No. 16-

IN THE

Supreme Court of the United States

JAMES R. DENELSBECK,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Has the New Jersey Legislature packed the consequences on conviction of a third or subsequent traffic offense under *N.J.S.A.* 39:4-50 so as to render the offense "serious" and to entitle offenders to the right to a jury trial under the Sixth Amendment to the United States Constitution and the decisional law of this Court?

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STATEMENT OF JURISDICTION

Petitioner James R. Denelsbeck petitions this Court for certiorari pursuant to 28 *U.S.C.A.* sec. 1257(a) from the decision of the New Jersey Supreme Court entered May 12, 2016. *See also* Rules 10(b) and 10(c) of the rules of this Court.

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey, decided May 12, 2016, to be reported as State v. Denelsbeck, ___ N.J. ___ (2016), is in Appendix A at 1a-66a.

The opinion of the Superior Court of New Jersey, Appellate Division, decided October 2, 2014, is not reported but is in Appendix B at 67a-70a.

The opinion of the Superior Court of New Jersey, Law Division, entered July 12, 2013, is not reported but is in Appendix C at 71a-72a.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution
Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for

obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution
Fourteenth Amendment, Section One

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED[1]

***New Jersey Statute* 39:4-50**

***New Jersey Statute* 39:4-50.8**

***New Jersey Statute* 39:4-50.17**

***New Jersey Statute* 39:4-50.19**

***New Jersey Statute* 39:5-36**

***New Jersey Statute* 39:5D-4**

***New Jersey Statute* 17:29A-35(*b*)(2)(*b*)**

1. These statutes are set forth at length in the Appendix.

***New Jersey Statute* 2C:43-3.1(*c*)**

***New Jersey Statute* 2C:43-3.2(*a*)(1)**

STATEMENT OF THE CASE

On October 5, 2011, Petitioner James R. Denelsbeck was charged in Ventnor City Municipal Court with, driving while under the influence of alcohol ["DUI" or "DWI"] in violation of *N.J.S.A.* 39:4-50, among other things. If convicted, he faced several consequences, including court-imposed fines and assessments of $1,364, administratively-imposed surcharges of between $3,000 and $4,500, a 10-year driving privilege revocation, and a requirement to install an alcohol ignition interlock device during the period of driving revocation and up to three years thereafter, among other things.

Denelsbeck requested a jury trial pursuant to the Sixth Amendment of the United States Constitution in open court during his first appearance on January 30, 2012. The municipal prosecutor declared that the State sought nothing more than 180-days jail, among the other consequences Denelsbeck faced, and opposed the motion. The municipal court judge denied the jury trial request. After a bench trial, Denelsbeck was convicted and sentenced on October 25, 2012, as a third or subsequent offender under *N.J.S.A.* 39:4-50 to pay a $1,006 fine,[2] $33 court costs,[3] and $325 in various assessments;[4] forfeit his

2. *N.J.S.A.* 39:4-50(a)(3) and *N.J.S.A.* 39:5-41(d) through (h).

3. *N.J.S.A.* 22A:3-4.

4. *N.J.S.A.* 39:4-50(i), *N.J.S.A.* 39:4-50.8, *N.J.S.A.* 2C:43-3.1(c), and *N.J.S.A.* 2C:43-3.2(a)(1).

driving privilege for ten years;[5] install an alcohol ignition interlock device ["IID"] in the vehicle he principally operates for the period of his driving privilege revocation and two years thereafter;[6] attend an Intoxicated Driver Resource Center ["IDRC"] for 12 hours;[7] and serve 180 days in jail.[8] Sentence was executed immediately, except for the jail, on which he obtained bail pending appeal. Because of his conviction, Denelsbeck was also required to pay a Merit Rating Plan surcharge of $3,000,[9] a $100 assessment to the Alcohol Education, Rehabilitation and Enforcement Fund,[10] and *per diem* fees of between $264 and $321 to the Intoxicated Driver Resource Program.[11]

Denelsbeck appealed the denial of a jury trial, among other things. His jury trial request was again denied,

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5. *N.J.S.A.* 39:4-50(a)(3).

6. *N.J.S.A.* 39:4-50.17(b). The person convicted under *N.J.S.A.* 39:4-50 must pay the expense of the IID, although some are eligible for reduced rates by statute. *See N.J.S.A.* 39:4-50.17a. *See also* http://www.state.nj.us/mvc/pdf/ Violations/interlock-faq.pdf (last visited July 31, 2016). The current market rate for IID rental is $75 to $90 per month. Some providers also charge for installation, de-installation, and monitoring.

7. *N.J.S.A.* 39:4-50(a)(3), *N.J.S.A.* 39:4-50(b), and *N.J.S.A.* 39:4-50(f).

8. *N.J.S.A.* 39:4-50(a)(3).

9. *N.J.S.A.* 17:29A-35(b)(2).

10. *N.J.S.A.* 39:4-50(b).

11. *N.J.S.A.* 39:4-50(f), par.3.; *N.J.A.C.* 10:162-2.4. *See* http://www.state.nj.us/mvc/Violations/dui_Intoxicated.htm (last visited July 31, 2016).

and he was again convicted after a trial *de novo* on the municipal court record in the Superior Court of New Jersey, Law Division, on June 14, 2013. 71a-72a. A request to continue bail pending appeal was denied, and he began serving his jail sentence three days later. His sentence has now been fully executed, except for the balance of the driving privilege revocation and IID requirement.

Denelsbeck appealed to the Superior Court of New Jersey, Appellate Division. In a decision dated October 2, 2014, the Appellate Division affirmed the lower courts' denials of Denelsbeck's requests for a jury trial. 67a-70a.

Denelsbeck petitioned the New Jersey Supreme Court for certification. This petition was granted on February 11, 2015. *State v. Denelsbeck*, 220 *N.J.* 575 (2015). After argument on October 26, 2015, the New Jersey Supreme Court affirmed the Appellate Division's denial of Denelsbeck's requests for a jury trial. *State v. Denelsbeck*, ___ *N.J.* ___ (2016); 1a-49a. The Hon. Barry T. Albin, J., dissented. 50a-66a. This petition follows.

REASONS FOR ALLOWANCE OF THE PETITION

New Jersey's Supreme Court has decided an important federal question in a way that conflicts with the law of all other states, a decision of a United States Court of Appeals, and relevant decisions of this Court. *See* this Court's *Rule* 10 (b) and (c).

Petitioner believes the decision of the New Jersey Supreme Court in his case conflicts with this Court's decisions in *Blanton v. North Las Vegas,* 489 *U.S.* 538, 543, 109 *S.Ct.* 1289, 103 *L.Ed.*2d 550 (1989), and *Duncan*

v. Louisiana, 391 *U.S.* 145, 159, 88 *S.Ct.* 1444, 20 *L.Ed.*2d 491 (1968), as well as the decision in *Richter v. Fairbanks*, 903 *F.*2d 1202 (8th Cir. 1990).

New Jersey is the only State that does not afford a third or subsequent DUI offender with a jury trial.

ARGUMENT

This is a case about drawing the line between that which is "petty" and that which is "serious" for determining whether a person facing conviction for a certain traffic offense has a right to a jury trial under the Sixth Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment.

I.

THIS CASE RAISES AN IMPORTANT FEDERAL QUESTION AS TO WHETHER PETITIONER WAS ENTITLED TO A JURY TRIAL AND TO WHICH THE NEW JERSEY SUPREME COURT ERRONEOUSLY APPLIED FEDERAL CONSTITUTIONAL LAW

In answering the question presented here, the New Jersey Supreme Court concluded

> that third or subsequent DWI offenders do not face more than six months' incarceration and that the additional penalties, although significant, are not sufficiently serious to trigger the right to a jury trial. At the same

> time, we emphasize that the Legislature has reached the outer limit of what is permitted without a jury trial and that any additional penalties would cause this Court to reach a different conclusion. Under the current law, however, we hold that the need for a jury trial is outweighed by the State's interest in promoting efficiency through non-jury trials.
>
> [*State v. Denelsbeck, supra*, ___ *N.J.* at ___, *slip op.* at 3, 3a]

The New Jersey Supreme Court reached this conclusion, relying solely on federal constitutional law:

> As an initial matter, we decline defendant's request to resolve this case on independent principles of the New Jersey Constitution. **** "New Jersey has never recognized a right to trial by jury for the motor-vehicle offense of DWI" and DWI is "not a crime under New Jersey law." [Citation omitted.] Those facts have not changed and we remain satisfied that the protections guaranteed by the Sixth Amendment are consonant with those found in our State Constitution. We therefore apply the federal standard.
>
> [*Id*, ___ *N.J.* at ___, *slip op.* at 21, 19a]

"The Constitution's guarantee of the right to a jury trial extends only to serious offenses...." *Lewis v. United States*, 518 *U.S.* 322, 330, 116 *S.Ct.* 2163, 135 *L.Ed.*2d 590 (1996).

New Jersey's legislature placed the law prohibiting the operation of a motor vehicle while under the influence of alcohol in Title 39, the statutory title providing for motor vehicles and traffic regulation, rather than Title 2C entitled the "New Jersey Code of Criminal Justice." *N.J.S.A.* 2C:1-1(a). Title 2C defines offenses as "crimes" exposing defendants to incarceration greater than six months (*see N.J.S.A.* 2C43-7; *see generally* N.J.S.A. 2C:43-1(a)) and "disorderly persons offenses" exposing defendants to incarceration not exceeding six months (*N.J.S.A.* 2C:43-8).

Despite this classification of DUI as a traffic offense, the New Jersey Legislature still treats third or subsequent DUI offenders as if they are criminals and the offense as if it is "serious." "To determine whether an offense is serious for Sixth Amendment purposes, we look to the legislature's judgment, as evidenced by the maximum penalty authorized." *Lewis v. United States, supra*, 518 *U.S.* at 330; *Blanton v. North Las Vegas, supra*, 489 *U.S.* at 541. "An offense is not 'serious' because it is severely punished; it is severely punished because it is 'serious.'" *United States v. Craner,* 652 *F.*2d 23, 24 (9th Cir. 1981).

This Court, in *Blanton v. North Las Vegas, supra*, referred to Congress' demarcation at six-months incarceration and a fine of $5,000. *Id.*, 489 *U.S.* at 544-45; *see United States v. Nachtigal*, 507 *U.S.* 1, 113 *S.Ct.* 1072, 122 *L.Ed.*2d 374 (1993). But in *Blanton v. North Las Vegas*, this Court departed from the bright line of six-months in jail expressed in *Duncan v. Louisiana, supra*, and embraced "a spectrum of values, a continuum rather than a clear contrast: the closer the DWI system actually comes to the six-month incarceration line, the less

room there may be for other penalties." *State v. Hamm*, 121 *N.J.* 109, 112 (1990), *cert.den.* 499 *U.S.* 947, 111 *S.Ct.* 1413, 113 *L.Ed.*2d 466 (1991).

While ordinarily "[t]he judiciary should not substitute its judgment as to seriousness for that of a legislature," *Blanton v. North Las Vegas, supra*, 489 *U.S.* at 541, this Court has held that a defendant should be entitled to a jury trial

> if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a "serious" one. This standard, albeit somewhat imprecise, should ensure the availability of a jury trial in the rare situation where a legislature packs an offense it deems "serious" with onerous penalties that nonetheless "do not puncture the 6-month incarceration line."
>
> [*Id.*, 489 *U.S.* at 543]

"Therefore, the nature of the penalties, not how the Legislature classifies the offense, ultimately determines when a defendant is entitled to a jury trial." *State v. Denelsbeck, supra*, ___ *N.J.* at ___, dissent *slip op.* at 4, 52a-53a (Albin dissenting).

II.

THE NEW JERSEY LEGISLATURE HAS SO PACKED PENALTIES FOR A THIRD OR SUBSEQUENT DUI OFFENSE AS TO ELEVATE IT TO A "SERIOUS" OFFENSE ENTITLING PETITIONER TO A JURY TRIAL

In the present case, Denelsbeck presents "the rare situation where a legislature packs an offense it deems 'serious' with onerous penalties" sufficient to "ensure the availability of a jury trial." *Blanton v. North Las Vegas*, *supra*, 489 *U.S.* at 544. This packing includes (a) monetary consequences of $1,364 in court-imposed assessments, between $3,000 and $4,500 in administrative surcharges, *see Denelsbeck, supra*, ___ *N.J.* at ___, *slip op.* at 18, 25a, and $264 to $314 in administrative fees; (b) a 10-year driving privilege revocation; (c) the IID requirement; (d) intoxicated driver program requirements, and (e) the prospect of additional jail time if the offender is unable to pay fines; among other things.

The New Jersey Supreme Court recognized:

> Along with increasing the severity of the sentence in terms of confinement, it has added another $251 in fines, bringing the total to nearly $6000, and has enacted new driving limitations through the ignition interlock device requirement. Although not all aspects of those changes are equally relevant, the offense is teetering between classifications, and any additional penalties will demonstrate that the Legislature views a third or subsequent DWI as a "serious" offense requiring a trial by jury.

[*Id.*, ___ *N.J.* at ___, *slip op.* at 31, 28a]

But the New Jersey Supreme Court majority failed to draw the line between what is "petty" versus "serious" in balancing the competing values of a defendant's right to a jury trial and the State's desire for efficiency, stating, "[W]e believe that the penal consequences of the offense do not tip the balance to classify it as 'serious.' As a result, the State's interest in the efficiency and cost-saving benefits of non-jury trials can still prevail." *Id.* The New Jersey Supreme Court stated:

> In sum, we believe that the Legislature has increased the severity of penalties associated with repeat DWI offenses to the point where any additional direct penalties, whether involving incarceration, fees, or driving limitations, will render third or subsequent DWI offenses "serious" offenses for the purpose of triggering the right to a jury trial. At that point, the balance will shift and the State's interest in efficiency will be outweighed by the magnitude of the consequences facing the defendant. In such an event, the constitutional right to a jury trial will apply, regardless of how the offense is categorized or labeled by the Legislature.

[*Id.*, ___ *N.J.* at ___, *slip op.* at 33-34, 30a-31a]

The New Jersey Supreme Court majority, despite recognizing the many consequences Denelsbeck faces, struck the balance against him and in favor of the State. In other words, it elevated the State's convenience above a defendant's constitutional right to a jury trial.

The dissent, however, recognized, "We have crossed the red line [that] justified withholding the right to a jury trial for a third-time DWI offense [because] the packing of an additional twelve hour IDRC requirement and extremely onerous licensure and financial penalties breached the constitutional threshold." *Id.*, ___ *N.J.* at ___, dissent *slip op.* at 3, 51a (Albin dissenting).

The dissent described how consequences faced by a third or subsequent DUI offender are, in fact, more serious than those faced by a defendant charged with a fourth degree crime in New Jersey:[12]

> The Legislature's failure to classify a third or subsequent DWI as a crime cannot be determinative. Defendant's DWI sentence exceeded the custodial term and penalties customarily imposed for a fourth-degree crime under *N.J.S.A.* 2C:43-1(a) for which there is a jury-trial right. A first-time fourth-degree offender, although exposed to a sentence not to exceed eighteen months in jail, *N.J.S.A.* 2C:43-6(a)(4), benefits from a presumption of non-incarceration. *N.J.S.A.* 2C:44-1(d), (e). No custodial term is required of a fourth-degree offender.
>
> [*Id.*, ___ *N.J.* at ___, dissent *slip op.* at 8, 56a-57a (Albin dissenting).

12. Incidentally, this reasoning applies with equal force to third degree crimes not involving organized criminal activity and certain acts of domestic violence. *See N.J.S.* 2C:43-1(d).

Justice Albin continued:

> Moreover, although a fourth-degree offender faces a potential $10,000 fine, *N.J.S.A.* 2C:43-3(b)(2), no fine is required. In short, a third or subsequent DWI offender typically not only will serve a longer custodial sentence and pay a greater fine than a person convicted of a fourth-degree crime, but also will face the additional penalty of a ten-year license suspension. Yet, a fourth DWI offense will be tried before a judge.
>
> [*Id.*, ___ *N.J.* at ___, dissent *slip op.* at 9, 57a (Albin dissenting).

This Court should grant *certiorari* to correct the error made by the New Jersey Supreme Court majority.

A.

Monetary Consequences

Denelsbeck is required to pay $1,364 in court-imposed fines and assessment and $3,264 in administratively-mandated assessments. Had he been situated a little differently, he may been subject to $4,821 in administrative assessments. In other words, he must pay a total of $4,628, but might have been exposed to $6,185 directly as a result of his conviction under *N.J.S.A.* 39:4-50. This is exclusive of the privately contracted fees required to comply with the IID requirement. *See* discussion below.

