

SENATE, No. 2616

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MAY 12, 2022

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Expands implied consent law to include blood testing; establishes per se standard for driving under influence of marijuana and certain controlled dangerous substances.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning driving under the influence and amending
2 P.L.1966, c.142 and R.S.39:4-50.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1966, c.142 (C.39:4-50.2) is amended to
8 read as follows:

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

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

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

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

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

39 (cf: P.L.2007, c.267, s.1)

40

41 2. R.S.39:4-50 is amended to read as follows:

42 39:4-50. (a) A person who operates a motor vehicle while under
43 the influence of intoxicating liquor, narcotic, hallucinogenic or
44 habit-producing drug, or operates a motor vehicle with a blood
45 alcohol concentration of 0.08% or more by weight of alcohol in the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 defendant's blood or permits another person who is under the
2 influence of intoxicating liquor, narcotic, hallucinogenic or habit-
3 producing drug to operate a motor vehicle the person owns or which
4 is in the person's custody or control or permits another to operate a
5 motor vehicle with a blood alcohol concentration of 0.08% or more
6 by weight of alcohol in the defendant's blood shall be subject:

7 (1) For the first offense:

8 (i) if the person's blood alcohol concentration is 0.08% or
9 higher but less than 0.10%, or the person operates a motor vehicle
10 while under the influence of intoxicating liquor, or the person
11 permits another person who is under the influence of intoxicating
12 liquor to operate a motor vehicle owned by him or in his custody or
13 control or permits another person with a blood alcohol
14 concentration of 0.08% or higher but less than 0.10% to operate a
15 motor vehicle, to a fine of not less than \$250 nor more than \$400
16 and a period of detainment of not less than 12 hours nor more than
17 48 hours spent during two consecutive days of not less than six
18 hours each day and served as prescribed by the program
19 requirements of the Intoxicated Driver Resource Centers established
20 under subsection (f) of this section and, in the discretion of the
21 court, a term of imprisonment of not more than 30 days. In addition,
22 the court shall order the person to forfeit the right to operate a
23 motor vehicle over the highways of this State until the person
24 installs an ignition interlock device in one motor vehicle the person
25 owns, leases, or principally operates, whichever the person most
26 often operates, for the purpose of complying with the provisions of
27 P.L.1999, c.417 (C.39:4-50.16 et al.);

28 (ii) if the person's blood alcohol concentration is 0.10% or
29 higher, or the person operates a motor vehicle while under the
30 influence of a narcotic, hallucinogenic or habit-producing drug, or
31 the person permits another person who is under the influence of a
32 narcotic, hallucinogenic or habit-producing drug to operate a motor
33 vehicle owned by him or in his custody or control, or permits
34 another person with a blood alcohol concentration of 0.10% or more
35 to operate a motor vehicle, to a fine of not less than \$300 nor more
36 than \$500 and a period of detainment of not less than 12 hours nor
37 more than 48 hours spent during two consecutive days of not less
38 than six hours each day and served as prescribed by the program
39 requirements of the Intoxicated Driver Resource Centers established
40 under subsection (f) of this section and, in the discretion of the
41 court, a term of imprisonment of not more than 30 days;

42 in the case of a person who is convicted of operating a motor
43 vehicle while under the influence of a narcotic, hallucinogenic or
44 habit-producing drug or permitting another person who is under the
45 influence of a narcotic, hallucinogenic or habit-producing drug to
46 operate a motor vehicle owned by the person or under the person's
47 custody or control, the person shall forfeit the right to operate a

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1 motor vehicle over the highways of this State for a period of not
2 less than seven months nor more than one year;

3 in the case of a person whose blood alcohol concentration is
4 0.10% or higher but less than 0.15%, the person shall forfeit the
5 right to operate a motor vehicle over the highways of this State until
6 the person installs an ignition interlock device in one motor vehicle
7 the person owns, leases, or principally operates, whichever the
8 person most often operates, for the purpose of complying with the
9 provisions of P.L.1999, c.417 (C.39:4-50.16 et al.);

