

**To: Commission**  
**From: Staff**  
**Re: Title 39 – *Driving while intoxicated***  
**Date: February 7, 2011**

## MEMORANDUM

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 – 39:4051b*. It was suggested that the current law might be made more effective if the statutory sections mandating lengthy suspensions were revised. One option suggested was the incorporation of language permitting the use of a vocational (also called limited or restricted) license, which allows an individual to drive for certain permissible reasons only (work, medical appointments, school, court-ordered probation, community service, etc.). Expanded use of the ignition interlock device was also proposed.

Attorneys and judges who deal with DWI (driving while intoxicated) cases have observed that individuals with suspended or revoked licenses frequently continue to drive and that the DWI recidivism rate is high. In addition, individuals who lose their jobs as a result of suspended licenses are unable to pay the fines and surcharges imposed on them as a result of their DWI conviction or to meet their other financial obligations. The goal is to more efficiently and effectively remove impaired drivers from the roadways in this State, protecting the public and reducing the financial burden imposed on the State.

To determine whether the proposed modifications appeared likely to achieve the desired result, Staff generally reviewed the laws of the other states pertaining to the vocational licenses and ignition interlock devices. In addition, Staff reviewed studies conducted by and materials prepared by: the Department of Transportation, national Highway Traffic Safety Administration (“NHTSA”); the National Conference of State Legislatures; the Governors Highway Safety Association; the Insurance Institute for Highway Safety; the United States Department of Health and Human Services, Office of Applied Studies, Substance Abuse and Mental Health Services Administration; Mothers Against Drunk Drivers (“MADD”); Officer.com (which features law enforcement technology and product news); and the Pacific Institute for Research and Evaluation (an independent non-profit public health organization). In addition, Staff focused on the 12 states in which ignition interlock use is mandatory or “highly incentivized” for even first offenses (Alaska, Arizona, Arkansas, Colorado, Hawaii, Illinois, Louisiana, Nebraska, New Mexico, New York, Utah and Washington) and the 12 states that saw a reduction in drunk driving rates in the last decade (Alaska, Florida, Idaho, Illinois, Maryland, Michigan, Mississippi, Missouri, New Mexico, Pennsylvania, Texas and Washington). Preliminary input regarding the proposed modifications was informally sought from the New Jersey Police Traffic Officers Association and the Motor Vehicle Commission.

Based on the information reviewed and the preliminary feedback received to this time, as more fully explained below, it does not appear that the implementation of a vocational license would accomplish the stated goal. In addition, the materials reviewed to this time 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*.

Research provides support for the expansion of the use of ignition interlock devices for first time offenders.

## **Background**

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*”). Approximately 13,000 people are killed every year by a driver under the influence; about one person every 40 minutes. Department of Transportation, National Highway Traffic Safety Administration, *Ignition Interlocks – What You Need to Know: a Toolkit for Policymakers, Highway Safety Professionals and Advocates* (November 2009), 1 (“*Toolkit*”). In addition, a 2000 study funded by NHTSA estimated the cost of alcohol-related vehicle crashes at more than \$51 billion annually. *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> Nationwide, there are approximately 1.5 million DWI arrests per year.<sup>2</sup> *Toolkit*, 1. That represents approximately one DWI arrest for every 139 licensed drivers in the United States (*Id.*), and approximately 0.6% of all drivers (*Arrests*, 2). These numbers have remained largely stable for more than 20 years after dropping significantly in the late 1980s and early 1990s. *Id.*

Rates of drunk driving were higher among drivers aged 16 to 25 (19.5%) than among those aged 26 or older (11.8%). *State Estimates*, 3. It was suggested that the prevalence of impaired driving among those aged 16-25 highlights the need for continued prevention efforts. *Id.* at 5.

One-half to two-thirds of all offenders driving under the influence are first-time offenders. Department of Transportation, National Highway Traffic Safety Administration, *Key Features for Ignition Interlock Programs* (March 2010), 19 (“*Key Features*”). 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>3</sup>

Up to 75% of drivers whose license is suspended after a DWI arrest continue to drive, and many continue to drink and drive. *Toolkit*, 13, 15. A “catch and release” strategy, in which law enforcement catches drunk drivers who are then released with few significant consequences, has not proven to reduce the number of drunk drivers on the roadways. *Advancing*. 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.*

Evidence from more than 10 evaluation studies demonstrates that the use of ignition interlocks results in a reduction in the recidivism rate ranging from 50% to 90% (with an average of 64%) for first time and repeat DWI offenders while the interlocks are installed, including the recidivism rates for those characterized as “hard core” offenders – those who repeatedly drive with high BACs and are resistant to changing this behavior. *Toolkit*, 2, 5; *Key Features*, 19-20.