For Denelsbeck, the New Jersey Supreme Court held generally that "DWI offenders on their third or

subsequent conviction face $5931 in fees, fines, and assessments. Of that amount, only the $1000 fine in the DWI statute and the $50 assessment under *N.J.S.A.* 2C:43-3.1(c) can be considered criminal penalties." *State v. Denelsbeck, supra*, ___ *N.J.* at ___, *slip op.* at 28, 25a. The New Jersey Supreme Court held, "The remaining fees are civil penalties which 'we do not disregard,' but we note that 'they are not the penalties associated with crimes.'" *Id.*, quoting *State v. Hamm, supra*, 121 *N.J.* at 117. The Court held, "While the use of civil penalties tends to show that the Legislature does not view the offense as 'serious,' $5931 in civil fines is significant. It is $251 more than the amount imposed in 1990 and exceeds the $5000 penalty mentioned in Blanton and federal law." *Id.*, ___ *N.J.* at ___, *slip op.* at 28-29, 26a, citing 18 *U.S.C.A.* sec. 3571(b).

The New Jersey Supreme Court disregards its own precedent in making these distinctions between "criminal" and "civil" penalties. In *State v. Nunez-Valez*, 200 *N.J.* 129 (2009), the New Jersey Supreme Court, considering the nature of consequences in a post-conviction relief proceeding, held, "[T]he traditional dichotomy that turns on whether consequences of a plea are penal or collateral is not relevant to our decision here." *Id.* at 138 (citation omitted). The nature of "consequences...should not depend on ill-defined and irrelevant characterizations of those consequences." *Id.* (citations and internal quotation marks omitted). Similarly, this Court has "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' ...." *Padilla v. Kentucky*, 559 *U.S.* 356, ___, 130 *S.Ct.* 1473, 1481, 176 *L.Ed.*2d 284 (2010). And in deciding whether consequences on conviction are "serious" or "petty," such distinctions are irrelevant when those consequences are mandated by law.

In *Blanton v. North Las Vegas, supra*, "the possible $1,000 fine [was] well below the $5,000 level set by Congress in its most recent definition of a 'petty' offense...." *Id.*, 489 *U.S.* at 544, n.9. (citations omitted). But Denelsbeck faced financial assessments of between $4,389 and $5,889 arising directly from his DUI conviction. Court imposed financial requirements well exceed a $1,000 fine, once the many additional assessments required by various statutes are included. Also, the failure to pay these fines and assessments exposes defendants to additional incarceration at the rate of $50 per day beyond the 180 days mandated by *N.J.S.A.* 39:4-50(a)(3). *See N.J.S.A.* 39:5-36.

There is an additional assessment of between $3,000 and $4,500 which, if unpaid, leads to an *ex parte* summary proceeding resulting in additional fees and interest easily reducible to the equivalent of a civil judgment. *N.J.S.A.* 17:29A-35(b)(2)(b), par.4. This lien, created under New Jersey's insurance law in default of payment of the $3,000 to $4,500 Merit Rating Plan surcharge, and other administrative consequences raises concern, as well.

Whether monetary consequences amount to the $4,628 for which Denelsbeck is liable or the $6,185 for which someone situated differently would be liable, this figure either exceeds or is so close to the $5,000 considered to be "serious" under federal law that it is immaterial for the purpose of determining the nature of the consequences for a third or subsequent offense under *N.J.S.A.* 39:4-50, especially in a context including the other consequences mandated by law.

B.

Driving Privilege Revocation

The New Jersey Legislature has mandated that Denelsbeck forfeit his driving privilege for 10 years. *N.J.S.A.* 39:4-50(a)(3). This is a serious consequence.

> Anyone who thinks it is a governmental privilege to drive a car in New Jersey has only to experience the life of a suburban homemaker providing transportation for almost all of life's necessities, or the life of a salesperson trying to call on customers in far-flung shopping or industrial malls. A license to drive is not a privilege, it is nearly a necessity. And its deprivation is clearly a "consequence of magnitude."
>
> [*State v. Hamm, supra*, 121 *N.J.* at 124 (citation omitted)]

In *Blanton v. North Las Vegas, supra*, this Court viewed the 90-day license suspension as "irrelevant if it runs concurrently with the prison sentence, which we assume for present purposes to be the maximum of six months," *id.*, or "when a restricted license may be obtained after only 45 days," *id.*, 489 *U.S.* at 544, n.9. In 1990, the New Jersey Supreme Court remarked how the "ten-year license suspension for third offenders, although in itself a heavy burden, is both precautionary and *penal*." *State v. Hamm, supra*, 121 *N.J.* at 129 (emphasis added). Now engrafted on this penalty is the additional burden of an IID for up to three years after the ten-year license

suspension, assuming, of course, one is not also required to maintain a vehicle with an interlock installed during that ten-year license suspension, as well. *N.J.S.A.* 39:4-50.17(b); *see N.J.S.A.* 39:4-50.19(a). If a person lacks the financial ability to own or maintain a vehicle or to install an IID, the offender's ten-year license suspension becomes indefinite, if not permanent, thus raising equal protection concerns.

For Denelsbeck, he has forfeited his driving privilege for ten years, with no limited license available during that time, and a significantly restricted privilege for two years thereafter. The driving privilege revocation is not confined to New Jersey, but will follow him to other jurisdictions; the same may also apply to the IID requirement. *N.J.S.A.* 39:5D-4(a)(2); *see N.J.S.A.* 5D-1 *et seq.*

In *Richter v. Fairbanks, supra*, the Eighth Circuit Court of Appeals, in a *habeas corpus* proceeding from a conviction under a Nebraska municipal ordinance, held "that the 15-year license revocation, considered together with the maximum six-month prison term, is a severe enough penalty to indicate that the Nebraska legislature considers third-offense DWI a serious crime." *Id.* at 1204. "The Supreme Court's analysis of the facts in *Blanton* supports our conclusion that adding the 15-year license revocation to the six-month prison term resulted in a penalty severe enough to warrant a jury trial in this case." *Id.* at 1205.

For Denelsbeck, Justice Albin contrasted *Richter v. Fairbanks* with the present case and noted in dissent, "While, here, defendant's license suspension is ten years rather than fifteen, his fines, fees, and costs are approximately fifteen times those imposed on the

defendant in *Richter*." *State v. Denelsbeck, supra*, ___ *N.J.* at ___, dissent *slip op.* at 9, 57a (Albin dissenting). But even setting aside fines, fees, and costs, the decision in *Richter v. Fairbanks* would still mandate a jury trial for Denelsbeck.

C.

Alcohol Ignition Interlock

The New Jersey Legislature mandated that, in addition to the revocation of his driving privilege for 10 years, Denelsbeck must suffer an additional penalty:

> [T]he court shall order, in addition to any other ***penalty*** imposed by [*N.J.S.A.* 39:4-50], the installation of an ignition interlock device in the motor vehicle principally operated by the offender during and following the expiration of the period of license suspension imposed under [*N.J.S.A.* 39:4-50, and] the device shall remain installed for not less than one year or more than three years, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served.
>
> [*N.J.S.A.* 38:4-50.17(b) (emphasis added)]

The costs of the IID is about $1,000 per year. *State v. Denelsbeck, supra*, ___ *N.J.* at ___, dissent *slip op.* at 6, 54a-55a (Albin dissenting).

Because "an offender shall drive no vehicle other than one in which an interlock device has been installed

pursuant to the order," *N.J.S.A.* 38:4-50.17(c), the Legislature has forced Denelsbeck to not only obtain an IID but to acquire a car in which to install it. This is because the State views the IID requirement as the only bridge between full driving privilege revocation and full driving privilege restoration. If Denelsbeck cannot obtain or gain access to a car equipped with an IID, he will never drive again.

This IID penalty, in combination with jail, IDRC, and monetary assessments entitled Denelsbeck to a jury trial.

D.

Intoxicated Driver Resource Center

In *Blanton v. North Las Vegas, supra*, this Court held that "the requirement that an offender attend an alcohol abuse education course can only be described as *de minimis*." *Id.*, 489 *U.S.* at 544, n.9. Yet, although not authorized as a part of his sentence under New Jersey's DUI statute, *N.J.S.A.* 39:4-50, Denelsbeck is still subject to payment of unspecified fees as designated by the New Jersey Division of Addiction Services upon referral or evaluation to an IDRC and the intoxicated driver's program ["IDP"]. *N.J.A.C.* 10:162-2.4. He also faces suspension of his driver's license for failure to comply with IDRC and IDP program or fee requirements. *N.J.A.C.* 10:162-2.5.

Consider also whether the two six-hour days Denelsbeck is required to attend at an IDRC breaches the six-month incarceration line set in *Duncan v. Louisiana, supra.* The 180-jail term plus two days IDRC totals to 182

days. If a six-month jail term includes a February in a year other than a leap year, six months is 181 to 182 days. If a six-month jail term excludes February, six months is 183 to 184 days. Where a 180-jail term plus two days confinement at an IDRC totals to 182 days, where is the line between "petty" and "serious" under *Duncan v. Louisiana*?

E.

Additional Incarceration

Denelsbeck faced the prospect of additional jail of up to 20 days if unable to pay fines, surcharges, and fees. *N.J.S.A.* 39:5-36 provides:

> a. The court may incarcerate...any person upon whom a penalty...has been imposed for a violation of any of the penalty...without good cause and that the default was willful. Incarceration ordered under this subsection shall not reduce the amount owed by the person in default. In no case shall such incarceration exceed one day for each $50 of the penalty or surcharge so imposed, nor shall such incarceration exceed a period of 90 consecutive days.
>
> b. Except when incarceration is ordered pursuant to subsection a of this section, if the court finds that the person has defaulted on the payment of a penalty the court may take one or more of the following actions:
>
> *** *** ***

> (3) if the defendant has served jail time for default on a penalty, the court may order that credit for each day of confinement be given against the amount owed. The amount of the credit shall be determined at the discretion of the court but shall be not less than $50 for each day of confinement served.

While this additional jail time may be "attenuated" as contended by the majority in the New Jersey Supreme Court (*State v. Denelsbeck, supra*, ___ *N.J.* at ___, *slip op.* at 24, 28, and 30; 22a, 25a, and 27a), it still gives an indication of what monetary value the New Jersey Legislature places on jail time.

III.

THE NEW JERSEY SUPREME COURT DECISION CONFLICTS WITH THE DECISIONAL LAW OF THIS COURT AND A FEDERAL COURT OF APPEALS AND, AS THE ONLY STATE WITHOUT A JURY TRIAL AVAILABLE FOR DUI DEFENDANTS, IS INCONSISTENT WITH THE LAW OF ALL OTHER STATES

"A person facing a fourth conviction for driving while intoxicated (DWI) has a right to a jury trial in every state except one–New Jersey." *State v. Denelsbeck, supra*, ___ *N.J.* at ___, dissent *slip op.* at 1, 50a. "New Jersey is unique in not providing the right to a jury trial to any DWI offenders." *Id.*, ___ *N.J.* at ___, *slip op.* at 38, 32a. Had Denelsbeck "been charged with a fourth DWI in any other state or in the District of Columbia, he would be entitled to a jury trial. New Jersey alone denies him this right." *Id.*, ___ *N.J.* at ___, dissent *slip op.* at 9, 57a.

In *Blanton v. North Las Vegas, supra*, this Court considered a DUI statute that authorized punishments for first offenders of a term of imprisonment between two days and six months, a fine ranging from $200 to $1,000, a loss of driver's license for 90 days, and attendance at an alcohol abuse education course. *Id.*, 489 *U.S.* at 539-40.

While this Court held that, viewed together, these "statutory penalties are not so severe that DUI must be deemed a 'serious' offense for purposes of the Sixth Amendment" in *Blanton*, *id.*, 489 U.S. at 545; *see State v. Hamm, supra*, 121 N.J. at 113-14, one cannot say the same for Denelsbeck. With Denelsbeck, we see how far DWI penalties have come in New Jersey.

So when is far too far? "That is the question in pretty much everything worth arguing in the law...." *Irvin v. Gavit*, 268 U.S. 161, 168, 45 *S.Ct.* 475, 69 L.Ed. 897 (1925). Under New Jersey law, there is no more room. The Legislature has gone too far with its penalty packing, and those facing third offender DUI consequences should be entitled to trial by a jury of their peers. As Justice Albin noted in dissent:

> The majority's position also is at odds with *Richter v. Fairbanks*, [*supra*], which is substantially similar to the case before us. In *Richter*, the defendant was convicted of his third DWI and sentenced to six months' imprisonment, a fifteen-year license suspension, and a $500 fine. *Id.* at 1203. The court held "that adding the 15-year license revocation to the six-month prison term resulted in a penalty severe enough to warrant a jury trial" under Blanton.

> *Id.* at 1205. While, here, defendant's license suspension is ten years rather than fifteen, his fines, fees, and costs are approximately fifteen times those imposed on the defendant in *Richter*.
>
> [*State v. Denelsbeck, supra*, ___ *N.J.* at ___, dissent *slip op.* at 9, 57a]

Given these diversions from the constitutional mandates of this Court, a federal courts of appeal, and the law of all other States, this Court should grant Denelsbeck's petition for *certiorari*.

CONCLUSION

In the words of New Jersey Justin Barry T. Albin, dissenting, "This case is the time for the Court to confer on third and subsequent DWI offenders the fundamental right guaranteed by the Sixth Amendment and guaranteed in every other state and the District of Columbia--the right to a jury trial." *State v. Denelsbeck, supra*, ___ *N.J.* at ___, dissent *slip op.* at 3, 52a.

> A jury trial may be inefficient and costly, but it is the embodiment of our democratic ethos and the process chosen by the Founders for the resolution of serious offenses. By any measure, under *Blanton*, a third or subsequent DWI conviction results in the imposition of a jail term and onerous license and financial penalties that trigger the Sixth Amendment right to a jury trial.

[*State v. Denelsbeck, supra*, ___ *N.J.* at ___, dissent *slip op.* at 12, 60a.]

Because the majority of the New Jersey Supreme Court denied Petitioner James R. Denelsbeck his constitutional right to a jury trial, this Court should grant his petition for *certiorari*.

Respectfully,

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APPENDIX

APPENDIX A — OPINION AND APPENDICES OF THE SUPREME COURT OF NEW JERSEY, DECIDED MAY 12, 2016

SUPREME COURT OF NEW JERSEY

A-42 September Term 2014
075170

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMES R. DENELSBECK,

Defendant-Appellant.

October 26, 2015, Argued
May 12, 2016, Decided

On certification to the Superior Court,
Appellate Division.

JUDGE CUFF (temporarily assigned) delivered the opinion of the Court.

In this appeal, we consider whether a defendant is entitled to a jury trial when facing a third or subsequent driving while intoxicated (DWI) charge pursuant to *N.J.S.A.* 39:4-50. This Court previously answered that question in the negative, over twenty-five years ago, in

State v. Hamm, 121 N.J. 109, 130, 577 A.2d 1259 (1990), *cert. denied*, 499 U.S. 947, 111 S. Ct. 1413, 113 L. Ed. 2d 466 (1991). Since then, however, the Legislature has amended the DWI statute to include additional penalties. As such, we now apply our analysis from *Hamm* to determine whether the current version of the law requires a different outcome.

At the time *Hamm* was decided, third or subsequent DWI offenses were punishable by several thousand dollars in fees, surcharges, and assessments, a ten-year driver's license suspension, and 180 days' confinement, which could be served through community service and outpatient treatment. Today, a third or subsequent offender faces an additional $251 in fees, is subject to the same license suspension, must be confined for 180 days, and must install an ignition interlock device[1] in his vehicle for one to three years. The municipal court in this case held that this new scheme did not implicate the right to a jury trial, and the Law and Appellate Divisions agreed.

The critical issue in resolving this case is whether the DWI offense is "serious" or "petty" for purposes of the Sixth Amendment. In answering that question, the primary focus is on the potential term of incarceration; specifically, whether it exceeds six months. A secondary consideration, but one which may render an offense "serious" regardless of the term of confinement, is the additional penalties imposed, including fines and fees.

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1. An ignition interlock device is "a blood alcohol equivalence measuring device which will prevent a motor vehicle from starting if the operator's blood alcohol content exceeds a predetermined level when the operator blows into the device." *N.J.S.A.* 39:4-50.17(d).

In weighing those factors, we conclude that third or subsequent DWI offenders do not face more than six months' incarceration and that the additional penalties, although significant, are not sufficiently serious to trigger the right to a jury trial. At the same time, we emphasize that the Legislature has reached the outer limit of what is permitted without a jury trial and that any additional penalties would cause this Court to reach a different conclusion. Under the current law, however, we hold that the need for a jury trial is outweighed by the State's interest in promoting efficiency through non-jury trials.

I.

In the early morning hours of October 5, 2011, defendant James R. Denelsbeck's vehicle was stopped by an officer of the Ventnor City Police Department for failing to stop at a red light. Defendant was arrested when he did not satisfactorily perform field sobriety tests. An Alcotest machine later indicated that defendant's blood alcohol content (BAC) was .12 percent.

Defendant was issued a motor-vehicle summons for DWI, *N.J.S.A.* 39:4-50; careless driving, *N.J.S.A.* 39:4-97; and failure to observe a traffic signal, *N.J.S.A.* 39:4-81. Defendant had three prior DWI convictions and therefore faced a mandatory term of 180 days' confinement, years of driving restrictions, and numerous fees, fines, and assessments. He also faced a maximum term of 15 days' confinement on each of the other driving offenses.

Appendix A

Defendant filed a demand for a jury trial in municipal court. In response, the prosecutor advised the court that the State would not seek more than 180 days' incarceration. After argument, the court denied the jury trial request. A bench trial commenced and the municipal court found defendant guilty of DWI and failure to observe a traffic signal. Defendant was acquitted of the careless driving charge.

