

2C:11-5

LEGISLATIVE HISTORY CHECK Compiled by the NJ State Law Library

LAWS OF: 1999 **CHAPTER:** 185
NJSA: 2C:11-5 (Drunk driving—school area)
BILL NO: S854 (Substituted for A1821)

SPONSOR(S): Furnari

DATE INTRODUCED: March 5, 1998

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

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 10, 1999
SENATE: May 10, 1999

DATE OF APPROVAL: August 19, 1999

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Senate Substitute (with statement)
(Amendments during passage denoted by superscript numbers)

S854

SPONSORS STATEMENT: (Begins on page 14 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: [Yes](#)

A1821

SPONSORS STATEMENT: (Begins on page 14 of original bill) [Yes](#)
Bill and Sponsors Statement identical to S854

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

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: [Yes](#)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: [Yes](#)

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 102 or refdesk@njstatelib.org

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

"Governor approves tougher DWI bill," 8-20-99, Bergen Record, p. A3.

Yes

P.L. 1999, CHAPTER 185, *approved August 19, 1999*
Senate Substitute for
Senate, No. 854

1 AN ACT concerning driving while on or within 1,000 feet of school
2 property under the influence of alcohol or drugs and amending
3 various parts of the statutory law.

4

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

7

8 1. N.J.S.2C:11-5 is amended to read as follows:

9 2C:11-5. Death by auto or vessel. a. Criminal homicide
10 constitutes vehicular homicide when it is caused by driving a vehicle
11 or vessel recklessly.

12 b. **[Vehicular]** Except as provided in paragraph (3) of this
13 subsection, vehicular homicide is a crime of the second degree.

14 (1) If the defendant was operating the auto or vessel while under
15 the influence of any intoxicating liquor, narcotic, hallucinogenic or
16 habit-producing drug, or with a blood alcohol concentration at or
17 above the prohibited level as prescribed in R.S.39:4-50, or if the
18 defendant was operating the auto or vessel while his driver's license or
19 reciprocity privilege was suspended or revoked for any violation of
20 R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
21 Director of the Division of Motor Vehicles pursuant to P.L.1982, c.85
22 (C.39:5-30a et seq.), or by the court for a violation of R.S.39:4-96,
23 the defendant shall be sentenced to a term of imprisonment by the
24 court. The term of imprisonment shall include the imposition of a
25 minimum term. The minimum term shall be fixed at, or between,
26 one-third and one-half of the sentence imposed by the court or three
27 years, whichever is greater, during which the defendant shall be
28 ineligible for parole.

29 (2) The court shall not impose a mandatory sentence pursuant to
30 paragraph (1) of this subsection unless the grounds therefor have been
31 established at a hearing. At the hearing, which may occur at the time
32 of sentencing, the prosecutor shall establish by a preponderance of the
33 evidence that the defendant was operating the auto or vessel while
34 under the influence of any intoxicating liquor, narcotic, hallucinogenic
35 or habit-producing drug, or with a blood alcohol concentration at or
36 above the level prescribed in R.S.39:4-50 or that the defendant was
37 operating the auto or vessel while his driver's license or reciprocity
38 privilege was suspended or revoked for any violation of R.S.39:4-50,
39 section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the

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

Matter underlined thus is new matter.

1 Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et
2 seq.), or by the court for a violation of R.S.39:4-96. In making its
3 findings, the court shall take judicial notice of any evidence, testimony
4 or information adduced at the trial, plea hearing, or other court
5 proceedings and shall also consider the presentence report and any
6 other relevant information.

7 (3) Vehicular homicide is a crime of the first degree if the
8 defendant was operating the auto or vessel while in violation of
9 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while:

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

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

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

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

25 It shall be no defense to a prosecution for a violation of
26 subparagraphs (a) or (b) of this paragraph that the defendant was
27 unaware that the prohibited conduct took place while on or within
28 1,000 feet of any school property or while driving through a school
29 crossing. Nor shall it be a defense to a prosecution under
30 subparagraphs (a) or (b) of this paragraph that no juveniles were
31 present on the school property or crossing zone at the time of the
32 offense or that the school was not in session.

33 (4) If the defendant was operating the auto or vessel in violation
34 of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the
35 defendant's license to operate a motor vehicle shall be suspended for
36 a period of between five years and life, which period shall commence
37 upon completion of any prison sentence imposed upon that person.

38 c. For good cause shown, the court may, in accepting a plea of
39 guilty under this section, order that such plea not be evidential in any
40 civil proceeding.

41 d. Nothing herein shall be deemed to preclude, if the evidence so
42 warrants, an indictment and conviction for aggravated manslaughter
43 under the provisions of subsection a. of N.J.S.2C:11-4.

44 As used in this section, "auto or vessel" means all means of
45 conveyance propelled otherwise than by muscular power.

46 e. Any person who violates paragraph (3) of subsection b. of this

1 section shall forfeit the auto or vessel used in the commission of the
2 offense, unless the defendant can establish at a hearing, which may
3 occur at the time of sentencing, by a preponderance of the evidence
4 that such forfeiture would constitute a serious hardship to the family
5 of the defendant that outweighs the need to deter such conduct by the
6 defendant and others. In making its findings, the court shall take
7 judicial notice of any evidence, testimony or information adduced at
8 the trial, plea hearing, or other court proceedings and shall also
9 consider the presentence report and any other relevant information.
10 Forfeiture pursuant to this subsection shall be in addition to, and not
11 in lieu of, civil forfeiture pursuant to chapter 64 of this title.

12 (cf: P.L.1995, c.285, s.1)

13

14 2. N.J.S.2C:12-1 is amended to read as follows:

15 2C:12-1. Assault. a. Simple assault. A person is guilty of assault
16 if he:

17 (1) Attempts to cause or purposely, knowingly or recklessly
18 causes bodily injury to another; or

19 (2) Negligently causes bodily injury to another with a deadly
20 weapon; or

21 (3) Attempts by physical menace to put another in fear of
22 imminent serious bodily injury.

23 Simple assault is a disorderly persons offense unless committed in
24 a fight or scuffle entered into by mutual consent, in which case it is a
25 petty disorderly persons offense.

26 b. Aggravated assault. A person is guilty of aggravated assault if
27 he:

28 (1) Attempts to cause serious bodily injury to another, or causes
29 such injury purposely or knowingly or under circumstances
30 manifesting extreme indifference to the value of human life recklessly
31 causes such injury; or

32 (2) Attempts to cause or purposely or knowingly causes bodily
33 injury to another with a deadly weapon; or

34 (3) Recklessly causes bodily injury to another with a deadly
35 weapon; or

36 (4) Knowingly under circumstances manifesting extreme
37 indifference to the value of human life points a firearm, as defined in
38 section 2C:39-1f., at or in the direction of another, whether or not the
39 actor believes it to be loaded; or

40 (5) Commits a simple assault as defined in subsection a. (1), (2)
41 or (3) of this section upon:

42 (a) Any law enforcement officer acting in the performance of his
43 duties while in uniform or exhibiting evidence of his authority; or

44 (b) Any paid or volunteer fireman acting in the performance of his
45 duties while in uniform or otherwise clearly identifiable as being
46 engaged in the performance of the duties of a fireman; or

1 (c) Any person engaged in emergency first-aid or medical services
2 acting in the performance of his duties while in uniform or otherwise
3 clearly identifiable as being engaged in the performance of emergency
4 first-aid or medical services; or

5 (d) Any school board member or school administrator, teacher or
6 other employee of a school board while clearly identifiable as being
7 engaged in the performance of his duties or because of his status as a
8 member or employee of a school board; or

9 (e) Any employee of the Division of Youth and Family Services
10 while clearly identifiable as being engaged in the performance of his
11 duties or because of his status as an employee of the division; or

12 (f) Any justice of the Supreme Court, judge of the Superior Court,
13 judge of the Tax Court or municipal judge while clearly identifiable as
14 being engaged in the performance of judicial duties or because of his
15 status as a member of the judiciary; or

16 (6) Causes bodily injury to another person while fleeing or
17 attempting to elude a law enforcement officer in violation of
18 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
19 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
20 other provision of law to the contrary, a person shall be strictly liable
21 for a violation of this subsection upon proof of a violation of
22 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
23 violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily
24 injury to another person;

25 (7) Attempts to cause significant bodily injury to another or causes
26 significant bodily injury purposely or knowingly or, under
27 circumstances manifesting extreme indifference to the value of human
28 life recklessly causes such significant bodily injury; or

29 (8) Causes bodily injury by knowingly or purposely starting a fire
30 or causing an explosion in violation of N.J.S.2C:17-1 which results in
31 bodily injury to any emergency services personnel involved in fire
32 suppression activities, rendering emergency medical services resulting
33 from the fire or explosion or rescue operations, or rendering any
34 necessary assistance at the scene of the fire or explosion, including any
35 bodily injury sustained while responding to the scene of a reported fire
36 or explosion. For purposes of this subsection, "emergency services
37 personnel" shall include, but not be limited to, any paid or volunteer
38 fireman, any person engaged in emergency first-aid or medical services
39 and any law enforcement officer. Notwithstanding any other provision
40 of law to the contrary, a person shall be strictly liable for a violation
41 of this paragraph upon proof of a violation of N.J.S.2C:17-1 which
42 resulted in bodily injury to any emergency services personnel.

43 Aggravated assault under subsections b. (1) and b. (6) is a crime
44 of the second degree; under subsections b. (2) and b. (7) is a crime of
45 the third degree; under subsections b. (3) and b. (4) is a crime of the
46 fourth degree; and under subsection b. (5) is a crime of the third

1 degree if the victim suffers bodily injury, otherwise it is a crime of the
2 fourth degree. Aggravated assault under subsection b. (8) is a crime
3 of the third degree if the victim suffers bodily injury; if the victim
4 suffers significant bodily injury or serious bodily injury it is a crime of
5 the second degree.

6 c. (1) A person is guilty of assault by auto or vessel when the
7 person drives a vehicle or vessel recklessly and causes either serious
8 bodily injury or bodily injury to another. Assault by auto or vessel is
9 a crime of the fourth degree if serious bodily injury results and is a
10 disorderly persons offense if bodily injury results.

11 (2) Assault by auto or vessel is a crime of the third degree if the
12 person drives the vehicle while in violation of R.S.39:4-50 or section
13 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily injury results
14 and is a crime of the fourth degree if the person drives the vehicle
15 while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
16 (C.39:4-50.4a) and bodily injury results.

17 (3) Assault by auto or vessel is a crime of the second degree if
18 serious bodily injury results from the defendant operating the auto or
19 vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,
20 c.512 (C.39:4-50.4a) while:

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

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

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

30 Assault by auto or vessel is a crime of the third degree if bodily
31 injury results from the defendant operating auto or vessel in violation
32 of this paragraph.

33 A map or true copy of a map depicting the location and boundaries
34 of the area on or within 1,000 feet of any property used for school
35 purposes which is owned by or leased to any elementary or secondary
36 school or school board produced pursuant to section 1 of P.L.1997,
37 c.101 (C.2C:35-7) may be used in a prosecution under subparagraph
38 (a) of paragraph (3) of this section.

39 It shall be no defense to a prosecution for a violation of
40 subparagraphs (a) or (b) of paragraph (3) of this subsection that the
41 defendant was unaware that the prohibited conduct took place while
42 on or within 1,000 feet of any school property or while driving
43 through a school crossing. Nor shall it be a defense to a prosecution
44 under subparagraphs (a) or (b) of paragraph (3) of this subsection that
45 no juveniles were present on the school property or crossing zone at
46 the time of the offense or that the school was not in session.

1 As used in this section, "vessel" means a means of conveyance for
2 travel on water and propelled otherwise than by muscular power.

3 d. A person who is employed by a facility as defined in section 2
4 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
5 defined in paragraph (1) or (2) of subsection a. of this section upon an
6 institutionalized elderly person as defined in section 2 of P.L.1977,
7 c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

8 e. A person who commits a simple assault as defined in subsection
9 a. of this section is guilty of a crime of the fourth degree if the person
10 acted with a purpose to intimidate an individual or group of individuals
11 because of race, color, religion, gender, handicap, sexual orientation,
12 or ethnicity.

13 (cf: P.L.1997, c.119, s.1)

14
15 3. R.S.39:3-40 is amended to read as follows:

16 39:3-40. No person to whom a driver's license has been refused or
17 whose driver's license or reciprocity privilege has been suspended or
18 revoked, or who has been prohibited from obtaining a driver's license,
19 shall personally operate a motor vehicle during the period of refusal,
20 suspension, revocation, or prohibition.

21 No person whose motor vehicle registration has been revoked shall
22 operate or permit the operation of such motor vehicle during the
23 period of such revocation.

