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| STATE:   | <b>NEW JERSEY</b>   |
| General Reference:   | New Jersey Statutes Annotated   |
| <u>Basis for a DWI Charge:</u>                             | See the Special Note below.   |
| Standard DWI Offense:                                      | Under the influence of intoxicating liquor §39:4-50(a)  |
| Illegal Per Se Law (BAC/BrAC):                             | ≥.08 <sup>797,798and799</sup> §39:4-50(a)<br><u>Persons Under 21 Years Old- ≥.01</u> §39:4-50.14  |
| Presumption (BAC):   | <b>None</b>   |
| Types of Drugs/Drugs and Alcohol:                          | Under the influence of (1) A Narcotic (2) A hallucinogenic drug or (3) A Habit-Producing Drug <sup>800</sup> §39:4-50(a)  |
| Other:   |   |
| <u>Chemical Breath Tests for Alcohol Concentration:</u>    |   |
| Preliminary Breath Test Law:                               | <b>No</b>   |
| Implied Consent Law:                                       |   |
| Arrest Required (Yes/No):                                  | <b>Probably, Yes.</b> Under §39:4-50.2(a) only "reasonable grounds" seem to be required. However, under §39:4-50.4a, a driver's license can only be revoked when the refusal is based on an arrest. |
| Implied Consent Law Applies to Drugs (Yes/No):             | <b>No</b>   |
| Refusal to Submit to Chemical Test Admitted into Evidence: | <b>Yes.</b> (Criminal Cases) <i>State v. Stever</i> , 527 A.2d 408 (N.J. 1987) (cert denied 484 U.S. 954, 98L.Ed.2d 373, 108 S. Ct. 348(1987)).   |
| Other Information:   | (1) An "involuntary" blood (not breath) sample may be obtained from a person who has been arrested for a DWI offense; i.e., a blood sample may be taken by "force" <sup>801</sup> .                 |

<sup>797</sup> Standard: "Percent by weight" of alcohol in the blood. §§39:4-50(a) and 39:4-50.14

<sup>798</sup> In *State v. Downie*, 569 A.2d 242 (N.J. 1990) (cert denied 498 U.S. 819, 112 L.Ed.2d 38, 111 S. Ct. 63 (1990)), the New Jersey Supreme Court held that breathalyzer results must be given "judicial notice." The court felt that this was in keeping with the legislature's policy of measuring alcohol in the brain for the purpose of determining whether a person was DWI. {The practical end result of this decision was to in effect create a "judicial" illegal per se law based on BrAC. See the dissenting opinion in the *Downie* case.}

<sup>799</sup> *State v. Lentini*, 573 A.2d 464 (N.J. Super. A. D. 1990)

<sup>800</sup> "[N]arcotic, hallucinogenic or habit-producing drug-includes an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as any glue, cement or any other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl nitrate or their isomers, toluene, toluol or xylene or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance." § 39:4-50(a)

<sup>801</sup> A forced test may be unreasonable and unconstitutional under the totality of the circumstances. *State v. Ravotto*, 777 A.2d 201 (NJ 2001).

**Special Note:** Under separate statutory provisions, it is illegal for a person to operate a motor vehicle while under the influence of intoxicating liquor, any narcotic or any habit-forming drug (1) on highways operated by the Port Authority of New York and New Jersey, (2) on any "project" of the New Jersey Highway Authority, (3) on any "project" of the New Jersey Turnpike Authority, or (4) on any "project" of the South Jersey Transportation Authority. §§27:12B-18, 27:23-26, 27:23-32, 27:25A-21, 32:1-154.3, 32:1-154.9, 32:1-154.10, 32:1-154.14, 32:1-154.18(2) and 32:1-154.19 It is illegal to operate a motorized bicycle while under the influence of intoxicating liquor, any narcotic drug or any habit-

*State v. Dyrl*, 478 A.2d 390 (N.J. 1984), and *State v. Woomer*, 483 A.2d 837 (N.J. Super. A. D. 1984)  
 (2) Tests for alcohol shall be made on automobile drivers who survive traffic accidents fatal to others. §§2A:84A-22.5, 26:2B-24 and *State v. Figueroa*, 515 A.2d 242 (N.J. Super. A. D. 1986), cert. den. 526 A.2d 204 (1987),

Chemical Tests for Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

|        |             |
|--------|-------------|
| Blood: | <b>No</b>   |
| Urine: | <b>No</b>   |
| Other: | <b>None</b> |

