

**To:** New Jersey Law Revision Commission  
**From:** Samuel M. Silver, Dep. Director  
**Re:** Applicability of the Driving While Intoxicated Statute, N.J.S. 39:4-50, to bicyclists as discussed in *State v. Tehan*, 190 N.J. Super. 348 (Law Div. 1982) and *State v. Johnson*, 203 N.J. Super. 436 (Law Div. 1985).  
**Date:** November 07, 2022

## MEMORANDUM

### Project Summary

A person who operates a motor vehicle while under the influence of “intoxicating liquor, narcotic, hallucinogenic or habit producing drugs,” or operates a motor vehicle with a blood alcohol concentration over an enumerated limit, may be found guilty of driving while intoxicated.<sup>1</sup> A conviction for driving under the influence carries with it: a fine;<sup>2</sup> a period of detainment;<sup>3</sup> the possibility of imprisonment;<sup>4</sup> and the requirement of an ignition interlock device.<sup>5</sup> Over the past four decades, a conflict has developed in the case law concerning the applicability of N.J.S. 39:4-50 to those who operate bicycles while intoxicated.

In *State v. Tehan*, decided in 1982, the Superior Court (in Somerset County) considered the “novel issue of the applicability of New Jersey’s drunk driving statute, N.J.S. 39:4-50, to operators of bicycles.”<sup>6</sup> At the time, the Court was unable to locate any case that had dealt with the applicability of the driving while intoxicated statute to the operators of bicycles.<sup>7</sup> In the absence of common law on this subject, the Court relied on an analysis of the statutes governing motor vehicles and bicycles to determine that “the penalties concerning fines, community service, and incarceration do apply to bicycle cases....”<sup>8</sup> It would be several years before this issue was again addressed by the Superior Court.

In 1985, the Superior Court (in Cumberland County), considered the applicability of N.J.S. 39:4-50, to the operators of pedal-type bicycles in *State v. Johnson*.<sup>9</sup> After examining the statutory definitions applicable to the driving while intoxicated statute, and the rules of statutory construction, the Court determined that N.J.S. 39:4-50 is unambiguous in its exclusion of conveyances powered by humans and is therefore inapplicable to bicyclists.<sup>10</sup>

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<sup>1</sup> N.J. STAT. ANN. § 39:4-50 (West 2022).

<sup>2</sup> N.J. STAT. ANN. § 39:4-50(a)(1)(i) (providing for a fine of \$250 to \$400 fine for a first offense).

<sup>3</sup> *Id.* (providing a period of detainment between twelve and forty-eight hours at the Intoxicated Driver Resource Center).

<sup>4</sup> *Id.* (providing for a period of up to thirty days imprisonment in the discretion of the court).

<sup>5</sup> *Id.* (mandating the forfeiture of the right to operate a motor vehicle until the person installs an ignition interlock device).

<sup>6</sup> 190 N.J. Super. 348, 349 (Law Div. 1982).

<sup>7</sup> *Id.* at 350.

<sup>8</sup> *Id.* at 353.

<sup>9</sup> *State v. Johnson*, 203 N.J. Super. 436 (Law Div. 1985).

<sup>10</sup> *Id.* at 350.

In 1988, in *State v. Machuzak*, the Superior Court (in Somerset County again) concurred with the *Johnson* Court and determined that New Jersey’s Driving While Intoxicated (DWI) statute does not apply to persons operating a bicycle.<sup>11</sup>

The Commission has been asked to consider whether the DWI statute applies to persons who operate bicycles while intoxicated.<sup>12</sup> It appears that in the absence of an Appellate Division decision<sup>13</sup> on this subject, the conflict in the common law has caused confusion about the applicability of N.J.S. 39:4-50 to bicyclists.<sup>14</sup>

### Statute Considered

N.J.S. 39:4-50, entitled “Driving while intoxicated” states, in relevant part:

(a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle the person owns or which is in the person's custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject: [to the penalties set forth in this section].

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N.J.S. 39:1-1, entitled “Definitions” provides:

\* \* \*

“Motor vehicle” includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks, low-speed electric bicycles, low-speed electric scooters, and motorized bicycles.

\* \* \*

“Vehicle” means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or low-speed electric bicycles, low-speed electric scooters, or motorized bicycles.

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<sup>11</sup> *State v. Machuzak*, 227 N.J. Super. 279, (Law Div. 1988).

<sup>12</sup> The conflict in the common law was brought to Staff’s attention via an e-mail from SFC David Guinan #6266, New Jersey State Police, Unit Head, Safe Corridor Unit to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (July 27, 2022, 12:24 PM EST) (on file with the NJLRC).

<sup>13</sup> See *Lackovic v. New England Paper Tude Co.*, 127 N.J. Super 394, 398 (App. Div. 1974) (holding that absent an appellate court’s determination on point, a trial court is not bound to follow the holding of another trial court).