24 A person violating this section shall be subject to the following
25 penalties:

26 a. Upon conviction for a first offense, a fine of \$500.00 and, if
27 that offense involves the operation of a motor vehicle during a period
28 when the violator's driver's license is suspended for a violation of
29 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a),
30 revocation of the violator's motor vehicle registration privilege in
31 accordance with the provisions of sections 2 through 6 of P.L.1995,
32 c.286 (C.39:3-40.1 through C.39:3-40.5);

33 b. Upon conviction for a second offense, a fine of \$750.00,
34 imprisonment in the county jail for not more than five days and, if the
35 second offense involves the operation of a motor vehicle during a
36 period when the violator's driver's license is suspended and that second
37 offense occurs within five years of a conviction for that same offense,
38 revocation of the violator's motor vehicle registration privilege in
39 accordance with the provisions of sections 2 through 6 of P.L.1995,
40 c.286 (C.39:3-40.1 through C.39:3-40.5);

41 c. Upon conviction for a third offense or subsequent offense, a
42 fine of \$1,000.00, imprisonment in the county jail for 10 days and, if
43 the third offense involves the operation of a motor vehicle during a
44 period when the violator's driver's license is suspended and that third
45 offense occurs within five years of a conviction for the same offense,
46 revocation of the violator's motor vehicle registration privilege in

1 accordance with the provisions of sections 2 through 6 of P.L.1995,
2 c.286 (C.39:3-40.1 through C.39:3-40.5);

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

5 e. Upon conviction, the court shall impose a period of
6 imprisonment for not less than 45 days, if while operating a vehicle in
7 **【violationf】** violation of this section a person is involved in an accident
8 resulting in personal injury to another person;

9 f. (1) Notwithstanding subsections a. through e., any person
10 violating this section while under suspension issued pursuant to section
11 2 of P.L.1972, c.197 (C.39:6B-2), upon conviction, shall be fined
12 \$500.00, shall have his license to operate a motor vehicle suspended
13 for an additional period of not less than one year nor more than two
14 years, and may be imprisoned in the county jail for not more than 90
15 days.

16 (2) Notwithstanding the provisions of subsections a. through e. of
17 this section and paragraph (1) of this subsection, any person violating
18 this section under suspension issued pursuant to R.S.39:4-50, section
19 2 of P.L.1981, c.512 (C.39:4-50.4a) or P.L.1982, c.85 (C.39:5-30a et
20 seq.), shall be fined \$500, shall have his license to operate a motor
21 vehicle suspended for an additional period of not less than one year or
22 more than two years, and shall be imprisoned in the county jail for not
23 less than 10 days or more than 90 days**【; 1】**.

24 (3) Notwithstanding the provisions of subsections a. through e. of
25 this section and paragraphs (1) and (2) of this subsection, a person
26 shall have his license to operate a motor vehicle suspended for an
27 additional period of not less than one year or more than two years,
28 which period shall commence upon the completion of any prison
29 sentence imposed upon that person, shall be fined \$500 and shall be
30 imprisoned for a period of 60 to 90 days for a first offense, imprisoned
31 for a period of 120 to 150 days for a second offense, and imprisoned
32 for 180 days for a third or subsequent offense, for operating a motor
33 vehicle while in violation of paragraph (2) of this subsection while:

34 (a) on any school property used for school purposes which is
35 owned by or leased to any elementary or secondary school or school
36 board, or within 1,000 feet of such school property;

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

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

43 A map or true copy of a map depicting the location and boundaries
44 of the area on or within 1,000 feet of any property used for school
45 purposes which is owned by or leased to any elementary or secondary
46 school or school board produced pursuant to section 1 of P.L.1997,

1 c.101 (C.2C:35-7) may be used in a prosecution under subparagraph
2 (a) of this paragraph.

3 It shall not be relevant to the imposition of sentence pursuant to
4 subparagraphs (a) or (b) of this paragraph that the defendant was
5 unaware that the prohibited conduct took place while on or within
6 1,000 feet of any school property or while driving through a school
7 crossing. Nor shall it be relevant to the imposition of sentence that
8 no juveniles were present on the school property or crossing zone at
9 the time of the offense or that the school was not in session.

10 g. In addition to the other applicable penalties provided under this
11 section, a person violating this section whose license has been
12 suspended pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35) or
13 the regulations adopted thereunder, shall be fined \$3,000. The court
14 shall waive the fine upon proof that the person has paid the total
15 surcharge imposed pursuant to section 6 of P.L.1983, c.65
16 (C.17:29A-35) or the regulations adopted thereunder.
17 Notwithstanding the provisions of R.S.39:5-41, the fine imposed
18 pursuant to this subsection shall be collected by the Division of Motor
19 Vehicles pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35), and
20 distributed as provided in that section, and the court shall file a copy
21 of the judgment of conviction with the director and with the Clerk of
22 the Superior Court who shall enter the following information upon the
23 record of docketed judgments: the name of the person as judgment
24 debtor; the Division of Motor Vehicles as judgment creditor; the
25 amount of the fine; and the date of the order. These entries shall have
26 the same force and effect as any civil judgment docketed in the
27 Superior Court;

28 h. A person who owns or leases a motor vehicle and permits
29 another to operate the motor vehicle commits a violation and is subject
30 to suspension of his license to operate a motor vehicle and to
31 revocation of registration pursuant to sections 2 through 6 of
32 P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5) if the person:

33 (1) Knows that the operator's license to operate a motor vehicle
34 has been suspended for a violation of R.S.39:4-50 or section 2 of
35 P.L.1981, c.512 (C.39:4-50.4a); or

36 (2) Knows that the operator's license to operate a motor vehicle
37 is suspended and that the operator has been convicted, within the past
38 five years, of operating a vehicle while the person's license was
39 suspended or revoked.

40 (cf: P.L.1995, c.286, s.1)

41

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

43 39:4-50. (a) **【A】** Except as provided in subsection (g) of this
44 section, a person who operates a motor vehicle while under the
45 influence of intoxicating liquor, narcotic, hallucinogenic or
46 habit-producing drug, or operates a motor vehicle with a blood alcohol

1 concentration of 0.10% or more by weight of alcohol in the
2 defendant's blood or permits another person who is under the influence
3 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug
4 to operate a motor vehicle owned by him or in his custody or control
5 or permits another to operate a motor vehicle with a blood alcohol
6 concentration of 0.10% or more by weight of alcohol in the
7 defendant's blood, shall be subject:

8 (1) For the first offense, to a fine of not less than \$250.00 nor
9 more than \$400.00 and a period of detainment of not less than
10 12 hours nor more than 48 hours spent during two consecutive days
11 of not less than six hours each day and served as prescribed by the
12 program requirements of the Intoxicated Driver Resource Centers
13 established under subsection (f) of this section and, in the discretion
14 of the court, a term of imprisonment of not more than 30 days and
15 shall forthwith forfeit his right to operate a motor vehicle over the
16 highways of this State for a period of not less than six months nor
17 more than one year.

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

31 (3) For a third or subsequent violation, a person shall be subject
32 to a fine of \$1,000.00, and shall be sentenced to imprisonment for a
33 term of not less than 180 days, except that the court may lower such
34 term for each day, not exceeding 90 days, served performing
35 community service in such form and on such terms as the court shall
36 deem appropriate under the circumstances and shall thereafter forfeit
37 his right to operate a motor vehicle over the highways of this State for
38 10 years.

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

45 A conviction of a violation of a law of a substantially similar nature
46 in another jurisdiction, regardless of whether that jurisdiction is a

1 signatory to the Interstate Driver License Compact pursuant to
2 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction
3 under this subsection unless the defendant can demonstrate by clear
4 and convincing evidence that the conviction in the other jurisdiction
5 was based exclusively upon a violation of a proscribed blood alcohol
6 concentration of less than .10%.

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

27 A person who has been convicted of a previous violation of this
28 section need not be charged as a second or subsequent offender in the
29 complaint made against him in order to render him liable to the
30 punishment imposed by this section on a second or subsequent
31 offender, but if the second offense occurs more than 10 years after the
32 first offense, the court shall treat the second conviction as a first
33 offense for sentencing purposes and if a third offense occurs more than
34 10 years after the second offense, the court shall treat the third
35 conviction as a second offense for sentencing purposes.

36 (b) A person convicted under this section must satisfy the
37 screening, evaluation, referral, program and fee requirements of the
38 Division of Alcoholism and Drug Abuse's Intoxicated Driving Program
39 Unit, and of the Intoxicated Driver Resource Centers and a program
40 of alcohol and drug education and highway safety, as prescribed by the
41 Director of the Division of Motor Vehicles. The sentencing court shall
42 inform the person convicted that failure to satisfy such requirements
43 shall result in a mandatory two-day term of imprisonment in a county
44 jail and a driver license revocation or suspension and continuation of
45 revocation or suspension until such requirements are satisfied, unless
46 stayed by court order in accordance with Rule 7:8-2 of the Rules

1 Governing the Courts of the State of New Jersey, or R.S.39:5-22.
2 Upon sentencing, the court shall forward to the Division of Alcoholism
3 and Drug Abuse's Intoxicated Driving Program Unit a copy of a
4 person's conviction record. A fee of \$100.00 shall be payable to the
5 Alcohol Education, Rehabilitation and Enforcement Fund established
6 pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
7 Intoxicated Driving Program Unit.

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

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

38 (e) Any person accused of a violation of this section who is liable
39 to punishment imposed by this section as a second or subsequent
40 offender shall be entitled to the same rights of discovery as allowed
41 defendants pursuant to the Rules Governing Criminal Practice, as set
42 forth in the Rules Governing the Courts of the State of New Jersey.

43 (f) The counties, in cooperation with the Division of Alcoholism
44 and Drug Abuse and the Division of Motor Vehicles, but subject to the
45 approval of the Division of Alcoholism and Drug Abuse, shall
46 designate and establish on a county or regional basis Intoxicated

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

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

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

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

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

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

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

46 (2) driving through a school crossing as defined in R.S.39:1-1 if

1 the municipality, by ordinance or resolution, has designated the school
2 crossing as such; or

3 (3) driving through a school crossing as defined in R.S.39:1-1
4 knowing that juveniles are present if the municipality has not
5 designated the school crossing as such by ordinance or resolution, the
6 convicted person shall: for a first offense, be fined not less than \$500
7 or more than \$800, be imprisoned for not more than 60 days and have
8 his license to operate a motor vehicle suspended for a period of not
9 less than one year or more than two years; for a second offense, be
10 fined not less than \$1,000 or more than \$2000, perform community
11 service for a period of 60 days, be imprisoned for not less than
12 96 consecutive hours, which shall not be suspended or served on
13 probation, nor more than 180 days, except that the court may lower
14 such term for each day, not exceeding 90 days, served performing
15 community service in such form and on such terms as the court shall
16 deem appropriate under the circumstances and have his license to
17 operate a motor vehicle suspended for a period of not less than four
18 years; and, for a third offense, be fined \$2,000, imprisoned for
19 180 days and have his license to operate a motor vehicle suspended for
20 a period of 20 years; the period of license suspension shall commence
21 upon the completion of any prison sentence imposed upon that person.

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

28 It shall not be relevant to the imposition of sentence pursuant to
29 paragraphs (1) or (2) of this subsection that the defendant was
30 unaware that the prohibited conduct took place while on or within
31 1,000 feet of any school property or while driving through a school
32 crossing. Nor shall it be relevant to the imposition of sentence that
33 no juveniles were present on the school property or crossing zone at
34 the time of the offense or that the school was not in session.

35 (cf: P.L.1997, c.277, s.1)

36

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

39 2. a. **【The】** Except as provided in subsection b. of this section,
40 the municipal court shall revoke the right to operate a motor vehicle
41 of any operator who, after being arrested for a violation of
42 R.S.39:4-50, shall refuse to submit to a test provided for in section 2
43 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six
44 months unless the refusal was in connection with a second offense
45 under this section, in which case the revocation period shall be for two
46 years or unless the refusal was in connection with a third or

1 subsequent offense under this section in which case the revocation
2 shall be for ten years. A conviction or administrative determination of
3 a violation of a law of a substantially similar nature in another
4 jurisdiction, regardless of whether that jurisdiction is a signatory to the
5 Interstate Driver License Compact pursuant to P.L.1966, c.73
6 (C.39:5D-1 et seq.), shall constitute a prior conviction under this
7 section.

8 The municipal court shall determine by a preponderance of the
9 evidence whether the arresting officer had probable cause to believe
10 that the person had been driving or was in actual physical control of
11 a motor vehicle on the public highways or quasi-public areas of this
12 State while the person was under the influence of intoxicating liquor
13 or a narcotic, hallucinogenic, or habit-producing drug or marijuana;
14 whether the person was placed under arrest, if appropriate, and
15 whether he refused to submit to the test upon request of the officer;
16 and if these elements of the violation are not established, no conviction
17 shall issue. In addition to any other requirements provided by law, a
18 person whose operator's license is revoked for refusing to submit to a
19 test shall be referred to an Intoxicated Driver Resource Center
20 established by subsection (f.) of R.S.39:4-50 and shall satisfy the same
21 requirements of the center for refusal to submit to a test as provided
22 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with
23 a first, second, third or subsequent offense under this section that must
24 be satisfied by a person convicted of a commensurate violation of this
25 section, or be subject to the same penalties as such a person for failure
26 to do so. The revocation shall be independent of any revocation
27 imposed by virtue of a conviction under the provisions of R.S.39:4-50.

28 In addition to issuing a revocation, except as provided in
29 subsection b. of this section, the municipal court shall fine a person
30 convicted under this section, a fine of not less than \$250.00 nor more
31 than \$500.00.