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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> The figures included in this memorandum are taken from NHTSA documents that rely on information from 2006, 2007 and 2008.

<sup>3</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*, Annecy, France: September 25-27, 2005 (<http://www.trafficinjuryresearch.com/whatsnew/newsItemPDFs/Bill> Rauch.pdf).

Currently, 47 states and the District of Columbia provide for the use of ignition interlocks, although the requirements associated with their use varies. *Toolkit*, 1. Based on the data reviewed, interlocks are mandatory, at least in some circumstances, in 31 of those states. *Id.* 20-26. As of January 2011, 12 states have made ignition interlocks mandatory or “highly incentivized” for all convicted DWI offenders, including first-time offenders. *National Conference of State Legislatures, Survey of Drunk Driving Laws*, <http://www.ncsl.org> (last visited January 10, 2011). The rate of usage by individuals for whom they are mandated or available (in some jurisdictions, offenders may obtain the return of their licenses sooner if they agree to use interlocks) is roughly 10% nationwide, with approximately 200,000 interlocks in use throughout the country. *Key Features*, 10.

So far, New Mexico’s interlock program is the only program that has undergone a comprehensive analysis of its impact and that has attained an interlock installation rate of 50% among convicted DWI offenders. *Key Features*, 46. In 2011, the Governors Highway Safety Association will begin a three year research effort funded by NHTSA to determine the most effective elements in a model interlock program. *Governors Highway Safety Association, States Warn Drunk Drivers: Over the Limit, Under Arrest*, <http://www.ghsa.org>, (last visited January 6, 2011).

### **Ignition Interlock Devices**

#### ***How do ignition interlock devices work?***

The first ignition interlock was developed in 1969 and performance-based interlocks were attempted and rejected in the 1970s in favor of alcohol-sensing devices. *Key Features*, 9. Interlocks that employed semiconductor (non-specific) alcohol sensors were sturdy and moved the technology forward in the 1980s, but they were sensitive to changes in altitude, reacted with positive readings to non-alcohol sources, and did not hold calibration well. *Id.* By the early 1990s, more reliable “second generation” devices with accurate fuel-cell sensors were being used. *Id.* In 1992, the Department of Transportation, National Highway Traffic Safety Administration (“NHTSA”), issued specifications for interlocks, recommending standards for sensitivity and reliability testing, and providing for “rolling retests” and data-recording systems to make circumvention difficult. *Id.* Improvements in the technology, including the use of temperature and pressure sensors, the requirement of rolling retests, and the recordation of all events related to the vehicle use have addressed many of the ways offenders circumvented ignition interlock devices in the past and have left the illegal use of a non-interlocked vehicle as the primary uncontrolled circumvention method. *Id.*, *Toolkit*, 3.

The commonly used ignition interlock devices (sometimes called breath alcohol ignition interlock devices) are attached to the ignition of a vehicle and require that the operator of the vehicle provide a breath sample for analysis of its alcohol level each time the engine is started. *Key Features*, 9. The four basic elements of ignition interlock systems are: (1) a breath alcohol sensor in the vehicle to record the operator’s blood alcohol concentration (there is also a control unit under the hood) which can be set to provide a warning if alcohol is detected and can also be set to prevent the vehicle from starting if the BAC exceeds a certain level (NHTSA guidelines recommend that the vehicle not start if the BAC exceeds .025 g/dL but not all states have adopted this limit); (2) a rolling (or running) retest system, which requires at least one retest once

the vehicle is in operation and calls for a retest approximately every 20-30 minutes while it is operating; (3) a system for mounting the unit under the hood on the engine that is tamper-proof and inspected at regular intervals (every 30 or 60 days) to detect attempts to circumvent it as well as a system to detect attempts to hotwire or otherwise bypass the interlock; and (4) a data-recording device that logs BAC results, test compliance and engine operation (in order to determine whether the offender is actually using the vehicle, rather than parking it and driving another). *Key Features*, 9.