Adjudication of DWI Charges:

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| Mandatory Adjudication Law (Yes/No):             | <b>No</b>   |
| Anti-Plea-Bargaining Statute (Yes/No):           | <b>No</b>   |
| Pre-Sentencing Investigation Law (PSI) (Yes/No): | <b>Yes</b> (Alcohol Screening Required) §39:4-50(b) |

Sanctions for Refusal to Submit to a Chemical Test:

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|--|------------|
| Refusal to Take a <u>Preliminary Breath Test</u> : |            |
| Criminal Sanctions (Fine/Jail):                    | <b>N/A</b> |
| Administrative Licensing Action (Susp/Rev):        | <b>N/A</b> |
| Other:   | <b>N/A</b> |

Refusal to Take Implied Consent Chemical Test:

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|---|---|
| Criminal Sanction (Fine/Jail):              | See <b>School Property/Crossing</b> .<br>Fine <b>\$250 to \$500</b> §39:4-50.4a   |
| Administrative Licensing Action (Susp/Rev): | <b>First Refusal – Revocation 6 months</b> <sup>802</sup> (Mand); <b>second refusal – Revocation 2 years</b> (Mand); <b>subsequent refusal – Revocation 10 years</b> (Mand) §§39:4-50.2 and 39:4-50.4a(a) <sup>803</sup> .<br><b>Surcharge.</b> A surcharge of <b>\$100.</b> §39:4-50.8<br>See <b>School Property/Crossing</b> <sup>804</sup> . |

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forming drug. §39:4-14.3g. The law provides that a violation of these provisions results in the same sanctions as for violating the regular DWI law (§39:4-50).

<sup>802</sup> Under separate statutory provisions, a person who refuses to submit to a chemical test after being charged with operating a CMV either with a BAC  $\geq$ .04 or while under the influence of a controlled substance is subject (1) to a fine of \$250 to \$500, and (2) for a first refusal, mandatory license revocation (i.e., a loss of all driving privileges) for 6 months or, where there has been either a prior refusal or a prior drunk-driving offense under any provisions of law, mandatory license revocation for 2 years. §§39:3-10.13 and 39:3-10.24(f)

<sup>803</sup> *State v. Hamm*, 577 A.2d 1259 (N.J. 1990) (cert den 499 U.S. 947, 113 L. Ed.2d 466, 111 S. Ct. 1413 (1990)) and *State v. Hammond*, 571 A.2d 942 (N.J. 1990). However, a traffic law violation, including a violation of the implied consent law, is considered “quasi-criminal” in nature. See for example, *State v. Widmaier*, 724 A.2d 241 (N.J. 1999).

<sup>804</sup> The only sanctions for driving with a BAC  $\geq$ .01 but  $\leq$ .08 if  $<$ 21 years old are community service and forfeiture of driving privileges.

**School Property/Crossing:** If the refusal occurred either (1) on property owned by or within 1,000 ft. of an elementary/secondary school, (2) while driving through a designated school crossing zone, or (3) while driving through a non-designated school crossing zone when juveniles are present, the following sanctions apply: for either a first or subsequent offense – a fine of **\$500 to \$1,000**; for a first offense – **license suspension for 1 year** (mand); for a second

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| Criminal Sanctions:             | <b>Note:</b> A drunk-driving offense is not a "crime"   |
| Imprisonment:                   |   |
| Term (Day, Month, Years, etc.): | <u>First offense</u> – .08 BAC to <.1 BAC – at least <b>12 hours</b> and not more than <b>30 days</b> , .1 BAC or more- <b>12 hours – 48 hours</b> plus not more than <b>30 days</b> ; <u>second offense</u> (within 10 years of a first offense) – <b>48 consecutive hours-90 days</b> ; <u>third and subsequent offenses</u> (within 10 years of a second offense) – Not less than <b>180 days</b> . §39:4-50 |
| Mandatory Minimum Term:         | <u>First offense .08 to &lt; .01</u> - <b>12 hours detention</b> <sup>805and806</sup> ; <u>second offense</u> – <b>48 consecutive hours</b> ; <u>third and subsequent offenses</u> – <b>90 days</b> <sup>807</sup>  |
| Fine:                           |   |
| Amount (\$ Range):              | <u>First offense .08 to &lt; .01</u> – <b>\$250 to 400</b> <sup>808</sup> ; <u>.1 BAC or greater</u> – <b>\$300 to \$500</b> ; <u>second offense</u> (within 10 years of a first offense) – <b>\$500 to 1,000</b> ; <u>third and subsequent offenses</u> (within 10 years of a second offense) – <b>\$1,000</b> . §39:4-50  |
| Mandatory Min. Fine (\$):       | <u>First offense .08 to &lt; .01</u> – <b>\$250</b> , <u>.1 BAC or greater</u> – <b>\$300</b> ; <u>second offense</u> (within 10 years of a first offense) – <b>\$500</b> ; <u>third and subsequent offenses</u> (within 10 years of a second offense) – <b>\$1,000</b> . §39:4-50, <i>State v. Laurick</i> , 4 575 A.2d 1340 (N.J. 1990), and <i>State v. Hamm</i> , 577 A.2d 1259 (N.J. 1990)                 |
| Other Penalties:                |   |
| Community Service:              | <u>Second offense</u> – <b>30 days</b> <sup>809</sup> ; <u>third and subsequent offense</u> – Not more than <b>90 days</b> as an alternative to imprisonment; i.e. not more than 90 days of the 180-day sentence may be served performing community service.  |

