

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Deputy Director
Re: Driving While Intoxicated – Contributions to the Drunk Driving Enforcement Fund for Refusal to Submit to Chemical Tests, N.J.S. 39:4-50.8
Date: May 06, 2024

MEMORANDUM

Project Summary

The New Jersey Legislature enacted driving while intoxicated statutes to “curb the senseless havoc and destruction caused by intoxicated drivers.”¹ To empower law enforcement officers to effectively enforce the DWI statutes, the Legislature also enacted the “Implied Consent Law.”² The refusal of an operator of a motor vehicle to provide “anything substantially short of any unconditional, unequivocal assent to an officer’s request that the arrested motorist take the breathalyzer test constitutes a refusal to do so.”³

In 1984, the New Jersey Legislature created the Drunk Driving Enforcement Fund (DDEF or the “Fund”).⁴ Individuals who are convicted of driving while intoxicated or who *refuse* to submit to a test for the presence of alcohol in their blood must pay a \$100.00 surcharge to the Fund.⁵ These funds are “used to maintain effective increased enforcement” of the State’s driving while intoxicated statutes.⁶ A court may only collect the surcharge “[u]pon conviction of a violation of [N.J.S.] 39:4-50[, DWI,] or. . . [N.J.S.] 39:4-50.4a[, refusal]....”⁷

A member of the public advised the Commission that in New Jersey officers may be charging individuals with the refusal to undergo testing for alcohol in their blood under either N.J.S. 39:4-50.2 or N.J.S. 39:4-50.4a.⁸ “There is ongoing confusion among police officers regarding the [selection of the] correct refusal statute” with which to charge an intoxicated driver.⁹ The financial implications could be significant because the DDEF statute does not explicitly authorize the collection of the surcharge for *refusals* written pursuant to N.J.S. 39:4-50.2.¹⁰

This public request served as the basis for this examination of New Jersey’s DWI refusal statutes.¹¹

¹ *State v. Widmaier*, 157 N.J. 475, 487 (1999) (quoting *State v. Tischio*, 107 N.J. 504, 512 (1987)).

² *Id.* (citing N.J. STAT. ANN. § 39:4-50.2).

³ *Widmaier*, 157 N.J. at 488 (quoting *State v. Bernhardt*, 245 N.J. Super. 210, 219 (App. Div.) (1991)).

⁴ L. 1984, c. 4, § 1, eff. Feb. 9, 1984, codified as N.J. STAT. ANN. § 39:4-50.8 (West 2024).

⁵ N.J. STAT. ANN. § 39:4-50.8

⁶ N.J.A.C. 13:86-2.1 (West 2024); *see also* N.J.A.C. 13:86-2.1(a)(1)-(2).

⁷ N.J. STAT. ANN. § 39:4-50.8.

⁸ E-mail from Michael J. Rizol, Jr., Dir. N.J. Div. of Highway Traffic Safety to Rhonda Crimi, Chief, Pol’y & Proc., Mun. Ct. Servs. Div., Admin. Ofc. of the Cts with copy to Samuel M. Silver, Dep. Dir., N.J. Law Revision Comm’n (Apr. 25, 2024, 02:41 p.m. EST) [hereinafter Rizol e-mail] (noting approximately fifty percent of the refusal citations are written on N.J.S. 39:4-50.2) (on file with the NJLRC).

⁹ *Id.*

¹⁰ N.J. STAT. ANN. § 39:4-50.8.

¹¹ N.J. STAT. ANN. § 1:12A-8(c) (providing that it is the duty of the Commission to “[r]eceive and consider suggestions and recommendations from. . . the public generally, for the improvement and modification of the general and permanent statutory law of the State, and bring the law. . . into harmony with modern conceptions and conditions....”).

Statutes Considered¹²

N.J.S. 39:4-50.8. Conviction for violation of § 39:4-50; surcharge; distribution.

