

**To: Commission**  
**From: Staff**  
**Re: Title 39 – Driving while intoxicated**  
**Date: January 18, 2011**

## MEMORANDUM

As discussed in the Memorandum previously distributed, the Commission has been asked to consider revising the provisions of Title 39 that pertain to driving while intoxicated, *N.J.S.* 39:4-50 – 39:4-51b. It was suggested that the current law might be made more effective if the statutory sections mandating lengthy suspensions were revised.

Based on the research conducted by Staff, the previous Memorandum explained that it does not appear that the implementation of a vocational license without simultaneously imposing the use of an ignition interlock would accomplish the stated goal of more efficiently and effectively removing impaired drivers from the roadways in this State, protecting the public and reducing the financial burden imposed on the State. In addition, the materials reviewed suggest that requiring the use of an ignition interlock while limiting driving to certain identified locations may be less effective than mandating interlock use and permitting unrestricted driving. The research does, however, support the modification of the current statutory language to expand the use of the interlock in New Jersey.

Currently, the New Jersey statute calls for the installation of the ignition interlock device in the vehicle principally operated by the offender if a driver is convicted of a first DWI offense with a blood alcohol level of .15 or greater. *N.J.S.* 39:4-50; *N.J.S.* 39:4-50.16. In such cases, the ignition interlock is required to be installed during the period of license suspension (seven months to a year) and for six months to one year following license restoration. *N.J.S.* 39:4-50.16. The law now permits, but does not require, the installation of an ignition interlock in the vehicle principally operated by a first time offender whose blood alcohol level did not exceed .15. *N.J.S.* 39:4-50; *N.J.S.* 39:4-50.16. Current law also calls for the installation of an ignition interlock in cases of a second or subsequent DWI offense. *N.J.S.* 39:4-50; *N.J.S.* 39:4-50.16. For a second offense within 10 years of the first, the interlock is to be installed during the period of license suspension (two years) and for one to three years following restoration. *N.J.S.* 39:4-50.16. For a third offense within 10 years of the second, the interlock is to be installed during the period of license suspension (10 years) and for one to three years following restoration. *N.J.S.* 39:4-50.16.

Additional research provides support for the expansion of the use of ignition interlock devices for first time offenders. It is widely recognized that driving under the influence of alcohol or illicit drugs poses a significant threat to public safety because those substances impair perception, cognition, attention, balance coordination, and other brain functions deemed necessary for the safe operation of a motor vehicle. Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *State Estimates of Drunk and Drugged Driving* (December 2010), 1 (“*State Estimates*”).

In 2008, 32% of all traffic-related deaths were the result of alcohol-related crashes. *State Estimates*, 1. According to NHTSA, 10.9% of drivers in fatal motor vehicle crashes were under the influence of alcohol or drugs (including medication). Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *Arrests for Driving Under the Influence among Adult Drivers* (September 2005), 1 (“Arrests”). Every day, NHTSA statistics show that approximately 32 people die in motor vehicle crashes involving an alcohol-impaired driver. *Advancing Ignition Interlocks*, [http://www.officer.com/print/Law-Enforcement-Technology/Advancing-ignition-interlocks/1\\$54246](http://www.officer.com/print/Law-Enforcement-Technology/Advancing-ignition-interlocks/1$54246) (last visited January 18, 2011) (“Advancing”). In addition, a 2000 study funded by NHTSA estimated the annual cost of alcohol-related vehicle crashes at more than \$51 billion. *Id.*

In the United States, 93.6% of individuals 21 or older (approximately 186 million people) were classified as drivers. *Arrests*, 1. Combined data from the years 2006 through 2009 indicate that 13.2% of persons 16 and older in the United States (approximately 30.6 million persons) drove under the influence of alcohol each year during that time period. *State Estimates*, 2.<sup>1</sup> Rates of drunk driving were higher among drivers aged 16 to 25 (19.5%) than among those aged 26 or older (11.8%). *Id.* at 3. Of those over the age of 21 who reported driving under the influence of alcohol during the past year in a 2002-2003 survey, 1.2 million (0.6%) had been arrested for DUI during the same time period. *Arrests*, 2. It was suggested that the prevalence of impaired driving among those aged 16-25 highlights the need for continued prevention efforts. *Id.* at 5.

