or operate a motor ve-
29 hicle within this State if such person is a nonresident for a period
30 [of 6 months] as prescribed in paragraph (b) to be calculated
31 from the date of the director's determination, or if such person
32 is a resident without a license or permit to drive or operate a motor
33 vehicle in this State, the director shall deny to such person the
34 issuance of any such license or permit [within 6 months] during
35 the period prescribed from the date of the director's determination.
36 Such revocation shall be independent of any revocation imposed
37 by virtue of a conviction under the provisions of R. S. 39:4-50.

38 (b) Any revocation of the right to operate a motor vehicle over
39 the highways of this State for refusing to submit to a chemical
40 test shall be for 6 months unless the refusal was in connection with
41 a subsequent offense of this section, in which case, the revocation
42 period shall be for 1 year.

1 5. R. S. 39:4-51 is amended to read as follows:

2 39:4-51. A person who has been convicted of violating section
3 39:4-50 of this Title, and in pursuance thereof has been imprisoned
4 in a county jail or workhouse in the county in which the offense
5 was committed, shall not, after commitment, be released therefrom
6 until the term of imprisonment imposed has been served. *A person*
7 *imprisoned in the county jail or workhouse may in the discretion*
8 *of the court, be released on a work release program.*

9 No warden or other officer having custody of the county jail or
10 workhouse shall release therefrom a person so committed, *unless*
11 *the person has been released by the court on a work release pro-*
12 *gram, until the sentence has been served. A person sentenced to*
13 *an inpatient rehabilitation program may upon petition by the treat-*
14 *ing agency be released, by the court, to an outpatient rehabilitation*
15 *program for the duration of the original sentence.*

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

19 *The director shall adopt such rules and regulations to effectuate*
20 *the provisions of this section as he shall deem necessary.*

1 6. (New section) (a) Any person who, on the effective date of
2 this amendatory and supplementary act, has served at least 6
3 months of a driver license suspension imposed by reason of an
4 alcohol-related traffic offense, may apply to the Director of the
5 Division of Motor Vehicles for restoration of his license to operate
6 a motor vehicle which application may be granted upon the con-
7 dition that the person agrees to pursue and satisfy the requirements
8 of a program of alcohol education or rehabilitation approved by
9 the director.

10 (b) Any person who, on the effective date of this amendatory
11 and supplementary act, has served at least 30 days of a sentence
12 of imprisonment for an alcohol-related traffic offense, may apply
13 to the court for release and cancellation of any further period of
14 imprisonment, which application may be granted upon the con-
15 dition that the person agrees to pursue and satisfy the require-
16 ments of a program of alcohol education or rehabilitation approved
17 by the director.

18 (c) *Any person who agrees to satisfy the requirements of an*
19 *approved alcohol education or rehabilitation program and who*
20 *fails to satisfactorily complete said program shall be suspended*
21 *forthwith until said program is completed.*

22 (d) *A fee, not to exceed \$30.00, shall be payable to the division*
23 *from every person required to satisfy the requirements of a pro-*
24 *gram of alcohol education or rehabilitation under the provisions*
25 *of this section.*

S1423

7

- 1 7. Sections 2 and 3 of P. L. 1966, c. 141 (C. 39:4-50.6 and
- 2 39:4-50.7) are repealed.
- 1 8. Section 6 of this act shall take effect immediately; the re-
- 2 mainder of this act shall take effect 90 days after enactment.

Sponsor's

STATEMENT

This bill implements a major recommendation of the Motor Vehicle Study Commission as contained on pages 133-162 of its September 1975 Report. The \$30.00 fee is charged under section 1 and new section 6 of this act so that the program will be self-sustaining. The errant driver will bear the cost of his rehabilitation program.

SENATE LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
SENATE, No. 1423

STATE OF NEW JERSEY

DATED: MAY 24, 1976

This bill provides for a number of changes in existing law regarding drinking and driving. Because of the complexity of the changes in the bill the following chart summarizes the major provisions of existing law and those under the bill.¹

Issue	Current Statute	Commission Recommendations
1. Blood Alcohol Concentration	.05 - sober .10 - impaired .15 - influence (presumptive)	.05 sober .05 - .10 No Presumption .10 Presumption of Intoxication
2. License	Imp - 6 mos. 2d - 2 yrs. Infl - 2 yrs. 2d - 10 yrs.	1st 2-6 mos. Subsq. in 15 yrs. 1-3 yrs.* 3rd in 10 yrs. - 5 yrs.**
3. Fines	Imp - 50-100 2d - 100-300 Infl 200-500 2d - 300-1000	1st 200-400 Subsq. in 15 yrs. - 1000* 3rd in 10 yrs. - 1000**
4. Jail	Imp - none Infl - 1st 30-90 (discretionary) 2d-90 (mandatory)	1st - 0-30 days in jail or in in-patient rehabilitation facility Subsq. in 15 yrs. - 0-90 days* in jail or in in-patient rehabilitation facility 3rd in 10 yrs. - 30-180 days** in jail or in in-patient rehabilitation facility
5. Alcohol Education or Rehabilitation	Mandatory for All Offenses
6. Re-License	2d (AA, BB, AB) by appl. to Dir.	Completion of or Satisfactory Progress in Alcohol Education or Rehabilitation

7. Restricted Driver's License	None
8. Refusal	6 mos. DL suspension	1st - 6 mos. + Alcohol Education or Rehabilitation Subsq. to Prior DWI Conv. in 15 yrs. - 1 yr.*
9. Grandfather Clause	Elig. for (1) Restoration after 6 mos. if satisfactory progress in Alcohol Education or Rehabilitation and/or (2) release after 30 days

¹ This chart is taken, with minor corrections from *Report*, New Jersey Motor Vehicle Study Commission at 164 (1975)

* If more than 15 yrs. then treated as a first

** If 3rd occurs more than 10 yrs. but less than 15 yrs. penalties are for subsq.

Information from the Alcohol Countermeasures Project, Division of Motor Vehicles indicates that by weight classification, the following quantities of alcohol are needed to reach the .10 and .15 BAC levels.

Wt.	Number of drinks* needed to reach**	Number of drinks* needed to reach**
	.10% BAC	.15% BAC
100	3.3	4.4
110	3.7	4.9
120	4.0	5.3
130	4.4	5.8
140	4.8	6.3
150	5.0	6.7
160	5.4	7.1
170	5.8	7.6
180	6.1	8.0
190	6.4	8.5
200	6.8	8.9
210	7.1	9.3
220	7.4	9.8
230	7.8	10.3
240	8.1	10.7
250	8.4	11.1

* Based on 1½ oz. 86 poof whiskey; 12 oz. beer, 5 oz. of table wine, 3½ oz. of fortified wine.

** Assumes a 4-hour, evenly paced, drinking period.

SOURCE: Alcohol Countermeasures Project, Division of Motor Vehicles

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY
AND DEFENSE COMMITTEE

STATEMENT TO

SENATE, No. 1423

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 27, 1976

This bill, as amended, would make the following changes in existing law regarding drinking and driving:

The two offenses "driving while impaired" (N. J. S. A. 39:4-50b) and "driving while under the influence" (N. J. S. A. 39:4-50a) would be eliminated. There would be one offense known as "operating while under the influence of alcohol (or drugs)." Individuals found to have less than 0.05% alcohol by weight in their blood, would be presumed sober for driving purposes. At levels between 0.05% blood alcohol concentration but less than 0.10% blood alcohol concentration, no presumptions would be raised as to whether the individual is or is not under the influence for driving purposes, but other evidence going to that question would be admissible in a trial. Individuals found to have 0.10% blood alcohol concentration or higher in their systems would be presumed to be under the influence for driving purposes. If a subsequent offense occurs more than 15 years from the date of the first offense, then it would be treated as a first offense. If a third offense occurs more than 10 years, but less than 15 years from the date of the first, then it would be treated as a subsequent offense.

The license suspension penalty for a first conviction would be not less than 60 days nor more than 180 days. A subsequent conviction would require a suspension of not less than 1 nor more than 3 years. A third conviction within 10 years would require a 5-year license suspension.

A fine for the first offense would be not less than \$200.00 and not more than \$400.00. A subsequent conviction would carry a fine of not less than \$500.00 nor more than \$1,000.00. A third conviction would carry a fine of \$1,000.00.

Imprisonment for a first conviction would be up to 30 days: for a subsequent conviction up to 90 days and not less than 30 nor more than

180 days for a third offender.

Education and rehabilitation would be mandatory for all offenders. All education or rehabilitation programs would be approved by the Director of the Division of Motor Vehicles.

Penalties for refusing the breath test would be a 90-day license suspension if no prior offense, or 1 year suspension, if a prior conviction within 15 years. In addition, a person whose license has been revoked for refusing the breath test would be required to attend an alcohol education or rehabilitation program.

On the effective date of a new statute, any persons who have served at least 6 months of a license suspension by reason of an alcohol related offense, would be eligible for restoration providing they agree to participate in an appropriate education or rehabilitation program, and providing they have made satisfactory progress in or successfully completed the program. Similarly, any person who has served at least 30 days of a jail sentence, would be eligible for release under the same conditions.

ASSEMBLY COMMITTEE AMENDMENTS TO
SENATE, No. 1423

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 27, 1976

Amend page 1, section 1, line 16, omit "2 months", insert "60 days";
omit "6 months", insert "180 days".

Amend page 5, section 4, line 40, omit "6 months", insert "90 days".

Amend page 5, section 4, line 42, after "year.", insert "In addition
to any other requirements provided by law, a person whose operator's
license is revoked for refusing to submit to a chemical test must satisfy
the requirements of a program of alcohol education or rehabilitation
pursuant to the provisions of R. S. 39:4-50.

ASSEMBLY REPRINT
SENATE, No. 1423

with Assembly committee amendments adopted September 27, 1976

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators MARESSA and VREELAND

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning motor vehicles and traffic regulation with respect to operation of a motor vehicle while under the influence of intoxicating liquor or certain drugs and revising parts of the statutory law.

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

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

2 39:4-50. (a) A person who operates a motor vehicle while under
3 the influence of intoxicating liquor, narcotic, hallucinogenic or
4 habit-producing drug, or permits another person who is under the
5 influence of intoxicating liquor, narcotic, hallucinogenic or habit-
6 producing drug to operate a motor vehicle owned by him or in his
7 custody or control, shall be subject, for the first offense, to a fine
8 of not less than \$200.00 nor more than **[\$500.00]** \$400.00 or im-
9 prisonment for a term of not **[less than 30 days nor more than**
10 **3 months]** *more than 30 days* or both, in the discretion of the
11 **[magistrate]** court, and shall forthwith forfeit his right to operate
12 a motor vehicle over the highways of this State for a period of
13 **[2 years from the date of his conviction or until he reaches the**
14 age of 21, years, whichever is the greater period of time, in the
15 case of a person who at the time of his conviction is under the age
16 of 21 years.] *not less than ***[2 months]*** *60 days* nor more than*
17 ****[6 months]*** *180 days**. Except as hereinafter provided, for a
18 **[subsequent]** *second* violation, he shall be *subject to a fine of not*
19 *less than \$500.00 nor more than \$1,000.00, **[imprisoned]** or im-*
20 *prisonment for a term of **[3 months]** no more than 90 days, or*
21 *both, and shall forfeit his right to operate a motor vehicle over*
22 *the highways of this State for a period of **[10 years]** not less*
23 *than 1 year nor more than 3 years **[from the date of his]** upon*

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

24 conviction, and, after the expiration of said period, he may make
25 application to the Director of the Division of Motor Vehicles for
26 a license to operate a motor vehicle, which application may be
27 granted at the discretion of the director, *consistent with subsec-*
28 *tion b. of this section. Except as hereinafter provided, for a third*
29 *or subsequent violation, he shall be subject to a fine of \$1,000.00,*
30 *or imprisonment for a term of not less than 30 days nor more*
31 *than 180 days, or both, in the discretion of the court, and shall*
32 *forfeit his right to operate a motor vehicle over the highways of*
32A *this State for a period of 5 years upon conviction, and, after*
32B *the expiration of said period, he may make application to the*
33 *Director of the Division of Motor Vehicles for a license to operate*
34 *a motor vehicle, which application may be granted at the discretion*
35 *of the director, consistent with subsection (b) of this section. If the*
36 *driving privilege of any person is under revocation or suspension*
37 *for a violation of any provision of this Title at the time of any*
38 *conviction for a violation of this section, the revocation or suspen-*
39 *sion period imposed shall commence as of the date of termination*
40 *of the existing revocation or suspension period. A [magistrate*
41 *who] court that imposes a term of imprisonment under this section*
42 *may sentence the person so convicted [either] to the county jail*
43 *[or] to the workhouse of the county wherein the offense was*
44 *committed, or to an in-patient rehabilitation program approved*
45 *by the Director of the Division of Motor Vehicles.*

46 A person who has been convicted of a previous violation of this
47 section need not be charged as a second or subsequent offender in
48 the complaint made against him in order to render him liable to
49 the punishment imposed by this section on a second or subsequent
50 offender, but if the second offense occurs [10] 15 or more years
51 after the [previous] first conviction the court [may,] shall [in its
52 discretion, suspend the sentence of imprisonment, impose a fine
53 of not less than \$300.00 nor more than \$1,000.00 and place the
54 person on probation] treat the conviction as a first offense, and
55 if a third or subsequent offense occurs 10 or more years after the
56 first conviction, the court shall treat the conviction as a second
57 offense.

