



**STATE OF NEW JERSEY  
NEW JERSEY LAW REVISION COMMISSION**

**Final Report  
Relating to**

**Driving While Intoxicated**

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## Introduction

Various officials asked the Commission to consider revising the provisions of Title 39 that pertain to driving while intoxicated, *N.J.S.* 39:4-50 – 39:40-51b. In response, Staff began a broad investigation of the issues.

Staff reviewed studies conducted by, and materials prepared by, the: Department of Transportation, National Highway Traffic Safety Administration (“NHTSA”); Centers for Disease Control and Prevention (“CDC”); United States Department of Health and Human Services, Office of Applied Studies, Substance Abuse and Mental Health Services Administration (“SAMHSA”); National Conference of State Legislatures (“NCSL”); Governors Highway Safety Association (“GHSA”); the Insurance Institute for Highway Safety (“IIHS”); Traffic Injury Research Foundation (“TIRF”); Mothers Against Drunk Drivers (“MADD”); Pacific Institute for Research and Evaluation (“PIRE”, an independent non-profit public health organization); American Prosecutor’s Research Institute’s National Traffic Law Center; National Center for DWI Courts; Task Force on Community Preventive Services (American Journal of Preventive Medicine, 2011); Officer.com (which features law enforcement technology and product news); Coalition of Ignition Interlock Manufacturers; and DrinkingandDriving.org.

This Report consists of an Introduction, which includes background information regarding DWI issues and the March 2012 version of Senator Scutari’s bill, S1750, as well as draft revised statutory language incorporating the Commission comments at the April 2012 and May 2012 Commission meetings.

Background.....	2
I. General DWI Information.....	3
II. Options for increasing the effectiveness of New Jersey’s DWI law.....	5
A. Requiring IIDs for all first-time offenders.....	5
B. Administrative license suspensions / pre-conviction IID.....	8
C. Consequences for those who claim they do not have or will not use a vehicle.....	10
D. Added penalties for repeat offenders for underage drinking and driving.....	11
Summary of March 2012 version of S1750.....	13
Draft statutory language with explanatory comments.....	15

## Background

Despite ongoing efforts to increase awareness of, and decrease the incidence of, driving while intoxicated, it remains a serious problem, both in New Jersey and nationwide.

In New Jersey, in 2011, there were a total of 587 fatal crashes with 628 people killed.<sup>1</sup> 536 of the 2011 fatalities (including drivers, passengers, pedestrians and bicyclists) were tested

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<sup>1</sup> New Jersey State Police, Fatal Accident Investigation Unit, *Fatal Motor Vehicle Crash Comparative Data Report for the State of New Jersey*, 2011, p. 10, [http://www.njsp.org/info/fatalacc/2011\\_fatal\\_crash.pdf](http://www.njsp.org/info/fatalacc/2011_fatal_crash.pdf)

for alcohol and 36.4% of them were positive for alcohol.<sup>2</sup> In 2010, there were a total of 530 fatal crashes in New Jersey with 556 people killed.<sup>3</sup> 466 of the 2010 fatalities were tested for alcohol and 36.5% of them were positive for alcohol.<sup>4</sup> According to information made available on the website of the New Jersey State Police, the 2011 numbers indicate 14.7% increase in alcohol-related fatalities as compared with the 2010 numbers, which reflected a 4.3% increase in alcohol-related fatalities as compared with the 2009 numbers.<sup>5</sup>

According to the Administrative Office of the Courts (AOC), DWI complaints and convictions for 2011 and 2010 were as follows:

- Total number of DWI complaints filed during calendar year: 2011 – 33,239; 2010 - 35,460;
- Total number of DWI convictions during calendar year: 2011 – 24,241; 2010 - 23,644;
- Staff was advised that the number of DWI convictions fluctuates slightly from year to year, but is consistently between 23,000 and 27,000;
- The DWI complaints and convictions data cannot necessarily be correlated annually because delays in the disposition of these matters can cause a complaint to be filed in one year, and the matter to be resolved in a subsequent year;
- The AOC does not track the number of first, second and third/subsequent offenders, but can obtain approximate numbers based on the length of the sentences imposed as follows:

	<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense</b>	<b>3<sup>rd</sup> and subsequent</b>
<b>2008</b>	27,669 (82.6%)	4,368 (13%)	1,464 (4.4%)
<b>2009</b>	21,043 (80.2%)	3,889 (14.8%)	1,299 (5%)
<b>2010</b>	19,812 (80.3%)	3,621 (14.7%)	1,252 (5%)
<b>2011</b>	19,541 (81.5%)	3,557 (14.8%)	1,087 (4.5%)

- From March 1, 2010 through February 28, 2011, ignition interlocks were ordered 7,194 times; it is not clear how many were installed.

### ***I. General DWI Information***

It is widely recognized that driving under the influence of alcohol or 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

<sup>2</sup> *Id.*

<sup>3</sup> New Jersey State Police, Fatal Accident Investigation Unit, *Fatal Motor Vehicle Crash Comparative Data Report for the State of New Jersey*, 2010, p. 10, [http://www.state.nj.us/njsp/info/fatalacc/2010\\_fatal\\_crash\\_101711.pdf](http://www.state.nj.us/njsp/info/fatalacc/2010_fatal_crash_101711.pdf)

<sup>4</sup> *Id.* at 10.

<sup>5</sup> New Jersey State Police, Fatal Accident Investigation Unit, *Fatal Motor Vehicle Crash Comparative Data Report for the State of New Jersey*, 2011, p. 10, [http://www.njsp.org/info/fatalacc/2011\\_fatal\\_crash.pdf](http://www.njsp.org/info/fatalacc/2011_fatal_crash.pdf) and New Jersey State Police, Fatal Accident Investigation Unit, *Fatal Motor Vehicle Crash Comparative Data Report for the State of New Jersey*, 2010, p. 10, [http://www.state.nj.us/njsp/info/fatalacc/2010\\_fatal\\_crash\\_101711.pdf](http://www.state.nj.us/njsp/info/fatalacc/2010_fatal_crash_101711.pdf)

operation of a motor vehicle.<sup>6</sup> This Report focuses exclusively on the issue of alcohol-impaired driving.

David P. Phillips and Kimberly M. Brewer studied federal statistics pertaining to approximately 1.5 million fatal automobile accidents that occurred in the United States from 1994 through 2008. The study revealed that a BAC of even .01, well below the legal limit and so low that it would not likely be detectible without a blood test, significantly increased the chances that a driver will be involved in an accident causing serious injuries and fatalities.<sup>7</sup> When the study was released, David Phillips was quoted as saying that “[a]ccidents are 36.6 percent more severe even when alcohol was barely detectible in a driver’s blood” since, even at those low levels, drivers are more likely to speed and to hit another vehicle.<sup>8</sup>

Across the country, and in New Jersey, approximately one-third of all traffic-related deaths are the result of alcohol-involved crashes.<sup>9</sup> This proportion has not changed appreciably in a decade.<sup>10</sup> Every day, approximately 32 people die in motor vehicle crashes involving an alcohol-impaired driver.<sup>11</sup> Nearly 11,000 people are killed every year by a driver under the influence; about one person every 50 minutes.<sup>12</sup> A 2000 study funded by NHTSA estimated the cost of alcohol-related vehicle crashes at more than \$50 billion annually.<sup>13</sup>

In the United States, 93.6% of individuals 21 or older (approximately 186 million people) are classified as drivers.<sup>14</sup> 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.<sup>15</sup>

Nationwide, there are approximately 1.4 million DWI arrests per year.<sup>16</sup> That represents approximately one DWI arrest for every 139 licensed drivers in the United States<sup>17</sup> and suggests that, in a given year, less than 5% of those driving under the influence are caught nationwide.

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<sup>6</sup> 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*”).

<sup>7</sup> Lee Dye, *Drunk Driving: Even a Trace of Alcohol is Dangerous on the Road, Says Study*, abcnews.go.com (June 22, 2011), <http://abcnews.go.com/Technology/drunk-driving-trace-alcohol-make-driver-dangerous/story?id=13897319#.T3SiFmGNcSE>

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

<sup>9</sup> *State Estimates*, 1.

<sup>10</sup> National Transportation Safety Board, *Most Wanted List; Addressing Alcohol-Impaired Driving*, June 23, 2011, <http://www.nts.gov/safety/mwl-9.html> (“*Most Wanted List*”).

<sup>11</sup> *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) (“*Advancing*”).

<sup>12</sup> *Most Wanted List*.

<sup>13</sup> *Ibid.*

<sup>14</sup> 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*”).

<sup>15</sup> *State Estimates*, 2.

<sup>16</sup> Randy W. Elder, PhD, Robert Voas, PhD, Doug Beirness, PhD, Ruth A. Shults, PhD, MPH, David A. Sleet, PhD, FAAHB, James L. Nichols, PhD, Richard Compton, PhD, *Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes; A Community Guide Systematic Review*, *Am J Prev Med* 2011, 40(3), 363 (“*Effectiveness*”).

<sup>17</sup> *Arrests*, 2.

These numbers have remained largely stable for more than 20 years after dropping significantly in the late 1980s and early 1990s.<sup>18</sup>

According to the IIHS, most impaired drivers are never stopped.<sup>19</sup> Estimates of the chance of arrest when driving impaired, based on studies using telephone surveys and official arrest records, “range from small (about 1 in 50) to miniscule (1 in 480)”<sup>20</sup>.

One-half to two-thirds of all offenders driving under the influence are first-time offenders.<sup>21</sup> There is a popular myth that a first offender is someone who drove drunk once and was caught.<sup>22</sup> Studies indicate, however, that an average “first offender” may have driven drunk 87 times before being caught.<sup>23</sup>

Up to 80% of drivers whose license is suspended after a DWI arrest continue to drive, and many continue to drink and drive.<sup>24</sup> This statement is supported by both self-reporting and covert surveillance of suspended drivers, many of whom continue to drive without a license or insurance even after they are eligible for reinstatement of their license.<sup>25</sup>

In July 2012, the federal Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) (MAP-21), was signed into law. MAP-21 eliminated certain federal restrictions on the use of IIDs and made grant funding available to states that enact and enforce all-offender IID laws.

## ***II. Options for increasing the effectiveness of New Jersey’s DWI law***

Based on the review of various studies and the laws of other states, Staff proposed four modifications to New Jersey law to reflect the information gathered from the studies, statistics and the successful implementation of programs in other states. For purposes of this project, Staff defined “success” as a modification to the DWI law of a given state that was followed by a decrease in the number of DWI-associated crashes, injuries and/or fatalities.

Staff’s proposals include: requiring IIDs for all DWI offenders, including first-time offenders; implementing administrative suspensions or providing incentives for the pre-conviction use of IIDs; imposing alternative consequences on offenders who wish to avoid the installation of an IID by claiming that they do not have access to a car; and modifying the

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

<sup>19</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *Q & A: Alcohol – deterrence & enforcement*, March 2012, [http://www.iihs.org/research/qanda/alcohol\\_enforce.html](http://www.iihs.org/research/qanda/alcohol_enforce.html) (“Q & A: Alcohol”).

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

<sup>21</sup> Department of Transportation, National Highway Traffic Safety Administration, *Key Features for Ignition Interlock Programs* (March 2010), 19 (“Key Features”).

<sup>22</sup> *Advancing*.

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

<sup>24</sup> 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), (“Toolkit”), 13, 15; Department of Transportation, National Highway Traffic Safety Administration, *Observational Study of the Extent of Driving While Suspended for Alcohol-Impaired Driving*, Report DOT HS February 2002.