A common objection to the use of ignition interlocks is that they do not need to be used on the vehicles of first offenders. *Advancing*. There is a popular myth that a first offender is someone who drove drunk once and was caught. *Id.* Studies indicate, however, that an average “first offender” has likely driven drunk 87 times before being caught. *Id.*<sup>2</sup>

Since approximately two-thirds of DUI offenders are “first offenders”, dealing more effectively with this largest group of offenders could have a significant impact. *Id.* A “catch and release” strategy, where law enforcement catches drunk drivers who are then released with few significant consequences, has not proven to be effective to reduce the number of drunk drivers on the roadways. *See, id.* Current interlock technology offers the advantages of improved information as a result of GPS, better data recording, photo imaging and instant reporting to probation officers. *Id.*

A first draft of proposed modifications to the DUI penalty provisions follows.

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<sup>1</sup> The 10 states with the highest rates of drunk driving are: Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin, Connecticut, Massachusetts, Rhode Island, Montana and Wyoming. *Id.* The nine states with the lowest rates of drunk driving are Alabama, Kentucky, Mississippi, West Virginia, Idaho, New Mexico, New Jersey and New York. *Id.*

<sup>2</sup> In one three-year study involving approximately 1,300 DUI offenders, the judge sentenced all first-time offenders to clinical evaluation and, after that evaluation, 82% were described as “problem drinkers” or alcoholics. Rauch, William, “Does Alcohol-Impaired Driving Recidivism Among First Offenders More Closely Resemble That of Multiple Offenders?” *6<sup>th</sup> International Symposium on Alcohol Ignition Interlock Programs*, Ancey, France: September 25-27, 2005 ([http://www.trafficinjuryresearch.com/whatsnew/newsItemPDFs/Bill Rauch.pdf](http://www.trafficinjuryresearch.com/whatsnew/newsItemPDFs/Bill%20Rauch.pdf)).

## **OPERATION OF VEHICLE UNDER THE INFLUENCE (Selected sections pertaining to ignition interlock devices)**

The following language is a modified version of the Commission's proposed revision to Title 39 since that revision reorganized the Title to place related provisions together in the same sections and to increase ease of access and review by inserting subsection lettering and numbering for all statutory subsections.

The language below was modified to expand the ignition interlock provisions to require the installation of an ignition interlock device for all DWI offenses, including first offenders, those who refuse to submit to a chemical test and second or subsequent offenders who are under the legal age to drink and whose BAC is under the legal limit. The modifications were made as a result of an ongoing review by Staff of the laws of other states and various studies pertaining to the use of ignition interlock devices. The changes shown below are the first draft of an attempt to maximize the effectiveness of New Jersey's ignition interlock requirements. When making changes, Staff attempted to maintain the proportionality of penalties found in the current statute. If the statute is changed, the regulations should be reviewed for any language that should be modified in response to the changes.

### Additional items for consideration:

1. A 2009 change to New Jersey's law, effective January 14, 2010, made the law pertaining to ignition interlocks less strict since it requires the installation of an interlock only in the vehicle "principally operated by the offender" rather than (as previously required and as still required in some other states) in "every motor vehicle owned, leased or regularly operated by the offender". The impact of installation in a leased vehicle, or a newly purchased vehicle still under warranty is not yet known to Staff but there may be ways to address these and other concerns through additional modifications to the statutory language while still encouraging greater interlock compliance.

2. Some states allow an exemption for work-related vehicles, permitting the offender to drive at work without an ignition interlock on the vehicle if the court determines that doing so would not create a substantial danger (Alaska), the employer is notified of the ignition interlock requirement imposed on the offender and proof of notification/authorization is carried in the vehicle (Alaska, Arizona, Arkansas) or the employer provides a sworn statement indicating that the employee will be fired if he or she cannot drive and indicating the hours during which the offender will drive, not to exceed 12 per day (Hawaii). Other states allow non-interlock driving at work only if the employer entity is not owned or controlled by the offender (Arkansas).