58 (b) [A person who operates a motor vehicle while his ability to
59 operate such motor vehicle is impaired by the consumption of
60 alcohol shall be subject, for a first offense, to a fine of not less
61 than \$50.00 nor more than \$100.00 and shall forthwith forfeit his
62 right to operate a motor vehicle over the highways of this State
63 for a period of 6 months from the date of his conviction. For a
64 subsequent violation, he shall be fined not less than \$100.00 nor

65 more than \$300.00 and shall forthwith forfeit his right to operate
66 a motor vehicle over the highways of this State for a period of
67 2 years from the date of his conviction. After the expiration of said
68 period of forfeiture, he may make application to the Director of
69 the Division of Motor Vehicles for a license to operate a motor
70 vehicle which application may be granted at the discretion of the
71 director.] *In addition to any other requirements provided by law,*
72 *a person convicted under this section must satisfy the requirements*
73 *of a program of alcohol education or rehabilitation approved by*
74 *the Director of the Division of Motor Vehicles. Failure to satisfy*
75 *such requirements shall result in a driver license revocation or*
76 *suspension or continuation of revocation or suspension until such*
77 *requirements are satisfied, unless stayed by court order in accord-*
78 *ance with Rule 7:8-2 of the N. J. Court Rules, 1969, or R. S.*
79 *39:5-22. A fee, not to exceed \$30.00, shall be payable to the director*
80 *from every person required to satisfy the requirements of a pro-*
81 *gram of alcohol education or rehabilitation under the provisions*
82 *of this section.*

83 (c) *Upon conviction of a violation of this section, the court shall*
84 *collect forthwith the New Jersey drivers' license or licenses of the*
85 *person so convicted and forward such license or licenses to the*
86 *Director of the Division of Motor Vehicles. In the event that*
87 *a person convicted under this section is the holder of any out-of-*
88 *state driver's license, the court shall not collect the license but*
89 *shall notify forthwith the director who shall, in turn, notify appro-*
90 *priate officials in the licensing jurisdiction. The court shall,*
91 *however, revoke the nonresident's driving privilege to operate a*
92 *motor vehicle in this State in accordance with this section.*

93 (d) *The Director of the Division of Motor Vehicles shall pro-*
94 *mulgate administrative rules and regulations in order to effectuate*
95 *the purposes of this act.*

1 2. Section 30 of P. L. 1951, c. 23 (C. 39:4-50.1) is amended to
2 read as follows:

3 30. In any prosecution for a violation of R. S. 39:4-50 relating
4 to driving a vehicle while under the influence of intoxicating liquor,
5 the amount of alcohol in the defendant's blood at the time alleged
6 as shown by chemical analysis of the defendant's blood, urine,
7 breath, or other bodily substance shall give rise to the following
8 presumptions:

9 (1) If there was at that time 0.05% or less by weight of alcohol
10 in the defendant's blood, it shall be presumed that the defendant
11 was not under the influence of intoxicating liquor;

12 (2) If there was at that time in excess of 0.05% but less than
13 ~~0.15%~~ 0.10% by weight of alcohol in the defendant's blood, such
14 fact shall not give rise to any presumption that the defendant was
15 or was not under the influence of intoxicating liquor, but such fact
16 may be considered with other competent evidence in determining
17 the guilt or innocence of the defendant;

18 (3) If there was at that time ~~0.15%~~ 0.10% or more by weight
19 of alcohol in the defendant's blood, it shall be presumed that the
20 defendant was under the influence of intoxicating liquor.

21 The foregoing provisions of this section shall not be construed
22 as requiring that evidence of the amount of alcohol in the defend-
23 ant's blood must be presented, nor shall they be construed as
24 limiting the introduction of any other competent evidence bearing
25 upon the question whether or not the defendant was under the
26 influence of intoxicating liquor.

1 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 taking
8 of samples is made in accordance with the provisions of this act
9 and at the request of a police officer who has reasonable grounds
10 to believe that such person has been operating a motor vehicle in
11 violation of the provisions of R. S. 39:4-50.

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

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

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

23 (e) No chemical test, as provided in this section, or specimen
24 necessary thereto, may be made or taken forcibly and against
25 physical resistance thereto by the defendant, *the police officer shall,*
26 *however, inform the person arrested of the consequences of re-*
27 *fusing to submit to such test under section 4 of P. L. 1966, c. 142*

28 (C. 39:4-50.4). A standard statement, prepared by the director,
29 shall be read by the police officer to the person under arrest.

1 4. Section 4 of P. L. 1966, c. 142 (C. 39:4-50.4) is amended to
2 read as follows:

3 4. (a) If an operator of a motor vehicle, after being arrested
4 for a violation of R. S. 39:4-50, shall refuse to submit to the chemi-
5 cal test provided for in section 2 of this act when requested to do
6 so, the arresting officer shall cause to be delivered to the Director
7 of Motor Vehicles his sworn report of such refusal in which report
8 he shall specify the circumstances surrounding the arrest and the
9 grounds upon which his belief was based that the person was driv-
10 ing or operating a motor vehicle in violation of the provisions of
11 R. S. 39:4-50. Upon receipt of such a report, if the director shall
12 find that the arresting officer acted in accordance with the provi-
13 sions of this act, he shall, upon written notice, suspend the person's
14 license or permit to drive or operate a motor vehicle, or if such
15 person is a nonresident, the privilege to drive or operate a motor
16 vehicle within this State, unless such person, within 10 days of the
17 date of such notice, shall have requested, in writing, a hearing be-
18 fore the director. Upon such request, the director shall hold a
19 hearing on the issues of whether the arresting officer had reason-
20 able grounds to believe the person had been driving or was in
21 actual physical control of a motor vehicle on the public highways
22 or quasi-public areas of this State while under the influence of in-
23 toxicating liquor, whether the person was placed under arrest, and
24 whether he refused to submit to the test upon request of the officer.
25 If no such hearing is requested within the time allowed, or if after
26 a hearing the director shall find against the person on such issues,
27 he shall revoke such person's license or permit to drive or operate
28 a motor vehicle, or the privilege to drive or operate a motor ve-
29 hicle within this State if such person is a nonresident for a period
30 [of 6 months] as prescribed in paragraph (b) to be calculated
31 from the date of the director's determination, or if such person
32 is a resident without a license or permit to drive or operate a motor
33 vehicle in this State, the director shall deny to such person the
34 issuance of any such license or permit [within 6 months] during
35 the period prescribed from the date of the director's determination.
36 Such revocation shall be independent of any revocation imposed
37 by virtue of a conviction under the provisions of R. S. 39:4-50.

38 (b) Any revocation of the right to operate a motor vehicle over
39 the highways of this State for refusing to submit to a chemical
40 test shall be for *[6 months]* *90 days* unless the refusal was

41 *in connection with a subsequent offense of this section, in which*
42 *case, the revocation period shall be for 1 year. *In addition to*
43 *any other requirements provided by law, a person whose operator's*
44 *license is revoked for refusing to submit to a chemical test must*
45 *satisfy the requirements of a program of alcohol education or*
46 *rehabilitation pursuant to the provisions of R. S. 39:4-50.**

1 5. R. S. 39:4-51 is amended to read as follows:

2 39:4-51. A person who has been convicted of violating section
3 39:4-50 of this Title, and in pursuance thereof has been imprisoned
4 in a county jail or workhouse in the county in which the offense
5 was committed, shall not, after commitment, be released therefrom
6 until the term of imprisonment imposed has been served. *A person*
7 *imprisoned in the county jail or workhouse may in the discretion*
8 *of the court, be released on a work release program.*

9 No warden or other officer having custody of the county jail or
10 workhouse shall release therefrom a person so committed, *unless*
11 *the person has been released by the court on a work release pro-*
12 *gram, until the sentence has been served. A person sentenced to*
13 *an inpatient rehabilitation program may upon petition by the treat-*
14 *ing agency be released, by the court, to an outpatient rehabilitation*
15 *program for the duration of the original sentence.*

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

19 *The director shall adopt such rules and regulations to effectuate*
20 *the provisions of this section as he shall deem necessary.*

1 6. (New section) (a) Any person who, on the effective date of
2 this amendatory and supplementary act, has served at least 6
3 months of a driver license suspension imposed by reason of an
4 alcohol-related traffic offense, may apply to the Director of the
5 Division of Motor Vehicles for restoration of his license to operate
6 a motor vehicle which application may be granted upon the con-
7 dition that the person agrees to pursue and satisfy the requirements
8 of a program of alcohol education or rehabilitation approved by
9 the director.

10 (b) Any person who, on the effective date of this amendatory
11 and supplementary act, has served at least 30 days of a sentence
12 of imprisonment for an alcohol-related traffic offense, may apply
13 to the court for release and cancellation of any further period of
14 imprisonment, which application may be granted upon the con-
15 dition that the person agrees to pursue and satisfy the require-
16 ments of a program of alcohol education or rehabilitation approved
17 by the director.

18 (c) *Any person who agrees to satisfy the requirements of an*
19 *approved alcohol education or rehabilitation program and who*
20 *fails to satisfactorily complete said program shall be suspended*
21 *forthwith until said program is completed.*

22 (d) *A fee, not to exceed \$30.00, shall be payable to the division*
23 *from every person required to satisfy the requirements of a pro-*
24 *gram of alcohol education or rehabilitation under the provisions*
25 *of this section.*

1 7. Sections 2 and 3 of P. L. 1966, c. 141 (C. 39:4-50.6 and
2 39:4-50.7) are repealed.

1 8. Section 6 of this act shall take effect immediately; the re-
2 mainder of this act shall take effect 90 days after enactment.

ASSEMBLY AMENDMENTS TO
SENATE, No. 1423
[ASSEMBLY REPRINT]

—◆—
STATE OF NEW JERSEY
—◆—

ADOPTED NOVEMBER 9, 1976

Amend page 2, section 1, line 42, after "county jail", insert a comma.

Amend page 6, section 6, line 1, omit "on", insert "prior to".

Amend page 6, section 6, line 2, omit "has served", insert "had been convicted of an alcohol-related offense, may, after service of".

Amend page 6, section 6, lines 3-4, omit "an alcohol-related traffic offense, may", insert "such conviction,".

Amend page 6, section 6, line 10, omit "on", insert "prior to".

Amend page 6, section 6, line 11, omit "has served", insert "had been convicted of an alcohol-related offense, may, after service of,".

Amend page 6, section 6, line 12, omit "for an alcohol-related traffic offense, may", insert "imposed therefor,".

[SECOND ASSEMBLY REPRINT]

SENATE, No. 1423

with Assembly committee amendments adopted September 27, 1976 and
Assembly amendments adopted November 9, 1976

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators MARESSA and VREELAND

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning motor vehicles and traffic regulation with respect to operation of a motor vehicle while under the influence of intoxicating liquor or certain drugs and revising parts of the statutory law.

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

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

2 39:4-50. (a) A person who operates a motor vehicle while under
3 the influence of intoxicating liquor, narcotic, hallucinogenic or
4 habit-producing drug, or permits another person who is under the
5 influence of intoxicating liquor, narcotic, hallucinogenic or habit-
6 producing drug to operate a motor vehicle owned by him or in his
7 custody or control, shall be subject, for the first offense, to a fine
8 of not less than \$200.00 nor more than **[\$500.00]** \$400.00 or im-
9 prisonment for a term of not **[less than 30 days nor more than**
10 **3 months]** *more than 30 days* or both, in the discretion of the
11 **[magistrate]** court, and shall forthwith forfeit his right to operate
12 a motor vehicle over the highways of this State for a period of
13 **[2 years from the date of his conviction or until he reaches the**
14 **age of 21 years, whichever is the greater period of time, in the**
15 **case of a person who at the time of his conviction is under the age**
16 **of 21 years.]** *not less than* ***[2 months]* *60 days*** *nor more than*
17 ***[6 months]* *180 days***. Except as hereinafter provided, for a
18 **[subsequent]** *second* violation, he shall be *subject to a fine of not*
19 *less than \$500.00 nor more than \$1,000.00, [imprisoned]* or im-
20 *prisonment for a term of [3 months] no more than 90 days, or*
21 *both, and shall forfeit his right to operate a motor vehicle over*

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

22 the highways of this State for a period of [10 years] *not less*
23 *than 1 year nor more than 3 years* [from the date of his] *upon*
24 *conviction, and, after the expiration of said period, he may make*
25 *application to the Director of the Division of Motor Vehicles for*
26 *a license to operate a motor vehicle, which application may be*
27 *granted at the discretion of the director, consistent with subsec-*
28 *tion b. of this section. Except as hereinafter provided, for a third*
29 *or subsequent violation, he shall be subject to a fine of \$1,000.00,*
30 *or imprisonment for a term of not less than 30 days nor more*
31 *than 180 days, or both, in the discretion of the court, and shall*
32 *forfeit his right to operate a motor vehicle over the highways of*
32A *this State for a period of 5 years upon conviction, and, after*
32B *the expiration of said period, he may make application to the*
33 *Director of the Division of Motor Vehicles for a license to operate*
34 *a motor vehicle, which application may be granted at the discretion*
35 *of the director, consistent with subsection (b) of this section. If the*
36 *driving privilege of any person is under revocation or suspension*
37 *for a violation of any provision of this Title at the time of any*
38 *conviction for a violation of this section, the revocation or suspen-*
39 *sion period imposed shall commence as of the date of termination*
40 *of the existing revocation or suspension period. A [magistrate*
41 *who] court that imposes a term of imprisonment under this section*
42 *may sentence the person so convicted [either] to the county jail**, ***
43 *[or] to the workhouse of the county wherein the offense was*
44 *committed, or to an in-patient rehabilitation program approved*
45 *by the Director of the Division of Motor Vehicles.*

46 A person who has been convicted of a previous violation of this
47 section need not be charged as a second *or subsequent* offender in
48 the complaint made against him in order to render him liable to
49 the punishment imposed by this section on a second *or subsequent*
50 offender, but if the second offense occurs [10] 15 or more years
51 after the [previous] *first* conviction the court [may,] *shall* [in its
52 discretion, suspend the sentence of imprisonment, impose a fine
53 of not less than \$300.00 nor more than \$1,000.00 and place the
54 person on probation] *treat the conviction as a first offense, and*
55 *if a third or subsequent offense occurs 10 or more years after the*
56 *first conviction, the court shall treat the conviction as a second*
57 *offense.*

58 (b) [A person who operates a motor vehicle while his ability to
59 operate such motor vehicle is impaired by the consumption of
60 alcohol shall be subject, for a first offense, to a fine of not less
61 than \$50.00 nor more than \$100.00 and shall forthwith forfeit his
62 right to operate a motor vehicle over the highways of this State