10 in the case of a person whose blood alcohol concentration is
11 0.15% or higher, the person shall forfeit the right to operate a motor
12 vehicle over the highways of this State for a period of not less than
13 four months or more than six months following installation of an
14 ignition interlock device in one motor vehicle the person owns,
15 leases, or principally operates, whichever the person most often
16 operates, for the purpose of complying with the provisions of
17 P.L.1999, c.417 (C.39:4-50.16 et al.);

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

19 (2) For a second violation, a person shall be subject to a fine of
20 not less than \$500 nor more than \$1,000, and shall be ordered by
21 the court to perform community service for a period of 30 days,
22 which shall be of such form and on terms the court shall deem
23 appropriate under the circumstances, and shall be sentenced to
24 imprisonment for a term of not less than 48 consecutive hours,
25 which shall not be suspended or served on probation, or more than
26 90 days, and shall forfeit the right to operate a motor vehicle over
27 the highways of this State for a period of not less than one year or
28 more than two years upon conviction.

29 After the expiration of the license forfeiture period, the person
30 may make application to the Chief Administrator of the New Jersey
31 Motor Vehicle Commission for a license to operate a motor vehicle,
32 which application may be granted at the discretion of the chief
33 administrator, consistent with subsection (b) of this section. For a
34 second violation, a person also shall be required to install an
35 ignition interlock device under the provisions of P.L.1999, c.417
36 (C.39:4-50.16 et al.).

37 (3) For a third or subsequent violation, a person shall be subject
38 to a fine of \$1,000, and shall be sentenced to imprisonment for a
39 term of not less than 180 days in a county jail or workhouse, except
40 that the court may lower such term for each day, not exceeding 90
41 days, served participating in a drug or alcohol inpatient
42 rehabilitation program approved by the Intoxicated Driver Resource
43 Center and shall thereafter forfeit the right to operate a motor
44 vehicle over the highways of this State for eight years.

45 For a third or subsequent violation, a person also shall be
46 required to install an ignition interlock device under the provisions
47 of P.L.1999, c.417 (C.39:4-50.16 et al.).

1 As used in this section, the phrase "narcotic, hallucinogenic or
2 habit-producing drug" includes an inhalant or other substance
3 containing a chemical capable of releasing any toxic vapors or
4 fumes for the purpose of inducing a condition of intoxication, such
5 as any glue, cement or any other substance containing one or more
6 of the following chemical compounds: acetone and acetate, amyl
7 nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl
8 nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol,
9 ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or
10 isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous
11 oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl
12 nitrite or propyl nitrate or their isomers, toluene, toluol or xylene or
13 any other chemical substance capable of causing a condition of
14 intoxication, inebriation, excitement, stupefaction or the dulling of
15 the brain or nervous system as a result of the inhalation of the
16 fumes or vapors of such chemical substance.

17 A person shall be deemed to be under the influence of a narcotic,
18 hallucinogenic, or habit-producing drug if the person's blood
19 contains three nanograms or more of delta 9-tetrahydrocannabinol
20 per milliliter of blood.

21 Except for tetrahydrocannabinols, a person shall be deemed to be
22 under the influence of a narcotic, hallucinogenic, or habit-producing
23 drug if the person's blood contains any amount of a Schedule I
24 controlled dangerous substance as defined in section 5 of P.L.1970,
25 c.226 (C.24:21-5) or one of its metabolites or analogs, or any
26 amount of a Schedule II or III controlled dangerous substance as
27 defined in sections 6 and 7 of P.L.1970, c.226 (C.24:21-6 and
28 24:21-7) or one of its metabolites or analogs, which has not been
29 medically prescribed.

30 Whenever an operator of a motor vehicle has been involved in an
31 accident resulting in death, bodily injury or property damage, a
32 police officer shall consider that fact along with all other facts and
33 circumstances in determining whether there are reasonable grounds
34 to believe that person was operating a motor vehicle in violation of
35 this section.