3. The studies pertaining to interlocks suggest that periods of "hard suspension" (license suspension or revocation before permitted driving with an interlock) are not particularly effective. If it is determined that a period of hard suspension should be imposed, however, Staff

recommends only a short period, like 30 days. It is noted that some other states, when a license is suspended, also require “immobilization” of the vehicle – which refers to the suspension of the registration and the confiscation of the license plates (Nebraska). An exemption from immobilization is authorized for a lienholder or a co-owner if the motor vehicle is necessary for co-owner employment and if employment of the co-owner is necessary for the wellbeing of children or parents (Nebraska). Other states use an actual “immobilization device” to prevent the operation of the vehicle during the established time period (New Mexico).

### Draft language

#### 39A:DWI-2. Driving while intoxicated

a. Except as provided in section 39A:DWI-3, a person shall be in violation of this section if that person:

(1) Operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or

(2) Operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood, or

(3) Permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or her or in his or her custody or control, or

(4) 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.

\* \* \*

d. For the first violation of subsection a. of this section, a person shall:

(1) ~~The provisions of this paragraph shall be applicable~~ If: the person's blood alcohol concentration is 0.08% or higher but less than 0.10%; or the person operates a motor vehicle while under the influence of intoxicating liquor; or the person permits another person who is under the influence of intoxicating liquor to operate a motor vehicle owned by him or in his custody or control or permits another person with a blood alcohol concentration of 0.08% or higher but less than 0.10% to operate a motor vehicle;

(A) pay a fine of not less than \$250 or more than \$400;

~~(B) forfeit the privilege to operate a motor vehicle on the highways of this State for a period of three months;~~

(C) be detained for a period of not less than 12 hours or more than 48 hours during two consecutive days for not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers (“IDRCs”); ~~and~~

(D) in the discretion of the court, be imprisoned for not more than 30 days; and

(E) install an ignition interlock device as required by 39:4-50.16 et al.

(2) ~~The provisions of this paragraph shall be applicable~~ If: the person's blood alcohol concentration is 0.10% or higher; or the person operates a motor vehicle while under the influence of narcotic, hallucinogenic or habit-producing drug; or the person permits another person who is under the influence of narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or her, or in his or her custody or control; or permits another person with a blood alcohol concentration of 0.10% or more to operate a motor vehicle;

(A) pay a fine of not less than \$300 or more than \$500;

~~(B) forfeit the privilege to operate a motor vehicle on the highways of this State for a period of not less than seven months or more than one year;~~

(C) be detained for a period of not less than 12 or more than 48 hours during two consecutive days for not less than six hours each day and served as prescribed by the program requirements of the IDRCs; and,

(D) in the discretion of the court, be imprisoned for not more than 30 days; and

(E) install an ignition interlock device as required by 39:4-50.16 et al.

~~(3) Be subject to the provisions of 39:4-50.16 et al.~~

e. For a second violation of subsection a. of this section, a person shall:

(1) pay a fine of not less than \$500 or more than \$1,000;

~~(2) forfeit the privilege to operate a motor vehicle on the highways of this State for a period of two years, and, after the expiration of that period, he or she may make application to the chief administrator for a driver's license, which application may be granted at the discretion of the chief administrator, consistent with subsection j. of this section;~~

(3) be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate; and

(4) be imprisoned for a term of not less than 48 consecutive hours or more than 90 days, which shall not be suspended or served on probation; and

(5) install an ignition interlock device as required by 39:4-50.16 et al.

f. For a third or subsequent violation of subsection a. of this section, a person shall:

(1) pay a fine of \$1,000;

~~(2) forfeit the privilege to operate a motor vehicle on the highways of this State for 10 years; and~~

(3) be ordered by the court to perform community service for a period of 60 days, which shall be of such form and on such terms as the court shall deem appropriate;

(4) be imprisoned for a term of not less than 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the IDRC; and

(5) install an ignition interlock device as required by 39:4-50.16 et al.