Upon a conviction of a violation of R.S. 39:4-50 or section 2 of P.L.1981, c. 512 (C. 39:4-50.4a),¹³ the court shall collect from the defendant a surcharge of \$100.00 in addition to and independently of any fine imposed on that defendant. The court shall forward the surcharge to the **Director of the Division of Motor Vehicles**¹⁴ who shall deposit \$95.00 of the surcharge into a “Drunk Driving Enforcement Fund” (hereinafter referred to as the “fund”). This fund shall be used to establish a Statewide drunk driving enforcement program to be supervised by the director. The remaining \$5.00 of each surcharge shall be deposited by the director into a separate fund for administrative expenses. (Emphasis added).

* * *

N.J.S. 39:4-50.2. Consent to taking samples of breath; record of test; independent test; prohibition of use of force; informing accused

(a) Any person who operates a motor vehicle on any public road, street or highway or quasi-public area in this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood; provided, however, that the taking of samples is made in accordance with the provisions of this act and at the request of a police officer who has reasonable grounds to believe that such person has been operating a motor vehicle in violation of the provisions of R.S.39:4-50 or section 1 of P.L.1992, c. 189 (C.39:4-50.14).

(b) A record of the taking of any such sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy thereof, upon his request, shall be furnished or made available to the person so tested.

(c) In addition to the samples taken and tests made at the direction of a police officer hereunder, the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.

(d) The police officer shall inform the person tested of his rights under subsections (b) and (c) of this section.

¹² N.J. STAT. ANN. § 39:4-50.4a has been reproduced at the end of this memorandum for the convenience of the reader.

¹³ L. 1994, c. 184, § 3, eff. Dec. 23, 1994.

¹⁴ See N.J. Reorg. Plan No. 004-1992, § D (Nov. 30, 1992) (transferring “the functions of the Division of Motor Vehicles with respect to the allocation and administration of the Drunk Driving Enforcement Fund to the Office of Highway and Traffic Safety [to] eliminate duplication of effort by the Department in administering various grant programs...”). Although not by the inquiry received from the member of the public, *supra* n. 8, the Commission may wish to address this anachronistic reference.

(e) No chemical test, as provided in this section, or specimen necessary thereto, may be made or taken forcibly and against physical resistance thereto by the defendant. The police officer shall, however, inform the person arrested of the consequences of refusing to submit to such test in accordance with section 2 of this amendatory and supplementary act. **A standard statement, prepared by the chief administrator,**¹⁵ shall be read by the police officer to the person under arrest.

Background

• *Origin of Informed Consent & Refusal*

In 1913, pursuant to New Jersey’s Disorderly Persons Act, any person who operated a motor vehicle on any public street while under the influence of intoxicating liquors was adjudged to be a disorderly person.¹⁶ In 1921, the Legislature transferred the offense from the Disorderly Persons Act to Title 39, the Motor Vehicle Act.¹⁷

The enforcement of the State’s statute prohibiting intoxicating driving faced significant challenges because drivers were not required to undergo blood-alcohol tests.¹⁸ In addition, drivers faced no consequences for refusing to undergo a sobriety test. As a result, national refusal rates were as high as 92%.¹⁹ In New Jersey, during 1964–65, the State Police reported a refusal rate of 26.5%.²⁰

In the early 1950s, there were divergent views in the United States regarding measures to address drunk driving. Some advocated for laws mandating that every suspected drunk driver undergo a chemical test.²¹ Others suggested that all drivers should agree, as part of their license application, to submit to such tests if they are suspected of driving under the influence.²² At the time, many in the traffic safety field expressed skepticism about the public’s willingness to accept such stringent measures.²³ After New York introduced an implied consent statute as a compromise, several other states, including New Jersey, followed suit.²⁴

¹⁵ See N.J. Reorg. Plan No. 003-2009 § 1 (Aug 03, 2009) (transferring “the functions, powers and duties relating to the preparation of the standard statements regarding the consequences of refusal to submit to chemical breath test prepared pursuant to... [N.J.S.] 39:4-50.2... are transferred to the Attorney General.”). . 41 N.J.R. 2825(a) (Aug. 3, 2009). Although not by the inquiry received from the member of the public, *supra* n. 8, the Commission may wish to address this anachronistic reference.

