

39:4-50

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 12
NJSA: 39:4-50 (Drunk drivers visitation program)
BILL NO: S462 (Substituted for A2321)

SPONSOR(S): Singer and Kosco

DATE INTRODUCED: Pre-filed

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

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 11, 2000
SENATE: December 18, 2000

DATE OF APPROVAL: January 29, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

S462

SPONSORS STATEMENT: (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A2321

SPONSORS STATEMENT: (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT:

ASSEMBLY: Yes

Identical to Assembly statement to S462

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

Identical to fiscal note to S462

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

SENATE, No. 462

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Senator LOUIS F. KOSCO

District 38 (Bergen)

Co-Sponsored by:

Senator Bucco

SYNOPSIS

Creates a drunk driver visitation program.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/21/2000)

1 AN ACT concerning visitations by certain drunk drivers and amending
2 R.S.39:4-50.

3

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

6

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

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

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

29 (2) For a second violation, a person shall be subject to a fine of not
30 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
31 the court to perform community service for a period of 30 days, which
32 shall be of such form and on such terms as the court shall deem
33 appropriate under the circumstances, and shall be sentenced to
34 imprisonment for a term of not less than 48 consecutive hours, which
35 shall not be suspended or served on probation, nor more than 90 days,
36 and shall forfeit his right to operate a motor vehicle over the highways
37 of this State for a period of two years upon conviction, and, after the
38 expiration of said period, he may make application to the Director of
39 the Division of Motor Vehicles for a license to operate a motor
40 vehicle, which application may be granted at the discretion of the
41 director, consistent with subsection (b) of this section.

42 (3) For a third or subsequent violation, a person shall be subject to
43 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term

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

Matter underlined thus is new matter.

1 of not less than 180 days, except that the court may lower such term
2 for each day, not exceeding 90 days, served performing community
3 service in such form and on such terms as the court shall deem
4 appropriate under the circumstances and shall thereafter forfeit his
5 right to operate a motor vehicle over the highways of this State for 10
6 years.

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

13 A conviction of a violation of a law of a substantially similar nature
14 in another jurisdiction, regardless of whether that jurisdiction is a
15 signatory to the Interstate Driver License Compact pursuant to
16 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction
17 under this subsection unless the defendant can demonstrate by clear
18 and convincing evidence that the conviction in the other jurisdiction
19 was based exclusively upon a violation of a proscribed blood alcohol
20 concentration of less than .10%. If the driving privilege of any
21 person is under revocation or suspension for a violation of any
22 provision of this Title or Title 2C of the New Jersey Statutes at the
23 time of any conviction for a violation of this section, the revocation or
24 suspension period imposed shall commence as of the date of
25 termination of the existing revocation or suspension period. In the
26 case of any person who at the time of the imposition of sentence is less
27 than 17 years of age, the forfeiture, suspension or revocation of the
28 driving privilege imposed by the court under this section shall
29 commence immediately, run through the offender's seventeenth
30 birthday and continue from that date for the period set by the court
31 pursuant to paragraphs (1) through (3) of this subsection. A court
32 that imposes a term of imprisonment under this section may sentence
33 the person so convicted to the county jail, to the workhouse of the
34 county wherein the offense was committed, to an inpatient
35 rehabilitation program or to an Intoxicated Driver Resource Center or
36 other facility approved by the chief of the Intoxicated Driving Program
37 Unit in the Department of Health and Senior Services; provided that
38 for a third or subsequent offense a person shall not serve a term of
39 imprisonment at an Intoxicated Driver Resource Center as provided in
40 subsection (f).

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

1 offense for sentencing purposes and if a third offense occurs more than
2 10 years after the second offense, the court shall treat the third
3 conviction as a second offense for sentencing purposes.

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

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

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

6 (e) Any person accused of a violation of this section who is liable
7 to punishment imposed by this section as a second or subsequent
8 offender shall be entitled to the same rights of discovery as allowed
9 defendants pursuant to the [Rules Governing Criminal Practice, as set
10 forth in the] Rules Governing the Courts of the State of New Jersey.

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

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

37 Required detention periods at the Intoxicated Driver Resource
38 Centers shall be determined according to the individual treatment
39 classification assigned by the Intoxicated Driving Program Unit. Upon
40 attendance at an Intoxicated Driver Resource Center, a person shall be
41 required to pay a per diem fee of \$75.00 for the first offender program
42 or a per diem fee of \$100.00 for the second offender program, as
43 appropriate. Any increases in the per diem fees after the first full year
44 shall be determined pursuant to rules and regulations adopted by the
45 Commissioner of Health and Senior Services in consultation with the
46 Governor's Council on Alcoholism and Drug Abuse pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.).

3 The centers shall conduct a program of alcohol and drug education
4 and highway safety, as prescribed by the Director of the Division of
5 Motor Vehicles.

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

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

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

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

17 (3) driving through a school crossing as defined in R.S.39:1-1
18 knowing that juveniles are present if the municipality has not
19 designated the school crossing as such by ordinance or resolution, the
20 convicted person shall: for a first offense, be fined not less than \$500
21 or more than \$800, be imprisoned for not more than 60 days and have
22 his license to operate a motor vehicle suspended for a period of not
23 less than one year or more than two years; for a second offense, be
24 fined not less than \$1,000 or more than \$2000, perform community
25 service for a period of 60 days, be imprisoned for not less than 96
26 consecutive hours, which shall not be suspended or served on
27 probation, nor more than 180 days, except that the court may lower
28 such term for each day, not exceeding 90 days, served performing
29 community service in such form and on such terms as the court shall
30 deem appropriate under the circumstances and have his license to
31 operate a motor vehicle suspended for a period of not less than four
32 years; and, for a third offense, be fined \$2,000, imprisoned for 180
33 days and have his license to operate a motor vehicle suspended for a
34 period of 20 years; the period of license suspension shall commence
35 upon the completion of any prison sentence imposed upon that person.

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

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

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

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

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

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

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

26 As used in this section, "appropriate victim" means a victim whose
27 condition is determined by the court-appointed visitation supervisor to
28 be appropriate for demonstrating the results of accidents involving
29 drunk drivers without being unnecessarily gruesome or traumatic to
30 the defendant.

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

1 during the visitation, are not liable for any civil damages resulting from
2 injury to the defendant, or for civil damages associated with the
3 visitation which are caused by the defendant, except for willful or
4 grossly negligent acts intended to, or reasonably expected to result in,
5 that injury or damage.

6 The Director of the Division of Motor Vehicles, in consultation
7 with the Commissioner of the Department of Health and Senior
8 Services, shall adopt rules and regulations pursuant to the
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
10 to effectuate the purposes of this subsection.

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

12

13 2. This act shall take effect on the first day of the seventh month
14 after enactment.

15

16

17

STATEMENT

18

19 This bill authorizes the court to order the participation of a person
20 convicted of drunk driving in a program of visitation to specified
21 facilities, as either a condition of probation or a form of community
22 service, to demonstrate the dangers of drunk driving and excessive
23 alcohol consumption.

24 Drunk drivers could be ordered by the court to visit one or more of
25 the following facilities to observe victims of drunk driving or
26 alcoholics: facilities such as emergency rooms that receive victims of
27 drunk drivers; facilities that care for advanced alcoholics; and the
28 offices of county medical examiners or public morgues.

