

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2001-5

APPENDIX A

POTENTIAL LIABILITY WARNING - *N.J.S.A.* 39:4-50.22, FORM AND GUIDELINES¹

- POTENTIAL LIABILITY WARNING - *N.J.S.A.* 39:4-50.22 FORM

Pursuant to Attorney General Law Enforcement Directive No. 2001-5, P.L. 2001, c. 69, *N.J.S.A.* 39:4-50.22 & 39:4-50.23, the content and form, in English and in an official Spanish translation from the 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 referred to as the POTENTIAL LIABILITY WARNING - *N.J.S.A.* 39:4-50.22, 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, in English and in an official Spanish translation from the English, are also available on the Division of Criminal Justice Internet website at www.njdcj.org.

- POTENTIAL LIABILITY WARNING - *N.J.S.A.* 39:4-50.22 GUIDELINES

Purpose of Guidelines

Pursuant to Attorney General Law Enforcement Directive No. 2001-5, P.L. 2001, c. 69, *N.J.S.A.* 39:4-50.22 & 39:4-50.23, 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.

This statute 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.* 39:4-50.4a (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"] 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.

¹ This DIRECTIVE and these Guidelines which contain the Potential Liability Warning - *N.J.S.A.* 39:4-50.22 form, are also available on the Division of Criminal Justice Internet website at www.njdcj.org. Once at the website, to locate this DIRECTIVE, click at the tab "AG Directives," then locate this Directive by name or number. To locate these Guidelines and the Potential Liability Warning - *N.J.S.A.* 39:4-50.22 form, click at the tab "AG Guidelines," then locate "DWI Enforcement" and click on "John's Law, Potential Liability Warning - Form & Guidelines."

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2001-5

- APPENDIX A -

POTENTIAL LIABILITY WARNING - *N.J.S.A.* 39:4-50.22, FORM AND GUIDELINES

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) Pertaining to the release of persons charged with a violation of *N.J.S.A.* 39:4-50 (DWI) and/or *N.J.S.A.* 39:4-50.4a (Refusal); and
- (2) Complying with a request by a defendant to obtain an independent test of his or her blood, breath or urine, pursuant to the provisions of *N.J.S.A.* 39:4-50.2(c).

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 the appropriate legal representative for legal advice.²

It is not a function of these Guidelines to unnecessarily delay or otherwise interfere with the release of a defendant charged with a DWI or Refusal offense, to a responsible party. Nor is it the function of these Guidelines to delay or otherwise interfere with the release of a defendant charged with a DWI 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. 2001-5, P.L. 2001, c. 69, *N.J.S.A.* 39:4-50.22 & 39:4-50.23, "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.* 39:4-50.4a (Refusal to submit to chemical breath testing)."

A law enforcement officer is NOT REQUIRED to read the POTENTIAL LIABILITY WARNING - *N.J.S.A.* 39:4-50.22 to the person who will transport or accompany the defendant.

² General legal advice for law enforcement agencies should be obtained from the following: 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 from the assigned Deputy Attorney General in the Division of Law; Division of State Police from the Office of State Police Affairs. Legal advice on issues pertaining to criminal law and procedure should be obtained from the County Prosecutor or the Division of Criminal Justice.

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2001-5

- APPENDIX A -

POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22*, FORM AND GUIDELINES

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 may not be permitted to leave with that person, since the requirements of this statute cannot be satisfied.

Procedures

Following the completion of the processing by the law enforcement officer of a person arrested for DWI or Refusal, including 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:

- a. following instructions given by the arrestee, or
- b. using information obtained from the arrestee or from the arrestee's person.

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 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* 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* 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* form. The officer shall complete the information in the box at the top of the form and then fill in the officer's name, rank and badge number in the section following the Warning, and labeled "Law Enforcement Officer." The line labeled "Date & Time of Acknowledgment" is to be left blank,

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2001-5

- APPENDIX A -

POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22*, FORM AND GUIDELINES

at this time.

- Completion of the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* form.

Upon the arrival of the summoned person at the law enforcement agency or at a medical facility, 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 violations with which the defendant has been charged. The law enforcement officer should use the statutory reference to each violation and 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.

If the summoned person refuses to appropriately identify himself or herself to the law enforcement officer, then the defendant may not be permitted to leave with that person, since the requirements of this statute cannot be satisfied. In that circumstance, the defendant may elect to contact another person to transport or accompany the defendant.

4. Hand the pre-prepared POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* form to the summoned person. Ask that person to read the form and instruct that person: to fill in the information on the form, just below the Warning statement labeled "Person Acknowledging Receipt;" put their signature on the line for "*Signature of Person Acknowledging Receipt;*" and return the completed form to the officer for copying.
5. Once the summoned person has completed the identification information, 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

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2001-5

- APPENDIX A -

POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22*, FORM AND GUIDELINES

“Signature of Person Acknowledging Receipt” the officer is to take 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 sign 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* 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 a copy of the original. The copy shall be retained in the law enforcement agency file for that case. The original is to be given to the summoned person.
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* 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 the completed copy.

Once the summoned person has been given the completed POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* form, the defendant may be transported or accompanied by the summoned person from the police station or facility.