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offense – **license suspension for 4 years** (mand); and for a third or subsequent offense – **license suspension for 20 years** (mand). §39:4-50.4a(b)

<sup>805</sup> Municipalities may enact ordinance to hold DUI arrestees in protective custody until the person is no longer a danger to himself or others. The person is no longer a danger to himself or others when the person's blood alcohol concentration is less than .05 percent and the person is no longer under the influence of any intoxicating liquor or narcotic or hallucinogenic or habit-forming drug to the extent that the person's faculties are impaired. In no event shall a municipality hold a person in protective custody for a period of longer than eight hours without providing an appropriate hearing.

<sup>806</sup> **Work Release:** At the court's discretion, a defendant may be allowed to participate in a work release program. §39:4-51. {The law does not require that a minimum period of incarceration be served prior to participating in this program.}

<sup>807</sup> The law provides that the court may substitute no more than 90 days of the 180 days jail term for community service on a day-for-day basis. Consequently, a third or subsequent DWI offender would still be subject to a mandatory jail term of at least 90 days. §39:4-50(a)(3) and *State v. Laurick*, 575 A.2d 1340 (N.J. 1990)(cert denied 498 U.S. 967, 112 L.Ed.2d 413, 111 S. Ct. 429(1990)). The law requires some type of confinement for at least 90 days. *State v. George*, 608 A.2d 957 (N.J. Super. A.D. 1992)

<sup>808</sup> **Additional Fees and Surcharges:** A \$100 fee is imposed for the Alcohol Education and Enforcement Fund (§39:4-50(b)) and a \$100 surcharge is imposed for the Drunk-Driving Enforcement Fund (§39:4-50.8). One dollar (\$1) is added to any fine for the Body Armor Replacement Fund and \$1 added for the N.J. Spinal Cord Research Fund. §39:5-41(d) and (e)

<sup>809</sup> May be mandatory and in addition to the minimum term of imprisonment.

Persons Under 21 Years Old-BAC ≥.01 but <.08 -15 to 30 days community service, license suspension of **30 to 90 days**.<sup>810</sup> §39:4-50.14

Restitution  
(e.g., Victim's Fund)

**Yes.** (1) Paid by the defendant to a victim. §§2C:1-5(b), 2C:43-2, 2C:43-3 and 2C:44-2 (2) A victim is also eligible to receive payment from the State's Violent Crimes Compensation Board. §52:4B-11

Other:

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

**None**

For an "alleged" DWI-related injury or death (as well as for other serious driving offenses), the licensing agency may issue a preliminary suspension without a hearing. When the agency notifies the driver of the preliminary action, it also advises that person of any final licensing action to be taken. The driver may request a hearing prior to the final action. §§39:5-30(e) and 39:5-31

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

**Revocation** (probably). The statute uses the terminology "forfeit his right to operate a motor vehicle." §§39:4-50 and 39:4-50.14

**Special Note:** Under separate statutory authority, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30 (a)

Term of License Withdrawal  
(Days, Months, Years, etc.):

First offense .08 to <.1BAC- 3 months; first offense BAC .1 or more-7 months to 1 year<sup>811</sup>; second offense – 2 years; third and subsequent offenses – 10 years

Persons Under 21 Years Old-BAC ≥.01 but <.10-30 to 90 days.

**Special Note:** For discretionary licensing actions under §39:5-30, the law does not specify the periods of license suspension or revocation.