Given defendant's prior convictions, he was sentenced to a mandatory term of 180 days in the Atlantic County Jail, pursuant to *N.J.S.A.* 39:4-50(a)(3). Defendant was also sentenced to a ten-year driver's license suspension followed by two years of using an ignition interlock device, twelve hours in the Intoxicated Driver Resource Center (IDRC), $1006 in fines, and over $350 in applicable surcharges, costs, and fees. He was also charged $89 in fines and costs for failing to observe a traffic signal.

Defendant filed an appeal in the Law Division. After a de novo review, the Law Division affirmed the denial of defendant's request for a jury trial, as well as defendant's convictions and sentence. Defendant appealed solely on the issue of his right to a jury trial.

The Appellate Division affirmed in an unpublished opinion based on "well-settled authority" holding that DWI offenders facing a prison term of six months or less are not entitled to a jury trial. The panel specifically relied on this Court's decision in *Hamm* to conclude that DWI in New Jersey is "considered a motor-vehicle offense rather than a criminal offense." The panel also found that there

was "nothing in the record to suggest that defendant faced any real risk of receiving a prison term greater than 180 days" and that "the additional fines, penalties, and surcharges defendant faced were not 'onerous' penalties triggering a right to a jury trial."

We granted defendant's petition for certification. *State v. Denelsbeck*, 220 N.J. 575, 108 A.3d 635 (2015).

II.

A.

Defendant's primary argument is that the Legislature has increased the severity of the penalties for third or subsequent DWI offenses since this Court's opinion in *Hamm* to the point that the right to a jury trial now applies. Specifically, defendant argues that the "packing" by the Legislature of numerous financial penalties, the ten-year driving privilege suspension, the ignition interlock device requirement, and the mandatory 180 days' confinement demonstrate that it now views third or subsequent DWI offenses as "serious" for purposes of the Sixth Amendment. Defendant also submits that he should have been granted a jury trial under the New Jersey Constitution.

The State argues that the amendments to *N.J.S.A.* 39:4-50(a) have not converted a third or subsequent DWI offense from a quasi-criminal motor-vehicle charge into a "serious" offense requiring a jury trial. The State emphasizes that the DWI offense remains classified as a

motor-vehicle violation and that the maximum jail term has not changed since *Hamm* was decided. The State also contends that many of the penalties pre-date *Hamm* and that the few new penalties are either collateral or insufficiently onerous.

In addition, the State argues that the right to a jury trial was not triggered by defendant's offenses carrying an aggregate term of imprisonment exceeding 180 days because the total penalty was limited to six months' incarceration under *State v. Owens*, 54 N.J. 153, 254 A.2d 97 (1969), *cert. denied*, 396 U.S. 1021, 90 S. Ct. 593, 24 L. Ed. 2d 514 (1970). Lastly, the State offers a detailed rebuttal to defendant's argument that this case should be resolved under the New Jersey Constitution.

B.

Amicus curiae New Jersey State Bar Association (NJSBA) argues that the amended DWI statute requires a jury trial and notes that the vast majority of states currently allow jury trials for repeat DWI offenses. In addition, the NJSBA argues that current precedent allowing a defendant to be tried without a jury on multiple "petty" offenses with aggregate sentences exceeding six months, as long as no more than six months' incarceration will be imposed, "improperly empowers the municipal prosecutor and judge to abrogate the defendant's right to a jury trial while still subjecting him to multiple charges." Lastly, the NJSBA provides practical guidance for applying the right to a jury trial to DWI offenses.

Amicus curiae American Civil Liberties Union of New Jersey (ACLU) also argues that the amended DWI statute triggers the right to a jury trial. The ACLU cites many of the same factors and penalties as defendant, but also states that the IDRC requirements create an additional period of incarceration because courts may sentence a defendant to a particular period of treatment and because failure to satisfy the IDRC requirements results in a two-day term of imprisonment. Thus, the ACLU argues that the maximum penalty for third or subsequent DWI offenses is actually 182 days of confinement.

The Attorney General, appearing as amicus curiae, reiterates many of the arguments made by the State, including that DWI is not a criminal offense in New Jersey and that defendant has not offered a justification for departing from federal precedent. In addition, the Attorney General argues that fines and collateral consequences do not factor into the Sixth Amendment analysis and that the principles of *stare decisis* weigh in favor of reaffirming *Hamm* . The Attorney General also emphasizes that New Jersey has a legitimate interest in pursuing non-jury trials in DWI cases, and has submitted two charts detailing how other states treat DWI offenses and the right to a jury trial.

III.

A.

The Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions,

the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]" *U.S. Const.* amend. VI. That provision is applicable to the states by virtue of the Fourteenth Amendment. *See Pointer v. Texas*, 380 U.S. 400, 403, 85 S. Ct. 1065, 1067-68, 13 L. Ed. 2d 923, 926 (1965).

Despite the broad language of the amendment, "it has long been the rule that so-called 'petty' offenses may be tried without a jury." *Frank v. United States*, 395 U.S. 147, 148, 89 S. Ct. 1503, 1505, 23 L. Ed. 2d 162, 166 (1969) (citations omitted). As such, to determine whether the right to a jury trial attaches, the relevant inquiry is whether the case involves a "petty" or "serious" offense. *Baldwin v. New York*, 399 U.S. 66, 68, 90 S. Ct. 1886, 1887-88, 26 L. Ed. 2d 437, 440 (1970).

The single bright-line rule that the United States Supreme Court has articulated in making this determination is that "no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized." *Id.* at 69, 90 S. Ct. at 1888, 26 L. Ed. 2d at 440. The Supreme Court has declined, however, to articulate a similar per se rule for cases involving a lesser period of confinement. *See id.* at 69 n.6, 90 S. Ct. at 1888 n.6, 26 L. Ed. 2d at 440 n.6 ("In this case, we decide only that a potential sentence in excess of six months' imprisonment is sufficiently severe by itself to take the offense out of the category of 'petty.'").

Rather, the Supreme Court has stated that when a defendant faces less than six months' incarceration, it will

look to "both the nature of the offense itself, as well as the maximum potential sentence, in determining whether [the] . . . offense was so serious as to require a jury trial." *Ibid.* (internal citations omitted). The "most relevant" information is the "severity of the maximum authorized penalty." *Id.* at 68, 90 S. Ct. at 1888, 26 L. Ed. 2d at 440.

At the same time, the Supreme Court has cautioned that "the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or 'petty' matter and may well result in quite serious repercussions affecting his career and his reputation." *Id.* at 73, 90 S. Ct. at 1890, 26 L. Ed. 2d at 443. Unlike in cases where the penalty exceeds six months' imprisonment, however, such "disadvantages, onerous though they may be, may be outweighed by the benefits that result from speedy and inexpensive nonjury adjudications." *Ibid.*

In *Blanton v. North Las Vegas*, the Supreme Court applied this analysis to conclude that a first-time DWI offense was "petty" for purposes of the Sixth Amendment. 489 U.S. 538, 539-40, 109 S. Ct. 1289, 1291-92, 103 L. Ed. 2d 550, 554-55 (1989). In doing so, the Supreme Court first explained that there was a presumption that the state legislature viewed the offense as "petty" because it authorized a maximum prison sentence of only six months. *Id.* at 544, 109 S. Ct. at 1293, 103 L. Ed. 2d at 557.

It also found that the inclusion of other penalties did not "clearly indicate[] that [DWI] is a 'serious' offense." *Ibid.* Specifically, the Supreme Court found a 90-day license suspension and completion of an alcohol abuse

education course to be insignificant, *id.* at 544 n.9, 109 S. Ct. at 1294 n.9, 103 L. Ed. 2d at 557 n.9, and that a $1000 fine was "well below the $5,000 level set by Congress in its most recent definition of a petty offense[,]" *id.* at 544, 109 S. Ct. at 1293-1294, 103 L. Ed. 2d at 557. Nonetheless, the Supreme Court explained that relevant penalties are not limited "solely to the maximum prison term authorized for a particular offense" and that "[a] legislature's view of the seriousness of an offense also is reflected in the other penalties that it attaches[.]" *Id.* at 542, 109 S. Ct. at 1292, 103 L. Ed. 2d at 555.

As such, a defendant facing a prison term of six months or less will be entitled to a jury trial "if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a 'serious' one." *Id.* at 544, 109 S. Ct. at 1293, 103 L. Ed. 2d at 556. Such a finding will occur only "in the rare situation where a legislature packs an offense it deems 'serious' with onerous penalties that nonetheless 'do not puncture the 6-month incarceration line.'" *Id.* at 544, 109 S. Ct. at 1293, 103 L. Ed. 2d at 556-57 (citation omitted). Such situations are rare because although "[p]enalties such as probation or a fine may engender a significant infringement of personal freedom, . . . they cannot approximate in severity the loss of liberty that a prison term entails." *Id.* at 542, 109 S. Ct. at 1292, 103 L. Ed. 2d at 556 (internal quotations and citations omitted).

"A similar right to trial by jury is guaranteed under the New Jersey Constitution." *State v. Stanton*, 176 N.J. 75, 88, 820 A.2d 637, *cert. denied*, 540 U.S. 903, 124 S. Ct. 259, 157 L. Ed. 2d 187 (2003); *see N.J. Const.* art. I, ¶ 9 ("The right of a trial by jury shall remain inviolate[.]"); *see also N.J. Const.* art. I, ¶ 10 ("In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury[.]"). Due to the similar language in the federal and state constitutions, we have long looked to the federal standard to determine the scope of the right to a jury trial. *See Owens*, *supra*, 54 N.J. at 159-60, 254 A.2d 97 (citing *Frank, supra*, 395 U.S. at 147, 89 S. Ct. at 1503, 23 L. Ed. 2d at 162).

Indeed, in *Hamm, supra*, we described the issue of whether a DWI defendant has a right to a jury trial as primarily a question of federal constitutional law "because New Jersey has never recognized a right to trial by jury for the motor-vehicle offense of DWI." 121 N.J. at 112, 577 A.2d 1259. Thus, this Court explained that the federal principles "provide the analytical framework" for resolving the question of "whether the Legislature has so 'packed' the offense of DWI that it must be regarded as 'serious' for sixth-amendment purposes." *Id.* at 114-15, 577 A.2d 1259.

We have also made clear, however, that trial by jury is relevant when a defendant faces several petty offenses that are factually related and arise out of a single event. *Owens, supra*, 54 N.J. at 163, 254 A.2d 97. "In such

circumstances, the prosecutor (or the municipal court if there is no prosecutor) should offer the defendant a jury trial, and if such offer is not made, then the sentences may not total more than the maximum authorized for a petty offense." *Ibid.*

Applying the federal standard, this Court determined that the penalty scheme in effect when Hamm was charged with a third incident of DWI did not require a jury trial. *Hamm, supra*, 121 N.J. at 111, 577 A.2d 1259. At that time, a third or subsequent DWI offender was subject to 180 days' incarceration that could be served by completing a 90-day community service sentence and a combination of inpatient and outpatient treatment. *See L.* 1986, *c.* 126, § 1. In addition, a third or subsequent DWI offender faced a ten-year driver's license suspension, *ibid.*; a fine of $1000, *ibid.*; an annual $1500 insurance surcharge for three years, *L.* 1988, *c.* 156, § 9; and $180 in other fees and charges, *L.* 1984, *c.* 126, § 1. The sentence imposed on Hamm, which consisted of ninety days' community service, twenty-eight days in an inpatient treatment program, and sixty days in an outpatient program, as well as the prescribed driver's license suspension, surcharges, and other financial assessments, fell well within the discretion afforded to a court at that time to craft a sentence that minimized the time of incarceration. *Hamm, supra*, 121 N.J. at 111, 577 A.2d 1259.

In response to Hamm's argument that this penalty scheme classified a third DWI offense as "serious" rather than "petty," we noted that "when the New Jersey Legislature wants to treat an offense as 'serious,' there

will be no mistaking it." *Id.* at 117, 577 A.2d 1259. By way of example, we noted that the Legislature had imposed mandatory prison sentences of a year or more to address certain gun and drug offenses. *Id.* at 117-18, 577 A.2d 1259. In contrast, we stated that for DWI, the Legislature "has yet to impose the full force of law on that offense that would denote a social evaluation that DWI is a 'crime' or an offense that equates with the need of trial by jury." *Id.* at 116, 577 A.2d 1259. Specifically, we noted that the law focused on prevention over punishment, carried shorter sentences than those in many other states, and had "yet to require a sentence in excess of six months, or even to require a mandatory six months of incarceration." *Ibid.*

We then turned to the additional penalties, noting that the $1000 fine would be regarded as "petty" under *Blanton* and that the other fees were civil in nature and therefore should be discounted. *Id.* at 117, 577 A.2d 1259. The Court explained that "[t]he various rehabilitation and enforcement surcharges are reasonable in themselves" and that the increased insurance premiums were not specific to DWI offenses. *Id.* at 125, 577 A.2d 1259. We also found that the insurance surcharge "was totally unrelated to any legislative intent to 'pack' the DWI offense" and that the collateral consequences attendant to DWI convictions are limited. *Id.* at 125-26, 577 A.2d 1259.

We further stated in *Hamm*, that a license to drive is a necessity but that other licenses, including those to practice certain professions, may be lost without a jury trial. *Id.* at 124, 577 A.2d 1259 (citation omitted). We also noted that the suspension, which previously existed, did

not "reflect a significant escalation of the seriousness with which New Jersey's Legislature regards this offense, but rather a shifting social conclusion about what works best with DWI offenders." *Id.* at 124-25, 577 A.2d 1259.

Finally, in *Hamm*, we discussed the Legislature's rehabilitative focus and described its decision to set a maximum penalty of 180 days' confinement as demonstrating "the undoubted legislative intention to continue to treat DWI as a motor-vehicle offense, not a crime." *Id.* at 127, 577 A.2d 1259. We also stated that "the provision of jury trial on a DWI charge by the majority of other states does not suggest the same result in New Jersey" due to the differences in offense structures and classification. *Ibid.*

We thus concluded that third or subsequent DWI offenses were not "serious" and did not require the option of a jury trial. *Id.* at 128-29, 577 A.2d 1259. At the same time, however, we emphasized that this was "not an easy question" and that *Blanton* appears to suggest that "the closer the DWI system actually comes to the six-month incarceration line, the less room there may be for other penalties." *Id.* at 130, 577 A.2d 1259.

IV.

N.J.S.A. 39:4-50(a) currently "prohibits the operation of a motor vehicle 'while under the influence of intoxicating liquor,' or 'with a [BAC] of 0.08% or more by weight of alcohol in the defendant's blood." *State v. Revie*, 220 N.J. 126, 133, 104 A.3d 221 (2014) (quoting *N.J.S.A.* 39:4-50(a)).

The statutory scheme provides a tiered penalty structure for first, second, and "third or subsequent" DWI offenses, with increasing penalties for each additional offense. *N.J.S.A.* 39:4-50(a).

Following a series of amendments in 2004, a third or subsequent violator currently

> shall be sentenced to imprisonment for a term of not less than 180 days *in a county jail or workhouse*, except that the court *may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program* approved by the [IDRC.]
>
> [*N.J.S.A.* 39:4-50(a)(3) (emphasis added).]

Thus, unlike the pre-2004 statute, the current law requires a third or subsequent DWI offender to be confined "either entirely in jail or partially in jail and partially in an inpatient facility" with "no allowance for noncustodial alternatives." *State v. Luthe*, 383 N.J. Super. 512, 514, 892 A.2d 736 (App. Div. 2006). The mandatory sentence of 180 days, however, has remained the same.

A third or subsequent DWI offender continues to face a driver's license suspension of ten years. *N.J.S.A.* 39:4-50(a)(3). That requirement has been in place since 1986 and was part of the penalty scheme considered by the Court in *Hamm*. Since *Hamm*, the Legislature has added an additional restriction in that third or subsequent

DWI offenders "shall be required to install an ignition interlock device under the provisions of *P.L.* 1999, *c.* 417[.]" *N.J.S.A.* 39:4-50(a)(3). The device must be installed "in the motor vehicle principally operated by the offender during and following the expiration of the period of license suspension imposed[.]" *N.J.S.A.* 39:4-50.17(b). After the period of license suspension has ended, "the device shall remain installed for not less than one year or more than three years, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served." *Ibid.*

Several financial penalties and assessments also apply to DWI offenders. Initially, there is a $1000 fine for a third or subsequent violation. *N.J.S.A.* 39:4-50(a)(3). There is also a $100 surcharge to support the Drunk Driving Enforcement Fund, *N.J.S.A.* 39:4-50.8; a $100 fee payable to the Alcohol Education, Rehabilitation and Enforcement Fund, *N.J.S.A.* 39:4-50(b); a $75 assessment for the Safe Neighborhoods Services Fund, *N.J.S.A.* 2C:43-3.2; a $50 assessment under *N.J.S.A.* 2C:43-3.1(c); a $100 DWI surcharge under *N.J.S.A.* 39:4-50(i);[2] and an insurance surcharge of $1500 per year for three years for third or subsequent DWI offenses occurring within a three-year period, *N.J.S.A.* 17:29A-35(b)(2)(b). A total of $6 is also added to every motor-vehicle violation fine. *N.J.S.A.* 39:5-41(d)-(h).

