

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2004-1

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.¹

These Guidelines are also available on the Division of Criminal Justice Internet website at www.njdcj.org, or 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

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.

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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 12-hours 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. 39:4-50.23(c)2*. However, under that provision of the statute, and these 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* (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.*

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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],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

² The text of this subsection of the statute refers to an arrest for a violation of *N.J.S.A.* 39:4-50.4a. That statute, however, is only the penalty enforcement provisions, imposed upon conviction for refusal to submit to chemical breath testing, *N.J.S.A.* 39:4-50.2. Refusal to submit to chemical breath testing is a violation of *N.J.S.A.* 39:4-50.2.

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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*.

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

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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 provisions of *N.J.S.A. 39:4-50.23d* 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

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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.

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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.