

SENATE, No. 1606

STATE OF NEW JERSEY

INTRODUCED OCTOBER 24, 1996

By Senator SINAGRA

1 AN ACT concerning driving under the influence and amending  
2 R.S.39:4-50.

3

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

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

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

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

28 If the person's blood alcohol concentration is 0.15% or more, the  
29 person shall be subject to a fine of \$500.00 rather than the fine  
30 prescribed in the preceding paragraph, and shall forfeit his right to  
31 operate a motor vehicle over the highways of this State for a period of  
32 one year, rather than the period prescribed in the preceding paragraph.  
33 If the person's blood alcohol concentration is 0.20% or more, the  
34 person shall be sentenced to a term of imprisonment of not less than

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

Matter underlined thus is new matter.

1 15 and not more than 30 days, rather than the term prescribed in the  
2 preceding paragraph.

3 (2) For a second violation, a person shall be subject to a fine of not  
4 less than \$500.00 nor more than \$1,000.00, and shall be ordered by  
5 the court to perform community service for a period of 30 days, which  
6 shall be of such form and on such terms as the court shall deem  
7 appropriate under the circumstances, and shall be sentenced to  
8 imprisonment for a term of not less than 48 consecutive hours, which  
9 shall not be suspended or served on probation, nor more than 90 days,  
10 and shall forfeit his right to operate a motor vehicle over the highways  
11 of this State for a period of two years upon conviction, and, after the  
12 expiration of said period, he may make application to the Director of  
13 the Division of Motor Vehicles for a license to operate a motor  
14 vehicle, which application may be granted at the discretion of the  
15 director, consistent with subsection (b) of this section.

16 If the person's blood alcohol concentration is 0.15% or more, in  
17 addition to the community service required under this paragraph, the  
18 person shall be subject to a fine of \$1500.00 rather than the fine  
19 prescribed in the preceding paragraph and shall forfeit his right to  
20 operate a motor vehicle over the highways of this State for a period of  
21 five years, rather than the period prescribed in the preceding  
22 paragraph. If the person's blood alcohol concentration is 0.20% or  
23 more, the person shall be sentenced to a term of imprisonment of not  
24 less than 30 and not more than 120 days which shall not be suspended  
25 or served on probation, rather than the term prescribed in the  
26 preceding paragraph.

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

35 If the person's blood alcohol concentration is 0.15% or more, the  
36 person shall be subject to a fine of \$2500.00 rather than the fine  
37 prescribed in the preceding paragraph, and shall forfeit his right to  
38 operate a motor vehicle over the highways of this State for a period of  
39 15 years, rather than the period prescribed in the preceding paragraph.  
40 If the person's blood alcohol concentration is 0.20% or more, the  
41 person also shall be sentenced to a term of imprisonment of 180 days  
42 rather than the term prescribed in the preceding paragraph, which the  
43 court shall not lower as provided for in this paragraph.

44 Whenever an operator of a motor vehicle has been involved in an  
45 accident resulting in death, bodily injury or property damage, a police  
46 officer shall consider that fact along with all other facts and

1 circumstances in determining whether there are reasonable grounds to  
2 believe that person was operating a motor vehicle in violation of this  
3 section.

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

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

33 (b) A person convicted under this section must satisfy the  
34 screening, evaluation, referral, program and fee requirements of the  
35 Division of Alcoholism and Drug Abuse Intoxicated Driving Program  
36 Unit, and of the Intoxicated Driver Resource Centers and a program  
37 of alcohol education and highway safety, as prescribed by the Director  
38 of the Division of Motor Vehicles. The sentencing court shall inform  
39 the person convicted that failure to satisfy such requirements shall  
40 result in a mandatory two-day term of imprisonment in a county jail  
41 and a driver license revocation or suspension and continuation of  
42 revocation or suspension until such requirements are satisfied, unless  
43 stayed by court order in accordance with Rule 7:8-2 of the Rules  
44 Governing the Courts of the State of New Jersey, or R.S.39:5-22.  
45 Upon sentencing, the court shall forward to the Bureau of Alcohol  
46 Countermeasures within the Intoxicated Driving Program Unit a copy

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

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

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

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

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

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

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

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

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

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

38 (cf: P.L.1995, c.243, s.1)

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40 2. This act shall take effect immediately.

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#### STATEMENT

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45 This bill provides for more severe penalties for violations of  
46 R.S.39:4-50 (driving under the influence) if the offender's blood

1 alcohol concentration (BAC) is 0.15% or greater. Under current law,  
2 an offender may be convicted if the BAC is 0.10% or greater.

3 For the first offense, a violator is currently subject to a fine of \$250  
4 to \$400 and a period of detainment of 12 to 48 hours at an Intoxicated  
5 Driver Resource Center and, in the discretion of the court, a term of  
6 imprisonment of up to 30 days. In addition, the violator's driver's  
7 license is suspended for six months to one year. Under this bill, if a  
8 first offender's BAC is 0.15% or more, he would be subject to a fine  
9 of \$500. An offender would also lose his driver's license for one year  
10 and be subject to the requirements of the intoxicated driver resource  
11 centers. If the first offender's BAC is 0.20% or more, the person also  
12 would be subject to a term of imprisonment of 15 to 30 days in the  
13 discretion of the court.

14 Currently, for a second violation, a person is subject to a fine of  
15 \$500 to \$1,000, and must be ordered by the court to perform  
16 community service for a period of 30 days. The violator also is  
17 sentenced to imprisonment for a term of not less than 48 consecutive  
18 hours or more than 90 days, which cannot be suspended or served on  
19 probation. In addition, his driver's license is suspended for two years.  
20 Under this bill, if the BAC of a second offender is 0.15% or more, in  
21 addition to the community service requirement, he would be subject to  
22 a fine of \$1500. Also, his driver's license would be suspended for five  
23 years. In addition, if the violator's BAC is 0.20% or more, the person  
24 would be subject to a term of imprisonment of 30 to 120 days which  
25 cannot be suspended or served on probation.

26 For a third or subsequent violation, a person currently is subject to  
27 a fine of \$1,000 and imprisonment for not less than 180 days, which  
28 may be lowered for each day of community service performed not  
29 exceeding 90 days. In addition, the violator's driver's license is  
30 suspended for 10 years. Under this bill, if the BAC of a third offender  
31 is 0.15% or more, he also would be subject to a fine of \$2500, and his  
32 driver's license would be suspended for 15 years. If a third offender's  
33 BAC is 0.20% or more, he would be subject to a term of imprisonment  
34 of 180 days which the court could not lower.

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39 Provides for enhanced penalties for certain drunk driving offenses.