2. This surcharge was increased to $125 effective March 1, 2015. *L.* 2014, *c.* 54, § 2.

The $1000 fine, *L.* 1986, *c.* 126, § 1; the $100 surcharge for the Drunk Driving Enforcement Fund, *L.* 1984, *c.* 4, § 1; and the annual $1500 insurance surcharge, *L.* 1988, *c.* 156, § 9; existed at the time *Hamm* was decided. Since *Hamm*, the Alcohol Education Fund fee has increased from $80 to $100, *L.* 1986, *c.* 126, § 1. In contrast, the $75 assessment fee was not put in place until August 1993, *L.* 1993, *c.* 220, § 11; the $100 DWI surcharge did not apply until 2002, *L.* 2002, *c.* 34, § 17; and the $50 assessment under *N.J.S.A.* 2C:43-3.1(c) and the $6 in fines under *N.J.S.A.* 39:5-41(d)-(h) were not enacted until after *Hamm* was argued, *L.* 1990, *c.* 64, § 1; *L.* 1990, *c.* 95, § 2. In other words, an additional $251 in fines, fees, assessments, and surcharges have been imposed since *Hamm*.

DWI offenders also may be subject to penalties, including confinement, for failing to meet obligations arising from a DWI conviction. For example, an offender who does not install an ignition interlock device "in a motor vehicle owned, leased or regularly operated by him shall have his driver's license suspended for one year . . . unless the court determines a valid reason exists for the failure to comply." *N.J.S.A.* 39:4-50.19(a). The offender also will be subject to a one-year license suspension for driving an ignition interlock-equipped vehicle that "has been started by any means other than his own blowing into the device" or for driving "a vehicle that is not equipped with such a device[.]" *Ibid.*

N.J.S.A. 39:4-50(b) provides that any person convicted of DWI "must satisfy the screening, evaluation, referral, program and fee requirements of the Division

of Alcoholism and Drug Abuses' Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol and drug education and highway safety, as prescribed by the chief administrator." Failure to comply "shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order[.]" *Ibid.* That requirement existed when *Hamm* was decided.

N.J.S.A. 39:3-40 states that no person whose driver's license has been suspended or revoked "shall personally operate a motor vehicle" during the period of suspension or revocation. An offender whose license has been suspended due to a DWI conviction will be fined $500 and will have his driver's license "suspended for an additional period of not less than one year or more than two years, and shall be imprisoned in the county jail for not less than 10 days or more than 90 days." *N.J.S.A.* 39:3-40(f)(2). The DWI offender's motor-vehicle registration privilege will also be revoked. *N.J.S.A.* 39:3-40(a). This penalty existed when *Hamm* was decided, except that the statute did not include a minimum 10-day term of imprisonment and did not require revocation of the offender's registration. *L.* 1994, *c.* 286, § 1.

Lastly, under *N.J.S.A.* 39:5-36(a), a court may incarcerate "any person upon whom a penalty or surcharge . . . has been imposed for a violation of [a motor-vehicle offense] where the court finds that the person defaulted . . . without good cause and the default was willful." Such

incarceration cannot "exceed one day for each $50 of the penalty or surcharge so imposed" or "a period of 90 consecutive days." *Ibid.* The earlier version of this law, in effect when *Hamm* was decided, was substantially identical, other than that incarceration could not exceed "1 day for each $20.00 of the fine so imposed[.]" *L.* 1975 *c.* 144, § 4.

V.

As an initial matter, we decline defendant's request to resolve this case on independent principles of the New Jersey Constitution. As was true when *Hamm* was decided, "New Jersey has never recognized a right to trial by jury for the motor-vehicle offense of DWI" and DWI is "not a crime under New Jersey law." 121 N.J. at 112, 577 A.2d 1259. Those facts have not changed and we remain satisfied that the protections guaranteed by the Sixth Amendment are consonant with those found in our State Constitution. We therefore apply the federal standard.

A.

We begin our inquiry with "[t]he most relevant indication of the seriousness" of an offense -- the severity of the penalty authorized for third or subsequent DWI offenses. *Frank, supra*, 395 U.S. at 148, 89 S. Ct. at 1505, 23 L. Ed. 2d at 166. In doing so, we keep in mind that "no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized." *Baldwin, supra*, 399 U.S. at 69, 90 S. Ct. at 1888, 26 L. Ed. 2d at 440. On the other hand, if the offense

is punishable by six months or less, it is "appropriate to presume . . . that society views such an offense as 'petty.'" *Blanton, supra*, 489 U.S. at 543-44, 109 S. Ct. at 1293, 103 L. Ed. at 556.

N.J.S.A. 39:4-50(a), the provision of the Motor Vehicle Code addressing third or subsequent DWI offenses, does not authorize a penalty of over six months' confinement. The current mandatory nature of the term of imprisonment, while a modification of the penal aspect arising from a third or subsequent DWI conviction, does not lengthen the potential term of confinement or alter our analysis. Indeed, the 180-day sentence is the same as that addressed in *Hamm*, with the only difference being in how the 180 days must be served.

Under the 1986 version of *N.J.S.A.* 39:4-50(a) addressed in *Hamm*, a DWI offender could potentially serve 90 days through community service and the remaining 90 days through outpatient treatment. In contrast, a person sentenced under the current law is required to spend the entire 180-day sentence incarcerated, unless the defendant enrolls in up to 90 days of inpatient treatment. Such treatment may not be available to some individuals due to their financial situation or insurance coverage, and they will forego this alternative.

Therefore, regardless of its intent, the Legislature has effectively replaced a largely non-custodial and treatment-based approach with one that more heavily emphasizes confinement. This increased emphasis on incarceration represents an alteration of the Legislature's

view of the penal consequences needed to address the scourge of intoxicated driving by third and subsequent offenders. This modification also marks the limit the Sixth Amendment will permit in terms of confinement without triggering the right to a jury trial. It does not, however, alter the guiding factor in our analysis: the amount of confinement to which a defendant is exposed.

We are not persuaded that defendant faced more than 180 days' incarceration in this case. To start, we reaffirm our holding in *Owens, supra*, that trial by jury is relevant when a defendant faces "several petty offenses [that] are factually related and arise out of a single event" but that the failure to offer the defendant a jury trial in such a case is cured by limiting the total sentence to no more "than the maximum authorized for a petty offense." 54 N.J. at 163, 254 A.2d 97. As noted, the primary focus of the right to a jury trial is on the penal exposure. Thus, in terms of the right to a jury trial, it is immaterial whether a defendant is tried on several factually related "petty" offenses or on a single "petty" offense as long as the total period of incarceration does not exceed six months.

As such, defendant was not entitled to a jury trial based on the 15-day jail terms that his other two offenses carried. Defendant was assured that he would not be sentenced to more than 180 days' imprisonment and, more importantly, was constitutionally guaranteed a sentence of no more than six months.

We also decline to find that the IDRC requirements under *N.J.S.A.* 39:4-50(b) bring a third or subsequent

DWI offender's maximum sentence to over 180 days' confinement. To be sure, those requirements have some relevance in determining whether the Legislature has "packed" the statute to the point of elevating it to a "serious" offense. At the same time, however, we find that the two-day sentence for failure to fulfill the requirements of the Intoxicated Driving Program Unit and the IDRC, a sentence dependent on an independent and not necessarily inevitable event, is too attenuated to affect a DWI offender's direct exposure to incarceration.

The two-day term of imprisonment is not part of the sentence for the DWI offense. Rather, the DWI statute merely requires the sentencing court to "inform the person convicted that failure to satisfy [the] requirements shall result in a mandatory two-day term of imprisonment[.]" *Ibid.* The sentencing court is not involved in imposing the penalty, and the conduct giving rise to the sentence is distinct from that underlying the DWI offense. In other words, the two-day sentence is imposed for the separate act of not complying with the Intoxicated Driving Program Unit and IDRC requirements, not the original DWI offense.

In addition, the statute makes clear that the sentencing judge's only role in this process is to "inform the person convicted" that he must comply with the requirements. *Ibid.* It does not instruct the judge to craft those requirements or to include them in the sentence.

B.

Because defendant did not face over six months of confinement, we presume the DWI offense to be "petty," *Hamm, supra*, 121 N.J. at 112-13, 577 A.2d 1259, and address the question whether this is a "rare situation where a legislature packs an offense it deems 'serious' with onerous penalties that nonetheless 'do not puncture the 6-month incarceration line,'" *Blanton, supra*, 489 U.S. at 544, 109 S. Ct. at 1293, 103 L. Ed. 2d at 556-57 (citation omitted). In making this determination, we consider "only penalties resulting from state action[.]" *Id.* at 544 n.8, 109 S. Ct. at 1293 n.8, 103 L. Ed. 2d at 557 n.8.

To begin with, as in *Hamm, supra*, we find that the deprivation of a license to drive "is clearly a 'consequence of magnitude.'" 121 N.J. at 124, 577 A.2d 1259 (citation omitted). We also reaffirm that the ten-year license suspension, which is not new, "does not in any sense reflect a significant escalation of the seriousness with which New Jersey's Legislature regards this offense, but rather a shifting social conclusion about what works best with DWI offenders." *Ibid.* The history and analysis regarding this suspension remain the same, and we see no reason to repeat our analysis from *Hamm* on this point. *See id.* at 118-22, 577 A.2d 1259.

The license suspension, however, is no longer the only driving restriction included in the statute. The requirement under *N.J.S.A.* 39:4-50.17(b) that an offender facing a second or subsequent DWI conviction install an ignition interlock device did not exist in 1990, and

we now recognize it as relevant to our analysis. That mandate places a restriction on the offender's ability to drive his vehicle, and also prevents him from operating any vehicle lacking an ignition interlock device. *N.J.S.A.* 39:4-50.17(a)-(c).

Those limitations, however, are far less burdensome than a license suspension. As a practical matter, an offender need not install an ignition interlock device during the suspension period if he sells the vehicle or transfers ownership to another person. Indeed, the New Jersey Motor Vehicle Commission advises that installing an ignition interlock device is not necessary if the individual "do[es] not have access to or plan[s] to operate any vehicle[.]" N.J. Motor Vehicle Commission, *Ignition Interlock Device FAQs* 2 (2016), http://www.state.nj.us/mvc/pdf/ Violations/interlock-faq.pdf .

Moreover, even when the ignition interlock device is installed, the burden is not so onerous as to indicate that the Legislature views repeat DWI offenses as "serious." Specifically, the ignition interlock device merely limits the vehicles an offender can operate, and prevents the offender from driving with a certain BAC level. Thus, while perhaps an inconvenience, the requirement, like the license suspension, is preventative rather than punitive.

The preventative nature of the ignition interlock device requirement is also reflected in the provision that individuals with family income not exceeding 149 percent of the federal poverty level are entitled to pay a reduced leasing fee for the ignition interlock device, and need not

pay anything for the installation, monitoring, calibration, or removal of said device. *N.J.S.A.* 39:4-50.17a. Similarly, the one-year license suspension for failure to install an ignition interlock device will not be applied if "the court determines a valid reason exists for the failure to comply." *N.J.S.A.* 39:4-50.19(a).

The costs associated with the device, however, likely represent the greatest burden imposed by this requirement. The ACLU estimates the cost of having an ignition interlock device as approximately $1050 for one year and $2850 for three years. Such an expense is significant, but is spread over a period of time and, as noted, can be reduced based on income.

In addition, that cost is not the result of fees paid to the State. Rather, it simply represents the price of satisfying a court order based on market rates. In that way, the expenses are no different from any other cost of complying with a court order, such as finding alternate means of transportation when one's driver's license is suspended. A prime distinction here, ironically, would appear to be that, unlike with other attenuated costs, the Legislature has attempted to lessen the cost of compliance for low-income offenders. Thus, although we consider this a financial burden, we do so to a limited extent.

More directly, DWI offenders on their third or subsequent conviction face $5931 in fees, fines, and assessments. Of that amount, only the $1000 fine in the DWI statute and the $50 assessment under *N.J.S.A.* 2C:43-3.1(c) can be considered criminal penalties. As in

Hamm, we note that $1050 would constitute a "petty" fee under *Blanton, supra*, which cited $5000 as the amount associated with federal "petty" offenses. 489 U.S. at 544-45, 109 S. Ct. at 1294, 103 L. Ed. 2d at 557 (citing 18 *U.S.C.A.* § 1 (1982 ed., Supp. IV)). The remaining fees are civil penalties which "we do not disregard," but we note that "they are not the penalties associated with crimes." *Hamm, supra*, 121 N.J. at 117, 577 A.2d 1259.

While the use of civil penalties tends to show that the Legislature does not view the offense as "serious," $5931 in civil fines is significant. It is $251 more than the amount imposed in 1990 and exceeds the $5000 penalty mentioned in *Blanton* and federal law. 18 *U.S.C.A.* § 3571(b).

We do not, however, view the $5000 amount as dispositive in regard to the right to a jury trial. The Supreme Court in *Blanton, supra*, did not treat it as such and instead simply noted that it had "frequently looked to the federal classification scheme in determining when a jury trial must be provided." 489 U.S. at 545 n.11, 109 S. Ct. at 1294 n.11, 103 L. Ed. 2d at 557 n.11. It is also worth noting that the fines associated with "petty" federal offenses have changed in the past. *See* 18 *U.S.C.A.* § 1 (1964 ed.) (stating that petty offense was "any misdemeanor, the penalty of which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both").

In addition, strict adherence to a set amount would overlook the context of a monetary penalty, including that money, as opposed to a term of confinement, is subject to

inflation. As such, while the amount of any surcharges, fines, or assessments is an essential factor in determining the right to a jury trial, and while we are not inclined to approve of fees larger than those present here, our inquiry does not end simply because the total amount due exceeds $5000.

The remaining penalties and fees, including the penalties for failing to install an ignition interlock device, *N.J.S.A.* 39:4-50.19(a); driving on a suspended license, *N.J.S.A.* 39:3-40; and failing to pay a penalty or surcharge, *N.J.S.A.* 39:5-36; are too attenuated to be relevant to the current issue before the Court. As with the two-day term of incarceration for not satisfying the IDRC requirements, those penalties are for conduct separate and distinct from the DWI offense. Although being convicted of a third or subsequent DWI offense makes it possible for the individual to receive additional penalties, such penalties are in no way preordained. Their applicability depends entirely on the subsequent conduct and choices of that person. Those penalties are therefore too removed from the DWI statute to enter into our analysis.

VI.

Given that the total term of potential confinement does not exceed six months, we presume the DWI offense to be "petty" for purposes of the Sixth Amendment. The Legislature has, however, reached the outer limit in subjecting third and subsequent DWI offenders to confinement without a jury trial. Defendant faced a mandatory term of six months' confinement, the

constitutional maximum. To reiterate, "the closer the DWI system actually comes to the six-month incarceration line, the less room there may be for other penalties." *Hamm, supra*, 121 N.J. at 130, 577 A.2d 1259.

In light of that fact, the State has also reached the outer limit of additional penalties that may be added for a third or subsequent DWI offense without triggering the right to a jury trial. Along with increasing the severity of the sentence in terms of confinement, it has added another $251 in fines, bringing the total to nearly $6000, and has enacted new driving limitations through the ignition interlock device requirement. Although not all aspects of those changes are equally relevant, the offense is teetering between classifications, and any additional penalties will demonstrate that the Legislature views a third or subsequent DWI as a "serious" offense requiring a trial by jury. Until that day arrives, however, we believe that the penal consequences of the offense do not tip the balance to classify it as "serious." As a result, the State's interest in the efficiency and cost-saving benefits of non-jury trials can still prevail.

VII.

In reaching this conclusion, we note that the NJSBA and the Attorney General have provided information about how other jurisdictions treat DWI offenses[3] and approach the right to a jury trial. This Court has also

3. For clarity and consistency, we use the terms "driving while intoxicated" and "DWI" regardless of the labels employed by each state.

conducted its own review -- the results of which are set forth at Appendix A -- which shows that every other state appears to afford jury trials for at least some DWI offenses. Such information, although not dispositive, can be helpful in guiding our decisions, particularly as they relate to important constitutional rights. *See State v. Witt*, 223 N.J. 409, 425-27, 126 A.3d 850 (2015).

We acknowledge, however, that the significance of any apparent uniformity in state practices can be belied by the context and nuances of each jurisdiction. For example, every other jurisdiction exposes at least some DWI offenders to over six months of confinement. Eighteen do so for the first offense, while the remaining thirty-two, including the District of Columbia, take that approach for second or subsequent offenses. The vast majority of those jurisdictions have also recognized a broader right to jury trials through statute, rule, or their individual constitutions, or have, unlike New Jersey, classified all or some DWI offenses as crimes.