If an offender tries to start a vehicle equipped with an ignition interlock after drinking alcohol, the interlock will enter a lock-out phase of a few minutes duration for the first failed BAC test, with a longer lockout for any subsequent failed BAC tests. *Toolkit*, 3. Medicine, alcohol-based mouthwashes and eating certain fruits can result in mouth alcohol that will prevent the vehicle from starting. *Id.* at 2. In the case of mouthwash and fruit, if the driver waits a few minutes for the mouth alcohol to dissipate, he or she should be able to start the vehicle. *Id.*

The 1992 NHTSA model specifications require that an ignition interlock must prevent a vehicle from starting 90% of the time if the BAC is .01 g/dL higher than the pre-set limit for the unit. *Toolkit*, 2.

If an offender fails to provide a rolling retest, or registers a BAC in excess of the pre-set limit, either an auditory or visual warning will commence or an alarm will be activated, alerting authorities. *Id.* at 3. It is recommended that drivers not perform the rolling retest while the vehicle is in motion, but that they pull over and comply with the test. *Id.*

### ***Optimizing ignition interlock use.***

NHTSA has indicated that there is no dispute about the fact that interlocks, when used, effectively reduce the recidivism rate of drivers convicted of DWI. *Key Features*, 9. The safety benefits of ignition interlocks are limited by the weakness of interlock laws, resistance on the part of judges to imposing ignition interlocks, and the resistance on the part of offenders to installing them. *Key Features*, 10. Offenders frequently avoid installation by claiming that they will not drive or that they do not own a vehicle. *Id.* Offenders cite concerns regarding social embarrassment, family inconvenience, long warm-up times, and the frequency of rolling retests as reasons they avoid installing the interlock. *Toolkit*, 13.

Five studies involving repeat DWI offenders found that ignition interlocks are one of the most promising strategies for preventing subsequent DWI incidents. *Toolkit*, 8. In addition to protecting the driving public by separating instances of drinking from the ability of an offender to drive, NHTSA reports suggest that ignition interlocks represent a benefit to the offender because they permit that individual to meet their daily responsibilities, including driving to work, driving to treatment appointments, driving children to and from school, etc. *Key Features*, 11. Offenders who install the interlock, and their families, avoid the transportation, financial and legal consequences that apply to offenders who do not use the interlock. *Toolkit*, 13. Incapacitating an offender by means of jail or house arrest, or monitoring alcohol use with an alcohol monitoring anklet, involve greater intrusions on the lives of offenders and their families. *Ibid.*

Surveys conducted with DWI offenders in New Mexico found that 85% of those surveyed deemed the ignition interlock fair to DWI offenders and 87% believed that the interlock reduced recidivism. *Toolkit*, 5. A study conducted in the United Kingdom reported finding that families of offenders with ignition interlocks favored the technology, and reported a generally positive experience and impact on the offender's drinking habits. *Id.*

### ***Application to offenders.***

Based on the information reviewed, the NHTSA *Key Features* report recommended that ignition interlocks be required for all DWI offenders. *Key Features*, 20. Estimates regarding the impaired driving of most first offenders suggests that they operated a vehicle while intoxicated many times prior to their first conviction. *Id.* A small but increasing number of states require interlocks for all DWI offenders regardless of the BAC level at the time of arrest. *Id.* DWI offenders, including high-risk drivers, frequently transfer the ownership of vehicles to other family members and then claim no intention to drive in an effort to avoid an interlock. *Id.* Optimally interlocks, or an alternative form of alcohol monitoring, should be required for all DWI offenders. *Id.* If interlocks are impractical for some offenders, alternative means of alcohol monitoring should be offered so that there is neither a lower cost, nor a higher cost imposed on offenders who avoid an interlock. *Id.* Mandatory programs could require an offender to choose between an interlock and other monitoring or control technologies such as: house arrest; SCRAM (secure continuous remote alcohol monitor), which continuously detects the release of alcohol gas from the skin's surface; or the Sobriotor or InHom, two devices that require the offender to provide regular breath samples at home, rather than in a vehicle. *Id.*

### ***The utility of vocational licenses and hard suspensions.***

A concern expressed by NHTSA is that the availability of "vocational" (otherwise known as limited or restricted licenses) might create a disincentive for an offender to install an interlock. *Id.* In addition, such licenses create enforcement problems for police officers and, as a result, appear to lack the support of the law enforcement community here in New Jersey.