\* \* \*

j. Upon conviction of a violation of this section, the court shall ~~immediately collect the New Jersey driver's license or licenses of the person convicted and forward such license or licenses to the chief administrator. The court shall~~ inform the person convicted, orally and in writing, that if that person is convicted of personally operating a motor vehicle during a period of license suspension imposed pursuant to this ~~section~~ chapter, the person shall upon conviction be subject to the penalties established in 39:3-40. The person shall be required to acknowledge receipt of the written notification in writing. Failure to receive a written notice, or to acknowledge in writing the receipt of a written notice, shall not be a defense to a subsequent charge of a violation of 39:3-40. If a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect that license but shall notify the chief administrator, who shall notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's privilege to operate a motor vehicle in this State in accordance with this section.

\* \* \*

Source: 39:4-50; 39:4-50.15; 39:4-51.

#### COMMENT

This section contains the substance of the original sections. Original section 39:4-50 contains the bulk of the provisions pertaining to driving while intoxicated. The original section is approximately seven pages long and does not contain letters or numbers for all of the paragraphs that it contains, making it unnecessarily confusing to use and to reference. No substantive changes were made to the text of that section, but the language was rearranged to include numbers or letters for each paragraph, unlike the source section, and was divided into several sections.

### **39A:DWI-3. Driving while intoxicated on school property or through a school crossing**

a. When a violation of 39:4-50 occurs while:

(1) On any school property used for school purposes owned by or leased to an elementary or secondary school or school board, or within 1,000 feet of such property;

(2) Driving through a school crossing as defined in 39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(3) Driving through a school crossing as defined in 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution, the convicted person shall be subject to the following penalties ~~and a period of license suspension shall commence upon the completion of any prison sentence imposed:~~

(A) For a first offense, be fined not less than \$500 or more than \$800, be imprisoned for not more than 60 days and ~~have the his or her driver's license suspended for a period of not less than one or more than two years~~ be subject to mandatory ignition interlock installation pursuant to 39:4-50.16 et al. for a period of two years;

(B) For a second offense, be fined not less than \$1,000 or more than \$2,000, perform community service for 60 days, be imprisoned for not less than 96 consecutive hours, which shall not be suspended or served on probation, or more than 180 days, except that the court may lower the term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate, and ~~have his or her driver's license suspended for a period of four years~~ be subject to mandatory ignition interlock installation pursuant to 39:4-50.16 et al. for a period of four years; and,

(C) For a third offense, be fined \$2,000, imprisoned for 180 days in a county jail or workhouse, except that the court may lower the term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the IDRC, and ~~have his or her driver's license suspended for a period of 20 years~~ be subject to mandatory ignition interlock installation for the remainder of the offender's life pursuant to 39:4-50.16 et al.

\* \* \*

Source: 39:4-50.

### **39ADWI-6. Refusal to submit to chemical test**

a. Except as provided in subsection f. of this section, a municipal court shall ~~revoke the driver's license of~~ require the installation of an ignition interlock device pursuant to 39:4-50.16 et al. for any operator who, after being arrested for a violation of 39:4-50 or 39:4-50.14, refuses to submit to a test provided for in 39:4-50.2 when requested to do so. ~~The revocation~~ ignition interlock installation shall be for a period of:

(1) ~~Not less than seven months or more than~~ One year for a first offense;

(2) Two years for a second offense of this section or when the refusal was in connection with a second offense under 39:4-50; and

(3) ~~Ten years~~ the remainder of the offender's life, as provided by 39:4-50.16 et al. for a third or subsequent offense of this section or when the refusal was in connection with a third or subsequent offense under 39:4-50.

b. A conviction or administrative determination of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to 39:5D-1 et seq., shall constitute a prior conviction under this section.

c. A municipal court shall determine beyond a reasonable doubt whether:

(1) The arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marijuana;

(2) The person was placed under arrest, if appropriate; and

(3) The person refused to submit to the test upon request of the officer.

d. If the elements of the violation set forth in subsection c. of this section are not established, no conviction shall issue.

