

**APPENDIX O**  
**GUIDELINES FOR IMPLEMENTATION OF "JOHN'S LAW"**  
**WARNING UPON RELEASE OF DWI SUSPECT**

**MEMORANDUM**

**TO: ALL COUNTY PROSECUTORS**

**SUPERINTENDENT, DIVISION OF STATE POLICE**

**ALL LAW ENFORCEMENT CHIEF EXECUTIVES**

**FROM: PETER C. HARVEY, ATTORNEY GENERAL**

**DATE: February 20, 2004**

**SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE  
NO. 2004-1: REPLACING ATTORNEY GENERAL LAW ENFORCEMENT  
DIRECTIVE NO. 2001-5**

John's Law, P.L. 2001, c. 69, N.J.S.A. 39:4-50.22 & 39:4-50.23

**POTENTIAL LIABILITY WARNING FORM - RELEASE OF DWI  
ARRESTEE & 12 HOUR IMPOUNDMENT OF THE VEHICLE OF A DWI  
ARRESTEE**

Please take notice that Attorney General Law Enforcement Directive No. 2001-5, is hereby replaced by Attorney General Law Enforcement Directive No. 2004-1, as more fully discussed below.

On July 31, 2001, Acting Attorney General Paul Zoubek issued Attorney General Law Enforcement Directive No. 2001-5. That Directive informed all law enforcement agencies and prosecutors of the implementation of P.L. 2001, c. 69, N.J.S.A. 39:4-50.22 & 39:4-50.23, "John's Law," requiring the use of a "Potential Liability Warning" Form for the release of a DWI Arrestee and a Minimum 12 Hour Impoundment of the Vehicle of a DWI Arrestee.

A recent amendment to N.J.S.A. 39:4-50, (Laws 2003, chapter 314, §1) established a new lower per se blood alcohol limit of 0.08% or more. That amendment has required the revision and/or modification of various forms utilized in DWI enforcement. [Note 1] The amendment to N.J.S.A. 39:4-50 was effective immediately upon its adoption, noon, Tuesday, January 20, 2004. Laws 2003, chapter 314, §4.

Following a review of the amendatory language of Laws 2003, chapter 314, it has been determined that a revision of the Potential Liability Warning - N.J.S.A. 39:4-50.22 Form used for the release of a DWI Arrestee is required. Correspondingly, Attorney General Law Enforcement Directive No. 2001-5 and the Appendices A & B to that Law Enforcement Directive are being replaced with Attorney General Law Enforcement Directive No. 2004-1.

THEREFORE, I, PETER C. HARVEY, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution of the State of New Jersey and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., and pursuant to the provisions of P.L. 2001, c. 69, §1, hereby DIRECT that Attorney General Law Enforcement Directive No. 2001-5 and the Appendices A & B to that Law Enforcement Directive, are replaced as follows:

1. Under the provisions of P.L. 2001, c. 69, §1, N.J.S.A. 39:4-50.22, (John's Law) the content and form of the written statement and acknowledgment of receipt of the written statement of potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated, [hereafter referred to as the POTENTIAL

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**LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form**], is established pursuant to this **DIRECTIVE**. [Note 2]

2. The **POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form** shall be used by all law enforcement agencies in, and of, this State, and replaces the form distributed under Attorney General Law Enforcement Directive No. 2001-5. The **POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form** is contained in Appendix A, attached to this **DIRECTIVE**.

3. All previous versions of the **POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 Forms** are to be discarded.

4. Under the provisions of P.L. 2001, c. 69, §1, **N.J.S.A. 39:4-50.22, (John's Law)**, Guidelines for the use of the **POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form**, are established pursuant to this **DIRECTIVE**. The Guidelines are contained in Appendix A, attached to this **DIRECTIVE**. These Guidelines shall be used by all law enforcement agencies in, and of, this State.