<sup>25</sup> *Effectiveness*, 362.

statutory provisions pertaining to underage drinking to address the problem of repeat violators of that statute. The bases for those recommendations, and the manner in which the proposals have been modified in response to direction provided by the Commission, are set forth below.

#### ***A. Requiring IIDs for all first-time offenders***

Currently, all 50 states and the District of Columbia provide for the use of IIDs, although the requirements associated with their use vary.<sup>26</sup> IIDs are mandatory, at least in some circumstances, in 37 states.<sup>27</sup> An increasing number of states have made IIDs mandatory or “highly incentivized” for all offenders, including first-time offenders; as of March 2012, 16 states did so.<sup>28</sup> The IIHS estimated that 249,000 IIDs were in use in the United States in 2011.<sup>29</sup>

NHTSA has indicated that there is no dispute that IIDs, when used, effectively reduce the recidivism rate of drivers convicted of DWI.<sup>30</sup> Studies involving repeat DWI offenders found that IIDs are one of the most promising strategies for preventing subsequent DWI incidents.<sup>31</sup> In addition to protecting the driving public by separating instances of drinking from the ability of an offender to drive, NHTSA reports suggest that IIDs represent a benefit to the offender because they permit that individual to meet their daily responsibilities.<sup>32</sup>

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 IIDs 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.<sup>33</sup>

In recent years, increased use of IIDs has been supported by:

- Insurance Institute for Highway Safety (IIHS) (independent, non-profit and educational organization the goal of which is the reduction of losses from crashes on the nation’s roadways);
- Task Force on Community Preventive Services (TFCPS) (independent body of public health and prevention experts);
- Department of Transportation, National Highway Traffic Safety Administration (NHTSA) (federal);
- Centers for Disease Control and Prevention (CDC) (federal);

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<sup>26</sup> Governors Highway Safety Association, *State Drunk Driving Laws*, March 2012, [http://www.ghsa.org/html/stateinfo/laws/impaired\\_laws.html](http://www.ghsa.org/html/stateinfo/laws/impaired_laws.html).

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

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

<sup>29</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *Q & A: Alcohol – deterrence & enforcement*, March 2012, [http://www.iihs.org/research/qanda/alcohol\\_enforce.html](http://www.iihs.org/research/qanda/alcohol_enforce.html).

<sup>30</sup> Department of Transportation, National Highway Traffic Safety Administration, *Key Features for Ignition Interlock Programs (March 2010)*, 11 (“Key Features”).

<sup>31</sup> *Toolkit*, 8.

<sup>32</sup> *Key Features*, 11.

<sup>33</sup> *Toolkit*, 2, 5; *Key Features*, 19-20.

- Governors Highway Safety Association (GHSA) (non-profit representing state and territory highway safety offices; provides leadership and advocacy to improve traffic safety, influence national policy, enhance program management and promote best practices);
- Mothers Against Drunk Drivers (MADD) (non-profit organization whose stated mission is to stop drunk driving, support the victims of this violent crime and prevent underage drinking);
- International Association of Chiefs of Police (IACP) (non-profit organization of police executives);
- Advocates for Highway and Auto Safety (AHAS) (alliance of consumer, health and safety groups and insurance companies and agents working to encourage adoption of federal and state laws, policies and programs that save lives and reduce injuries); and
- Alliance of Automobile Manufacturers (Auto Alliance) (alliance of 12 vehicle manufacturers committed to developing and implementing constructive solutions to promote sustainable mobility and benefit society in the areas of environment, energy and motor vehicle safety).

To this time, ignition interlock programs have most commonly been targeted at repeat-offenders and high-BAC offenders.<sup>34</sup> The NHTSA *Key Features* report, however, recommended that ignition interlocks be required for all DWI offenders.<sup>35</sup> First-time DWI offenders “more closely resemble repeat offenders than they do non-offenders” and ignition interlocks are as effective with first-time offenders as they are with repeat offenders.<sup>36</sup> A large study published in the May 2010 American Journal of Public Health came to that conclusion based on an examination of more than 100,000,000 driving records covering the years from 1973 to 2008.<sup>37</sup> As a result, “it would likely be a major boost to overall public health to require first-time DWI offenders to participate in an interlock program”.<sup>38</sup>

- One-half to two-thirds of all offenders driving under the influence are first-time offenders.<sup>39</sup>
- IIDs are mandatory for all first offenders in 16 states (and four California counties);
- IIDs are mandatory only for high-BAC first offenders in 15 states;
- IIDs are mandatory for repeat offenders in 36 states;

The safety benefits of IIDs are limited by the weakness of interlock laws, resistance on the part of judges to imposing IIDs, and the resistance on the part of offenders to installing them.<sup>40</sup> Offenders frequently avoid installation by claiming that they will not drive or that they do not own a vehicle.<sup>41</sup>

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<sup>34</sup> *Effectiveness*, 371.

<sup>35</sup> *Key Features*, 20.

<sup>36</sup> *Effectiveness*, 371.

<sup>37</sup> National Traffic Law Center, Between the Lines, Brian Ursino, *Ignition Interlocks: (Why do we need them and what does the future hold)*, Volume 19, Number 1, January/February 2011.

<sup>38</sup> *Effectiveness*, 371.

<sup>39</sup> *Key Features*, 19.

<sup>40</sup> *Key Features*, 10.

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

A 2012 IIHS study of Washington State’s expansion of its IID requirements to apply to all persons convicted of a DWI showed that the recidivism rate fell by 12% for first-time offenders with BACs below .15%.<sup>42</sup> The Washington study, however, revealed that only about one-third of the first-time offenders with BACs below .15% actually installed the mandated IIDs during the study period. *Id.* It was estimated that if all offenders in that group who were required to install an IID had actually done so, the recidivism rate for that group would have fallen by nearly half.

To increase the effectiveness of IID programs, participation must be increased.<sup>43</sup> This can be attempted by: limiting the acceptable bases for non-participation; requiring or encouraging IID installation at the time of arrest rather than conviction; follow-up to confirm that offenders comply with IID installation orders; and offering IIDs as an alternative to “less attractive sanctions”.<sup>44</sup>

Nationwide, the monthly cost to offenders for an IID ranges from \$65 to \$125 a month.<sup>45</sup> That number may or may not include the cost of installation, which is said to range from \$100 to \$250.<sup>46</sup> Some vendors do not charge for installation, removal or the required monitoring, but instead include those items in the monthly cost and charge approximately \$100 per month. With installation, plus basic fees, the cost estimate for an IID annually is \$1,000 to \$1,500.<sup>47</sup> The cost of the interlock has been described as equivalent to one or two drinks per day.<sup>48</sup> This is less than the cost associated with electronic monitoring for home arrest, the estimates for which range from approximately \$5-\$15 per day<sup>49</sup>, and less than the cost associated with an alcohol monitoring bracelet, which may cost \$12-\$15 per day.<sup>50</sup>

### ***B. Administrative license suspensions / pre-conviction IID***

License suspensions or revocations typically follow a conviction. In the majority of the states, pursuant to a procedure referred to as administrative license suspension, licenses may also be suspended or revoked *before* a conviction when a driver fails a chemical test or refuses to take one.<sup>51</sup> Administrative license suspensions have been found to be more effective than post-conviction sanctions because they take effect immediately.<sup>52</sup> The research done to this time suggests that combining administrative license suspensions and the installation of IIDs – which would involve installing IIDs sooner, rather than after a considerable delay (as frequently occurs

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<sup>42</sup> *Q & A: Alcohol.*

<sup>43</sup> *Effectiveness*, 371.

<sup>44</sup> *Id.*

<sup>45</sup> *Key Features*, 26.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 27.

<sup>49</sup> U.S. Pretrial Services Agency, District of New Jersey, *Home Confinement Procedures*, [http://www.njpt.uscourts.gov/Home\\_Confinement\\_pro.html](http://www.njpt.uscourts.gov/Home_Confinement_pro.html)

<sup>50</sup> *Id.*

<sup>51</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *DUI/DWI Laws*, March 2012, <http://www.iihs.org/laws/dui.aspx>

<sup>52</sup> *Id.*

between the issuance of a summons and the municipal court determination in a DWI matter) – could increase the benefit that IIDs can provide.

The IIHS supports the use of administrative suspensions, finding that they reduce the number of drivers involved in fatal crashes and are not costly to implement but, rather, that such programs can pay for themselves.<sup>53</sup> NHTSA also supports the use of administrative suspensions, finding that they are associated with a decrease in fatal crashes likely to be alcohol-related<sup>54</sup> and the GHSA likewise recommends their use.<sup>55</sup> Courts throughout the country (both state and federal) have determined that administrative license suspensions do not violate the due process provisions of the federal or state constitutions since the laws provide prompt post-suspension hearings.<sup>56</sup>

- 42 States allow administrative suspensions (before conviction) for a first DWI offense;
- The states that do not permit administrative suspension for a first offense are: Michigan, Montana, New Jersey, Pennsylvania, Rhode Island, South Carolina, South Dakota and Tennessee;
- Of the states that *do* permit administrative suspension before conviction, 31 of them permit the restoration of driving privileges during suspension;
- The administrative suspensions vary in duration as follows:
  - 2-90 days – 1 jurisdiction (D.C.)
  - 7 days – 1 state (VA)
  - 30 days – 3 states
  - 30-120 days – 1 state (KY)
  - 45 days – 1 state (MD)
  - 3 months/90 days – 20 states
  - 91 days – 1 state (ND)
  - 4 months/120 days – 2 states
  - 6 months/180 days – 11 states
  - 1 year – 1 state (GA)
  - Indefinite (until prosecution is complete) – 1 state (NY)
- All 31 states permitting restoration during suspension require some showing of special hardship during the suspension and, even then, privileges are generally restricted;
- The states that do not permit restoration during suspension are: Alabama, Delaware, Kansas, Massachusetts, Mississippi, Missouri, New Hampshire, Utah, Vermont and Virginia.

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<sup>53</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *Q & A: Alcohol – administrative license suspension*, January 2011, [http://www.iihs.org/research/qanda/alcohol\\_als.html](http://www.iihs.org/research/qanda/alcohol_als.html).

<sup>54</sup> Department of Transportation, National Highway Traffic Safety Administration, *Changes in alcohol-involved fatal crashes associated with tougher state alcohol legislation*, Report DOT HS-809-511, 1989.

<sup>55</sup> Governors Highway Safety Association, *GHSA Issues: Impaired Driving, GHSA Policy*, 2011.

<sup>56</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *Q & A: Alcohol – administrative license suspension*, January 2011, [http://www.iihs.org/research/qanda/alcohol\\_als.html](http://www.iihs.org/research/qanda/alcohol_als.html).

After considering the issue and expressing concerns about due process, and the adequacy of the proposed statutory provisions, the Commission declined to include administrative suspension provisions in the draft statutory language.

In an effort to address the concerns expressed by the Commission while offering a mechanism to expand the pool of drivers using the IID, Staff drafted new language permitting a first offender the option of pre-conviction installation of an IID. Pursuant to the new draft language, a defendant may make an application to install the IID before conviction. If this is done, the proceedings are suspended pending the installation and maintenance of the IID for the specified period (the same length of time as would be imposed for a conviction of a first offense). The IID is to be installed within 30 days of the court's suspension of the proceedings, and the person may drive only an IID-equipped vehicle for the duration of the required period. If the person is not charged with, or convicted of, a DWI or refusal during the period of voluntary IID operation, then, when that period concludes, they enter a plea and pay the minimum fine available for a first offender, comply with the mandatory IDRC requirements and pay certain surcharges (including AERF and NSF (shown in the chart below)). The license suspension of up to 60 days and the period of incarceration (up to 30 days), however, will not be imposed. The surcharges associated with DDF (shown in the chart below) also will not be imposed. The draft language also includes consequences for those charged with, or convicted of, a DWI or refusal during the period of voluntary IID operation.