36 A conviction of a violation of a law of a substantially similar
37 nature in another jurisdiction, regardless of whether that jurisdiction
38 is a signatory to the Interstate Driver License Compact pursuant to
39 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior
40 conviction under this subsection unless the defendant can
41 demonstrate by clear and convincing evidence that the conviction in
42 the other jurisdiction was based exclusively upon a violation of a
43 proscribed blood alcohol concentration of less than 0.08%.

44 If the driving privilege of any person is under revocation or
45 suspension for a violation of any provision of this Title or Title 2C
46 of the New Jersey Statutes at the time of any conviction for a
47 violation of this section, the revocation or suspension period
48 imposed shall commence as of the date of termination of the

1 existing revocation or suspension period. In the case of any person
2 who at the time of the imposition of sentence is less than 17 years
3 of age, the forfeiture, suspension or revocation of the driving
4 privilege imposed by the court under this section shall commence
5 immediately, run through the offender's seventeenth birthday and
6 continue from that date for the period set by the court pursuant to
7 paragraphs (1) through (3) of this subsection. A court that imposes
8 a term of imprisonment for a first or second offense under this
9 section may sentence the person so convicted to the county jail, to
10 the workhouse of the county wherein the offense was committed, to
11 an inpatient rehabilitation program or to an Intoxicated Driver
12 Resource Center or other facility approved by the chief of the
13 Intoxicated Driving Program Unit in the Division of Mental Health
14 and Addiction Services in the Department of Health. For a third or
15 subsequent offense a person shall not serve a term of imprisonment
16 at an Intoxicated Driver Resource Center as provided in subsection
17 (f).

18 A person who has been convicted of a previous violation of this
19 section need not be charged as a second or subsequent offender in
20 the complaint made against him in order to render him liable to the
21 punishment imposed by this section on a second or subsequent
22 offender, but if the second offense occurs more than 10 years after
23 the first offense, the court shall treat the second conviction as a first
24 offense for sentencing purposes and if a third offense occurs more
25 than 10 years after the second offense, the court shall treat the third
26 conviction as a second offense for sentencing purposes.

27 (b) A person convicted under this section must satisfy the
28 screening, evaluation, referral, program and fee requirements of the
29 Division of Mental Health and Addiction Services' Intoxicated
30 Driving Program Unit, and of the Intoxicated Driver Resource
31 Centers and a program of alcohol and drug education and highway
32 safety, as prescribed by the chief administrator. The sentencing
33 court shall inform the person convicted that failure to satisfy such
34 requirements shall result in a mandatory two-day term of
35 imprisonment in a county jail and a driver license revocation or
36 suspension and continuation of revocation or suspension until such
37 requirements are satisfied, unless stayed by court order in
38 accordance with the Rules Governing the Courts of the State of
39 New Jersey, or R.S.39:5-22. Upon sentencing, the court shall
40 forward to the Division of Mental Health and Addiction Services'
41 Intoxicated Driving Program Unit a copy of a person's conviction
42 record. A fee of \$100 shall be payable to the Alcohol Education,
43 Rehabilitation and Enforcement Fund established pursuant to
44 section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
45 Intoxicated Driving Program Unit.

46 (c) Upon conviction of a violation of this section, the court shall
47 collect forthwith the New Jersey driver's license or licenses of the
48 person so convicted and forward such license or licenses to the