5. Under the provisions of P.L. 2001, c. 69, §1, **N.J.S.A. 39:4-50.22, (John's Law)**, Guidelines for the implementation of **N.J.S.A. 39:4-50.23, Requiring the Mandatory 12-hour Impoundment of the Motor Vehicle Operated by a Person Arrested for a Violation of N.J.S.A. 39:4-50 (DWI) and/or N.J.S.A. 39:4-50.2 (Refusal to submit to chemical breath testing)**, are established pursuant to this **DIRECTIVE**. The Guidelines are contained in Appendix B, attached to this **DIRECTIVE**. These Guidelines shall be used by all law enforcement agencies in, and of, this State.

This **DIRECTIVE** and the accompanying Guidelines are also available on the Division of Criminal Justice Internet website at [www.njdcj.org](http://www.njdcj.org), or [www.state.nj.us/lps/dcj](http://www.state.nj.us/lps/dcj).

Note 1: On January 22, 2004, under separate cover, a revised Standard Refusal Statement to be read to operators of a motor vehicle (**N.J.S.A. 39:4-50.2(e)**) was sent to the Superintendent of the State Police and All Law Enforcement Chief Executives.

Note 2: The original **POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 form** was prepared in an American English version, and in an official Spanish translation from the American English version. Both versions have been modified under this **DIRECTIVE**.

Forms & Guidelines attached

**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2004-1  
APPENDIX A**

**GUIDELINES FOR POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM**

**POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM**

Pursuant to Attorney General Law Enforcement Directive No. 2004-1, and under the provisions of **N.J.S.A. 39:4-50.22**, the content and form, in American English, and in an official Spanish translation from American English, of the written statement and acknowledgment of receipt of the written statement of potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated, hereafter

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referred to as the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 220-2004) Form,” are found on the last pages of this Appendix.

When used by a law enforcement agency, the entire content of the form must be on a single page. Both versions of the form (American English & Spanish), in a single page format, and these Guidelines are available on the Division of Criminal Justice Internet website at [www.njdcj.org](http://www.njdcj.org), or [www.state.nj.us/lps/dcj](http://www.state.nj.us/lps/dcj).

## **GUIDELINES:**

### **Purpose & General Overview of the Guidelines**

Pursuant to Attorney General Law Enforcement Directive No. 2004-1, replacing Attorney General Law Enforcement Directive No. 2001-5, these Guidelines are established. The purpose of these Guidelines is to assure the fullest cooperation and compliance, by the public, with the requirements of N.J.S.A. 39:4-50.22.

N.J.S.A. 39:4-50.22 requires that a person summoned by, or on behalf of, a person arrested for a violation of N.J.S.A. 39:4-50 (DWI) and/or N.J.S.A. 39:4-50.2 (Refusal to submit to chemical breath testing [hereafter “Refusal”]) shall be provided with a written statement [hereafter “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22” (Rev. 2-20-2004) Form] advising the summoned person of his or her “potential criminal and civil liability for permitting or facilitating the arrestee’s operation of a motor vehicle while the arrestee remains intoxicated.” N.J.S.A. 39:4-50.22.

The provisions of this Guideline are to be implemented and made consistent with the existing policies and procedures of each law enforcement agency in this State:

(1) As they pertain to the release of persons charged with a violation of N.J.S.A. 39:450 (DWI) and/or N.J.S.A. 39:4-50.2 (Refusal); and

(2) Complying with a request by a defendant to obtain an independent test of his/her blood, breath or urine, pursuant to the provisions of N.J.S.A. 39:4-50.2(c).

(3) Compliance with the provisions of any municipal Ordinance or Resolution adopted pursuant to Laws 2003, chapter 164, governing the detention of a person charged with a violation of N.J.S.A. 39:4-50 (DWI).

To the extent that these Guidelines may require a law enforcement agency to adjust any of the above policies or practices, the law enforcement agency should contact their appropriate legal representative for legal advice. [Note 1]

It is not a function of these Guidelines to unnecessarily delay, or otherwise interfere with: (1) the release of a defendant charged with a DWI and/or Refusal offense, to a responsible party; or (2) the release of a defendant charged with a DWI and/or Refusal offense in order for that defendant to exercise his or her statutory rights to obtain an independent test under the provisions of N.J.S.A. 39:4-50.2(c).