Thus, while other states may provide jury trials in at least some DWI cases, this fact provides minimal guidance for what is appropriate in our State. New Jersey has historically addressed DWI as a motor-vehicle offense. A motor-vehicle offense is not included in an individual's criminal history record, *N.J.A.C.* 13:59-1.1, and is not subject to expungement as a criminal record, *N.J.S.A.* 2C:52-28. The Legislature has not enacted a statute guaranteeing a right to a jury trial for DWI offenses. Rather, the legislative response to repeat DWI conduct has been to increase the severity of the penalties focused

on prevention and deterrence, thereby creating a law that is far less punitive than those found in many other states. It has resisted criminalizing this conduct except in separate criminal statutes addressing cases where a DWI offense results in bodily injury or death.[4] That approach reveals a legislative intent to blend punishment with deterrence, which runs counter to concluding that the current penalties assessed for third and subsequent DWI offenses have transformed DWI from a "petty" offense, or a quasi-criminal offense as we classify such conduct, to a "serious" offense requiring a jury trial.

VIII.

In sum, we believe that the Legislature has increased the severity of penalties associated with repeat DWI offenses to the point where any additional direct penalties, whether involving incarceration, fees, or driving limitations, will render third or subsequent DWI offenses "serious" offenses for the purpose of triggering the right to a jury trial. At that point, the balance will shift and the State's interest in efficiency will be outweighed by the magnitude of the consequences facing the defendant. In such an event, the constitutional right to a jury trial

4. For example, while intoxication is not an element of the crime of death by auto, DWI "shall give rise to an inference that the defendant was driving recklessly" for the purpose of proving that offense. *N.J.S.A.* 2C:11-5(a). The same is true of assault by auto. *N.J.S.A.* 2C:12-1(c)(1); *see also State v. Mara*, 253 N.J. Super. 204, 213, 601 A.2d 718 (App. Div. 1992). A DWI violation may also lead to increased penalties for death by auto, *N.J.S.A.* 2C:11-5(b)(1)-(3), and assault by auto, *N.J.S.A.* 2C:12-1(c).

will apply, regardless of how the offense is categorized or labeled by the Legislature.

Until that time, however, we are satisfied that the current penalty scheme is within the confines of Sixth Amendment precedent and that the Legislature has managed to strike a minimally acceptable balance in weighing the various interests at play. As such, third or subsequent DWI offenders are not entitled to a jury trial, and defendant's conviction procured by a bench trial did not violate his Sixth Amendment right to a jury trial.

IX.

The judgment of the Appellate Division is affirmed.

Appendix A

Appendix A

This Court's review of the DWI laws and jury trial rights in the other forty-nine states and the District of Columbia appears to establish that New Jersey is unique in not providing the right to a jury trial to any DWI offenders. However, the review also reveals key distinctions between the other jurisdictions and this State, based on the punishments and classifications of DWI and the rights guaranteed by individual state legislatures and constitutions, that explain this result.

I.

Eighteen states expose first-time DWI offenders to over six months' confinement, thereby implicating the right to a jury trial under the Sixth Amendment:

1. **Alabama** authorizes up to a year in prison for a first offense. *Ala. Code* § 32-5A-191(e).

2. **Arkansas** authorizes up to a year in prison for a first offense. *Ark. Code Ann.* § 5-65-111(a)(1)(A).

3. **Colorado** authorizes up to a year in prison for a first offense. *Colo. Rev. Stat.* § 42-4-1307(3)(a)(I).

4. **Delaware** authorizes up to a year in prison for a first offense. *Del. Code Ann.* tit. 21, § 4177(d)(1).

5. **Georgia** authorizes up to a year in prison for a first offense. *Ga. Code Ann.* § 40-6-391(c)(1)(B).

6. **Illinois** classifies a first offense as a misdemeanor, 625 *Ill. Comp. Stat.* 5/11-501(c)(1), punishable by less than a year in prison, 730 *Ill. Comp. Stat.* 5/5-4.5-55(a).

7. **Iowa** authorizes up to a year in prison for a first offense. *Iowa Code* § 321J.2(3)(a).

8. **Maryland** authorizes up to a year in prison for a first offense. *Md. Code Ann., Transp.* § 27-101(k)(1)(i).

9. **Massachusetts** authorizes up to two-and-one-half years in prison for a first offense. *Mass. Gen. Laws* ch. 90, § 24(1)(a)(1).

10. **New York** authorizes up to a year in prison for a first offense. *N.Y. Veh. & Traf. Law* § 1193(1)(b)(i).

11. **Oklahoma** authorizes up to a year in prison for a first offense. *Okla. Stat.* tit. 47, § 11-902(C)(1)(b).

12. **Oregon** classifies a first offense as a misdemeanor, *Or. Rev. Stat.* § 813.010(4), punishable by up to a year in prison, *Or. Rev. Stat.* § 161.615(1).

13. **Rhode Island** authorizes up to a year in prison for a first offense. *R.I. Gen. Laws* § 31-27-2(d)(1)(i).

14. **South Dakota** classifies a first offense as a misdemeanor, *S.D. Codified Laws* § 32-23-2, punishable by up to a year in prison, *S.D. Codified Laws* § 22-6-2(1).

15. **Tennessee** authorizes up to eleven months and twenty-nine days in prison for a first offense. *Tenn. Code Ann.* § 55-10-402(a)(1)(A).

16. **Vermont** authorizes up to two years in prison for a first offense. *Vt. Stat. Ann.* tit. 23, § 1210(b).

17. **Virginia** classifies a first offense as a misdemeanor, *Va. Code Ann.* § 18.2-270(A), punishable by up to a year in prison, *Va. Code Ann.* § 18.2-11(a).

18. **Washington** authorizes up to 364 days in prison for a first offense. *Wash. Rev. Code* § 46.61.5055(1)(a)(i).

II.

The remaining thirty-two jurisdictions, including the District of Columbia, expose second or subsequent DWI offenders to over six months' confinement, thereby applying the federal right to a jury trial to those offenses:

1. **Alaska** authorizes not less than 240 days in prison for a fifth offense. *Alaska Stat.* § 28.35.030(b)(1)(E).

2. **Arizona** classifies a third or subsequent offense within eighty-four months as a felony, *Ariz. Rev. Stat. Ann.* § 28-1383(A)(2), (L)(1), punishable by up to three years in prison, *Ariz. Rev. Stat. Ann.* § 13-702(D).

3. **California** authorizes up to a year in prison for a second offense within ten years. *Cal. Veh. Code* § 23540(a).

4. **Connecticut** authorizes up to two years in prison for a second offense within ten years. *Conn. Gen. Stat.* § 14-227a(g)(2)(B).

5. **District of Columbia** authorizes up to a year in prison for a second offense. *D.C. Code* § 50-2206.13(b).

6. **Florida** authorizes up to nine months in prison for a second offense. *Fla. Stat.* § 316.193(2)(a)(2)(b).

7. **Hawaii** authorizes an "indeterminate term of imprisonment of five years" for a fourth or subsequent offense within ten years. *Haw. Rev. Stat.* § 291E-61.5(a)(1), (b)(1), (b)(3)(A), (d)(1).

8. **Idaho** authorizes up to a year in prison for a second offense within ten years. *Idaho Code* § 18-8005(4)(a).

9. **Indiana** classifies a second offense within five years as a felony, *Ind. Code* § 9-30-5-3(a)(1), punishable by up to two-and-one-half years in prison, *Ind. Code* § 35-50-2-7(b).

10. **Kansas** authorizes up to a year in prison for a second offense. *Kan. Stat. Ann.* § 8-1567(b)(1)(B).

11. **Kentucky** authorizes up to a year in prison for a third offense within five years. *Ky. Rev. Stat. Ann.* § 189A.010(5)(c).

12. **Louisiana** authorizes one to five years in prison for a third offense. *La. Stat. Ann.* § 14:98.3(A)(1).

13. **Maine** authorizes not less than six months in prison for a fourth offense within ten years. *Me. Stat.* tit. 29-A, § 2411(5)(D)(2).

14. **Michigan** authorizes up to a year in prison for a second offense within seven years. *Mich. Comp. Laws* § 257.625(9)(b)(i).

15. **Minnesota** mandates at least 180 days in prison for a fourth offense within ten years, *Minn. Stat.* § 169A.275(3)(a)(1), and at least a year in prison for a fifth offense within ten years, *Minn. Stat.* § 169A.275(4)(a)(1).

16. **Mississippi** authorizes up to a year in prison for a second offense within five years. *Miss. Code Ann.* § 63-11-30(2)(b)(i).

17. **Missouri** classifies a second offense as a misdemeanor, *Mo. Rev. Stat.* § 577.023(2), punishable by up to a year in prison, *Mo. Rev. Stat.* § 558.011(1)(5).

18. **Montana** authorizes up to a year in prison for a second offense. *Mont. Code Ann.* § 61-8-714(2)(a).

19. **Nebraska** classifies a fourth offense as a felony, *Neb. Rev. Stat.* § 60-6,197.03(7), punishable by up to three years in prison, *Neb. Rev. Stat.* § 28-105(1).

20. **Nevada** authorizes one year to six years in prison for a third offense within seven years. *Nev. Rev. Stat.* § 484C.400(1)(c).

21. **New Hampshire** classifies a second offense within ten years as a misdemeanor, *N.H. Rev. Stat. Ann.* § 265-A:18(IV)(a), punishable by up to a year in prison, *N.H. Rev. Stat. Ann.* § 625:9(IV)(a).

22. **New Mexico** authorizes up to 364 days in prison for a second offense. *N.M. Stat. Ann.* § 66-8-102(F).

23. **North Carolina** authorizes up to a year in prison for a second offense within seven years. *N.C. Gen. Stat.* § 20-179(c)(1)(a), (h).

24. **North Dakota** classifies a third offense within seven years as a misdemeanor, *N.D. Cent. Code* § 39-08-01(3), punishable by up to a year in prison, *N.D. Cent. Code* § 12.1-32-01(5).

25. **Ohio** authorizes up to a year in prison for a third offense within six years. *Ohio Rev. Code Ann.* § 4511.19(G)(1)(c)(i).

26. **Pennsylvania** classifies a third or subsequent offense as a misdemeanor, 75 *Pa. Cons. Stat.* § 3803(a)(2), punishable by up to two years in prison, 18 *Pa. Cons. Stat.* § 1104(2).

27. **South Carolina** authorizes up to a year in prison for a second offense. *S.C. Code Ann.* § 56-5-2930(A)(2).

28. **Texas** classifies a second offense as a misdemeanor, *Tex. Penal Code Ann.* § 49.09(a), punishable by up to a year in prison, *Tex. Penal Code Ann.* § 12.21(2).

29. **Utah** classifies a third or subsequent offense within ten years as a felony, *Utah Code Ann.* § 41-6a-503(2)(b)(i), punishable by up to five years in prison, *Utah Code Ann.* § 76-3-203(3).

30. **West Virginia** authorizes six months to a year in prison for a second offense. *W. Va. Code* § 17C-5-2(l).

31. **Wisconsin** authorizes up to a year in prison for a third offense. *Wis. Stat.* § 346.65(2)(am)(3).

32. **Wyoming** authorizes up to seven years in prison for a fourth or subsequent offense within ten years. *Wyo. Stat. Ann.* § 31-5-233(e).

III.

In addition, at least thirty-nine states have established a broader right to jury trials by statute, rule, or under their state constitutions, or have applied the right to DWI offenses, at least in part, by classifying DWI as a crime even when the attached penalty is for six months' confinement or less:

1. **Alabama** provides that "[d]efendants in all criminal cases shall have the right to be tried by a jury[,]" *Ala. R. Crim. P.* 18.1(a), and classifies DWI as a misdemeanor or felony, *Ex parte Marshall*, 25 So. 3d 1190, 1194 (Ala. 2009).

2. **Alaska** applies the right to a jury trial to all "offenses in which a direct penalty may be incarceration," *State v. Dutch Harbor Seafoods, Ltd.*, 965 P.2d 738, 741 (Alaska 1998), and authorizes not less than seventy-two hours in prison for a first offense, *Alaska Stat.* § 28.35.030(b)(1)(A).

3. **Arizona** applies the right to a jury trial to DWI defendants, *Ariz. Rev. Stat. Ann.* § 28-1381(F),

even though a first offense is punishable by no less than ten days in jail, *Ariz. Rev. Stat. Ann.* § 28-1381(I)(1).

4. **Arkansas** applies the right to a jury trial "to all cases at law, without regard to the amount in controversy[,]" *Ark. Const.* art. II, § 7, including misdemeanors, *Winkle v. State*, 310 Ark. 713, 841 S.W.2d 589, 590 (Ark. 1992), and classifies a first offense as a misdemeanor, *Ark. Code Ann.* § 5-65-111(a)(1)(A).

5. **California** provides that "[n]o person can be convicted of a public offense unless by verdict of a jury," *Cal. Penal Code* § 689, and classifies DWI as a public offense, *Cal. Veh. Code* § 23152, punishable for a first offense by up to six months in prison, *Cal. Veh. Code* § 23536(a).

6. **Colorado** defines a petty offense as one not punishable by more than six months in prison or $500 in fines, and provides that "[a] defendant charged with a petty offense shall be entitled to a jury trial[.]" *Colo. Rev. Stat.* § 16-10-109(1), (2).

7. **Connecticut** provides that a "party accused in a criminal action in the Superior Court may demand a trial by jury" unless the maximum penalty is a fine of $199, *Conn. Gen. Stat.* § 54-82b(a), and classifies a first offense, which is punishable by up to six months in prison, *Conn. Gen. Stat.* § 14-227a(g)(1)(B)(i), as a misdemeanor,

McCoy v. Comm'r of Pub. Safety, 300 Conn. 144, 12 A.3d 948, 957-59 (Conn. 2011).

8. **Florida** provides that, "[i]n each prosecution for a violation of a state law or a municipal or county ordinance punishable by imprisonment, the defendant shall have, upon demand, the right to a trial by an impartial jury[,]" *Fla. Stat.* § 918.0157, and authorizes up to six months in prison for a first offense, *Fla. Stat.* § 316.193(2)(a)(2)(a). Florida also explicitly applies the right to a jury trial to all DWI offenses. *Fla. Stat.* § 316.1934(4).

9. **Georgia** provides that criminal defendants "shall have a public and speedy trial by an impartial jury[,]" *Ga. Const.* art. I, § I, ¶ XI(a), and classifies a first offense as a misdemeanor, *Ga. Code Ann.* § 40-6-391(c).

10. **Hawaii** applies the right to a jury trial when a defendant "may be imprisoned for six months or more." *Haw. Rev. Stat.* § 806-60.

11. **Idaho** "provides a trial by jury for all public offenses which are potentially punishable by imprisonment[,]" *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833, 836 (Idaho 1988), and authorizes up to six months in prison for a first offense, *Idaho Code* § 18-8005(1)(a).

12. **Illinois** provides that "[e]very person accused of an offense shall have the right to a trial by

jury" unless waived or for an "ordinance violation punishable by fine only[,]" 725 *Ill. Comp. Stat.* 5/103-6, and classifies DWI as a misdemeanor, 625 *Ill. Comp. Stat.* 5/11-501(c)(1), punishable for a first offense by less than a year in prison, 730 *Ill. Comp. Stat.* 5/5-4.5-55(a).

13. **Indiana** provides that "[a] defendant charged with a misdemeanor may demand trial by jury[,]" *Ind. R. Crim. P.* 22, and classifies a first offense as a misdemeanor, *Ind. Code* § 9-30-5-2(a), punishable by up to sixty days in prison, *Ind. Code* § 35-50-3-4.

14. **Iowa** provides the right to a jury trial "[i]n all criminal prosecutions, and in cases involving the life, or liberty of an individual[,]" *Iowa Const.* art. I, § 10, and classifies a first offense as a misdemeanor punishable by up to a year in prison, *Iowa Code* § 321J.2(2)(a), (3)(a).

15. **Kansas** provides that "[t]he trial of misdemeanor cases shall be to the court unless a jury trial is requested in writing by the defendant[,]" *Kan. Stat. Ann.* § 22-3404(1), and classifies first offense as a misdemeanor punishable by up to a six months in prison, *Kan. Stat. Ann.* § 8-1567(b)(1)(A).

16. **Kentucky** provides that "[d]efendants shall have the right to a jury trial in all criminal prosecutions, including prosecutions for violations

of traffic laws," *Ky. Rev. Stat. Ann.* § 29A.270(1), and classifies DWI as a crime, *Commonwealth v. Ramsey*, 920 S.W.2d 526, 529, 43 4 Ky. L. Summary 20 (Ky. 1996), punishable by up to thirty days in prison for a first offense, *Ky. Rev. Stat. Ann.* § 189A.010(5)(a).

17. **Maine** "guarantees all criminal defendants, even those charged with petty crimes, the right to trial by jury[,]" *State v. Lenfestey*, 557 A.2d 1327, 1327-28 (Me. 1989) (citing *Me. Const.* art. I, § 6), and classifies DWI as a crime, even though a first offense may not result in confinement, *Me. Stat.* tit. 29-A, § 2411(5)(A)(3).

18. **Maryland** applies the right to a jury trial to criminal cases exposing a defendant to "a penalty of imprisonment[,]" *Md. Code Ann., Crim. Proc.* § 6-101(1), and classifies a first offense as a misdemeanor punishable by up to a year in prison, *Md. Code Ann., Transp.* § 27-101(a), (k)(1)(i).