### ***C. Consequences for those who claim they do not have a vehicle***

DWI offenders, including high-risk drivers, frequently transfer the ownership of vehicles to others and then claim no intention to drive in an effort to avoid an interlock.<sup>57</sup> In addition, studies (both observational and self-reporting) have shown that a substantial portion of persons whose licenses are suspended for driving while intoxicated continue to drive while their licenses are suspended (studies have shown driving by 33% to nearly 80% of the offenders with licenses suspended for alcohol-impaired driving).<sup>58</sup>

Optimally, IIDs, or an alternative form of alcohol monitoring, should be required for all DWI offenders.<sup>59</sup> If IIDs 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 IID.<sup>60</sup> Mandatory programs could require an offender to choose between an interlock and other monitoring or control technologies such as: house arrest; a CRAM (continuous remote alcohol monitor), which continuously detects the release of alcohol gas from the skin's surface; or the Sobriator or InHom, two devices that require the offender to provide regular breath samples at home, rather than in a vehicle.<sup>61</sup>

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<sup>57</sup> *Key Features*, 20.

<sup>58</sup> *Toolkit*, 13; Department of Transportation, National Highway Traffic Safety Administration, *Observational Study of the Extent of Driving While Suspended for Alcohol-Impaired Driving*, Report DOT HS February 2002.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

In a pilot program in Santa Fe County, New Mexico, house arrest via electronic monitoring was imposed by judges as an alternative to an IID.<sup>62</sup> During the course of that pilot program, 70% of offenders installed IIDs, compared with installation rates of less than 20% in other New Mexico counties.<sup>63</sup> The IID installation rate declined when the pilot program ended, removing the threat of house arrest.<sup>64</sup>

Although no alternative used by any state has eliminated drunk driving, the experiences of other states are useful in assessing the ways in which New Jersey law could potentially be improved. In order to address the substantial number of DWI convictions in which IIDs are not ordered, or installed, Staff drafted alternative provisions, including: the use of a wrist or ankle alcohol monitor; the use of an in-home device to take breath samples rather than an IID installed in a vehicle; a period of home arrest using an electronic monitor to enforce any restrictions imposed; and a requirement that, even absent the use of any monitoring device, the defendant pay a monthly fee equivalent to that associated with the monthly cost of an IID to the Ignition Interlock Assistance Fund. After considering the options presented, the Commission elected to eliminate the possibility of home arrest, but retained the three other options. The Commission also asked that the draft be modified to allow the person subject to the statute, rather than the court, to select the alternative to the IID.

Alternatives like those included in the draft, although not a perfect solution, have been shown to increase compliance with IID requirements which, in turn, has been shown to reduce recidivism and to reduce alcohol-related crashes, injuries and fatalities.

In an effort to close another gap in New Jersey's DWI statutes and regulations, Staff drafted a provision requiring that, when an IID or alternative is ordered, the person for whom the IID or alternative was ordered shall make an application to the court for a determination of use and compliance. The application is to be made no earlier than 30 days before the use of the IID or alternative is scheduled to conclude. Before the use of a device may terminate, the court is to confirm, based on a review of the records supplied by the entity responsible for the monitoring of the device, that the device was in use during the required period and that the person complied with any conditions imposed at the time of sentencing. If the device was in use and the person complied with the conditions, the required use of the device terminates. If not, the required use of the device is to continue until all conditions are complied with and until the device has been in use for the period of time initially required by the court. If the court orders that the person's use of the ignition interlock or alternative device must indicate a record of zero failures for a certain period of time before the required use of the device may be terminated, a reading of a blood alcohol concentration of less than .05% shall not be counted as a failure.

#### ***D. Added penalties for repeat offenders for underage drinking and driving***

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<sup>62</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *Q & A: Alcohol – deterrence & enforcement*, March 2012, [http://www.iihs.org/research/qanda/alcohol\\_enforce.html](http://www.iihs.org/research/qanda/alcohol_enforce.html)

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

Rates of drunk driving are higher among drivers aged 16 to 25 (19.5%) than among those aged 26 or older (11.8%).<sup>65</sup> In addition, drivers younger than 21 are “more vulnerable” than older drivers to the effects of alcohol and, at the same BAC, are more likely to experience a fatal or non-fatal crash.<sup>66</sup> One in three eighth graders drinks alcohol and one in five teens binge drink.<sup>67</sup> Teen alcohol use kills approximately 6,000 people each year, more deaths than are associated with all illegal drugs combined.<sup>68</sup>

Vehicle crashes are the leading cause of death for teens and one in three of them are alcohol-related.<sup>69</sup> In 2009, 30% of 16-20 year old fatally injured drivers had a BAC of .08% or higher.<sup>70</sup> Drivers between the ages of 16 and 20 with a BAC between .05% and .08% are far more likely to be killed in single-vehicle crashes than teenage drivers who were not drinking (17 times more likely for male drivers, 7 times more likely for female drivers).<sup>71</sup> At a BAC between .08% and .10%, the fatality risk is even higher (52 times more likely for male drivers, 15 times higher for female drivers).<sup>72</sup>

In the 1970s and early 1980s, the minimum legal drinking age (“MLDA”) became a traffic safety issue after studies showed that youth traffic crashes increased as states lowered the MLDA from 21 to 18.<sup>73</sup> Congress enacted the Uniform Drinking Age Act in 1984.<sup>74</sup> By 1988, all young adults between the ages of 16 and 20 were covered by an MLDA 21 law.<sup>75</sup> “Zero tolerance” laws are a combination of the MLDA laws and *per se* laws that make it illegal to drive with a BAC that exceeds a selected level.<sup>76</sup> The rationale is that if it is illegal for underage individuals to drink, it should be illegal for them to drive with any measurable BAC.<sup>77</sup> The zero tolerance limit selected for the laws, however, is commonly a BAC of .02% in order to allow for small measurement errors in the BAC test instruments.<sup>78</sup>

In 1995, Congress used the same strategy that had been effective for MLDA laws in order to encourage zero tolerance laws.<sup>79</sup> The National Highway Systems Designation Act provided that states that failed to enact a zero tolerance law by 1999, at a BAC of .02% or lower, covering

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<sup>65</sup> *State Estimates*, 3.

<sup>66</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *Fatality Facts 2010: Alcohol*, 2012, <http://www.iihs.org/research/fatality.aspx?topicName=Alcoholanddrugs&year=2010>

<sup>67</sup> Mothers Against Drunk Drivers, Statistics, 2011, <http://www.madd.org/statistics/>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, *Q & A: Teenagers – underage drinking*, March 2011, <http://www.iihs.org/research/qanda/underage.html>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, *Determine Why There are Fewer Young Alcohol-Impaired Drivers*, 2001, Chapter IV, <http://www.nhtsa.gov/people/injury/research/feweryoungdrivers/>

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

all persons under 21, would lose a portion of their federal highway construction funds.<sup>80</sup> By 1998, all states had zero tolerance laws in place.<sup>81</sup>

Information regarding the number of New Jersey drivers who are under the drinking age but found to have a BAC of at least .01% but less than .08% was provided by the AOC for 2011. During that year, there were 1,215 complaints and 658 convictions for underage drinking and driving. No information regarding second and subsequent offenders was available for New Jersey. Information previously received from the Pennsylvania Department of Transportation’s Impaired Driving Program showed that approximately one-third of the Pennsylvania drivers convicted of driving with a BAC of .02% or above while below the drinking age in 2010 were repeat offenders.

Based on the available information regarding underage drinking and driving, it may be appropriate to modify the law to address the issue of young repeat offenders. The approaches taken by other states with regard to subsequent underage offenders vary. Some states, like Kentucky, have statutory schemes similar to New Jersey’s current statute, which does not address subsequent offenses by underage drinking drivers. Other states, like Arkansas and Iowa and Kansas, have limited differentiation in the statute between first and subsequent underage offenders. Still other states, like Georgia, Idaho and Missouri, differentiate between first offenders and subsequent offenders with significant increases in the various penalty provisions, including incarceration, fines, license suspension, requirements analogous to New Jersey’s IDRC provisions, and the use of IIDs. Based on Staff’s review of the laws of various states to this time, it appears that the use of graduated penalties for subsequent underage offenders is not unusual and Staff proposed changes to the New Jersey law accordingly

**Summary of S1750 as introduced in March 2012**

In March 2012, Senator Nicholas Scutari introduced bill S1750 (A2832 is identical). The provisions of the current law, as modified by Senator Scutari’s bill, are summarized in the chart below with strikeout and underlining indicating deletions from and additions to the current law:

<b>Offense</b>	<b>License Loss</b>	<b>Fines, Fees, Surcharges</b>	<b>Prison</b>	<b>Community Service, IDRC, IID</b>
1st offense	<del>3 months</del>	\$250-400 fine \$230 IDRC \$100 DDF	Up to 30 days	12-48 hours IDRC
<del>.08-.10</del>	<u>30 - 60 days</u>	\$100 AERF \$75 NSF		<del>May order IID</del> <u>IID required 6 mos</u>

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

		\$1,000/yr ins surchrg (3 yrs)*		<u>– 1 yr with a restricted license only (6 mos if BAC .08 but less than .10%; 1 year if BAC .10 or greater)</u>
1 <sup>st</sup> offense  . <u>10 or &gt;</u>	<del>7 mos – 1 year</del>	\$300-500 fine \$230 IDRC \$100 DDF \$100 AERF \$75 NSF  \$1,000/yr ins surchrg (3 yrs)*	Up to 30 days	12-48 hrs IDRC  If <del>BAC .15% or greater</del> IID during suspension and <del>6 mos to 1 year</del> following restoration
2 <sup>nd</sup> offense  w/in 10 years of 1 <sup>st</sup>	<del>2 years</del> <u>60 - 90 days</u>	\$500-1,000 fine \$280 IDRC \$100 DDF \$100 AERF \$75 NSF  \$1,500/yr ins surchrg (3 yrs)*	<del>48 hours – up to 90 days</del>	<del>12-48</del> <u>48-96</u> hrs IDRC  IID during suspension and <del>1 yr to 3 yrs</del> following restoration <del>3 yrs – 5 yrs with a restricted license only</del>  30 days comm. Service
3 offense  w/in 10 years of 2 <sup>nd</sup>	<del>10 years</del> <u>1 – 3 yrs</u>	\$1,000 – <u>2,000</u> fine \$280 IDRC \$100 DDF \$100 AERF \$75 NSF  \$1,500/yr ins surchrg (3 yrs)*	<u>120 - 180 days which can be decreased, day for day up to 90 days, for time served in an in-patient drug or alcohol rehab program</u>	12-48 hrs IDRC  IID during suspension and <del>1 yr to 3 yrs</del> following restrtn – <u>permanent installation required</u>  Up to 90 days comm. service

N.J.S. 39:4-50; N.J.S. 39:4-50.17.

The chart notations above show some of the current penalty provisions as they would be impacted by S1750 and A2832 – additions to the law are shown underlined above, and deletions from the current law are shown with strikeout.

Additional changes to the law if the proposed language is enacted include:

- A requirement for a “restricted use” placard during the restricted use license period;
- Deletion of the “school zone” restrictions;
- Modifications to the “refusal” provisions to match the modifications above; and
- Changes the language pertaining to the installation of an IID to a vehicle “owned or leased” vehicle, rather than one “principally operated” by the offender.

Abbreviations used in chart:

IDRC – Intoxicated Driver Resource Center

DDF – Drunk Driving Fund

AERF – Alcohol Education and Rehabilitation Fund

NSF – Neighborhood Services Fund

\*failure to pay ins surcharge – indefinite suspension and Sup Ct action

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### Draft Language

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

The following language includes the current statutory language, as modified by the March 2012 version of S1750, the Coalition of Ignition Interlock Manufacturers and then Commission Staff.

