

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2004-1

APPENDIX A

**GUIDELINES FOR
POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* (Rev. 2-20-2004) FORM**

POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* (Rev. 2-20-2004) FORM

Pursuant to Attorney General Law Enforcement Directive No. 2004-1, and under the provisions of *N.J.S.A. 39:4-50.22*, the content and form, in American English, and in an official Spanish translation from American 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* (Rev. 2-20-2004) Form," 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 (American English & Spanish), in a single page format, and these Guidelines are available on the Division of Criminal Justice Internet website at www.njdcj.org, or www.state.nj.us/lps/dcj.

GUIDELINES:

Purpose & General Overview of the Guidelines

Pursuant to Attorney General Law Enforcement Directive No. 2004-1, replacing Attorney General Law Enforcement Directive No. 2001-5, 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*.

N.J.S.A. 39:4-50.22 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. 39:4-50.2* (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*" (Rev. 2-20-2004) Form] 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*.

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:

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- (1) As they pertain to the release of persons charged with a violation of *N.J.S.A. 39:4-50* (DWI) and/or *N.J.S.A. 39:4-50.2* (Refusal); and
- (2) Complying with a request by a defendant to obtain an independent test of his/her blood, breath or urine, pursuant to the provisions of *N.J.S.A. 39:4-50.2(c)*.
- (3) Compliance with the provisions of any municipal Ordinance or Resolution adopted pursuant to Laws 2003, chapter 164, governing the detention of a person charged with a violation of *N.J.S.A. 39:4-50* (DWI).

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 their appropriate legal representative for legal advice.¹

It is not a function of these Guidelines to unnecessarily delay, or otherwise interfere with: (1) the release of a defendant charged with a DWI and/or Refusal offense, to a responsible party; or (2) the release of a defendant charged with a DWI and/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. 2004-1, P.L. 2001, c. 69, *N.J.S.A. 39:4-50.22* & *39:4-50.23*, "Guidelines for Mandatory 12-hour Impoundment of the Motor Vehicles."

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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A law enforcement officer is NOT REQUIRED to read the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* (Rev. 2-20-2004) Form to the person who will transport or accompany the defendant. 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 should not to be permitted to leave with the summoned person.

Procedures

Following the completion of the processing by the law enforcement officer of a person arrested for DWI and/or Refusal, including the administration of any chemical breath tests or the obtaining of blood or urine specimens, and 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:

- (1) following instructions given by the arrestee, or
- (2) using information obtained from the arrestee, or from the arrestee's person or personal effects.

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 or Rescue 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* (Rev. 2-20-2004) Form to any person who may thereafter be summoned to transport or accompany the arrestee from the medical facility.

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Preparation of the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* (Rev. 2-20-2004) 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* (Rev. 2-20-2004) Form. The officer **shall** complete the information in the box at the top of the form. Then the officer **shall** fill in his/her name, rank and badge number in the section following the Warning paragraphs, labeled "Law Enforcement Officer." The line labeled "Date & Time of Acknowledgment" is to be left blank, at this time.

Completion of the POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* (Rev. 2-20-2004) Form

When the summoned person arrives at the law enforcement agency, or at a medical facility treating the defendant, 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 specific violations with which the defendant has been charged. The law enforcement officer should use the statutory reference for each violation, as well as 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, that decision is left to the determination of each law enforcement agency.

If the summoned person refuses to appropriately identify himself or herself to the law enforcement officer, then the defendant should not to be permitted to leave with that person. In that circumstance, the defendant may elect to contact another person to transport or accompany him or her.

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- (4) Hand the pre-prepared POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form to the summoned person. Ask that person to read the Form. Then instruct that person:
 - (a) To fill in the information on the Form, just below the Warning statement paragraph, labeled “Person Acknowledging Receipt;”
 - (b) Put their signature on the line for “*Signature of Person Acknowledging Receipt;*” and
 - (c) Return the completed Form to the officer for copying.
- (5) Once the summoned person has read the POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form, 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 “*Signature of Person Acknowledging Receipt;*” the officer is to retrieve 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 then the officer is to sign his/her name on 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 (Rev. 2-20-2004) 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 at least one (1) copy of the original. The copy, or copies **shall** be retained in the law enforcement agency file for that case. The original of the signed POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) Form is to be given to the summoned person, not the arrestee.