Nor do these Guidelines address the provisions of N.J.S.A. 39:4-50.23 concerning the mandatory 12-hour impoundment of a vehicle operated by a person arrested for DWI or Refusal. For implementation of that statutory provision, law enforcement officers are referred to Appendix B of Attorney General Law Enforcement Directive No. 2004-1, P.L. 2001, c. 69, N.J.S.A. 39:4-50.22 & 39:4-50.23, “Guidelines for Mandatory 12-hour Impoundment of the Motor Vehicles.”

A law enforcement officer is NOT REQUIRED to read the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form to the

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person who will transport or accompany the defendant. The statute only requires that the statement be provided to that person, and that the person acknowledge receipt of the statement. If the person refuses to acknowledge receipt, then the law enforcement officer is to record the refusal to acknowledge receipt. Once those requirements have been fulfilled, the defendant should be allowed to leave with the summoned person.

However, if the summoned person refuses to appropriately identify himself or herself to the law enforcement officer, then the defendant should not to be permitted to leave with the summoned person.

### Procedures

Following the completion of the processing by the law enforcement officer of a person arrested for DWI and/or Refusal, including the administration of any chemical breath tests or the obtaining of blood or urine specimens, and the issuance of any summonses, the arrested person may contact a responsible person to transport or accompany the arrestee from the police station. If the arrestee is incapable of performing the task of contacting a responsible person to transport or accompany the arrestee, the law enforcement officer may perform that function on behalf of the arrestee by:

- (1) following instructions given by the arrestee, or
- (2) using information obtained from the arrestee, or from the arrestee's person or personal effects.

However, if an arrestee is in a condition that, in the opinion of the law enforcement officer, requires medical attention, then the arrestee should be transported by either the law enforcement agency, or the First Aid or Rescue Squad, acting at the direction of the law enforcement agency, to a medical facility for evaluation and/or treatment. Under that circumstance, a law enforcement officer must accompany the arrestee to the medical facility and be prepared to provide the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form to any person who may thereafter be summoned to transport or accompany the arrestee from the medical facility.

Preparation of the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form

Once an arrestee has contacted a person to transport or accompany the arrestee from the law enforcement agency, and before the summoned person arrives, the law enforcement officer shall prepare the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form. The officer shall complete the information in the box at the top of the form. Then the officer shall fill in his/her name, rank and badge number in the section following the Warning paragraphs, labeled "Law Enforcement Officer." The line labeled "Date & Time of Acknowledgment" is to be left blank, at this time.

Completion of the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form

When the summoned person arrives at the law enforcement agency, or at a medical facility treating the defendant, the law enforcement officer shall do the following.

- (1) Identify the defendant by name to the summoned person, and confirm that the summoned person has arrived to transport or accompany the named defendant.
- (2) Inform the summoned person that the defendant has been arrested, and the specific violations with which the defendant has been charged. The law

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enforcement officer should use the statutory reference for each violation, as well as a plain language description for each charge.

(3) Ask the summoned person for some form of positive, and verifiable, identification. It is not required or necessary to make a copy of the identification provided, that decision is left to the determination of each law enforcement agency.

If the summoned person refuses to appropriately identify himself or herself to the law enforcement officer, then the defendant should not to be permitted to leave with that person. In that circumstance, the defendant may elect to contact another person to transport or accompany him or her.

(4) Hand the pre-prepared POTENTIAL LIABILITY WARNING - N.J.S.A. 39:450.22 (Rev. 2-20-2004) Form to the summoned person. Ask that person to read the Form. Then instruct that person:

(a) To fill in the information on the Form, just below the Warning statement paragraph, labeled "Person Acknowledging Receipt;"

(b) Put their signature on the line for "Signature of Person Acknowledging Receipt;" and

(c) Return the completed Form to the officer for copying.