With regard to the statutory modifications proposed by the Coalition of Ignition Interlock Manufacturers and provided to Staff for preliminary review as a courtesy, the Commission questioned only a few of those language changes, as reflected below. Other alterations were made by Staff simply for consistency with the draft DWI provisions.

As a result of the interrelated nature of the statutory provisions, if changes are made to any of the draft sections, a review of the other sections is advisable to maintain the accuracy of references and interactions between the sections.

~~[Black strike through]~~ – text deleted in S1750

Black underlined – text added in S1750

~~**Bold strike through**~~ – text suggested to be deleted by Coalition of Ignition Interlock Manufacturers

**Bold underlined** – text suggested to be added by Coalition of Ignition Interlock Manufacturers

~~Shaded strikethrough~~ – deletion proposed by the New Jersey Law Revision Commission

Shaded underlined – addition proposed by the New Jersey Law Revision Commission

**39:4-50 amended to read as follows:**

a. Except as provided in subsection (g) of this section, A person shall:

(1) Be in violation of this section if that person:

~~who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject:~~

(A) Operates a motor vehicle while under the influence of:

(i) while under the influence of intoxicating liquor; or

(ii) while under the influence of narcotic, hallucinogenic or habit-producing drug;

~~(B)~~ (iii) Operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's operator's blood;

~~(C)~~ (B) Permits the operation of a motor vehicle owned by him or her or in his or her custody or control by another visibly intoxicated person who is under the influence of:

(i) who is under the influence of intoxicating liquor; or

(ii) who is under the influence of narcotic, hallucinogenic or habit-producing drug; or

(iii) with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's operator's blood.

~~(D) 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 operator's blood.~~

(1 2) For the first offense involving a blood alcohol concentration in excess of 0.08% a violation of subsection a.(1)(A)(i) and a.(1)(B)(A)(iii):

~~(i) 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, to a fine of not less than \$250 nor more than \$400 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of three months;~~

~~(ii) 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 in his custody or control, or permits another person with a blood alcohol concentration of 0.10% or more to operate a motor vehicle, to a fine of not less than \$300 nor more than \$500 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than seven months nor more than one year;~~

~~(iii) For a first offense, a person also shall be subject to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)}, a person shall~~

~~(A) be fined pay a fine of not less than \$250 and not more than \$400;~~

~~(B) and shall forfeit the right to operate a motor vehicle for not less than 30 days and not more than 60 days;~~

~~(C) The person also shall serve a period of detainment of not less than 12 hours or more than 48 hours as prescribed by the program requirements of the Intoxicated Driver Resource Centers;~~

~~(D) The court, in its discretion, may sentence the person to a term of imprisonment for in the discretion of the court serve a period of imprisonment for not more than 30 days;~~

~~(E) In addition, the person shall be required to install ~~an~~ and maintain a **functioning** ignition interlock device pursuant to the provisions of section 2 of P.L.1999, c.417 (C.39:4-50.17); and;~~

~~(F) for the duration of the ignition interlock requirement, ~~may~~ operate ~~only~~ a motor vehicle **equipped with an ignition interlock device** and only under a restricted use driver's license issued by the chief administrator pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).~~

~~(2 3) For a second ~~violation~~, a person shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00, and shall 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 under the circumstances, and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of two years upon conviction, and, after the expiration of said period, he may make application to the Chief Administrator of the New Jersey Motor Vehicle Commission for a license to operate a motor vehicle, which application may be granted at the discretion of the chief administrator, consistent with subsection (b) of this section. For a second violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)} offense, **involving a blood alcohol concentration in excess of 0.08% a violation of subsection a.(1)(A)(i) and a.(1)(B)(A)(iii):**~~

~~(A) ~~be fined~~ pay a fine of not less than \$500 and not more than \$1,000;~~

~~(B) ~~and shall~~ forfeit the right to operate a motor vehicle for not less than 60 days and not more than 90 days;~~

~~(C) ~~The person also shall~~ serve a period of detainment of not less than 48 hours or more than 96 hours as prescribed by the program requirements of the Intoxicated Driver Resource Centers;~~

~~(D) The court, in its discretion, may sentence the person to a term of imprisonment for~~ in the discretion of the court serve a period of imprisonment of not more than 90 days;

~~(E) In addition, the person shall be required to~~ install ~~an~~ and maintain a **functioning** ignition interlock device pursuant to the provisions of section 2 of P.L.1999, c.417 (C.39:4-50.17); and;

~~(F)~~ for the duration of the ignition interlock requirement, ~~may~~ operate ~~only~~ a motor vehicle **equipped with an ignition interlock device** and only under a restricted use driver's license issued by the chief administrator pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

~~(3 4) For a third or subsequent [violation, a person shall be subject to a fine of \$1,000.00, and shall be sentenced to imprisonment 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 Intoxicated Driver Resource Center and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years. For a third or subsequent violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)] offense,~~ **involving a blood alcohol concentration in excess of 0.08% a violation of subsection a.(1)(A)(i) and a.(1)(B)(A)(iii):**

~~(A) be fined~~ pay a fine of not less than \$1,000 and not more than \$2,000;

~~(B) and shall forfeit the right to operate a motor vehicle for not less than one year and not more than three years;~~

~~(C) The court, in its discretion, may sentence the person to a term of imprisonment for~~ in the discretion of the court serve a period of imprisonment of not less than 120 days and not more than 180 days, except that the court may lower the term **one day** for each day, not exceeding 90 days, served in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center.;

~~(D) In addition, the person shall be required to~~ install ~~an~~ and maintain a **functioning** ignition interlock device pursuant to the provisions of section 2 of P.L.1999, c.417 (C.39:4-50.17); and

(E) for the duration of the ignition interlock requirement, ~~may~~ operate ~~only~~ a motor vehicle ~~equipped with an ignition interlock device~~ and only under a restricted use driver's license issued by the chief administrator pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

(5) For a first offense involving a violation of subsection a.(1)(A)(ii) or a.(1)(C)(B) or

~~a.(1)(D):~~

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

(B) forfeit the right to operate a motor vehicle for not less than 30 days and not more than 60 days;

(C) serve a period of detainment of not less than 12 hours or more than 48 hours as prescribed by the program requirements of the Intoxicated Driver Resource Centers; and

(D) in the discretion of the court serve a period of imprisonment for not more than 30 days.

(6) For a second offense involving a violation of subsection a.(1)(A)(ii) or a.(1)(C)(B)

~~or a.(1)(D):~~

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

(B) forfeit the right to operate a motor vehicle for not less than 60 days and not more than 90 days;

(C) serve a period of detainment of not less than 48 hours or more than 96 hours as prescribed by the program requirements of the Intoxicated Driver Resource Centers; and

(D) in the discretion of the court serve a period of imprisonment of not more than 90 days.

(7) For a third or subsequent offense involving a violation of subsection a.(1)(A)(ii) or

~~a.(1)(C)(B) or a.(1)(D):~~

(A) pay a fine of not less than \$1,000 and not more than \$2,000;

(B) forfeit the right to operate a motor vehicle for not less than one year and not more than three years days; and

(C) in the discretion of the court serve a period of imprisonment of not less than 120 days and not more than 180 days, except that the court may lower the

term one day for each day, not exceeding 90 days, served in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center.

\* \* \*

A conviction 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 subsection unless the defendant person convicted can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

\* \* \*

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the chief administrator. ~~The court shall~~ inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S.39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the chief administrator, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge

in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

\* \* \*

~~[(g) When a violation of this section occurs while:~~

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

~~(2) driving through a school crossing as defined in R.S.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 R.S.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: for a first offense, be fined not less than \$500 or more than \$800, be imprisoned for not more than 60 days and have his license to operate a motor vehicle suspended for a period of not less than one year or more than two years; for a second offense, be fined not less than \$1,000 or more than \$2,000, perform community service for a period of 60 days, be imprisoned for not less than 96 consecutive hours, which shall not be suspended or served on probation, nor more than 180 days, except that the court may lower such 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 under the circumstances and have his license to operate a motor vehicle suspended for a period of four years; and, for a third offense, be fined \$2,000, imprisoned for 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 Intoxicated Driver Resource Center, and have his license to operate a motor vehicle suspended for a period of 20 years; the period of license suspension shall commence upon the completion of any prison sentence imposed upon that person.~~

~~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 which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under paragraph (1) of this subsection.~~

~~It shall not be relevant to the imposition of sentence pursuant to paragraph (1) or (2) of this subsection 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.} Deleted by amendment, P.L. , c. (pending before Legislature as this bill).~~

\* \* \*

As used in this section, “appropriate victim” means a victim whose condition is determined by the facility's supervisory personnel and the probation officer to be appropriate for demonstrating the results of accidents involving drunk drivers without being unnecessarily gruesome or traumatic to the defendant person convicted.

If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine that the visitation may be or is traumatic or otherwise inappropriate for that defendant the person convicted, the visitation shall be terminated without prejudice to the defendant that person. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant person convicted, defendant's counsel for the person convicted, and, if available, the defendant's person's parents to discuss the visitation and its effect on the defendant's person's future conduct. If a personal conference is not practicable because of the defendant's person's absence from the jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant person convicted to submit a written report concerning the visitation experience and its impact on the defendant person. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any one person supervising a defendant the person convicted during the visitation, are not liable for any civil damages resulting from injury to the defendant person, or for civil damages associated with the visitation which are caused by the defendant person convicted, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage.

\* \* \*

## COMMENT

By requiring ignition interlocks for all first-time offenders, not just those with high BACs, Senator Scutari's March 2012 proposed changes could strengthen New Jersey law.

There are additional, related, modifications that could improve the clarity and effectiveness of New Jersey's law in this area.

First, in its current form, the law states that an individual may be found to have violated the provisions of 39:4-50 under a number of different circumstances: operation of a vehicle while under the influence of alcohol (as determined by officer observation); operation of a vehicle while under the influence of an intoxicating substance other than alcohol (as determined by officer observation); operation of a vehicle with a BAC of .08% or more (as determined by authorized machine – Alcotest); permitting the operation of a vehicle that you own or that is in your custody or control by another person who is under the influence of alcohol (as determined by officer observation); permitting the operation of a vehicle that you own or that is in your custody or control by another person who is under the influence of an intoxicating substance other than alcohol (as determined by officer observation); and permitting the operation of a vehicle by another person with a BAC of .08% or more (determined by authorized machine – Alcotest).

S1750, as introduced, appears to result in the requirement of ignition interlock devices ("IIDs") for those who violate *N.J.S.* 39:4-50 as a result of drug, and not just alcohol, impairment. Since IIDs cannot detect the presence of drugs, and are therefore of no value in the case of a drug offender, a modification to the language would be useful. Staff has proposed modified language in this section to address this issue. The modification generally uses the existing language of the statute but breaks it down into subsections so that penalty provisions or other sections of the statute can refer to specific types of DWI offenses. The language was altered slightly for purposes of the division, but the goal was to use as much of the existing language as possible.

The draft applies the IID provisions only to those offenders who violated the observational-alcohol provisions or the .08% BAC and above alcohol provisions. An additional change was then required to provide penalties for those who violated other subsections of the statute. The new section imposes the same penalties as those imposed on alcohol offenders with the exception of the IID.