29 Drunk driving visitors to these facilities would be carefully screened
30 to try to ensure that the visit would not be unnecessarily traumatic or
31 inappropriate. A personal conference among court personnel, the
32 driver and his parents would follow the visitation to allow for the
33 experience and its impact to be discussed. A letter or written report
34 from the driver to the court may be substituted due to the driver's
35 absence from the jurisdiction, conflicting time schedules or other
36 reasons.

37 The bill provides that the defendant would participate in the
38 visitation program as either a condition of probation or a form of
39 community service. The bill also require the Intoxicated Driving
40 Program Unit to supervise a counseling session prior to the defendant's
41 participation in the visitation program.

42 Further, the bill conforms section 1 in the bill (R.S.39:4-50) to the
43 provisions of P.L.1999, c.185 and correct references to the New
44 Jersey Court Rules.

45 According to the sponsor, young drivers, in particular, often do not
46 realize the consequences of drinking alcohol or ingesting any other

1 drugs, whether legal or not, and driving a motor vehicle while their
2 physical capabilities to drive safely are impaired by those substances.
3 Young drivers who use alcohol or other drugs are likely to become
4 dependent on those substances; prompt intervention is needed to
5 protect other persons, as well as the young driver, from death or
6 serious injury. The conviction of a young driver for driving under the
7 influence of an alcoholic beverage, a drug, or both, identifies that
8 person as a risk to the health and safety of others, as well as that
9 young driver, because of the young driver's inability to control his or
10 her conduct.

11 It has been demonstrated that close observation of the effects on
12 others of alcohol and other drugs, both chronic and acute, by a young
13 driver convicted of driving under the influence has a marked effect on
14 recidivism and should therefore be encouraged by the courts,
15 prehospital emergency medical care personnel and other officials
16 charged with attending to the carnage and wreckage caused by drunk
17 drivers. The program prescribed in this bill provides guidelines for the
18 operation of an intensive program to discourage recidivism by
19 convicted drunk drivers, especially youthful drivers.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 462

STATE OF NEW JERSEY

DATED: MARCH 20, 2000

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 462.

This bill authorizes the court to order the participation of a person convicted of drunk driving in a program of visitation to specified facilities, as either a condition of probation or a form of community service, to demonstrate the dangers of drunk driving and excessive alcohol consumption.

Drunk drivers could be ordered by the court to visit one or more of the following facilities to observe victims of drunk driving or alcoholics: facilities such as emergency rooms that receive victims of drunk drivers; facilities that care for advanced alcoholics; and the offices of county medical examiners or public morgues.

Drunk driving visitors to these facilities would be carefully screened to try to ensure that the visit would not be unnecessarily traumatic or inappropriate. A personal conference among court personnel, the driver and his parents would follow the visitation to discuss the visitation experience and its impact. If a personal conference is not practicable, the court is to require the driver to submit a letter or written report.

The bill provides that the defendant would participate in the visitation program as either a condition of probation or a form of community service. The bill also permits the Intoxicated Driving Program Unit to supervise a counseling session prior to the defendant's participation in the visitation program.

According to the sponsor, young drivers often do not realize the consequences of drinking alcohol or ingesting legal or illegal drugs, and driving a motor vehicle while their physical capabilities are impaired by those substances. Young drivers who use alcohol or other drugs are likely to become dependent on those substances; prompt intervention is needed to protect the young driver and other persons from death or serious injury. Providing a young driver convicted of driving under the influence with the opportunity to observe the chronic and acute effects of alcohol and other drugs has a marked effect on recidivism. The program prescribed in this bill provides guidelines for the operation of an intensive program to discourage recidivism by convicted drunk drivers, especially youthful drivers.

This bill was prefiled for introduction in the 2000 legislative

session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE, No. 462

STATE OF NEW JERSEY

209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Senator LOUIS F. KOSCO

District 38 (Bergen)

Co-Sponsored by:

Senators Bucco and Bennett

SYNOPSIS

Creates a drunk driver visitation program.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee with technical review.



(Sponsorship Updated As Of: 3/28/2000)

1 AN ACT concerning visitations by certain drunk drivers and amending
2 R.S.39:4-50.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.39:4-50 is amended to read as follows:

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

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

29 (2) For a second violation, a person shall be subject to a fine of not
30 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
31 the court to perform community service for a period of 30 days, which
32 shall be of such form and on such terms as the court shall deem
33 appropriate under the circumstances, and shall be sentenced to
34 imprisonment for a term of not less than 48 consecutive hours, which
35 shall not be suspended or served on probation, nor more than 90 days,
36 and shall forfeit his right to operate a motor vehicle over the highways
37 of this State for a period of two years upon conviction, and, after the
38 expiration of said period, he may make application to the Director of
39 the Division of Motor Vehicles for a license to operate a motor
40 vehicle, which application may be granted at the discretion of the
41 director, consistent with subsection (b) of this section.

42 (3) For a third or subsequent violation, a person shall be subject to
43 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term

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

Matter underlined thus is new matter.

1 of not less than 180 days, except that the court may lower such term
2 for each day, not exceeding 90 days, served performing community
3 service in such form and on such terms as the court shall deem
4 appropriate under the circumstances and shall thereafter forfeit his
5 right to operate a motor vehicle over the highways of this State for 10
6 years.

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

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

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

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

1 offense for sentencing purposes and if a third offense occurs more than
2 10 years after the second offense, the court shall treat the third
3 conviction as a second offense for sentencing purposes.

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

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

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

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

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

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

37 Required detention periods at the Intoxicated Driver Resource
38 Centers shall be determined according to the individual treatment
39 classification assigned by the Intoxicated Driving Program Unit. Upon
40 attendance at an Intoxicated Driver Resource Center, a person shall be
41 required to pay a per diem fee of \$75.00 for the first offender program
42 or a per diem fee of \$100.00 for the second offender program, as
43 appropriate. Any increases in the per diem fees after the first full year
44 shall be determined pursuant to rules and regulations adopted by the
45 Commissioner of Health and Senior Services in consultation with the
46 Governor's Council on Alcoholism and Drug Abuse pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.).

3 The centers shall conduct a program of alcohol and drug education
4 and highway safety, as prescribed by the Director of the Division of
5 Motor Vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 As used in this section, "appropriate victim" means a victim whose
31 condition is determined by the court-appointed visitation supervisor to
32 be appropriate for demonstrating the results of accidents involving
33 drunk drivers without being unnecessarily gruesome or traumatic to
34 the defendant.

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

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

10 The Director of the Division of Motor Vehicles, in consultation
11 with the Commissioner of the Department of Health and Senior
12 Services, shall adopt rules and regulations pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
14 to effectuate the purposes of this subsection.

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

16

17 2. This act shall take effect on the first day of the seventh month
18 after enactment

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 462

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 21, 2000

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 462.

Senate Bill No. 462 authorizes the court to order a person convicted of drunk driving to participate in a program of visitation to specified facilities, as either a condition of probation or a form of community service, to demonstrate the dangers of drunk driving and excessive alcohol consumption. Preference for participation in the program is to be given to persons who were under 21 years of age when they committed the offense.

The court is authorized to order drunk drivers to visit one or more of the following facilities to observe victims of drunk driving or alcoholics: facilities such as emergency rooms that receive victims of drunk drivers; facilities that care for advanced alcoholics; and the offices of county medical examiners or public morgues.