¹⁶ L. 1913, c. 67, § 1 (providing that “[a]ny person... who shall operate an automobile... over any public street or highway while under the influence of intoxicating liquors shall be adjudged to be a disorderly person....”); *State v. Hammond*, 118 N.J. 306, 312 (1990).

¹⁷ L.1921, c. 208, § 14. *State v. Hammond*, 118 N.J. at 313.

¹⁸ *State v. Marquez*, 202 N.J. 485, 497 (2010). See *State v. Wright*, 107 N.J. 488, 498-99 (1987), abrogated by *State v. Cummings*, 184 N.J. 84 (2005) (noting “[w]ithout a breathalyzer test, police were denied a method of reliably distinguishing those motorists who were drunk from motorists who displayed symptoms of drunkenness [sic] that were actually attributable to other causes” such as dizziness following a crash.).

¹⁹ Public Hearings on Senate Bill No. 9, Implied Consent, (Feb. 21, 1966) at 12.

²⁰ *Id.* at 14.

²¹ *State v. Wright*, 107 N.J. at 500.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

In 1966 New Jersey enacted implied consent and refusal statutes.²⁵ The implied consent statute was “conceived and enacted for laudable public purposes and to serve valid state interests.”²⁶ These interests included avoiding the necessity for force in sample collection, facilitating the acquisition of the most credible evidence of driving while intoxicated, and curbing the presence of dangerous drunk drivers on highways through administrative measures, such as license suspension.²⁷

The implied consent statute “deemed all motorists operating a vehicle on a public road had consented to the taking of breath samples, which [c]ould be tested for blood-alcohol content.”²⁸ The statute was “supplemented by N.J.S. 39:4-50.4, which imposed penalties for those refusing to submit to a breathalyzer test.”²⁹ The refusal statute authorized the Director of the Division of Motor Vehicles to revoke a person’s license upon a finding that the arresting officer had reasonable grounds that the person operated their vehicle while intoxicated.³⁰ These statutes, at the time of their respective enactments, did not reference the other.

Despite New Jersey’s enactment of the implied consent statute, it was still advantageous for an offender to refuse to submit to a test.³¹ The six-month license suspension imposed for a refusal to consent to a chemical test was “so much shorter than any penalty imposed for [drunk driving] except for a first ‘impaired’ offense.”³² While a repeat offender, depending on their record, could face either a two-year or ten-year revocation of the license, a person who refused to submit to a breath test risked only a six-month license suspension.³³

In 1977, the Legislature amended the refusal statute to address this loophole.³⁴ The amended statute provided for a ninety day license revocation for a first refusal and a one-year revocation for a second offense.³⁵ Given these new penalties, “the Legislature added the requirement that police officers inform the person arrested of the consequences of refus[al]”³⁶ The Director of the Division of Motor Vehicles³⁷ was required to prepare the standard statement that would be read to motorists warning them of the consequences of their failure to submit to a breathalyzer test.³⁸

²⁵ L. 1966, c. 142, §§ 2, 4 (codified as N.J. STAT. ANN. §§ 39:4-50.2 and 39:4-50.4).

²⁶ *State v. Hudes*, 128 N.J. Super. 589, 605 (Law Div. 1974).

²⁷ *Id.*

²⁸ L. 1966, c. 142, § 2 (N.J. STAT. ANN. § 39:4-50.2).

²⁹ *State v. Wright*, 107 N.J. at 500.

³⁰ L. 1966, c. 142, § 4 (N.J. STAT. ANN. § 39:4-50.4) (repealed by L.1981, c. 512, § 3, eff. Jan. 12, 1982).

³¹ *State v. Marquez*, 202 N.J. at 499.

³² *Id.* (alterations original) (quoting N.J. MOTOR VEHICLE STUDY COMM’N, *Report* 150-51).