Dividing subsection a. of this section into smaller subsections brought to Staff's attention the fact that the language of the new subsections was not parallel – one subsection made it an offense to permit the operation of a vehicle that you own or that is in your custody or control by someone who is under the influence and another subsection made it an offense to permit the operation of a vehicle regardless of ownership or custody/control. The language of that latter subsection appeared to apply to a backseat passenger who accepts a ride from an individual who volunteers to be a designated driver and also to a valet who hands the keys to a driver with a BAC in excess of .08%. The Commission asked that Staff revise the language for greater consistency. The Commission also requested that the "visibly intoxicated" language of the Dram Shop Act be imported to make it clear that the violation of the new subsection a.(1)(B) is not a strict liability offense. This language, which is defined by *N.J.S.* 2A:22A-3 as "a state of intoxication accompanied by a perceptible act or series of acts which present clear signs of intoxication" was selected since it has been judicially interpreted in the context of the Dram Shop Act.

Among the known issues with the current statute is the concern expressed by some municipal court judges that as a result of the current language, they are constrained to order IIDs for subsequent offenders even if those offenders were convicted of drug, rather than alcohol, offenses. The proposed language drafted by Staff addresses this issue.

Not directly related to the current revisions to the statute, it is noted that the references to the individual affected by the statutory provisions are not consistent – the references are to "person", "defendant", "offender", "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable, and that was done by Staff.

In addition, subsection c. of 39:4-50 calls for the collection of a driver's license upon conviction of a violation of the statute. The Commission has expressed concerns about the fact that a driver's license is now required for a number of things in addition to driving (entry into government buildings, identification for those wishing to board a plane, future potential use in lieu of a passport, etc.) and requested that Staff modify this subsection of the statute to remove that requirement. The requirement that a license be collected on conviction may not be necessary today, since law enforcement officers may generally access computer records at the time an individual vehicle is stopped in order to determine whether a license has been suspended or revoked. Also, it is not yet clear if the non-driver identification available through the MVC is able to be obtained quickly and is widely acceptable in lieu of a license for the other purposes noted above.

If the community service requirements are not included in the statute as revised by S1750 as introduced, perhaps they could be included with 30 days required for a first offense, 60 days for a second offense and 90 days for a third or subsequent offense.

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

\* \* \*

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 person arrested. 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, shall be read by the police officer to the person under arrest.

#### COMMENT

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the "person", "defendant", "offender" "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable, and that was done by Staff.

### **39:4-50.4a amended to read as follows:**

a. ~~Except as provided in subsection b. of this section, t~~ The municipal court shall revoke the right to operate a motor vehicle of any operator 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), shall refuse to submit to a test provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for a period of:

1. not less than ~~[seven months]~~ 30 days or more than ~~[one year]~~ 60 days for a first offense;

~~2. unless the refusal was in connection with a second offense under this section, in which case the revocation period shall be for [two years] not less than 60 days and not more than 90 days for a second offense; and~~

~~3. or unless the refusal was in connection with a third or subsequent offense under this section in which case the revocation shall be for [ten years] not less than one year and not more than three years for a third or subsequent offense.~~

**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 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a ~~prior~~ conviction under this section.

**c.** The municipal court shall determine by a preponderance of the evidence 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 the person was under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marijuana;

**(2)** ~~whether~~ the person was placed under arrest, if appropriate; and

**(3)** ~~whether he~~ **the person** refused to submit to the test upon request of the officer;.

~~and i~~ If these elements of the violation are not established, no conviction shall issue.

**d.** 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.

**e.** In addition to issuing a revocation, ~~except as provided in subsection b. of this section,~~ the municipal court shall fine a person convicted under this section, ~~a fine of~~ not less than ~~[\$300]~~ **\$250** or more than ~~[\$500]~~ **\$400** for a first offense; ~~a fine of~~ not less than \$500 or more than \$1,000 for a

second offense; and ~~a fine of~~ not less than \$1,000 or more than \$2,000 for a third or subsequent offense. For a violation of subsection a. of this section, if 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, ~~the person also shall be required to install~~ an and maintain a functioning ignition interlock device on one or more vehicles owned, leased or to be operated by the person pursuant to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) and, for the duration of the ignition interlock requirement, ~~may~~ operate only a motor vehicle equipped with an ignition interlock device and only under a restricted use driver's license issued by the chief administrator pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

~~f. A person issued a restricted use driver's license requiring the person to operate only vehicles equipped with a functioning ignition interlock device during a revocation required under this section, shall receive day for day credit toward any ignition interlock restricted license requirement as a result of a conviction under the provisions of R.S.39:4-50 arising out of the same incident.~~

~~b. [For a first offense, the fine imposed upon the convicted person shall be not less than \$600 or more than \$1,000 and the period of license suspension shall be not less than one year or more than 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; and for a third or subsequent offense, a fine of \$2,000 and a license suspension for a period of 20 years when a violation of this section occurs while:~~

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

~~(2) driving through a school crossing as defined in R.S.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 R.S.39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.~~

~~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 which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under paragraph (1) of this subsection.~~

~~It shall not be relevant to the imposition of sentence pursuant to paragraph (1) or (2) of this subsection 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.] Deleted by amendment, P.L. , c. (pending before the Legislature as this bill) (cf: P.L.2009, c.201, s.5)~~

#### COMMENT

Subsection lettering and numbering was added for ease of review and reference.

Since the draft no longer contemplates a pre-conviction administrative suspension of the driver's license, the day-for-day credit language has been removed.

While not directly related to the statutory modifications that are the subject of this draft, it is noted that the refusal statute does not track the provisions of 39:4-50 because that section applies on public, quasi-public or private property and 39:4-50.4a only applies on public or quasi-public property. Since it appears that efforts have been made to make the two statutory sections consistent, additional modification may be appropriate to address this issue.

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the "person", "defendant", "offender", "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable, and that was done by Staff.

#### **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), the court shall collect from the **defendant person convicted** a surcharge of \$100.00 in addition to and independently of any fine imposed on that **defendant person**. The court shall forward the surcharge to the Director of the Division of Motor Vehicles 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.

\* \* \*

#### COMMENT

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the "person", "defendant", "offender" "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable and that was done by Staff.

### 39:4-50.11. Victims' rights

Victims shall have the right to:

\* \* \*

d. Be provided by the court adjudicating the offense, upon the request of the victim in writing, with:

- (1) Information about their role in the court process;
- (2) Timely advance notice of the date, time and place of the defendant's initial appearance by the person charged before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;
- (3) Timely notification of the case disposition, including the trial and sentencing;
- (4) Prompt notification of any decision or action in the case which results in the defendant's provisional or final release from custody of the person charged; and
- (5) Information about the status of the case at any time from the commission of the offense to final disposition or release of the defendant person charged;

\* \* \*

#### COMMENT

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the "person", "defendant", "offender", "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable, and that was done by Staff.

### **39:4-50.14 amended to read as follows:**

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 and, on at least one of those occasions, has a blood alcohol concentration of 0.05% or more by weight of alcohol in the person's blood, shall:

(1) pay a fine of not less than \$250 and not more than \$400;

(2) forfeit the right to operate a motor vehicle for not more than 60 days;

(3) serve a period of detainment of not less than 12 hours or more than 48 hours as prescribed by the program requirements of the Intoxicated Driver Resource Centers;

(4) in the discretion of the court serve a period of imprisonment for not more than 30 days;

(5) install and maintain a functioning ignition interlock device pursuant to the provisions of section 2 of P.L.1999, c.417 (C.39:4-50.17) that are applicable to a person with a person blood alcohol concentration of 0.08% or more by weight of alcohol in the person's blood; and,

(6) for the duration of the ignition interlock requirement, operate only a motor vehicle equipped with an ignition interlock device and only under a restricted use driver's license issued by the chief administrator pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

**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.

#### COMMENT

Rates of drunk driving are higher among drivers aged 16 to 25 (19.5%) than among those aged 26 or older (11.8%). Vehicle crashes are the leading cause of death for teens and one in three of them are alcohol-related. In 2009, 30% of 16-20 year old fatally injured drivers had a BAC of .08% or higher. Drivers between the ages of 16 and 20 with a BAC between .05% and .08% are far more likely to be killed in single-vehicle crashes than teenage drivers who were not drinking (17 times more likely for male drivers, 7 times more likely for female drivers). At a BAC between .08% and .10%, the fatality risk is even higher (52 times more likely for male drivers, 15 times higher for female drivers).

Information regarding the number of New Jersey drivers who are under the drinking age but found to have a BAC of at least .01% but less than .08% was provided by the AOC for 2011. During that year, there were 1,215 complaints and 658 convictions. No information regarding second and subsequent offenders was available for New Jersey. Information previously received from the Pennsylvania Department of Transportation's Impaired Driving Program showed that approximately one-third of the Pennsylvania drivers convicted of driving with a BAC of .02% or above while below the drinking age in 2010 were repeat offenders.

The approaches taken by other states with regard to subsequent underage offenders vary. Some states, like Kentucky, have statutory schemes similar to New Jersey's current statute, which does not address subsequent offenses by underage drinking drivers. Other states, like Arkansas and Iowa and Kansas, have limited differentiation in the statute between first and subsequent underage offenders. Still other states, like Georgia, Idaho and Missouri differentiate between first offenders and subsequent offenders with significant increases in the various penalty

provisions, including incarceration, fines, license suspension, requirements analogous to New Jersey's IDRC provisions, and the use of IIDs. Based on Staff's review of the laws of various states to this time, it appears that the use of graduated penalties for subsequent underage offenders is not unusual.

In light of the information regarding the dangers and the prevalence of underage drinking and driving, the draft includes new penalties for individuals who are under the legal drinking age but who are convicted a second or subsequent time of driving with alcohol in their system and, on at least one of those occasions, the individual had a blood alcohol concentration of 0.05% or more by weight of alcohol in the person's blood. The .05% BAC level was selected by regulation as the alcohol setpoint of IIDs in New Jersey and, as such, was incorporated here. Staff has made inquiries to determine whether the information regarding the blood alcohol concentration associated with prior violations would be available to the court in the event of a second or subsequent offense pursuant to the new subsection above.

### **New section – pre-conviction installation of ignition interlock device for first offense**

a. Whenever a person who has not previously been convicted of a violation of subsection a. of 39:4-50 or section 39:4-50.4a is charged with a violation of subsection a.(1)(A)(i) or a.(1)(B)(A)(iii) of 39:4-50 or section 39:4-50.4a, the court, on application of the person and with notice to the prosecutor, may suspend further proceedings pending the installation and maintenance of a functioning ignition interlock device in a vehicle owned, leased or to be operated by the person for the period set forth in subsection ~~b~~. c. of this section.

b. When a person is charged with a violation of subsection a.(1)(A)(i) or a.(1)(B)(A)(iii) of 39:4-50 or section 39:4-50.4a, a law enforcement officer shall read a notice prepared by the Office of the Attorney General, and deliver a copy of it, advising that the person may be eligible to participate in a voluntary ignition interlock device program for first offenders and that information regarding the program is available from the court. A person who wishes to voluntarily install an ignition interlock device pursuant to this section shall make an application to the court within 30 days of being charged with a violation of subsection a.(1)(A)(i) or a.(1)(B)(A)(iii) of 39:4-50 or section 39:4-50.4a.

~~b~~. c. The ignition interlock device shall be installed within 30 days of the court's suspension of the proceedings. If the person's blood alcohol concentration is 0.08% or higher but less than 0.10%, the ignition interlock device shall remain installed for six months; if the person's blood alcohol concentration is 0.10% or more, the device shall remain installed for one year.

~~c~~. d. During the period of voluntary ignition interlock device installation, the person shall drive only a vehicle equipped with an ignition interlock device.