e. In addition to any other requirements provided by law, a person ~~whose driver's license is revoked for refusing~~ who refuses to submit to a test shall be referred to an IDRC and shall satisfy the Center's requirements for refusal to submit to a test as provided for in 39:4-50.2 or be subject to the penalties imposed for failure to do so. ~~For a first offense, the revocation may be concurrent with or consecutive to any revocation imposed for a conviction under 39:4-50 arising out of the same incident. For a second or subsequent offense, the revocation shall be consecutive to any revocation imposed for a conviction under 39:4-50. In addition to issuing a revocation, except as provided in subsection f. of this section,~~ The municipal court shall also fine a person convicted under this section not less than \$300 or more than \$500 for a first offense, not less than \$500 or more than \$1,000 for a second offense; and a fine of \$1,000 for a third or subsequent offense. ~~The person also shall be required to install an ignition interlock device pursuant to the provisions of 39:4-50.16 et al.~~

f. If a violation occurs under the following circumstances, the penalty for a first offense shall be a fine of not less than \$600 or more than \$1,000 and a ~~license suspension of not less than one or more than two years~~ mandatory ignition interlock installation pursuant to 39:4-50.16 et al. for a period of two years; for a second offense, a fine of not less than \$1,000 or more than \$2,000 and a ~~license suspension for a period of four years~~ mandatory ignition interlock installation pursuant to 39:4-50.16 et al. for a period of four years; and for a third or subsequent offense, a fine of \$2,000 and a ~~license suspension for a period of 20 years~~ mandatory ignition interlock installation for the remainder of the offender's life as provided by 39:4-50.16 et al.:

(1) A violation of this section that occurs on any school property used for school purposes owned by or leased to an elementary or secondary school or school board, or within 1,000 feet of such school property;

(2) A violation of this section that occurs while driving through a school crossing as defined in 39:1-1 if the municipality, by ordinance or resolution, designated the school crossing as such; or

(3) A violation of this section that occurs while driving through a school crossing as defined in 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.

g. A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes owned by or leased to an elementary or secondary school or school board produced pursuant to 2C:35-7 may be used in a prosecution under this section. It shall not be relevant to the imposition of sentence pursuant to subsection f.



of this section that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing, nor shall it be relevant to the imposition of sentence that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

Source: 39:4-50.4a.

### **39A:DWI-9. Operation of vehicle by person who has consumed alcohol but is under the legal age to drink**

a. A person under the legal age to purchase alcoholic beverages who operates a motor vehicle with a blood alcohol concentration of 0.01% or more, but less than 0.08%, by weight of alcohol in the person's blood, shall, for a first offense, forfeit the driving privilege in this State or shall be prohibited from obtaining a New Jersey driver's license for a period of not less than 30 or more than 90 days beginning on the date the person becomes eligible to obtain a license or on the day of conviction, whichever is later, and shall perform community service for a period of not less than 15 or more than 30 days. In addition, the person shall satisfy the program and fee requirements of an IDRC or participate in a program of alcohol education and highway safety as prescribed by the chief administrator.

b. A person who violates the provisions of this section for a second or subsequent time shall:

(A) pay a fine of not less than \$250 or more than \$400;

(B) forfeit the privilege to operate a motor vehicle on the highways of this State for a period of three months;

(C) perform community service for not less than 30 or more than 60 days;

(D) be detained for a period of not less than 12 hours or more than 48 hours during two consecutive days for not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers ("IDRCs"); and

(E) in the discretion of the court, be imprisoned for not more than 30 days; and

(F) install an ignition interlock device pursuant to 39:4-50.16 et al.

c. The penalties provided under this section shall be in addition to the penalties the court may impose under 2C:33-15, 33:1-81, 39:4-50 or any other law.

Source: 39:4-50.14.

### **39A:DWI-10. Ignition interlock devices as alternative penalties**

a. ~~In sentencing a:~~

~~(1) first offender under 39:4-50, the court may shall order, in addition to any other penalty imposed by that section, the installation of an ignition interlock device in the motor vehicle principally operated by the offender during and following the expiration of~~

~~the period of license suspension imposed under that section. The device shall remain installed for not less than six months.~~

~~(2) first offender under section 2 of 39:4-50.4a, the court shall order, in addition to any other penalty imposed by that section, the installation of an ignition interlock device in the motor vehicle principally operated by the offender during and following the expiration of the period of license suspension imposed under that section. The device shall remain installed for not less than six months more than one year, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served.~~