63 for a period of 6 months from the date of his conviction. For a
64 subsequent violation, he shall be fined not less than \$100.00 nor
65 more than \$300.00 and shall forthwith forfeit his right to operate
66 a motor vehicle over the highways of this State for a period of
67 2 years from the date of his conviction. After the expiration of said
68 period of forfeiture, he may make application to the Director of
69 the Division of Motor Vehicles for a license to operate a motor
70 vehicle which application may be granted at the discretion of the
71 director. **¶** *In addition to any other requirements provided by law,*
72 *a person convicted under this section must satisfy the requirements*
73 *of a program of alcohol education or rehabilitation approved by*
74 *the Director of the Division of Motor Vehicles. Failure to satisfy*
75 *such requirements shall result in a driver license revocation or*
76 *suspension or continuation of revocation or suspension until such*
77 *requirements are satisfied, unless stayed by court order in accord-*
78 *ance with Rule 7:8-2 of the N. J. Court Rules, 1969, or R. S.*
79 *39:5-22. A fee, not to exceed \$30.00, shall be payable to the director*
80 *from every person required to satisfy the requirements of a pro-*
81 *gram of alcohol education or rehabilitation under the provisions*
82 *of this section.*

83 (c) *Upon conviction of a violation of this section, the court shall*
84 *collect forthwith the New Jersey drivers' license or licenses of the*
85 *person so convicted and forward such license or licenses to the*
86 *Director of the Division of Motor Vehicles. In the event that*
87 *a person convicted under this section is the holder of any out-of-*
88 *state driver's license, the court shall not collect the license but*
89 *shall notify forthwith the director who shall, in turn, notify appro-*
90 *priate officials in the licensing jurisdiction. The court shall,*
91 *however, revoke the nonresident's driving privilege to operate a*
92 *motor vehicle in this State in accordance with this section.*

93 (d) *The Director of the Division of Motor Vehicles shall pro-*
94 *mulgate administrative rules and regulations in order to effectuate*
95 *the purposes of this act.*

1 2. Section 30 of P. L. 1951, c. 23 (C. 39:4-50.1) is amended to
2 read as follows:

3 30. In any prosecution for a violation of R. S. 39:4-50 relating
4 to driving a vehicle while under the influence of intoxicating liquor,
5 the amount of alcohol in the defendant's blood at the time alleged
6 as shown by chemical analysis of the defendant's blood, urine,
7 breath, or other bodily substance shall give rise to the following
8 presumptions:

9 (1) If there was at that time 0.05% or less by weight of alcohol
10 in the defendant's blood, it shall be presumed that the defendant
11 was not under the influence of intoxicating liquor;

12 (2) If there was at that time in excess of 0.05% but less than
13 ~~0.15%~~ 0.10% by weight of alcohol in the defendant's blood, such
14 fact shall not give rise to any presumption that the defendant was
15 or was not under the influence of intoxicating liquor, but such fact
16 may be considered with other competent evidence in determining
17 the guilt or innocence of the defendant;

18 (3) If there was at that time ~~0.15%~~ 0.10% or more by weight
19 of alcohol in the defendant's blood, it shall be presumed that the
20 defendant was under the influence of intoxicating liquor.

21 The foregoing provisions of this section shall not be construed
22 as requiring that evidence of the amount of alcohol in the defend-
23 ant's blood must be presented, nor shall they be construed as
24 limiting the introduction of any other competent evidence bearing
25 upon the question whether or not the defendant was under the
26 influence of intoxicating liquor.

1 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 taking
8 of samples is made in accordance with the provisions of this act
9 and at the request of a police officer who has reasonable grounds
10 to believe that such person has been operating a motor vehicle in
11 violation of the provisions of R. S. 39:4-50.

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

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

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

23 (e) No chemical test, as provided in this section, or specimen
24 necessary thereto, may be made or taken forcibly and against

25 physical resistance thereto by the defendant, *the police officer shall,*
26 *however, inform the person arrested of the consequences of re-*
27 *fusing to submit to such test under section 4 of P. L. 1966, c. 142*
28 *(C. 39:4-50.4). A standard statement, prepared by the director,*
29 *shall be read by the police officer to the person under arrest.*

1 4. Section 4 of P. L. 1966, c. 142 (C. 39:4-50.4) is amended to
2 read as follows:

3 4. (a) If an operator of a motor vehicle, after being arrested
4 for a violation of R. S. 39:4-50, shall refuse to submit to the chemi-
5 cal test provided for in section 2 of this act when requested to do
6 so, the arresting officer shall cause to be delivered to the Director
7 of Motor Vehicles his sworn report of such refusal in which report
8 he shall specify the circumstances surrounding the arrest and the
9 grounds upon which his belief was based that the person was driv-
10 ing or operating a motor vehicle in violation of the provisions of
11 R. S. 39:4-50. Upon receipt of such a report, if the director shall
12 find that the arresting officer acted in accordance with the provi-
13 sions of this act, he shall, upon written notice, suspend the person's
14 license or permit to drive or operate a motor vehicle, or if such
15 person is a nonresident, the privilege to drive or operate a motor
16 vehicle within this State, unless such person, within 10 days of the
17 date of such notice, shall have requested, in writing, a hearing be-
18 fore the director. Upon such request, the director shall hold a
19 hearing on the issues of whether the arresting officer had reason-
20 able grounds to believe the person had been driving or was in
21 actual physical control of a motor vehicle on the public highways
22 or quasi-public areas of this State while under the influence of in-
23 toxicating liquor, whether the person was placed under arrest, and
24 whether he refused to submit to the test upon request of the officer.
25 If no such hearing is requested within the time allowed, or if after
26 a hearing the director shall find against the person on such issues,
27 he shall revoke such person's license or permit to drive or operate
28 a motor vehicle, or the privilege to drive or operate a motor ve-
29 hicle within this State if such person is a nonresident for a period
30 **[of 6 months]** *as prescribed in paragraph (b) to be calculated*
31 *from the date of the director's determination, or if such person*
32 *is a resident without a license or permit to drive or operate a motor*
33 *vehicle in this State, the director shall deny to such person the*
34 *issuance of any such license or permit **[within 6 months]** during*
35 *the period prescribed from the date of the director's determination.*
36 Such revocation shall be independent of any revocation imposed
37 by virtue of a conviction under the provisions of R. S. 39:4-50.

38 (b) Any revocation of the right to operate a motor vehicle over
 39 the highways of this State for refusing to submit to a chemical
 40 test shall be for ~~*[6 months]*~~ *90 days* unless the refusal was
 41 in connection with a subsequent offense of this section, in which
 42 case, the revocation period shall be for 1 year. *In addition to
 43 any other requirements provided by law, a person whose operator's
 44 license is revoked for refusing to submit to a chemical test must
 45 satisfy the requirements of a program of alcohol education or
 46 rehabilitation pursuant to the provisions of R. S. 39:4-50.*

1 5. R. S. 39:4-51 is amended to read as follows:

2 39:4-51. A person who has been convicted of violating section
 3 39:4-50 of this Title, and in pursuance thereof has been imprisoned
 4 in a county jail or workhouse in the county in which the offense
 5 was committed, shall not, after commitment, be released therefrom
 6 until the term of imprisonment imposed has been served. *A person
 7 imprisoned in the county jail or workhouse may in the discretion
 8 of the court, be released on a work release program.*

9 No warden or other officer having custody of the county jail or
 10 workhouse shall release therefrom a person so committed, *unless
 11 the person has been released by the court on a work release pro-
 12 gram, until the sentence has been served. A person sentenced to
 13 an inpatient rehabilitation program may upon petition by the treat-
 14 ing agency be released, by the court, to an outpatient rehabilitation
 15 program for the duration of the original sentence.*

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

19 *The director shall adopt such rules and regulations to effectuate
 20 the provisions of this section as he shall deem necessary.*

1 6. (New section) (a) Any person who, ~~**[on]**~~ ***prior to*** the
 2 effective date of this amendatory and supplementary act, ~~**[has
 3 served]**~~ ***had been convicted of an alcohol-related offense, may,
 4 after service of*** at least 6 months of a driver license suspension
 5 imposed by reason of ~~**[an alcohol-related traffic offense, may]**~~
 6 ***such conviction*** apply to the Director of the Division of Motor
 7 Vehicles for restoration of his license to operate a motor vehicle
 8 which application may be granted upon the condition that the person
 9 agrees to pursue and satisfy the requirements of a program of
 10 alcohol education or rehabilitation approved by the director.

11 (b) Any person who, ~~**[on]**~~ ***prior to*** the effective date of
 12 this amendatory and supplementary act, ~~**[has served]**~~ ***had
 13 been convicted of an alcohol-related offense, may, after service of,***

14 at least 30 days of a sentence of imprisonment **[for an alcohol-
15 related traffic offense, may]** ***imposed therefor*** apply to
16 the court for release and cancellation of any further period of
17 imprisonment, which application may be granted upon the con-
18 dition that the person agrees to pursue and satisfy the require-
19 ments of a program of alcohol education or rehabilitation approved
20 by the director.

20A (c) *Any person who agrees to satisfy the requirements of an*
20B *approved alcohol education or rehabilitation program and who*
20C *fails to satisfactorily complete said program shall be suspended*
21 *forthwith until said program is completed.*

22 (d) *A fee, not to exceed \$30.00, shall be payable to the division*
23 *from every person required to satisfy the requirements of a pro-*
24 *gram of alcohol education or rehabilitation under the provisions*
25 *of this section.*

1 7. Sections 2 and 3 of P. L. 1966, c. 141 (C. 39:4-50.6 and
2 39:4-50.7) are repealed.

1 8. Section 6 of this act shall take effect immediately; the re-
2 mainder of this act shall take effect 90 days after enactment.

ASSEMBLY AMENDMENTS TO
SENATE, No. 1423
[SECOND ASSEMBLY REPRINT]

—♦—
STATE OF NEW JERSEY
—♦—

ADOPTED JANUARY 31, 1977

Amend page 7, section 6, line 25, insert new section 7 as follows:

“7. In any case pending on or initiated after the effective date of this act involving an offense committed prior to such date, the court, with the consent of the defendant, shall impose sentence under the provisions of this act. If the defendant does not consent to the imposition of sentence under the provisions of the act, the court shall impose sentence under the law which was in effect at the time of the commission of the offense.”

Amend page 7, section 7, line 1, omit “7.”, insert “8.”

Amend page 7, section 8, line 1, omit “8.”, insert “9.”

[THIRD ASSEMBLY REPRINT]

SENATE, No. 1423

with Assembly committee amendments adopted September 27, 1976 and
Assembly amendments adopted November 9 1976 and
Assembly amendments adopted January 31, 1977

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators MARESSA and VREELAND

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning motor vehicles and traffic regulation with respect to operation of a motor vehicle while under the influence of intoxicating liquor or certain drugs and revising parts of the statutory law.

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

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

2 39:4-50. (a) A person who operates a motor vehicle while under
3 the influence of intoxicating liquor, narcotic, hallucinogenic or
4 habit-producing drug, or permits another person who is under the
5 influence of intoxicating liquor, narcotic, hallucinogenic or habit-
6 producing drug to operate a motor vehicle owned by him or in his
7 custody or control, shall be subject, for the first offense, to a fine
8 of not less than \$200.00 nor more than **[\$500.00]** \$400.00 or im-
9 prisonment for a term of not **[less than 30 days nor more than**
10 **3 months]** *more than 30 days* or both, in the discretion of the
11 **[magistrate]** court, and shall forthwith forfeit his right to operate
12 a motor vehicle over the highways of this State for a period of
13 **[2 years from the date of his conviction or until he reaches the**
14 **age of 21, years, whichever is the greater period of time, in the**
15 **case of a person who at the time of his conviction is under the age**
16 **of 21 years.]** *not less than ***[2 months]*** *60 days* nor more than*
17 ****[6 months]*** *180 days**. Except as hereinafter provided, for a
18 **[subsequent]** *second* violation, he shall be *subject to a fine of not*
19 *less than \$500.00 nor more than \$1,000.00, **[imprisoned]** or im-*
20 *prisonment for a term of **[3 months]** no more than 90 days, or*
21 *both, and shall forfeit his right to operate a motor vehicle over*

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

22 the highways of this State for a period of [10 years] *not less*
23 *than 1 year nor more than 3 years* [from the date of his] *upon*
24 *conviction, and, after the expiration of said period, he may make*
25 *application to the Director of the Division of Motor Vehicles for*
26 *a license to operate a motor vehicle, which application may be*
27 *granted at the discretion of the director, consistent with subsec-*
28 *tion b. of this section. Except as hereinafter provided, for a third*
29 *or subsequent violation, he shall be subject to a fine of \$1,000.00,*
30 *or imprisonment for a term of not less than 30 days nor more*
31 *than 180 days, or both, in the discretion of the court, and shall*
32 *forfeit his right to operate a motor vehicle over the highways of*
32A *this State for a period of 5 years upon conviction, and, after*
32B *the expiration of said period, he may make application to the*
33 *Director of the Division of Motor Vehicles for a license to operate*
34 *a motor vehicle, which application may be granted at the discretion*
35 *of the director, consistent with subsection (b) of this section. If the*
36 *driving privilege of any person is under revocation or suspension*
37 *for a violation of any provision of this Title at the time of any*
38 *conviction for a violation of this section, the revocation or suspen-*
39 *sion period imposed shall commence as of the date of termination*
40 *of the existing revocation or suspension period. A [magistrate*
41 *who] court that imposes a term of imprisonment under this section*
42 *may sentence the person so convicted [either] to the county jail**, ***
43 *[or] to the workhouse of the county wherein the offense was*
44 *committed, or to an in-patient rehabilitation program approved*
45 *by the Director of the Division of Motor Vehicles.*

46 A person who has been convicted of a previous violation of this
47 section need not be charged as a second *or subsequent* offender in
48 the complaint made against him in order to render him liable to
49 the punishment imposed by this section on a second *or subsequent*
50 offender, but if the second offense occurs [10] 15 or more years
51 after the [previous] *first* conviction the court [may,] *shall* [in its
52 discretion, suspend the sentence of imprisonment, impose a fine
53 of not less than \$300.00 nor more than \$1,000.00 and place the
54 person on probation] *treat the conviction as a first offense, and*
55 *if a third or subsequent offense occurs 10 or more years after the*
56 *first conviction, the court shall treat the conviction as a second*
57 *offense.*