32 b. The fine imposed upon the convicted person shall be not less
33 than \$500 or more than \$1,000 and the period of license suspension
34 shall be one year for a first offense, four years for a second offense and
35 20 years for a third or subsequent offense, which period shall
36 commence upon the completion of any prison sentence imposed upon
37 that person 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.

1 of 20 years.

2 The substitute also increases the penalties imposed on a person
3 convicted of refusing to consent to a breathalyzer test in connection
4 with an offense committed while on or within 1,000 feet of school
5 property or while driving through designated school crossings or
6 school crossings when children are present. Under the substitute,
7 these persons would lose their driver's licenses for one year for a first
8 offense, four years for a second offense and 20 years for a third or
9 subsequent offense. A fine of between \$500 and \$1,00 also would be
10 imposed.

11 Also under the substitute, persons who drive a motor vehicle while
12 under the influence of alcohol or drugs commit vehicular homicide of
13 the first degree if they do so while on or within 1,000 feet of school
14 property or while driving through designated school crossings or
15 school crossings when children are present. Additionally, the
16 substitute requires these persons to forfeit their vehicles unless they
17 can establish that such forfeiture would constitute a serious hardship
18 to their families.

19 Under the substitute, a person who commits vehicular homicide
20 while driving drunk or refusing to consent to a breathalyzer test also
21 is subject to an additional loss of driving privileges for five years to
22 life.

23 The substitute also upgrades the crime of assault by auto under
24 certain circumstances. Under the substitute, a person who commits
25 assault by auto while driving drunk or refusing to consent to a
26 breathalyzer is guilty of a crime of the third degree if serious bodily
27 injury results. A person who commits assault by auto while driving
28 drunk or refusing to consent to a breathalyzer is guilty of a crime of
29 the fourth degree if bodily injury results.

30 A person who commits assault by auto while driving drunk or
31 refusing to consent to a breathalyzer while on or within 1,000 feet of
32 school property or while driving through designated school crossings
33 or school crossings when children are present is guilty of a crime of
34 the second degree if serious bodily injury results and is guilty of a
35 crime of the third degree if bodily injury results.

36 Finally, the substitute increases the penalties for persons who are
37 found guilty of driving while on or within 1,000 feet of school
38 property or while driving through designated school crossings or
39 school crossings when children are present when their licenses have
40 been suspended or revoked for drunk driving or refusing to consent to
41 a breathalyzer test. Such persons will be fined \$500, have their
42 driver's licenses suspended for an additional period of one to two years
43 and be imprisoned for 60 to 90 days for a first offense, 120 to 150
44 days for a second offense and 180 days for a third or subsequent
45 offense.

1

2

3 Increases penalties for certain alcohol-related driving offenses,
4 including those in school zones.

SENATE, No. 854

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MARCH 5, 1998

Sponsored by:

Senator GARRY J. FURNARI

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

Senators Girgenti, O'Connor, Matheussen, Palaia, Connors, Bryant, Cafiero, Rice, Singer, Bassano, Sinagra, Schluter, Bucco, Turner, Baer, Bark, Codey, Lipman, Inverso and Littell

SYNOPSIS

Increases penalties for alcohol-related driving offenses.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning driving while on or within 1,000 feet of school
2 property under the influence of alcohol or drugs and amending
3 various parts of the statutory law.

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

7
8 1. N.J.S.2C:11-5 is amended to read as follows:

9 2C:11-5. Death by auto or vessel. a. Criminal homicide
10 constitutes vehicular homicide when it is caused by driving a vehicle
11 or vessel recklessly.

12 b. Vehicular homicide is a crime of the second degree.

13 (1) If the defendant was operating the auto or vessel while under
14 the influence of any intoxicating liquor, narcotic, hallucinogenic or
15 habit-producing drug, or with a blood alcohol concentration at or
16 above the prohibited level as prescribed in R.S.39:4-50, or if the
17 defendant was operating the auto or vessel while his driver's license or
18 reciprocity privilege was suspended or revoked for any violation of
19 R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
20 Director of the Division of Motor Vehicles pursuant to P.L.1982, c.85
21 (C.39:5-30a et seq.), or by the court for a violation of R.S.39:4-96,
22 the defendant shall be sentenced to a term of imprisonment by the
23 court. The term of imprisonment shall include the imposition of a
24 minimum term. The minimum term shall be fixed at, or between,
25 one-third and one-half of the sentence imposed by the court or three
26 years, whichever is greater, during which the defendant shall be
27 ineligible for parole.

28 (2) The court shall not impose a mandatory sentence pursuant to
29 paragraph (1) of this subsection unless the grounds therefor have been
30 established at a hearing. At the hearing, which may occur at the time
31 of sentencing, the prosecutor shall establish by a preponderance of the
32 evidence that the defendant was operating the auto or vessel while
33 under the influence of any intoxicating liquor, narcotic, hallucinogenic
34 or habit-producing drug, or with a blood alcohol concentration at or
35 above the level prescribed in R.S.39:4-50 or that the defendant was
36 operating the auto or vessel while his driver's license or reciprocity
37 privilege was suspended or revoked for any violation of R.S.39:4-50,
38 section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the
39 Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et
40 seq.), or by the court for a violation of R.S.39:4-96. In making its
41 findings, the court shall take judicial notice of any evidence, testimony
42 or information adduced at the trial, plea hearing, or other court
43 proceedings and shall also consider the presentence report and any

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

Matter underlined thus is new matter.

1 other relevant information.

2 (3) If the defendant was operating the auto while on or within
3 1,000 feet of any school property used for school purposes which is
4 owned by or leased to any elementary or secondary school or school
5 board while in violation of R.S.39:4-50 or section 2 of P.L.1981,
6 c.512 (C.39:4-50.4a), any fine or term of imprisonment imposed upon
7 the defendant shall be double that which would otherwise be imposed
8 pursuant to paragraph (1) of this subsection.

9 (4) If the defendant was operating the auto in violation of
10 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the
11 defendant shall permanently forfeit the right to operate a motor vehicle
12 over the highways of this State. If the owner of the auto is other than
13 the defendant and knowingly permits the defendant to operate the
14 vehicle while in violation of R.S.39:4-50, the owner shall permanently
15 forfeit the right to operate a motor vehicle over the highways of this
16 State.

17 c. For good cause shown, the court may, in accepting a plea of
18 guilty under this section, order that such plea not be evidential in any
19 civil proceeding.

20 d. Nothing herein shall be deemed to preclude, if the evidence so
21 warrants, an indictment and conviction for aggravated manslaughter
22 under the provisions of subsection a. of N.J.S.2C:11-4.

23 As used in this section, "auto or vessel" means all means of
24 conveyance propelled otherwise than by muscular power.

25 (cf: P.L.1995, c.285, s.1)

26

27 2. N.J.S.2C:12-1 is amended to read as follows:

28 2C:12-1. Assault. a. Simple assault. A person is guilty of assault if
29 he:

30 (1) Attempts to cause or purposely, knowingly or recklessly causes
31 bodily injury to another; or

32 (2) Negligently causes bodily injury to another with a deadly
33 weapon; or

34 (3) Attempts by physical menace to put another in fear of imminent
35 serious bodily injury.

36 Simple assault is a disorderly persons offense unless committed in
37 a fight or scuffle entered into by mutual consent, in which case it is a
38 petty disorderly persons offense.

39 b. Aggravated assault. A person is guilty of aggravated assault if
40 he:

41 (1) Attempts to cause serious bodily injury to another, or causes
42 such injury purposely or knowingly or under circumstances
43 manifesting extreme indifference to the value of human life recklessly
44 causes such injury; or

45 (2) Attempts to cause or purposely or knowingly causes bodily
46 injury to another with a deadly weapon; or

- 1 (3) Recklessly causes bodily injury to another with a deadly
2 weapon; or
- 3 (4) Knowingly under circumstances manifesting extreme
4 indifference to the value of human life points a firearm, as defined in
5 section 2C:39-1f., at or in the direction of another, whether or not the
6 actor believes it to be loaded; or
- 7 (5) Commits a simple assault as defined in subsection a. (1), (2) or
8 (3) of this section upon:
- 9 (a) Any law enforcement officer acting in the performance of his
10 duties while in uniform or exhibiting evidence of his authority; or
- 11 (b) Any paid or volunteer fireman acting in the performance of his
12 duties while in uniform or otherwise clearly identifiable as being
13 engaged in the performance of the duties of a fireman; or
- 14 (c) Any person engaged in emergency first-aid or medical services
15 acting in the performance of his duties while in uniform or otherwise
16 clearly identifiable as being engaged in the performance of emergency
17 first-aid or medical services; or
- 18 (d) Any school board member or school administrator, teacher or
19 other employee of a school board while clearly identifiable as being
20 engaged in the performance of his duties or because of his status as a
21 member or employee of a school board; or
- 22 (e) Any employee of the Division of Youth and Family Services
23 while clearly identifiable as being engaged in the performance of his
24 duties or because of his status as an employee of the division; or
- 25 (f) Any justice of the Supreme Court, judge of the Superior Court,
26 judge of the Tax Court or municipal judge while clearly identifiable as
27 being engaged in the performance of judicial duties or because of his
28 status as a member of the judiciary; or
- 29 (6) Causes bodily injury to another person while fleeing or
30 attempting to elude a law enforcement officer in violation of
31 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
32 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
33 other provision of law to the contrary, a person shall be strictly liable
34 for a violation of this subsection upon proof of a violation of
35 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
36 violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily
37 injury to another person;
- 38 (7) Attempts to cause significant bodily injury to another or causes
39 significant bodily injury purposely or knowingly or, under
40 circumstances manifesting extreme indifference to the value of human
41 life recklessly causes such significant bodily injury; or
- 42 (8) Causes bodily injury by knowingly or purposely starting a fire
43 or causing an explosion in violation of N.J.S.2C:17-1 which results in
44 bodily injury to any emergency services personnel involved in fire
45 suppression activities, rendering emergency medical services resulting
46 from the fire or explosion or rescue operations, or rendering any

1 necessary assistance at the scene of the fire or explosion, including any
2 bodily injury sustained while responding to the scene of a reported fire
3 or explosion. For purposes of this subsection, "emergency services
4 personnel" shall include, but not be limited to, any paid or volunteer
5 fireman, any person engaged in emergency first-aid or medical services
6 and any law enforcement officer. Notwithstanding any other provision
7 of law to the contrary, a person shall be strictly liable for a violation
8 of this paragraph upon proof of a violation of N.J.S. 2C:17-1 which
9 resulted in bodily injury to any emergency services personnel.

10 Aggravated assault under subsections b. (1) and b. (6) is a crime of
11 the second degree; under subsections b. (2) and b. (7) is a crime of the
12 third degree; under subsections b. (3) and b. (4) is a crime of the
13 fourth degree; and under subsection b. (5) is a crime of the third
14 degree if the victim suffers bodily injury, otherwise it is a crime of the
15 fourth degree. Aggravated assault under subsection b. (8) is a crime
16 of the third degree if the victim suffers bodily injury; if the victim
17 suffers significant bodily injury or serious bodily injury it is a crime of
18 the second degree.

19 c. A person is guilty of assault by auto or vessel when the person
20 drives a vehicle or vessel recklessly and causes either serious bodily
21 injury or bodily injury to another. Assault by auto or vessel is a crime
22 of the fourth degree if serious bodily injury results and is a disorderly
23 persons offense if bodily injury results.

24 Assault by auto or vessel is a crime of the third degree if the person
25 drives the vehicle while in violation of R.S.39:4-50 or section 2 of
26 P.L.1981, c.512 (C.39:4-50.4a) and serious bodily injury results and
27 is a crime of the fourth degree if the person drives the vehicle while in
28 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-
29 50.4a) and bodily injury results.

30 If the person drives the vehicle while on or within 1,000 feet of any
31 school property used for school purposes which is owned by or leased
32 to any elementary or secondary school or school board, while in
33 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-
34 50.4a), any fine or term of imprisonment imposed upon the person
35 shall be double that which would otherwise be imposed under this
36 subsection.

37 As used in this section, "vessel" means a means of conveyance for
38 travel on water and propelled otherwise than by muscular power.

39 d. A person who is employed by a facility as defined in section 2
40 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
41 defined in paragraph (1) or (2) of subsection a. of this section upon an
42 institutionalized elderly person as defined in section 2 of P.L.1977,
43 c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

44 e. A person who commits a simple assault as defined in subsection
45 a. of this section is guilty of a crime of the fourth degree if the person
46 acted with a purpose to intimidate an individual or group of individuals

1 because of race, color, religion, gender, handicap, sexual orientation,
2 or ethnicity.

3 (cf: P.L.1997, c.119, s.1)

4

5 3. N.J.S.2C:64-1 is amended to read as follows:

6 2C:64-1. Property Subject to Forfeiture.

7 a. Any interest in the following shall be subject to forfeiture and no
8 property right shall exist in them:

9 (1) Controlled dangerous substances, firearms which are unlawfully
10 possessed, carried, acquired or used, illegally possessed gambling
11 devices, untaxed cigarettes and untaxed special fuel. These shall be
12 designated prima facie contraband.