³³ *Id.*

³⁴ L. 1977, c. 29.

³⁵ L. 1977, c. 29, § 4.

³⁶ L. 1977, c. 29, § 2; N.J. STAT. ANN. § 39:4-50.2(e) (“[a] standard statement, prepared by the chief administrator, shall be read by the police officer to the person under arrest” informing them of the consequences of refusal to submit to a breathalyzer test).

³⁷ N.J. Stat. Ann. § 39:2A-4 (changing the name from the division of Motor Vehicles to the “New Jersey Motor Vehicle Commission”).

³⁸ L. 1977, c. 29, § 3.

Both the informed consent and the refusal statute would undergo further modifications in 1981.³⁹ Among other changes, the amended informed consent statute “transferred jurisdiction for refusal cases from the Office of Administrative Law and the DMV to the municipal courts.”⁴⁰ In addition, the refusal statute “raised the penalties for refusal to six months’ license suspension for a first offense and two years for subsequent offenses.”⁴¹ Significantly, the Legislature repealed N.J.S. 39:4-50.4,⁴² and enacted a new refusal statute - N.J.S. 39:4-50.4a.⁴³

The new refusal statute, N.J.S. 39:4-50.4a was enacted in an attempt to induce individuals suspected of driving while intoxicated to undergo the breathalyzer test.⁴⁴ Before taking effect on January 12, 1982, the statute was amended to provide for up to a one year loss of license for a first offense and a two year suspension for a second offense.⁴⁵ Additionally, the amended statute permitted municipal courts to impose fines of not less than \$250 for a first offense and not more than \$1,000 for a second offense.⁴⁶

The legislative history of the consent and refusal statutes confirms that these statutes were enacted to assist law enforcement officers in drunk driving investigations.⁴⁷ Each statute was formulated to permit law enforcement to act quickly in the collection of scientific evidence that is only available within a very narrow timeframe.⁴⁸ These statutes permitted officers to interact with individuals whose proximity to the incident suggested that these individuals could provide valuable insights towards uncovering the truth about whether the individual had engaged in drunk driving.⁴⁹

Between 1977 and 2009, the preparation of standard statements concerning the consequences of refusal to submit to a chemical test for individuals arrested for driving while intoxicated rested with the Chief Administrator of the Division of Motor Vehicles.⁵⁰ In 1977, the Division of Motor Vehicles was a branch within the Department of Law and Public Safety.⁵¹ The promulgation of the standard statement was under the direction of the Attorney General.⁵² In 1995, the Division of Motor Vehicles was transferred and reorganized within the Department of

³⁹ See L. 1981, c. 512, c. 537.

⁴⁰ See L. 1981, c. 512, § 2; A.B. 2293, 199th Leg. (N.J. Dec. 8, 1980) (Sponsor's Statement).

⁴¹ See L. 1981, c. 537, § 2.2.

⁴² L.1981, c. 512, § 3, eff. Jan. 12, 1982

⁴³ L.1981, c. 537, § 2, eff. Jan. 12, 1982. Amended by L. 1981, c. 537, § 2.

⁴⁴ *State v. Wright*, 107 N.J. at 501 (quoting N.J. MOTOR VEHICLE STUDY COMM’N, *Report* 147-48, 150-51

⁴⁵ Amended by L. 1981, c. 537, § 2.

⁴⁶ *Id.* This statute would be amended another ten times. See L.1994, c. 184, § 2, eff. Dec. 23, 1994 ; L.1997, c. 277, § 2, eff. Dec. 30, 1997; L.1999, c. 185, § 5; L.2004, c. 8, § 1, eff. April 26, 2004; L.2007, c. 267, § 2, eff. March 1, 2008; L.2009, c. 201, § 5, eff. Jan. 14, 2010; L.2019, c. 248, § 3, eff. Dec. 1, 2019; L.2021, c. 16, § 82, eff. Feb. 22, 2021, (contingent operative date); L.2023, c. 191, § 6, eff. Feb. 19, 2024. The modifications contained in these amendments exceed the scope of this memorandum.