58 (b) [A person who operates a motor vehicle while his ability to
59 operate such motor vehicle is impaired by the consumption of
60 alcohol shall be subject, for a first offense, to a fine of not less
61 than \$50.00 nor more than \$100.00 and shall forthwith forfeit his
62 right to operate a motor vehicle over the highways of this State

63 for a period of 6 months from the date of his conviction. For a
64 subsequent violation, he shall be fined not less than \$100.00 nor
65 more than \$300.00 and shall forthwith forfeit his right to operate
66 a motor vehicle over the highways of this State for a period of
67 2 years from the date of his conviction. After the expiration of said
68 period of forfeiture, he may make application to the Director of
69 the Division of Motor Vehicles for a license to operate a motor
70 vehicle which application may be granted at the discretion of the
71 director. **】** *In addition to any other requirements provided by law,*
72 *a person convicted under this section must satisfy the requirements*
73 *of a program of alcohol education or rehabilitation approved by*
74 *the Director of the Division of Motor Vehicles. Failure to satisfy*
75 *such requirements shall result in a driver license revocation or*
76 *suspension or continuation of revocation or suspension until such*
77 *requirements are satisfied, unless stayed by court order in accord-*
78 *ance with Rule 7:8-2 of the N. J. Court Rules, 1969, or R. S.*
79 *39:5-22. A fee, not to exceed \$30.00, shall be payable to the director*
80 *from every person required to satisfy the requirements of a pro-*
81 *gram of alcohol education or rehabilitation under the provisions*
82 *of this section.*

83 *(c) Upon conviction of a violation of this section, the court shall*
84 *collect forthwith the New Jersey drivers' license or licenses of the*
85 *person so convicted and forward such license or licenses to the*
86 *Director of the Division of Motor Vehicles. In the event that*
87 *a person convicted under this section is the holder of any out-of-*
88 *state driver's license, the court shall not collect the license but*
89 *shall notify forthwith the director who shall, in turn, notify appro-*
90 *priate officials in the licensing jurisdiction. The court shall,*
91 *however, revoke the nonresident's driving privilege to operate a*
92 *motor vehicle in this State in accordance with this section.*

93 *(d) The Director of the Division of Motor Vehicles shall pro-*
94 *mulgate administrative rules and regulations in order to effectuate*
95 *the purposes of this act.*

1 2. Section 30 of P. L. 1951, c. 23 (C. 39:4-50.1) is amended to
2 read as follows:

3 30. In any prosecution for a violation of R. S. 39:4-50 relating
4 to driving a vehicle while under the influence of intoxicating liquor,
5 the amount of alcohol in the defendant's blood at the time alleged
6 as shown by chemical analysis of the defendant's blood, urine,
7 breath, or other bodily substance shall give rise to the following
8 presumptions:

9 (1) If there was at that time 0.05% or less by weight of alcohol
10 in the defendant's blood, it shall be presumed that the defendant
11 was not under the influence of intoxicating liquor;

12 (2) If there was at that time in excess of 0.05% but less than
13 **[0.15%]** 0.10% by weight of alcohol in the defendant's blood, such
14 fact shall not give rise to any presumption that the defendant was
15 or was not under the influence of intoxicating liquor, but such fact
16 may be considered with other competent evidence in determining
17 the guilt or innocence of the defendant;

18 (3) If there was at that time **[0.15%]** 0.10% or more by weight
19 of alcohol in the defendant's blood, it shall be presumed that the
20 defendant was under the influence of intoxicating liquor.

21 The foregoing provisions of this section shall not be construed
22 as requiring that evidence of the amount of alcohol in the defend-
23 ant's blood must be presented, nor shall they be construed as
24 limiting the introduction of any other competent evidence bearing
25 upon the question whether or not the defendant was under the
26 influence of intoxicating liquor.

1 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 taking
8 of samples is made in accordance with the provisions of this act
9 and at the request of a police officer who has reasonable grounds
10 to believe that such person has been operating a motor vehicle in
11 violation of the provisions of R. S. 39:4-50.

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

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

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

23 (e) No chemical test, as provided in this section, or specimen
24 necessary thereto, may be made or taken forcibly and against

25 physical resistance thereto by the defendant, *the police officer shall,*
26 *however, inform the person arrested of the consequences of re-*
27 *fusing to submit to such test under section 4 of P. L. 1966, c. 142*
28 *(C. 39:4-50.4). A standard statement, prepared by the director,*
29 *shall be read by the police officer to the person under arrest.*

1 4. Section 4 of P. L. 1966, c. 142 (C. 39:4-50.4) is amended to
2 read as follows:

3 4. (a) If an operator of a motor vehicle, after being arrested
4 for a violation of R. S. 39:4-50, shall refuse to submit to the chemi-
5 cal test provided for in section 2 of this act when requested to do
6 so, the arresting officer shall cause to be delivered to the Director
7 of Motor Vehicles his sworn report of such refusal in which report
8 he shall specify the circumstances surrounding the arrest and the
9 grounds upon which his belief was based that the person was driv-
10 ing or operating a motor vehicle in violation of the provisions of
11 R. S. 39:4-50. Upon receipt of such a report, if the director shall
12 find that the arresting officer acted in accordance with the provi-
13 sions of this act, he shall, upon written notice, suspend the person's
14 license or permit to drive or operate a motor vehicle, or if such
15 person is a nonresident, the privilege to drive or operate a motor
16 vehicle within this State, unless such person, within 10 days of the
17 date of such notice, shall have requested, in writing, a hearing be-
18 fore the director. Upon such request, the director shall hold a
19 hearing on the issues of whether the arresting officer had reason-
20 able grounds to believe the person had been driving or was in
21 actual physical control of a motor vehicle on the public highways
22 or quasi-public areas of this State while under the influence of in-
23 toxicating liquor, whether the person was placed under arrest, and
24 whether he refused to submit to the test upon request of the officer.
25 If no such hearing is requested within the time allowed, or if after
26 a hearing the director shall find against the person on such issues,
27 he shall revoke such person's license or permit to drive or operate
28 a motor vehicle, or the privilege to drive or operate a motor ve-
29 hicle within this State if such person is a nonresident for a period
30 **[of 6 months]** *as prescribed in paragraph (b) to be calculated*
31 *from the date of the director's determination, or if such person*
32 *is a resident without a license or permit to drive or operate a motor*
33 *vehicle in this State, the director shall deny to such person the*
34 *issuance of any such license or permit **[within 6 months]** during*
35 *the period prescribed from the date of the director's determination.*
36 Such revocation shall be independent of any revocation imposed
37 by virtue of a conviction under the provisions of R. S. 39:4-50.

38 (b) *Any revocation of the right to operate a motor vehicle over*
 39 *the highways of this State for refusing to submit to a chemical*
 40 *test shall be for ***[6 months]*** *90 days* unless the refusal was*
 41 *in connection with a subsequent offense of this section, in which*
 42 *case, the revocation period shall be for 1 year. *In addition to*
 43 *any other requirements provided by law, a person whose operator's*
 44 *license is revoked for refusing to submit to a chemical test must*
 45 *satisfy the requirements of a program of alcohol education or*
 46 *rehabilitation pursuant to the provisions of R. S. 39:4-50.**

1 5. R. S. 39:4-51 is amended to read as follows:

2 39:4-51. A person who has been convicted of violating section
 3 39:4-50 of this Title, and in pursuance thereof has been imprisoned
 4 in a county jail or workhouse in the county in which the offense
 5 was committed, shall not, after commitment, be released therefrom
 6 until the term of imprisonment imposed has been served. *A person*
 7 *imprisoned in the county jail or workhouse may in the discretion*
 8 *of the court, be released on a work release program.*

9 No warden or other officer having custody of the county jail or
 10 workhouse shall release therefrom a person so committed, *unless*
 11 *the person has been released by the court on a work release pro-*
 12 *gram, until the sentence has been served. A person sentenced to*
 13 *an inpatient rehabilitation program may upon petition by the treat-*
 14 *ing agency be released, by the court, to an outpatient rehabilitation*
 15 *program for the duration of the original sentence.*

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

19 *The director shall adopt such rules and regulations to effectuate*
 20 *the provisions of this section as he shall deem necessary.*

1 6. (New section) (a) Any person who, ****[on]**** ***prior to*** the
 2 effective date of this amendatory and supplementary act, ****[has**
 3 **served]**** ***had been convicted of an alcohol-related offense, may,*
 4 *after service of*** at least 6 months of a driver license suspension
 5 imposed by reason of ****[an alcohol-related traffic offense, may]****
 6 ***such conviction*** apply to the Director of the Division of Motor
 7 Vehicles for restoration of his license to operate a motor vehicle
 8 which application may be granted upon the condition that the person
 9 agrees to pursue and satisfy the requirements of a program of
 10 alcohol education or rehabilitation approved by the director.

11 (b) Any person who, ****[on]**** ***prior to*** the effective date of
 12 this amendatory and supplementary act, ****[has served]**** ***had*
 13 *been convicted of an alcohol-related offense, may, after service of,***

14 at least 30 days of a sentence of imprisonment ****[for an alcohol-**
 15 **related traffic offense, may]******** ***imposed therefor*** apply to
 16 the court for release and cancellation of any further period of
 17 imprisonment, which application may be granted upon the con-
 18 dition that the person agrees to pursue and satisfy the require-
 19 ments of a program of alcohol education or rehabilitation approved
 20 by the director.

20A (c) *Any person who agrees to satisfy the requirements of an*
 20B *approved alcohol education or rehabilitation program and who*
 20C *fails to satisfactorily complete said program shall be suspended*
 21 *forthwith until said program is completed.*

22 (d) *A fee, not to exceed \$30.00, shall be payable to the division*
 23 *from every person required to satisfy the requirements of a pro-*
 24 *gram of alcohol education or rehabilitation under the provisions*
 25 *of this section.*

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

1 *****[7.]***** *****8.***** Sections 2 and 3 of P. L. 1966, c. 141
 2 (C. 39:4-50.6 and 39:4-50.7) are repealed.

1 *****[8.]***** *****9.***** Section 6 of this act shall take effect immedi-
 2 ately; the remainder of this act shall take effect 90 days after
 3 enactment.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FEBRUARY 24, 1977

FOR FURTHER INFORMATION

ED RAMSEY

A series of bills which will have a major impact on the State's more than 4.5 million motorists was signed into law today by Governor Brendan Byrne.

The new laws revise the Driver Manual, require licensed drivers to take eye tests every ten years, allow for the erasing of points for violation-free driving and establish a single standard for the drinking and driving offense.

"These laws will update the State's motor vehicle regulations and will provide a basis for improving safety on our highways," said Byrne.

The bills were based on recommendations made to the Governor and Legislature by the Motor Vehicle Study Commission headed by Barry H. Evenchick, a Newark lawyer. The seventeen member commission held numerous working sessions and three public hearings before issuing a report in September, 1975 with recommendations designed to deal with the problems of highway safety and improved effectiveness of the Division of Motor Vehicles.

The bills, (S-1416, S-1417, S-1419, S-1420, S-1422, S-1423), all sponsored by Senator Joseph A. Maressa, D-Camden, provide that:

- All driver license applicants with no prior driving experience will, after successfully completing the written and road test, be issued a probationary license for the first two years. The license document will look the same as all other New Jersey licenses, but during the two year probationary period the new driver's accident and violation records will be carefully

monitored and remedial action, when indicated, will be instituted before illegal or dangerous driving habits become ingrained. The age for a driving permit will be lowered to 16 for use in driver education courses. At age 16 1/2, the new driver may use the permit for practice driving between sunrise and sunset when accompanied by a licensed driver with at least three years experience. At age 17, a permit holder may drive anytime when accompanied by a licensed driver. A permit holder may take the test for the initial probationary license at age 17.

- A new Driver Manual will be issued which will have, as its primary objectives, information designed to raise the level of safe driving knowledge among license applicants. The new manual will be improved as to "readability," and will be a summary of the New Jersey Motor Vehicle Laws as well as a practical guide for safe and efficient driving practices.

- Drivers will be required to submit to a vision test every ten years to see if corrective glasses are needed or currently used eyeglasses are adequate. A medical/vision advisory panel will devise better licensing standards in this area and assist the Division in adjudicating cases concerning drivers who suffer from identified medical or vision problems. The panel will consist of medical doctors and licensing officials who will review existing policies and procedures and make recommendations for changes or improvements, if indicated. In addition to those with vision problems, the State maintains certain standards for handicapped persons and for those with a history of serious medical problems.

- A single standard for the drinking and driving offense will be established which lowers the level of blood alcohol at which a person is presumed to be under the influence. The present level of .15% will be tightened to .10%. Under the revised law, the term "impaired" will not be used. Individuals found to have less than .05% blood alcohol content (BAC) will be presumed to be sober for driving purposes. At BAC levels of .05% up to but not including .10%, no presumptions will be raised that the driver is or is not under the influence, but other evidence going to that question will be admissible.

Licenses will not be restored until the convicted driver completes mandated education and rehabilitation. Persons not judged to be problem drinkers must participate in informational courses in a school operated under the auspices of DMV which emphasizes responsible driving technique and attitudes. Those who are found to be problem drinkers will be required to seek help from organizations such as Alcoholics Anonymous or register as an outpatient in an alcohol rehabilitation program run by a hospital or clinic.

A "grandfather clause" in the legislation provides that drivers currently suspended under the old drunken driving law will be eligible to apply for license restoration upon satisfactory completion of the education or rehabilitation program, after completion of at least six months suspension.

The new statute calls for a license suspension of not less than 60 days and not more than 180 days for the first offense, with a fine of not less than \$200 nor more than \$400.

A subsequent conviction would result in a license suspension of not less than one year nor more than three years and a fine of not less than \$500 nor more than \$1000.

A third conviction within ten years will require a five year suspension and a fine of \$1000.

Jail terms on the first conviction could be up to 30 days and up to 90 days on a subsequent conviction. For a third offense, the term of imprisonment will be not less than 30 days nor more than 180 days.

more

Refusal to take a breath test after arrest for suspected drunken driving will result in a 90 day license suspension if no prior conviction exists and a one year suspension if there has been a prior conviction within 15 years.