Mandatory Minimum Term of  
Withdrawal:

First offense – 3 months .08 to <.1BAC, , BAC .1 or more-**7 months**; second offense – 2 years; third and subsequent offenses – 10 years.

Under 21 Years Old-BAC ≥.01 but <.08 – 30 days.

Other:

Rehabilitation:

Alcohol Education:

**Yes**

<sup>810</sup> The community service and driver licensing sanctions against a person under 21 years old for operating a motor vehicle with a BAC ≥.01 but <.08 are in addition to any other penalties that may be imposed for a violation of any other DWI-related law. §39:4-50.14

<sup>811</sup> For offenders <17 years old, license forfeiture through their 17th birthday plus the regular forfeiture period. §39:4-50

Persons Under 21 Years Old-BAC  $\geq$ .01 but  $<$ .08-Yes.  
§39:4-50.14

Alcohol Treatment:

First offense – Yes<sup>812</sup>; second offense – Yes<sup>813</sup>; third and subsequent offenses – Yes.<sup>814</sup> §39:4-50

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Yes<sup>815</sup>**

Terms Upon Which Vehicle

Will Be Released:

Other:

Vehicle Registration Revocation:<sup>816and817</sup> As an alternative to “ignition interlock usage”, the registrations of ALL of the vehicles owned by the offender **must** be revoked as follows: second offense– 2 years; third or subsequent offense – 10 years §§39:3-40.1(a)(3) and 39:4-50(a)(2) and (3). Temporary registration with special tags may be issued so that other persons can use the vehicle for employment, educational, health, or medical purposes. §39:3-40.2

Miscellaneous Sanctions

Not Included Elsewhere:

**Special Assessment:** A defendant shall be assessed a penalty of \$50 that is to be paid into a fund administered by the Violent Crimes Compensation Board. §2C:43-3.1(c)

**Insurance Surcharges:** A DWI offender must pay the following insurance surcharges: first and second offenses – \$1,000 per year for 3 years for a total surcharge of **\$3,000** for each conviction; and, third offense (within 3 years) – \$1,500 per year for 3 years for a total surcharge of **\$4,500**. §17:29A-35(b)(2)

**Per Diem Fees:** DWI offenders who are incarcerated in an Intoxicated Driver Resource Center must pay the following *per diem* fees: first offense – \$75; second offense – \$100. These fees may be increased via regulations promulgated by the Commissioner of Health after consulting with the Governor's Council on Alcoholism and Drug Abuse. §39:4-50(f)

**Assault by Auto:** I. A person commits assault by auto, a crime of the fourth degree, if a violator of the drunk-driving laws causes a bodily injury. The following sanctions apply: imprisonment – not more than **18 months**; and a fine – not more than **\$10,000**. II. A person commits assault by auto, a

<sup>812</sup> There appears to be a mandatory treatment of from 12 to 48 hours (spent during two consecutive days of not less than six hours each day) which is to be spent in an intoxicated driver resource center.

<sup>813</sup> The imprisonment term may be served in an intoxicated driver resource center.

<sup>814</sup> The imprisonment term may be served in an inpatient rehabilitation facility but not an intoxicated driver resource center.

<sup>815</sup> The vehicle operated by the offender shall be impounded for 12 or more hours following arrest. The offender (after this period) or another person (before the end of the period) may claim the vehicle if lawfully able to operate it. §39:4-50.23

<sup>816</sup> **Registration Revocation** may be imposed an alternative sanction to ignition interlock usage.

<sup>817</sup> Under §39:5-30(a), the licensing agency has the discretionary authority to suspend or revoke the vehicle registration certificates of a person for any violation of the traffic laws or on "other reasonable grounds."

crime of the third degree, if a violator of the drunk-driving laws causes a serious bodily injury. The following sanctions apply: imprisonment **-3 to 5 years**; and a fine – not more than **\$15,000**. §§2C:12-1(c)(2), 2C:43-3(b)(1) and (2) and 2C:43-6(a)(3) and(4)

**Other information:** A person convicted of a DWI offense must satisfy the requirements of a program of alcohol education and rehabilitation approved by the Director of the Division of Motor Vehicles. Failure to satisfy such requirements shall result in a driver's license revocation or suspension or continuation of revocation or suspension until such requirements are satisfied (unless stayed by court order in accordance with Rule 7:8-2 of the N.J. Court Rules, or §39:5-22). §39:4-50