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- (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* (Rev. 2-20-2004) 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 any copies.

Once the summoned person has been given the completed POTENTIAL LIABILITY WARNING - *N.J.S.A. 39:4-50.22* (Rev. 2-20-2004) Form, the defendant may be transported or accompanied by the summoned person from the police station or facility.

POTENTIAL LIABILITY WARNING - N.J.S.A. 39:4-50.22 (Rev. 2-20-2004) FORM

Defendant Information		Case #
Name: Last, First, M.I.	DL# & State	Arresting Officer Information
Street Address	Birth Date	Name: Last, First, M.I. Rank
Town, State ZIP	Arrest: Date & Time	Badge #
Violation(s) Charged: <input type="checkbox"/> N.J.S.A. 39:4-50(a), DWI (Check appropriate boxes) <input type="checkbox"/> N.J.S.A. 39:4-50.2, Refusal to submit to chemical breath testing		

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 motor vehicle violations checked in the box above. 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 or has a blood alcohol concentration at, or above, that permitted by law (*N.J.S.A. 39:4-50*), then you are potentially subject to criminal penalties and civil liability.

Permitting a person who is intoxicated or who has a blood alcohol concentration at, or above, that permitted by law, to operate a motor vehicle is a violation of *N.J.S.A. 39:4-50(a)*. If you are charged and convicted under that statute: your driving privilege will be suspended; fines and monetary penalties will be imposed; and you may be incarcerated. If you permit or facilitate the defendant to operate a motor vehicle while the defendant remains intoxicated or has a blood alcohol concentration at, or above, that permitted by law, 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 to operate a motor vehicle while the defendant remains intoxicated or has a blood alcohol concentration at, or above, that permitted by law, 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 LIABILITY WARNING** from the Law Enforcement Officer whose name appears below.
Signature of Person Summoned

**REFUSAL TO ACKNOWLEDGE, IN WRITING,
RECEIPT OF POTENTIAL LIABILITY WARNING**

_____, was given a copy of this **POTENTIAL LIABILITY WARNING**, but refused to sign the acknowledgment of receipt.
Print Name of Person Summoned

Signature of Law Enforcement Officer

Date & Time of Refusal to Acknowledge

AVISO DE POSIBLE OBLIGACIÓN LEGAL - N.J.S.A. 39:4-50.22 (Rev 2-20-2004)

Defendant Information		Case #
Name: Last, First, M.I.	DL# & State	Arresting Officer Information
Street Address	Birth Date	Name: Last, First, M.I. Rank
Town, State ZIP	Arrest: Date & Time	Badge #
Violation(s) Charged: <input type="checkbox"/> <i>N.J.S.A. 39:4-50(a), DWI</i> (<i>Check appropriate boxes</i>) <input type="checkbox"/> <i>N.J.S.A. 39:4-50.2, Refusal to submit to chemical breath testing</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 violaciones de la ley de tránsito marcado en la caja arriba. 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 o tiene un contenido alcohólico en la sangre igual a, o más de lo que está permitido por la ley (*N.J.S.A. 39:4-50*), usted potencialmente se expone a penalidades criminales y obligaciones legales civiles.

Permitir que una persona opere un vehículo motorizado en estado de embriaguez o tiene un contenido alcohólico en la sangre igual a, o más de lo que está permitido por la ley es una violación de la ley *N.J.S.A. 39:4-50(a)*. Si usted está acusado y condenado bajo el estatuto: se le suspenderán sus privilegios de manejo; se le impondrán multas y penalidades monetarias; y se le puede encarcelar. Si usted permite o facilita que el acusado opere un vehículo motorizado mientras el acusado permanece en estado de embriaguez o tiene un contenido alcohólico en la sangre igual a, o más de lo que está permitido por la ley, 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 o tiene un contenido alcohólico en la sangre igual a, o más de lo que está permitido por la ley, 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, Law Enforcement Officer

Date & Time of Refusal to Acknowledge