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1 chief administrator. The court shall inform the person convicted
2 that if he is convicted of personally operating a motor vehicle
3 during the period of license suspension imposed pursuant to
4 subsection (a) of this section, he shall, upon conviction, be subject
5 to the penalties established in R.S.39:3-40. The person convicted
6 shall be informed orally and in writing. A person shall be required
7 to acknowledge receipt of that written notice in writing. Failure to
8 receive a written notice or failure to acknowledge in writing the
9 receipt of a written notice shall not be a defense to a subsequent
10 charge of a violation of R.S.39:3-40. In the event that a person
11 convicted under this section is the holder of any out-of-State
12 driver's license, the court shall not collect the license but shall
13 notify forthwith the chief administrator, who shall, in turn, notify
14 appropriate officials in the licensing jurisdiction. The court shall,
15 however, revoke the nonresident's driving privilege to operate a
16 motor vehicle in this State, in accordance with this section. Upon
17 conviction of a violation of this section, the court shall notify the
18 person convicted, orally and in writing, of the penalties for a
19 second, third or subsequent violation of this section. A person shall
20 be required to acknowledge receipt of that written notice in writing.
21 Failure to receive a written notice or failure to acknowledge in
22 writing the receipt of a written notice shall not be a defense to a
23 subsequent charge of a violation of this section.

24 (d) The chief administrator shall promulgate rules and
25 regulations pursuant to the "Administrative Procedure Act,"
26 P.L.1968, c.410 (C.52:14B-1 et seq.) in order to establish a program
27 of alcohol education and highway safety, as prescribed by this act.

28 (e) Any person accused of a violation of this section who is
29 liable to punishment imposed by this section as a second or
30 subsequent offender shall be entitled to the same rights of discovery
31 as allowed defendants pursuant to the Rules Governing the Courts
32 of the State of New Jersey.

33 (f) The counties, in cooperation with the Division of Mental
34 Health and Addiction Services and the commission, but subject to
35 the approval of the Division of Mental Health and Addiction
36 Services, shall designate and establish on a county or regional basis
37 Intoxicated Driver Resource Centers. These centers shall have the
38 capability of serving as community treatment referral centers and as
39 court monitors of a person's compliance with the ordered treatment,
40 service alternative or community service. All centers established
41 pursuant to this subsection shall be administered by a counselor
42 certified by the Addiction Professionals Certification Board of New
43 Jersey or other professional with a minimum of five years'
44 experience in the treatment of alcoholism. All centers shall be
45 required to develop individualized treatment plans for all persons
46 attending the centers; provided that the duration of any ordered
47 treatment or referral shall not exceed one year. It shall be the
48 center's responsibility to establish networks with the community

1 alcohol and drug education, treatment and rehabilitation resources
2 and to receive monthly reports from the referral agencies regarding
3 a person's participation and compliance with the program. Nothing
4 in this subsection shall bar these centers from developing their own
5 education and treatment programs; provided that they are approved
6 by the Division of Mental Health and Addiction Services.

7 Upon a person's failure to report to the initial screening or any
8 subsequent ordered referral, the Intoxicated Driver Resource Center
9 shall promptly notify the sentencing court of the person's failure to
10 comply.

11 Required detention periods at the Intoxicated Driver Resource
12 Centers shall be determined according to the individual treatment
13 classification assigned by the Intoxicated Driving Program Unit.
14 Upon attendance at an Intoxicated Driver Resource Center, a person
15 shall be required to pay a per diem fee of \$75 for the first offender
16 program or a per diem fee of \$100 for the second offender program,
17 as appropriate. Any increases in the per diem fees after the first full
18 year shall be determined pursuant to rules and regulations adopted
19 by the Commissioner of Health in consultation with the Governor's
20 Council on Alcoholism and Drug Abuse pursuant to the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.).

23 The centers shall conduct a program of alcohol and drug
24 education and highway safety, as prescribed by the chief
25 administrator.

26 The Commissioner of Health shall adopt rules and regulations
27 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
28 (C.52:14B-1 et seq.), in order to effectuate the purposes of this
29 subsection.