13 (2) All property which has been, or is intended to be, utilized in
14 furtherance of an unlawful activity, including, but not limited to,
15 conveyances intended to facilitate the perpetration of illegal acts, or
16 buildings or premises maintained for the purpose of committing
17 offenses against the State.

18 (3) Property which has become or is intended to become an
19 integral part of illegal activity, including, but not limited to, money
20 which is earmarked for use as financing for an illegal gambling
21 enterprise.

22 (4) Proceeds of illegal activities, including, but not limited to,
23 property or money obtained as a result of the sale of prima facie
24 contraband as defined by subsection a. (1), proceeds of illegal
25 gambling, prostitution, bribery and extortion.

26 (5) A motor vehicle used in the commission of vehicular homicide
27 pursuant to N.J.S.2C:11-5 if the owner operated the vehicle while in
28 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
29 (C.39:4-50.4a) or knowingly permitted another to operate the vehicle
30 while in violation of R.S.39:4-50.

31 b. Any article subject to forfeiture under this chapter may be seized
32 by the State or any law enforcement officer as evidence pending a
33 criminal prosecution pursuant to section 2C:64-4 or, when no criminal
34 proceeding is instituted, upon process issued by any court of
35 competent jurisdiction over the property, except that seizure without
36 such process may be made when not inconsistent with the Constitution
37 of this State or the United States, and when

38 (1) The article is prima facie contraband; or,

39 (2) The property subject to seizure poses an immediate threat to
40 the public health, safety or welfare.

41 c. For the purposes of this section:

42 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and
43 kerosene on which the motor fuel tax imposed pursuant to
44 R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or
45 transferred in this State in a manner not authorized pursuant to

1 R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).
2 (cf: P.L.1992, c.23, s.70)

3

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

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

10 No person whose motor vehicle registration has been revoked shall
11 operate or permit the operation of such motor vehicle during the
12 period of such revocation.

13 A person violating this section shall be subject to the following
14 penalties:

15 a. Upon conviction for a first offense, a fine of \$500.00 and, if that
16 offense involves the operation of a motor vehicle during a period when
17 the violator's driver's license is suspended for a violation of
18 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a),
19 revocation of the violator's motor vehicle registration privilege in
20 accordance with the provisions of sections 2 through 6 of P.L.1995,
21 c.286 (C.39:3-40.1 through C.39:3-40.5);

22 b. Upon conviction for a second offense, a fine of \$750.00,
23 imprisonment in the county jail for not more than five days and, if the
24 second offense involves the operation of a motor vehicle during a
25 period when the violator's driver's license is suspended and that second
26 offense occurs within five years of a conviction for that same offense,
27 revocation of the violator's motor vehicle registration privilege in
28 accordance with the provisions of sections 2 through 6 of P.L.1995,
29 c.286 (C.39:3-40.1 through C.39:3-40.5);

30 c. Upon conviction for a third offense or subsequent offense, a
31 fine of \$1,000.00, imprisonment in the county jail for 10 days and, if
32 the third offense involves the operation of a motor vehicle during a
33 period when the violator's driver's license is suspended and that third
34 offense occurs within five years of a conviction for the same offense,
35 revocation of the violator's motor vehicle registration privilege in
36 accordance with the provisions of sections 2 through 6 of P.L.1995,
37 c.286 (C.39:3-40.1 through C.39:3-40.5);

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

40 e. Upon conviction, the court shall impose a period of
41 imprisonment for not less than 45 days, if while operating a vehicle in
42 violation of this section a person is involved in an accident resulting in
43 personal injury to another person;

44 f. (1) Notwithstanding subsections a. through e., any person
45 violating this section while under suspension issued pursuant to section
46 2 of P.L.1972, c.197 (C.39:6B-2), upon conviction, shall be fined

1 \$500.00, shall have his license to operate a motor vehicle suspended
2 for an additional period of not less than one year nor more than two
3 years, and may be imprisoned in the county jail for not more than 90
4 days.

5 (2) Notwithstanding the provisions of subsections a. through e. of
6 this section and paragraph (1) of this subsection, any person violating
7 this section under suspension issued pursuant to R.S.39:4-50, section
8 2 of P.L.1981, c.512 (C.39:4-50.4a) or P.L.1982, c.85 (C.39:5-30a et
9 seq.), shall be fined \$500, shall have his license to operate a motor
10 vehicle suspended for an additional period of not less than one year or
11 more than two years, and shall be imprisoned in the county jail for not
12 less than 10 days or more than 90 days[;].

13 (3) Notwithstanding the provisions of subsections a. through e. of
14 this section and paragraphs (1) and (2) of this subsection, any person
15 violating this section under suspension issued pursuant to R.S.39:4-50
16 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while on or within
17 1,000 feet of any school property used for school purposes which is
18 owned by or leased to any elementary or secondary school or school
19 board shall be fined \$500, shall be imprisoned for a minimum of 18
20 months for a first offense, a minimum of three years for a second
21 offense and a minimum of five years for a third or subsequent offense
22 and shall have his license to operate a motor vehicle suspended for an
23 additional period of not less than one year or more than two years,
24 which period shall commence upon the completion of any prison
25 sentence imposed upon that person;

26 g. In addition to the other applicable penalties provided under this
27 section, a person violating this section whose license has been
28 suspended pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35) or
29 the regulations adopted thereunder, shall be fined \$3,000. The court
30 shall waive the fine upon proof that the person has paid the total
31 surcharge imposed pursuant to section 6 of P.L.1983, c.65
32 (C.17:29A-35) or the regulations adopted thereunder.
33 Notwithstanding the provisions of R.S.39:5-41, the fine imposed
34 pursuant to this subsection shall be collected by the Division of Motor
35 Vehicles pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35), and
36 distributed as provided in that section, and the court shall file a copy
37 of the judgment of conviction with the director and with the Clerk of
38 the Superior Court who shall enter the following information upon the
39 record of docketed judgments: the name of the person as judgment
40 debtor; the Division of Motor Vehicles as judgment creditor; the
41 amount of the fine; and the date of the order. These entries shall have
42 the same force and effect as any civil judgment docketed in the
43 Superior Court;

44 h. A person who owns or leases a motor vehicle and permits
45 another to operate the motor vehicle commits a violation and is subject
46 to suspension of his license to operate a motor vehicle and to

1 revocation of registration pursuant to sections 2 through 6 of
2 P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5) if the person:

3 (1) Knows that the operator's license to operate a motor vehicle
4 has been suspended for a violation of R.S.39:4-50 or section 2 of
5 P.L.1981, c.512 (C.39:4-50.4a); or

6 (2) Knows that the operator's license to operate a motor vehicle is
7 suspended and that the operator has been convicted, within the past
8 five years, of operating a vehicle while the person's license was
9 suspended or revoked.

10 (cf: P.L.1995, c.286, s.1)

11

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

13 39:4-50. (a) A person who operates a motor vehicle while under
14 the influence of intoxicating liquor, narcotic, hallucinogenic or
15 habit-producing drug, or operates a motor vehicle with a blood alcohol
16 concentration of 0.10% or more by weight of alcohol in the
17 defendant's blood or permits another person who is under the influence
18 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug
19 to operate a motor vehicle owned by him or in his custody or control
20 or permits another to operate a motor vehicle with a blood alcohol
21 concentration of 0.10% or more by weight of alcohol in the
22 defendant's blood, shall be subject:

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

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

46 (3) For a third or subsequent violation, a person shall be subject

1 to a fine of \$1,000.00, and shall be sentenced to imprisonment for a
2 term of not less than 180 days, except that the court may lower such
3 term for each day, not exceeding 90 days, served performing
4 community service in such form and on such terms as the court shall
5 deem appropriate under the circumstances and shall thereafter forfeit
6 his right to operate a motor vehicle over the highways of this State for
7 10 years.

8 When a violation of this section occurs while on or within 1,000
9 feet of any school property used for school purposes which is owned
10 by or leased to any elementary or secondary school or school board,
11 the fine, period of community service, term of imprisonment and
12 period of license forfeiture imposed upon the convicted person shall
13 be double that which would otherwise be imposed under paragraphs
14 (1), (2) or (3) of this subsection.

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

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

29 If the driving privilege of any person is under revocation or
30 suspension for a violation of any provision of this Title or Title 2C of
31 the New Jersey Statutes at the time of any conviction for a violation
32 of this section, the revocation or suspension period imposed shall
33 commence as of the date of termination of the existing revocation or
34 suspension period. In the case of any person who at the time of the
35 imposition of sentence is less than 17 years of age, the forfeiture,
36 suspension or revocation of the driving privilege imposed by the court
37 under this section shall commence immediately, run through the
38 offender's seventeenth birthday and continue from that date for the
39 period set by the court pursuant to paragraphs (1) through (3) of this
40 subsection. A court that imposes a term of imprisonment under this
41 section may sentence the person so convicted to the county jail, to the
42 workhouse of the county wherein the offense was committed, to an
43 inpatient rehabilitation program or to an Intoxicated Driver Resource
44 Center or other facility approved by the chief of the Intoxicated
45 Driving Program Unit in the Department of Health and Senior
46 Services; provided that for a third or subsequent offense a person shall

1 not serve a term of imprisonment at an Intoxicated Driver Resource
2 Center as provided in subsection (f).

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

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

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

1 nonresident's driving privilege to operate a motor vehicle in this State,
2 in accordance with this section. Upon conviction of a violation of this
3 section, the court shall notify the person convicted, orally and in
4 writing, of the penalties for a second, third or subsequent violation of
5 this section. A person shall be required to acknowledge receipt of that
6 written notice in writing. Failure to receive a written notice or failure
7 to acknowledge in writing the receipt of a written notice shall not be
8 a defense to a subsequent charge of a violation of this section.

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

14 (e) Any person accused of a violation of this section who is liable
15 to punishment imposed by this section as a second or subsequent
16 offender shall be entitled to the same rights of discovery as allowed
17 defendants pursuant to the Rules Governing Criminal Practice, as set
18 forth in the Rules Governing the Courts of the State of New Jersey.

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

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

45 Required detention periods at the Intoxicated Driver Resource
46 Centers shall be determined according to the individual treatment

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

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

14 The Commissioner of Health and Senior Services shall adopt rules
15 and regulations pursuant to the "Administrative Procedure Act,"
16 P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the
17 purposes of this subsection.
18 (cf: P.L.1997, c.277, s.1)

19

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

22 2. The municipal court shall revoke the right to operate a motor
23 vehicle of any operator who, after being arrested for a violation of
24 R.S.39:4-50, shall refuse to submit to a test provided for in section 2
25 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six
26 months unless the refusal was in connection with a second offense
27 under this section, in which case the revocation period shall be for two
28 years or unless the refusal was in connection with a third or
29 subsequent offense under this section in which case the revocation
30 shall be for ten years. A conviction or administrative determination of
31 a violation of a law of a substantially similar nature in another
32 jurisdiction, regardless of whether that jurisdiction is a signatory to the
33 Interstate Driver License Compact pursuant to P.L.1966, c.73
34 (C.39:5D-1 et seq.), shall constitute a prior conviction under this
35 section.

36 The municipal court shall determine by a preponderance of the
37 evidence whether the arresting officer had probable cause to believe
38 that the person had been driving or was in actual physical control of
39 a motor vehicle on the public highways or quasi-public areas of this
40 State while the person was under the influence of intoxicating liquor
41 or a narcotic, hallucinogenic, or habit-producing drug or marijuana;
42 whether the person was placed under arrest, if appropriate, and
43 whether he refused to submit to the test upon request of the officer;
44 and if these elements of the violation are not established, no conviction
45 shall issue. In addition to any other requirements provided by law, a
46 person whose operator's license is revoked for refusing to submit to a

1 test shall be referred to an Intoxicated Driver Resource Center
2 established by subsection (f.) of R.S.39:4-50 and shall satisfy the same
3 requirements of the center for refusal to submit to a test as provided
4 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with
5 a first, second, third or subsequent offense under this section that must
6 be satisfied by a person convicted of a commensurate violation of this
7 section, or be subject to the same penalties as such a person for failure
8 to do so. The revocation shall be independent of any revocation
9 imposed by virtue of a conviction under the provisions of R.S.39:4-50.

10 In addition to issuing a revocation, the municipal court shall fine a
11 person convicted under this section, a fine of not less than \$250.00 nor
12 more than \$500.00.

13 When a violation of this section occurs while on or within 1,000
14 feet of any school property used for school purposes which is owned
15 by or leased to any elementary or secondary school or school board,
16 the fine and period of license revocation imposed upon the convicted
17 person shall be double that which would otherwise be imposed under
18 this section.

19 (cf: P.L.1997, c.277, s.2)

20

21 7. This act shall take effect on the first day of the fourth month
22 after enactment.

23

24

25

STATEMENT

26

27 This bill creates stiff new penalties for drunk driving and other
28 serious traffic offenses when committed in the vicinity of a school. It
29 is intended to honor Filomena Coppola, a well-known and popular
30 crossing guard who was recently struck and killed by an alleged drunk
31 driver while protecting two eight-year old girls at a crossing near
32 Radcliffe Elementary School in Nutley. It is the sponsor's wish that
33 "Filomena's Law" will make the often busy streets and roads near
34 schools safer for the children who must daily cross them, and for the
35 dedicated persons who guard their crossing.

