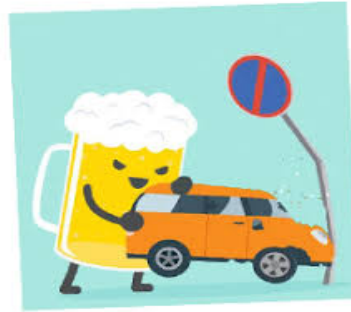


Garden State CLE Presents:

The New DWI Sentencing Statute



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Introduction

The amendment to N.J.S.A. 39:4-50(a)(3) was signed into law by the governor on April 3, 2025, and reads as follows:

Any person who is required to forfeit the right to operate a motor vehicle over the highways of this State pursuant to this section may, in lieu of forfeiting the right to operate a motor vehicle, install an ignition interlock device and receive a one day credit against the period that the person is required to forfeit the right to operate a motor vehicle over the highways of this State pursuant to this section for every two days that the person has the ignition interlock device installed. A person shall not be entitled to this credit if the violation of this section resulted in serious bodily injury as defined in N.J.S.A. 2C:11-1 to another person. In addition, a person who has been arrested or convicted of operating a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug or permitting another person who is under the influence of a narcotic, hallucinogenic, or habit-producing drug to operate a motor vehicle owned by the person or under the person's custody or control pursuant to the provisions of this section or a person who has been convicted of operating a commercial motor vehicle under the influence of a controlled substance pursuant to section 5 of P.L.1990, c.103 (C. 39:3-10.13) shall not be eligible for this credit.

N.J.S.A. 39:4-50(i)(2)

This act shall take effect immediately, shall apply to any offense occurring on or after the effective date, and shall expire on January 1, 2029.

I. Discussion and Analysis

1) License suspension/Interlock Table

<u>BAC</u>	<u>OFFENSE #</u>	<u>D/L LOSS</u>	<u>INTERLOCK</u>
NONE	1	NONE	90 days
.08-.099	1	NONE	90 days
.10 -.149	1	NONE	7m – 1y
.15 +	1	3 mo.	1y – 15m
N/A	2	1 – 2 yrs	2y – 4y
N/A	3	8 yrs	2y – 4y

See N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.17

2) All qualified alcohol offenders: The availability of the 2 for 1 day credit against an alcohol related license suspension following a conviction for N.J.S.A. 39:4-50 applies to first, second and subsequent offenders. The newly amended law may be the only statute in the United States that allows ALL alcohol-intoxicated drivers to avoid a loss of driving privileges.

3) Continuation of pre-conviction credits - The amendments for N.J.S.A. 39:4-50(a)(3) can be thought of as an extension of the pre-conviction 2 for 1-day credits against a license suspension that are currently available to DWI defendants who install an ignition interlock device (IID) on their vehicles and receive a restricted use license from MVC following their arrests and prior to the disposition of their cases.

II. Qualifications for Credits

1) Pre-Conviction – A defendant seeking 2 for 1 day credit prior to conviction must meet the following criteria:

i) Be charged with a DWI offense that is alcohol based;

ii) Cannot have been involved in a DWI accident where there was serious bodily injury (SBI) (bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.); and

iii) Must have obtained a restricted use driver's license from MVC based upon proof of installation of the IID.

2) Post-Conviction – Under the newly amended statute, N.J.S.A. 39:4-50(a)(3), a defendant seeking 2 for 1 day credit following conviction must meet the following criteria:

i) Be charged with a DWI offense that is alcohol based;

ii) Cannot have been involved in a DWI accident where there was serious bodily injury (SBI).

3) Instructors' comments: In order to qualify, the best practice would be for the defendant to obtain and present the restricted use license to the Court at the time of sentencing.

The post-conviction option is vested in the defendant and is entirely optional. There is no authority for the prosecutor to object or the judge to deny the application to a defendant who meets the qualifications.

A New Jersey defendant who has installed the IID and has obtained a restricted use license and who was validly licensed in our state on the date of his offense and maintains that license in good standing until the conviction is entitled to receive full credit against his fines.

III. Open Legal and Procedural Questions

- 1) Refusal – The Refusal statute under N.J.S.A. 39:4-50.4a does not provide any credits for early installation of the IID. Advocacy calling for an extension of the license loss credits to the refusal offense would have to be judicially developed by interpreting the phrase, “pursuant to this section.” See discussion in State vs. Ciancaglini, 204 N.J. 597(2011).
- 2) Pre-Conviction Credits Against Other Mandatory IID Requirements – Dispositional delays based upon litigation (e.g., the Alcotest 9510), may allow the defendant to accumulate more than necessary 2 for 1 credit to avoid a license suspension. The open question is whether any surplus IID credits can be applied against the mandatory IID component of the sentence following the license loss term.
- 3) Synergistic Effects – Since the credits are only available in cases involving alcohol intoxication, there is an open question as to the availability of the credits in cases involving defendants who were under the influence of both drugs and alcohol. See discussion in State vs. Glynn, 20 N.J.Super 20(App.Div.1952).
- 4) Indigents - The availability of the interlock credits may require the defendant to commit to IID installation over many months or years. The ongoing costs may make it impossible for indigent defendants to opt for the IID in lieu of a license suspension. This outcome is especially likely in light of the mandatory IDRC and Surcharge components of every DWI sentence. New Jersey statutory law currently provides some measure of IID relief for indigents:

N.J.S.A. 39:4-50.17a. Fees for ignition interlock device installation

a. If a person is required to install an ignition interlock device 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.

b. If a person is required to install an ignition interlock device 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.