Drunk driving visitors to these facilities would be carefully screened to try to ensure that the visit would not be unnecessarily traumatic or inappropriate. A personal conference among court personnel, the driver and his parents may follow the visitation to discuss the visitation experience and its impact. If a personal conference is not practicable, the court is to require the driver to submit a written report concerning the visitation experience and its impact. The bills also permit the Intoxicated Driving Program Unit to supervise a counseling session prior to the defendant's participation in the visitation program.

The committee amended the bill to:

- C Place responsibility for determining whether the visitation would be traumatic or inappropriate for the defendant and whether a victim is appropriate for observation by the defendant on the facility's supervisory personnel and the probation officer, rather than a court-appointed visitation supervisor.
- C Clarify that eligible facilities are to include only those which have agreed to participate in the program.
- C Clarify that the court may consult with persons knowledgeable about the defendant's physical and emotional suitability for

participation in the visitation program prior to ordering participation.

- C Authorize the Supreme Court, rather than the Director of the Division of Motor Vehicles and the Commissioner of Health and Senior Services, to adopt rules governing the visitation program.
- C Make technical corrections to R.S.39:4-50 to conform its provisions to P.L.2000, c.83 and P.L.2000, c.117.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 2321, also reported by the committee on this same date.

[First Reprint]

SENATE, No. 462

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Senator LOUIS F. KOSCO

District 38 (Bergen)

Co-Sponsored by:

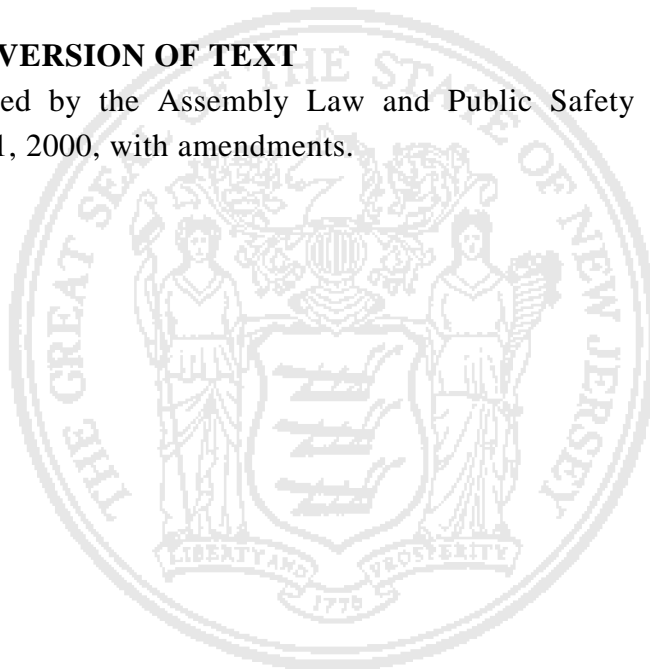
Senators Bucco, Bennett, Assemblymen Malone and Cottrell

SYNOPSIS

Creates a drunk driver visitation program.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on September 21, 2000, with amendments.



(Sponsorship Updated As Of: 12/12/2000)

1 AN ACT concerning visitations by certain drunk drivers and amending
2 R.S.39:4-50.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.39:4-50 is amended to read as follows:

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

19 (1) For the first offense, to a fine of not less than \$250.00 nor
20 more than \$400.00 and a period of detainment of not less than
21 12 hours nor more than 48 hours spent during two consecutive days
22 of not less than six hours each day and served as prescribed by the
23 program requirements of the Intoxicated Driver Resource Centers
24 established under subsection (f) of this section and, in the discretion
25 of the court, a term of imprisonment of not more than 30 days and
26 shall forthwith forfeit his right to operate a motor vehicle over the
27 highways of this State for a period of not less than six months nor
28 more than one year. ¹For a first offense, a person also shall be subject
29 to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).¹

30 (2) For a second violation, a person shall be subject to a fine of not
31 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
32 the court to perform community service for a period of 30 days, which
33 shall be of such form and on such terms as the court shall deem
34 appropriate under the circumstances, and shall be sentenced to
35 imprisonment for a term of not less than 48 consecutive hours, which
36 shall not be suspended or served on probation, nor more than 90 days,
37 and shall forfeit his right to operate a motor vehicle over the highways
38 of this State for a period of two years upon conviction, and, after the
39 expiration of said period, he may make application to the Director of
40 the Division of Motor Vehicles for a license to operate a motor
41 vehicle, which application may be granted at the discretion of the
42 director, consistent with subsection (b) of this section. ¹For a second

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted September 21, 2000.

1 violation, a person also shall be required to install an ignition interlock
2 device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)
3 or shall have his registration certificate and registration plates revoked
4 for two years under the provisions of section 2 of P.L.1995, c.286
5 (C.39:3-40.1).¹

6 (3) For a third or subsequent violation, a person shall be subject to
7 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
8 of not less than 180 days, except that the court may lower such term
9 for each day, not exceeding 90 days, served performing community
10 service in such form and on such terms as the court shall deem
11 appropriate under the circumstances and shall thereafter forfeit his
12 right to operate a motor vehicle over the highways of this State for 10
13 years. ¹For a third or subsequent violation, a person also shall be
14 required to install an ignition interlock device under the provisions of
15 P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration
16 certificate and registration plates revoked for 10 years under the
17 provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

18 As used in this section, the phrase "narcotic, hallucinogenic or
19 habit-producing drug" includes an inhalant or other substance
20 containing a chemical capable of releasing any toxic vapors or fumes
21 for the purpose of inducing a condition of intoxication, such as any
22 glue, cement or any other substance containing one or more of the
23 following chemical compounds: acetone and acetate, amyl nitrite or
24 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,
25 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite
26 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl
27 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl
28 alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl
29 nitrate or their isomers, toluene, toluol or xylene or any other chemical
30 substance capable of causing a condition of intoxication, inebriation,
31 excitement, stupefaction or the dulling of the brain or nervous system
32 as a result of the inhalation of the fumes or vapors of such chemical
33 substance.¹

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

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

1 concentration of less than ¹[.10%] 0.10%¹.

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

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

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

1 to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
2 Intoxicated Driving Program Unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (h) ¹[In addition to any penalty or condition imposed by law or
29 regulation, a person who is subject to the provisions of this section
30 shall also be subject to the provisions of P.L.1999, c.417
31 (C.39:4-50.16 et al.).

32 (i) ¹A court also may order a person convicted pursuant to
33 subsection a. of this section, to participate in a supervised visitation
34 program as either a condition of probation or a form of community
35 service, giving preference to those who were under the age of 21 at
36 the time of the offense. ¹[The] Prior to ordering a person to
37 participate in such a program, the¹ court may consult with any person
38 who may provide useful information on the defendant's physical,
39 emotional and mental suitability for the visit to ensure that it will not
40 cause any injury to the defendant. The ¹court also may order that the¹
41 defendant ¹[may] ¹ participate in a counseling session under the
42 supervision of the Intoxicated Driving Program Unit prior to
43 participating in the supervised visitation program. The supervised
44 visitation program shall be at one or more of the following facilities
45 ¹which have agreed to participate in the program¹ under the
46 supervision of the facility's personnel and the probation department:

47 (1) a trauma center, critical care center or acute care hospital

1 having basic emergency services, which receives victims of motor
2 vehicle accidents for the purpose of observing appropriate victims of
3 drunk drivers and victims who are, themselves, drunk drivers;

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

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

10 As used in this section, "appropriate victim" means a victim whose
11 condition is determined by the ¹[court-appointed visitation
12 supervisor] facility's supervisory personnel and the probation officer¹
13 to be appropriate for demonstrating the results of accidents involving
14 drunk drivers without being unnecessarily gruesome or traumatic to
15 the defendant.