36 The bill would double the penalties imposed on a person convicted
37 of driving a motor vehicle under the influence of alcohol or drugs
38 while on or within 1,000 feet of any school property used for school
39 purposes which is owned by or leased to any elementary or secondary
40 school or school board.

41 Under current law, the penalties for a first drunk driving offense
42 include a fine of \$250 to \$400, possible imprisonment for up to 30
43 days and loss of a driver's license for six months to one year. Under
44 the bill, the penalties for a first offense of drunk driving while on or
45 within 1,000 feet of a school property would be a fine of \$500 to
46 \$800, possible imprisonment for up to 60 days and loss of a driver's

1 license for up to two years. The penalties for second, third and
2 subsequent drunk driving offenses committed while on or within 1,000
3 feet of school property also would be doubled.

4 The bill also would double the penalties imposed on a person
5 convicted of refusing to consent to a breathalyzer test in connection
6 with an offense committed on or within 1,000 feet of school property.
7 The penalties under current law for a first offense of refusing to take
8 a breathalyzer test are a six month loss of license and a fine of \$250 to
9 \$500. These penalties are independent of the penalties imposed for a
10 drunk driving conviction. Under the bill, the penalties increase to a
11 one year loss of license and a fine of \$500 to \$1,000. The penalties
12 imposed for a second, third or subsequent offense of refusing to
13 consent to a breathalyzer test for an offense committed while on or
14 within 1,000 feet of school property also would be doubled.

15 Additionally, the bill would double the penalties for committing
16 vehicular homicide while driving drunk or refusing to consent to a
17 breathalyzer test when requested to do so while on or within 1,000
18 feet of school property. Vehicular homicide is a crime of the second
19 degree punishable by a \$150,000 fine, a term of imprisonment of five
20 to 10 years, or both. A drunk driver who commits vehicular homicide
21 is currently required to serve at least three years of this sentence
22 without eligibility for parole. Under this bill, a drunk driver or a
23 person who refuses a breathalyzer test who commits vehicular
24 homicide while on or within 1,000 feet of school property would be
25 fined up to \$300,000, would be subject to a term of imprisonment of
26 10 to 20 years, or both. The person would have to serve at least six
27 years before becoming eligible for parole.

28 Under the bill, a person who commits vehicular homicide while
29 driving drunk or refusing to consent to a breathalyzer test also would
30 be subject to permanent loss of driving privileges in this State. An
31 owner of a motor vehicle also would permanently lose his or her
32 driving privileges for knowingly permitting such a driver to operate the
33 vehicle.

34 The bill also would increase the penalties for assault by auto under
35 certain circumstances. Under the bill, a person who commits assault
36 by auto while driving drunk or refusing to consent to a breathalyzer is
37 guilty of a crime of the third degree if serious bodily injury results.
38 Third-degree crimes are punishable by a fine of up to \$15,000, a term
39 of imprisonment of three-to-five years, or both. Under current law,
40 the person would be guilty of a fourth-degree crime. Fourth-degree
41 crimes are punishable by a fine of up to \$10,000 a term of
42 imprisonment of up to 18 months, or both.

43 A person who commits assault by auto while driving drunk or
44 refusing to consent to a breathalyzer is guilty of a crime of the fourth
45 degree under the bill if bodily injury results. Under current law, the
46 person would be guilty of a disorderly persons offense. Disorderly

1 persons offenses are punishable by a maximum fine of \$1,000, a term
2 of imprisonment of up to six months, or both.

3 The bill also doubles the penalties that would otherwise be imposed
4 under the bill if a person commits assault by auto while driving drunk
5 or refusing to consent to a breathalyzer if committed while on or
6 within 1,000 feet of school property. For example, assault by auto
7 constituting a third-degree crime under the bill would result in a fine
8 of up to \$30,000, a term of imprisonment of six to 10 years, or both.
9 Assault by auto constituting a fourth-degree crime under the bill would
10 result in a fine of up to \$20,000, a term of imprisonment of up to three
11 years, or both.

12 The bill also provides for mandatory minimum terms of
13 imprisonment for persons who are found guilty of driving while on or
14 within 1,000 feet of school property when their licenses have been
15 suspended or revoked for drunk driving or refusing to consent to a
16 breathalyzer test. For a first offense, the person shall serve a minimum
17 of 18 months; for a second offense, a minimum of three years and for
18 a third or subsequent offense, a minimum of five years.

19 Under this bill, a motor vehicle used to commit vehicular homicide
20 by an owner who was in violation of the drunk driving or refusal
21 statute would be subject to forfeiture. The motor vehicle of an owner
22 who knowingly permits a drunk driver to use the vehicle is also subject
23 to forfeiture.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 854

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1998

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 854.

As amended and released by the committee, this bill creates stiff new penalties for drunk driving and other serious traffic offenses when committed in the vicinity of a school or a school crossing. It is intended to honor Filomena Coppola, a well-known and popular crossing guard who was struck and killed by an alleged drunk driver while protecting two eight-year old girls at a crossing near Radcliffe Elementary School in Nutley. It is the sponsor's wish that "Filomena's Law" will make the often busy streets and roads near schools safer for the children who must daily cross them, and for the dedicated persons who guard their crossing.

The bill would double the penalties imposed on a person convicted of driving a motor vehicle under the influence of alcohol or drugs while on or within 1,000 feet of a school crossing or any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board.

Under current law, the penalties for a first drunk driving offense include a fine of \$250 to \$400, possible imprisonment for up to 30 days and loss of a driver's license for six months to one year. Under the bill, the penalties for a first offense of drunk driving while on or within 1,000 feet of a school crossing or school property would be a fine of \$500 to \$800, possible imprisonment for up to 60 days and loss of a driver's license for up to two years. The penalties for second, third and subsequent drunk driving offenses committed while on or within 1,000 feet of school property or a school crossing also would be doubled.

The bill also would double the penalties imposed on a person convicted of refusing to consent to a breathalyzer test in connection with an offense committed on or within 1,000 feet of school property or a school crossing. The penalties under current law for a first offense of refusing to take a breathalyzer test are a six month loss of license and a fine of \$250 to \$500. These penalties are independent of

the penalties imposed for a drunk driving conviction. Under the bill, the penalties increase to a one year loss of license and a fine of \$500 to \$1,000. The penalties imposed for a second, third or subsequent offense of refusing to consent to a breathalyzer test for an offense committed while on or within 1,000 feet of school property or a school crossing also would be doubled.

Additionally, the bill would double the penalties for committing vehicular homicide while driving drunk or refusing to consent to a breathalyzer test when requested to do so while on or within 1,000 feet of school property or a school crossing. Vehicular homicide is a crime of the second degree punishable by a \$150,000 fine, a term of imprisonment of five to 10 years, or both. A drunk driver who commits vehicular homicide is currently required to serve at least three years of this sentence without eligibility for parole. Under this bill, a drunk driver or a person who refuses a breathalyzer test who commits vehicular homicide while on or within 1,000 feet of school property or a school crossing would be fined up to \$300,000, would be subject to a term of imprisonment of 10 to 20 years, or both. The person would have to serve at least six years before becoming eligible for parole.

Under the bill, a person who commits vehicular homicide while driving drunk or refusing to consent to a breathalyzer test also would be subject to permanent loss of driving privileges in this State. An owner of a motor vehicle also would permanently lose his or her driving privileges for knowingly permitting such a driver to operate the vehicle.

The bill also would increase the penalties for assault by auto under certain circumstances. Under the bill, a person who commits assault by auto while driving drunk or refusing to consent to a breathalyzer is guilty of a crime of the third degree if serious bodily injury results. Third-degree crimes are punishable by a fine of up to \$15,000, a term of imprisonment of three-to-five years, or both. Under current law, the person would be guilty of a fourth-degree crime. Fourth-degree crimes are punishable by a fine of up to \$10,000 a term of imprisonment of up to 18 months, or both.

A person who commits assault by auto while driving drunk or refusing to consent to a breathalyzer is guilty of a crime of the fourth degree under the bill if bodily injury results. Under current law, the person would be guilty of a disorderly persons offense. Disorderly persons offenses are punishable by a maximum fine of \$1,000, a term of imprisonment of up to six months, or both.

The bill also doubles the penalties that would otherwise be imposed under the bill if a person commits assault by auto while driving drunk or refusing to consent to a breathalyzer if committed while on or within 1,000 feet of school property or a school crossing. For example, assault by auto constituting a third-degree crime under the bill would result in a fine of up to \$30,000, a term of imprisonment of six to 10 years, or both. Assault by auto constituting a fourth-degree

crime under the bill would result in a fine of up to \$20,000, a term of imprisonment of up to three years, or both.

The bill also provides for mandatory minimum terms of imprisonment for persons who are found guilty of driving while on or within 1,000 feet of school property or a school crossing when their licenses have been suspended or revoked for drunk driving or refusing to consent to a breathalyzer test. For a first offense, the person shall serve a minimum of 18 months; for a second offense, a minimum of three years and for a third or subsequent offense, a minimum of five years.

Under this bill, a motor vehicle used to commit vehicular homicide by an owner who was in violation of the drunk driving or refusal statute would be subject to forfeiture. The motor vehicle of an owner who knowingly permits a drunk driver to use the vehicle is also subject to forfeiture.

The committee amended the bill to extend its provisions to the areas on or within 1,000 feet of a school crossing as defined in R.S.39:1-1.

FISCAL NOTE

[First Reprint]

SENATE, No. 854

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: NOVEMBER 18, 1998

Senate Bill No. 854 (1R) of 1998 creates new penalties for drunk driving and other serious traffic offenses when committed in the vicinity of a school or a school crossing.

The bill doubles the penalties imposed on a person convicted of driving a motor vehicle under the influence of alcohol or drugs while on or within 1,000 feet of any school crossing or any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board. In addition, the bill doubles the penalties imposed on a person convicted of refusing to consent to a breathalyser test in connection with an offense committed on or within 1,000 feet of a school crossing or school property, as well as doubling the penalties for committing vehicular homicide while driving drunk or refusing to consent to a breathalyser test when requested to do so while on or within 1,000 feet of a school crossing or school property.

The bill also increases the penalties for assault by auto under certain circumstances and doubles the penalties that would otherwise be imposed if a person commits assault by auto while driving drunk or refusing to consent to a breathalyser if committed while on or within 1,000 feet of a school crossing or school property.

In addition, the bill provides for mandatory minimum terms of imprisonment for persons who are found guilty of driving while on or within 1,000 feet of a school crossing or school property when their licenses have been suspended or revoked for drunk driving or refusing to consent to a breathalyser test. Finally, the bill specifies that a motor vehicle used to commit vehicular homicide by an owner who was in violation of the drunk driving or refusal statute would be subject to forfeiture. The motor vehicle of an owner who knowingly permits a drunk driver to use the vehicle is also subject to forfeiture.

The Administrative Office of the Courts states that the Municipal Court Services Division does not maintain statistics on the number of offenses included in the bill that are committed within 1,000 feet of a school property. As a result, the fiscal impact of this legislation is

unknown.

The Department of Corrections states that the proposed penalties compared to the current penalties will result in imprisonment for offenses which previously did not receive prison sentences, as well as longer sentences for offenses which already receive prison sentences. With the exception of vehicular homicide and assault by auto, persons convicted of all other drunk driving offenses included on the list are not currently sentenced to the Department of Corrections. A projection of the number of offenders who would be sentenced to the department under the bill is not available, however, according to the department it is not anticipated that the volume of admissions would be sufficient to increase population levels significantly, or to increase institutional operating costs.

The Office of Legislative Services notes that while the number of offenders who would become State sentenced inmates is minimal, the potential exists for an unknown number of offenders to be remanded to the county jails as a result of these increased penalties. The actual costs to each county would be determined by the number of offenders in each county and the per capita cost.

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

ASSEMBLY, No. 1821

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MARCH 16, 1998

Sponsored by:

Assemblyman JOHN V. KELLY
District 36 (Bergen, Essex and Passaic)
Assemblyman PAUL DIGAETANO
District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

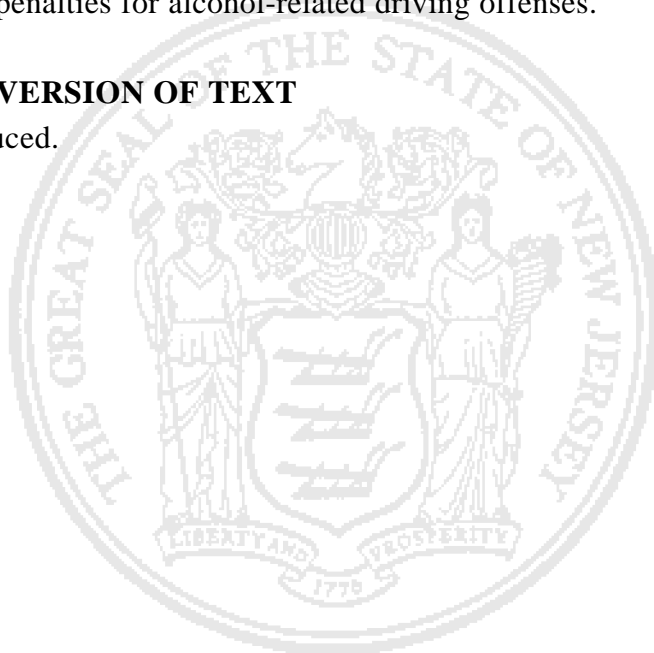
Assemblymen Kramer, Asselta, Gibson, Assemblywomen Wright, Heck,
Assemblymen Connors, Moran, Assemblywoman Myers, Assemblymen
Bodine, Blee, LeFevre, Azzolina, Thompson, Corodemus, Greenwald and
Felice

SYNOPSIS

Increases penalties for alcohol-related driving offenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/11/1999)

1 AN ACT concerning driving while on or within 1,000 feet of school
2 property under the influence of alcohol or drugs and amending
3 various parts of the statutory law.