19. **Michigan** has "largely extended the right to a jury trial to petty offenses, without precisely addressing whether Sixth Amendment analysis applies[,]" *People v. Antkoviak*, 242 Mich. App. 424, 619 N.W.2d 18, 41 (Mich. Ct. App. 2000), and classifies a first offense as a misdemeanor punishable by up to ninety-three days in jail, *Mich. Comp. Laws* § 257.625(9)(a)(ii).

20. **Minnesota** provides that "[a] defendant has a right to a jury trial for any offense punishable by incarceration[,]" *Minn. R. Crim. P.* 26.01(1)(1)(a), and classifies a first offense as a misdemeanor, *Minn. Stat.* § 169A.27, punishable by up to ninety days in prison, *Minn. Stat.* § 609.02(3).

21. **Missouri** applies the right to a jury trial to all misdemeanor cases, *Mo. Rev. Stat.* § 543.200, and classifies a first offense as a misdemeanor, *Mo. Rev. Stat.* § 577.010(2).

22. **Montana** provides that "[t]he parties in a misdemeanor case are entitled to a jury[,]" *Mont. Code Ann.* § 46-17-201(1), and classifies DWI as a felony or misdemeanor, *State v. Anderson*, 2008 MT 116, 342 Mont. 485, 182 P.3d 80, 84 (Mont. 2008), with a first offense punishable by up to six months in prison, *Mont. Code Ann.* § 61-8-714(1)(a).

23. **Nebraska** provides that "[e]ither party to any case in county court, except criminal cases arising under city or village ordinances, traffic infractions, other infractions, and any matter arising under the Nebraska Probate Code or the Nebraska Uniform Trust Code, may demand a trial by jury[,]" *Neb. Rev. Stat.* § 25-2705(1), and classifies DWI as a felony or misdemeanor under state law, *Neb. Rev. Stat.* § 60-6,197.03, with a first offense punishable by up to sixty days in prison, *Neb. Rev. Stat.* § 28-106(1).

24. **New Hampshire** guarantees "a jury trial to all criminal defendants facing the possibility of incarceration[,]" *In re Senate*, 135 N.H. 538, 608 A.2d 202, 204-05 (N.H. 1992), and classifies DWIs as misdemeanors or felonies, *N.H. Rev. Stat. Ann.* § 265-A:18(I).

25. **North Carolina** provides that "[n]o person shall be convicted of any crime but by the unanimous verdict of a jury in open court," *N.C. Const.* art. I, § 24, and classifies a first offense as a misdemeanor, *N.C. Gen. Stat.* § 20-138.1(d), even though it may only expose a defendant to up to sixty days in jail, *N.C. Gen. Stat.* § 20-179(f)(3), (k).

26. **North Dakota** provides that misdemeanor cases will be tried before at least six jurors, *N.D.R. Crim. P.* 23(b)(2), and classifies DWI as felony or misdemeanor, *N.D. Cent. Code* § 39-08-01(3), with a first offense punishable by up to thirty days in prison, *N.D. Cent. Code* § 12.1-32-01(6).

27. **Ohio** applies the right to a jury trial to any case involving the violation of a statute, except for minor misdemeanors or cases that do not involve "the possibility of a prison term or jail term and for which the possible fine does not exceed one thousand dollars[,]" *Ohio Rev. Code Ann.* § 2945.17(A), (B), and classifies a first offense as a misdemeanor punishable by up to six months in prison, *Ohio Rev. Code Ann.* § 4511.19(G)(1)(a)(i).

28. **Oklahoma** applies the right to a jury trial "except in civil cases wherein the amount in controversy does not exceed [$1500], or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding [$1500][,]" *Okla. Const.* art. II, § 19, and classifies a first offense as a misdemeanor punishable by up to a year in prison, *Okla. Stat.* tit. 47, § 11-902(C)(1)(b).

29. **Oregon** provides that, "[i]n all criminal prosecutions, the accused shall have the right to public trial by an impartial jury[,]" *Or. Const.* art. I, § 11, and classifies a first offense as a misdemeanor, *Or. Rev. Stat.* § 813.010(4), punishable by up to a year in prison, *Or. Rev. Stat.* § 161.615(1).

30. **South Carolina** applies the right to a jury trial to all DWI defendants, *S.C. Code Ann.* § 56-5-2935, even though a first offense is punishable by no more than thirty days in prison, *S.C. Code Ann.* § 56-5-2930(A)(1).

31. **South Dakota** applies the right to a jury trial to "any criminal prosecution, whether for violation of state law or city ordinance, in which a direct penalty of incarceration for any period of time could be imposed," *State v. Wikle*, 291 N.W.2d 792, 794 (S.D. 1980), and classifies a first offense as a misdemeanor, *S.D. Codified Laws* § 32-23-2, punishable by up to a year in prison, *S.D. Codified Laws* § 22-6-2(1).

32. **Texas** applies the right to a jury trial "to all criminal prosecutions," including misdemeanors, *Chaouachi v. State*, 870 S.W.2d 88, 90 (Tex. App. 1993), and classifies a first offense as a misdemeanor, *Tex. Penal Code Ann.* § 49.04(b), punishable by up to 180 days in jail, *Tex. Penal Code Ann.* § 12.22(2).

33. **Utah** provides that, "[i]n criminal prosecutions the accused shall have the right . . . to have a speedy public trial by an impartial jury[,]" *Utah Const.* art. I, § 12, and has applied that right to DWI, *State v. Nuttall*, 611 P.2d 722, 725 (Utah 1980), a misdemeanor, *Utah Code Ann.* § 41-6a-503(1)(a), punishable by up to six months for a first offense, *Utah Code Ann.* § 76-3-204(2).

34. **Vermont** law does not "provide that certain classes of offenses shall be tried without a jury or authorize the legislature to make such provision by statutory enactment." *State v. Becker*, 130 Vt. 153, 287 A.2d 580, 582 (Vt. 1972).

35. **Virginia** applies the right to a jury trial to misdemeanor offenses, *Va. Code Ann.* § 19.2-258, and classifies a first offense as a misdemeanor, *Va. Code Ann.* § 18.2-270(A).

36. **Washington** provides that, when an offense carries a possible term of imprisonment, "the constitution requires that a jury trial be afforded unless waived[,]" *Pasco v. Mace*, 98 Wn.2d 87, 653

P.2d 618, 625 (Wash. 1982), and authorizes up to 364 days in prison for a first offense, *Wash. Rev. Code* § 46.61.5055(1)(a)(i).

37. **West Virginia** applies the right to a jury trial to "both felonies and misdemeanors where the penalty imposed involves any period of incarceration[,]" *Hendershot v. Hendershot*, 164 W. Va. 190, 263 S.E.2d 90, 95 (W. Va. 1980), and classifies a first offense as a misdemeanor punishable by up to six months in prison, *W. Va. Code* § 17C-5-2(e).

38. **Wisconsin** applies the right to a jury trial to misdemeanor crimes, *State v. Slowe*, 230 Wis. 406, 284 N.W. 4, 5-6 (Wis. 1939), and classifies a second or subsequent offense as a crime, *State v. Verhagen*, 2013 WI App 16, 346 Wis. 2d 196, 827 N.W.2d 891, 896 (Wis. Ct. App.), *review denied*, 2013 WI 82, 350 Wis. 2d 703, 839 N.W.2d 866 (Wis. 2013), *cert. denied*, 134 S. Ct. 927, 187 L. Ed. 2d 783 (2014), punishable by up to six months in prison, *Wis. Stat.* § 346.65(2)(am)(2).

39. **Wyoming** applies the right to a jury trial to crimes "punishable by any jail term, regardless of length," *Brenner v. Casper*, 723 P.2d 558, 561 (Wyo. 1986), and classifies a first offense as a misdemeanor punishable by up to six months in prison, *Wyo. Stat. Ann.* § 31-5-233(e).

CHIEF JUSTICE RABNER, and JUSTICES LaVECCHIA, PATTERSON, and SOLOMON join in JUDGE CUFF's opinion. JUSTICE ALBIN filed a separate dissenting opinion. JUSTICE FERNANDEZ-VINA did not participate.

JUSTICE ALBIN, dissenting.

A person facing a fourth conviction for driving while intoxicated (DWI) has a right to a jury trial in every state except one -- New Jersey. Our state holds this dubious distinction because, in the case of third and subsequent DWI offenses, the majority elevates "the State's interest in the efficiency and cost-saving benefits of non-jury trials," State v. Denelsbeck, 2016 N.J. 488, *40 (2016) (slip op. at 31), above the Sixth Amendment guarantee of the right to a jury trial. However inefficient and costly a jury trial may be, the right to one is enshrined in the Federal Bill of Rights.[1] "A jury trial is self-government at work in our constitutional system," and in our democratic society a jury verdict is the ultimate validation of the guilt or innocence of a defendant. *Allstate New Jersey v. Lajara*, 222 N.J. 129, 134, 117 A.3d 1221 (2015).

In this case, a municipal court judge denied defendant James Denelsbeck's request for a jury trial despite the array of severe penalties he faced for a fourth DWI conviction. After a bench trial, the judge convicted defendant of DWI and imposed the following sentence: a mandatory 180-day jail term; an additional twelve hours of participation at an Intoxicated Driver Resource Center (IDRC); ten-year's loss of license privileges; fines, penalties, costs, and surcharges totaling about $6500; and the installment of an ignition interlock device in defendant's automobile for a period of two years after completing his license suspension.

1. The right to trial by jury also has been guaranteed by the New Jersey Constitution, beginning in 1776. *Allstate New Jersey v. Lajara*, 222 N.J. 129, 140-41, 117 A.3d 1221 (2015).

Appendix A

In *Blanton v. North Las Vegas*, the United States Supreme Court held that although a potential sentence exceeding 180 days in jail automatically triggers the right to a jury trial, the right is still guaranteed when a sentence of less than six months is packed with additional "onerous penalties." 489 U.S. 538, 542-44, 109 S. Ct. 1289, 1293, 103 L. Ed. 2d 550, 556-57 (1989). In light of *Blanton*, this Court declared in *State v. Hamm* that "the closer the DWI system actually comes to the six-month incarceration line, the less room there may be for other penalties" without offending the Sixth Amendment's jury trial right. 121 N.J. 109, 130, 577 A.2d 1259 (1990), *cert. denied*, 499 U.S. 947, 111 S. Ct. 1413, 113 L. Ed. 2d 466 (1991).

We have crossed the red line set in *Blanton* and *Hamm*. We justified withholding the right to a jury trial for a third-time DWI offense in *Hamm* based on the "rehabilitative emphasis in New Jersey's DWI laws" at the time. *Ibid.* Indeed, in *Hamm*, the defendant was not imprisoned, but ordered to perform community service and undergo inpatient and outpatient therapy. *Ibid.*

The primary focus of New Jersey's DWI laws today is not rehabilitation, but rather punishment and deterrence. Defendant's mandatory 180-day jail term, standing alone, was at the outermost constitutional limit without triggering the right to a jury trial. Surely, the packing of an additional twelve hour IDRC requirement and extremely onerous licensure and financial penalties breached the constitutional threshold.

This case is not the time to draw another red line. This case is the time for the Court to honor the promise it made twenty-five years ago in *Hamm*. This case is the time for the Court to confer on third and subsequent DWI offenders the fundamental right guaranteed by the Sixth Amendment and guaranteed in every other state and the District of Columbia -- the right to a jury trial. Because the enforced bench trial denied defendant a basic right protected by the United States Constitution, I respectfully dissent.

I.

A.

"[A] defendant is entitled to a jury trial whenever the offense for which he is charged carries a maximum authorized prison term of greater than six months." *Blanton, supra*, 489 U.S. at 542, 109 S.Ct. at 1293, 103 L. Ed. 2d at 556. However, even when a defendant is not facing a sentence of more than six months, he is still entitled to a jury trial if "additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a 'serious' one." *Id.* at 543, 109 S.Ct. at 1293, 103 L. Ed. 2d at 556. The right to a jury trial cannot be denied "where a legislature packs an offense it deems 'serious' with onerous penalties that nonetheless 'do not puncture the 6-month incarceration line.'" *Id.* at 543, 109 S.Ct. at 1293, 103 L. Ed. 2d at 556-57. Therefore, the nature of the penalties, not how the Legislature classifies

the offense, ultimately determines when a defendant is entitled to a jury trial.

At the time this Court decided *Hamm, supra*, in 1990, the statutory penalties for a third or subsequent DWI offense were "not so severe as to clearly reflect a legislative determination of a constitutionally 'serious' offense requiring jury trial." 121 N.J. at 111, 577 A.2d 1259. Then, an offender faced a non-mandatory 180-day jail term. *State v. Laurick*, 120 N.J. 1, 5, 575 A.2d 1340, *cert. denied*, 498 U.S. 967, 111 S.Ct. 429, 112 L. Ed. 2d 413 (1990). The municipal court was authorized to commute the sentence to ninety days' community service and a combination of ninety days of inpatient and outpatient alcohol rehabilitation therapy. *Ibid.* Indeed, the defendant in *Hamm* was sentenced "to ninety days of community service, twenty-eight days in an inpatient program and sixty days in an outpatient program." *Hamm, supra*, 121 N.J. at 111, 577 A.2d 1259. Additionally, "[t]he court fined defendant $1,000; imposed a surcharge of $100 and $15 court costs; and suspended his license for ten years." *Ibid.* (citation omitted). Furthermore, offenders were required to pay a $3000 to $4500 insurance surcharge and a $100 Drunk Driving Enforcement Fund surcharge. *Laurick, supra*, 120 N.J. at 5-6.

The Court in *Hamm* concluded by noting that

> *Blanton* now appears to embrace a spexum of values, a continuum rather than a clear contrast: the closer the DWI system actually comes to the six-month incarceration line, the

> less room there may be for other penalties. For now, given the rehabilitative emphasis in New Jersey's DWI laws (Hamm will serve no county-jail time; his sentence is split between community service and rehabilitation), we find the *Blanton* criteria not to be violated.

[121 N.J. at 130, 577 A.2d 1259.]

B.

After *Hamm*, the Legislature steadily imposed more severe penalties for a third or subsequent DWI offense, including a mandatory custodial term. In 2004, the Legislature provided that a defendant convicted of a third or subsequent DWI offense "shall be sentenced to imprisonment for a term of *not less* than 180 days," with the sole exception that "the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program." *See L.* 2003, *c.* 315 (emphasis added). Importantly, only defendants with the financial resources to pay for an inpatient program will receive such treatment if the option is offered by the court. Here, defendant was sentenced to serve the entirety of his custodial term in the county jail.

In 1999, the Legislature passed *N.J.S.A.* 39:4-50.17, which required second or subsequent DWI offenders to install an ignition interlock device on vehicles they owned during the period of their license suspension and for one to three years thereafter. *See L.* 1999, *c.* 417. The cost of an ignition interlock device for just the three-year period

after completion of the ten-year license suspension is approximately $3000. Additional penalties added since *Hamm* are the $100 Alcohol Education, Rehabilitation and Enforcement Fund fee, *see L.* 1995, *c.* 243 (raised to $100 from $80); $100 DWI surcharge, *see L.* 2002, *c.* 34; $75 Safe Neighborhoods Services Fund assessment, *see L.* 1993, *c.* 220; $50 violent crime assessment, *see L.* 1990, *c.* 64, *L.* 1991, *c.* 329; and $6 motor vehicle offense fine supplement, *see L.* 1997, *c.* 177, *L.* 2007, *c.* 174.

The jail term, license suspension, and financial and other penalties imposed on defendant far exceed those imposed in *Hamm* -- and *Hamm* was a close call in deciding whether the jury-trial right attached. *See Hamm, supra*, 121 N.J. at 130, 577 A.2d 1259. Here, defendant must serve the entirety of his 180-day county jail sentence. The court, moreover, imposed a ten-year license suspension, twelve-hour participation in an IDRC, a two-year post-suspension ignition interlock device costing approximately $2000, a $3000 insurance surcharge, a $1000 fine, and $431 in other penalties and assessments.

II.

A.

Under the statutory regime in place when this Court decided *Hamm*, the Court held that the Legislature did not consider third and subsequent DWI offenses "serious" because "[t]he law allows for various alternatives to incarceration, with a strong emphasis on community service and rehabilitative alternatives." *Id.* at 126-28,

577 A.2d 1259. It is now clear that "the Legislature has so 'packed' the offense of DWI that it must be regarded as 'serious' for sixth-amendment purposes." *See id.* at 114-15, 577 A.2d 1259.

The most significant statutory change since *Hamm* is the 180-day mandatory custodial period. *See Blanton, supra*, 489 U.S. at 542, 109 S.Ct. at 1292, 103 L. Ed. 2d at 556 ("[B]ecause incarceration is an 'intrinsically different' form of punishment, it is the most powerful indication of whether an offense is 'serious.'" (citation omitted)). As we stated in *Hamm, supra*, "the closer the DWI system actually comes to the six-month incarceration line, the less room there may be for other penalties." 121 N.J. at 130, 577 A.2d 1259. New Jersey's DWI statutory scheme is now at the 180-day demarcation line. The statutory packing of other "onerous penalties" to accompany the 180-day mandatory jail term clearly reflects a legislative determination that a fourth-time DWI is a "serious" offense, thereby triggering the right to a jury trial. *See Blanton, supra*, 489 U.S. at 543, 109 S.Ct. at 1293, 103 L. Ed. 2d at 556-57.