16 If at any time before or during a visitation the ¹[court-appointed
17 visitation supervisor determines] facility's supervisory personnel and
18 the probation officer determine¹ that the visitation may be or is
19 traumatic or otherwise inappropriate for that defendant, the visitation
20 shall be terminated without prejudice to the defendant. The program
21 may include a personal conference after the visitation, which may
22 include the sentencing judge or the judge who coordinates the program
23 for the court, the defendant, defendant's counsel, and, if available, the
24 defendant's parents to discuss the visitation and its effect on the
25 defendant's future conduct. If a personal conference is not practicable
26 because of the defendant's absence from the jurisdiction, conflicting
27 time schedules, or any other reason, the court shall require the
28 defendant to submit a written report concerning the visitation
29 experience and its impact on the defendant. The county, a court, any
30 facility visited pursuant to the program, any agents, employees, or
31 independent contractors of the court, county, or facility visited
32 pursuant to the program, and any person supervising a defendant
33 during the visitation, are not liable for any civil damages resulting from
34 injury to the defendant, or for civil damages associated with the
35 visitation which are caused by the defendant, except for willful or
36 grossly negligent acts intended to, or reasonably expected to result in,
37 that injury or damage.

38 ¹[The Director of the Division of Motor Vehicles, in consultation
39 with the Commissioner of the Department of Health and Senior
40 Services, shall adopt rules and regulations pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
42 to effectuate the purposes of this subsection]

43 The Supreme Court may adopt court rules or directives to
44 effectuate the purposes of this subsection¹.

45
46 2. This act shall take effect on the first day of the seventh month
47 after enactment.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 462

STATE OF NEW JERSEY

209th LEGISLATURE

DATED: JANUARY 10, 2001

SUMMARY

Synopsis: Creates a drunk driver visitation program
Type of Impact: General Fund expenditure
Agencies Affected: Judiciary

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate	Indeterminate	Indeterminate

- ! The Office of Legislative Services (OLS) **concurs** with the Judiciary estimate.
- ! The bill authorizes the court to order a person convicted of drunk driving to participate in a program of visitation to specified facilities, such as emergency rooms that receive victims of drunk drivers; facilities that care for advanced alcoholics; and the offices of county medical examiners or public morgues, as either a condition of probation or a form of community service, to demonstrate the dangers of drunk driving and excessive alcohol consumption. Preference for participation in the program is to be given to persons who were under 21 years of age when they committed the offense
- ! The bill also permits the Intoxicated Driving Program Unit to supervise a counseling session prior to the defendant's participation in the visitation program.
- ! The Administrative Office of the Courts (AOC) states that because this is a new program, there are no data available to determine the cost of its operation. In addition, because the program is discretionary, there is no information available concerning the number of judges who would refer offenders into the program or the actual number of program participants.

BILL DESCRIPTION

Senate Bill No. 462 (1R) of 2000 authorizes the court to order a person convicted of drunk driving to participate in a program of visitation to specified facilities, as either a condition of probation or a form of community service, to demonstrate the dangers of drunk driving and excessive alcohol consumption. Preference for participation in the program is to be given to

persons who were under 21 years of age when they committed the offense.

The court is authorized to order drunk drivers to visit one or more of the following facilities to observe victims of drunk driving or alcoholics: facilities such as emergency rooms that receive victims of drunk drivers; facilities that care for advanced alcoholics; and the offices of county medical examiners or public morgues. A personal conference among court personnel, the driver and his parents may follow the visitation to discuss the visitation experience and its impact. If a personal conference is not practicable, the court is to require the driver to submit a written report concerning the visitation experience and its impact. The bill also permits the Intoxicated Driving Program Unit to supervise a counseling session prior to the defendant's participation in the visitation program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Administrative Office of the Courts (AOC) states that because this is a new program, there are no data available to determine the cost of its operation. In addition, because the program is discretionary, there is no information available concerning the number of judges who would refer offenders into the program or the actual number of program participant.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Judiciary estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

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

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

ASSEMBLY, No. 2321

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MAY 1, 2000

Sponsored by:

Assemblyman JOSEPH R. MALONE, III

District 30 (Burlington, Monmouth and Ocean)

Assemblyman MELVIN COTTRELL

District 30 (Burlington, Monmouth and Ocean)

SYNOPSIS

Creates a drunk driver visitation program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning visitations by certain drunk drivers and amending
2 R.S.39:4-50.

3

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

6

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

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

19 (1) For the first offense, to a fine of not less than \$250.00 nor
20 more than \$400.00 and a period of detainment of not less than
21 12 hours nor more than 48 hours spent during two consecutive days
22 of not less than six hours each day and served as prescribed by the
23 program requirements of the Intoxicated Driver Resource Centers
24 established under subsection (f) of this section and, in the discretion
25 of the court, a term of imprisonment of not more than 30 days and
26 shall forthwith forfeit his right to operate a motor vehicle over the
27 highways of this State for a period of not less than six months nor
28 more than one year.

29 (2) For a second violation, a person shall be subject to a fine of not
30 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
31 the court to perform community service for a period of 30 days, which
32 shall be of such form and on such terms as the court shall deem
33 appropriate under the circumstances, and shall be sentenced to
34 imprisonment for a term of not less than 48 consecutive hours, which
35 shall not be suspended or served on probation, nor more than 90 days,
36 and shall forfeit his right to operate a motor vehicle over the highways
37 of this State for a period of two years upon conviction, and, after the
38 expiration of said period, he may make application to the Director of
39 the Division of Motor Vehicles for a license to operate a motor
40 vehicle, which application may be granted at the discretion of the
41 director, consistent with subsection (b) of this section.

42 (3) For a third or subsequent violation, a person shall be subject to
43 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term

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

Matter underlined thus is new matter.

1 of not less than 180 days, except that the court may lower such term
2 for each day, not exceeding 90 days, served performing community
3 service in such form and on such terms as the court shall deem
4 appropriate under the circumstances and shall thereafter forfeit his
5 right to operate a motor vehicle over the highways of this State for
6 10 years.

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

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

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

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

1 offense for sentencing purposes and if a third offense occurs more than
2 10 years after the second offense, the court shall treat the third
3 conviction as a second offense for sentencing purposes.

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

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

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

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

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

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

37 Required detention periods at the Intoxicated Driver Resource
38 Centers shall be determined according to the individual treatment
39 classification assigned by the Intoxicated Driving Program Unit. Upon
40 attendance at an Intoxicated Driver Resource Center, a person shall be
41 required to pay a per diem fee of \$75.00 for the first offender program
42 or a per diem fee of \$100.00 for the second offender program, as
43 appropriate. Any increases in the per diem fees after the first full year
44 shall be determined pursuant to rules and regulations adopted by the
45 Commissioner of Health and Senior Services in consultation with the
46 Governor's Council on Alcoholism and Drug Abuse pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.).

3 The centers shall conduct a program of alcohol and drug education
4 and highway safety, as prescribed by the Director of the Division of
5 Motor Vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 As used in this section, "appropriate victim" means a victim whose
31 condition is determined by the court-appointed visitation supervisor to
32 be appropriate for demonstrating the results of accidents involving
33 drunk drivers without being unnecessarily gruesome or traumatic to
34 the defendant.