(5) Once the summoned person has read the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form, signed the Acknowledgment of Receipt, and returned the Form, the law enforcement officer shall complete the line labeled "Date & Time of Acknowledgment," and sign the Form on the line labeled "Signature of Law Enforcement Officer."

(6) In the event the summoned person refuses to put their signature on the line for "Signature of Person Acknowledging Receipt," the officer is to retrieve the Form and complete the information under the section "Refusal to Acknowledge, in Writing, Receipt of Potential Liability Warning." In that section, the officer is to print the name of the summoned person on the appropriate line, complete the line labeled "Date & Time of Refusal to Acknowledge," and then the officer is to sign his/her name on the form on the line labeled "Signature of Law Enforcement Officer."

(7) Once the receipt of the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form has been acknowledged by the summoned person, or the law enforcement officer has recorded that the summoned person refused to acknowledge receipt of the Form, the law enforcement officer shall make at least one (1) copy of the original. The copy, or copies shall be retained in the law enforcement agency file for that case. The original of the signed POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form is to be given to the summoned person, not the arrestee.

(8) If the summoned person refuses or declines to accept receipt of the original of the completed POTENTIAL LIABILITY WARNING -N.J.S.A. 39:4-50.22 (Rev. 220-2004) Form, the law enforcement officer shall record that fact in the right-hand margin of the original Form, by noting that the summoned person refused or declined to accept receipt of the document. The original will then be retained in the law enforcement agency file for that case along with any copies.

Once the summoned person has been given the completed POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form, the defendant may be transported or accompanied by the summoned person from the police station or facility.

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### POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM

|  |                     |                                      |
|--|---------------------|--------------------------------------|
| <b>Defendant Information</b>   |                     | Case #                               |
| Name: Last, First, M.I.  | DL# & State         | <b>Arresting Officer Information</b> |
| Street Address   | Birth Date          | Name: Last, First, M.I.<br>Rank      |
| Town, State ZIP  | Arrest: Date & Time | Badge #                              |
| Violation(s) Charged <input type="checkbox"/> N.J.S.A. 39:4-50(a), DWI<br><i>Check appropriate boxes</i> <input type="checkbox"/> N.J.S.A. 39:4-50.2, Refusal to submit to chemical breath testing |                     |                                      |

You have been summoned by, or on behalf of, the person whose name appears above as “defendant,” to transport or accompany the defendant from this law enforcement agency. The defendant has been arrested and charged with one or both of the motor vehicle violations checked in the box above. Pursuant to N.J.S.A. 39:4-50.22, this WARNING is to advise you that if you accept responsibility to transport or accompany the defendant, and you permit or facilitate the operation of a motor vehicle by the defendant while the defendant is intoxicated or has a blood alcohol concentration at, or above, that permitted by law (N.J.S.A. 39:4-50), then you are potentially subject to criminal penalties and civil liability.

Permitting a person who is intoxicated or who has a blood alcohol concentration at, or above, that permitted by law, to operate a motor vehicle is a violation of N.J.S.A. 39:4-50(a). If you are charged and convicted under that statute: your driving privilege will be suspended; fines and monetary penalties will be imposed; and you may be incarcerated. If you permit or facilitate the defendant to operate a motor vehicle while the defendant remains intoxicated or has a blood alcohol concentration at, or above, that permitted by law, and the defendant becomes involved in a motor vehicle collision where other persons are injured or killed, then you may be subject to indictment and criminal prosecution. If you are prosecuted and found guilty, the court can impose fines and mandatory penalties, and a prison sentence. In addition to any criminal liability, if you permit or facilitate the defendant to operate a motor vehicle while the defendant remains intoxicated or has a blood alcohol concentration at, or above, that permitted by law, and the defendant becomes involved in a motor vehicle collision where there is property damage, or personal injury or death, then you may be held liable for civil damages, and those damages may not be covered by insurance.