**School Property/Crossing:** I. If the drunk-driving offense occurred (1) on property owned by or within 1,000 ft. of an elementary/secondary school, (2) while driving through a designated school crossing zone, or (3) while driving through a non-designated school crossing zone when juveniles are present, the following sanctions apply: first offense - Jail – not more than **60 days**, fine **\$500 (mand) – \$800** and license suspension – **1 year (mand) –2 years**; second offense – Jail – not more than **180 days** (with 96 consecutive hours mand), fine **\$1,000 (mand) – \$2,000**, community service – **60 days (mand)** and license suspension – not **less than 4 years (mand)**; and third offense - Jail – **180 days (mand)**, fine – **\$2,000 (mand)** and license suspension **-20 years (mand)**. The license suspension period begins after the completion of any incarceration sanction. §39:4-50(g)

II. A person commits assault by auto, a second degree crime, by causing a serious bodily injury while violating the drunk-driving laws and the offense occurred (1) on property owned by or within 1,000 feet of an elementary/secondary school, (2) while driving through a designated school crossing zone, or (3) while driving through a non-designated school crossing zone when juveniles are present. Sanctions: imprisonment **-5 to 10 years**; and a fine – not more than **\$150,000**. §§2C:12-1(c)(3), 2C:43-3(a)(2) and 2C:43-6(a)(2)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's privilege to operate a CMV is "suspended" for not less than 1 mandatory year nor more than 3 years if transporting hazardous materials if, while operating a CMV, that person (1) has a BAC/BrAC  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) is under the influence of (b) intoxicating liquor or a controlled substance, (3) violates the drunk-driving law (§39:4-50), (4) refuses to submit to a chemical test for an alcohol concentration, or (5) the CDL is suspended, revoked, disqualified, or under an out-of-service order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the privilege to operate a CMV is "revoked" for life (10 years mand). A CMV operator who refuses to submit to a chemical test is subject to a fine of not less than \$250 nor more than \$500. §39:3-10.9 et seq.

**Child Endangerment:** In addition to any other sanctions for a drunk-driving offense, a person who commits such an offense while transporting a passenger  $\leq 17$  years old is guilty of a "disorderly persons offense". The sanctions for this offense are as follows: first offense -Jail-**none**, fine – **\$25 to \$100**; subsequent offense -Jail – not more than **90 days**, fine – **\$100 to \$200**. For either a first or subsequent offense - community service for not more than **5 days** and license suspension for not more than **6 months**. §§39:5C-1 and 39:4-50.15

**Drunk Driving on School Property or Within a School Crossing Zone (Designated or Not Designated):** first offense -Jail not more than **60 days**, fine **\$500 to \$800** and license suspension **1 year (mand) to 2 years**; second offense - **96 consecutive hours** (mand but may be reduced to 6 days with community service up to 90 days) to **180 days**, community service 60 days, fine **\$1,000 to \$2,000** and license suspension not less than **4 years (mand)**; and, third offense – Jail- **180 days**, fine **\$2,000** and license suspension for **20 years (mand)**. For either a first or subsequent offense, license suspension is to commence upon the completion of any imprisonment sanction. §39:4-50(g)

**Ignition Interlock:** After the license suspension period has been completed, a person may be required to install an ignition interlock device on all of the motor vehicles he/she owns, leases or regularly operates. The device remains installed for the following periods: first offense – discretionary - **6 months to 1 year** (6 months required usage if ignition interlock use ordered); second or subsequent offense – mandatory ignition usage for **1 (mand) to 3 years** or mandatory vehicle registration revocation. §§39:4-50(a)(1),(2) and (3) and 39:4-50.17

**Visitation Program:** Either as part of probation or community service, offenders may be ordered by the court to participate in a visitation program to a medical facility that handles motor vehicle accident victims. §39:4-50(h)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes.** Crime of the second degree.<sup>818</sup> Death must have resulted from the reckless operation of a vehicle. "Death by Auto." §2C:11-5

Sanctions:

Criminal Sanction:

Imprisonment (Term):

**5 to 10 years** §2C:43-6(a)(2)

<sup>818</sup> This offense is not specifically classified as either a "felony" or a "misdemeanor;" i.e., the Criminal Code (Title 2C) does not define these terms. To cope with this lack of definitions, the N.J. Supreme Court has held that a crime can be considered equal to a "common law felony" if a defendant can be sentenced to the State prison for more than 1 year. *State v. Doyle*, 200 A.2d 606 (N.J. 1964) and *Kaplowitz v. State Farm Mutual Auto. Ins. Co.*, 493 A.2d 637 (N.J. Super. L. 1985).