<sup>14</sup> *Id.*

## Background & Analysis<sup>15</sup>

### • *State v. Tehan*

The issue of whether New Jersey’s driving while intoxicated statute applied to operators of bicycles was raised for the first time in *State v. Tehan*.<sup>16</sup> In *Tehan*, the defendant left work and visited a bar where he proceeded to drink until he was admittedly legally intoxicated.<sup>17</sup> The defendant left the bar on a bicycle and attracted the attention of the police after he kicked over some traffic cones.<sup>18</sup> He was arrested and charged with disorderly conduct and driving while under the influence of alcohol, a violation of N.J.S. 39:4-50.<sup>19</sup> After entering pleas of guilty to disorderly conduct and resisting arrest, the defendant was found guilty of driving under the influence.<sup>20</sup> He was fined \$250 for driving under the influence and his driving privileges were revoked for nine months.<sup>21</sup> The defendant appealed his conviction to the Superior Court of Somerset County, sitting as an appellate court in a trial de novo.<sup>22</sup>

In this case of first impression, the *Tehan* Court examined the statutory definitions of motor vehicles and bicycles.<sup>23</sup> The Court noted that a “motor vehicle” is defined as “all vehicles propelled otherwise than by muscular power.”<sup>24</sup> Similarly, a “vehicle” includes “every device, in, upon or by which a person...may be transported upon a highway, excepting devices moved by human power...”<sup>25</sup> The Court then noted that bicyclists are afforded all of the “rights and shall be subject to all of the duties applicable to the drive of a vehicle...”<sup>26</sup> on a roadway.<sup>27</sup> The Court reasoned that the driving under the influence statute imposed a duty upon persons to refrain from operating on the roadways while they were intoxicated.<sup>28</sup> Finding that “the drunken operator of a bicycle may create situations endangering both himself and others on the road” the Court held that the operator of a bicycle was under the same obligation to stay off the roads when intoxicated.<sup>29</sup>

### • *State v. Johnson*

Almost a year after the *Tehan* decision, the defendant in *State v. Johnson* “was stopped by a New Jersey State Trooper and issued a summons for operating a motor vehicle while under the influence of an intoxicating liquor in violation of N.J.S.[] 39:4-50.”<sup>30</sup> The defendant was operating

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<sup>15</sup> The background and analysis of the cases discussed are so intertwined that they are presented in one section for the convenience of the reader.

<sup>16</sup> *Tehan*, 190 N.J. Super. at 349, 350.

<sup>17</sup> *Id.* at 350.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* The defendant was also charged with simple assault and resisting arrest.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 350-351 (citing N.J.S. 39:1-1).

<sup>25</sup> *Id.* at 351.

<sup>26</sup> *Id.* (citing N.J.S. 39:4-14.1).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 352.

<sup>30</sup> *State v. Johnson*, 203 N.J. Super. 436, 438 (Law Div. 1985).

a pedal bicycle at the time of the stop.<sup>31</sup> He was found guilty and required to serve a ninety day jail sentence and perform ninety days of community service.<sup>32</sup> The defendant appealed his municipal conviction to the Superior Court in Cumberland County.<sup>33</sup>

On appeal, the State maintained that the operator of a bicycle may be charged with a violation of N.J.S. 39:4-50 and cited to *State v. Tehan*.<sup>34</sup> Although the defendant admitted his intoxication, he argued that he was not operating a motor vehicle and therefore could not be found guilty of violating the driving while intoxicated statute.<sup>35</sup> The Court “scrutinized the detailed and technical definitions applicable to vehicles of all classes and has found it to be clearly apparent from the plain language of the statute that the muscular powered bicycle is not included [in N.J.S. 39:4-50].”<sup>36</sup>

The *Johnson* Court, considering the decision in *Tehan*, said that “courts of this State have consistently held that it is not the role of the judiciary to extend the language of a statute beyond that which has been legislated” and that the “need to restrict the judicial branch of government from engaging in legislating has existed since the founding of this nation.”<sup>37</sup> The Court noted that “[t]he Legislature has at length, differentiated between various types of vehicles.”<sup>38</sup> Further, the Court stated that “[i]t is not the function of this Court to supplement or amend that which the Legislature has taken great pains to formulate.”<sup>39</sup> The *Johnson* Court noted that N.J.S. 39:4-50 had been amended several times and that none of the Legislature’s modifications extended the statute to include persons operating bicycles.<sup>40</sup> Finally, the Court stated that “[i]f it is the intention of the Legislature that a bicycle be included as a motor vehicle and its operator subject to the penalties for driving while intoxicated, then it is also the responsibility of the Legislature to make that clear.”<sup>41</sup>

To this time, whether or not an intoxicated individual will be charged with a violation of New Jersey’s DWI statute depends upon which decision the court elects to follow because the case law on this subject is divided. Conflicting trial court opinions mean that the statute is subject to competing interpretations of whether bicyclists can be charged with a violation of N.J.S. 39:4-50.

### **Pending Bills**

There is no pending legislation in New Jersey that concerns the issue raised in this Memorandum.

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 441.

<sup>38</sup> *Id.* at 440.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 441-42.

<sup>41</sup> *Id.* at 442.

## **Conclusion**

Staff requests authorization to conduct additional research and outreach to determine whether the DWI statute applies to persons who operate bicycles while intoxicated and whether the statute should be modified to resolve the conflict in the common law that served as the impetus for this Memorandum.