Person Acknowledging Receipt

Law Enforcement Officer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

# DWI SUSPECT RELEASE GUIDELINES

Street Address

Rank & Badge No.

City & State

Date & Time of Acknowledgment

## ACKNOWLEDGMENT OF RECEIPT OF POTENTIAL LIABILITY WARNING

I, \_\_\_\_\_, have received this **POTENTIAL**

*Signature of Person Summoned*

**LIABILITY WARNING** from the Law Enforcement Officer whose name appears below.

## REFUSAL TO ACKNOWLEDGE, IN WRITING, RECEIPT OF POTENTIAL LIABILITY WARNING

\_\_\_\_\_, was given a copy of this **POTENTIAL**

*Print Name of Person Summoned*

**LIABILITY WARNING**, but refused to sign the acknowledgment of receipt.

\_\_\_\_\_  
Signature of Law Enforcement Officer

\_\_\_\_\_  
Date & Time of Refusal to  
Acknowledge

## AVISO DE POSIBLE OBLIGACION LEGAL - N.J.S.A. 39:4-50.22 (Rev 2-20-2004)

| Defendant Information  |                     | Case #                               |
|--|---------------------|--------------------------------------|
| Name: Last, First, M.I.  | DL# & State         | <b>Arresting Officer Information</b> |
| Street Address   | Birth Date          | Name: Last, First, M.I.<br>Rank      |
| Town, State ZIP  | Arrest: Date & Time | Badge #                              |
| Violation(s) Charged <input type="checkbox"/> N.J.S.A. 39:4-50(a), DWI<br><i>Check appropriate boxes</i> <input type="checkbox"/> N.J.S.A. 39:4-50.2, Refusal to submit to chemical breath testing |                     |                                      |

Usted ha sido citado por o a favor de la persona cuyo nombre aparece arriba como “acusado”, para que transporte o acompañe al acusado desde esta agencia policial. Al acusado se le ha arrestado y acusado por una o dos de las violaciones de la ley de tránsito marcado en la caja arriba. Conforme a la ley N.J.S.A. 39:4-50.22, este AVISO es para informarle que si usted acepta la responsabilidad de transportar o acompañar al acusado y le permite o facilita la operación de un vehículo motorizado mientras el acusado está en estado de embriaguez o tiene un contenido alcohólico en la sangre igual a, o más de lo que está permitido por la ley (N.J.S.A. 39:4-50), usted potencialmente se expone a penalidades criminales y obligaciones legales civiles.

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Permitir que una persona opere un vehiculo motorizado en estado de embriaguez o tiene un contenido alcoholico en la sangre igual a, o mas de lo que esta permitido por la ley es una violacion de la ley N.J.S.A. 39:4-50(a). Si usted esta acusado y condenado bajo el estatuto: se le suspenderan sus privilegios de manejo; se le impondran multas y penalidades monetarias; y se le puede encarcelar. Si usted permite o facilita que el acusado opere un vehiculo motorizado mientras el acusado permanece en estado de embriaguez o tiene un contenido alcoholico en la sangre igual a, o mas de lo que esta permitido por la ley, y el acusado se ve involucrado en un accidente de vehiculo que ocasione la lesion o muerte de otras personas, entonces usted se expone a un proceso legal y enjuiciamiento criminal. Si a usted se le enjuicia y declara culpable, la corte puede imponer multas, penalidades obligatorias y sentencia de carcel. Ademas de las obligaciones criminales, si usted permite o facilita que el acusado opere un vehiculo motorizado en estado de embriaguez o tiene un contenido alcoholico en la sangre igual a, o mas de lo que esta permitido por la ley, y el acusado se ve involucrado en un accidente de vehiculo que ocasiona daflos a la propiedad, o lesiones o muerte, se le puede hacer a usted responsable por los dafios civiles y puede ser que esos danos no estdn cubiertos por su seguro.

Persona que cofirma el recibo

Law Enforcement Officer

\_\_\_\_\_  
Nombre en letra de imprenta

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Direccion

\_\_\_\_\_  
Rank & Badge No.

