

ASSEMBLY, No. 3896

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 23, 2020

Sponsored by:

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

SYNOPSIS

Eliminates “pentachlorophenol” from the definition of "narcotic, hallucinogenic or habit-producing drug" for driving under the influence.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning driving while under the influence and
2 amending 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. R.S. 39:4-50 is amended to read as follows:

8 39:4-50. (a) A person who operates a motor vehicle while
9 under the influence of intoxicating liquor, narcotic, hallucinogenic
10 or habit-producing drug, or operates a motor vehicle with a blood
11 alcohol concentration of 0.08% or more by weight of alcohol in the
12 defendant's blood or permits another person who is under the
13 influence of intoxicating liquor, narcotic, hallucinogenic or habit-
14 producing drug to operate a motor vehicle the person owns or which
15 is in the person's custody or control or permits another to operate a
16 motor vehicle with a blood alcohol concentration of 0.08% or more
17 by weight of alcohol in the defendant's blood shall be subject:

18 (1) For the first offense:

19 (i) if the person's blood alcohol concentration is 0.08% or
20 higher but less than 0.10%, or the person operates a motor vehicle
21 while under the influence of intoxicating liquor, or the person
22 permits another person who is under the influence of intoxicating
23 liquor to operate a motor vehicle owned by him or in his custody or
24 control or permits another person with a blood alcohol
25 concentration of 0.08% or higher but less than 0.10% to operate a
26 motor vehicle, to a fine of not less than \$250 nor more than \$400
27 and a period of detainment of not less than 12 hours nor more than
28 48 hours spent during two consecutive days of not less than six
29 hours each day and served as prescribed by the program
30 requirements of the Intoxicated Driver Resource Centers established
31 under subsection (f) of this section and, in the discretion of the
32 court, a term of imprisonment of not more than 30 days. In addition,
33 the court shall order the person to forfeit the right to operate a
34 motor vehicle over the highways of this State until the person
35 installs an ignition interlock device in one motor vehicle the person
36 owns, leases, or principally operates, whichever the person most
37 often operates, for the purpose of complying with the provisions of
38 P.L.1999, c.417 (C.39:4-50.16 et al.);

39 (ii) if the person's blood alcohol concentration is 0.10% or
40 higher, or the person operates a motor vehicle while under the
41 influence of a narcotic, hallucinogenic or habit-producing drug, or
42 the person permits another person who is under the influence of a
43 narcotic, hallucinogenic or habit-producing drug to operate a motor
44 vehicle owned by him or in his custody or control, or permits
45 another person with a blood alcohol concentration of 0.10% or more

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 to operate a motor vehicle, to a fine of not less than \$300 nor more
2 than \$500 and a period of detainment of not less than 12 hours nor
3 more than 48 hours spent during two consecutive days of not less
4 than six hours each day and served as prescribed by the program
5 requirements of the Intoxicated Driver Resource Centers established
6 under subsection (f) of this section and, in the discretion of the
7 court, a term of imprisonment of not more than 30 days;

8 in the case of a person who is convicted of operating a motor
9 vehicle while under the influence of a narcotic, hallucinogenic or
10 habit-producing drug or permitting another person who is under the
11 influence of a narcotic, hallucinogenic or habit-producing drug to
12 operate a motor vehicle owned by the person or under the person's
13 custody or control, the person shall forfeit the right to operate a
14 motor vehicle over the highways of this State for a period of not
15 less than seven months nor more than one year;

16 in the case of a person whose blood alcohol concentration is
17 0.10% or higher but less than 0.15%, the person shall forfeit the
18 right to operate a motor vehicle over the highways of this State until
19 the person installs an ignition interlock device in one motor vehicle
20 the person owns, leases, or principally operates, whichever the
21 person most often operates, for the purpose of complying with the
22 provisions of P.L.1999, c.417 (C.39:4-50.16 et al.);

23 in the case of a person whose blood alcohol concentration is
24 0.15% or higher, the person shall forfeit the right to operate a motor
25 vehicle over the highways of this State for a period of not less than
26 four months or more than six months following installation of an
27 ignition interlock device in one motor vehicle the person owns,
28 leases, or principally operates, whichever the person most often
29 operates, for the purpose of complying with the provisions of
30 P.L.1999, c.417 (C.39:4-50.16 et al.);

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

32 (2) For a second violation, a person shall be subject to a fine of
33 not less than \$500 nor more than \$1,000, and shall be ordered by
34 the court to perform community service for a period of 30 days,
35 which shall be of such form and on terms the court shall deem
36 appropriate under the circumstances, and shall be sentenced to
37 imprisonment for a term of not less than 48 consecutive hours,
38 which shall not be suspended or served on probation, or more than
39 90 days, and shall forfeit the right to operate a motor vehicle over
40 the highways of this State for a period of not less than one year or
41 more than two years upon conviction.

42 After the expiration of the license forfeiture period, the person
43 may make application to the Chief Administrator of the New Jersey
44 Motor Vehicle Commission for a license to operate a motor vehicle,
45 which application may be granted at the discretion of the chief
46 administrator, consistent with subsection (b) of this section. For a
47 second violation, a person also shall be required to install an

1 ignition interlock device under the provisions of P.L.1999, c.417
2 (C.39:4-50.16 et al.).

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

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

14 As used in this section, the phrase "narcotic, hallucinogenic or
15 habit-producing drug" includes an inhalant or other substance
16 containing a chemical capable of releasing any toxic vapors or
17 fumes for the purpose of inducing a condition of intoxication, such
18 as any glue, cement or any other substance containing one or more
19 of the following chemical compounds: acetone and acetate, amyl
20 nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl
21 nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol,
22 ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or
23 isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous
24 oxide, n-propyl alcohol, **pentachlorophenol,** petroleum ether,
25 propyl nitrite or propyl nitrate or their isomers, toluene, toluol or
26 xylene or any other chemical substance capable of causing a
27 condition of intoxication, inebriation, excitement, stupefaction or
28 the dulling of the brain or nervous system as a result of the
29 inhalation of the fumes or vapors of such chemical substance.

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

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

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 2. This act shall take effect immediately.
8
9

10 STATEMENT
11

12 This bill amends the definition of "narcotic, hallucinogenic or
13 habit-producing drug" in R.S. 39:4-50 (driving under the influence)
14 to eliminate the reference to "pentachlorophenol" as one of the
15 chemical compounds that release toxic vapors or fumes for the
16 purpose of inducing a condition of intoxication. The sponsor
17 believes that the listing of "pentachlorophenol" may result from
18 confusion with the narcotic "phencyclidine" (sometimes referred to
19 as angel dust) because both share "PCP" as an acronym. Crimes
20 involving controlled dangerous substances in Title 2C, the New
21 Jersey Criminal Code refer to "phencyclidine." It is included in
22 paragraph (7) of subsection d. of N.J.S.A. 24:21-7 which sets forth
23 Schedule III substances.

24 The Treated Wood Council (TWC) has indicated that since
25 approximately 1980, the purchase and use of pentachlorophenol
26 (penta) in the United States has not been available to the general
27 public. Penta is not sold to the general public.

28 Penta and its use must be reviewed and registered by the federal
29 Environmental Protection Agency (EPA) under the Federal
30 Insecticide, Fungicide and Rodenticide Act (FIFRA). The use of
31 penta under FIFRA takes place within sealed tanks and associated
32 piping at secure industrial sites.