- The accumulation of 12 points in moving violations will continue to constitute cause for license suspension. However, the Motor Vehicles Director or a hearing officer designated by him may permit the driver to participate in a Driver Improvement Program operated by the Division. Successful completion of driver improvement school will give the driver a reduction in points.

When a driver accumulates between six and eleven points, the Division will send an official notice warning the driver that subsequent violations may result in the loss of driving privileges.

- Under the new moving violation law, DMV will adjust all points accumulated over the past three years to a new, reduced point system. Motorists will receive a one-time 6 point reduction if no points were assessed over the last year. Drivers not eligible for the first time 6 point reduction can earn a 3 point reduction for each additional year without conviction for a moving violation. Everyone will get a 3 point reduction for each additional year of conviction-free driving; however, no point totals will be reduced below zero. This is to encourage improved violation-free driving by all motorists.

Motor Vehicles Director John A. Waddington said that the new laws will be implemented as quickly as possible.

Drinking and Driving

Discussion:

Drinking and driving is among the most serious problems in highway safety today. According to State Police figures, the rate of alcohol-related driver fatalities in New Jersey has averaged 36 percent since 1969. "Alcohol-related" is defined as a crash or fatality in which the driver was found to have a blood alcohol concentration in excess of 0.05 percent, or where there was a "causal" relationship between the use of alcohol and collision involvement."¹ The resulting financial burden on the people of this State has been estimated to be as high as 75 million dollars annually.^{2*}

New Jersey has one of the strongest drunk-driving laws in the nation. The present statute, N.J.S.A. 39:4-50, was revised in 1966 with the aim of reducing alcohol-involved traffic fatalities. To date, however, no credible evidence has been developed to support the assumption that the law has produced its intended result. The rate of alcohol-related driver fatalities has not decreased, even though the number of arrests and convictions for drinking and driving has more than tripled since 1969.*

In recent years a vast effort has been expended in studying the relationship of alcohol to highway safety, and in attempting to determine whether a particular problem group or type of person is responsible for fatal and serious crashes.

* See Table, page 163, infra.

While many of these investigations have been qualified assessments of the data, numerous public relations campaigns, based on incomplete findings, have ultimately confused and possibly mislead the public with regard to the nature and severity of the problem.

If anything has emerged from this welter of information, it is that the problem of alcohol and highway safety is not simple. It is inextricably tied to society's attitudes and values regarding alcohol and driving. Those who expect quick and inexpensive solutions are likely to be disappointed. The practice of drinking before driving is widespread. Programs designed merely to "get the drunk driver off the road" ignore the reality of the problem. There is evidence that traditional punitive measures have not reduced the number of alcohol-related crashes and fatalities. It follows, therefore, that the objective of saving lives requires that new and additional approaches be considered.

For the past two years, the State has had an exploratory program operating in four counties. The experience of that pilot program, in addition to the findings of researchers and other test programs, has led to the conclusion that the institution of a range of countermeasures -- education, rehabilitation, and enforcement and judicial sanctions -- can ultimately have a significant impact on the problem. But no guarantee comes with those findings. Only critical evaluation of the methods employed, and long-range measurement of effectiveness will demonstrate utility.

A further caution is necessary. States and other institutions, like people, tend to emulate the efforts of others -- especially if they appear to be successful. But such efforts can flounder if they do not take into consideration local differences. Specific programs that appear successful in one setting may prove futile unless they are tailored to the communities in which they operate. For these reasons, New Jersey must adopt a program that is responsive to the needs of its own citizens.

New Jersey currently imposes the most severe license suspension penalties of any state in the nation for driving under the influence, even though the blood-alcohol concentration level presumptive for this offense (0.15 percent) is the most permissive. A first conviction carries with it a mandatory two-year license suspension and fine of between \$200 and \$500. In addition, a court may impose a 30-day to three-month jail term. A second or subsequent conviction results in a mandatory ten-year license suspension and 90-day jail term. If the second offense occurs more than ten years after the first conviction, the judge may suspend the jail term and impose a fine of up to \$1000.

The impaired driving offense (N.J.S.A. 39:4-50(b)) added to the drinking and driving statute in 1966, was designed to aid in the administration of the implied consent law and

to serve as a deterrent. That section presumes impairment, for driving purposes, at 0.10 percent blood alcohol concentration and prescribes more moderate penalties than those imposed for the offense of driving under the influence. A first offense conviction results in a mandatory 6-month license suspension and a fine of between \$50 and \$100. A second conviction results in a fine of between \$100 and \$300 and a mandatory license suspension of two years.

The "implied consent" statute (N.J.S.A. 39:4-50.2) renders a person liable to a six-month license suspension by the Division of Motor Vehicles, if, after the person is arrested for driving while under the influence, the person refuses a breath test to determine the blood alcohol concentration. That section was added to the statute in 1966 to induce those arrested on the charge of impaired or intoxicated driving to submit to the breath test.

Severe penalties are traditionally imposed upon offenders because of the gravity of the act, the harm it causes, and because it is supposed that punishment will deter others from behaving in the proscribed manner. It appears, however, that the law as it is not constituted, inflicts only punishment; no evidence has been produced to show that the driving public has been deterred from excessive drinking before driving. A comparison of driver fatal statistics before and after 1966 indicates no substantial change in alcohol-related driver

fatalities.³

Comparison of the New Jersey law with others shows that although some states, such as Michigan and New York, impose indefinite sentences for second offenses; no other state takes the driver license for ten years. No other state suspends the driver license for two years for a first conviction of driving while under the influence. Subsequent offense suspensions are somewhat more severe in other states, but there are no fixed penalties in excess of three years.⁴ The uniform Vehicle Code recommends a one-year license suspension for a second driving while under the influence conviction.⁵ The National Highway Traffic Safety Administration does not specify a revocation period.⁶

In other states, first conviction fines can range from \$50 (South Carolina) to \$1000 (Oregon). The minimum figure for second conviction is \$100 (Colorado, Nevada, and Texas), the maximum is \$5000 (Texas). New York imposes a \$200 to \$2000 fine for a second conviction.⁷ The Uniform Vehicle Code recommends a fine of \$100 to \$1000 for first conviction, and a fine of not more than \$1000 for the second or subsequent conviction.⁸ The National Highway Traffic Safety Administration recommends that a fine be imposed, but it does not specify an amount.⁹

Some states impose short jail terms for first offenders.

Arizona, New Hampshire and Texas mandate one, two and three-day jail terms, respectively, for the first offense. Idaho mandates a 10-day jail sentence. Some examples of second offense jail terms are: Connecticut, ten days to five years; Arizona, 20 days; Delaware, 60 days.¹⁰ The Uniform Vehicle Code recommends a mandatory jail term of ten days to one year for the first offense, and 90 days to one year for a second or subsequent offense.¹¹

Research in other jurisdictions suggests that severe penalties for first traffic offenses positively correlate with the repetition of the offense. One such study concluded that, "The severity of punishment is ineffective . . . both for preventing additional offenses and for reducing their gravity."¹² There is also evidence in other jurisdictions that moderate sanctions are as effective as more severe sanctions and that the threat of license suspension does not deter drivers. A study in the Netherlands concluded that regardless of whether or not individuals were subjected to fines, the variation in recidivism was insignificant. The same study also concluded that "making sentences more severe is not an effective mean(s) to combat recidivism."¹³

While the problems addressed by the statute have not been ameliorated, other problems have developed. Irrespective of the severity of the offense that led to the conviction, individuals in New Jersey are deprived of their driver

licenses for periods of six months to ten years plus six months. Those sentences are imposed even if no injury, property damage, or death results. Frequently, suspended drivers who clearly need licenses to retain their jobs find themselves unable to support themselves, and even though they have not been incarcerated, the hardship is extended to members of their families.¹⁴

The severity of penalties has also had an adverse effect on the level of enforcement of the statute, and the administration of the law. In reality, only a small minority of those who violate the law are apprehended,¹⁵ and although conviction rates are high, the reported figures do not reveal the extent of plea bargaining and downgrading that prevailed up to 1974.¹⁶

According to a recent survey conducted by the Alcohol Countermeasures Project, 62 percent of the municipal judges in the State do not believe that the present statute contributes to solving the problem of drinking and driving.¹⁷ Only 23 percent of a sample group of police chiefs agreed that the statute encourages strong enforcement,¹⁸ and the enforcement rate for driving while under the influence is roughly one-half the national average, even though the number of arrests tripled in the past six years.¹⁹

The majority of both police (88 percent) and judges (73 percent) surveyed feel that there would be better enforcement if penalties, particularly the length of license suspensions, were reduced.²⁰ Both groups feel that the severity of the license suspensions encourages litigation and delay.²¹

Approximately one-third of all cases appealed from municipal courts are alcohol-related traffic convictions.²²

The "impaired" category, added to the statute in 1964 as N.J.S.A. 39:4-50(b), recognizes a so-called "lesser" offense and imposes more moderate penalties for conviction. That section of the statute, however, has created problems unanticipated by its authors; it has also fostered the impression that there is a substantial difference between the offenses. Epidemiological figures and the average blood alcohol concentration (in excess of 0.16 percent) of defendants in New Jersey indicate that such is not the case.²³ Nor does it appear that the differences implied by the terms "impaired by alcohol" and "under the influence" are clinically meaningful.²⁴ Plea bargaining and downgrading of the offense from "a" to "b" have been common, and appear to have been encouraged by the long license suspension required by the "a" section of the statute itself.²⁵

By defining "driving under the influence" under the current statute at 0.15 percent blood alcohol concentration, New Jersey is far more permissive than almost any other state in the Union.²⁶ Forty-eight states have adopted or exceeded the federal highway safety standard that requires 0.10 percent blood alcohol concentration as the threshold level of intoxication for driving purposes. There is strong incentive to bring the language of the statute into conformity with that standard since the continued receipt of federal highway safety and

construction funds is conditioned on compliance with it.

The existing 0.15 percent blood alcohol concentration standard reflects knowledge about the effects of alcohol on driving ability rooted in balance and coordination tests developed more than 40 years ago. Since then, however, an enormous amount of research has been done with respect to the impairing effects of alcohol on driving ability.²⁷ It is now clearly established that impairment for driving purposes begins long before the outward signs of intoxication appear.²⁸ It has been estimated that police and doctors fail to identify 50 percent of those at or above 0.10 percent blood alcohol concentration on the basis of non-driving balance and coordination tests.²⁹

Some individuals are impaired at levels below 0.05 percent blood alcohol concentration. Most persons are impaired at 0.08 percent blood alcohol concentration, and it is generally agreed that almost everyone experiences reduced driving ability at and above 0.10 percent blood alcohol concentration. The most important study of alcohol and crash involvement conducted in this country found that a driver at 0.10 percent blood alcohol concentration is five to six times more likely to cause a crash than an alcohol-free driver.³⁰

Visual perception is affected by alcohol: for example, visual acuity is affected long before 0.10 percent blood alcohol concentration is reached, and dark adaptation times have been shown to be extended at impairing blood alcohol levels.³¹

Perhaps the most significant finding of recent research is that while simple visual functions appear to be resistant to alcohol, "when visual or tracking functions [are] examined in more complex situations typical of the requirement of driving. . .there [appear] large performance decrements at low blood alcohol concentrations."³²

A study conducted by the United States Department of Health Education and Welfare, Injury Control Research Laboratory found that moderate blood alcohol levels "will significantly affect the risk taking behavior of automobile drivers."³³ Reaction times are also lengthened, judgment is impaired, hearing is affected, and the critical sense of balance is disrupted.³⁴

In recent years there has been a shift away from purely punitive approaches to the drinking/driving problem; the trend is toward moderating punishment, and an emphasis on treating or rehabilitating offenders. These changes have occurred because policy makers and legislators feel they can (1) save lives and (2) reduce time and costs spent in litigation.³⁵ At least six states now specifically allow diagnosis and rehabilitation; Maryland mandates alcoholism education and treatment for persons convicted of driving while under the influence; Wisconsin, Georgia and Florida have recently instituted statewide programs of education and rehabilitation.

The aim of rehabilitation in the area of alcohol and

highway safety is to reduce the consumption of the "problem" drinker and to reduce his driving while occurring under the influence of alcohol. Rehabilitation is generally applied to the "problem" rather than the "social" drinker, and treatment options range from drug therapy (antabuse), individual psychotherapy, Alcoholics Anonymous, and behavior modification.³⁶

Under the aegis of the federal government (National Highway Traffic Safety Administration), a total of 35 "ASAP's" (Alcohol Safety Action Programs) were instituted beginning in 1971. These programs were comprehensive efforts involving community projects, public education, manpower development and research activities. A central element in these programs has been identification of the "problem drinker" and his referral into an appropriate rehabilitation program.³⁷

Accurate evaluation of those programs has been a subject of considerable debate. Critics, such as the Institute for Highway Safety, claim that results have been inconclusive when they attempt to establish a direct causal relationship between the programs and reduction in alcohol-related fatalities and crashes.³⁸ Supporters argue that a three year operational period, common to those projects, is insufficient to make such evaluation meaningful but there have been other tangible benefits.³⁹ Presently, the evaluation of rehabilitation as a countermeasure is largely limited to such indirect measures as a reduction in drinking/driving behavior, and a reduction in alcohol consumption.⁴⁰ An initial evaluation

of the Phoenix "Driving While Under the Influence" Program involving 1000 drivers produced the conclusion that a significant reduction in recidivism was found for those who had taken the course.⁴¹ Final assessments of the Alcohol Safety Action Programs are not yet available.

In New York State, a program called "DWI-Counterattack", a combined cooperative effort of the New York State Automobile Association and the Department of Motor Vehicles, is operating in Erie, Onondaga and Westchester Counties. This program substitutes re-education and rehabilitation for traditional punitive measures. Participation is voluntary and those who elect the program after conviction for driving while under the influence may keep their license. It has been in operation since 1971. Although evaluation was confined to a knowledge inventory, an attitude test, and a simple pretest-post-test design, (without control groups), the evaluators concluded that the attitudinal changes which were registered warranted the conclusion that the findings were promising.⁴²

The law as it is currently written in New Jersey does nothing to educate the convicted drinking driver to what is safe or reasonable. An individual who violates the State's permissive blood alcohol concentration levels is fined, his license is suspended, and (perhaps) a jail term is imposed. In this system, an individual has no way of informing himself of the proper standard of conduct. Few laymen (or police and judges, for that matter) understand the significance

of blood alcohol concentration presumptive levels. Until recently, few people had ready access to reliable information regarding the effects of alcohol on driving ability, the nature of alcohol problems, and the disease of alcoholism.