~~d.~~ e. If the person is not charged or convicted of a violation of subsection a. of 39:4-50 or section 39:4-50.4a during the voluntary ignition interlock device installation period, then, upon completion of that period of ignition interlock device installation, the person shall:

(1) enter a plea of guilty to subsection a. of 39:4-50 or section 39:4-50.4a, as appropriate;

(2) pay a fine of \$250; and

(3) be subject to the surcharges and requirements set forth in subsections b., f. and i. of 39:4-50, 39:4-50.8, subsection c. of 2C:43-3.1 and subsection a.(1) of 2C:43-3.2. The person shall not be subject to the fees, fines, surcharges and requirements set forth in subsection h. of 39:4-50.

~~e.~~ f. If the person is charged with a violation of subsection a. of 39:4-50 or section 39:4-50.4a during the voluntary ignition interlock device installation period, then the person must continue the ignition interlock device installation and use and shall drive only a vehicle equipped with an ignition interlock device until the disposition of the subsequent charge.

~~f.~~ g. If the person is convicted of a violation of subsection a. of 39:4-50 or section 39:4-50.4a during the voluntary ignition interlock device installation period, then the person shall be subject, on the original charge, to all of the consequences associated with a conviction for a violation of subsection a. of 39:4-50 or section 39:4-50.4a but shall receive day-for-day credit for any time spent with the ignition interlock device installed and in use before the conviction and shall also receive credit for any fees, fines, surcharges and requirements with which they have already complied with.

~~g.~~ h. If the charge of violation of subsection a.(1)(A)(i) or a.(1)(B)(A)(iii) of section 39:4-50 or section 39:4-50.4a identified in subsection a. of this section is associated with a criminal charge, then the disposition of the violation of subsection a.(1)(A)(i) or a.(1)(B)(A)(iii) of 39:4-50 or section 39:4-50.4a shall be deferred pending the outcome of the criminal charge.

#### COMMENT

Citing concerns about due process, and the adequacy of the proposed statutory provisions, the Commission declined to include administrative suspension provisions in the draft.

In an effort to address the concerns expressed by the Commission, while offering a mechanism to expand the pool of drivers using the IID, Staff drafted new language permitting a first offender the option of pre-conviction installation of an ignition interlock device. If the person is not charged with, or convicted of, a DWI or refusal during the period of voluntary IID operation, then, when that period concludes, the person shall enter a plea and pay the minimum fine available for a first offender, comply with the IDRC requirements as well as certain surcharges, (including AERF and NSF (shown in the chart above)). The license suspension of up to 60 days and the period of incarceration (up to 30 days), however, will not be imposed. The surcharges associated with DDF (shown in the chart above) also will not be imposed. Originally, Staff had removed the IDRC requirements, but these were re-

inserted after discussion with IDRC representatives who wished to preserve the ability to identify potential problem offenders and make appropriate referrals for treatment.

It is intended that a person who opts for the pre-conviction use of the IID will not be subject to any restrictions other than those imposed in this section. Since the person has not been convicted, it is anticipated that the person will not be issued an “IID only” license.

If the person is charged with a violation during the voluntary IID period, they must continue the IID installation and use until the disposition of the subsequent charge. If the person is convicted of a violation during the voluntary IID period, they shall be subject, on the original charge, to all of the consequences associated with a conviction, but given a day-for-day credit for any time spent with the IID installed and in use before the conviction and shall also receive credit for any fines, fees, surcharges and other requirements with which they have already complied. The goal is to clarify that if the individual in good faith opts for the voluntary IID, the consequences of participation in this program should not be more onerous than if the person had simply awaited the disposition of the charge.

The Commission was concerned that an individual might not know of the availability of this program and might not seek the help of an attorney within the 30-day period available for application to participate. In response to those concerns, the draft language calls for a notice required to be provided to individuals to be prepared by the Office of the Attorney General. The draft language also contemplates that the municipal court will provide the information necessary for an individual to determine whether he or she is eligible to participate in the program.

#### **New – transfer of vehicle not permitted without authorization**

**a. A registered owner of a motor vehicle shall not sell or transfer title to, or ownership interest in, a motor vehicle after being charged with a violation of subsection a.(1)(A)(i) and a.(1)(B)(A)(iii) of 39:4-50 or section 39:4-50.4a and before the disposition of the charge unless the registered owner applies to the motor vehicle commission for consent to transfer title to the motor vehicle do so. The motor vehicle commission may consent to the sale or transfer if it is satisfied that:**

**(1) the proposed sale or transfer is in good faith and for valid consideration;**

**(2) the registered owner will be deprived of the custody and control of the motor vehicle and the intended owner of the vehicle supplies an affidavit confirming this to be the case; and**

**(3) the sale or transfer is not for the purpose of circumventing this chapter.**

**If the motor vehicle commission consents, it shall issue a certified copy of the written consent to the registered owner and the intended owner and forward a copy to the court in which the violation of subsection a.(1)(A)(i) and a.(1)(B)(A)(iii) of 39:4-50 or section 39:4-50.4a shall be heard.**

**b. A registered owner of a motor vehicle shall not sell or transfer title to, or ownership interest in, a motor vehicle after being convicted of a violation of subsection a. of 39:4-50 or section**

39:4-50.4a, unless the registered owner applies to the motor vehicle commission for consent to transfer title to the motor vehicle do so. The motor vehicle commission may consent to the sale or transfer if it is satisfied that:

(1) the proposed sale or transfer is in good faith and for valid consideration;

(2) the registered owner will be deprived of the custody and control of the motor vehicle and the intended owner of the vehicle supplies an affidavit confirming this to be the case and stating that the intended owner is aware of the penalty provisions of 39:4-50.19 as they pertain to renting, leasing or lending a motor vehicle not equipped with an interlock device to a person who has been ordered by the court to install such a device or use one of the alternatives to the ignition interlock device described in subsection c.(2) of section 39:4-50.17; and

(3) the sale or transfer is not for the purpose of circumventing this chapter.

If the motor vehicle commission consents, it shall issue a certified copy of the written consent to the registered owner and the intended owner.

c. Notwithstanding subsections a. and b. of this section, if the title to the motor vehicle is transferred by foreclosure of a chattel mortgage, cancellation of a conditional sales contract, a sale upon execution, or decree or order of a court of competent jurisdiction, after the registered owner of the motor vehicle is charged with a violation of subsection a. of 39:4-50 or section 39:4-50.4a, the motor vehicle commission shall transfer the certificate of title and ownership to the new owner.

#### COMMENT

Some states limit the transfer of a motor vehicle if the owner has been charged with or convicted of a DWI offense in an effort to limit the number of individuals who do so and then use the fact that they do not have a vehicle as a means to avoid certain aspects of the punishment associated with their DWI conviction. The provisions above were based on the language of the relevant statute from Hawaii.

At the request of the Commission, references to the Chief Administrator of the Motor Vehicle Commission were replaced with references to the Motor Vehicle Commission generally. This was done in order to avoid creating the impression that the determinations called for could not be made at local or regional MVC offices.

#### **39:4-50.17 amended to read as follows:**

a. ~~[(1) Except as provided in paragraph (2) of this subsection, in sentencing a first offender under R.S.39:4-50, the court may 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 following the expiration of the period of license suspension imposed under that section.]~~

In sentencing a first offender under subsection a.(1)(A)(i) and a.(1)(B)(A)(iii) of 39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the court shall order, in addition to any other penalty imposed by that section, that the ~~installation of an~~ offender person convicted ~~must~~ install and maintain a functioning ignition interlock device in ~~the~~ one or more motor vehicles ~~[principally operated]~~ owned, or leased or to be operated by the offender ~~[during and]~~ person convicted following the expiration of ~~the~~ any period of license suspension imposed under that section. ~~[The]~~ If the offender's blood alcohol concentration of the person convicted is 0.08% or higher but less than 0.10%, the device shall remain installed and functioning for ~~[not less than]~~ six months; if the offender's blood alcohol concentration of the person convicted is 0.10% or more, the device shall remain installed and functioning for ~~[or more than]~~ one year, commencing immediately upon the return of the offender's person's driver's license after ~~the required~~ any period of suspension has been served.

~~[(2) If the first offender's blood alcohol concentration is 0.15% or higher, the court shall order, in addition to any other penalty imposed under R.S.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.]~~

b. In sentencing a second or subsequent offender under subsection a.(1)(A)(i) and a.(1)(B)(A)(iii) of 39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the court shall order, in addition to any other penalty imposed by that section, that the ~~installation of an~~ offender person convicted ~~must~~ install and maintain a functioning ignition interlock device in ~~the~~ a one or more motor vehicles ~~[principally operated]~~ owned, or leased or to be operated by the offender ~~[during and]~~ person convicted following the expiration of ~~the~~ any period of license suspension imposed under R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a). ~~[In addition to installation during the period of license suspension,]~~ For a second offense, the device shall remain installed for not less than ~~[one year]~~ three years or more than ~~[three]~~ five years, commencing immediately upon the return of the offender's person's driver's license after ~~the required~~ any period of suspension has been served. For subsequent offenses, commencing immediately upon the return of the offender's person's driver's license after ~~the required~~ any period of suspension has been served, the person

permanently shall be prohibited from operating a motor vehicle without ~~an~~ **functioning** ignition interlock device.

c. (1) The court shall require that, for the duration of its order, ~~an offender~~ **the person convicted** shall ~~[drive]~~ :

~~(a A)~~ **operate a motor vehicle only with a restricted use driver's license pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill); and**

~~(b B)~~ **operate a motor vehicle only in which no vehicle other than one in which ~~an~~ a **functioning** interlock device has been installed **and is maintained** pursuant to the order.**

(2) If, at the time the sentence is imposed, the ~~offender~~ **states** ~~person convicted~~ **claims** ~~that he or she does not own, or lease, or is unable to provide proof to the satisfaction of the court that the person will have a functioning ignition interlock device installed on a motor vehicle to be operated by the person, or lease, or have access to a vehicle in which an ignition interlock device may be installed, a vehicle, or will not drive or that he or she is medically unable to use an ignition interlock device, then :~~ ~~(a A)~~ **the court shall postpone the ignition interlock requirement, and the order shall commence on the day that the offender registers a motor vehicle owned or leased by the offender and the person's driver's license shall remain suspended; and (b B) the court shall order the person to submit to alcohol monitoring through an alcohol detection breath analyzer device, transdermal sensor device, or other technology certified by the director in accordance with R.S. 39:4-50.20 as amended by P.L. , c., (pending before the legislature as this bill) designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring. the person's driver's license shall be suspended and the court person shall use its discretion to select one of the following alternatives to the ignition interlock device, and the court shall order the alternative of the person's choosing, requiring the person to:**

~~(A)~~ **utilization the use of either a secure continuous remote alcohol monitor of a type authorized by the chief administrator in accordance with R.S. 39:4-50.20 as amended by P.L. , c., (pending before the legislature as this bill) to continuously detect the release of alcohol gas from the skin's surface;**

~~(B) utilization of the use of an alternate device authorized by the chief administrator that requires the person to provide regular breath samples at home, rather than in a vehicle; or~~

~~(C) a period of home arrest and shall require the person to wear an electronic monitoring device to enforce the restrictions imposed by the court and subject to monitoring by the Division of Parole pursuant to Title 10A, Chapters 71 and 72 of the New Jersey Administrative Code; or~~

~~(D)(C) payment of \$95 per month to the "Ignition Interlock Assistance Fund" established pursuant to provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).~~

~~If either the secure continuous remote alcohol monitor or the machine requiring breath samples from home is required to be used by the offender, it- Any option alternative to the ignition interlock device ordered by the court shall continue for the period of time during which an ignition interlock would otherwise be required by this Title . If either of these alternate devices is utilized pursuant to this section, then and all relevant provisions of this chapter applicable to ignition interlock devices are applicable to the alternate device alternative. The court, in its discretion, may impose requirements on the offender person concerning the ignition interlock device or alternative device, including a requirement of zero failures registered by the device for 45 30 days before the use of the device may be terminated.~~

d. As used in this act, "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 **interlock** device.

e. The provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) and any amendments and supplements thereto shall be applicable only to violations of **subsection a.(1)(A)(i) and a.(1)(B) of 39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a).**

**f. In any case in which an ignition interlock device or an alternative to the ignition interlock device is ordered by the court pursuant to subsection c.(2) of this section, the person for whom the ignition interlock device or alternative was ordered shall make application to the court for a determination of use and compliance no earlier than 30 days before the period of required use of ignition interlock device or an alternative is scheduled to conclude. Before the requirement of the**

ignition interlock or an alternative may be terminated, the court shall confirm, by a review of records supplied by the entity responsible for monitoring of the ignition interlock or alternative, that any interlock device or alternative was in use during the required period and that the person is in compliance with any other all conditions imposed by the court at the time of sentencing. If the ignition interlock or alternative device was in use for the required period and the person is in compliance with all conditions imposed by the court at the time of sentencing, the required use of the ignition interlock or alternative shall terminate. If the ignition interlock or alternative device was not in use for the required period or the person is not in compliance with all conditions imposed by the court at the time of sentencing, the required use of the ignition interlock or alternative shall continue until all conditions are complied with and until the ignition interlock or alternative device has been in use for the period of time equal to that initially required by the court. If the court orders that the person's use of the ignition interlock or alternative device must indicate a record of zero failures for a certain period of time before the required use of the device may be terminated, a reading of a blood alcohol concentration of less than .05% shall not be counted as a failure.

