

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2001-5

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).¹

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*. It is not the purpose of these Guidelines, however, to otherwise invalidate, supplement, modify or rescind any existing: ordinance or resolution adopted by a governing body; any existing policy of a law enforcement agency; or any 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.²

In addition, these Guidelines do not otherwise negate the holdings of the New Jersey Supreme Court, which interpret the constitution to allow the operator of a vehicle who has been arrested to make arrangements for the vehicle's immediate removal by another person present at the scene in lieu of impoundment by a law enforcement agency.

Another important aspect of this legislation is that subject to these Guidelines, a vehicle must be impounded for 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

¹ This DIRECTIVE and these Guidelines 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, click at the tab "AG Guidelines," then locate "DWI Enforcement" and click on "John's Law, Guidelines for Vehicle Impoundment."

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.

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governed by specific provisions in the statute and by these Guidelines and Guidelines for the use of the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* form, found in Appendix A 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*. 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 of *N.J.S.A. 39:4-50.23*

In summary, the primary provisions of *N.J.S.A. 39:4-50.23* mandate that the law enforcement agency which has arrested a driver 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. 39:4-50.23(a) "Whenever a person has been arrested for a violation of [*N.J.S.A. 39:4-50*] or . . . [*N.J.S.A. 39:4-50.4a*], the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of the arrest." .

N.J.S.A. 39:4-50.23(b) The vehicle which had been operated by the arrested person "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. 39:4-50.23(d)*.

Although the first provision of the statute 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, prior to the end of the period of impoundment, subject to several conditions and compliance with the provisions of *N.J.S.A. 39:4-50.23(d)*.

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Procedures

Other than the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* 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, the provisions of *N.J.S.A. 39:4-50.23* mandate that the vehicle being operated by the driver 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, 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 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. 39:4-50.23(d)*. Those requirements are set forth

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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.
 - The arrestee has given his or her permission to the other person to operate the vehicle.
 - The person to whom permission has been given accepts the conditions for release of the vehicle under the provisions of *N.J.S.A. 39:4-50.23(d)*. See Release Requirements, below.
 - 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*.

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 provisions of *N.J.S.A. 39:4-50.23(d)* is to be executed are to be determined by each law enforcement agency.

The receipt of acknowledgment of the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* must be in conformance with the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22*, Form & Guidelines, found in Appendix A of Attorney General Law Enforcement Directive No. 2001-5, P.L. 2001, c. 69, *N.J.S.A. 39:4-50.22 & 50.23*.³

- Release Requirements

The provisions of *N.J.S.A. 39:4-50.23(d)* set forth several mandatory requirements on 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

³ The Guidelines in Appendix A 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, Potential Liability Warning - Forms & Guidelines."

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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.

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.

- 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*.

Failure of the person to comply with this statutory requirement prohibits the release of the impounded vehicle before the 12-hour period of impoundment has elapsed.

The law enforcement agency is authorized, under the provisions of *N.J.S.A. 39:4-50.23(e)* to retain custody of the vehicle until the fee for towing and storage is paid.