Since 1971, the State has been exploring alternatives through a pilot program similar to, but not as elaborate as, the Alcohol Safety Action Programs. The New Jersey Division of Motor Vehicles Alcohol Countermeasures Project, operating in Bergen, Middlesex, Hunterdon and Warren counties, screens individuals convicted of a drinking and driving offense, and refers them to an appropriate re-education or rehabilitation program. The Project has conducted extensive research into the nature and extent of drinking and driving in the State and has run experimental programs designed to raise enforcement levels, and to improve the quality of the administration of the relevant statute. Nearly 90 percent of the screening referrals made by the Project have been to the Project's Alcohol Safety Institutes, which are six-hour intensive courses on the effects of alcohol on driving ability. Other subjects covered in the Alcohol Safety Institutes include: the breathalyzer; what are safe and reasonable consumption limits; the law; and a consideration of the differences between social, problem, and alcoholic drinking patterns.

Measured in terms of knowledge gain, the Alcohol Safety Institute has been successful; of the 1950 students who have

completed the course, 96 percent have passed, versus an 88 percent failure rate on the pre-course test. Results also indicate that prior to the Alcohol Safety Institute, 18 percent were aware of how long a person should wait after drinking before driving, and that after exposure to the course, 97 percent could make this calculation correctly.⁴³

The Alcohol Countermeasures Project reports that more than 10 percent of those arrested for alcohol-related traffic offenses have severe problems with alcohol.⁴⁴ That figure has led the Project to conclude that even though its problem drinker criteria are conservative, a significant number of potentially dangerous drivers can be identified through its screening procedures and prohibited from driving until they demonstrate control of their drinking.

Long-range treatment or rehabilitation programs for problem drinkers range from documented attendance at Alcoholics Anonymous meetings, to individual or group counselling, or traditional psychotherapeutic techniques. No individual is eligible for unconditional relicensing until he has successfully completed his assigned program.

Although it is impossible to measure the precise short-term effects of the Project on alcohol-related fatality rates, because of uncontrollable factors such as fuel shortages and lowered speed limits, the recidivism rate of the Project (1.8 percent) compares favorably with the national average (5.5 percent) for similar programs.⁴⁵

The American Automobile Association has publicly endorsed the Alcohol Countermeasures Project, and pending evaluation of its results, desires to see it expanded into other counties.⁴⁶ Similarly, the New Jersey State Safety Council has specifically recommended a statewide program of rehabilitation of drivers convicted of drunken driving.⁴⁷

Eighty-eight percent of the uniformed police officers surveyed by the Alcohol Countermeasures Project indicate that they feel mandatory education and rehabilitation would aid in increasing enforcement and in discouraging recidivism.⁴⁸ Eighty-six percent of the municipal judges surveyed indicated that they support mandatory education or rehabilitation in conjunction with greater sentencing discretion.⁴⁹

One aspect of the drinking/driving statute remains for consideration: the "refusal statute". It has been estimated that at least 25 percent of those arrested for driving while under the influence in New Jersey refuse the test.⁵⁰ Time consumed in processing arrest and refusal forms and in hearing appearances lowers the motivation of police to arrest.⁵¹

If an individual is a second offender under the impaired statute, it is advantageous for him to refuse the test, since the penalty he must receive, if convicted, is two years loss of license. If he is charged with driving while under the influence, he faces either a two or ten year revocation, depending on his prior record. By refusing the

test, he deprives the state of objective evidence of intoxication or impairment (and perhaps evidence of his own innocence), and risks a six month loss of license.

The Uniform Vehicle Code and the National Highway Traffic Safety Administration recommend license revocation for six months for refusal to submit to a breath test.⁵² Twenty states are in substantial conformity with the code, including New Jersey.⁵³ Eleven states provide for three months or 90-day suspensions. Three states provide for a 60-day suspension; five states provide for a one-year revocation. The Wyoming law provides for a 30-day period of suspension.⁵⁴ Several states have made the penalty for refusal to submit to a test at least as painful as the penalty for driving while under the influence.⁵⁵

In light of these findings, a new approach to the problem of drinking and driving appears desirable. Such an approach should (1) encompass a more precise definition of the offense that reflects current knowledge of alcohol impairment for driving purposes, (2) provide more reasonable license suspension, (3) allowance for more discretion in the imposition of penalties, and (4) mandate education and/or rehabilitation for all who drink excessively and drive.

There is now little doubt that the faculties necessary for the safe operation of an automobile begin to be affected

at more moderate blood alcohol levels than scientists previously assumed, and that most of these faculties can be impaired even though the individual does not show the outward, visible signs of intoxication.

The Commission believes, therefore, that this knowledge should be applied in order to eliminate the inconsistencies of the 1966 statute and to bring the State into compliance with the federal standard. Confronted by the failure of the present statute as a highway safety measure, the Commission believes that the license suspensions imposed are excessive because they do not prevent the kind of behavior that the statute prohibits. They impose unnecessarily severe burdens on many offenders, often creating additional problems for the State, they discourage vigorous enforcement of the statute; they are practically unenforceable; they clog court calendars, and they inhibit a judge's discretion to sentence appropriately. And they do not permit the courts or the Division of Motor Vehicles to address the problem of drinking and driving in a direct and effective way. Any reduction in penalties, however, without the simultaneous implementation of a mandatory program of education and rehabilitation for persons convicted of drinking and driving would be inimical to highway safety.

The concepts developed by the Division of Motor Vehicle's Alcohol Countermeasures Project should be extended to encompass a state-wide program of education and rehabilitation for drinking and driving offenders as part of the statutory

revision. That program should also serve as the prime resource for preventive education programs for new drivers and for those drivers already licensed. A state-wide drinking and driving program should have the dual function of making the roads less hazardous for law-abiding drivers and of acting as a preliminary screen for many problem drinkers.

The statute should be strengthened with respect to imprisonment by making jail a possibility for a first alcohol-related offense below the current 0.15 percent blood alcohol concentration presumptive level and by increasing the maximum time that can be served by repeat offenders. Judges should be given the option to sentence offenders to in-patient treatment facilities.

The structure of fines should take into account the total penalty exacted by the law. An individual convicted under the statute will be subject to a license suspension and a possible jail term in addition to the money exaction. The license suspension, in many cases, has the effect of depriving an individual of his ability to earn an income and of creating problems that can only be solved by welfare, thus placing an additional burden on the State. The purpose of the fine, in this context, should be to impose a monetary penalty that permits the individual to feel the weight of the law, but is not financially crippling.

It is presently advantageous for an individual to refuse the breath test since the refusal suspension penalty

is so much shorter than any penalty imposed under N.J.S.A. 39:4-50 except for a first "impaired" offense. That advantage should be removed from the law so that more individuals will be induced to take the test. Since the recommended refusal penalties are so stringent, however, police should be required to warn the driver of the possible consequence of refusing to submit to a chemical test (37 jurisdictions currently require that such warning be given).⁵⁶

There will be approximately 20,000 individuals under license suspension for periods of at least six-months up to ten-years, six-months when and if the current statute is modified. Fairness requires that they be accorded some relief that would place them in a similar position with respect to the law, as those who are convicted under the modified statute. At the same time, highway safety considerations make it necessary that those who seek relicensing be screened and referred to appropriate education or rehabilitation programs before they are unconditionally relicensed.

Recommendation: THE TWO OFFENSES "DRIVING WHILE IMPAIRED" (N.J.S.A. 39:4-50b) AND "DRIVING WHILE UNDER THE INFLUENCE" (N.J.S.A. 39:4-50a) SHOULD BE ELIMINATED. THERE SHOULD BE ONE OFFENSE KNOWN AS "OPERATING WHILE UNDER THE INFLUENCE OF ALCOHOL (OR DRUGS)." INDIVIDUALS FOUND TO HAVE LESS THAN 0.05 PERCENT ALCOHOL BY WEIGHT IN THEIR BLOOD, SHOULD BE PRESUMED SOBER FOR DRIVING PURPOSES. AT LEVELS BETWEEN 0.05 PERCENT BLOOD ALCOHOL CONCENTRATION BUT LESS THAN 0.10 PERCENT BLOOD

ALCOHOL CONCENTRATION, NO PRESUMPTIONS SHOULD BE RAISED THAT THE INDIVIDUAL IS OR IS NOT UNDER THE INFLUENCE FOR DRIVING PURPOSES, BUT OTHER EVIDENCE GOING TO THAT QUESTION SHOULD BE ADMISSIBLE IN A TRIAL. INDIVIDUALS FOUND TO HAVE 0.10 PERCENT BLOOD ALCOHOL CONCENTRATION OR HIGHER IN THEIR SYSTEMS SHOULD BE PRESUMED TO BE UNDER THE INFLUENCE FOR DRIVING PURPOSES. IF A SUBSEQUENT OFFENSE OCCURS MORE THAN 15 YEARS FROM THE DATE OF THE FIRST OFFENSE, THEN IT SHOULD BE TREATED AS A FIRST OFFENSE. IF A THIRD OFFENSE OCCURS MORE THAN TEN YEARS, BUT LESS THAN 15 YEARS FROM THE DATE OF THE FIRST, THEN IT SHOULD BE TREATED AS A SUBSEQUENT OFFENSE.

THE LICENSE SUSPENSION PENALTY FOR A FIRST CONVICTION SHOULD BE NOT LESS THAN TWO MONTHS NOR MORE THAN SIX MONTHS. A SUBSEQUENT CONVICTION SHOULD REQUIRE A SUSPENSION OF NOT LESS THAN ONE NOR MORE THAN THREE YEARS. A THIRD CONVICTION WITHIN TEN YEARS SHOULD REQUIRE A FIVE-YEAR LICENSE SUSPENSION.

A FINE FOR THE FIRST OFFENSE SHOULD BE NOT LESS THAN \$200 AND NOT MORE THAN \$400. A SUBSEQUENT CONVICTION SHOULD CARRY A FINE OF NOT LESS THAN \$500 NOR MORE THAN \$1000. A THIRD CONVICTION SHOULD CARRY A FINE OF \$1000.

IMPRISONMENT FOR A FIRST CONVICTION SHOULD BE UP TO 30 DAYS: FOR A SUBSEQUENT CONVICTION UP TO 90 DAYS AND NOT LESS THAN 30 NOR MORE THAN 180 DAYS FOR A THIRD OFFENDER.

EDUCATION AND REHABILITATION SHOULD BE MANDATORY FOR ALL OFFENDERS. ALL EDUCATION OR REHABILITATION PROGRAMS SHOULD BE APPROVED BY THE DIRECTOR OF THE DIVISION OF MOTOR

VEHICLES.

THE COMMISSION SPECIFICALLY RECOMMENDS THAT RESTRICTED (HARDSHIP, OCCUPATION, ETC.) LICENSES NOT BE GRANTED DURING A SUSPENSION PERIOD IMPOSED AS A RESULT OF A CONVICTION FOR "DRIVING WHILE UNDER THE INFLUENCE."

PENALTIES FOR REFUSING THE BREATH TEST SHOULD BE A SIX - MONTH LICENSE SUSPENSION IF NO PRIOR OFFENSE, OR ONE YEAR SUSPENSION IF A PRIOR CONVICTION WITHIN 15 YEARS.

ON THE EFFECTIVE DATE OF A NEW STATUTE, ANY PERSONS WHO HAVE SERVED AT LEAST SIX MONTHS OF A LICENSE SUSPENSION BY REASON OF AN ALCOHOL-RELATED OFFENSE, SHOULD BE ELIGIBLE FOR RESTORATION PROVIDING THEY AGREE TO PARTICIPATE IN AN APPROPRIATE EDUCATION OR REHABILITATION PROGRAM, AND PROVIDING THEY HAVE MADE SATISFACTORY PROGRESS IN OR SUCCESSFULLY COMPLETED THE PROGRAM. SIMILARLY, ANY PERSON WHO HAS SERVED AT LEAST 30 DAYS OF A JAIL SENTENCE, SHOULD BE ELIGIBLE FOR RELEASE UNDER THE SAME CONDITIONS. (See Table, page 164, infra.)

Recommended Legislation:

N.J.S.A. 39:4-50 et seq. should be amended as follows:
39:4-50. Operating under the influence of liquor or drugs.
(a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle

owned by him or in his custody or control, shall be subject, for the first offense, to a fine of not less than \$200.00 nor more than ~~[\$500.00]~~ \$400.00, or imprisonment for a term of not ~~[less than 30 days nor more than 3 months]~~ more than 30 days, or both, in the discretion of the ~~[magistrate]~~ court, and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of [2 years from the date of this conviction or until he reaches the age of 21 years, whichever is the greater period of time, in the case of a person who at the time of his conviction is under the age of 21 years.] not less than 2 months nor more than 6 months. Except as hereinafter provided, for a subsequent violation, he shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00, ~~[imprisoned]~~ or imprisonment for a term of [3 months] no more than 90 days, or both, in the discretion of the court, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of [10 years] not less than 1 year nor more than 3 years from the date of his conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the Director, consistent with section b of this act. Except as hereinafter provided, for a third violation, he shall be subject to a fine of \$1,000.00, or imprisonment for a term

of not less than 30 days nor more than 180 days, or both,
in the discretion of the court, and shall forfeit his right
to operate a motor vehicle over the highways of this State
for a period of 5 years from the date of his conviction,
and, after the expiration of said period, he may make applica-
tion to the Director of the Division of Motor Vehicles for
a license to operate a motor vehicle, which application
may be granted at the discretion of the director, consistent
with section b of this act. A [magistrate who] court that
imposes a term of imprisonment under this section may sentence
the person so convicted [either] to the county jail [or],
to the workhouse of the county wherein the offense was committed,
or to an in-patient rehabilitation program approved by the
Director of the Division of Motor Vehicles.