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

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

10 The Director of the Division of Motor Vehicles, in consultation
11 with the Commissioner of the Department of Health and Senior
12 Services, shall adopt rules and regulations pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
14 to effectuate the purposes of this subsection.

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

16
17 2. This act shall take effect on the first day of the seventh month
18 after enactment.

21 STATEMENT

22
23 This bill authorizes the court to order the participation of a person
24 convicted of drunk driving in a program of visitation to specified
25 facilities, as either a condition of probation or a form of community
26 service, to demonstrate the dangers of drunk driving and excessive
27 alcohol consumption.

28 Drunk drivers could be ordered by the court to visit one or more of
29 the following facilities to observe victims of drunk driving or
30 alcoholics: facilities such as emergency rooms that receive victims of
31 drunk drivers; facilities that care for advanced alcoholics; and the
32 offices of county medical examiners or public morgues.

33 Drunk driving visitors to these facilities would be carefully screened
34 to try to ensure that the visit would not be unnecessarily traumatic or
35 inappropriate. A personal conference among court personnel, the
36 driver and his parents may follow the visitation to discuss the visitation
37 experience and its impact. If a personal conference is not practicable,
38 the court is to require the driver to submit a written report concerning
39 the visitation experience and its impact.

40 The bill provides that the defendant would participate in the
41 visitation program as either a condition of probation or a form of
42 community service. The bill also provides for permits the Intoxicated
43 Driving Program Unit to supervise a counseling session prior to the
44 defendant's participation in the visitation program.

45 According to the sponsor, young drivers often do not realize the
46 consequences of drinking alcohol or ingesting legal or illegal drugs,

1 and driving a motor vehicle while their physical capabilities are
2 impaired by those substances. Young drivers who use alcohol or other
3 drugs are likely to become dependent on those substances; prompt
4 intervention is needed to protect the young driver and other persons
5 from death or serious injury. Providing a young driver convicted of
6 driving under the influence with the opportunity to observe the chronic
7 and acute effects of alcohol and other drugs has a marked effect on
8 recidivism. The program prescribed in this bill provides guidelines for
9 the operation of an intensive program to discourage recidivism by
10 convicted drunk drivers, especially youthful drivers.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2321

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 21, 2000

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2321.

Assembly Bill No. 2321 authorizes the court to order a person convicted of drunk driving to participate in a program of visitation to specified facilities, as either a condition of probation or a form of community service, to demonstrate the dangers of drunk driving and excessive alcohol consumption. Preference for participation in the program is to be given to persons who were under 21 years of age when they committed the offense.

The court is authorized to order drunk drivers to visit one or more of the following facilities to observe victims of drunk driving or alcoholics: facilities such as emergency rooms that receive victims of drunk drivers; facilities that care for advanced alcoholics; and the offices of county medical examiners or public morgues.

Drunk driving visitors to these facilities would be carefully screened to try to ensure that the visit would not be unnecessarily traumatic or inappropriate. A personal conference among court personnel, the driver and his parents may follow the visitation to discuss the visitation experience and its impact. If a personal conference is not practicable, the court is to require the driver to submit a written report concerning the visitation experience and its impact. The bills also permit the Intoxicated Driving Program Unit to supervise a counseling session prior to the defendant's participation in the visitation program.

The committee amended the bill to:

- C Place responsibility for determining whether the visitation would be traumatic or inappropriate for the defendant and whether a victim is appropriate for observation by the defendant on the facility's supervisory personnel and the probation officer, rather than a court-appointed visitation supervisor.
- C Clarify that eligible facilities are to include only those which have agreed to participate in the program.
- C Clarify that the court may consult with persons knowledgeable about the defendant's physical and emotional suitability for

participation in the visitation program prior to ordering participation.

- C Authorize the Supreme Court, rather than the Director of the Division of Motor Vehicles and the Commissioner of Health and Senior Services, to adopt rules governing the visitation program.
- C Make technical corrections to R.S.39:4-50 to conform its provisions to P.L.2000, c.83 and P.L.2000, c.117.

As amended and reported by the committee, this bill is identical to Senate Bill No. 462, also reported by the committee on this same date.

[First Reprint]

ASSEMBLY, No. 2321

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 1, 2000

Sponsored by:

Assemblyman JOSEPH R. MALONE, III

District 30 (Burlington, Monmouth and Ocean)

Assemblyman MELVIN COTTRELL

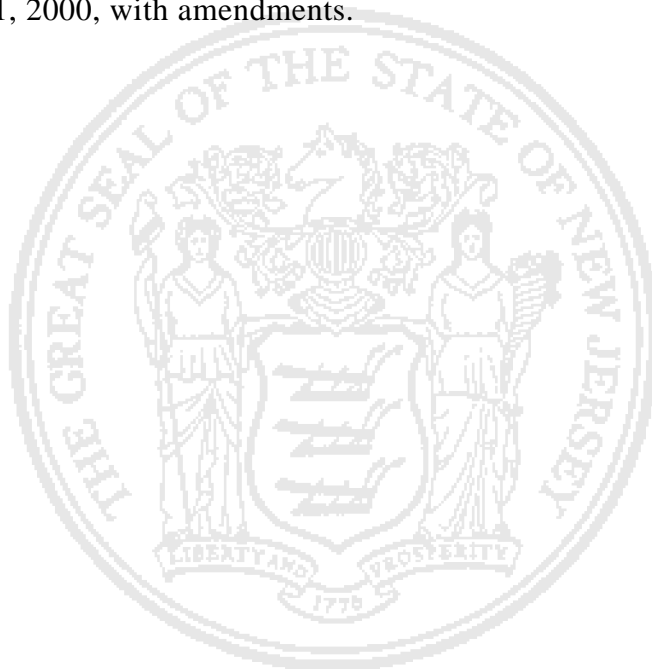
District 30 (Burlington, Monmouth and Ocean)

SYNOPSIS

Creates a drunk driver visitation program.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on September 21, 2000, with amendments.



1 AN ACT concerning visitations by certain drunk drivers and amending
2 R.S.39:4-50.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.39:4-50 is amended to read as follows:

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

19 (1) For the first offense, to a fine of not less than \$250.00 nor
20 more than \$400.00 and a period of detainment of not less than 12
21 hours nor more than 48 hours spent during two consecutive days of
22 not less than six hours each day and served as prescribed by the
23 program requirements of the Intoxicated Driver Resource Centers
24 established under subsection (f) of this section and, in the discretion
25 of the court, a term of imprisonment of not more than 30 days and
26 shall forthwith forfeit his right to operate a motor vehicle over the
27 highways of this State for a period of not less than six months nor
28 more than one year. ¹For a first offense, a person also shall be subject
29 to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).¹

30 (2) For a second violation, a person shall be subject to a fine of not
31 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
32 the court to perform community service for a period of 30 days, which
33 shall be of such form and on such terms as the court shall deem
34 appropriate under the circumstances, and shall be sentenced to
35 imprisonment for a term of not less than 48 consecutive hours, which
36 shall not be suspended or served on probation, nor more than 90 days,
37 and shall forfeit his right to operate a motor vehicle over the highways
38 of this State for a period of two years upon conviction, and, after the
39 expiration of said period, he may make application to the Director of
40 the Division of Motor Vehicles for a license to operate a motor
41 vehicle, which application may be granted at the discretion of the
42 director, consistent with subsection (b) of this section. ¹For a second

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted September 21, 2000.

