



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Relating to Driver's Licenses - N.J.S.A. 39:3-10

November 10, 2014

The New Jersey Law Revision Commission is required to “[conduct] a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” N.J.S. 1:12A-8.

This Report is distributed to advise interested persons of the Commission’s tentative recommendations and to notify them of the opportunity to submit comments.

The Commission will consider these comments before making its final recommendation to the Legislature. The Commission often substantially revises tentative recommendations as a result of comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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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, which resulted in the imposition of a fine and jail term, on the grounds that the law required the court to choose either a fine or imprisonment but not both. The issue before the New Jersey Superior Court, Appellate Division, was whether or not the statute permitted both a fine and a jail term for driver never licensed in the State or any other jurisdiction. The Court ultimately found for the driver, ruling that while the statute was ambiguous, an interpretation in favor of the driver was in best keeping with the Legislature's intent.

Background

This project resulted from the New Jersey Superior Court's recent holding in *State v. Carreon*¹, in which the Court was asked to interpret the penalty provision of N.J.S. 39:3-10, the statute governing driver's licenses. 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.² The defendant pled guilty to driving without a license.³ The municipal court judge imposed a fine of \$756 and a 10-day jail term in accordance with the penalty provision of the statute, after defendant's driving record indicated this was his third conviction for driving without a license.⁴ Defendant appealed to the Superior Court, Law Division, Criminal Part, Cumberland County, which upheld the sentence.⁵ Defendant then appealed to the Superior Court of New Jersey, Appellate Division.⁶

The relevant statutory provision states:

*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.*⁷

¹ State v. Carreon, 2014 WL 3891626 (N.J. Super. Ct. App. Div. Aug. 11, 2014).

² *Id.* at *1. The second charge, failure to stop at a stop sign, was dismissed. *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ NJ STAT. ANN. 39:3-10.

The Appellate Court was careful to note that there is no dispute over the penalty for drivers who have previously been licensed in the State or any other jurisdiction – such persons may either be fined or imprisoned, but not both. The ambiguity lies in the second clause regarding never-licensed drivers and how the first and second clauses interact.

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.⁸ Defendant argued that the second clause represents a minimum fine requirement should the judge choose a fine in lieu of imprisonment.⁹ The Court looked at both precedent and legislative history for indications of the intent of the Legislature, but found both lacking.¹⁰

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 such persons that have never been licensed.¹¹ However, whether a fine and jail can be imposed or whether the court must choose one is “susceptible to two possible interpretations” both of which are “... plainly reasonable...”¹²

Ultimately, the Court found that defendant’s interpretation of the statute was more in keeping with the Legislature’s intent – i.e., never-licensed drivers may be fined or imprisoned, but not both. It states that “when the Legislature intends find or imprisonment, or both, for a motor vehicle offense, it often says so plainly.”¹³ The Court does point to a weakness of defendant’s argument being that if “shall” is to be considered mandatory and a judge may not impose a fine and jail on a never-licensed driver, then the driver may never be sentenced to jail, which is a result the Legislature did not intend.¹⁴

Conclusion

Given the lack of case law and legislative history available to help interpret this statute, the draft revisions are to meant to enhance the clarity of the statute in keeping with the judicial determination in *Carreon*. Staff has attempted to do so by changing the structure, rather than the substance, of the language. The attached *Appendix* contains the proposed changes.

⁸ *Id.* at *2.

⁹ *Id.*

¹⁰ *Id.* at *3.

¹¹ *Id.*

¹² *Id.* at *3-4.

¹³ *Id.*

¹⁴ *Id.*

Appendix

Due to the length of N.J.S.A. 39:3-10, only the text in question has been replicated below. The relevant text, including the proposed modifications, is 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.

...

Proposed Modification

...

A person violating this section shall:

- a. Be subject to
 1. A fine not exceeding \$500; or
 2. Imprisonment in the county jail for not more than 60 days.
- b. If that person has never been licensed in this State or any other jurisdiction:
 1. The applicant person shall be
 - i. Subject to a fine of not less than \$200; or
 - ii. Imprisonment in the county jail; and
 2. 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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