#### COMMENT

Although no alternative used by any state has proven to eliminate drunk driving entirely, the experiences of other states are useful in assessing ways in which New Jersey law could potentially be improved. In order to address the substantial number of DWI convictions in which IIDs are not ordered or used, Staff drafted alternative provisions, including: the use of a wrist or ankle alcohol monitor; the use of an in-home device to take breath samples rather than an IID installed in a vehicle; a period of home arrest using an electronic monitor to enforce any restrictions imposed; and a requirement that, even absent the use of any monitoring device, the defendant pay a monthly fee to the Ignition Interlock Assistance Fund. Alternatives like these, although not a perfect solution, have been shown to increase compliance with IID requirements which, in turn, has been shown to reduce recidivism and to reduce alcohol-related crashes, injuries and fatalities. The Commission considered the proposed alternatives and directed the inclusion of all of them, except the possibility of home arrest, in the draft report. In addition, the Commission asked Staff to modify the report to allow the person convicted of the offense to choose the alternative, rather than requiring the judge to select an option that might, for a variety of reasons, not be suitable in a particular case.

The draft also includes a provision allowing the court, in its discretion, to impose requirements on the person ordered to use the IID or alternative, including a requirement of zero failures recorded by the device for 30 days before the use of the device may be terminated. This would enable the court to gauge the ability and willingness of the individual to comply with the order of the court, and also, potentially, the ability and willingness of the individual to exercise control over his or her drinking. Such a requirement would provide a benchmark for those using the IID or an alternative device and a factor for the consideration of the court in determining whether use of the device should be terminated.

In an effort to close another gap in New Jersey's DWI statutes and regulations, Staff drafted a provision that requires that, when an IID or alternative is ordered, the person for whom the IID or alternative was ordered shall make an application to the court for a determination of use and compliance before the use of the IID or alternative may be discontinued. The application is to be made no earlier than 30 days before the use of the IID or alternative is scheduled to conclude. Before the use of the device may terminate, the court is to confirm based on a review of the

records supplied by the entity responsible for the monitoring, that the IID or alternative was in use during the required period and that the person complied with all conditions imposed at the time of sentencing. If the IID or alternative was in use and the person complied with the conditions, the required use terminates. If not, the required use of the IID or alternative is to continue until all conditions are complied with and until the IID or alternative has been in use for the period of time initially required by the court. If the court orders that the person's use of the ignition interlock or alternative device must indicate a record of zero failures for a certain period of time before the required use of the device may be terminated, a reading of a blood alcohol concentration of less than .05% shall not be counted as a failure.

The .05% reference is included in the event that New Jersey, at some point, uses compliance-based monitoring to determine who may conclude a period of IID or other device use and who must continue to use the IID or alternative. At this time, it is Staff's understanding that there is no monitoring of the reports generated by the IID installers as a part of the 60-day download of information from the device. In other states, termination of IID use is compliance-based, meaning that an individual is required to have, for example, three months with no "fails" (with "fails" meaning an inability to start the vehicle or the failure/refusal to take a rolling retest) before IID use may terminate. In New Jersey, an individual can have "fails" every day during the course of their mandated IID use and, when the statutorily mandated period of IID use is over, the person is able to start driving again without an IID. It is the understanding of Staff that monitoring need not be cost-prohibitive, since it is done in other states by authorized IID vendors and the tailoring of the computer-generated reports, without the need to review hundreds of pages of data pertaining to every individual using an IID.

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the "person", "defendant", "offender", "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable, and that was done by Staff.

**39:4-50.17a amended to read as follows:**

**a. Upon the determination of a person's eligibility for a restricted use license by the chief administrator, the applicant shall be responsible to pay the any cost of associated with installing, removing, and leasing ignition interlock devices in one or more motor vehicles owned, leased or to be operated by the person and shall pay an additional fee of twenty dollars per month directly to the ignition interlock company.**

**b. The company shall forward the additional twenty dollar fee to the Director chief administrator of the Division of Motor Vehicles motor vehicle commission who shall deposit \$19 of the fee into the shall establish the "Ignition Interlock Assistance Fund" established pursuant to provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) to assist persons' qualifying for financial assistance in accordance with R.S.39:4-50.17a as amended by P.L. , c. (C. ) (pending before the Legislature as this bill).**

**c. The Director chief administrator of the Division of Motor Vehicles motor vehicle commission shall deposit the remaining \$1 of the fee into a separate fund for administrative expenses.**

~~d. The surcharge described herein shall not be considered a fine, penalty or forfeiture to be distributed pursuant to R.S.39:5-41.~~

e. Payments from this fund shall be made directly to the provider of the person's ignition interlock device or the device selected as an alternative to the ignition interlock as described in subsection c.(2)(A) — (C) of 39:4-50.17 in amounts to be determined accordance with R.S.39:4-50.17a as amended by P.L. , c. (C. ) (pending before the Legislature as this bill).

f. The director chief administrator shall promulgate rules and regulations in order to effectuate the purposes of this section.

~~a. g.~~ If a person is required to install an ignition interlock device or use an alternative to the ignition interlock device pursuant to subsection c.(2)(A) — (C) of 39:4-50.17 and that person's family income does not exceed 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~~ the person may make application for assistance from the fund for 50% of the provider's customary fees for the installation, removal, and monthly lease/monitoring fees.

~~b. h.~~ If a person is required to install an ignition interlock device or use an alternative to the ignition interlock device pursuant to subsection c.(2)(A) — (C) of 39:4-50.17 and that person's family income does not exceed 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~~ the person may make application for assistance from the fund for 75% of the provider's customary fees for installation, removal, and monthly lease/monitoring fees for the ignition interlock device.

c. Persons who qualify for a reduced fee pursuant to the provisions of this section 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.

i. For the purposes of this section, the guideline for the Director chief administrator of the Division of Motor Vehicles motor vehicle commission to determine eligibility for assistance from the fund is the federal poverty level, as defined in section 4 of P.L.2005, c.156 (C.30:4J-11).

#### COMMENT

This provision was not drafted by Staff, but was prepared by CIIM based on programs that have proven to be successful in other states. The Commission, at its May meeting, expressed concerns about the inclusion of additional fees in light of the number of fines, fees and penalties associated with DWI convictions generally and, as a result, that language has been stricken in the above section of the draft. It is anticipated that the Ignition Interlock Assistance Fund will instead be funded by persons who do not have access to a vehicle in which an IID can be installed, or who are medically unable to use an IID, and who instead opt to pay a monthly fee into the fund as permitted by subsection c. of 39:4-50.17.

**39:4-50.18 amended to read as follows:**

The court shall notify the ~~Director of the Division of Motor Vehicles~~ chief administrator of the motor vehicle commission when a person has been ordered to install ~~an~~ and maintain a functioning interlock device in ~~a one or more~~ vehicles owned, ~~[,] or~~ leased ~~[or regularly operated]~~ or to be operated by the person. The ~~division~~ commission shall require that the device be installed before reinstatement of the person's driver's license that has been suspended pursuant to R.S.39:4-50. The ~~division~~ 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.

COMMENT

In this section, as in others, Staff has no objection to the requirement that the IID be functioning throughout the period of its mandated use.

**39:4-50.19 amended to read as follows:**

a. A person who fails to install ~~an~~ and maintain a functioning interlock device ordered by the court in a motor vehicle owned, ~~[,] or~~ leased ~~[or regularly operated]~~ or to be operated by ~~him~~ the person shall have his or her driver's license suspended for one year, in addition to any other suspension or revocation imposed under R.S.39:4-50, unless the court determines a valid reason exists for the failure to comply. 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 ~~his~~ the person's own blowing into the device or who drives a vehicle that is not equipped with such a device shall have his or her driver's license suspended for one year, in addition to any other penalty applicable by law. A person who fails to obtain and use an alternative to the ignition interlock device that has been ordered by the court pursuant to 39:4-50.17c.(2)(A) or (B) or (C) shall have his or her driver's license suspended for one year in addition to any other suspension or revocation imposed under 39:4-50 unless the court determines that a valid reason exists for the failure to comply.

b. 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~~ **operate or who is licensed to operate only vehicles equipped with a functioning ignition interlock device;**

(2) tampers or in any way circumvents the operation of an **ignition interlock device or alternative device ordered by the court pursuant to 39:4-50.17c.(2)(A) or (B) or (C)**; or

(3) knowingly rents, leases or lends a motor vehicle not equipped with ~~an a~~ **functioning ignition 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~~ **operate or is licensed to operate only vehicles equipped with a functioning ignition interlock device or required to use one of the alternatives to the ignition interlock device described in subsection c.(2) of section 39:4-50.17.**

c. The provisions of subsection b. 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 **to operate or who is licensed to operate only vehicles equipped with a functioning ignition interlock device** does not operate the vehicle.

#### COMMENT

The language of this section was modified to address the potential use of alternatives to the IID.

#### **39:4-50.20 amended to read as follows:**

The **director chief administrator** shall certify or cause to be certified ignition interlock devices, **and alcohol detection breath analyzer devices, transdermal sensor devices, and other technology designed to detect alcohol in a person's system** alternative devices described in 39:4-50.17c.(2)(A), **or (B) or (C)** as required by this act and shall publish a list of approved devices. **An ignition interlock or alternative** device shall not be certified unless the manufacturer enters into an agreement with the **division motor vehicle commission** for the provision of devices to indigent offenders, as determined by the director, ~~at a reduced cost in accordance with R.S. 39:4-50.17a as amended by P.L. , c., (pending before the legislature as this bill)~~. The **director chief administrator** shall provide a copy of this list along with information on the purpose and proper use of interlock **and other alcohol detection** devices to persons who have been ordered by the court to install such a device in their vehicles.

COMMENT

The language of this section was modified to address the potential use of alternatives to the IID.

**39:4-50.22. Criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle; content and form of the written statement and acknowledgment**

Whenever a person is summoned by or on behalf of a person who has been arrested for a violation of R.S.39:4-50 or section 2 of P.L.1981, c. 512 (C.39:4-50.4a) in order to transport or accompany the **arrestee person arrested** from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising him of his potential criminal and civil liability for permitting or facilitating the **arrestee's** operation of a motor vehicle **by the person arrested** while the **arrestee person arrested** remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment.