1 violation, a person also shall be required to install an ignition interlock
2 device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)
3 or shall have his registration certificate and registration plates revoked
4 for two years under the provisions of section 2 of P.L.1995, c.286
5 (C.39:3-40.1).¹

6 (3) For a third or subsequent violation, a person shall be subject to
7 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
8 of not less than 180 days, except that the court may lower such term
9 for each day, not exceeding 90 days, served performing community
10 service in such form and on such terms as the court shall deem
11 appropriate under the circumstances and shall thereafter forfeit his
12 right to operate a motor vehicle over the highways of this State for 10
13 years. ¹For a third or subsequent violation, a person also shall be
14 required to install an ignition interlock device under the provisions of
15 P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration
16 certificate and registration plates revoked for 10 years under the
17 provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

18 As used in this section, the phrase "narcotic, hallucinogenic or
19 habit-producing drug" includes an inhalant or other substance
20 containing a chemical capable of releasing any toxic vapors or fumes
21 for the purpose of inducing a condition of intoxication, such as any
22 glue, cement or any other substance containing one or more of the
23 following chemical compounds: acetone and acetate, amyl nitrite or
24 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,
25 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite
26 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl
27 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl
28 alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl
29 nitrate or their isomers, toluene, toluol or xylene or any other chemical
30 substance capable of causing a condition of intoxication, inebriation,
31 excitement, stupefaction or the dulling of the brain or nervous system
32 as a result of the inhalation of the fumes or vapors of such chemical
33 substance.¹

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

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

1 concentration of less than ¹[.10%] 0.10%¹.

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

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

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

1 to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
2 Intoxicated Driving Program Unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 convicted person shall: for a first offense, be fined not less than \$500
2 or more than \$800, be imprisoned for not more than 60 days and have
3 his license to operate a motor vehicle suspended for a period of not
4 less than one year or more than two years; for a second offense, be
5 fined not less than \$1,000 or more than \$2,000, perform community
6 service for a period of 60 days, be imprisoned for not less than 96
7 consecutive hours, which shall not be suspended or served on
8 probation, nor more than 180 days, except that the court may lower
9 such term for each day, not exceeding 90 days, served performing
10 community service in such form and on such terms as the court shall
11 deem appropriate under the circumstances and have his license to
12 operate a motor vehicle suspended for a period of not less than four
13 years; and, for a third offense, be fined \$2,000, imprisoned for 180
14 days and have his license to operate a motor vehicle suspended for a
15 period of 20 years; the period of license suspension shall commence
16 upon the completion of any prison sentence imposed upon that person.

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

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

30 (h) ¹[In addition to any penalty or condition imposed by law or
31 regulation, a person who is subject to the provisions of this section
32 shall also be subject to the provisions of P.L.1999, c.417
33 (C.39:4-50.16 et al.).

34 (i) ¹ A court also may order a person convicted pursuant to
35 subsection a. of this section, to participate in a supervised visitation
36 program as either a condition of probation or a form of community
37 service, giving preference to those who were under the age of 21 at
38 the time of the offense. ¹[The] Prior to ordering a person to
39 participate in such a program, the ¹ court may consult with any person
40 who may provide useful information on the defendant's physical,
41 emotional and mental suitability for the visit to ensure that it will not
42 cause any injury to the defendant. The ¹ court also may order that the ¹
43 defendant ¹[may] ¹ participate in a counseling session under the
44 supervision of the Intoxicated Driving Program Unit prior to
45 participating in the supervised visitation program. The supervised
46 visitation program shall be at one or more of the following facilities

1 ¹which have agreed to participate in the program under the
2 supervision of the facility's personnel and the probation department:

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

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

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

13 As used in this section, "appropriate victim" means a victim whose
14 condition is determined by the ¹[court-appointed visitation
15 supervisor] facility's supervisory personnel and the probation officer¹
16 to be appropriate for demonstrating the results of accidents involving
17 drunk drivers without being unnecessarily gruesome or traumatic to
18 the defendant.

19 If at any time before or during a visitation the ¹[court-appointed
20 visitation supervisor determines] facility's supervisory personnel and
21 the probation officer determine¹ that the visitation may be or is
22 traumatic or otherwise inappropriate for that defendant, the visitation
23 shall be terminated without prejudice to the defendant. The program
24 may include a personal conference after the visitation, which may
25 include the sentencing judge or the judge who coordinates the program
26 for the court, the defendant, defendant's counsel, and, if available, the
27 defendant's parents to discuss the visitation and its effect on the
28 defendant's future conduct. If a personal conference is not practicable
29 because of the defendant's absence from the jurisdiction, conflicting
30 time schedules, or any other reason, the court shall require the
31 defendant to submit a written report concerning the visitation
32 experience and its impact on the defendant. The county, a court, any
33 facility visited pursuant to the program, any agents, employees, or
34 independent contractors of the court, county, or facility visited
35 pursuant to the program, and any person supervising a defendant
36 during the visitation, are not liable for any civil damages resulting from
37 injury to the defendant, or for civil damages associated with the
38 visitation which are caused by the defendant, except for willful or
39 grossly negligent acts intended to, or reasonably expected to result in,
40 that injury or damage.

41 ¹[The Director of the Division of Motor Vehicles, in consultation
42 with the Commissioner of the Department of Health and Senior
43 Services, shall adopt rules and regulations pursuant to the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
45 to effectuate the purposes of this subsection]

46 The Supreme Court may adopt court rules or directives to

1 effectuate the purposes of this subsection¹ .

2 (cf: P.L.2000, c.117, s.1)

3

4 2. This act shall take effect on the first day of the seventh month

5 after enactment.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2321

STATE OF NEW JERSEY

209th LEGISLATURE

DATED: JANUARY 10, 2001

SUMMARY

Synopsis: Creates a drunk driver visitation program
Type of Impact: General Fund expenditure
Agencies Affected: Judiciary

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate	Indeterminate	Indeterminate

- ! The Office of Legislative Services (OLS) **concurs** with the Judiciary estimate.
- ! The bill authorizes the court to order a person convicted of drunk driving to participate in a program of visitation to specified facilities, such as emergency rooms that receive victims of drunk drivers; facilities that care for advanced alcoholics; and the offices of county medical examiners or public morgues, as either a condition of probation or a form of community service, to demonstrate the dangers of drunk driving and excessive alcohol consumption. Preference for participation in the program is to be given to persons who were under 21 years of age when they committed the offense.
- ! The bill also permits the Intoxicated Driving Program Unit to supervise a counseling session prior to the defendant's participation in the visitation program.
- ! The Administrative Office of the Courts (AOC) states that because this is a new program, there are no data available to determine the cost of its operation. In addition, because the program is discretionary, there is no information available concerning the number of judges who would refer offenders into the program or the actual number of program participants.

BILL DESCRIPTION

Assembly Bill No. 2321 (1R) of 2000 authorizes the court to order a person convicted of drunk driving to participate in a program of visitation to specified facilities, as either a condition of probation or a form of community service, to demonstrate the dangers of drunk driving and excessive alcohol consumption. Preference for participation in the program is

to be given to persons who were under 21 years of age when they committed the offense.

