

ASSEMBLY, No. 701

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblywoman MARY PAT ANGELINI

District 11 (Monmouth)

SYNOPSIS

Establishes per se standard for driving under the influence of drugs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A701 ANGELINI

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1 AN ACT concerning driving under the influence of drugs, amending
2 R.S.39:4-50, and supplementing chapter 35 of Title 2C of the
3 New Jersey Statutes.

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

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

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

20 (1) For the first offense:

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

37 (ii) if the person's blood alcohol concentration is 0.10% or
38 higher, or the person operates a motor vehicle while under the
39 influence of narcotic, hallucinogenic or habit-producing drug, or the
40 person permits another person who is under the influence of
41 narcotic, hallucinogenic or habit-producing drug to operate a motor
42 vehicle owned by him or in his custody or control, or permits
43 another person with a blood alcohol concentration of 0.10% or more
44 to operate a motor vehicle, to a fine of not less than \$300 nor more
45 than \$500 and a period of detainment of not less than 12 hours nor

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.

A701 ANGELINI

1 more than 48 hours spent during two consecutive days of not less
2 than six hours each day and served as prescribed by the program
3 requirements of the Intoxicated Driver Resource Centers established
4 under subsection (f) of this section and, in the discretion of the
5 court, a term of imprisonment of not more than 30 days and shall
6 forthwith forfeit his right to operate a motor vehicle over the
7 highways of this State for a period of not less than seven months
8 nor more than one year;

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

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

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

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

1 isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous
2 oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl
3 nitrite or propyl nitrate or their isomers, toluene, toluol or xylene or
4 any other chemical substance capable of causing a condition of
5 intoxication, inebriation, excitement, stupefaction or the dulling of
6 the brain or nervous system as a result of the inhalation of the
7 fumes or vapors of such chemical substance.

8 As used in this section, a person is deemed to be under the
9 influence of an intoxicating narcotic, hallucinogenic, or habit-
10 producing drug if there is any amount of a Schedule I, II, III, or IV
11 chemical or controlled dangerous substance as defined in sections 5
12 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8) or one of
13 its metabolites or analogs in the person's blood, saliva, urine, or any
14 other bodily fluid. The fact that a person charged with driving
15 under the influence of a Schedule II, III, or IV controlled dangerous
16 substance pursuant to a prescription issued by a licensed health
17 professional authorized to prescribe it and injected, ingested, or
18 inhaled the controlled dangerous substance in accordance with the
19 health professional's directions shall constitute an affirmative
20 defense against any charge of violating this section.

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

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

35 If the driving privilege of any person is under revocation or
36 suspension for a violation of any provision of this Title or Title 2C
37 of the New Jersey Statutes at the time of any conviction for a
38 violation of this section, the revocation or suspension period
39 imposed shall commence as of the date of termination of the
40 existing revocation or suspension period. In the case of any person
41 who at the time of the imposition of sentence is less than 17 years
42 of age, the forfeiture, suspension or revocation of the driving
43 privilege imposed by the court under this section shall commence
44 immediately, run through the offender's seventeenth birthday and
45 continue from that date for the period set by the court pursuant to
46 paragraphs (1) through (3) of this subsection. A court that imposes
47 a term of imprisonment for a first or second offense under this

1 section may sentence the person so convicted to the county jail, to
2 the workhouse of the county wherein the offense was committed, to
3 an inpatient rehabilitation program or to an Intoxicated Driver
4 Resource Center or other facility approved by the chief of the
5 Intoxicated Driving Program Unit in the Department of Health and
6 Senior Services. For a third or subsequent offense a person shall
7 not serve a term of imprisonment at an Intoxicated Driver Resource
8 Center as provided in subsection (f).

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

18 (b) A person convicted under this section must satisfy the
19 screening, evaluation, referral, program and fee requirements of the
20 Division of Alcoholism and Drug Abuse's Intoxicated Driving
21 Program Unit, and of the Intoxicated Driver Resource Centers and a
22 program of alcohol and drug education and highway safety, as
23 prescribed by the chief administrator. The sentencing court shall
24 inform the person convicted that failure to satisfy such requirements
25 shall result in a mandatory two-day term of imprisonment in a
26 county jail and a driver license revocation or suspension and
27 continuation of revocation or suspension until such requirements
28 are satisfied, unless stayed by court order in accordance with the
29 Rules Governing the Courts of the State of New Jersey, or
30 R.S.39:5-22. Upon sentencing, the court shall forward to the
31 Division of Alcoholism and Drug Abuse's Intoxicated Driving
32 Program Unit a copy of a person's conviction record. A fee of
33 \$100.00 shall be payable to the Alcohol Education, Rehabilitation
34 and Enforcement Fund established pursuant to section 3 of
35 P.L.1983, c.531 (C.26:2B-32) to support the Intoxicated Driving
36 Program Unit.

