

SENATE, No. 2096

STATE OF NEW JERSEY

INTRODUCED MAY 15, 1997

By Senator LITTELL

1 AN ACT concerning certain motor vehicle offenses and amending
2 R.S.39:4-50.

3

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

6

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

8 39:4-50. (a) 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 (2) For a second violation, a person shall be subject to a fine of not
29 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
30 the court to perform community service for a period of 30 days, which
31 shall be of such form and on such terms as the court shall deem
32 appropriate under the circumstances, and shall be sentenced to
33 imprisonment for a term of not less than 48 consecutive hours, which
34 shall not be suspended or served on probation, nor more than 90 days,

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 and shall forfeit his right to operate a motor vehicle over the highways
2 of this State for a period of two years upon conviction, and, after the
3 expiration of said period, he may make application to the Director of
4 the Division of Motor Vehicles for a license to operate a motor
5 vehicle, which application may be granted at the discretion of the
6 director, consistent with subsection (b) of this section.

7 (3) For a third or subsequent violation, a person shall be subject to
8 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
9 of not less than 180 days, [except] during which the defendant shall
10 not be eligible for any parole, early release or remission of time for
11 good behavior, work release or other such program which would
12 result in any reduction in the term set by the court; provided, however,
13 that the court may lower such term for each day, not exceeding
14 90 days, served performing community service in such form and on
15 such terms as the court shall deem appropriate under the
16 circumstances and shall thereafter forfeit his right to operate a motor
17 vehicle over the highways of this State for 10 years.

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

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

44 A person who has been convicted of a previous violation of this
45 section need not be charged as a second or subsequent offender in the
46 complaint made against him in order to render him liable to the

1 punishment imposed by this section on a second or subsequent
2 offender, but if the second offense occurs more than 10 years after the
3 first offense, the court shall treat the second conviction as a first
4 offense for sentencing purposes and if a third offense occurs more than
5 10 years after the second offense, the court shall treat the third
6 conviction as a second offense for sentencing purposes.

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

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

1 written notice in writing. Failure to receive a written notice or failure
2 to acknowledge in writing the receipt of a written notice shall not be
3 a defense to a subsequent charge of a violation of this section.

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

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

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

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

39 Required detention periods at the Intoxicated Driver Resource
40 Centers shall be determined according to the individual treatment
41 classification assigned by the Bureau of Alcohol Countermeasures.
42 Upon attendance at an Intoxicated Driver Resource Center, a person
43 shall be required to pay a per diem fee of \$75.00 for the first offender
44 program or a per diem fee of \$100.00 for the second offender
45 program, as appropriate. Any increases in the per diem fees after the
46 first full year shall be determined pursuant to rules and regulations

1 adopted by the Commissioner of Health in consultation with the
2 Governor's Council on Alcoholism and Drug Abuse pursuant to the
3 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
4 seq.).

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

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

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

13

14 2. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 This bill amends R.S.39:4-50 to establish a mandatory minimum
20 period of incarceration for individuals who are convicted of a third
21 offense of driving while under the influence of intoxicating liquor or
22 drugs.

23 Under the provisions of the bill, a person convicted of a third
24 offense of driving while under the influence would be subject to a 180
25 day mandatory minimum term of incarceration. A person sentenced
26 under this provision would not be eligible for any parole, early release,
27 or remission of time for any good behavior, work release or other such
28 program that would result in any reduction of the term of incarceration
29 set by the court.

30

31

32

33

34 Establishes a mandatory minimum term of incarceration for certain
35 persons convicted of drunk driving.