⁴⁷ *State v. Wright*, 107 N.J. at 502 (quoting *State v. Wright*, 209 N.J. Super. 482, 487 (App. Div. 1986) (Fritz, P.J.A.D., dissenting)).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See *supra* n. 40. See also N.J. Reorg. Plan No. 003-2009 § 1 (Aug. 03, 2009); 41 N.J.R. 2825(a) (Aug. 3, 2009).

⁵¹ N.J. Reorg. Plan No. 003-2009 (General Statement of Purpose); 41 N.J.R. 2825(a).

⁵² *Id.*

Transportation and established as an independent Commission.⁵³ “[T]o more efficiently provide for the preparation of the standard statement, [the] Reorganization Plan [] provide[d] for the transfer of responsibility of the standard statement to the Attorney General” as the State’s chief law enforcement officer.⁵⁴

Analysis

To understand the enforcement of New Jersey’s refusal statute a person must engage in a multi-step analysis involving the examination of two statutes *and* the contents of a statement prepared by the Attorney General.⁵⁵ The intricacies of navigating the interactions between these two statutes and the prescribed statement have been acknowledged even by the New Jersey Supreme Court.⁵⁶

The identification of each of the elements of the refusal offense necessitates an examination of the informed consent and refusal statutes because despite appearing in different statutory sections, “they are plainly interrelated.”⁵⁷ The refusal statute mandates that officers *request* motor vehicle operators to undergo a breath test, while the implied consent statute delineates *how* to make such a request.⁵⁸ To be convicted of a refusal to submit to a breath test, the judge must find that the driver “refused to submit to the test *upon the request of the officer.*”⁵⁹ The test that officers must reference is the chemical test set forth in the informed consent statute – N.J.S. 39:4-50.2.⁶⁰ The implied consent statute instructs officers to articulate a standard statement to the person under arrest with the explicit purpose of informing the arrested person about the consequences of refusing to submit to such a test in accordance with the refusal statute – N.J.S. 39:4-50.4a.⁶¹

In *State v. Marquez*, the New Jersey Supreme Court determined that the two statutes must be read in *pari materia*.⁶² The Court reasoned that if an officer relied solely on N.J.S. 39:4-50.4a to enforce the refusal statute, they could potentially select any language they deemed suitable to request that a driver submit to a breath test.⁶³ This reading would undermine the Legislature’s intent that all officers read “a standard statement” to the person under arrest, specifically to inform them of the consequences of refusing to submit to such a test in accordance with N.J.S. 39:4-50.4a.⁶⁴

⁵³ N.J. Reorg. Plan No. 002-1995 § 1a (Mar. 13, 1995).

⁵⁴ N.J. Reorg. Plan No. 003-2009 § 1; 41 N.J.R. 2825(a), § 1.

⁵⁵ See N.J. STAT. ANN. §§ 39:4-50.2; 39:4-50.4a; N.J. Att’y Gen. Standard Statement for Motor Vehicle Operators (N.J.S. 39:4-50.2(e)) (revised and effective Jul. 01, 2012).

⁵⁶ *Marquez*, 202 N.J. at 501-02.

⁵⁷ *Id.* at 501.

⁵⁸ *Id.* (citing N.J. STAT. ANN. §§ 39:4-50.2; 39:4-50.4a).

⁵⁹ *Id.* (citing N.J. STAT. ANN. § 39:4-50.4a(a)).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 502 (finding that “the statutes not only cross-reference one another internally, but they also rely on each other substantively. They must therefore be read together.”).