~~(3) first offender under 39:4-50 with a blood alcohol concentration of 0.15 % or higher, the court shall order, in addition to any other penalty imposed under 39:4-50, the installation of an ignition interlock device in the motor vehicle principally operated by the offender during and following the expiration of the period of license suspension imposed under that section. In addition to installation during the period of license suspension, the device shall remain installed for not less than six months or more than one year, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served.~~

~~(4) second or subsequent offender under 39:4-50 or section 2 of 39:4-50.4a, the court shall order, in addition to any other penalty imposed by that section, the installation of an ignition interlock device in the motor vehicle principally operated by the offender during and following the expiration of the period of license suspension imposed under 39:4-50 or section 2 of 39:4-50.4a. In addition to installation during the period of license suspension, the device shall remain installed for not less than one year or more than three years, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served.~~

a. Upon a conviction pursuant to 39:4-50, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on the motor vehicle principally operated by the offender, pursuant to rules promulgated by the Chief Administrator. The offender shall operate only a vehicle equipped with an ignition interlock device for:

(1) a period of six months for a first offender if: the person's blood alcohol concentration was 0.08% or higher but less than 0.10%; or the person operated a motor vehicle while under the influence of intoxicating liquor; or the person permitted another person who was under the influence of intoxicating liquor to operate a motor vehicle owned by him or in his custody or control or permitted another person with a blood alcohol concentration of 0.08% or higher but less than 0.10% to operate a motor vehicle. This period of interlock operation shall also be imposed for a second or subsequent violation of 39:4-50.14;

(2) a period of one year, for a first offender if: the person's blood alcohol concentration was 0.10% or higher; or the person operated a motor vehicle while under the influence of narcotic, hallucinogenic or habit-producing drug; or the person permitted another person who was under the influence of narcotic, hallucinogenic or habit-

producing drug to operate a motor vehicle owned by him or her, or in his or her custody or control; or permitted another person with a blood alcohol concentration of 0.10% or more to operate a motor vehicle;

(3) a period of two years, for a second conviction;

(4) a period of three years, for a third conviction; or

(5) the remainder of the offender's life, for a fourth or subsequent conviction.

b. Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section. A district court may, for good cause shown, remove the ignition interlock device requirement; provided that the offender has not been subsequently convicted pursuant to 39:4-50 or 39:4-50.4a. Good cause may include an alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device.

c. An offender who obtains an ignition interlock license and installs an ignition interlock device prior to conviction shall be given credit at sentencing for the time period the ignition interlock device has been in use.

d. The provisions of 39:4-50.16 et al. and any amendments and supplements thereto shall be applicable only to violations of 39:4-50, ~~and section 2 of 39:4-50.4a,~~ and 39:4-50.14 as set forth in those sections.

~~e. The court shall require that, for the duration of its order, an offender shall drive no vehicle other than one in which an interlock device has been installed pursuant to the order.~~

e. As used in this section, "ignition interlock device" or "device" means a blood alcohol equivalence measuring device which will prevent a motor vehicle from starting if the operator's blood alcohol content exceeds a predetermined level when the operator blows into the device.

f. The court shall notify the Chief Administrator of the Motor Vehicle Commission when a person has been ordered to install an interlock device in a vehicle owned, leased or regularly operated by the person. ~~The commission shall require that the device be installed before reinstatement of the person's driver's license that has been suspended pursuant to 39:4-50.~~ The commission shall imprint a notation on the driver's license stating that the person shall not operate a motor vehicle unless it is equipped with an interlock device and shall enter this requirement in the person's driving record.