37 (c) Upon conviction of a violation of this section, the court shall
38 collect forthwith the New Jersey driver's license or licenses of the
39 person so convicted and forward such license or licenses to the
40 chief administrator. The court shall inform the person convicted
41 that if he is convicted of personally operating a motor vehicle
42 during the period of license suspension imposed pursuant to
43 subsection (a) of this section, he shall, upon conviction, be subject
44 to the penalties established in R.S.39:3-40. The person convicted
45 shall be informed orally and in writing. A person shall be required
46 to acknowledge receipt of that written notice in writing. Failure to
47 receive a written notice or failure to acknowledge in writing the

1 receipt of a written notice shall not be a defense to a subsequent
2 charge of a violation of R.S.39:3-40. In the event that a person
3 convicted under this section is the holder of any out-of-State
4 driver's license, the court shall not collect the license but shall
5 notify forthwith the chief administrator, who shall, in turn, notify
6 appropriate officials in the licensing jurisdiction. The court shall,
7 however, revoke the nonresident's driving privilege to operate a
8 motor vehicle in this State, in accordance with this section. Upon
9 conviction of a violation of this section, the court shall notify the
10 person convicted, orally and in writing, of the penalties for a
11 second, third or subsequent violation of this section. A person shall
12 be required to acknowledge receipt of that written notice in writing.
13 Failure to receive a written notice or failure to acknowledge in
14 writing the receipt of a written notice shall not be a defense to a
15 subsequent charge of a violation of this section.

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

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

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

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

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

17 The centers shall conduct a program of alcohol and drug
18 education and highway safety, as prescribed by the chief
19 administrator.

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

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

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

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

31 (3) driving through a school crossing as defined in R.S.39:1-1
32 knowing that juveniles are present if the municipality has not
33 designated the school crossing as such by ordinance or resolution,
34 the convicted person shall: for a first offense, be fined not less than
35 \$500 or more than \$800, be imprisoned for not more than 60 days
36 and have his license to operate a motor vehicle suspended for a
37 period of not less than one year or more than two years; for a
38 second offense, be fined not less than \$1,000 or more than \$2,000,
39 perform community service for a period of 60 days, be imprisoned
40 for not less than 96 consecutive hours, which shall not be suspended
41 or served on probation, nor more than 180 days, except that the
42 court may lower such term for each day, not exceeding 90 days,
43 served performing community service in such form and on such
44 terms as the court shall deem appropriate under the circumstances
45 and have his license to operate a motor vehicle suspended for a
46 period of four years; and, for a third offense, be fined \$2,000,
47 imprisoned for 180 days in a county jail or workhouse, except that

1 the court may lower such term for each day, not exceeding 90 days,
2 served participating in a drug or alcohol inpatient rehabilitation
3 program approved by the Intoxicated Driver Resource Center, and
4 have his license to operate a motor vehicle suspended for a period
5 of 20 years; the period of license suspension shall commence upon
6 the completion of any prison sentence imposed upon that person.

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

13 It shall not be relevant to the imposition of sentence pursuant to
14 paragraph (1) or (2) of this subsection that the defendant was
15 unaware that the prohibited conduct took place while on or within
16 1,000 feet of any school property or while driving through a school
17 crossing. Nor shall it be relevant to the imposition of sentence that
18 no juveniles were present on the school property or crossing zone at
19 the time of the offense or that the school was not in session.

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

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

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

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

45 As used in this section, "appropriate victim" means a victim
46 whose condition is determined by the facility's supervisory
47 personnel and the probation officer to be appropriate for

1 demonstrating the results of accidents involving drunk drivers
2 without being unnecessarily gruesome or traumatic to the
3 defendant.

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

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

28 (i) In addition to any other fine, fee, or other charge imposed
29 pursuant to law, the court shall assess a person convicted of a
30 violation of the provisions of this section a surcharge of \$100, of
31 which amount \$50 shall be payable to the municipality in which the
32 conviction was obtained and \$50 shall be payable to the Treasurer
33 of the State of New Jersey for deposit into the General Fund.
34 (cf: P.L.2009, c.201, s.1)

35
36 2. (New section) Any person who provides a bodily fluid
37 sample pursuant to R.S.39:4-50 that contains any amount of a
38 Schedule I, II, III, or IV chemical or controlled dangerous
39 substance as defined in sections 5 through 8 of P.L.1970, c.226
40 (C.24:21-5 through 24:21-8) or one of its metabolites or analogs
41 commits an offense punishable in the same manner under chapter
42 35 of Title 2C of the New Jersey Statutes as if the person otherwise
43 possessed that substance. The fact that a person charged with
44 violating this section is or was legally entitled to use a Schedule II,
45 III, or IV chemical or controlled dangerous substance shall
46 constitute an affirmative defense against any charge of violating
47 this section.

A701 ANGELINI

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- 1 of a controlled dangerous substance in a bodily fluid unless the
- 2 substance was prescribed by a physician.