The court is authorized to order drunk drivers to visit one or more of the following facilities to observe victims of drunk driving or alcoholics: facilities such as emergency rooms that receive victims of drunk drivers; facilities that care for advanced alcoholics; and the offices of county medical examiners or public morgues. A personal conference among court personnel, the driver and his parents may follow the visitation to discuss the visitation experience and its impact. If a personal conference is not practicable, the court is to require the driver to submit a written report concerning the visitation experience and its impact. The bill also permits the Intoxicated Driving Program Unit to supervise a counseling session prior to the defendant's participation in the visitation program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Administrative Office of the Courts (AOC) states that because this is a new program, there are no data available to determine the cost of its operation. In addition, because the program is discretionary, there is no information available concerning the number of judges who would refer offenders into the program or the actual number of program participants.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Judiciary estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

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

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

P.L. 2001, CHAPTER 12, *approved January 29, 2001*
Senate, No. 462 (*First Reprint*)

1 **AN ACT** concerning visitations by certain drunk drivers and amending
2 R.S.39:4-50.

3

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

6

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

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

19 (1) For the first offense, to a fine of not less than \$250.00 nor
20 more than \$400.00 and a period of detainment of not less than
21 12 hours nor more than 48 hours spent during two consecutive days
22 of not less than six hours each day and served as prescribed by the
23 program requirements of the Intoxicated Driver Resource Centers
24 established under subsection (f) of this section and, in the discretion
25 of the court, a term of imprisonment of not more than 30 days and
26 shall forthwith forfeit his right to operate a motor vehicle over the
27 highways of this State for a period of not less than six months nor
28 more than one year. ¹For a first offense, a person also shall be subject
29 to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).¹

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted September 21, 2000.

1 vehicle, which application may be granted at the discretion of the
2 director, consistent with subsection (b) of this section. ¹For a second
3 violation, a person also shall be required to install an ignition interlock
4 device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)
5 or shall have his registration certificate and registration plates revoked
6 for two years under the provisions of section 2 of P.L.1995, c.286
7 (C.39:3-40.1).¹

8 (3) For a third or subsequent violation, a person shall be subject to
9 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
10 of not less than 180 days, except that the court may lower such term
11 for each day, not exceeding 90 days, served performing community
12 service in such form and on such terms as the court shall deem
13 appropriate under the circumstances and shall thereafter forfeit his
14 right to operate a motor vehicle over the highways of this State for 10
15 years. ¹For a third or subsequent violation, a person also shall be
16 required to install an ignition interlock device under the provisions of
17 P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration
18 certificate and registration plates revoked for 10 years under the
19 provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

20 As used in this section, the phrase "narcotic, hallucinogenic or
21 habit-producing drug" includes an inhalant or other substance
22 containing a chemical capable of releasing any toxic vapors or fumes
23 for the purpose of inducing a condition of intoxication, such as any
24 glue, cement or any other substance containing one or more of the
25 following chemical compounds: acetone and acetate, amyl nitrite or
26 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,
27 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite
28 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl
29 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl
30 alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl
31 nitrate or their isomers, toluene, toluol or xylene or any other chemical
32 substance capable of causing a condition of intoxication, inebriation,
33 excitement, stupefaction or the dulling of the brain or nervous system
34 as a result of the inhalation of the fumes or vapors of such chemical
35 substance.¹

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

42 A conviction of a violation of a law of a substantially similar nature
43 in another jurisdiction, regardless of whether that jurisdiction is a
44 signatory to the Interstate Driver License Compact pursuant to
45 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction
46 under this subsection unless the defendant can demonstrate by clear

1 and convincing evidence that the conviction in the other jurisdiction
2 was based exclusively upon a violation of a proscribed blood alcohol
3 concentration of less than ¹ [.10%] 0.10%¹.

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

24 A person who has been convicted of a previous violation of this
25 section need not be charged as a second or subsequent offender in the
26 complaint made against him in order to render him liable to the
27 punishment imposed by this section on a second or subsequent
28 offender, but if the second offense occurs more than 10 years after the
29 first offense, the court shall treat the second conviction as a first
30 offense for sentencing purposes and if a third offense occurs more than
31 10 years after the second offense, the court shall treat the third
32 conviction as a second offense for sentencing purposes.

33 (b) A person convicted under this section must satisfy the
34 screening, evaluation, referral, program and fee requirements of the
35 Division of Alcoholism and Drug Abuse's Intoxicated Driving Program
36 Unit, and of the Intoxicated Driver Resource Centers and a program
37 of alcohol and drug education and highway safety, as prescribed by the
38 Director of the Division of Motor Vehicles. The sentencing court shall
39 inform the person convicted that failure to satisfy such requirements
40 shall result in a mandatory two-day term of imprisonment in a county
41 jail and a driver license revocation or suspension and continuation of
42 revocation or suspension until such requirements are satisfied, unless
43 stayed by court order in accordance with the Rules Governing the
44 Courts of the State of New Jersey, or R.S.39:5-22. Upon sentencing,
45 the court shall forward to the Division of Alcoholism and Drug
46 Abuse's Intoxicated Driving Program Unit a copy of a person's

1 conviction record. A fee of \$100.00 shall be payable to the Alcohol
2 Education, Rehabilitation and Enforcement Fund established pursuant
3 to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
4 Intoxicated Driving Program Unit.

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

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

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

40 (f) The counties, in cooperation with the Division of Alcoholism
41 and Drug Abuse and the Division of Motor Vehicles, but subject to the
42 approval of the Division of Alcoholism and Drug Abuse, shall
43 designate and establish on a county or regional basis Intoxicated
44 Driver Resource Centers. These centers shall have the capability of
45 serving as community treatment referral centers and as court monitors
46 of a person's compliance with the ordered treatment, service
47 alternative or community service. All centers established pursuant to

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

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

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

31 The centers shall conduct a program of alcohol and drug education
32 and highway safety, as prescribed by the Director of the Division of
33 Motor Vehicles.

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

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

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

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

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

1 convicted person shall: for a first offense, be fined not less than \$500
2 or more than \$800, be imprisoned for not more than 60 days and have
3 his license to operate a motor vehicle suspended for a period of not
4 less than one year or more than two years; for a second offense, be
5 fined not less than \$1,000 or more than \$2,000, perform community
6 service for a period of 60 days, be imprisoned for not less than 96
7 consecutive hours, which shall not be suspended or served on
8 probation, nor more than 180 days, except that the court may lower
9 such term for each day, not exceeding 90 days, served performing
10 community service in such form and on such terms as the court shall
11 deem appropriate under the circumstances and have his license to
12 operate a motor vehicle suspended for a period of not less than four
13 years; and, for a third offense, be fined \$2,000, imprisoned for 180
14 days and have his license to operate a motor vehicle suspended for a
15 period of 20 years; the period of license suspension shall commence
16 upon the completion of any prison sentence imposed upon that person.

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

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

30 (h) ¹[In addition to any penalty or condition imposed by law or
31 regulation, a person who is subject to the provisions of this section
32 shall also be subject to the provisions of P.L.1999, c.417
33 (C.39:4-50.16 et al.).

34 (i) ¹A court also may order a person convicted pursuant to
35 subsection a. of this section, to participate in a supervised visitation
36 program as either a condition of probation or a form of community
37 service, giving preference to those who were under the age of 21 at
38 the time of the offense. ¹[The] Prior to ordering a person to
39 participate in such a program, the¹ court may consult with any person
40 who may provide useful information on the defendant's physical,
41 emotional and mental suitability for the visit to ensure that it will not
42 cause any injury to the defendant. The ¹court also may order that the¹
43 defendant ¹[may] participate in a counseling session under the
44 supervision of the Intoxicated Driving Program Unit prior to
45 participating in the supervised visitation program. The supervised
46 visitation program shall be at one or more of the following facilities
47 ¹which have agreed to participate in the program¹ under the

1 supervision of the facility's personnel and the probation department:

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

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

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

12 As used in this section, "appropriate victim" means a victim whose
13 condition is determined by the ¹[court-appointed visitation
14 supervisor] facility's supervisory personnel and the probation officer¹
15 to be appropriate for demonstrating the results of accidents involving
16 drunk drivers without being unnecessarily gruesome or traumatic to
17 the defendant.