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| Mandatory Minimum Term:  | I. 85 percent of the sentence imposed. §2C:43-7.2(a),(b) and (d)(3)<br>II. If the offense was DWI-related <sup>819</sup> - <b>3 years.</b> <sup>820</sup><br>§2C:11-5(b)(1)   |
| Fine (\$ Range):   | Not more than <b>\$150,000.</b> §2C:43-3(a)(2)  |
| Mandatory Minimum Fine:  | <b>None</b>   |
| Administrative Licensing Action:<br>Licensing Authorized and<br>Type of Action:      | I. If the offense was related to DWI/Refusal – <b>Suspension.</b><br>§2C:11-5(b)(4)<br>II. The licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a).  |
| Length of Term of<br>Licensing Withdrawal:   | I. If the offense was related to DWI/Refusal – <b>Suspension – 5 years to life</b> §2C:11-5(b)(4)<br>II. For discretionary licensing actions under §39:5-30, the law does not specify the periods of license suspension or revocation.  |
| Mandatory Action--Minimum<br>Length of License Withdrawal:                           | If the offense was related to DWI/Refusal – <b>Suspension – 5 years</b> §2C:11- 5(b)(4)   |
| Other:   | I. <b>Restitution</b> by the defendant (§2C:43-3) or via the Violent Crimes Compensation Board (§52:4B-1 et seq.)<br>II. <b>School Property/Crossing.</b> It is a first degree crime to commit vehicle homicide if the offense occurred (1) on property owned by or within 1,000 ft. of an elementary/secondary school, (2) while driving through a designated school crossing zone or (3) while driving through a non-designated school crossing zone when juveniles are present. Sanctions are imprisonment- <b>10 to 20 years</b> ; fine – not more than <b>\$200,000.</b> Unless the offender’s family would be subject to a serious hardship, the vehicle used in the offense <u>must be forfeited.</u> §§2C:11-5(b)(3) and (e), 2C:43-3(a)(1) and 2C:43-6(a)(1) |
| <u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u> |   |
| Sanction:<br>Criminal:   |   |
| Imprisonment (Term):   | <b>10 to 90 days</b> §39:3-40(f)(2)   |
| Mandatory Minimum Term<br>of Imprisonment:   | <b>10 days</b> may be mandatory. §39:3-40(f)(2)   |
| Fine (\$ Range):   | <b>\$500</b> <sup>821</sup> §39:3-40(a) and (f)(2)  |

<sup>819</sup> Or if the offender was driving while his/her license was suspended or revoked for a DWI or Refusal offense.

<sup>820</sup> The minimum sentence is either between one-third and one-half of the sentence imposed or 3 years whichever is greater.

<sup>821</sup> Although the law is not specific, the following fines, which could be mandatory, may apply for subsequent offenses related to driving after license has been suspended for a drunk-driving offense: second offense – \$750; and/or subsequent offense – \$1,000. §39-3-40(b) and (c)



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| Mandatory Minimum Fine:  | <b>\$500</b> may be mandatory. §39:3-40(f)(2)   |
| Administrative Licensing Actions:<br>Type of Licensing Action<br>(Susp/Rev):                         | <b>Suspension.</b> §39:3-40(f) Under separate law, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30 (a)      |
| Length of Term of License<br>Withdrawal Action:  | An additional period of not less than <b>1 year</b> nor more than <b>2 years</b> §39:3-40(f)(2) For discretionary licensing actions under §39:5-30, the law does not specify the periods of suspension or revocation. |
| Mandatory Term of License<br>Withdrawal Action:  | <b>1 year</b>   |
| <u>Habitual Traffic Offender Law:</u>  |   |
| State Has Such a Law (Yes/No):<br>Grounds for Being Declared an                                      | <b>Yes</b> §39:5-30a  |
| Habitual Offender:   | 3 license suspensions for traffic offenses within 3 years<br>§39:5-30a  |
| Term of License Rev While<br>Under Habitual Offender Status:   | <b>Suspension</b> for not more than <b>3 years.</b> §39:5-30b. This suspension is not to run concurrently with any other suspension. §39:5-30d  |
| Type of Criminal Offense if<br>Convicted on Charges of Driving<br>While on Habitual Offender Status: | Not specified   |

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**Vehicle Registration Revocation:** The registration of all of the offender's vehicles shall be revoked for the same period of time as the license suspension. However, temporary registration and tags may be issued so that other persons can use the vehicle for either employment, educational, health or medical purposes. §39:3-40(a)(1), (b) and (c) and 39:3-40.1 et seq.