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

7
8 1. N.J.S.2C:11-5 is amended to read as follows:

9 2C:11-5. Death by auto or vessel. a. Criminal homicide
10 constitutes vehicular homicide when it is caused by driving a vehicle
11 or vessel recklessly.

12 b. Vehicular homicide is a crime of the second degree.

13 (1) If the defendant was operating the auto or vessel while under
14 the influence of any intoxicating liquor, narcotic, hallucinogenic or
15 habit-producing drug, or with a blood alcohol concentration at or
16 above the prohibited level as prescribed in R.S.39:4-50, or if the
17 defendant was operating the auto or vessel while his driver's license or
18 reciprocity privilege was suspended or revoked for any violation of
19 R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the
20 Director of the Division of Motor Vehicles pursuant to P.L.1982, c.85
21 (C.39:5-30a et seq.), or by the court for a violation of R.S.39:4-96,
22 the defendant shall be sentenced to a term of imprisonment by the
23 court. The term of imprisonment shall include the imposition of a
24 minimum term. The minimum term shall be fixed at, or between,
25 one-third and one-half of the sentence imposed by the court or three
26 years, whichever is greater, during which the defendant shall be
27 ineligible for parole.

28 (2) The court shall not impose a mandatory sentence pursuant to
29 paragraph (1) of this subsection unless the grounds therefor have been
30 established at a hearing. At the hearing, which may occur at the time
31 of sentencing, the prosecutor shall establish by a preponderance of the
32 evidence that the defendant was operating the auto or vessel while
33 under the influence of any intoxicating liquor, narcotic, hallucinogenic
34 or habit-producing drug, or with a blood alcohol concentration at or
35 above the level prescribed in R.S.39:4-50 or that the defendant was
36 operating the auto or vessel while his driver's license or reciprocity
37 privilege was suspended or revoked for any violation of R.S.39:4-50,
38 section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the
39 Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et
40 seq.), or by the court for a violation of R.S.39:4-96. In making its
41 findings, the court shall take judicial notice of any evidence, testimony
42 or information adduced at the trial, plea hearing, or other court
43 proceedings and shall also consider the presentence report and any

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

Matter underlined thus is new matter.

1 other relevant information.

2 (3) If the defendant was operating the auto while on or within
3 1,000 feet of any school property used for school purposes which is
4 owned by or leased to any elementary or secondary school or school
5 board while in violation of R.S.39:4-50 or section 2 of P.L.1981,
6 c.512 (C.39:4-50.4a), any fine or term of imprisonment imposed upon
7 the defendant shall be double that which would otherwise be imposed
8 pursuant to paragraph (1) of this subsection.

9 (4) If the defendant was operating the auto in violation of
10 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the
11 defendant shall permanently forfeit the right to operate a motor vehicle
12 over the highways of this State. If the owner of the auto is other than
13 the defendant and knowingly permits the defendant to operate the
14 vehicle while in violation of R.S.39:4-50, the owner shall permanently
15 forfeit the right to operate a motor vehicle over the highways of this
16 State.

17 c. For good cause shown, the court may, in accepting a plea of
18 guilty under this section, order that such plea not be evidential in any
19 civil proceeding.

20 d. Nothing herein shall be deemed to preclude, if the evidence so
21 warrants, an indictment and conviction for aggravated manslaughter
22 under the provisions of subsection a. of N.J.S.2C:11-4.

23 As used in this section, "auto or vessel" means all means of
24 conveyance propelled otherwise than by muscular power.

25 (cf: P.L.1995, c.285, s.1)

26

27 2. N.J.S.2C:12-1 is amended to read as follows:

28 2C:12-1. Assault. a. Simple assault. A person is guilty of assault if
29 he:

30 (1) Attempts to cause or purposely, knowingly or recklessly causes
31 bodily injury to another; or

32 (2) Negligently causes bodily injury to another with a deadly
33 weapon; or

34 (3) Attempts by physical menace to put another in fear of imminent
35 serious bodily injury.

36 Simple assault is a disorderly persons offense unless committed in
37 a fight or scuffle entered into by mutual consent, in which case it is a
38 petty disorderly persons offense.

39 b. Aggravated assault. A person is guilty of aggravated assault if
40 he:

41 (1) Attempts to cause serious bodily injury to another, or causes
42 such injury purposely or knowingly or under circumstances
43 manifesting extreme indifference to the value of human life recklessly
44 causes such injury; or

45 (2) Attempts to cause or purposely or knowingly causes bodily
46 injury to another with a deadly weapon; or

- 1 (3) Recklessly causes bodily injury to another with a deadly
2 weapon; or
- 3 (4) Knowingly under circumstances manifesting extreme
4 indifference to the value of human life points a firearm, as defined in
5 section 2C:39-1f., at or in the direction of another, whether or not the
6 actor believes it to be loaded; or
- 7 (5) Commits a simple assault as defined in subsection a. (1), (2) or
8 (3) of this section upon:
- 9 (a) Any law enforcement officer acting in the performance of his
10 duties while in uniform or exhibiting evidence of his authority; or
- 11 (b) Any paid or volunteer fireman acting in the performance of his
12 duties while in uniform or otherwise clearly identifiable as being
13 engaged in the performance of the duties of a fireman; or
- 14 (c) Any person engaged in emergency first-aid or medical services
15 acting in the performance of his duties while in uniform or otherwise
16 clearly identifiable as being engaged in the performance of emergency
17 first-aid or medical services; or
- 18 (d) Any school board member or school administrator, teacher or
19 other employee of a school board while clearly identifiable as being
20 engaged in the performance of his duties or because of his status as a
21 member or employee of a school board; or
- 22 (e) Any employee of the Division of Youth and Family Services
23 while clearly identifiable as being engaged in the performance of his
24 duties or because of his status as an employee of the division; or
- 25 (f) Any justice of the Supreme Court, judge of the Superior Court,
26 judge of the Tax Court or municipal judge while clearly identifiable as
27 being engaged in the performance of judicial duties or because of his
28 status as a member of the judiciary; or
- 29 (6) Causes bodily injury to another person while fleeing or
30 attempting to elude a law enforcement officer in violation of
31 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
32 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
33 other provision of law to the contrary, a person shall be strictly liable
34 for a violation of this subsection upon proof of a violation of
35 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
36 violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily
37 injury to another person;
- 38 (7) Attempts to cause significant bodily injury to another or causes
39 significant bodily injury purposely or knowingly or, under
40 circumstances manifesting extreme indifference to the value of human
41 life recklessly causes such significant bodily injury; or
- 42 (8) Causes bodily injury by knowingly or purposely starting a fire
43 or causing an explosion in violation of N.J.S.2C:17-1 which results in
44 bodily injury to any emergency services personnel involved in fire
45 suppression activities, rendering emergency medical services resulting
46 from the fire or explosion or rescue operations, or rendering any

1 necessary assistance at the scene of the fire or explosion, including any
2 bodily injury sustained while responding to the scene of a reported fire
3 or explosion. For purposes of this subsection, "emergency services
4 personnel" shall include, but not be limited to, any paid or volunteer
5 fireman, any person engaged in emergency first-aid or medical services
6 and any law enforcement officer. Notwithstanding any other provision
7 of law to the contrary, a person shall be strictly liable for a violation
8 of this paragraph upon proof of a violation of N.J.S. 2C:17-1 which
9 resulted in bodily injury to any emergency services personnel.

10 Aggravated assault under subsections b. (1) and b. (6) is a crime of
11 the second degree; under subsections b. (2) and b. (7) is a crime of the
12 third degree; under subsections b. (3) and b. (4) is a crime of the
13 fourth degree; and under subsection b. (5) is a crime of the third
14 degree if the victim suffers bodily injury, otherwise it is a crime of the
15 fourth degree. Aggravated assault under subsection b. (8) is a crime
16 of the third degree if the victim suffers bodily injury; if the victim
17 suffers significant bodily injury or serious bodily injury it is a crime of
18 the second degree.

19 c. A person is guilty of assault by auto or vessel when the person
20 drives a vehicle or vessel recklessly and causes either serious bodily
21 injury or bodily injury to another. Assault by auto or vessel is a crime
22 of the fourth degree if serious bodily injury results and is a disorderly
23 persons offense if bodily injury results.

24 Assault by auto or vessel is a crime of the third degree if the person
25 drives the vehicle while in violation of R.S.39:4-50 or section 2 of
26 P.L.1981, c.512 (C.39:4-50.4a) and serious bodily injury results and
27 is a crime of the fourth degree if the person drives the vehicle while in
28 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-
29 50.4a) and bodily injury results.

30 If the person drives the vehicle while on or within 1,000 feet of any
31 school property used for school purposes which is owned by or leased
32 to any elementary or secondary school or school board, while in
33 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
34 (C.39:4-50.4a), any fine or term of imprisonment imposed upon the
35 person shall be double that which would otherwise be imposed under
36 this subsection.

37 As used in this section, "vessel" means a means of conveyance for
38 travel on water and propelled otherwise than by muscular power.

39 d. A person who is employed by a facility as defined in section 2
40 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
41 defined in paragraph (1) or (2) of subsection a. of this section upon an
42 institutionalized elderly person as defined in section 2 of P.L.1977,
43 c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

44 e. A person who commits a simple assault as defined in subsection
45 a. of this section is guilty of a crime of the fourth degree if the person
46 acted with a purpose to intimidate an individual or group of individuals

1 because of race, color, religion, gender, handicap, sexual orientation,
2 or ethnicity.

3 (cf: P.L.1997, c.119, s.1)

4

5 3. N.J.S.2C:64-1 is amended to read as follows:

6 2C:64-1. Property Subject to Forfeiture.

7 a. Any interest in the following shall be subject to forfeiture and no
8 property right shall exist in them:

9 (1) Controlled dangerous substances, firearms which are unlawfully
10 possessed, carried, acquired or used, illegally possessed gambling
11 devices, untaxed cigarettes and untaxed special fuel. These shall be
12 designated prima facie contraband.

13 (2) All property which has been, or is intended to be, utilized in
14 furtherance of an unlawful activity, including, but not limited to,
15 conveyances intended to facilitate the perpetration of illegal acts, or
16 buildings or premises maintained for the purpose of committing
17 offenses against the State.

18 (3) Property which has become or is intended to become an
19 integral part of illegal activity, including, but not limited to, money
20 which is earmarked for use as financing for an illegal gambling
21 enterprise.

22 (4) Proceeds of illegal activities, including, but not limited to,
23 property or money obtained as a result of the sale of prima facie
24 contraband as defined by subsection a. (1), proceeds of illegal
25 gambling, prostitution, bribery and extortion.

26 (5) A motor vehicle used in the commission of vehicular homicide
27 pursuant to N.J.S.2C:11-5 if the owner operated the vehicle while in
28 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-
29 50.4a) or knowingly permitted another to operate the vehicle while in
30 violation of R.S.39:4-50.

31 b. Any article subject to forfeiture under this chapter may be seized
32 by the State or any law enforcement officer as evidence pending a
33 criminal prosecution pursuant to section 2C:64-4 or, when no criminal
34 proceeding is instituted, upon process issued by any court of
35 competent jurisdiction over the property, except that seizure without
36 such process may be made when not inconsistent with the Constitution
37 of this State or the United States, and when

38 (1) The article is prima facie contraband; or,

39 (2) The property subject to seizure poses an immediate threat to
40 the public health, safety or welfare.

41 c. For the purposes of this section:

42 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and
43 kerosene on which the motor fuel tax imposed pursuant to
44 R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or
45 transferred in this State in a manner not authorized pursuant to

1 R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).
2 (cf: P.L.1992, c.23, s.70)

3

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

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

10 No person whose motor vehicle registration has been revoked shall
11 operate or permit the operation of such motor vehicle during the
12 period of such revocation.