g A person who fails to install an interlock device ordered by the court in a motor vehicle owned, leased or regularly operated by him, or who claims that he or she does not own a vehicle or will not drive or is medically unable to use an ignition interlock shall ~~have that person's driver's license suspended for one year, in addition to any other suspension or revocation imposed under 39:4-50, unless the court determines a valid reason exists for the failure to comply.~~ be required to utilize either a secure continuous remote alcohol monitor of a type authorized by the chief administrator to continuously detect the release of alcohol gas from the skin's surface or an alternate device authorized by the chief administrator that requires the person to provide regular breath samples at home, rather than in a vehicle. If either the secure

continuous remote alcohol monitor or the machine requiring breath samples from home is required to be used by the defendant, it shall be used for the period of time during which an ignition interlock would otherwise required by this Title. If either of these alternate devices is utilized pursuant to this section, then all provisions of this chapter applicable to ignition interlock devices are applicable to the alternate device. A person in whose vehicle an interlock device is installed pursuant to a court order who drives that vehicle after it has been started by any means other than that person's own blowing into the device or who drives a vehicle not equipped with such a device shall have ~~that person's driver's license suspended for one year~~ the mandatory period of ignition interlock installation doubled, in addition to any other penalty applicable by law.

h. A person is a disorderly person who:

(1) Blows into an interlock device or otherwise starts a motor vehicle equipped with such a device for the purpose of providing an operable motor vehicle to a person who has been ordered by the court to install the device in the vehicle;

(2) Tampers or in any way circumvents the operation of an interlock device; or

(3) Knowingly rents, leases or lends a motor vehicle not equipped with an interlock device to a person who has been ordered by the court to install an interlock device in a vehicle he owns, leases or regularly operates.

i. The provisions of subsection h. of this section shall not apply if a motor vehicle required to be equipped with an ignition interlock device is started by a person for the purpose of safety or mechanical repair of the device or the vehicle, provided the person subject to the court order does not operate the vehicle.

j. The Chief Administrator shall certify or cause to be certified ignition interlock devices, secure continuous remote alcohol monitors and alternate devices requiring the person to provide regular breath samples at home that are required by this act and shall publish a list of approved devices. A device shall not be certified unless the manufacturer enters into an agreement with the commission for the provision of devices to indigent offenders, as determined by the chief administrator, at a reduced cost. The chief administrator shall provide a copy of this list along with information on the purpose and proper use of ~~interlock the~~ the devices to persons who have been ordered by the court to install or use such a device ~~in their vehicles~~.

k. If a person is required to install an ignition interlock device and that person's family income does not exceed:

(1) 100% of the federal poverty level, the monthly leasing fee shall be 50% of the fee established by regulation for persons who do not qualify for the reduced fee; or

(2) 149% of the federal poverty level, the monthly leasing fee shall be 75% of the fee established by regulation for persons who do not qualify for the reduced fee.

Persons who qualify for a reduced fee pursuant ~~to the provisions of~~ this subsection shall not be required to pay the installation fee, the cost for monitoring of the device, or any fees for calibration or removal of the device.

l. Pursuant to the "Administrative Procedure Act", 52:14B-1 et seq., the commission shall promulgate regulations for the installation and use of ignition interlock devices. These regulations shall be consistent with the federal model specifications for ignition interlock devices issued by the National Highway Traffic Safety Administration including the following:

- (1) Requiring that the ignition interlock system selected shall:
  - (A) Not impede the safe operation of the vehicle;
  - (B) Incorporate features that make circumvention difficult and that do not interfere with the normal use of the vehicle;
  - (C) Correlate closely with established measures of alcohol impairment;
  - (D) Operate accurately and reliably in an unsupervised environment;
  - (E) Resist tampering and give evidence when tampering is attempted;
  - (F) Be difficult to circumvent and require premeditation to do so;
  - (G) Require a deep lung breath sample as a measure of blood alcohol concentration equivalence;
  - (H) Operate reliably over the range of automobile environments; and
  - (I) Be manufactured by a party who will provide liability insurance.
- (2) Designating the facilities where ignition interlock devices may be installed;
- (3) Establishing guidelines for the proper use of ignition interlock devices; and
- (4) Establishing guidelines for the provision of ignition interlock devices at reduced rates to persons who, according to standards specified by the commission, qualify as indigent.

m. The chief administrator may adopt, in whole or in part, the guidelines, rules, regulations, studies, or independent laboratory tests performed on and relied upon in the certification of ignition interlock devices by other states, their agencies or commissions.

Source: 39:4-50.17; 39:4-50.17a; 39:4-50.18; 39:4-50.19; 39:4-50.20; 39:4-50.21.

COMMENT

This section contains the substance of the original sections, but consolidates them.