\_\_\_\_\_  
Ciudad y estado

\_\_\_\_\_  
Date & Time of Acknowledgment

### ACKNOWLEDGMENT OF RECEIPT OF POTENTIAL LIABILITY WARNING

I, \_\_\_\_\_, have received this **POTENTIAL**

*Signature of Person Summoned*

**LIABILITY WARNING** from the Law Enforcement Officer whose name appears below.

### CONFIRMACION DE RECIBO DEL “AVISO DE POSIBLE OBLIGACION LEGAL”

\_\_\_\_\_, was given a copy of this **POTENTIAL**

*Print Name of Person Summoned*

**LIABILITY WARNING**, but refused to sign the acknowledgment of receipt.

\_\_\_\_\_  
Signature of Law Enforcement Officer

\_\_\_\_\_  
Date & Time of Refusal to  
Acknowledge

Note 1: General legal advice for law enforcement agencies is to be obtained from the following entities: Municipal Police Departments from the Municipal Attorney or Solicitor; County law enforcement agencies from the County Counsel; Bi-state law enforcement agencies from the General Counsel for the Bi-state agency; State law enforcement agencies, including the Division of State Police, from the assigned Deputy Attorney General in the Division of Law. Legal advice on issues pertaining to criminal law and procedure are to be obtained from the County Prosecutor or the Division of Criminal Justice.



# **DWI SUSPECT RELEASE GUIDELINES**

## **APPENDIX B**

### **GUIDELINES**

#### **MANDATORY 12-HOUR IMPOUNDMENT OF MOTOR VEHICLES**

[Guidelines for the implementation of N.J.S.A. 39:4-50.23, the Mandatory 12-hour Impoundment of the Motor Vehicle Operated by a Person Arrested for a Violation of N.J.S.A. 39:4-50 (DWI) or N.J.S.A. 39:4-50.2 (Refusal to submit to chemical breath testing)]

#### **Purpose of Guidelines**

The purpose of these Guidelines is to assist law enforcement agencies in fulfilling their statutory responsibilities under the provisions of N.J.S.A. 39:4-50.23. However, it is not the purpose or function of these Guidelines to otherwise invalidate, supplement, modify or rescind any existing: ordinance or resolution adopted by a governing body; policy of a law enforcement agency; or contractual agreements with respect to the towing and removal of vehicles, the manner in which such vehicles are claimed by their owner or the fees related thereto. To the extent that the provisions of N.J.S.A. 39:4-50.23 may require a law enforcement agency to adjust its policies or practices, the law enforcement agency should contact their appropriate legal representative for legal advice. [Note 1]

These Guidelines are also available on the Division of Criminal Justice Internet website at [www.njdcj.org](http://www.njdcj.org), or [www.state.nj.us/lps/dcj](http://www.state.nj.us/lps/dcj).

#### **Purpose of Statute**

The key element of this statute is, that a vehicle must be impounded for at least 12-hours from the time of arrest of the person operating that vehicle. Any release of the vehicle before the expiration of the 12-hour period of impoundment is governed by specific provisions in the statute, by these Guidelines, and by the Guidelines for the use of the "POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM," found in Appendix A of Attorney General Law Enforcement Directive No. 2004-1. Release of an impounded vehicle after the expiration of the 12-hour period of impoundment will be governed by existing policies and procedures of the law enforcement agency.

#### **Summary: Impounding of a Vehicle; and Release of an Impounded Vehicle**

Under the provisions of N.J.S.A. 39:4-50.23(a), the vehicle operated by the arrested person will have been impounded, and that vehicle must be held, in impound, for at least 12hours following the arrest of the operator of the vehicle. The Guidelines in this Appendix B "Guidelines: Mandatory 12-Hour Impoundment of Motor Vehicles." are to be followed by law enforcement officers to implement this statutory provision.

Under these Guidelines, and the provisions found at N.J.S.A. 39:4-50.23(c), there are two circumstances which allow for the release of an impounded vehicle before the 12-hour time period expires.