⁶³ *Id.*

⁶⁴ *Id.* See also *State v. Widmaier*, 157 N.J. 475, (1999) (finding that by requiring the reading of a standardized statement “the Legislature has provided a procedural safeguard to help ensure that defendants understand the mandatory nature

After conducting a careful analysis of both the informed consent and the refusal statute, the *Marquez* Court concluded that four elements must be satisfied to sustain a conviction for the refusal to submit to a chemical test:

(1) the arresting officer had probable cause to believe that defendant had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol or drugs; (2) defendant was arrested for driving while intoxicated; (3) the officer requested defendant to submit to a chemical breath test and informed defendant of the consequences of refusing to do so; and (4) defendant thereafter refused to submit to the test.⁶⁵

The Court noted that the Attorney General’s written guidelines for the prosecution of refusal violations set forth similar elements to the Court’s four-part standard.⁶⁶

The implied consent statute, N.J.S. 39:4-50.2(e), requires that the standard statement promulgated by the Attorney General be read to operators to inform them of the consequences of refusing to submit to a breath test. This statement reads, in pertinent part: “5. If you refuse to provide samples of your breath, you will be issued a separate summons for the refusal. A court may find you guilty of both refusal and driving while intoxicated.”⁶⁷

Given the intertwined nature of the informed consent and the refusal statutes, it is unclear under which statute the refusal must be written – N.J.S. 39:4-50.2 or N.J.S. 39:4-50.4a. Preliminary data on this issue suggests that one half of refusal citations are written as violations of N.J.S. 39:4-50.2 and the other half written as violations of N.J.S. 39:50.4a.⁶⁸ Additionally, it appears that “the municipal courts have adapted to this and accept either as the correct refusal statute.”⁶⁹

The consequence of accepting either violation as being the “correct” refusal statute may have an impact on the DDEF. N.J.S. 39:4-50.8 requires a court to impose a \$100.00 surcharge *only* for a conviction of a violation of N.J.S. 39:4-50 or 39:4-50.4a.⁷⁰ If, however, one half of all refusal violations are written as violations of N.J.S. 39:4-50.2, then the possibility exists that the municipal courts are not imposing the \$100.00 statutory surcharge set forth in N.J.S. 39:4-50.8. Conversely, the municipal court collection of the surcharge for violations of N.J.S. 39:4-50.2 may suggest that the DDEF statute may benefit from a reference to the informed consent statute.⁷¹

of the breathalyzer test, their limited rights to counsel for purposes of the test, and the need for unequivocal, affirmative consent.”).

⁶⁵ *Id.* at 503.

⁶⁶ *Id.* at 505 (quoting Office of the Att’y Gen., Attorney General’s Guideline: Prosecution of DWI & Refusal Violations 4–5 (Jan. 24, 2005), available at <http://www.state.nj.us/oag/dcj/agguide/d-10jd-dwi-2005>).

⁶⁷ N.J. Att’y Gen. Standard Statement for Motor Vehicle Operators (N.J. STAT. ANN. § 39:4-50.2(e)) (revised and effective Jul. 01, 2012).

⁶⁸ Rizol e-mail at *1.

⁶⁹ *Id.*

⁷⁰ N.J. STAT. ANN. § 39:4-50.8.

⁷¹ E-mail from Rhonda Crimi, Chief, Pol’y & Proc., Mun. Ct. Servs. Div., Admin. Ofc. of the Cts. to Michael J. Rizol, Jr., Dir. N.J. Div. of Highway Traffic Safety with copy to Samuel M. Silver, Dep. Dir., N.J. Law Revision Comm’n (May 3, 2024, 10:337 a.m. EST) (noting that “a random sampling of tickets (approx. 75) from across the state that

Pending Bills

There are no bills pending that seek to amend the language of N.J.S. 39:4-50.8.

Conclusion

Staff requests authorization to conduct further research and outreach to determine whether N.J.S. 39:4-50.8, which imposes a surcharge upon a conviction for a violation of the State's DWI or refusal statute would benefit from modification.

were heard in March [2024] where there was a guilty finding either to 39:4-50.2 or 39:4-50.4a and the surcharge [was] assessed by the judges" in all but a couple of cases.) (on file with the NJLRC).

For reference

N.J.S. 39:4-50.4.