18 If at any time before or during a visitation the ¹[court-appointed
19 visitation supervisor determines] facility's supervisory personnel and
20 the probation officer determine¹ that the visitation may be or is
21 traumatic or otherwise inappropriate for that defendant, the visitation
22 shall be terminated without prejudice to the defendant. The program
23 may include a personal conference after the visitation, which may
24 include the sentencing judge or the judge who coordinates the program
25 for the court, the defendant, defendant's counsel, and, if available, the
26 defendant's parents to discuss the visitation and its effect on the
27 defendant's future conduct. If a personal conference is not practicable
28 because of the defendant's absence from the jurisdiction, conflicting
29 time schedules, or any other reason, the court shall require the
30 defendant to submit a written report concerning the visitation
31 experience and its impact on the defendant. The county, a court, any
32 facility visited pursuant to the program, any agents, employees, or
33 independent contractors of the court, county, or facility visited
34 pursuant to the program, and any person supervising a defendant
35 during the visitation, are not liable for any civil damages resulting from
36 injury to the defendant, or for civil damages associated with the
37 visitation which are caused by the defendant, except for willful or
38 grossly negligent acts intended to, or reasonably expected to result in,
39 that injury or damage.

40 ¹[The Director of the Division of Motor Vehicles, in consultation
41 with the Commissioner of the Department of Health and Senior
42 Services, shall adopt rules and regulations pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
44 to effectuate the purposes of this subsection]

45 The Supreme Court may adopt court rules or directives to
46 effectuate the purposes of this subsection¹.

1 2. This act shall take effect on the first day of the seventh month
2 after enactment.

3

4

5

6

7 Creates a drunk driver visitation program.

CHAPTER 12

AN ACT concerning visitations by certain drunk drivers and amending R.S.39:4-50.

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

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

Driving while intoxicated.

39:4-50. (a) Except as provided in subsection (g) of this section, a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood shall be subject:

(1) For the first offense, to a fine of not less than \$250.00 nor more than \$400.00 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than six months nor more than one year. For a first offense, a person also shall be subject to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).

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

(3) For a third or subsequent violation, a person shall be subject to a fine of \$1,000.00, and shall be sentenced to imprisonment for a term of not less than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years. For a third or subsequent violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked for 10 years under the provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

As used in this section, the phrase "narcotic, hallucinogenic or habit-producing drug" includes an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as any glue, cement or any other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl nitrate or their isomers, toluene, toluol or xylene or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

Whenever an operator of a motor vehicle has been involved in an accident resulting in death,

bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

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

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

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

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

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the Director of the Division of Motor Vehicles. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S.39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the director, who shall,

in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

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

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

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

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

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

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

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

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

- (1) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;
- (2) driving through a school crossing as defined in R.S.39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or
- (3) driving through a school crossing as defined in R.S.39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution, the convicted person shall: for a first offense, be fined not less than \$500 or more than \$800, be imprisoned for not more than 60 days and have his license to operate a motor vehicle suspended for a period of not less than one year or more than two years; for a second

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

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

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

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

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

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

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

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

If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine that the visitation may be or is traumatic or otherwise inappropriate for that defendant, the visitation shall be terminated without prejudice to the defendant. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant, defendant's counsel, and, if available, the defendant's parents to discuss the visitation and its effect on the defendant's future conduct. If a personal conference is not practicable because of the defendant's absence from the jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant to submit a written report concerning the visitation experience and its impact on the defendant. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a defendant during the visitation, are not liable for any civil damages resulting from injury to the defendant, or for civil damages associated with the visitation which are caused by the defendant, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage.

The Supreme Court may adopt court rules or directives to effectuate the purposes of this

subsection.

2. This act shall take effect on the first day of the seventh month after enactment.

Approved January 29, 2001.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
Laura Otterbourg
609-777-2600

RELEASE: January 29, 2001

Governor Whitman today signed the following legislation:

A-3038, sponsored by Assembly Members Malone (R-Burlington/Monmouth/Ocean) and Cottrell (R-Burlington/Monmouth/Ocean) and Senators Singer (R-Burlington/Monmouth/Ocean) and DiFrancesco (R-Middlesex/Morris/Somerset/Union), permits religious or charitable organizations to lease property to other tax-exempt entities without losing their property tax exemption.

A-1849, sponsored by Assembly Members Merkt (R-Morris) and Augustine (R-Middlesex/Morris/Somerset/Union) and Senators Singer (R-Burlington/Monmouth/Ocean), Bucco (R-Morris) and Martin (R-Essex/Morris/Passaic), permits counties to increase the maximum daily compensation for members of election boards from \$100 to an amount not to exceed \$150.

S-254, sponsored by Senators Bennett (R-Monmouth) and Bucco (R-Morris) and Assembly Member Geist (R-Camden/Gloucester), amends the law concerning the reforestation of land owned or maintained by a State entity. Under current law, whenever a State entity plans to deforest an area at least one acre in size, the entity is required to adopt a plan to reforest the area. This bill reduces the size threshold to one-half acre, requiring the State to develop a reforestation plan whenever an entity plans to deforest an area one-half acre in size.

S-382, sponsored by Senator Sinagra (R-Middlesex) and Assembly Members Weingarten (R-Essex/Union) and Kelly (R-Bergen/Essex/Passaic) makes a supplemental appropriation of \$50,000 to the Department of Community Affairs for a grant to the National Association for Children with Autism, Inc. in Livingston.

A-2614, sponsored by Assembly Members Gregg (R-Sussex/Hunterdon/Morris) and Thompson (R-Middlesex/Monmouth), modifies the eligibility requirements for unemployment insurance and temporary disability insurance benefits.

A-895, sponsored by Assembly Members Bateman (R-Morris/Somerset) and Biondi (R-Morris/Somerset) and Senators Singer (R-Burlington/Monmouth/Ocean) and Bark (R-Atlantic/Burlington/Camden), establishes a special license to promote agriculture.

S-462, sponsored by Senators Singer (R-Burlington/Monmouth/Ocean) and Kosco (R-Bergen) and Assembly Members Malone (R-Burlington/Monmouth/Ocean) and Cottrell (R-Burlington/Monmouth/Ocean), creates a drunk driver visitation program.

A-2006, sponsored by Assembly Member O'Toole (R-Essex/Union) requires a sentence imposed on inmates for assault on corrections and law enforcement employees to run consecutively to other sentences.

SCS for S-141 and S-1054, sponsored by Senators Bark (R-Atlantic/Burlington/ Camden), Singer (R-Burlington/Monmouth.Ocean), Matheussen (R-Camden/Gloucester) and Martin (R-Essex/Morris/Passaic) and Assembly Members Bodine (R-Atlantic/Burlington/ Camden) and Chatzidakis (R-Atlantic/Burlington/Camden), increases the number of tuition-free credits that a member of the National Guard may earn in undergraduate study and extends the credits to graduate study.