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.

5) Re-Sentencing Rule 7:9-4 – A defendant who seeks to take advantage of the 2 for 1 day credit at some point after sentence has been imposed may have to request re-sentencing and a stay of license suspension in order to apply for the restricted use license.

6) Effective Date - It appears that that statute is prospective beginning on April 3, 2025.

7) Future Impacts - The full force and effect of this statute has the capacity to create a *de jure* work license for convicted DWI offenders and may result in a dramatic decrease in violations of driving on the revoked list under N.J.S.A. 2C:40-26 and N.J.S.A. 39:3-40(f)(2). It may also reduce the incidences of repeat drunk-driving offenses and save lives.

8) Constitutional issues - It is unclear to what extent, if any, the availability of the credit is applicable to defendants who are licensed in another jurisdiction outside of New Jersey. This issue raises a variety of equal protection arguments that must be decided by a judge in the Law Division of Superior Court on notice to the Attorney General.

IV. Legislative Statements from the Assembly

ASSEMBLY, No. 5411

STATE OF NEW JERSEY

DATED: MARCH 10, 2025

The Assembly Judiciary Committee reports favorably Assembly Bill No. 5411.

This bill addresses aspects of P.L.2023, c.191 (C.39:4-50.21a et al.) regarding the installation of ignition interlock devices (IID) for certain driving while intoxicated (DWI) offenses.

Under the provisions of this bill, any person who is required to forfeit the right to operate a motor vehicle in this State may, in lieu of forfeiting the right to operate a motor vehicle, install an IID and receive a one day credit against the period of license forfeiture for every two days that the person has the IID installed.

The bill provides that a person is not entitled to this credit if the DWI violation under R.S.39:4-50 resulted in serious bodily injury to another person. In addition, a person who has been convicted of operating or permitting another person to operate a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug pursuant to the provisions of R.S.39:4-50 or convicted of operating a commercial motor vehicle under the influence of a controlled substance pursuant to section 5 of P.L.1990, c.103 (C.39:3-10.13) is also not eligible for this credit.

The provisions of this bill take effect immediately and apply to any offense occurring on or after the effective date. The bill's provisions expire on January 1, 2029, to conform to the expiration dates of P.L. 2019, c.248 and P.L.2023, c.191 which also expire on January 1, 2029, and concern the installation of IID.

As reported by the committee, Assembly Bill No. 5411 is identical to Senate Bill No. 4144, which was also reported by the committee on this date.

V. Legislative Statements from the Senate

This bill clarifies P.L.2023, c.191 and the installation of ignition interlock devices (IID) for certain driving while intoxicated (DWI) offenses.

Under current law, for a first DWI offense, a person whose blood alcohol concentration was 0.15% or higher is required to forfeit the right to operate a motor vehicle for a period of three months and is required to install an IID during the period of license forfeiture and for an additional 12 to 15 months thereafter. For a second DWI offense, a person is required to forfeit the right to operate a motor vehicle for a period of one to two years and is required to install an IID during the period of license forfeiture and for an additional two to four years thereafter. For a third or subsequent DWI offense, a person is required to forfeit the right to operate a motor vehicle for eight years and is required to install an IID during the period of license forfeiture and for an additional two to four years thereafter. A person may receive a one-day credit against the period of license forfeiture for every two days that the person has the ignition interlock device installed under certain conditions.

Under the provisions of this bill, any person who is required to forfeit the right to operate a motor vehicle over the highways of this State pursuant to current law may, in lieu of forfeiting the right to operate a motor vehicle, install an ignition interlock device and receive a one day credit against the period of license forfeiture pursuant to current law for every two days that the person has the ignition interlock device installed.

The bill provides that a person is not entitled to this credit if the violation of R.S.39:4-50 resulted in serious bodily injury to another person. In addition, a person who has been arrested or convicted of operating or permitting another person to operate a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug pursuant to the provisions of R.S.39:4-50 or a person who is convicted of operating a commercial motor vehicle under the influence of a controlled substance pursuant to section 5 of P.L.1990, c.103 (C.39:3-10.13) is also not eligible for this credit.

The provisions of this bill take effect immediately and apply to any offense occurring on or after the effective date. The bill's provisions expire on January 1, 2029, to conform to the expiration of P.L.2019, c. 248 and P.L.2023, c.191 which also expire on January 1, 2029, and concern the installation of ignition interlock devices.