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

31 (h) A court also may order a person convicted pursuant to
32 subsection (a) of this section, to participate in a supervised
33 visitation program as either a condition of probation or a form of
34 community service, giving preference to those who were under the
35 age of 21 at the time of the offense. Prior to ordering a person to
36 participate in such a program, the court may consult with any
37 person who may provide useful information on the defendant's
38 physical, emotional and mental suitability for the visit to ensure that
39 it will not cause any injury to the defendant. The court also may
40 order that the defendant participate in a counseling session under
41 the supervision of the Intoxicated Driving Program Unit prior to
42 participating in the supervised visitation program. The supervised
43 visitation program shall be at one or more of the following facilities
44 which have agreed to participate in the program under the
45 supervision of the facility's personnel and the probation department:

46 (1) a trauma center, critical care center or acute care hospital
47 having basic emergency services, which receives victims of motor

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1 vehicle accidents for the purpose of observing appropriate victims
2 of drunk drivers and victims who are, themselves, drunk drivers;

3 (2) a facility which cares for advanced alcoholics or drug
4 abusers, to observe persons in the advanced stages of alcoholism or
5 drug abuse; or

6 (3) if approved by a county medical examiner, the office of the
7 county medical examiner or a public morgue to observe appropriate
8 victims of vehicle accidents involving drunk drivers.

9 As used in this section, "appropriate victim" means a victim
10 whose condition is determined by the facility's supervisory
11 personnel and the probation officer to be appropriate for
12 demonstrating the results of accidents involving drunk drivers
13 without being unnecessarily gruesome or traumatic to the
14 defendant.

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

37 The Supreme Court may adopt court rules or directives to
38 effectuate the purposes of this subsection.

39 (i) In addition to any other fine, fee, or other charge imposed
40 pursuant to law, the court shall assess a person convicted of a
41 violation of the provisions of this section a surcharge of \$125, of
42 which amount \$50 shall be payable to the municipality in which the
43 conviction was obtained, \$50 shall be payable to the Treasurer of
44 the State of New Jersey for deposit into the General Fund, and \$25
45 which shall be payable as follows: in a matter where the summons
46 was issued by a municipality's law enforcement agency, to that
47 municipality to be used for the cost of equipping police vehicles
48 with mobile video recording systems pursuant to the provisions of

1 section 1 of P.L.2014, c.54 (C.40A:14-118.1); in a matter where the
2 summons was issued by a county's law enforcement agency, to that
3 county; and in a matter where the summons was issued by a State
4 law enforcement agency, to the General Fund.
5 (cf: P.L.2019, c.248, s.2)

6

7 3. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill expands the implied consent law to include blood
13 testing. In addition, the bill establishes a per se standard for driving
14 under the influence of marijuana and certain controlled dangerous
15 substances.

16 Under current law, any person who operates a motor vehicle on a
17 public road in this State is deemed to have given consent to a breath
18 test for the purpose of determining the person's blood alcohol
19 content. The provisions of the bill extend this implied consent law
20 to include blood testing for the purpose of determining the content
21 of any narcotic, hallucinogenic, or habit-producing drug in the
22 person's blood. A person who refuses to consent to the blood test
23 would be subject to the same penalties as a person who is convicted
24 of refusing a breath test in relation to a drunk driving charge under
25 current law.

26 In addition, the bill establishes a per se standard for driving
27 under the influence of marijuana and certain controlled dangerous
28 substances. Under current law, a person is prohibited from
29 operating a motor vehicle while under the influence of intoxicating
30 liquor, narcotic, hallucinogenic, or habit-producing drug. This bill
31 provides that a person is deemed to be under the influence of a
32 narcotic, hallucinogenic, or habit-producing drug if his or her blood
33 contains three nanograms or more of delta 9-tetrahydrocannabinol
34 (THC) per milliliter of blood.

35 In addition, under the bill, except for tetrahydrocannabinols, a
36 person is deemed to be under the influence of a narcotic,
37 hallucinogenic, or habit-producing drug if his or her blood contains
38 any amount of a Schedule I controlled dangerous substance or one
39 of its metabolites or analogs, or any amount of a Schedule II or III
40 controlled dangerous substance or one of its metabolites or analogs,
41 which has not been medically prescribed.