

Driver's License Suspension and Proposed Changes to the Comprehensive Drug Reform Act

Senate Bill 2517 proposes to amend the CDRA to allow greater judicial discretion concerning driver's license suspension for individuals convicted of drug offenses. Under New Jersey's current law, the court must suspend a driver's license for 6 to 24 months without exception. Federal law permits states to include a "compelling circumstances" exception. By providing such judicial discretion with regard to license suspension, the bill would be in keeping with the increasingly widespread recognition, as reflected in the FIX DMV Commission report among other sources, that driver's license suspension can serve as a significant barrier to employment for low-income individuals in the state.

Issue Overview: Driver's License Suspension in New Jersey

The suspension of driver's licenses for reasons unrelated to driving safety has become an issue of significant concern in New Jersey because lack of a valid license is a major barrier to employment. According to the 2000 census, about three quarters of all workers in New Jersey drive alone to work, with less than ten percent using public transportation. Recent figures from the New Jersey Department of Labor indicate that ninety percent of job openings listed by employers with the county One Stop Career Centers were not accessible by public transportation, following a statewide trend that has most job growth occurring in suburban areas. The Fix DMV Commission, which concluded its work in 2003, noted the significance of the socio-economic effects of suspension, and the Department of Labor and Workforce Development has begun to build into its workforce development programs funding and advocacy to help low-income New Jerseyans address suspension issues.

Last year, New Jersey imposed 825,320 suspensions¹ on the states approximately 5.5 million drivers, of which 20,567 were imposed under the Comprehensive Drug Reform Act. As in past years, the majority of suspensions were not driving-related, including failure to pay insurance surcharges (228,175), failure to pay parking tickets (139,280), failure to appear in court (105,971); failure to pay court fines (59,957); and failure to pay child support (24,613).

While exact figures are not available, license suspension has been identified by the state's criminal justice agencies as highly prevalent among parolees and other recently released offenders (as well as probationers), affecting their ability to obtain work and remain crime-free. It is particularly problematic because many of the employment sectors that have both job growth and receptivity to individuals with criminal records, such as the construction and automotive industries, require a valid license regardless of the location of the job.

Suspension under the Criminal Code: N.J.S.A. § 2C:35-16

The license suspension problem can in part be addresses by modifications to the CDRA. As noted above, under N.J.S.A. § 2C:35-16, individuals convicted or adjudicated delinquent for any offense listed in chapters 35 or 36 of Title 2C lose their driving privileges for 6 to 24 months per offense from the date of sentence. This section of the code dates back to 1992, following the passage of an amendment to the Federal Highway Apportionment Act authorizing the Secretary of Transportation to withhold a portion of federal highway funds from any state that failed to adopt a license suspension law for drug offenders. 23 U.S.C.A. § 159. Under that federal law, which was one of a series of measures targeting low-level drug users, states had to require a suspension of at least 6 months for CDS charges in all cases, or require such

¹ This the number of suspensions, not the number of individuals suspended. One individual can be subject to multiple suspensions in a given year. About 200,000 drivers are suspended at any one time.

suspension unless there were “compelling circumstances warranting an exception.”² New Jersey’s current law mandates suspension but does not include the “compelling circumstances” exception permissible under the federal statute. Judges currently have no discretion not to suspend, regardless of circumstance.

New Jersey’s statute is also clear that suspension begins from the date of sentence, except where there are any other suspensions or revocations under 2C or Title 39 (motor vehicle and traffic law) in place, in which case the suspension begins from the date those suspension or revocation periods are complete. Thus, while multiple CDRA suspensions arising from the same event will run concurrently, they run consecutive to other suspensions, including presumably suspensions for failure to pay fines and fees, which run indefinitely, pending payment. An individual can thus be subject to a CDRA suspension long after completing a custodial sentence.

Senate Bill 2517 and Assembly Bill 878

Senate Bill 2517, sponsored by Senators Kenny and Bucco, and its companion Assembly Bill 878, sponsored by Assemblymembers Previte and Barnes amends N.J.S.A. § 2C:35-16 to allow the sentencing court not to suspend upon a finding of “compelling circumstances warranting an exception,” directly mirroring the language in the federal law. It further clarifies that “compelling circumstances warranting an exception” exist when suspension would result in “extreme hardship and alternative means of transportation are not available.” The federal law does not dictate a definition of “compelling circumstances” and there appears to be no clarifying or limiting case law. As presently written, these bills do not address the issue of when suspensions begin, whether they are to be concurrent or consecutive to other suspension or revocation periods.

The Senate bill has been approved by the New Jersey Commission to Review Criminal Sentencing, and the New Jersey County Prosecutors Association, among others. The identical Assembly bill was passed out of committee in 2004.

² States can also opt out, if the Governor submits certifications stating that both the Governor and the legislature are opposed to the enactment or enforcement of such a law.