Repealed by L.1981, c. 512, § 3, eff. Jan. 12, 1982

N.J.S. 39:4-50.4a. Refusal to submit to chemical test; penalties

a. The municipal court shall order any person who, after being arrested for a violation of R.S.39:4-50 or section 1 of P.L.1992, c. 189 (C.39:4-50.14), refuses to submit, upon request, to a test provided for in section 2 of P.L.1966, c. 142 (C.39:4-50.2):

(1) if the refusal was in connection with a first offense under this section, to forfeit the right to operate a motor vehicle over the highways of this State until the person installs an ignition interlock device in one motor vehicle owned, leased, or principally operated by the person, whichever the person most often operates, for the purpose of complying with the provisions of P.L.1999, c. 417 (C.39:4-50.16 et al.);

(2) if the refusal was in connection with a second offense under this section, to forfeit the right to operate a motor vehicle over the highways of this State for a period of not less than one year or more than two years following the installation of an ignition interlock device in one motor vehicle owned, leased, or principally operated by the person, whichever the person most often operates, for the purpose of complying with the provisions of P.L.1999, c. 417 (C.39:4-50.16 et al.);

(3) if the refusal was in connection with a third or subsequent offense under this section, to forfeit the right to operate a motor vehicle over the highways of this State for a period of eight years following the installation of an ignition interlock device in one motor vehicle owned, leased, or principally operated by the person, whichever the person most often operates, for the purpose of complying with the provisions of P.L.1999, c. 417 (C.39:4-50.16 et al.). 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 P.L.1966, c. 73 (C.39:5D-1 et seq.), shall constitute a prior conviction under this section.

The municipal court shall determine by a preponderance of the evidence whether 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 the person was under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug, or marijuana or cannabis item as defined in section 3 of P.L.2021, c. 16 (C.24:6I-33); whether the person was placed under arrest, if appropriate, and whether he refused to submit to the test upon request of the officer; and if these elements of the violation are not established, no conviction shall issue. In addition to any other requirements provided by law, a person whose operator's license is revoked for refusing to submit to a test shall be referred to an Intoxicated Driver Resource Center established by subsection (f) of R.S.39:4-50 and shall satisfy the same

requirements of the center for refusal to submit to a test as provided for in section 2 of P.L.1966, c. 142 (C.39:4-50.2) in connection with a first, second, third or subsequent offense under this section that must be satisfied by a person convicted of a commensurate violation of this section, or be subject to the same penalties as such a person 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 the provisions of R.S.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 the provisions of R.S.39:4-50. In addition to issuing a revocation, the municipal court shall fine a person convicted under this section, a fine of not less than \$300 or more than \$500 for a first offense; a fine of 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.

Notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement under this section is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the Revised Statutes or offense under Title 2C of the New Jersey Statutes; provided, however, that if a person is convicted of operating a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug or permitting another person who is under the influence of a narcotic, hallucinogenic, or habit-producing drug to operate a motor vehicle owned by the person or under the person's custody or control pursuant to the provisions of R.S.39:4-50 or a person is convicted of operating a commercial motor vehicle under the influence of a controlled substance pursuant to section 5 of P.L.1990, c. 103 (C.39:3-10.13), the person shall forfeit the right to operate a motor vehicle over the highways of this State for a period of not less than six months.

b. (Deleted by amendment, P.L.2019, c. 248)

Credits: L.1981, c. 512, § 2, eff. Jan. 12, 1982. Amended by L.1981, c. 537, § 2, eff. Jan. 12, 1982; L.1994, c. 184, § 2, eff. Dec. 23, 1994; L.1997, c. 277, § 2, eff. Dec. 30, 1997; L.1999, c. 185, § 5; L.2004, c. 8, § 1, eff. April 26, 2004; L.2007, c. 267, § 2, eff. March 1, 2008; L.2009, c. 201, § 5, eff. Jan. 14, 2010; L.2019, c. 248, § 3, eff. Dec. 1, 2019; L.2021, c. 16, § 82, eff. Feb. 22, 2021, (contingent operative date); L.2023, c. 191, § 6, eff. Feb. 19, 2024.