The first circumstance permits the early release of an impounded vehicle if the vehicle is not owned or leased by the arrestee. N.J.S.A. 39:4-50.23(c)1. Early release of a vehicle, under that provision of the statute, does not require acknowledgment and receipt of the "POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM," but does require compliance with the provisions of N.J.S.A. 39:4-50.23(d).

The second circumstance permits the early release of an impounded vehicle that is owned or leased by the arrestee. N.J.S.A. 39:4-50.23c(2). However, under that provision of the statute, and these Guidelines, before an impounded vehicle

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may be released, the person to whom the vehicle will be released must acknowledge, in writing, receipt of the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM,” and they must also comply with the provisions of N.J.S.A. 39:4-50.23d.

If a vehicle is to be released under the provisions of N.J.S.A. 39:4-50.23(c)(2), the law enforcement officer shall follow the procedures set forth in this Appendix B, “Guidelines for the implementation of N.J.S.A. 39:4-50.23, the Mandatory 12-hour Impoundment of the Motor Vehicle,” and in the Guidelines at Appendix A, Guidelines for Potential Liability Warning - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form, with the following additional requirements.

If the person to whom the vehicle will be released is not the owner or lessee and has refused or declined to accept receipt of the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM,” the vehicle shall not be released before the end of the statutory 12-hour period of impoundment.

N.J.S.A. 39:4-50.23(c)(2) establishes a requirement of a written acknowledgment of receipt of the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM,” as a precondition of release of the impounded vehicle. This statutory requirement is necessary because the person claiming the vehicle must have appropriate documentation authorizing the early release of the vehicle in order to permit the entity holding the vehicle in impound to release the vehicle before the expiration of the mandatory 12-hour period.

### Summary of N.J.S.A. 39:4-50.23

The relevant provisions of N.J.S.A. 39:4-50.23 mandate that the law enforcement agency which has arrested an operator of a motor vehicle for a DWI or a Refusal violation must take two actions with regard to the vehicle operated by the arrested person.

N.J.S.A. 39:4-50.23a Whenever a person has been arrested for a violation of [N.J.S.A. 39:4-50] or ... [N.J.S.A. 39:4-50.2], [Note 2] the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of the arrest.

N.J.S.A. 39:4-50.23b A vehicle impounded pursuant to this section [N.J.S.A. 39:4-50.23] shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release under [N.J.S.A. 39:4-50.23d].

Although the first provision of the statute, N.J.S.A. 39:4-50.23a, calls for an immediate impoundment of the vehicle being operated by the person arrested, that provision of the statute does not negate the Constitutional right of the arrested person to make other arrangements for the removal of the vehicle by another person who is present at the scene of the arrest. Thus, if there is a passenger in the vehicle at the time the operator is arrested, the arrestee may permit that passenger to operate the vehicle or to make arrangements for its removal without the vehicle being impounded. Of course, the person remaining with the vehicle must possess a valid driver's license, be capable of operating the vehicle or making arrangements for its removal, and not be in violation of the motor vehicle laws of this State.

Additional provisions of the statute allow for the release of an impounded vehicle, before the end of the 12-hour period of impoundment, subject to several conditions and compliance with the provisions of N.J.S.A. 39:4-50.23d.

# **DWI SUSPECT RELEASE GUIDELINES**

## **Procedures for Impoundment of Vehicle and Release of Vehicle from Impoundment**

Other than the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM,” to be given to a person summoned to transport or accompany an arrested person, these Guidelines do not require the use or adoption of any specific forms. To the extent that any existing forms of the law enforcement agency may require modifications or revisions to otherwise conform to the provisions of this statute, those modifications should be reviewed by the legal advisor to the law enforcement agency.