With regard to the issue of "hard suspension" (suspension during which no driving is permitted), it is noted that license suspension was a hard-won victory of the safety community at time when ignition interlocks were not part of the discussion. *Key Features*, 21. Concern has been expressed about the number of offenders who simply drive while suspended if interlocks are not required (because they quickly discover how easy it is to drive unlicensed and undetected). *Id.* It has been said that a long delay between a licensing action and the required ignition interlock installation teaches offenders that they do not need a license to drive and decreases their incentive to ever re-enter the licensing control system. *Toolkit*, 13-14.

### ***Duration of interlock use.***

The duration of interlock use is another issue to be considered, but since there is no research evidence that bears on the question at this point, it is anticipated that practices will continue to differ by jurisdiction. *Key Features*, 22. It is suggested that anything less than six

months for the lower risk DWI offender (first time offender with a BAC below .15) is not supported by the available research. *Id.* For second and third offenders, two and three years, respectively, were recommended. *Id.*

New Mexico, which has the interlock program described as arguably the most successful in the nation, imposes one year of interlock for a first offense, two for a second offense, three for a third offense and a lifetime interlock for four or more DWI offenses, with a five-year review. *Id.* at 22-23. Many jurisdictions have offenders with 10 or more prior DWI offenses, while some have offenders with more than 20 DWI offenses on their record. *Id.* at 22. There is evidence that 84% of the public support interlocks for DWI offenders. *Id.* Although New Mexico's interlock periods are on the longer end of the spectrum when the laws of the various states are examined, NHTSA did not hear any suggestion that they are inappropriate or unsupportable. *Id.* at 23. Expert members of a panel convened by NHTSA recommended longer interlock times for those offenders who refuse BAC tests. *Id.*

### ***Cost of interlock.***

The monthly costs to offenders for an installed interlock device are fairly consistent across the states, ranging from \$65 to \$90 a month. *Key Features*, 26. That number does not include the cost of installation, which is said to range from \$100 to \$250. *Id.* With installation, plus basic fees, the cost estimate for an interlock device annually is \$1,000 to \$1,500 at the upper end of the cost estimate range. *Id.* Monthly costs including installation range from \$70 to \$125. *Id.* The cost of the interlock has been described as equivalent to one or two drinks per day. *Id.* at 27. This is significantly less than the cost associated with an alcohol monitoring bracelet, which was said to cost \$12-\$15 per day. *Id.*

New Mexico has estimated that the cost to the State is \$50,000 for each DWI. *Key Features*, 26. The NHTSA report suggests that an effective interlock program can facilitate an offset of those costs. *Id.* Estimates in two different studies (in 2000 and in 2007) suggested that there is a benefit to a state for each dollar that an interlock program costs an offender. *Id.* Research estimates of the cost/benefit analysis suggested that there was a \$3 benefit to the State for each dollar of program cost for a first time DWI offender and a benefit of between 4-\$7 for other DWI offenders. *Toolkit*, 4.

In Arizona, offenders pay for interlock costs while the DMV Staff costs are covered by fees imposed on aggravated DWI offenders. *Key Features*, 26. Some states provide funds to offset costs to indigent offenders. *Id.* Other states use the revenue raised from the installation and use of interlocks to fund DWI victim programs. One state uses 2% of fees raised to offset cost of providing food stamps to indigent citizens.

### ***Potential models for statutory revision.***

The program in place in New Mexico was highlighted by NHTSA as one for consideration by states seeking to emulate a well-considered comprehensive set of features. *Key Features*, 50. By 2005, New Mexico had enacted six laws pertaining to the operation of its interlock program. *Id.* By 2008, the State had achieved a sustained effort to enact an interrelated

group of statutory provisions to address the issues pertaining to the use of ignition interlocks and to close loopholes left by earlier legislation. *Id.* All convicted DWI offenders are required to install interlocks. *Id.* An interlock license may be obtained shortly after arrest if the offender provides proof of insurance and did not commit vehicular homicide. *Id.* Past DWI offenders who are revoked may obtain an interlock license that allows interlock-controlled driving throughout the entire period of their revocation. *Id.* An indigent fund established by the State pays up to one-half of the cost of the monthly fees for qualified offenders. *Id.*

