

# SENATE, No. 71

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**SYNOPSIS**

Clarifies that period of suspension remains in effect until driver's license is restored in certain cases.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



S71 BATEMAN

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1 AN ACT concerning driving with a suspended license and amending  
2 P.L.2009, c.333.

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

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7 1. Section 1 of P.L.2009, c.333 (C.2C:40-26) is amended to  
8 read as follows:

9 1. a. It shall be a crime of the fourth degree to operate a motor  
10 vehicle during the period of license suspension in violation of  
11 R.S.39:3-40 and until the license has been restored, if the actor's  
12 license was suspended or revoked for a first violation of R.S.39:4-  
13 50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) and the actor had  
14 previously been convicted of violating R.S.39:3-40 while under  
15 suspension for that first offense. A person convicted of an offense  
16 under this subsection shall be sentenced by the court to a term of  
17 imprisonment.

18 b. It shall be a crime of the fourth degree to operate a motor  
19 vehicle during the period of license suspension in violation of  
20 R.S.39:3-40 and until the license has been restored, if the actor's  
21 license was suspended or revoked for a second or subsequent  
22 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-  
23 50.4a). A person convicted of an offense under this subsection  
24 shall be sentenced by the court to a term of imprisonment.

25 c. Notwithstanding the term of imprisonment provided under  
26 N.J.S.2C:43-6 and the provisions of subsection e. of N.J.S.2C:44-1,  
27 if a person is convicted of a crime under this section the sentence  
28 imposed shall include a fixed minimum sentence of not less than  
29 180 days during which the defendant shall not be eligible for parole.  
30 (cf: P.L.2009, c.333, s.1)

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32 2. This act shall take effect immediately.

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STATEMENT

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37 This bill clarifies current law to provide that a person can be  
38 charged with the crime of operating a motor vehicle during a period  
39 of license suspension: 1) while the period of suspension is in effect,  
40 and 2) until the driver's license has been restored by the Motor  
41 Vehicle Commission (MVC).

42 Current law provides that in certain instances of driving while  
43 suspended, where the underlying suspension is due to a DWI  
44 conviction, a person commits a fourth degree crime in addition to  
45 violating the Motor Vehicle Code. In recent years, there was a

**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 divergence in the way these criminal cases were being handled  
2 across the State. The divergence was based on differing  
3 interpretations of the statute; specifically, whether the statute  
4 provided that a charge could arise only when a person was driving  
5 during the actual period of suspension, or if a charge could arise in  
6 cases where the period of suspension had expired, but the individual  
7 was driving without having the license restored by MVC.

8 Recently, the Appellate Division of the Superior Court  
9 concluded in State v. Perry, 439 N.J.Super. 514, 519 (App. Div.  
10 2015), certif. denied, “that the statute criminalizes the operation of a  
11 motor vehicle only while the operator is serving the court-imposed  
12 term of suspension and not thereafter.” Appeal of this decision was  
13 denied certification by the New Jersey Supreme Court.  
14 Accordingly, scores of cases brought against repeat offenders  
15 charged with driving without a valid license, due to a suspension  
16 based on a DWI conviction, have been dismissed throughout the  
17 State.

18 In response to this decision, the bill amends current law to  
19 specifically provide that a person may be charged for driving during  
20 the court-imposed period of suspension and for driving after its  
21 conclusion, but before the driver’s license has been restored.