13 A person violating this section shall be subject to the following
14 penalties:

15 a. Upon conviction for a first offense, a fine of \$500.00 and, if that
16 offense involves the operation of a motor vehicle during a period when
17 the violator's driver's license is suspended for a violation of
18 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a),
19 revocation of the violator's motor vehicle registration privilege in
20 accordance with the provisions of sections 2 through 6 of P.L.1995,
21 c.286 (C.39:3-40.1 through C.39:3-40.5);

22 b. Upon conviction for a second offense, a fine of \$750.00,
23 imprisonment in the county jail for not more than five days and, if the
24 second offense involves the operation of a motor vehicle during a
25 period when the violator's driver's license is suspended and that second
26 offense occurs within five years of a conviction for that same offense,
27 revocation of the violator's motor vehicle registration privilege in
28 accordance with the provisions of sections 2 through 6 of P.L.1995,
29 c.286 (C.39:3-40.1 through C.39:3-40.5);

30 c. Upon conviction for a third offense or subsequent offense, a
31 fine of \$1,000.00, imprisonment in the county jail for 10 days and, if
32 the third offense involves the operation of a motor vehicle during a
33 period when the violator's driver's license is suspended and that third
34 offense occurs within five years of a conviction for the same offense,
35 revocation of the violator's motor vehicle registration privilege in
36 accordance with the provisions of sections 2 through 6 of P.L.1995,
37 c.286 (C.39:3-40.1 through C.39:3-40.5);

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

40 e. Upon conviction, the court shall impose a period of
41 imprisonment for not less than 45 days, if while operating a vehicle in
42 violation of this section a person is involved in an accident resulting in
43 personal injury to another person;

44 f. (1) Notwithstanding subsections a. through e., any person
45 violating this section while under suspension issued pursuant to section
46 2 of P.L.1972, c.197 (C.39:6B-2), upon conviction, shall be fined

1 \$500.00, shall have his license to operate a motor vehicle suspended
2 for an additional period of not less than one year nor more than two
3 years, and may be imprisoned in the county jail for not more than 90
4 days.

5 (2) Notwithstanding the provisions of subsections a. through e. of
6 this section and paragraph (1) of this subsection, any person violating
7 this section under suspension issued pursuant to R.S.39:4-50, section
8 2 of P.L.1981, c.512 (C.39:4-50.4a) or P.L.1982, c.85 (C.39:5-30a et
9 seq.), shall be fined \$500, shall have his license to operate a motor
10 vehicle suspended for an additional period of not less than one year or
11 more than two years, and shall be imprisoned in the county jail for not
12 less than 10 days or more than 90 days[;].

13 (3) Notwithstanding the provisions of subsections a. through e. of
14 this section and paragraphs (1) and (2) of this subsection, any person
15 violating this section under suspension issued pursuant to R.S.39:4-50
16 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while on or within
17 1,000 feet of any school property used for school purposes which is
18 owned by or leased to any elementary or secondary school or school
19 board shall be fined \$500, shall be imprisoned for a minimum of 18
20 months for a first offense, a minimum of three years for a second
21 offense and a minimum of five years for a third or subsequent offense
22 and shall have his license to operate a motor vehicle suspended for an
23 additional period of not less than one year or more than two years,
24 which period shall commence upon the completion of any prison
25 sentence imposed upon that person;

26 g. In addition to the other applicable penalties provided under this
27 section, a person violating this section whose license has been
28 suspended pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35) or
29 the regulations adopted thereunder, shall be fined \$3,000. The court
30 shall waive the fine upon proof that the person has paid the total
31 surcharge imposed pursuant to section 6 of P.L.1983, c.65
32 (C.17:29A-35) or the regulations adopted thereunder.
33 Notwithstanding the provisions of R.S.39:5-41, the fine imposed
34 pursuant to this subsection shall be collected by the Division of Motor
35 Vehicles pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35), and
36 distributed as provided in that section, and the court shall file a copy
37 of the judgment of conviction with the director and with the Clerk of
38 the Superior Court who shall enter the following information upon the
39 record of docketed judgments: the name of the person as judgment
40 debtor; the Division of Motor Vehicles as judgment creditor; the
41 amount of the fine; and the date of the order. These entries shall have
42 the same force and effect as any civil judgment docketed in the
43 Superior Court;

44 h. A person who owns or leases a motor vehicle and permits
45 another to operate the motor vehicle commits a violation and is subject
46 to suspension of his license to operate a motor vehicle and to

1 revocation of registration pursuant to sections 2 through 6 of
2 P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5) if the person:

3 (1) Knows that the operator's license to operate a motor vehicle
4 has been suspended for a violation of R.S.39:4-50 or section 2 of
5 P.L.1981, c.512 (C.39:4-50.4a); or

6 (2) Knows that the operator's license to operate a motor vehicle is
7 suspended and that the operator has been convicted, within the past
8 five years, of operating a vehicle while the person's license was
9 suspended or revoked.

10 (cf: P.L.1995, c.286, s.1)

11

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

13 39:4-50. (a) A person who operates a motor vehicle while under
14 the influence of intoxicating liquor, narcotic, hallucinogenic or
15 habit-producing drug, or operates a motor vehicle with a blood alcohol
16 concentration of 0.10% or more by weight of alcohol in the
17 defendant's blood or permits another person who is under the influence
18 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug
19 to operate a motor vehicle owned by him or in his custody or control
20 or permits another to operate a motor vehicle with a blood alcohol
21 concentration of 0.10% or more by weight of alcohol in the
22 defendant's blood, shall be subject:

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

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

46 (3) For a third or subsequent violation, a person shall be subject

1 to a fine of \$1,000.00, and shall be sentenced to imprisonment for a
2 term of not less than 180 days, except that the court may lower such
3 term for each day, not exceeding 90 days, served performing
4 community service in such form and on such terms as the court shall
5 deem appropriate under the circumstances and shall thereafter forfeit
6 his right to operate a motor vehicle over the highways of this State for
7 10 years.

8 When a violation of this section occurs while on or within 1,000
9 feet of any school property used for school purposes which is owned
10 by or leased to any elementary or secondary school or school board,
11 the fine, period of community service, term of imprisonment and
12 period of license forfeiture imposed upon the convicted person shall
13 be double that which would otherwise be imposed under paragraphs
14 (1), (2) or (3) of this subsection.

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

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

29 If the driving privilege of any person is under revocation or
30 suspension for a violation of any provision of this Title or Title 2C of
31 the New Jersey Statutes at the time of any conviction for a violation
32 of this section, the revocation or suspension period imposed shall
33 commence as of the date of termination of the existing revocation or
34 suspension period. In the case of any person who at the time of the
35 imposition of sentence is less than 17 years of age, the forfeiture,
36 suspension or revocation of the driving privilege imposed by the court
37 under this section shall commence immediately, run through the
38 offender's seventeenth birthday and continue from that date for the
39 period set by the court pursuant to paragraphs (1) through (3) of this
40 subsection. A court that imposes a term of imprisonment under this
41 section may sentence the person so convicted to the county jail, to the
42 workhouse of the county wherein the offense was committed, to an
43 inpatient rehabilitation program or to an Intoxicated Driver Resource
44 Center or other facility approved by the chief of the Intoxicated
45 Driving Program Unit in the Department of Health and Senior
46 Services; provided that for a third or subsequent offense a person shall

1 not serve a term of imprisonment at an Intoxicated Driver Resource
2 Center as provided in subsection (f).

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

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

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

1 nonresident's driving privilege to operate a motor vehicle in this State,
2 in accordance with this section. Upon conviction of a violation of this
3 section, the court shall notify the person convicted, orally and in
4 writing, of the penalties for a second, third or subsequent violation of
5 this section. A person shall be required to acknowledge receipt of that
6 written notice in writing. Failure to receive a written notice or failure
7 to acknowledge in writing the receipt of a written notice shall not be
8 a defense to a subsequent charge of a violation of this section.

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

14 (e) Any person accused of a violation of this section who is liable
15 to punishment imposed by this section as a second or subsequent
16 offender shall be entitled to the same rights of discovery as allowed
17 defendants pursuant to the Rules Governing Criminal Practice, as set
18 forth in the Rules Governing the Courts of the State of New Jersey.

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

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

45 Required detention periods at the Intoxicated Driver Resource
46 Centers shall be determined according to the individual treatment

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

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

14 The Commissioner of Health and Senior Services shall adopt rules
15 and regulations pursuant to the "Administrative Procedure Act,"
16 P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the
17 purposes of this subsection.
18 (cf: P.L.1997, c.277, s.1)

19

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

22 2. The municipal court shall revoke the right to operate a motor
23 vehicle of any operator who, after being arrested for a violation of
24 R.S.39:4-50, shall refuse to submit to a test provided for in section 2
25 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six
26 months unless the refusal was in connection with a second offense
27 under this section, in which case the revocation period shall be for two
28 years or unless the refusal was in connection with a third or
29 subsequent offense under this section in which case the revocation
30 shall be for ten years. A conviction or administrative determination of
31 a violation of a law of a substantially similar nature in another
32 jurisdiction, regardless of whether that jurisdiction is a signatory to the
33 Interstate Driver License Compact pursuant to P.L.1966, c.73
34 (C.39:5D-1 et seq.), shall constitute a prior conviction under this
35 section.

36 The municipal court shall determine by a preponderance of the
37 evidence whether the arresting officer had probable cause to believe
38 that the person had been driving or was in actual physical control of
39 a motor vehicle on the public highways or quasi-public areas of this
40 State while the person was under the influence of intoxicating liquor
41 or a narcotic, hallucinogenic, or habit-producing drug or marijuana;
42 whether the person was placed under arrest, if appropriate, and
43 whether he refused to submit to the test upon request of the officer;
44 and if these elements of the violation are not established, no conviction
45 shall issue. In addition to any other requirements provided by law, a
46 person whose operator's license is revoked for refusing to submit to a

1 test shall be referred to an Intoxicated Driver Resource Center
2 established by subsection (f.) of R.S.39:4-50 and shall satisfy the same
3 requirements of the center for refusal to submit to a test as provided
4 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with
5 a first, second, third or subsequent offense under this section that must
6 be satisfied by a person convicted of a commensurate violation of this
7 section, or be subject to the same penalties as such a person for failure
8 to do so. The revocation shall be independent of any revocation
9 imposed by virtue of a conviction under the provisions of R.S.39:4-50.

10 In addition to issuing a revocation, the municipal court shall fine a
11 person convicted under this section, a fine of not less than \$250.00 nor
12 more than \$500.00.

13 When a violation of this section occurs while on or within 1,000
14 feet of any school property used for school purposes which is owned
15 by or leased to any elementary or secondary school or school board,
16 the fine and period of license revocation imposed upon the convicted
17 person shall be double that which would otherwise be imposed under
18 this section.

19 (cf: P.L.1997, c.277, s.2)

20

21 7. This act shall take effect on the first day of the fourth month
22 after enactment.

23

24

25

STATEMENT

26

27 This bill creates stiff new penalties for drunk driving and other
28 serious traffic offenses when committed in the vicinity of a school. It
29 is intended to honor Filomena Coppola, a well-known and popular
30 crossing guard who was recently struck and killed by an alleged drunk
31 driver while protecting two eight-year old girls at a crossing near
32 Radcliffe Elementary School in Nutley. It is the sponsor's wish that
33 "Filomena's Law" will make the often busy streets and roads near
34 schools safer for the children who must daily cross them, and for the
35 dedicated persons who guard their crossing.

36 The bill would double the penalties imposed on a person convicted
37 of driving a motor vehicle under the influence of alcohol or drugs
38 while on or within 1,000 feet of any school property used for school
39 purposes which is owned by or leased to any elementary or secondary
40 school or school board.

41 Under current law, the penalties for a first drunk driving offense
42 include a fine of \$250 to \$400, possible imprisonment for up to 30
43 days and loss of a driver's license for six months to one year. Under
44 the bill, the penalties for a first offense of drunk driving while on or
45 within 1,000 feet of a school property would be a fine of \$500 to
46 \$800, possible imprisonment for up to 60 days and loss of a driver's

1 license for up to two years. The penalties for second, third and
2 subsequent drunk driving offenses committed while on or within 1,000
3 feet of school property also would be doubled.

4 The bill also would double the penalties imposed on a person
5 convicted of refusing to consent to a breathalyzer test in connection
6 with an offense committed on or within 1,000 feet of school property.
7 The penalties under current law for a first offense of refusing to take
8 a breathalyzer test are a six month loss of license and a fine of \$250 to
9 \$500. These penalties are independent of the penalties imposed for a
10 drunk driving conviction. Under the bill, the penalties increase to a
11 one year loss of license and a fine of \$500 to \$1,000. The penalties
12 imposed for a second, third or subsequent offense of refusing to
13 consent to a breathalyzer test for an offense committed while on or
14 within 1,000 feet of school property also would be doubled.

15 Additionally, the bill would double the penalties for committing
16 vehicular homicide while driving drunk or refusing to consent to a
17 breathalyzer test when requested to do so while on or within 1,000
18 feet of school property. Vehicular homicide is a crime of the second
19 degree punishable by a \$150,000 fine, a term of imprisonment of five
20 to 10 years, or both. A drunk driver who commits vehicular homicide
21 is currently required to serve at least three years of this sentence
22 without eligibility for parole. Under this bill, a drunk driver or a
23 person who refuses a breathalyzer test who commits vehicular
24 homicide while on or within 1,000 feet of school property would be
25 fined up to \$300,000, would be subject to a term of imprisonment of
26 10 to 20 years, or both. The person would have to serve at least six
27 years before becoming eligible for parole.

28 Under the bill, a person who commits vehicular homicide while
29 driving drunk or refusing to consent to a breathalyzer test also would
30 be subject to permanent loss of driving privileges in this State. An
31 owner of a motor vehicle also would permanently lose his or her
32 driving privileges for knowingly permitting such a driver to operate the
33 vehicle.