### **Arrest and Impoundment**

When a law enforcement officer has arrested a person, based upon the officer’s reasonable suspicion that the operator of a motor vehicle has been operating that vehicle while under the influence of intoxicating liquor or drugs (N.J.S.A. 39:4-50), or for refusing to submit to chemical breath testing (N.J.S.A. 39:4-50.2), the provisions of N.J.S.A. 39:4-50.23 mandate that the vehicle being operated by the driver must be impounded for 12-hours from the time of the arrest of the operator of the vehicle.

The procedure by which impoundment of the vehicle is to take place shall be governed by existing policies and procedures of the law enforcement agency. However, those policies and procedures must include a provision for the arrestee to permit another person, present at the scene, to operate the motor vehicle or to make arrangements for the removal of the vehicle.

If the vehicle is impounded, then the person or party taking responsibility for the removal and impoundment of the vehicle must be informed that the vehicle cannot be released for 12-hours following the time of arrest, unless otherwise authorized by law and should be informed of the time of the arrest of the operator of the vehicle.

Release of a vehicle from impoundment before the expiration of the 12-hour period of impoundment.

An impounded vehicle may be released before the 12-hour period of impoundment has elapsed, but only under the following conditions.

1. If the vehicle is not owned or leased by the person arrested, then the owner or lessor can claim the vehicle at any time, provided that the owner or lessor satisfies the requirements of N.J.S.A. 39:4-50.23d. Those requirements are set forth below under Release Requirements.

2. If the vehicle is owned or leased by the arrested person, then the vehicle may be released to another person, only if the following conditions and requirements are satisfied.

- a. The arrestee has given his/her permission to the other person to operate the vehicle.

- b. The person to whom permission has been given accepts the conditions for release of the vehicle under the provisions of N.J.S.A. 39:4-50.23d. See Release Requirements, below.

- c. The person to whom permission has been given, has acknowledged, in writing, receipt of the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM.”

The manner and form by which permission to operate the impounded vehicle and the acceptance of the conditions for release of the impounded under the

## APPENDIX O

provisions of N.J.S.A. 39:450.23d are to be executed are to be determined by each law enforcement agency, in consultation with their designated legal counsel.

The receipt of acknowledgment of the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM” must be in conformance with the Guidelines for POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22, (Rev. 1-26-2004) Form, found in Appendix A of Attorney General Law Enforcement Directive No. 2004-1.

### Release Requirements

The provisions of N.J.S.A. 39:4-50.23d set forth several mandatory requirements which must be satisfied by the person to whom an impounded vehicle is to be released. Satisfaction of these requirements should be ascertained by the law enforcement agency, since it is the law enforcement agency which authorized the impoundment. The manner and form by which satisfaction of these requirements is communicated by the law enforcement agency to its agent who impounded the vehicle are to be determined by each law enforcement agency.

Under the provisions of N.J.S.A. 39:4-50.23d(1), and regardless of the ownership of the vehicle, the person claiming the vehicle must present the following documentation or authority.

- A valid driver’s license.
- Proof of ownership of the vehicle or evidence of lawful authority to operate that vehicle.
- Proof of valid insurance for the vehicle.

In addition, the person claiming the vehicle must satisfy the following criteria as required under the provisions of N.J.S.A. 39:4-50.23d(2) & (3).

- The person must be able to operate the vehicle in a safe manner.
- The person would not be in violation of Title 39 by operating the vehicle.
- The person has met any other conditions for the release of the vehicle as established by the law enforcement agency, including but not limited to the payment of the reasonable fees for any towing and/or storage of the vehicle.

Additionally, if the person claiming the impounded motor vehicle is not the owner or lessee the following statutory requirement must be satisfied.

- The person must acknowledge, in writing, receipt of the “POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM.”

If the person fails to comply with this statutory requirement, then the statute prohibits the release of the impounded vehicle before the 12-hour period of impoundment has elapsed.

Under the provisions of N.J.S.A. 39:4-50.23e, the law enforcement agency is authorized, to retain custody of the vehicle until the fee for towing and storage is paid. However, each law enforcement agency may need to consult with its legal advisor concerning to whom and where the payment of the “reasonable fee for towing and storage of the vehicle” are to be made.