A person who has been convicted of a previous violation
of this section need not be charged as a [second] subsequent
or third offender in the complaint made against him in order
to render him liable to the punishment imposed by this section
on a [second] subsequent or third offender, but if the [secon]
subsequent offense occurs [10] 15 or more years after the
previous conviction the court [may] shall [, in its discre-
tion, suspend the sentence of imprisonment, impose a fine
of not less than \$300.00 nor more than \$1,000.00 and place
the person on probation] treat the conviction as a first
offense, and if the third offense occurs 10 or more years
after the first conviction, the court shall treat the convic-

tion as a subsequent offense.

(b) [A person who operates a motor vehicle while his ability to operate such motor vehicles is impaired by the consumption of alcohol shall be subject, for a first offense, to a fine of not less than \$50.00 nor more than \$100.00 and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of 6 months from the date of his conviction. For a subsequent violation, he shall be fined not less than \$100.00 nor more than \$300.00 and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of 2 years from the date of his conviction. After the expiration of said period of forfeiture, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle which application may be granted at the discretion of the director.] In addition to any other requirements provided by law, a person convicted under this act or any other section of the Revised Statutes dealing with alcohol and highway safety must satisfy the requirements of an appropriate alcohol education and/or rehabilitation program approved by the Director of the Division of Motor Vehicles. Failure to satisfy such requirements will result in a driver license suspension until such requirements are satisfied.

(c) The Director of the Division of Motor Vehicles shall promulgate administrative rules and regulations in

order to effectuate the purposes of this act.

(d) Any person who, on the effective date of this act, has served at least 6 months of a driver license suspension by reason of an alcohol-related offense, shall be eligible to make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted, provided the person complies with sub-section b of this act.

(e) Any person who, on the effective date of this act, has served at least 30 days of a sentence of imprisonment by reason of an alcohol-related traffic offense, shall be eligible for release, provided such person complies with sub-section b of this act.

(f) This act shall take effect 90 days after enactment.

39:4-50.1 Chemical analysis; presumptions

In any prosecution for a violation of section 39:4-50 of the Revised Statutes relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

(1) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at the time in excess of 0.05% but less than [0.15%] 0.10% by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumptions that

the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at the time [0.15%] 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

The foregoing provisions of this section shall not be construed as requiring that evidence of the amount of alcohol in the defendant's blood must be presented, nor shall they be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

39:4-50.2 Consent to taking samples of breath

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

(b) A record of the taking of any such sample, dis-

closing the date and time thereof, as well as the result of any chemical test, shall be made and a copy thereof, upon his request, shall be furnished or made available to the person so tested.

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

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

(e) No chemical test, as provided in this section, or specimen necessary thereto, may be made or taken forcibly and against physical resistance thereto by the defendant, the police officer shall, however, inform the person arrested of the consequences of refusing to submit to such test under section 39:4-50.4.

39:4-50.3 Method of analyses

(No change)

39:4-50.4 Refusal to submit to test

(a) If an operator of a motor vehicle, after being arrested for a violation of section 39:4-50 of the Revised Statutes, shall refuse to submit to the chemical test provided for in section 2 of this Act when requested to do so, the

arresting officer shall cause to be delivered to the Director of Motor Vehicles his sworn report of such refusal in which report he shall specify the circumstances surrounding the arrest and the grounds upon which his belief was based that the person was driving or operating a motor vehicle in violation of the provisions of section 39:4-50 of the Revised Statutes. Upon receipt of such a report, if the Director shall find that the arresting officer acted in accordance with the provisions of this Act, he shall, upon written notice, suspend the person's license or permit to drive or operate a motor vehicle, or if such person is a nonresident, the privilege to drive or operate a motor vehicle within this State, unless such person, within 10 days of the date of such notice, shall have requested, in writing, a hearing before the Director. Upon such request, the Director shall hold a hearing on the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he refused to submit to the test upon request of the officer. If no such hearing is requested within the time allowed, or if after a hearing the director shall find against the person on such issues, he shall revoke such person's license or permit to drive or operate a motor vehicle, or the privilege

to drive or operate a motor vehicle within this State if such person is a nonresident for a period [of 6 months] as prescribed in paragraph b to be calculated from the date of the Director's determination, or if such person is a resident without a license or permit to drive or operate a motor vehicle in this State, the Director shall deny to such person the issuance of any such license or permit [within 6 months] during the period prescribed from the date of the Director's determination. Such revocation shall be independent of any revocation imposed by virtue of a conviction under the provisions of section 39:4-50 of the Revised Statutes.

(b) Any revocation of the right to operate a motor vehicle over the highways of this State for refusing to submit to a breath test shall be for 6 months unless the refusal was in connection with a subsequent offense of this section, in which case, the revocation period shall be for 1 year.

39:4-50.5 Severability

(No change)

39:4-50.6 Presumptions

(repeal entire section - it deals with presumptions for driving while impaired)

39:4-50.7 Limitation on convictions

(repeal entire section - it deals with a bifurcated statutory approach)

39:4-51 Sentence for violation of Section 39:4-50 must be served

A person who has been convicted of violating section 39:4-50 of this title, and in pursuance thereof has been imprisoned in a county jail or workhouse in the county in which the offense was committed, shall not, after commitment, be released therefrom until the term of imprisonment imposed has been served. No warden or other officer having custody of the county jail or workhouse shall release therefrom a person so committed until the sentence has been served.

A person who has been convicted of violation of section 39:4-50 of this title, and in pursuance thereof has been sentenced to an in-patient rehabilitation program, shall not, after commitment, be released therefrom until the term of imprisonment imposed has been served.

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

ALCOHOL AND DRIVING FATAL ACCIDENT STATISTICS

	Total Number of Fatalities	Tests for Alcohol Content		Alcohol Involved			Blood Alcohol* Concentration Above .05%		
		#	% of total	#	% of total	% of tested	#	% of total	% of tested
<u>Drivers</u>									
1973 -	654	495	75.7	280	42.8	56.6	236	36.1	47.7
1972 -	628	492	78.3	257	40.9	52.2	225	35.8	45.7
1971 -	592	462	78.0	243	41.0	52.6	217	36.7	47.0
1970 -	608	434	71.4	229	37.7	52.8	195	32.1	44.9
1969 -	605	469	77.5	274	45.3	58.4	227	37.5	48.4
<u>Passengers</u>									
1973 -	348	147	42.2	76	21.8	51.7	53	15.2	36.1
1972 -	318	120	37.7	54	17.0	45.0	37	11.6	30.8
1971 -	352	160	45.5	70	19.8	43.8	52	14.7	32.5
1970 -	326	146	44.8	69	20.8	47.3	54	16.5	37.0
1969 -	317	150	47.3	75	23.6	50.0	61	19.2	40.7
<u>Pedestrians</u>									
1973 -	319	157	49.2	74	23.2	47.1	63	19.7	40.1
1972 -	345	168	48.7	68	19.7	40.5	61	17.7	36.3
1971 -	352	187	53.1	72	20.4	38.5	61	17.3	32.6
1970 -	328	168	51.2	84	25.6	50.0	63	19.2	37.5
1969 -	322	183	56.8	97	29.2	53.0	76	22.8	41.5

ALCOHOL AND DRIVING VIOLATION STATISTICS

<u>Arrests</u>	<u>DRINKING/DRIVING</u>		<u>IMPLIED CONSENT</u>	
	<u>Convictions</u>	<u>% of Arrests</u>	<u>Citations</u>	<u>Suspensions</u>
1974 - 26,939	24,245	90.0	5,737	4,058
1973 - 21,145	19,178	90.7	4,893	5,148
1972 - 16,590	14,142	91.6	4,528	3,453
1971 - 12,698	11,124	87.6		2,780
1970 - 9,629	8,349	86.7		2,076
1969 - 8,938	7,739	86.6		1,564

(Compiled by Division of Motor Vehicles, Alcohol Countermeasures Project, June, 1975)

COMPARISON OF RECOMMENDATIONS TO PRESENT STATUTE

<u>Issue</u>	<u>Current Statute</u>	<u>Commission Recommendations</u>
1. Blood Alcohol Concentration	.05 - sober .10 - impaired .15 - influence (presumptive)	.05 sober .05-.10 No Presumption .10 Presumption of Intoxication
2. License	Imp - 6 mos. 2d - 2 yrs. Infl - 2 yrs.	1st 2-6 mos. Subsq. in 15 yrs. 1-3 yrs* 3rd in 10 yrs. - 5 yrs.**
3. Fines	Imp - 50-100 2d - 100-300 Infl 200-500 2d - 300-1000	1st 200 - 400 Subsq. in 15 yrs. - 1000* 3rd in 10 yrs. - 1000**
4. Jail	Imp - none Infl - 1st 30-90 (disc) 2d - 90 (mand)	1st - 0-30 days Subsq. in 15 yrs. - 0-90 days* 3rd in 10 yrs. - 30-180 days**
5. Screen/education	- - -	Mandatory for All Offenses
6. Re-License	2d (AA, BB, AB) by appl. to Dir.	Completion of or Satis Progress in Screen/Ed.
7. Restricted Driver's License	- - -	None
8. Refusal	6 mos. DL suspension	1st - 6 mos. + Screen/Ed Subsq. to Prior DWI Conv. in 15 yrs. - 1 yr.*
9. Grandfather Clause	- - -	Elig. for (1) Restoration after 6 mos. if satisfactory progress in Screen/Ed and/or (2) release after 30 days

*if more than 15 yrs. then treated as a first

**if 3rd occurs more than 10 yrs but less than 15 yrs penalties are for subsq.

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3. New Jersey Division of Motor Vehicles, "Alcohol Determination Program in Fatal Traffic Accident Cases," Trenton, 1964, p. 5. New Jersey State Police, "Fatal Motor Vehicle Accident Comparative Data Report 1969-1973".
4. Rutgers Center for Alcohol Studies, op. cit., supra, p. 9.
5. Uniform Vehicle Code, § 11-902.2.
6. Rutgers Center for Alcohol Studies, op. cit., supra, p. 9.
7. Id. at p. 8.
8. Uniform Vehicle Code, § 11-902.2.
9. Rutgers Center for Alcohol Studies, op. cit., supra, p. 9.
10. Id. at Appendix A.
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16. National Center for State Courts, "A Study of Plea Bargaining in Municipal Courts of the State of New Jersey," August, 1974, passim.

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32. Light, W. and Keiper, C., ICRL, RR-69-4, "The Effects of Moderate Blood Alcohol Levels on Automobile Passing Behavior," p. 19.
33. Perrine, op. cit., supra, p. 25.

34. Rutgers Center for Alcohol Studies, Legislative Report, op. cit., supra, p. 12.

35. Driessen, G., and Bryk, G., "Alcohol Countermeasures: Solid Rock and Shifting Sand," Journal of Safety Research, September 1973, Vol. 5, p. 118.

36. Id. at pp. 110-111.

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38. Id. at p. 35.

39. Driessen and Bryk, op. cit., supra, p. 119.

40. Id.

41. Malfetti, J., and Simon, K., "Evaluation of a Program to Rehabilitate Drunken Drivers," Traffic Quarterly, January 1974, Vol. xxvii, p. 57.

42. Alcohol Countermeasures Project, Statistical Comparison, 1975.

43. Id.

44. Id.

45. Id.

46. Testimony of William K. Duncan, Council of American Automobile Associated Clubs of New Jersey, Motor Vehicle Study Commission Public Hearing, Trenton, New Jersey, April 4, 1975.

47. Testimony of Victor Carney, New Jersey State Safety Council, Motor Vehicle Study Commission Public Hearing, Trenton, New Jersey, April 4, 1975.

48. Survey of Uniformed Police, op. cit., supra,

49. Survey of Municipal Judges, op. cit., supra,

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51. Zylman, R., "Are Drinking Driving Laws Enforced?", Police Chief, September 1970, p. 55.

52. Uniform Vehicle Code § 6-208; Rutgers Center for Alcohol Studies, "Legislative Report," Table 3.

53. National Committee on Uniform Traffic Laws and Ordinances,
Driver Licensing Laws Annotated § 6-208a, p. 347.

54. Id.

55. Rutgers Center for Alcohol Studies, "Legislative Report,"
p. 11.

56. Driver Licensing Laws Annotated, § 6-205, p. 278.

THURSDAY, MAY 15, 1975

Report of the Committee on Municipal Courts

Lawrence A. Carton, III
Member of the Committee on Municipal Courts

The Committee recommends that the Board of Municipal Court Judges be provided the same as indicated on the attached list of the County Clerk immediately as is presently the case.

and this gets more true as you go further south.

Are there any comments?

(No response.)

JUDGE CARTON: Now, we get to item number 5. Let me give you a little bit of background on this.

New Jersey's drunk driving statute and impaired driving statute is about as straightforward as it can be. It says if you get convicted of (a), you lose your license for a minimum of two years, \$225, \$200 fine plus Court costs. That's all there is to it. The second conviction you lose your license for ten years and I think there's a jail sentence at that point.

Under the impaired statute for the less amount of alcohol in your blood or some judgement that's not quite as bad as an (a), you automatically lose your license for a minimum of six months, minimum fine of \$50 to \$100 plus costs. The six months and the two years say nothing of the ten years, produce in the judgement of the Committee and a great many lawyers, a terrible effect in that the family is knocked out of business more than the offender himself. We also have the problem or we've all been conflicted with the problem where somebody who is not an alcoholic comes out of a wedding with too much under his belt or her belt and they get picked up more or less a first time operation.

California some years ago went into a much more tailored system to punishing of drunk driving and reforming the alcoholic driver situation setting up certain rehabilitation standards and giving you alternatives; you could take the two year revocation or you could do certain other things and the Committee has recommended that legislation be proposed or that we propose to the legislature certainly this legislation reducing the penalties for (a) and (b) convictions as follows:

First of all, in connection with (a), the recommendation is that the sentence be reduced from not less than two years to not less than six months; a maximum period of revocation for a first conviction under (a) should be provided for of up to one year, six monthsto a year under this penalty section.

For first conviction under (b), revocation of the right to operate motor vehicle on the highways should be reduced from not less than six months to not less than three months with a maximum of six.

It is also recommended that the refusal to take a breath sample should not produce six months of revocation but three months.