\* \* \*

COMMENT

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the "person", "defendant", "offender", "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable, and that was done by Staff.

**39:4-50.23. Vehicle impoundment; detention, and release; fees**

a. Whenever a person has been arrested for a violation of R.S.39:4-50 or section 2 of P.L.1981, c. 512 (C.39:4-50.4a), the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of arrest.

b. A vehicle impounded pursuant to this section shall be impounded for a period of 12 hours after the time of arrest or until such later time as the **arrestee person arrested** claiming the vehicle meets the conditions for release in subsection d. of this section.

c. A vehicle impounded pursuant to this section may be released to a person other than the **arrestee person arrested** prior to the end of the impoundment period only if:

(1) The vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in subsection d. of this section; or

(2) The vehicle is owned or leased by the **arrestee person arrested**, the **arrestee person arrested** gives permission to another person, who has acknowledged in writing receipt of the statement required in section 1 of P.L.2001, c. 69 (C.39:4-50.22), to operate the vehicle and the conditions for release in subsection d. of this section are met.

\* \* \*

#### COMMENT

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the "person", "defendant", "offender", "arrestee" and "operator". The Commission requested that Staff revise the language to make it consistent, using the term "person" where practicable, and that was done by Staff.

#### New section – definitions:

As used in this act:

"Chief administrator" means the Chief Administrator of the New Jersey Motor Vehicle Commission.

~~"Motor vehicle" or "vehicle" does not include "Commercial motor vehicles" as defined in R.S. 39:3-10.11, requiring a "Commercial driver license" or "CDL" for such vehicles' operation.~~

"Restricted use license" means a license to operate ~~a~~ motor vehicles, ~~exclusively for employment-related purposes~~ **equipped with a functioning ignition interlock device** pursuant to the provisions of this act, which is readily distinguishable from other driver's licenses issued by the State.

"Restricted use placard" means a rectangular sign of at least 12 inches by 8 inches, in the same color as a restricted use license, bearing the words "restricted use vehicle" in bold letters at least one inch high.

#### COMMENT

While there is now considerable support for the use of ignition interlock devices for all offenders, the studies and experiences of other states do not as clearly support the use of vocational licenses limiting the use of the vehicle for employment. The materials reviewed by Staff to this time suggest that requiring the use of an IID while limiting driving to certain identified locations may be less effective than mandating IID use and permitting unrestricted driving.

**New section – restricted license:**

a. Upon suspending the driver's license of any person convicted of a violation of R.S.39:4-50 or section 2 of P.L.1966, c.142 (C.39:4-50.2), the court shall determine whether that person is eligible to apply for a restricted use license pursuant to the provisions of this act. If the person is determined to be eligible, the court shall explain the conditions under which the license may be obtained, including the requirement that the person install ~~an~~ **and maintain a functioning** ignition interlock device in ~~a one or more vehicles owned, or leased~~ **or to be operated** by ~~him the person~~ pursuant to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.). The person shall make application to the chief administrator for the restricted use license.

b. A person who applies for a restricted use license shall ~~pay a \$50 non refundable application fee, which fee shall be in addition to any fee for the issuance of the restricted use license if the person is determined to be eligible, and~~ certify in the application:

- ~~(1) his place of employment and the hours during which he is employed;~~
- ~~(2) the hours during which and the locations between which it is necessary for him personally to operate a motor vehicle; and~~
- ~~(3) the manner in which he is required to operate a motor vehicle as a condition of employment, if necessary.~~

(1) that the person will install and maintain a functioning ignition interlock device in one or more specified vehicles owned, leased or to be operated by the person for the duration of the restricted use license pursuant to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.); and

(2) that the person has paid or agrees to honor any entered a payment arrangement established with the court by which the person will make installment payments until any fine imposed by the court in connection with the offense for which his driver's license is suspended is paid in full ; and

(3) that the person has served or agrees to honor any arrangement agreed to by the court by which the person will serve any period of detainment or term of imprisonment imposed by the court in connection with the offense for which his driver's license is suspended; and

**(4) that the person has obtained, has paid the initial premium, and agrees to maintain motor vehicle liability insurance in the amount required by law on one or more specified vehicles to be operated by the person for the duration of the restricted use license; and**

**(5) that the person agrees to abide by any conditions imposed by the court and/or by the chief administrator under which the license may be obtained.**

c. The chief administrator shall grant the restricted use license only on the condition that the applicant **provides proof to the satisfaction of the chief administrator that the applicant:**

(1) **has paid or has made arrangements suitable with the court to** pays any fine and serves any period of detainment or term of imprisonment imposed by the court in connection with the offense for which his driver's license is suspended; and

(2) provides proof that he **or she** possesses fully paid **the initial premium and has agreed to maintain** motor vehicle liability insurance **on one or more specified vehicles** in the amount required by law **and** for the duration of the requested restricted use license.

d. Upon receiving the completed application, the chief administrator shall determine whether the person should be issued a restricted use license **which will include any conditions imposed by the court or by the chief administrator.**

#### COMMENT

This provision was not drafted by Staff, but was prepared by CIIM based on programs that have proven to be successful in other states. The Commission, at its May meeting, expressed concerns about the inclusion of additional fees in light of the number of fines, fees and penalties associated with DWI convictions generally and, as a result, that language has been stricken in the above section of the draft. The Commission took no position on a fee for a restricted license.

#### **New section – restricted license cont'd:**

a. The restricted use license shall be in a form prescribed by the chief administrator and shall be issued in accordance with procedures established by the chief administrator. The license shall be of a color selected by the chief administrator, which readily distinguishes it from other driver's licenses issued by this State, **and the face of the license shall be imprinted with the notation: Ignition Interlock Required.** ~~The chief administrator may impose a fee of not more than \$25 for the issuance of a restricted use license.~~

b. A restricted use license issued under this act shall authorize the licensee to operate a motor vehicle with an **functioning** ignition interlock device which has been installed pursuant to P.L.1999, c.417 (C.39:4-50.16 et al.) ~~during certain hours and between certain points solely for the purpose of traveling to and from the licensee's place of employment, or for pursuing employment, or both.~~ **Additional** ~~Limitations~~ on the authorized use of the license shall **may** be determined by the **court and by the** chief administrator, and those limitations, as well as the penalties provided for in section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be indicated on the license.

~~c. The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the division with a declaration on a form provided by the division bearing the notarized signature of the person's employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.~~ The chief administrator of the motor vehicle commission may issue a permit authorizing a person to operate a vehicle owned by the person's employer during the period in which the person is required to install an ignition interlock or use one of the alternative devices described in 39:4-50.17c.(2)(A), (B) or (C) without installation of an ignition interlock device in the employer owned vehicle if:

(1) the person is gainfully employed in a position that requires driving;

(2) the person will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and

(3) the person has no ownership or controlling interest in the entity that employs that person.

d. A permit pursuant to subsection c. of this section shall:

(1) be sought by application to the chief administrator, which application shall be accompanied by:

(A) an affidavit from the person containing facts establishing that the person is currently employed in a position that requires driving and that the person will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and

~~(B) an affidavit from the person's employer establishing that the person has no ownership or controlling interest in the employer, that the employer will, in fact, discharge the person if the person is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day the person will drive, not to exceed twelve hours per day, for purposes of employment.~~

~~(2) include restrictions allowing the person to drive:~~

~~(A) only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;~~

~~(B) only the vehicle specified; and~~

~~(C) only if the permit is kept in the respondent's possession while operating the employer's vehicle.~~

~~c. e.~~ The chief administrator shall issue a restricted use placard to each approved restricted use licensee. The placard shall be prominently displayed in the rear window, or other location determined by the chief administrator, of any vehicle being driven by a restricted use licensee ~~other than the vehicle or vehicles specified by the person when the person submitted the person's application for the restricted use license.~~ The placard shall be the same color as the restricted use license. The limitations on the authorized use of the placard shall be determined by the chief administrator, and those limitations, as well as the penalties provided for in section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be indicated on the placard.

~~d. f.~~ A restricted use license shall be issued only to:

~~(1) a persons whose driver's licenses are is suspended or revoked after the effective date of this act, or~~

~~(2) a persons whose driver's licenses are is suspended or revoked prior to the effective date of this act for a violation of R.S.39:4-50 or section 2 of P.L.1966, c.142 (C.39:4-50.2), who may, in accordance with rules or directives to effectuate the purposes of this subsection adopted by the Supreme Court, petition the court that suspended or revoked the person's driver's license for a determination that the person is eligible to apply for a restricted use license pursuant to the provisions of this act.~~

#### COMMENT

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).

Staff included proposed language in the draft for Commission consideration of the issue of work-related vehicles. In light of the seriousness of the offense, the Commission did not support language providing an exception for driving employer-owned or controlled vehicles.

**New section – restricted license - penalties:**

The following penalties shall apply with regard to the issuance and use of restricted use licenses:

a. ~~An applicant~~ **A person** who deliberately falsifies an application for a restricted use license shall have the suspension or revocation of his driver's license extended for a period of one year.

b. A restricted use licensee who operates a motor vehicle ~~between points or during hours other than those indicated on~~ **in violation of conditions imposed upon** the restricted use license shall be fined not less than \$500 or more than \$1,000, and shall be ordered by the court to perform community service for a period of 30 days, and may be sentenced to imprisonment for not more than 90 days. The chief administrator shall immediately ~~rescind~~ **extend the** ~~suspension or revocation of the person's driver's license and the~~ licensee's restricted use license **and the mandatory period of ignition interlock device use** **for one year.**

c. If, while operating a motor vehicle ~~during unauthorized hours or between unauthorized points~~ **in violation of conditions imposed upon the restricted use license**, a licensee is convicted of causing an accident resulting in bodily injury, serious bodily injury, or death to another person, he shall be fined not less than \$1,000 or more than \$5,000, shall be ordered by the court to perform community service for a period of 30 days, and shall be sentenced to imprisonment for a term of not less than 10 days or more than 120 days. The chief administrator shall immediately rescind the licensee's restricted use license.

d. The penalties in this section shall be applied in addition to any other penalties required by law for a violation of the motor vehicle laws.

**COMMENT**

In this section, as in others, Staff has no objection to the clarification of the IID and restricted license requirements.

**New Section – effective date:**

This act shall take effect on the first day of the sixth month after enactment.

COMMENT

**39:4-51a. Consumption of alcoholic beverage by operator or passenger; prohibition; presumption; violations; penalty**

a. A person shall not consume an alcoholic beverage while operating a motor vehicle. A passenger in a motor vehicle shall not consume an alcoholic beverage while the motor vehicle is being operated. This subsection shall not apply to a passenger of a charter or special bus operated as defined under R.S.48:4-1 or a limousine service.

b. A person shall be presumed to have consumed an alcoholic beverage in violation of this section if an unsealed container of an alcoholic beverage is located in the passenger compartment of the motor vehicle, the contents of the alcoholic beverage have been partially consumed and the physical appearance or conduct of the ~~operator of~~ person operating the motor vehicle or a passenger may be associated with the consumption of an alcoholic beverage. For the purposes of this section, the term “unsealed” shall mean a container with its original seal broken or a container such as a glass or cup.

\* \* \*

COMMENT

In this section, as in those above, references to the individual affected by the statutory provisions are not consistent. The sections of the statute refer to the individual subject to the statute as the “person”, “defendant”, “offender”, “arrestee” and “operator”. The Commission requested that Staff revise the language to make it consistent, using the term “person” where practicable, and that was done by Staff.