The Legislature's failure to classify a third or subsequent DWI as a crime cannot be determinative. Defendant's DWI sentence exceeded the custodial term and penalties customarily imposed for a fourth-degree crime under *N.J.S.A.* 2C:43-1(a) for which there is a jury-trial right. A first-time fourth-degree offender, although exposed to a sentence not to exceed eighteen months in jail, *N.J.S.A.* 2C:43-6(a)(4), benefits from a presumption of non-incarceration. *N.J.S.A.* 2C:44-1(d), (e). No custodial

term is required of a fourth-degree offender. Moreover, although a fourth-degree offender faces a potential $10,000 fine, *N.J.S.A.* 2C:43-3(b)(2), no fine is required. In short, a third or subsequent DWI offender typically not only will serve a longer custodial sentence and pay a greater fine than a person convicted of a fourth-degree crime, but also will face the additional penalty of a ten-year license suspension. Yet, a fourth DWI offense will be tried before a judge.

The majority's position also is at odds with *Richter v. Fairbanks*, 903 F.2d 1202 (8th Cir. 1990), which is substantially similar to the case before us. In *Richter*, the defendant was convicted of his third DWI and sentenced to six months' imprisonment, a fifteen-year license suspension, and a $500 fine. *Id.* at 1203. The court held "that adding the 15-year license revocation to the six month prison term resulted in a penalty severe enough to warrant a jury trial" under *Blanton*. *Id.* at 1205. While, here, defendant's license suspension is ten years rather than fifteen, his fines, fees, and costs are approximately fifteen times those imposed on the defendant in *Richter*.

B.

Had defendant been charged with a fourth DWI in any other state or in the District of Columbia, he would be entitled to a jury trial. New Jersey alone denies him this right. Indeed, a national survey reveals how far out of the mainstream our laws and jurisprudence are concerning the jury-trial right of those charged with DWI offenses.

In forty states, a defendant has a right to a jury trial for a first DWI offense. *See Dissent Appendix*. In five states and the District of Columbia, the right attaches for a second offense. *Ibid.* In three, a defendant has a right to a jury trial beginning with his third offense. *Ibid.* In only one state -- Hawaii -- does a defendant not gain the right to a jury until his fourth offense. *Ibid.*

Additionally, many states grant the right to a jury trial to DWI offenders facing much less severe penalties than those found in New Jersey's statutory scheme for third-time DWI offenders. For example, Wisconsin provides a jury trial to second-time offenders, who face imprisonment of five days to six months, a fine of $350 to $1100, a one-year license suspension, and an ignition interlock device for at least one year. *See Wis. Stat.* §§ 343.30(1q), 343.301, 343.307, 346.63, 346.65, 939.12; *State v. Slowe*, 230 Wis. 406, 284 N.W. 4, 5-6 (Wis. 1939). California provides a jury trial to first-time offenders, who face ninety-six hours to six months' imprisonment, an ignition interlock device for up to three years, a fine of $390 to $1000, and a six-month license suspension. *See Cal. Penal Code* § 689; *Cal. Veh. Code* §§ 13352(a)(1), 23152, 23536(a), 23536(c), 23575(a)(1). Idaho also provides a jury trial for first-time DWI offenders, who face imprisonment of up to six months and up to a $1000 fine, a thirty-day mandatory license suspension, and an additional sixty to 150-day license suspension or restricted driving privileges. *See Idaho Code* § 18-8004, 18-8005(1), 19-1902; *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833, 836 (Idaho 1988). Last, Texas grants a jury-trial right to first-time offenders, who face seventy-two hours to 180 days' imprisonment, a fine of up

to $2000, and a license suspension of ninety days. *See Tex. Penal Code Ann.* §§ 12.22, 49.04; *Tex. Transp. Code Ann.* §§ 524.012, 524.022(a)(1); *Chaouachi v. State*, 870 S.W.2d 88, 90 (Tex. Ct. App. 1993).

Last, according to the majority, any additional penalty will tip the balance in favor of a jury trial. In light of the extremity of the majority's position, that stand is reasonable. However, going forward, we will have the absurd scenario in which a third-time DWI offender who refuses to take a breathalyzer test, and therefore faces a mandatory twenty-year license suspension, will be entitled to a jury trial, *see N.J.S.A.* 39:4-50.4a(a), whereas the motorist who takes the breathalyzer will be consigned to a bench trial.

III.

Oftentimes, this Court has construed the New Jersey Constitution to provide greater rights than those granted under the United States Constitution. *See, e.g., State v. Earls*, 214 N.J. 564, 568-69, 584-85, 70 A.3d 630 (2013) (noting that New Jersey Constitution provides greater privacy rights to cell phone users than does Federal Constitution); *State v. McAllister*, 184 N.J. 17, 26, 32-33, 875 A.2d 866 (2005) (concluding that New Jersey Constitution, unlike Federal Constitution, protects interest in privacy of bank records); *N.J. Coalition Against War in the Middle E. v. J.M.B. Realty Corp.*, 138 N.J. 326, 353, 650 A.2d 757 (1994) (providing broader free speech rights in shopping malls under New Jersey Constitution than provided by Federal Constitution), *cert. denied sub nom., Short Hills*

Assocs. v. N.J. Coalition Against War in the Middle E., 516 U.S. 812, 116 S.Ct. 62, 133 L. Ed. 2d 25 (1995). Here, in contrast, the majority will not honor one of the most basic of rights in our Federal Constitution -- the right of this defendant to have a jury trial. A similarly situated defendant in any other state would not have been compelled to stand trial before a judge.

A jury trial may be inefficient and costly, but it is the embodiment of our democratic ethos and the process chosen by the Founders for the resolution of serious offenses. By any measure, under *Blanton*, a third or subsequent DWI conviction results in the imposition of a jail term and onerous license and financial penalties that trigger the Sixth Amendment right to a jury trial. Because defendant was denied his right to a jury trial, I respectfully dissent.

Appendix A

Dissent Appendix

State	Number of DWI[2] Offenses Needed to Trigger Right to Jury Trial	Citations[3]
Alabama	1	*See Ala. Code* §§ 32-5A-3, 32-5A-191; *Ala. R. Crim. P.* 18.1.
Alaska	1	*See Alaska Const.* art. 1, § 11; *Alaska Stat.* § 28.35.030.
Arizona	1	*See Ariz. Rev. Stat.* 28-1381(A), (F).
Arkansas	1	*See Ark. Const.* art. 2, § 7; *Ark.Code Ann.* 5-65-103; 5-65-111.
California	1	See *Cal. Const.* Art. 1, § 16; *Cal. Penal Code* § 689; *Cal. Veh. Code* § 23152.
Colorado	1	*See Colo. Rev. Stat.* 16-10-109, 42-4-1301.

2. As mentioned by the majority, states vary in the exact name given to the offense of driving while under the influence of alcohol. I use "DWI" for the sake of simplicity

3. In those states where the statutory scheme imposes a penalty of greater than six months' imprisonment, the state is required to provide a jury trial. Blanton, supra, 489 U.S. at 542, 109 S.Ct. at 1293, 103 L. Ed. 2d at 556.

Connecticut	2	*See Conn. Const.* art. 1, § 19; *Conn. Gen. Stat.* § 14-227a.
Delaware	1	*See Del. Code Ann.* tit. 21, § 4177(a), (d)(1).
Florida	1	*See Fla. Stat.* §§ 316.193, 316.1934(4).
Georgia	1	*See Ga. Code Ann.* §§ 16-1-3(9), 17-9-2, 40-6-391.
Hawaii	4	*See Haw. Rev. Stat. Ann.* §§291E-61, 291E.61.5.
Idaho	1	*See Idaho Code Ann.* §§ 18-8004, 18-8005, 19-1902; *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833, 836-37 (Idaho 1988).
Illinois	1	*See* 625 Ill. Comp. Stat. Ann. § 5/11-501, 725 Ill. Comp. Stat. Ann. § 5/103-6.
Indiana	1	*See Ind. Code Ann.* §§ 9-30-5-2, 35-31.5-2-75, 35-37-1-2; *Ind. R. Crim P.* 22.
Iowa	1	*See Iowa Code* § 321J.2.
Kansas	1	*See Kan. Stat. Ann.* §§ 8-1567, 22-3404.
Kentucky	1	*See Ky. Rev. Stat.* §§ 29A.270(1), 189A.010.

Louisiana	3	*See La. Rev. Stat. Ann.* § 14:98.3(A)(1); *State v. Montgomery*, 250 LA. 326, 195 So. 2d 285, 287 (La. 1967).
Maine	1	*See Me. Const.* art. 1, § 6; *Me. Rev. Stat.* tit. 29-A § 2411.
Maryland	1	*See Md. Crim. Pra. Code Ann.* § 6-101; *Md. Transp. Code Ann.* §§ 21-902; 27-101(c)(22).
Massachusetts	1	*See Mass. Ann. Laws* ch. 90, § 24(1)(a)(1).
Michigan	1	*See Mich. Comp. Laws Serv.* § 257.625(1), (18).
Minnesota	1	*See Minn. Stat.* §§ 169A.20, 169A.27, 609.02(3); *Minn. R. Crim. P.* 26.01.
Mississippi	2	*See Miss. Code Ann.* § 63-11-30; *Harkins v. State*, 735 So. 2d 317, 318-19 (Miss. 1999).
Missouri	1	*See Mo. Rev. Stat.* §§ 543.200, 558.011(1)(5), 577.010, 577.023(2).
Montana	1	*See Mont. Code Ann.* §§ 46-17-201, 61-8-104, 61-8-401.
Nebraska	1	*See Neb. Rev. Stat. Ann.* §§ 25-2705, 28-106(1), 60-6,196, 60-6,196.03.

Nevada	3	*See Nev. Rev. State Ann.* § 484C.400; *State v. Smith*, 99 Nev. 806, 672 P.2d 631 (Nev. 1983).
New Hampshire	2	*See N.H. Rev. Stat. Ann.* § 265-A:18, 625:9(IV); *In re Senate*, 135 N.H. 538, 608 A.2d 202, 204-05 (N.H. 1992).
New Mexico	2	*See N.M. Stat. Ann.* § 66-8-102; *State v. Grace*, 993 P.2d 93, 95 (N.M. Ct. App. 1999).
New York	1	*See N.Y. Veh. & Traf. Law* §§ 1192, 1193.
North Carolina	1	*See N.C. Gen Stat.* §§ 15A-1201, 20-138.1, 20-179.
North Dakota	1	*See N.D. Cent. Code* §§ 29-01-06, 39-08-01; *N.D. R. Crim. P. Rule 23(b)(2).*
Ohio	1	*See Ohio Rev. Code Ann.* §§ 2901.02, 2945.17, 4511.19.
Oklahoma	1	*See Okla. Const.* art. II, § 19; *Okla. St.* tit. 47, § 11-902.
Oregon	1	*See Ore. Rev. Stat.* §§ 161.615(1), 813.010; *Brown v. Multnomah Cnty. Dist. Court*, 280 Ore. 95, 570 P.2d 52 (Ore. 1977).
Pennsylvania	3	*See* 18 Pa. Cons. Stat. § 1104; 75 Pa. Cons. Stat. §§ 3802, 3803, 3804.

Rhode Island	1	*See R.I. Gen Law* § 31-27-2(d)(1)(i).
South Carolina	1	*See S.C. Code Ann.* §§ 56-5-2930, 56-5-2935.
South Dakota	1	*See Parham v. Municipal Court*, 86 S.D. 531, 199 N.W.2d 501, 505 (S.D. 1972).
Tennessee	1	*See Tenn. Code Ann.* §§ 55-10-401, 55-10-402.
Texas	1	*See Tex. Penal Code Ann.* § 49.04; *Chaouachi v. State*, 870 S.W.2d 88, 90 (Tex. Ct. App. 1993).
Utah	1	*See State v. Nuttall*, 611 P.2d 722, 725 (Utah 1980).
Vermont	1	*See Vt. Stat. Ann.* tit. 23, §§ 1201, 1210.
Virginia	1	*See Va. Code Ann.* §§ 18.2-270, 19.2-258.
Washington	1	*See Wash. Rev. Code* §§ 46.61.502(1), 46.61.502(5), 46.61.5055(1); *Pasco v. Mace*, 98 Wn.2d 87, 653 P.2d 618, 625 (Wash. 1982).
West Virginia	1	*See W. Va. Code* § 17C:5-2(e); *Hendershot v. Hendershot*, 164 W. Va. 190, 263 S.E.2d 90, 95 (W. Va. 1980).

Wisconsin	2	*See Wis. Stat.* §§ 346.63, 346.65, 939.12; *State v. Slowe*, 230 Wis. 406, 284 N.W. 4, 5-6 (Wis. 1939).
Wyoming	1	*See Casper v. Cheatham*, 739 P.2d 1222, 1223 (Wyo. 1987).
District of Columbia	2	*D.C. Code* §§ 16-705, 50-2206.11, 50-2206.13.

APPENDIX B — OPINION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, DECIDED OCTOBER 2, 2014

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-5730-12T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMES R. DENELSBECK,

Defendant-Appellant.

September 24, 2014, Argued
October 2, 2014, Decided

On appeal from Superior Court of New Jersey, Law Division, Atlantic County, Municipal Appeal No. 0053-12.

Before Judges Alvarez and Carroll.

PER CURIAM

On October 5, 2011, defendant James R. Denelsbeck was charged in the Ventnor Municipal Court with driving while intoxicated (DWI), *N.J.S.A.* 39:4-50; careless

driving, *N.J.S.A.* 39:4-97; and failure to observe a signal, *N.J.S.A.* 39:4-81. On January 26, 2012, defense counsel entered his appearance with the court and requested a jury trial. In response, the municipal prosecutor advised that the State would not be seeking more than 180 days incarceration were defendant to be convicted of all charges. Following argument on January 30, 2012, the municipal judge denied the motion.

After defendant unsuccessfully moved to suppress the results of an Alcotest breath examination, a bench trial ensued. On October 25, 2012, defendant was found guilty of DWI and failure to observe a traffic signal, and acquitted of careless driving. Since defendant had three prior DWI convictions, the municipal court sentenced him to a term of 180 days in the Atlantic County Jail, a ten-year driver's license suspension, twelve hours in the intoxicated driver resource program, a $1006 fine, and applicable fees and costs. A $56 fine and $33 court costs were imposed for the red light violation.

Defendant appealed his conviction to the Law Division, where he again sought to exclude the breath test results and renewed his argument that he was entitled to a jury trial. On June 14, 2013, the court rejected defendant's challenge to the admissibility of the Alcotest results and request for a jury trial, and found him guilty. The court imposed the same sentence as the municipal court.

Defendant's sole argument on appeal is that he was entitled to a jury trial. Defendant bases his argument on the assertion that the aggregate penalties he faced exceeded 180 days of incarceration. Relying on well-settled authority to the contrary, we reject defendant's argument as without merit.

Appendix B

In *Blanton v. N. Las Vegas*, 489 U.S. 538, 539-40, 109 S. Ct. 1289, 1291-92, 103 L. Ed. 2d 550, 554-55 (1989), the United States Supreme Court held that DWI offenders facing a prison term of six months or less are not guaranteed a jury trial. The court noted, however, that one may be required "in the rare situation where a legislature packs an offense it deems serious with onerous penalties that nonetheless do not puncture the [six]-month incarceration line." *Id.* at 543, 109 S. Ct. at 1293, 103 L. Ed. 2d at 556-57 (internal quotations omitted).

New Jersey does not recognize a right to a trial by jury for DWI, which under state law is considered a motor-vehicle offense rather than a criminal offense. *State v. Hamm*, 121 N.J. 109, 116, 577 A.2d 1259 (1990), *cert. denied*, 499 U.S. 947, 111 S. Ct. 1413, 113 L. Ed. 2d 466 (1991). "Despite the fact that the Legislature regards DWI as a profound social problem, it has yet to impose the full force of law on that offense that would denote a social evaluation that DWI is a 'crime' or an offense that equates with the need of trial by jury." *Ibid.* However, in situations where a DWI defendant is also charged with "'factually related petty offenses . . . whose maximum sentences [when combined with the DWI sentence] total more than six months, and the defendant is not offered a jury trial, the sentences may not total more than six months.'" *State v. Federico*, 414 N.J. Super. 321, 330, 998 A.2d 517 (App. Div. 2010) (quoting *State v. Linnehan*, 197 N.J. Super. 41, 43, 484 A.2d 34 (App. Div. 1984), *certif. denied*, 99 N.J. 236, 491 A.2d 723 (1985)).