34 The bill also would increase the penalties for assault by auto under
35 certain circumstances. Under the bill, a person who commits assault
36 by auto while driving drunk or refusing to consent to a breathalyzer is
37 guilty of a crime of the third degree if serious bodily injury results.
38 Third-degree crimes are punishable by a fine of up to \$15,000, a term
39 of imprisonment of three-to-five years, or both. Under current law,
40 the person would be guilty of a fourth-degree crime. Fourth-degree
41 crimes are punishable by a fine of up to \$10,000 a term of
42 imprisonment of up to 18 months, or both.

43 A person who commits assault by auto while driving drunk or
44 refusing to consent to a breathalyzer is guilty of a crime of the fourth
45 degree under the bill if bodily injury results. Under current law, the
46 person would be guilty of a disorderly persons offense. Disorderly

1 persons offenses are punishable by a maximum fine of \$1,000, a term
2 of imprisonment of up to six months, or both.

3 The bill also doubles the penalties that would otherwise be imposed
4 under the bill if a person commits assault by auto while driving drunk
5 or refusing to consent to a breathalyzer if committed while on or
6 within 1,000 feet of school property. For example, assault by auto
7 constituting a third-degree crime under the bill would result in a fine
8 of up to \$30,000, a term of imprisonment of six to 10 years, or both.
9 Assault by auto constituting a fourth-degree crime under the bill would
10 result in a fine of up to \$20,000, a term of imprisonment of up to three
11 years, or both.

12 The bill also provides for mandatory minimum terms of
13 imprisonment for persons who are found guilty of driving while on or
14 within 1,000 feet of school property when their licenses have been
15 suspended or revoked for drunk driving or refusing to consent to a
16 breathalyzer test. For a first offense, the person shall serve a minimum
17 of 18 months; for a second offense, a minimum of three years and for
18 a third or subsequent offense, a minimum of five years.

19 Under this bill, a motor vehicle used to commit vehicular homicide
20 by an owner who was in violation of the drunk driving or refusal
21 statute would be subject to forfeiture. The motor vehicle of an owner
22 who knowingly permits a drunk driver to use the vehicle is also subject
23 to forfeiture.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1821

STATE OF NEW JERSEY

DATED: JUNE 1, 1998

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 1821.

This bill creates stiff new penalties for drunk driving and other serious traffic offenses when committed in the vicinity of a school. It is intended to honor Filomena Coppola, a well-known and popular crossing guard who was recently struck and killed by an alleged drunk driver while protecting two eight-year old girls at a crossing near Radcliffe Elementary School in Nutley. It is the sponsor's wish that "Filomena's Law" will make the often busy streets and roads near schools safer for the children who must daily cross them, and for the dedicated persons who guard their crossing.

The bill doubles the penalties imposed on a person convicted of driving a motor vehicle under the influence of alcohol or drugs while on or within 1,000 feet of any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board.

Under current law, the penalties for a first drunk driving offense include a fine of \$250 to \$400, possible imprisonment for up to 30 days and loss of a driver's license for six months to one year. Under the bill, the penalties for a first offense of drunk driving while on or within 1,000 feet of a school property would be a fine of \$500 to \$800, possible imprisonment for up to 60 days and loss of a driver's license for up to two years. The penalties for second, third and subsequent drunk driving offenses committed while on or within 1,000 feet of school property also would be doubled.

The bill also doubles the penalties imposed on a person convicted of refusing to consent to a breathalyzer test in connection with an offense committed on or within 1,000 feet of school property. The penalties under current law for a first offense of refusing to take a breathalyzer test are a six month loss of license and a fine of \$250 to \$500. These penalties are independent of the penalties imposed for a drunk driving conviction. Under the bill, the penalties increase to a one year loss of license and a fine of \$500 to \$1,000. The penalties imposed for a second, third or subsequent offense of refusing to consent to a breathalyzer test for an offense committed while on or within 1,000 feet of school property also would be doubled.

Additionally, the bill doubles the penalties for committing vehicular homicide while driving drunk or refusing to consent to a breathalyzer test when requested to do so while on or within 1,000 feet of school property. Vehicular homicide is a crime of the second degree punishable by a \$150,000 fine, a term of imprisonment of five to 10 years, or both. A drunk driver who commits vehicular homicide is currently required to serve at least three years of this sentence without eligibility for parole. Under this bill, a drunk driver or a person who refuses a breathalyzer test who commits vehicular homicide while on or within 1,000 feet of school property would be fined up to \$300,000, would be subject to a term of imprisonment of 10 to 20 years, or both. The person would have to serve at least six years before becoming eligible for parole.

Under the bill, a person who commits vehicular homicide while driving drunk or refusing to consent to a breathalyzer test also would be subject to permanent loss of driving privileges in this State. An owner of a motor vehicle also would permanently lose his or her driving privileges for knowingly permitting such a driver to operate the vehicle.

The bill also increases the penalties for assault by auto under certain circumstances. Under the bill, a person who commits assault by auto while driving drunk or refusing to consent to a breathalyzer is guilty of a crime of the third degree if serious bodily injury results. Third-degree crimes are punishable by a fine of up to \$15,000, a term of imprisonment of three-to-five years, or both. Under current law, the person would be guilty of a fourth-degree crime, which is punishable by a fine of up to \$10,000 a term of imprisonment of up to 18 months, or both.

A person who commits assault by auto while driving drunk or refusing to consent to a breathalyzer is guilty of a crime of the fourth degree under the bill if bodily injury results. Under current law, the person would be guilty of a disorderly persons offense, which is punishable by a maximum fine of \$1,000, a term of imprisonment of up to six months, or both.

The bill also doubles the penalties that would otherwise be imposed under the bill if a person commits assault by auto while driving drunk or refusing to consent to a breathalyzer if committed while on or within 1,000 feet of school property. For example, assault by auto constituting a third-degree crime under the bill would result in a fine of up to \$30,000, a term of imprisonment of six to 10 years, or both. Assault by auto constituting a fourth-degree crime under the bill would result in a fine of up to \$20,000, a term of imprisonment of up to three years, or both.

The bill also provides for mandatory minimum terms of imprisonment for persons who are found guilty of driving while on or within 1,000 feet of school property when their licenses have been suspended or revoked for drunk driving or refusing to consent to a

breathalyzer test. For a first offense, the person would serve a minimum of 18 months; for a second offense, a minimum of three years and for a third or subsequent offense, a minimum of five years.

Under this bill, a motor vehicle used to commit vehicular homicide by an owner who was in violation of the drunk driving or refusal statute would be subject to forfeiture. The motor vehicle of an owner who knowingly permits a drunk driver to use the vehicle is also subject to forfeiture.

FISCAL NOTE

ASSEMBLY, No. 1821

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: NOVEMBER 24, 1998

Assembly Bill No. 1821 of 1998 creates new penalties for drunk driving and other serious traffic offenses when committed in the vicinity of a school.

The bill doubles the penalties imposed on a person convicted of driving a motor vehicle under the influence of alcohol or drugs while on or within 1,000 feet of any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board. In addition, the bill doubles the penalties imposed on a person convicted of refusing to consent to a breathalyser test in connection with an offense committed on or within 1,000 feet of school property, as well as doubling the penalties for committing vehicular homicide while driving drunk or refusing to consent to a breathalyser test when requested to do so while on or within 1,000 feet of school property.

The bill also increases the penalties for assault by auto under certain circumstances and doubles the penalties that would otherwise be imposed if a person commits assault by auto while driving drunk or refusing to consent to a breathalyser if committed while on or within 1,000 feet of school property.

In addition, the bill provides for mandatory minimum terms of imprisonment for persons who are found guilty of driving while on or within 1,000 feet of school property when their licenses have been suspended or revoked for drunk driving or refusing to consent to a breathalyser test. Finally, the bill specifies that a motor vehicle used to commit vehicular homicide by an owner who was in violation of the drunk driving or refusal statute would be subject to forfeiture. The motor vehicle of an owner who knowingly permits a drunk driver to use the vehicle is also subject to forfeiture.

The Administrative Office of the Courts states that the Municipal Court Services Division does not maintain statistics on the number of offenses included in the bill that are committed within 1,000 feet of a school property. As a result, the fiscal impact of this legislation is unknown.

The Department of Corrections states that the proposed penalties compared to the current penalties will result in imprisonment for

offenses which previously did not receive prison sentences, as well as longer sentences for offenses which already receive prison sentences. With the exception of vehicular homicide and assault by auto, persons convicted of all other drunk driving offenses included on the list are not currently sentenced to the Department of Corrections. A projection of the number of offenders who would be sentenced to the department under the bill is not available, however, according to the department it is not anticipated that the volume of admissions would be sufficient to increase population levels significantly, or to increase institutional operating costs.

The Office of Legislative Services notes that while the number of offenders who would become State Sentenced inmates is minimal, the potential exists for an unknown number of offenders to be remanded to the county jails as a result of these increased penalties. The actual costs to each county would be determined by the number of offenders in each county and the per capita cost.

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

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
Stephanie Bell
609-777-2600

RELEASE: August 19, 1999

Governor Signs Bills To Increase DWI Penalties, Fund Homes For Developmentally Disabled

Governor Christie Whitman today signed the following legislation:

S-854, sponsored by Senator Garry Furnari (D- Bergen/Essex/Passaic) and Assemblymen Paul DiGaetano (R- Bergen/Essex/Passaic) and John Kelly (R-Bergen/ Essex/Passaic), increases penalties for certain alcohol-related driving offenses, including those in school zones.

This legislation doubles the current penalties for DWI offenses that occur within a school zone or in a school crossing. The penalties will now be as follows.

- **First offense:** A fine of between \$500 and \$800, imprisonment of not more than 60 days, with no minimum term of imprisonment required, and license suspension of one to two years.
- **Second offense:** A fine of \$1,000 to \$2,000, community service of 60 days, imprisonment of 96 hours to 180 days and license suspension for not less than 4 years.
- **Third Offense:** A fine of \$2,000, imprisonment for 180 days and license suspension for twenty years.

These increased penalties will also be applicable to individuals convicted of refusing to consent to a breathalyzer test in connection with an offense committed in a school zone or school crossing.

Under the bill, anyone who drives under the influence or refuses a breathalyzer test and commits vehicular homicide in a school zone or school crossing, will face first-degree charges. Currently, this is a second-degree crime. In addition, such offenders will be required to forfeit their vehicle unless a serious hardship to their family can be established. Finally, such offenders will be subject to an additional loss of their driving privileges from five years to life.

In addition, the legislation upgrades the crime of assault by auto when the individual is driving under the influence or refuses a breathalyzer test. The individual will now face third-degree charges if serious bodily injury results from the accident. The offense will be a second-degree crime if it occurs within a school zone or school crossing. Currently, assault by auto is a fourth- degree crime if serious injury results from the accident.

Finally, the bill increase the penalties for individuals who are found guilty of driving in a school zone or school crossing when their license has been suspended or revoked for drunk driving or for refusing to

consent to a breathalyzer test. Such offenders will be fined \$500, have their driver's license suspended for an additional period of one to two years and be imprisoned for 60 to 90 days for a first offense, 120 to 150 days for a second offense and 180 days for a third or subsequent offense.

A-2736, sponsored by Assembly Members Rose Marie Heck (R- Bergen) and Leonard Lance (R- Warren/ Hunterdon/Mercer) and Senators C. Louis Bassano (R-Essex/Union) and Joseph Vitale (D-Middlesex), appropriates \$31,050,000 from the Developmental Disabilities' Waiting List Reduction and Human Services Construction Fund to the Departments of Human Services and Law and Public Safety.

The fund was created by the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Bond Act of 1994. The appropriation will be used for various projects of the Departments of Human Services and Law and Public Safety.

Under the legislation, the Division of Developmental Disabilities (DDD) within the Department of Human Services (DHS) will receive \$27,950,000 for the following projects:

- \$25,000,000 for community grants to reduce the DDD waiting list by approximately 500 waiting list clients;
- \$1,000,000 in grants for costs associated with the closure of North Princeton Development Center; and
- \$1,950,000 in grant money for DDD for community programs' major maintenance projects.

Under the new legislation, the Commissioner of Human Services is required to provide the Joint Budget Oversight Committee (JBOC), or its successor specific information as to which agencies will receive money, the amounts awarded and the purpose of the award.

Unless the JBOC notifies the Commissioner within ten working days of the receipt of the information that it does not approve the particular projects the Department may award the funds. If the funds are for renovations that do not increase the capacity of the facility, for emergency repairs or for life-safety and accreditation improvements the JBOC is not required to receive notice.

The \$1 million grant for costs associated with the closure of the North Princeton facility will be used to satisfy any outstanding mortgages that community agencies may have incurred related to the closure. Unused money may be transferred to grants for DDD project maintenance accounts.

In addition to the DDD projects, the Juvenile Justice Commission would receive \$3.1 million to upgrade and renovate the following facilities:

- \$1,100,000 Essex Residential renovations;
- \$100,000 Pinelands Residential septic system;
- \$175,000 Pinelands Residential new classroom building;
- \$ 450,000 Ocean Residential security upgrades and renovations;
- \$ 500,000 Warren Residential septic system;

- \$ 275,000 Wharton Bootcamp capacity increase; and
- \$ 500,000 Elias Residential renovations.