Additional procedures for release of impounded vehicles

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 the vehicle must be held in impound for 12 hours following the arrest. Consult Attorney General Law Enforcement Directive No. 2001-5, P.L. 2001, c. 69, *N.J.S.A. 39:4-50.22 & 39:4-50.23*, Appendix B "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. 39:4-50.4a* (Refusal to submit to chemical breath testing)."

Under those 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

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2001-5

- APPENDIX A -

POTENTIAL LIABILITY WARNING - *N.J.S.A.* 39:4-50.22, FORM AND GUIDELINES

period expires. One 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, 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.* 39:4-50.23(c)2. However, under that provision of the statute and the applicable Attorney General Guidelines, before an impounded vehicle 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 and they must also comply with the provisions of *N.J.S.A.* 39:4-50.23(d).

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 Appendix B³ of Attorney General Directive No. 2001-5, P.L. 2001, c. 69, *N.J.S.A.* 39:4-50.22 & 39:4-50.23, "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.* 39:4-50.4a (Refusal to submit to chemical breath testing)" and in these Guidelines 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 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 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.

³ The Guidelines in Appendix B are also available on the Division of Criminal Justice Internet website at www.njdcj.org. Once at the website, click at the tab "AG Guidelines," then locate "DWI Enforcement" and click on "John's Law, Guidelines for Vehicle Impoundment."

POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22

Defendant Information		Case #
Name: Last, First, M.I.	DL# & State	Arresting Officer Information
Street Address	Birth Date	Name: Last, First, M.I.
Town, State ZIP	Arrest: Date & Time	Badge #
Violation(s) Charged: (Check appropriate boxes) [] DWI, <i>N.J.S.A. 39:4-50(a)</i> ; [] Refusal, <i>N.J.S.A. 39:4-50.4a</i>		

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 following motor vehicle violations: (1) operating, or permitting another to operate, a motor vehicle while intoxicated, or with a blood alcohol concentration of 0.10% or more, in violation of *N.J.S.A. 39:4-50(a)*; (2) refusing to submit to chemical breath testing as required by *N.J.S.A. 39:4-50.2*, in violation of *N.J.S.A. 39:4-50.4a*. 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, then you are potentially subject to criminal penalties and civil liability.

Permitting a person who is intoxicated to operate a motor vehicle is a violation of *N.J.S.A. 39:4-50(a)*. Upon conviction your driving privilege will be suspended, fines and monetary penalties will be imposed and you may be incarcerated. In addition, if you permit or facilitate the defendant to operate a motor vehicle while the defendant remains intoxicated, 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 above to operate a motor vehicle while the defendant remains intoxicated, 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

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 OBLIGACIÓN LEGAL - N.J.S.A. 39:4-50.22

Defendant Information		Case #
Name: Last, First, M.I.	DL# & State	Arresting Officer Information
Street Address	Birth Date	Name: Last, First, M.I.
Town, State ZIP	Arrest: Date & Time	Badge #
Violation(s) Charged: (Check appropriate boxes) [] DWI, <i>N.J.S.A. 39:4-50(a)</i> ; [] Refusal, <i>N.J.S.A. 39:4-50.4a</i>		

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 siguientes violaciones de la ley de tránsito: (1) operar, o permitir que otro opere, un vehículo motorizado en estado de embriaguez, o con un contenido alcohólico en la sangre de 0.10% o más, en violación de la ley *N.J.S.A. 39:4-50(a)*; (2) rehusarse a someterse a una prueba química del aliento tal como lo estipula la ley *N.J.S.A. 39:4-50.2*, en violación de la ley *N.J.S.A. 39:4-50.4a*. 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, usted potencialmente se expone a penalidades criminales y obligaciones legales civiles.

Permitir que una persona opere un vehículo motorizado en estado de embriaguez es una violación de la ley *N.J.S.A. 39:4-50(a)*. Al momento de la condena se le suspenderán sus privilegios de manejo, se le impondrán multas y penalidades monetarias y se le puede encarcelar. Además, si usted permite o facilita que el acusado opere un vehículo motorizado mientras el acusado permanece en estado de embriaguez, y el acusado se ve involucrado en un accidente de vehículo que ocasione la lesión 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 cárcel.

Además de las obligaciones criminales, si usted permite o facilita que el acusado opere un vehículo motorizado en estado de embriaguez, y el acusado se ve involucrado en un accidente de vehículo que ocasiona daños a la propiedad, o lesiones o muerte, se le puede hacer a usted responsable por los daños civiles y puede ser que esos daños no estén cubiertos por su seguro.

Persona que cofirma el recibo

Law Enforcement Officer

Nombre en letra de imprenta

Print Name

Dirección

Rank & Badge No.

Ciudad y estado

Date & Time of Acknowledgment

Confirmación de recibo del “Aviso de Posible Obligación Legal”

Yo, _____, recibí una copia de este Aviso de
Firma de la persona citada

Posible Obligación Legal del oficial de la policía cuyo nombre aparece a continuación.

Declino, por escrito, el recibo del “Aviso de Posible Obligación 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