**Special Note: I.** If a person operates a CMV during either a CDL suspension/revocation or a CDL out-of-service order, that person is subject to an imprisonment term of not more than 90 days and/or a fine of not more than \$5,000. In addition, an offender is subject to an additional CDL suspension/revocation as noted under DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL). An offender injuring another person as a result of such illegal operation appears to be subject to a mandatory 90-day jail sentence and a \$5,000 fine. §39:3-10.18(b)

**II.** If a violation of §39:3-40 results in an accident that causes injury or death, the following sanctions are imposed: (1) for bodily injury, imprisonment for **45 to 180 days**; (2) for serious bodily injury, crime of the fourth degree, imprisonment for not **more than 18 months and a fine not more than \$10,000** and an additional license suspension period of 1 year which is to begin after release from incarceration; and (3) for death of another person, crime of the third degree, imprisonment from **3 to 5 years and a fine not more than \$15,000** and an additional license suspension period of 1 year which is to begin after release from incarceration. §§2C:40-22, 2C:43-3(b)(1)and(2), 2C:43-6(a)(3) and(4) and 39:3-40(e).

**School Property/Crossing:** If the offense occurred either (1) on property owned by or within 1,000 feet of an elementary/secondary school, (2) while driving through a designated school crossing zone or (3) while driving through a non-designated school crossing zone when juveniles are present, the following sanctions apply: Imprisonment – first offense – **60 days to 90 days**; second offense – **120 days to 150 days**; and, third offense – **180 days** – fine – first and subsequent offenses – **\$500** and an additional license suspension – **1 year to 2 years**. The license suspension period begins after the completion of any incarceration sanction. §39:3-40(f)(3)

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:

Imprisonment (Term): **30 days** or **45 days** if the offense resulted in bodily injury.  
§39:5-30e

Mandatory Minimum Term of  
Imprisonment:

**30 days** if the offense resulted in bodily injury. §39:5-30e

Fine (\$ Range): **\$1,000**<sup>822</sup> §39:5-30e

Mandatory Minimum Fine (\$): **\$1,000** §39:5-30e

Licensing Actions (Specify): The licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30 (a). The law does not specify the periods of license suspension or revocation.

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No): **Yes** §26:2B-24

BAC Chemical Test Is Given to the  
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes**

Other State Laws Related To Alcohol Use:

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§33:1-77 and 33:1-81

Minimum Age (Years) Possession: **21**<sup>823and824</sup> §2C:33-15 There is an exemption for employment.

Minimum Age (Years) Consumption: **21** §§2C:33-15, 9:17B-1 and 33:1-81(b). There is an exception for religious observances, ceremonies or rites. §2C:33-17

Dram Shop Laws and Related Legal  
Actions:

State Has a Dram Shop Law (Yes/No): **Yes**<sup>825</sup> §2A:22A-1 et seq. In order to be held liable, it must be shown that the licensee served alcoholic beverages to either a "minor" or a "visibly intoxicated" person. See *Salemke v. Sarvetnick*, 800 A.2d 177 (NJ App 2002)(cert denied 812 A.2d 1109 (N.J. 2002)).

"Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case  
Citation):

**No.**<sup>826</sup>

<sup>822</sup> One dollar (\$1) is added to any fine for the Body Armor Replacement Fund and \$1 is also added for the N.J. Spinal Cord Research Fund. §39:5-41(d) and (e)

<sup>823</sup> Possession or consumption in a public place.

<sup>824</sup> A municipality may enact an ordinance that prohibits a person <21 years old from either "knowingly" possessing or "knowingly" consuming alcoholic beverages on private property "without legal authority." §40:48-1 and Chapter 33 (P.L. 2000)

<sup>825</sup> Under a New Jersey regulation, NJAC 13:2-23-1, a bartender can be held liable for the injuries of either an intoxicated patron or a person the patron injured if the bartender continued to serve alcoholic beverages to the patron when it should have been known that the patron was intoxicated.