There are, however, still areas in which New Mexico's law could use improvement. It lacks monitoring for revoked offenders who obtain interlocks through the licensing act. *Id.* It does not contain provisions for extending offenders on the interlock until zero BAC-positive lockouts are achieved and maintained for a pre-determined period. *Id.* It also does not contain provisions for alternative alcohol-monitoring equipment for those who avoid the interlock requirement by claiming that they have no vehicle or no intention to drive. *Id.* Although it could be improved, New Mexico's laws have resulted in significant increases in interlock use and reductions in alcohol-related crashes, alcohol-related crash injuries, and alcohol-related fatalities. *Id.* Between 2002-2006, when interlock installation rates were approximately 35%, there was decrease in alcohol-related crash injuries of approximately 32%. *Toolkit*, 8. While not all of these reductions may be attributed solely to the interlock program, since other initiatives were underway during the same time period, the results are promising and research regarding the program continues. *Key Features*, 50.

#### **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. When making changes, Staff attempted to maintain the proportionality of penalties found in the current statute. Additional items not addressed in the draft statute that are proposed for consideration are:

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, not to exceed 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).

4. Alaska includes a requirement in its statute that an offender take a drug (apparently akin to a modern version of antabuse) or combination of drugs intended to prevent substance abuse and it also provides an option for house arrest of the offender.

5. Arkansas and Hawaii are two states that provide for the forfeiture of an offenders vehicle for a subsequent DWI offense (fourth and third, respectively). It has been suggested, however, that by the time someone is an habitual offender, that person is not likely to have a car in his or her own name and, even if he or she does, forfeitures may not be effective since leased vehicles and vehicles in which the bank has an interest are not forfeited.

6. Options for raising funds or offsetting interlock costs include the imposition of certain costs on offenders. Some states: reduce fines by the costs of installing an interlock device (Alaska); impose the cost of imprisonment (up to \$2,000) on the offender (Alaska and Arizona); and impose the cost of emergency services on the offender (Alaska and Arizona).

7. Payments to an appropriate fund could be used to defray the costs of the interlock.

8. Emergency override of the interlock should be considered.

9. An exception to the prohibition on renting, leasing or loaning a non-interlock vehicle to an offender required to drive an interlock vehicle in the event of an emergency could be considered (Arizona).

10. A requirement could be imposed requiring DWI cases to be tried or plead to with no reductions or plea agreements (Arkansas).

11. Some states seize the license plates and registrations of out-of-state offenders (Hawaii).

12. Some states prohibit the transfer of title or ownership of a vehicle before or during an interlock period without the approval of some official (the chief administrator or, in Hawaii, the Administrative Director of the Courts).

13. At this time, no motor vehicle points are imposed for DWI offenses since those offenses result in the loss of license and the accumulation of points results in the loss of license. If suspensions will no longer be imposed for DWI, it may be appropriate to consider the imposition of motor vehicle points for these offenses (which is currently handled by regulation).

### **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;~~

(B) 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

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

~~(E) if the person fails to comply with the ignition interlock requirements, in the discretion of the court, be imprisoned for not more than 30 days.~~

(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;~~

(B) be ordered by the court to perform community service for a period of 15 days, which shall be of such form and on such terms as the court shall deem appropriate;

(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

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

~~(E) if the person fails to comply with the ignition interlock requirements, in the discretion of the court, be imprisoned for not more than 30 days.~~

~~(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;~~

(2) 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

(3) 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

~~(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~~

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

~~(5) if the person fails to comply with the ignition interlock requirements, 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.~~

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; and

~~(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~~

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

~~(5) if the person fails to comply with the ignition interlock requirements, 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.~~

\* \* \*

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 in violation of 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.

The language of 39:3-40 may have to be modified if the changes to this section are incorporated since that section imposes enhanced penalties in the event of DWI suspensions.

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

(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) 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. If a person fails to comply with the ignition interlock requirement, and also fails to utilize 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, that person shall be imprisoned. Unless otherwise specified in this chapter, the person shall be imprisoned for:

- (1) a first offense, for a period not to exceed 30 days;
- (2) a second offense, for a period between 30 – 90 days; and
- (3) a third or subsequent offense, for a period not less than 180 days.

The prison terms set forth in this section shall be doubled for a violation of 39A:DWI-3.

i. 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) Tamper 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.

j. The provisions of subsection i. 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.

k. 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 devices to persons who have been ordered by the court to install or use such a device ~~in their vehicles~~.

l. 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.

m. 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.

n. 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.