



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report Relating to Driver's License Penalty Provisions Under N.J.S. 39:3-10**

**December 2, 2015**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.  
Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries to:

Vito J. Petitti, Counsel  
New Jersey Law Revision Commission  
153 Halsey Street, 7<sup>th</sup> Fl., Box 07102  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [vjp@njlrc.org](mailto:vjp@njlrc.org)  
Website: <http://www.njlrc.org>

## Executive Summary

In 2014, a driver convicted of driving without a license under N.J.S. 39:3-10 challenged the penalty provision of the statute, arguing that the law required the court to impose either a fine or imprisonment, but not both. The issue before the New Jersey Superior Court, Appellate Division, was whether the statute permitted the imposition of both a fine and a jail term for a driver never licensed in the State or any other jurisdiction. Although it found the statute to be ambiguous, the Court ruled in favor of the driver, basing its decision on the Legislature's intent.

## Background

This project results from the New Jersey Superior Court's holding in *State v. Carreon*, in which the Court was asked to interpret the penalty provision of N.J.S. 39:3-10, the statute governing driver's licenses.<sup>1</sup> In *Carreon*, the defendant was charged with two traffic infractions, one of which was driving without a license under N.J.S. 39:3-10, resulting from a 2012 traffic stop, to which Defendant pleaded guilty.<sup>2</sup> Because Defendant's driving record indicated a third conviction for driving without a license, the municipal court judge imposed a fine of \$756 and a 10-day jail term, which were upheld on appeal to the Superior Court.<sup>3</sup> Defendant then looked to the Appellate Division for relief.<sup>4</sup>

The relevant statutory provision provides that:

A person violating this section shall be subject to a fine not exceeding \$500 or imprisonment in the county jail for not more than 60 days, but if that person has never been licensed to drive in this State or any other jurisdiction, the applicant shall be subject to a fine of not less than \$200 and, in addition, the court shall issue an order to the commission requiring the commission to refuse to issue a license to operate a motor vehicle to the person for a period of not less than 180 days. The penalties provided for by this paragraph shall not be applicable in cases where failure to have actual possession of the operator's license is due to an administrative or technical error by the commission.<sup>5</sup>

The Appellate Court noted that there is no dispute over the penalty for drivers who have previously been licensed in the State or another jurisdiction – such persons may either be fined or imprisoned, but not both. The ambiguity lies in the second clause regarding never-licensed drivers, and in the interaction between the first and second clauses.

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<sup>1</sup> *State v. Carreon*, 437 N.J. Super. 81 (2014).

<sup>2</sup> *Id.* at 83. The second charge, failure to stop at a stop sign, was dismissed.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 84.

<sup>5</sup> NJ STAT. ANN. 39:3-10 (West 2014).

The State argued that the \$200 fine referenced in the second clause is mandatory and therefore still permits a judge to impose an additional fine or imprisonment.<sup>6</sup> Defendant argued that the second clause represents a minimum fine requirement if the judge chooses a fine in lieu of imprisonment.<sup>7</sup>

The Court held that the plain language of the statute makes it clear that the Legislature intended to guarantee a minimum fine of \$200 and a 180-day waiting period for a license to be issued to persons that have never been licensed.<sup>8</sup> However, regarding whether such drivers may additionally be sentenced to jail, the Court found the statute to be susceptible to two plainly reasonable interpretations.<sup>9</sup>

As articulated by the Court, the first interpretation was that such drivers must always receive a fine of at least \$200 and a six-month suspension and may also receive up to 60 days in the county jail. The strength of that interpretation being that the Legislature's use of "but" rather than "and" suggests that the second clause is meant to be an exception to the first clause, and that "shall" suggests a mandatory fine. Its weakness is the acceptance that the fine is capped at the \$500 of the first clause, suggesting that the overarching design of fine or imprisonment holds for never-licensed drivers as well.<sup>10</sup>

The other interpretation was the one argued by Defendant, that the "but if" clause creates only a minimum fine in the event the judge imposes a fine rather than imprisonment in the county jail. The strength of that interpretation being that it accounts for the entirety of both clauses. Emphasizing that the clause states only that never-licensed drivers "shall be subject to" a \$200 minimum fine, which shall be capped at \$500, and that never-licensed drivers are not "subject to" a fine "and" a suspension, but that the suspension is "in addition" to the minimum fine to which such drivers are subject, Defendant argues that the "but if" clause modifies but does not supplant the fine or jail alternatives of the first clause. The interpretation's weakness would be that, if "shall" is mandatory and a judge may not impose a fine and jail on a never-licensed driver, then the never-licensed driver may never be sentenced to jail, a result clearly not intended by the Legislature.<sup>11</sup>

Ultimately, the Court found Defendant's interpretation of the statute more consistent with the Legislature's intent, i.e., never-licensed drivers may be fined or imprisoned, but not both. The Court reasoned that, "when the Legislature intends fine or imprisonment, or both, for a motor vehicle offense, it often says so plainly."<sup>12</sup>

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<sup>6</sup> *Carreon*, 437 N.J. Super. 81, 85.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 88.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 89.

## **Feedback from the Law Enforcement Community**

The Commission's proposed revisions have been well received by the law enforcement community, with most commenters expressing the belief that, although the wording in the original structure of the law is clear enough to be understood by law enforcement professionals, the proposed revision provides further clarification that should indeed help prevent any misinterpretation of the current format or content. One seasoned peace officer nevertheless articulated a preference for even more – not less – judicial discretion in line with the trial court's ruling in *Carreon*. In the officer's words, enabling judges to order a fine, imprisonment, or both would deter unlicensed drivers.

## **Conclusion**

The Commission's proposed revisions, contained in the *Appendix*, below, are intended to enhance the clarity of N.J.S. 39:3-10, consistent with the judicial determination in *Carreon*, by addressing its structure but not its substance.

Consistent with the practice of the NJLRC, the release of this Final Report will be followed by outreach to identify state lawmakers who may be interested in sponsoring legislation in this area.

## Appendix

Due to the length of N.J.S. 39:3-10 only the relevant text has been included below, including proposed modifications, as follows:

### Existing Statute

39:3-10. Driver's licenses; examination; surrender of current license; classifications; issuance; license periods; renewals; denial of license; penalties

\* \* \*

A person violating this section shall be subject to a fine not exceeding \$500 or imprisonment in the county jail for not more than 60 days, but if that person has never been licensed to drive in this State or any other jurisdiction, the applicant shall be subject to a fine of not less than \$200 and, in addition, the court shall issue an order to the commission requiring the commission to refuse to issue a license to operate a motor vehicle to the person for a period of not less than 180 days. The penalties provided for by this paragraph shall not be applicable in cases where failure to have actual possession of the operator's license is due to an administrative or technical error by the commission.

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### Proposed Modification

39:3-10. Driver's licenses; examination; surrender of current license; classifications; issuance; license periods; renewals; denial of license; penalties

\* \* \*

A person violating this section:

- a. who has been licensed in this State or any other jurisdiction shall be subject to either
  1. a fine not greater than \$500 or
  2. imprisonment in the county jail for not more than 60 days.
- b. who has never been licensed in this State or any other jurisdiction shall be subject to a court order issued to the commission requiring the commission to refuse to issue a license to operate a motor vehicle to the person for a period of not less than 180 days, and either
  1. a fine not less than \$200 but not greater than \$500 or
  2. imprisonment in the county jail for not more than 60 days.
- c. shall not be penalized under subsections a. or b. of this section in cases where failure to have actual possession of the operator's license is due to an administrative or technical error by the commission.

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