Now, we come to the alternatives which are a little bit like the California system. It is recommended that there may be a period of probation for conviction under (a) or (b) of not less than six months nor more than two years for purposes of alcoholic rehabilitation and driver education. This section or recommendation contemplates the setting up of a program to assist in alcoholic rehabilitation and driver education, not the driver's school that merely takes three sessions of a couple hours apiece but some kind of consistent program that will require as California does, for instance, physicals and the like, all at the cost of the person charged.

Another aspect of the recommendation is the work license provision. It is recommended that a Judge be given discretion to permit the issuance of work transportation licenses during the period of revocation and that's the dawn to dusk type operation or seven to six or under certain limitations that would conform to working hours.

That's the recommendation. There was a lot of work that went into this recommendation. There was very little dissension with it. The pressure that is on Municipal Court Judges when faced with an (a) charge is substantial to downgrade it to (b) because the penalty is so big.

The second offense provisions are so Draconian with the ten year suspension and jail and the like that as a practical matter we see countless people driving on the revoked list coming back all the time because there's no way to support themselves while revoked. A large percentage of your convictions are salesmen, road salesmen and they quite frankly do not obey the law.

My understanding or our general understanding is that if substantial portions of the population disregard the law, then the law is a little bit out of the way.

Any comments?

FROM THE FLOOR: I'm in favor of the recommendation but I see no provision here with respect to second offenders. Are you going to keep it ten years and a jail sentence or shouldn't they be reduced?

JUDGE CARTON: The way it's drafted here, it looks as if

it was not considered. It was intended to reduce them.

FROM THE FLOOR: I think we should.

JUDGE CARTON: No comment at all?

Would you identify yourself when you get up to speak, please?

MR. LONDON: My name is Robert London. I'm from Hunterdon County. First, I think that there definitely should be an amendment of the statute, but I still feel that the penalties that you propose are still too strict. Unless we can leave it for the discretion of the Magistrate which nobody seems to oppose, at least that I know, three months suspension.

First of all, a penalty should have three effects. One is to penalize the person for the offense; one is rehabilitation; and the other is deterrent.

Believe me, three months suspension of a driver's license in this day and age plus the heat if the man is married which has nothing to do with the penalty having his wife drive him continually to work or wherever he has to go I think would be enough of a rehabilitative thing in most cases. In most of these situations it's not an alcoholic situation. It's having a bit too much at one particular party or affair.

The second aspect of it is that you indicate and I presume this is mandatory of a probationary period of not less than six months nor more than two years for purposes of alcoholic rehabilitation and driver education. Now again, I think that does not effect the average individual who just happened to have that one too many and was never picked up before. I don't see why he should have to go through any alcoholic rehabilitation. He may not be a drinker. I know of one case in which a man didn't drink and he went to an affair in which he was moving as I understand it and he had some drinks and he was picked up for drunken driving. Now, most of the cases are in a first offense situation and are that one isolated instance and therefore, alcoholic rehabilitation is really not in order.

JUDGE HART: It would seem to me this proposal subjects itself more to the legislature than it does the Judges and it would appear further to achieve in the end which is sought here, you are seeking to give the Municipal Court Judge discretion because in many instances as it has been pointed out, the two

year mandatory revocation works an undue or an unjust hardship, but yet there may be many instances in which two years is perhaps not even enough. Consequently, rather than to reduce the penalty to three months or up to six months or whatever it's suggesting since this matter addresses itself to the legislature, it would appear to me that to ask the legislature to amend the statute to give the Judge discretionary power perhaps might be the best vehicle.

JUDGE CARTON: I don't think that's a good idea. These cases are generally felt to be the most serious. They provoke the most accidents. They provoke the worst driving. The studies done by all of the interested parties indicate that alcohol is a substantial contributor to virtually every accident we have. Competent defense attorneys will pressure and pressure strongly with up to ten children in the room and the wife in rags, the whole shooting match to keep this revocation down. It's actually a protection to a degree. It doesn't have to be three months or six months or whatever you fix it. It's absolutely a protection for the Municipal Court Judge so that he's able to take refuge in the statute.

The problem now is that the penalty is so Draconian that no one wants to go to the statute if there's a way around it, so I don't think discretion is a good idea and I don't think the Committee does.

MR. MOORE: Francis X. Moore, Monmouth County.

You recommend here the refusal to submit be reduced from six to three. Did you consider the possibilities of rather than the revocation for the refusal he be given a bonus from the point of view of the disposition of the 39:4-50 (a) or (b)?

JUDGE CARTON: You mean an excess penalty?

MR. MOORE: No, perhaps if he consented to take the test that the maximum penalty instead of being two years would only be a year rather than the absolute revocation for the refusal to submit.

JUDGE CARTON: Actually we didn't consider that although that is part of the California system, I believe.

MR. MOORE: Yes, as a matter of fact, you see, he has to attend the second hearing, the refusal hearing if there's a revocation, but I would think it would seem to me that most people if they knew that they suffered a less of a penalty in

the Municipal Court would consent more readily and of course, the Municipal Court Judge hears the matter in its initiating stage, why have it heard twice which is in effect what's happening because under 39:4-50.2 under the hearing you go through the same evidence in Trenton as you go through in the Municipal Court.

JUDGE CARTON: There's some validity in the comment and I'll report it to the Committee for discussion.

JUDGE ALAMPI: Alex Alampi from the Municipal Court of Clayton. I don't agree with the entire recommendation at all. I think with the number of cases increasing, drunken driving, the fatalities, the accidents on the highways, the drinking problems and in those cases in my experience as a Municipal Court Judge we don't get alcoholic problems, these first time offenders just drinking too much going to parties and things of that nature. I feel the only thing that I would be possibly agreeable to would be to have the discretion of the Judge to issue work transportation licenses where warranted. That's the only thing I would recommend.

Other than that, I think the penalties ought to be left where they are. I think we're relaxing them entirely too far and we're going to have a lot more drunken driving cases coming in our Courts. That's my opinion.

JUDGE CARTON: All I can say is New Jersey is considered to have the harshest law in the United States.

JUDGE ALAMPI: Look at your statistics in New Jersey; that will give you something to think about.

JUDGE CARTON: Look at your driving on the revoked list. You have an awful lot of them.

JUDGE ALAMPI: I merely want to voice my opinion that I'm against it.

JUDGE CARTON: Yes, the gentleman in the back.

FROM THE FLOOR: Martin Feldman, Atlantic County. I have a better system we've been working on as far as this. We'd like to take this out of the Courts almost entirely and leave it up to the traffic cops. Now, that may seem to shutter you a little bit, but the Breathalyzer machine that we have is perfect or close to perfection. I've been through it enough to be satisfied. The Judges - -

JUDGE CARTON: Maybe you better rephrase that statement.

MR. FELDMAN: Judges who decide the cases know almost entirely from the Breathalyzer machine. Now, a different type of system more perfect would be to give the authority to the traffic cop to chase the driver off the road for something like thirty days right then and there and then report his record to the Motor Vehicle Department. Now, the Motor Vehicle Department will have the man's record and then you get into some judicial activity as to whether the man's license should be suspended for a longer time or possibly even totally and I think that we can give this authority to traffic cops and I think that while that system needs some working, I think it might take an awful big burden off the Courts.

JUDGE CARTON: I'm sure it would take a burden off in the first instance, but I can see the first habeas corpus or probable cause hearing when the first guy knocked off the road for thirty days.

I don't have as much faith that you do and I don't think the Committee does in the run of the mill officer. We have problems enough with some of our Municipal Court Judges let alone the cops.

FROM THE FLOOR: Has any consideration been given to the second offender rather than ninety days in the county jail spending that time at a rehabilitation clinic?

JUDGE CARTON: Yes.

FROM THE FLOOR: And is there any proposal that that be incorporated in any legislative enactment?

JUDGE CARTON: I suppose what I should say is that this recommendation which required a great deal of work to put together is not intended to be the law that goes into effect. It's to indicate what we think is a whole new approach that should be assessed in New Jersey. It will be up to the legislature to go put the law together, but it would be our feeling that that ninety day sentence should be set up as a rehabilitation, the idea getting the true alcoholic off the road.

FROM THE FLOOR: But the idea getting him rehabilitated so he won't kill somebody the next time around.

JUDGE CARTON: Exactly.

FROM THE FLOOR: Isn't the California theory that they be sent to a clinical institution for thirty days and waive the ninety day jail sentence?

JUDGE CARTON: The California system is a very complex one that has to do with different levels of alcohol in your blood and with alternatives at all phases. You can take, for instance, a revocation for a year and forget the rehabilitation or you can take the rehabilitation and as the offense is more serious, the alternatives are more serious. There is an institutional program, but it's the serious one.

Yes, sir.

MR. GIOVINE: Peter Giovine, Ocean County.

I have two points I'd like clarified. The Chair didn't address any comments to the gentleman that got up before over on this side of the room and indicated that it was his understanding that probation would be mandatory and that's not my reading of this.

JUDGE CARTON: No, no, no, if I gave that impression that's wrong. That's discretion.

MR. GIOVINE: With regard to what was just asked, it would not be possible to suspend providing you place someone on probation for a three month period, it would not be possible?

JUDGE CARTON: I don't think I understand your question.

MR. GIOVINE: In other words, right now there's absolutely no discretion with regard to the suspension of the sentence. Assuming you place someone on probation rather than a work permit or something along those lines, could you impose a minimum let's say of three months based upon the facts of the case and then suspend it provided that he's placed on probation?

JUDGE CARTON: If he's placed on probation, he doesn't have to be revoked but that's in the discretion of the Court.

MR. GIOVINE: All right, thank you.

JUDGE CARTON: Thank you.

Thank you for hearing us out.

JUDGE SIMPSON: I want to thank Judge Carton for his

presentation. I think that we could summarize by noting that the technical amendments that have been suggested will be considered by the Supreme Court, of course. The substantive amendments, particularly this drunken driving, impaired driving, will obviously need more thinking not only by the legislature, but the Criminal Practice Committee, certainly the Division of Motor Vehicles, but the import here will be of some value for the Court, the legislature and the Bar Association who might take it in conjunction with several resolutions we have received from County Bar Associations to provide for jury trials as to drunken driving cases. The intent obviously is to ameliorate the harshness of the statute. I think we have a feeling as to the general thinking from this Judicial Conference.

One question was not addressed on item one with respect to reasons for custodial sentences. I think Judge Carton referred to it as an oral statement to be made by Municipal Court Judges. I wonder if we should not consider requiring a written statement in the judgement of conviction, the same as in the upper Courts and thus preclude the necessity of transcribing even that portion of the statement that deals with the reasons for the sentence in the event there's going to be an appeal addressed solely to the sentence.

If anyone has thoughts on that, please drop us a line but we are running behind schedule so we'll move on right now to the next subject which will be taken up at this time.

Before we do that, I would like to note if you will please give your name and get to one of these mikes because the reporters are taking this down. We need the information when we have the reports typed up. Even if you have a loud voice, everybody can't always hear you anyway.

The report of the Committee on Juvenile and Domestic Relations Courts will be given by Judge Apter, Essex County Juvenile and Domestic Relations Judge and he will move right into the family Court report as you'll see from the program.

Judge Apter.

IMPORTANT - Please bring this report
with you to the Judicial Conference.
Additional copies will not be available.

REPORT OF THE
NEW JERSEY SUPREME COURT'S
COMMITTEE ON MUNICIPAL COURTS

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Robert A. Pine
Stephen S. Rubins
John C. Stritehoff, Jr.
Harry Supple
Michael Patrick King, Chairman

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who is under such influence (or impairment) to operate a motor vehicle owned by the defendant or in his custody or control; ..." since N.J.S.A. 39:4-50(b) contains no such violation. [Note: R. 7:6-6(a) was similarly amended in 1975].

4. The Committee, with a single dissent, recommends that legislation be proposed reducing the penalties for violations of N.J.S.A. 39:4-50(a), operating a motor vehicle while under the influence of intoxicating liquor and N.J.S.A. 39:4-50(b), operating while ability is impaired. It is recommended that revocation of the right to operate a motor vehicle on the highways of this State for a first conviction under (a) be reduced from not less than 2 years to not less than six months. A maximum period of revocation for a first conviction under (a) should be provided of up to one year. For a first conviction under (b), revocation of the right to operate a motor vehicle on the highways of this State should be reduced from not less than six months to not less than 3 months. A maximum period of revocation for a first conviction under (b) should be provided of up to 6 months.

The Committee recommends that N.J.S.A. 39:4-50.4 be amended to reduce the mandatory penalty for refusing to submit to the taking of breath samples for chemical analysis from six months revocation to three months.

It is further recommended that there be a period of probation for conviction under N.J.S.A. 39:4-50(a) or (b) of not less than six months nor more than two years for purposes of alcoholic rehabilitation and driver education.

For those convicted as a first offender under N.J.S.A. 39:4-50 (a) or (b), it is recommended that the judge be given the discretion to permit the issuance of work transportation licenses during the period of revocation.

The Committee unanimously recommends that legislation be adopted permitting the trial court to use its sound discretion in the sentencing of second offender (a) offenses in substitution for the present requirement of mandatory sentencing in such cases.

5. The committee unanimously recommends that there be a municipal prosecutor who must appear in all contested matters in all municipal courts. This recommendation should be implemented either by order of the Supreme Court or by legislation, which ever is deemed appropriate.

6. The Committee recommends that plea negotiation and disposition by agreement be permitted in all municipal courts in all cases where there is a municipal prosecutor and where defendant is represented by counsel.

7. The Committee recommends that R. 7:4-2 (g) be amended to read as follows:

Discovery is available as a matter of right as provided by R. 3:13-3 in all criminal matters triable in the municipal court and in all other cases triable in the municipal court involving consequences of magnitude to the defendant. Upon written request by the defendant, the prosecuting authority shall permit defendant to inspect and copy all relevant and discoverable items as set forth in R. 3:13-3 (a). The court may order depositions to be taken in such cases as provided in R. 3:13-3.

COMMENT: The Committee is of the opinion that the right to discovery should be broadened to include not only criminal actions triable in the municipal courts, but should be extended to any action involving "consequence of magnitude" to the accused. Thus the right to discovery made essentially co-extensive with the right to counsel.

7a. The procedure for implementation is upon written request of defendant to the prosecuting authority thereby not involving the municipal judge in any additional paper flow prior to trial. The rule