|                                 |  |
|---------------------------------|--|
| Dram Shop Actions-Social Hosts: | <b>Yes.</b> §2A:15-5.5 et seq. These provisions provide the exclusive remedy against a social host who has "provided" alcoholic beverages to an injury-causing guest where (1) the guest is over the legal drinking age and is visibly intoxicated and (2) the injuries are the result of negligent operation of a vehicle by the guest (§2A:15-5.6). The courts have held that the term "provided" includes "self-service" by guests as well as the "direct" service of alcoholic beverages by the host on the social host's premises. The "provided" alcoholic beverages include those alcoholic beverages that may have been brought by other guests. <i>Dower v. Gamba</i> , 647A.2d 1364 (N.J. Super. A.D. 1994) (cert denied 658 A.2d 299 (N.J. 1995)). Previous case law concerning "adult" guests appears to have been abrogated by these sections. <i>Kelly v. Gwinnell</i> , 476 A.2d 1219 (N.J. 1984) |
| Other:                          | Under §2A:22A-5, a licensee may be held liable for the injuries sustained by an intoxicated patron. However, a social host is not liable for the injuries sustained by an adult social guest where such injuries were the result of the negligent service of alcoholic beverages to such guest. §2A:15-5.7 and <i>Kollar v. Lozier</i> , 669 A.2d 845 (N.J. Super. A.D. 1996) (cert denied 678 A.2d 714 (N.J. 1996) and <i>AAA Mid-Atlantic v. Predental Ins.</i> , 763 A.2d 788 (N.J. Super. A.D. 2000).  |

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

|                          |  |
|--------------------------|--|
| Type of Criminal Action: | Probably a petty disorderly persons offense. §§2C:1-4, 2C:1-5(b), 2C:43-1, 2C:43-3 and 2C:43-8 <sup>827</sup> Regulation NJAC 13:2-23:1 which was promulgated under §33:1-39 |
| Term of Imprisonment:    | Not more than <b>30 days</b> under §33:1-92; <b>None</b> under §33:1-12.37   |
| Fine (\$ Range):         | <b>Not more than \$500</b> under §33:1-92; <b>\$50-250</b> under §33:1-12.37   |

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

|  |   |
|--|---|
| License to Serve Alcoholic Beverages Withdrawn (Yes/No): | <b>Yes Suspension/Revocation</b> §33:1-31   |
| Length of Term of License Withdrawal:                    | <b>Suspension</b> – Length of suspension is not specified in the statute; <b>Revocation</b> – <u>first offense</u> – <b>2 years</b> ; <u>subsequent</u> |

<sup>826</sup> A Federal appellate court has held that, under New Jersey law, a gambling patron does not have a common law cause of action against a casino for gambling losses which might have been incurred as a result of the patron's intoxication. *Hakimoglu v. Trump Taj Mahal Associates*, 70 F.3d 291 (third Cir. 1995)

<sup>827</sup> Sec. 33:1-92 gives the sanctions for a "violation of this act" (i.e., the Alcoholic Beverage Control (ABC) Law. Sec. 33:1-12.37 gives a fine sanction for "violating any provision of this act (i.e., the ABC Law) or of any rule or regulation issued pursuant to this act." However, this section does not preclude the imposition of the sanctions under §33:1-92.

offense – **Permanent revocation.** A compromise sum of money may be paid in lieu of a suspension.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action: Disorderly Person Offense §§2C:33-17, 2C:43-3(c), 2C:43-8, and 33:1-77  
 Term of Imprisonment: Not more than **6 months**  
 Fine (\$ Range): Not more than **\$1,000**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes Suspension/Revocation** §33:1-31

Length of Term License Withdrawal:

**Suspension** – Length of suspension is not specified in the statute; **Revocation** – first offense – **2 years**; subsequent offense – **Permanent revocation.** A compromise sum of money may be paid in lieu of a suspension.

Anti-Happy Hour Laws/Regulations:

**Yes** NJAC 13:2-23.16 (regulation) This regulation does not per se regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or the charging of one price for two or more drinks.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes**<sup>828</sup> Driver and passengers §6 of Chapter 83 (P.L. 2000)

Anti-Consumption Law (Yes/No):

**Yes** - Driver and passengers The law prohibits the consumption of alcoholic beverages by either a driver or passenger while the vehicle is being operated. There are exceptions for certain vehicles for hire. §39:4-51a

<sup>828</sup> Under §39:4-51a(b), a person is presumed to have violated the anti-consumption law (§39:4-51a(a)) if (1) a partially filled "unsealed" container of an alcoholic beverage is found in a vehicle's passenger compartment and (2) the appearance of either the driver or passenger(s) indicates that he/she has consumed alcoholic beverages. *State v. Moore*, 588 A.2d 889 (N.J. Super. A.D. 1991)