Here, defendant's DWI charge carried a potential prison sentence of 180 days, *N.J.S.A.* 39:4-50(a)(3), and his careless driving and failure to observe signal charges

each carried a potential prison sentence of up to fifteen days, *N.J.S.A.* 39:4-104. However, we see nothing in the record to suggest that defendant faced any real risk of receiving a prison term greater than 180 days. Rather, the State made it clear from the outset that it would not seek a custodial sentence exceeding that length. If a sentence greater than 180 days had been imposed, our holding in *Federico* would have limited defendant's sentence to 180 days. Moreover, the additional fines, penalties, and surcharges defendant faced were not "onerous" penalties triggering a right to a jury trial. *See Blanton, supra*, 489 U.S. at 543, 109 S. Ct. at 1293, 103 L. Ed. 2d at 556-57. Thus, federal and state precedent support the denial of defendant's request for a jury trial.

Affirmed.

APPENDIX C — ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, ATLANTIC COUNTY, FILED JULY 12, 2013

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-ATLANTIC COUNTY
MUNICIPAL COURT OF VENTNOR
APPEAL NO. 0053-12

STATE OF NEW JERSEY,

Plaintiff,

v.

JAMES R. DENELSBECK,

Defendant.

ORDER

This matter having been opened to the Court by John Menzel, J.D., attorney for defendant James R. Denelsbeck; and Assistant Prosecutor Deborah Hay having appeared for the State; and the Court having considered the submissions of the parties, the record of the proceedings below, and having heard the arguments of counsel on June 14, 2013; and for good cause having been shown:

IT IS on this 12 day of July 2013, **ORDERED** that the sentence imposed by the Honorable Mary J. Siracusa, P.J.M.C., in the above matter is **AFFIRMED** for the reasons placed on the record on June 14, 2013.

IT IS FURTHER ORDERED that defendant is to report to the Atlantic County Justice Facility on Monday, June 17, 2013, at 10:00 A.M. and his bail is revoked as of that time.

/s/_____
Honorable Max A. Baker, J.S.C.

APPENDIX D — CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

UNITED STATES CONSTITUTION, SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. [Emphasis added.]

NEW JERSEY STATUTE 39:4-50

(a) Except as provided in subsection (g) of this section, a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject:

Appendix D

*** *** ***

(3) For a third or subsequent violation, a person shall be subject to a fine of $1,000.00, and shall be sentenced to imprisonment for a term of not less than 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years. For a third or subsequent violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c. 417 (C.39:4-50.16 et al.).

*** *** ***

A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the

revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. **** For a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

(b) A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol and drug education and highway safety, as prescribed by the chief administrator. The sentencing court shall inform the person convicted that failure to satisfy such requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance

with the Rules Governing the Courts of the State of New Jersey, or R.S.39:5-22. Upon sentencing, the court shall forward to the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of $100.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3 of P.L. 1983, c. 531 (C.26:2B-32) to support the Intoxicated Driving Program Unit.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the chief administrator. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S.39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the chief administrator, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon

conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(d) The chief administrator shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to establish a program of alcohol education and highway safety, as prescribed by this act.

(e) *** *** ***.

(f) The counties, in cooperation with the Division of Alcoholism and Drug Abuse and the commission, but subject to the approval of the Division of Alcoholism and Abuse, shall designate and establish on a county or regional basis Intoxicated Driver Resource Centers. These centers shall have the capability of serving as community treatment referral centers and as court monitors of a person's compliance with the ordered treatment, service alternative or community service. All centers established pursuant to this subsection shall be administered by a counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending

the centers; provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol and drug education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing in this subsection shall bar these centers from developing their own education and treatment programs; provided that they are approved by the Division of Alcoholism and Drug Abuse.

Upon a person's failure to report to the initial screening or any subsequent ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an Intoxicated Driver Resource Center, a person shall be required to pay a per diem fee of $75.00 for the first offender program or a per diem fee of $100.00 for the second offender program, as appropriate. Any increases in the per diem fees after the first full year shall be determined pursuant to rules and regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.).

The centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the chief administrator.

The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this subsection.

(g) *** *** ***.

(h) A court also may order a person convicted pursuant to subsection (a) of this section, to participate in a supervised visitation program as either a condition of probation or a form of community service, giving preference to those who were under the age of 21 at the time of the offense. Prior to ordering a person to participate in such a program, the court may consult with any person who may provide useful information on the defendant's physical, emotional and mental suitability for the visit to ensure that it will not cause any injury to the defendant. The court also may order that the defendant participate in a counseling session under the supervision of the Intoxicated Driving Program Unit prior to participating in the supervised visitation program. The supervised visitation program shall be at one or more of the following facilities which have agreed to participate in the program under the supervision of the facility's personnel and the probation department:

(1) a trauma center, critical care center or acute care hospital having basic emergency services, which receives victims of motor vehicle accidents for the purpose of observing appropriate victims of drunk drivers and victims who are, themselves, drunk drivers;

(2) a facility which cares for advanced alcoholics or drug abusers, to observe persons in the advanced stages of alcoholism or drug abuse; or

(3) if approved by a county medical examiner, the office of the county medical examiner or a public morgue to observe appropriate victims of vehicle accidents involving drunk drivers.

As used in this section, "appropriate victim" means a victim whose condition is determined by the facility's supervisory personnel and the probation officer to be appropriate for demonstrating the results of accidents involving drunk drivers without being unnecessarily gruesome or traumatic to the defendant.

If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine that the visitation may be or is traumatic or otherwise inappropriate for that defendant, the visitation shall be terminated without prejudice to the defendant. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant, defendant's counsel, and, if available, the defendant's parents to discuss the visitation and its effect

on the defendant's future conduct. If a personal conference is not practicable because of the defendant's absence from the jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant to submit a written report concerning the visitation experience and its impact on the defendant. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a defendant during the visitation, are not liable for any civil damages resulting from injury to the defendant, or for civil damages associated with the visitation which are caused by the defendant, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage.

The Supreme Court may adopt court rules or directives to effectuate the purposes of this subsection.

(i) In addition to any other fine, fee, or other charge imposed pursuant to law, the court shall assess a person convicted of a violation of the provisions of this section a surcharge of $100, of which amount $50 shall be payable to the municipality in which the conviction was obtained and $50 shall be payable to the Treasurer of the State of New Jersey for deposit into the General Fund.

***NEW JERSEY STATUTE* 39:4-50.8**

Upon a conviction of a violation of R.S. 39:4-50 or section 2 of P.L.1981, c.512 (C. 39:4-50.4a), the court shall collect from the defendant a surcharge of $100.00

in addition to and independently of any fine imposed on that defendant. The court shall forward the surcharge to the Director of the Division of Motor Vehicles who shall deposit $95.00 of the surcharge into a "Drunk Driving Enforcement Fund" (hereinafter referred to as the "fund"). This fund shall be used to establish a Statewide drunk driving enforcement program to be supervised by the director. The remaining $5.00 of each surcharge shall be deposited by the director into a separate fund for administrative expenses.

A municipality shall be entitled to periodic grants from the "Drunk Driving Enforcement Fund" in amounts representing its proportionate contribution to the fund. A municipality shall be deemed to have contributed to the fund the portion of the surcharge allocated to the fund, collected pursuant to this section if the violation of R.S. 39:4-50 or section 2 of P.L.1981, c.512 (C. 39:4-50.4a) occurred within the municipality and the arrest resulting in conviction was made by the member of a municipal police force. The grants from the fund shall be used by the municipality to increase enforcement of R.S. 39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the director. The Division of State Police, interstate law enforcement agencies and county law enforcement agencies shall be entitled to periodic grants from the fund in amounts representing their proportionate contribution to the fund. The Division of State Police or county or interstate law enforcement agency shall be deemed to have contributed to the fund the portion of the surcharge allocated to the fund collected pursuant to this section if the arrest

resulting in a conviction was made by a member of the Division of State Police or county or interstate law enforcement agency. The grants from the fund shall be used by the Division of State Police or county or interstate law enforcement agency to increase enforcement of R.S. 39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the director.

The surcharge described herein shall not be considered a fine, penalty or forfeiture to be distributed pursuant to R.S. 39:5-41.

The director shall promulgate rules and regulations in order to effectuate the purposes of this section.

***NEW JERSEY STATUTE* 39:4-50.17**

a. *** *** ***.

b. In sentencing a second or subsequent offender under R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the court shall order, in addition to any other penalty imposed by that section, the installation of an ignition interlock device in the motor vehicle principally operated by the offender during and following the expiration of the period of license suspension imposed under R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a). In addition to installation during the period of license suspension, the device shall remain installed for not less than one year or more than three years, commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served.

c. The court shall require that, for the duration of its order, an offender shall drive no vehicle other than one in which an interlock device has been installed pursuant to the order.

d. As used in this act, "ignition interlock device" or "device" means a blood alcohol equivalence measuring device which will prevent a motor vehicle from starting if the operator's blood alcohol content exceeds a predetermined level when the operator blows into the device.

e. The provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) and any amendments and supplements thereto shall be applicable only to violations of R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a).

***NEW JERSEY STATUTE* 39:4-50.19**

a. A person who fails to install an interlock device ordered by the court in a motor vehicle owned, leased or regularly operated by him shall have his driver's license suspended for one year, in addition to any other suspension or revocation imposed under R.S.39:4-50, unless the court determines a valid reason exists for the failure to comply. A person in whose vehicle an interlock device is installed pursuant to a court order who drives that vehicle after it has been started by any means other than his own blowing into the device or who drives a vehicle that is not equipped with such a device shall have his driver's license suspended for one year, in addition to any other penalty applicable by law.

b. A person is a disorderly person who:

(1) blows into an interlock device or otherwise starts a motor vehicle equipped with such a device for the purpose of providing an operable motor vehicle to a person who has been ordered by the court to install the device in the vehicle;

(2) tampers or in any way circumvents the operation of an interlock device; or

(3) knowingly rents, leases or lends a motor vehicle not equipped with an interlock device to a person who has been ordered by the court to install an interlock device in a vehicle he owns, leases or regularly operates.

c. The provisions of subsection b. of this section shall not apply if a motor vehicle required to be equipped with an ignition interlock device is started by a person for the purpose of safety or mechanical repair of the device or the vehicle, provided the person subject to the court order does not operate the vehicle.

***NEW JERSEY STATUTE* 39:5-36**

Unless otherwise expressly provided in this subtitle, any person who shall be convicted of a violation of any of the provisions of this subtitle, and upon whom a fine shall be imposed, shall, in default of payment thereof, be imprisoned in the county jail or workhouse of the county where the offense was committed, but in no case shall such imprisonment exceed 1 day for each $20.00 of the fine so

imposed, nor shall such imprisonment exceed, in any case, a period of 3 months.

Whenever a person is imprisoned by reason of default in the payment of a fine or fines and costs imposed and assessed upon conviction of any violation of this subtitle wherein the committing court, as a part of the sentence, ordered that such person stand committed to the county jail or workhouse until such fine and costs are paid, he shall be given credit against the amount of such fines and costs at the rate of $20.00 for each day of such confinement. When such person shall have been confined for a sufficient number of days to establish credits equal to the aggregate amount of such fines and costs, and is not held by reason of any other sentence or commitment, he shall be discharged from such imprisonment by the officer in charge of the county jail or workhouse.

***NEW JERSEY STATUTE* 39:5D-4**

(a) The licensing authority in the home State, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home State, shall apply the penalties of the home State or of the State in which the violation occurred, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home State shall give such effect to the conduct as is provided by the laws of the home State.

(c) If the laws of a party State do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party State shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party State shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

***NEW JERSEY STATUTE* 17:29A-35(*B*)**

b. There is created a Motor Vehicle Violations Surcharge System which shall apply to all drivers and shall include, but not be limited to, the following provisions:

*** *** ***.

(b) Surcharges shall be levied for convictions (i) under R.S.39:4-50 for violations occurring on or after February 10, 1983, and (ii) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for offenses committed in other jurisdictions of a substantially similar nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), for violations occurring on or after January 26, 1984. Except as hereinafter provided, surcharges under this subparagraph (b) shall be levied annually for a three-year period, and shall be $1,000.00 per year for each of the first two convictions, for a total surcharge of $3,000 for each conviction, and $1,500.00 per year for the third conviction occurring within a three-year period, for a total surcharge of $4,500 for the third conviction. If a driver is convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for offenses arising out of the same incident, the driver shall be assessed only one surcharge for the two offenses.

If, upon written notification from the commission or its designee, mailed to the last address of record with the commission, a driver fails to pay a surcharge levied under this section and collectible by the commission, the driving privilege of the driver shall be suspended forthwith until at least five percent of each outstanding surcharge assessment that has resulted in suspension is paid to the commission; except that the commission may authorize payment of the surcharge on an installment basis over a period of 12 months for assessments under $2,300 or 24 months for assessments of $2,300 or more.

The commission, for good cause, may authorize payment of any surcharge on an installment basis over a period not to exceed 36 months. If a driver fails to pay the surcharge or any installments on the surcharge, the total surcharge shall become due immediately, except as otherwise prescribed by rule of the commission.

*** *** ***

In addition to any other remedy provided by law, the commission is authorized to utilize the provisions of the SOIL (Set off of Individual Liability) program established pursuant to P.L.1981, c.239 (C.54A:9-8.1 et seq.) to collect any surcharge levied under this section and collectible by the commission that is unpaid on or after the effective date of this act. As an additional remedy, the commission may issue a certificate to the Clerk of the Superior Court stating that the person identified in the certificate is indebted under this surcharge law in such amount as shall be stated in the certificate. The certificate shall reference the statute under which the indebtedness arises. Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon the record of docketed judgments the name of such person as debtor; the State as creditor; the address of such person, if shown in the certificate; the amount of the debt so certified; a reference to the statute under which the surcharge is assessed, and the date of making such entries. The docketing of the entries shall have the same force and effect as a civil judgment docketed in the Superior Court, and the commission shall have all the remedies and may take all of the proceedings for the collection thereof which

may be had or taken upon the recovery of a judgment in an action, but without prejudice to any right of appeal. Upon entry by the clerk of the certificate in the record of docketed judgments in accordance with this provision, interest in the amount specified by the court rules for post-judgment interest shall accrue from the date of the docketing of the certificate, however payment of the interest may be waived by the commission or its designee. In the event that the surcharge remains unpaid following the issuance of the certificate of debt and the commission takes any further collection action including referral of the matter to the Attorney General or his designee, the fee imposed, in lieu of the actual cost of collection, may be 20 percent of surcharges of $1,000 or more. The administrator or his designee may establish a sliding scale, not to exceed a maximum amount of $200, for surcharge principal amounts of less than $1,000 at the time the certificate of debt is forwarded to the Superior Court for filing. The commission shall provide written notification to a driver of the proposed filing of the certificate of debt at least 10 days prior to the proposed filing; such notice shall be mailed to the driver's last address of record with the commission. Upon the filing of a certificate of debt with the Clerk of the Superior Court, the surcharged driver shall not be eligible for the restoration of his driving privilege until at least five percent of each outstanding surcharge assessment that has resulted in the suspension, including interest and costs, if any, is paid to the commission. If a certificate of debt is satisfied following a credit card payment, debit card payment or payment by other electronic payment device and that payment is reversed, a new certificate of debt shall be filed against the surcharged driver unless the original is reinstated.

If the administrator or his designee approves a special payment plan, of such duration as the administrator or his designee deems appropriate, for repayment of the certificate of debt, and the driver is complying with the approved plan, the plan may be continued for any new surcharge not part of the certificate of debt.

All moneys collectible by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall be billed and collected by the commission except as provided in P.L.1997, c.280 (C.2B:19-10 et al.) for the collection of unpaid surcharges. Commencing on September 1, 1996, or such earlier time as the Commissioner of Banking and Insurance shall certify to the State Treasurer that amounts on deposit in the New Jersey Automobile Insurance Guaranty Fund are sufficient to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, all surcharges collected by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall be remitted to the Division of Motor Vehicles Surcharge Fund:

(i) for transfer to the Market Transition Facility Revenue Fund, as provided in section 12 of P.L.1994, c.57 (C.34:1B-21.12), for the purposes of section 4 of P.L.1994, c.57 (C.34:1B-21.4) until such a time as all the Market Transition Facility bonds, notes and obligations and all Motor Vehicle Commission bonds, notes and obligations issued pursuant to that section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding; and

(ii) from and after the date of certification by the Commissioner of Banking and Insurance that the moneys collectible under subparagraph (b) of paragraph (2) of this subsection b. are no longer needed to fund the association or at such time as all Market Transition Facility bonds, notes and obligations and all Motor Vehicle Commission bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding, for transfer to the Motor Vehicle Surcharges Revenue Fund established pursuant to section 6 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c.70 (C.34:1B-21.28) to be applied as set forth in section 6 that act. From and after such time as all bonds issued under section 4 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c.70 (C.34:1B-21. 26) and the costs thereof are discharged and no longer outstanding, all surcharges collected by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall, subject to appropriation, be remitted to the New Jersey Property-Liability Insurance Guaranty Association created pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used for payment of any loans made by that association to the New Jersey Automobile Insurance Guaranty Fund pursuant to paragraph (10) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such payments shall be subject to and dependent upon appropriation by the State Legislature.

All surcharges collected by the courts pursuant to subparagraph (a) of paragraph (2) of this subsection b. shall be forwarded not less frequently than monthly to

the Division of Revenue. The Division of Revenue shall transfer: all such surcharges received prior to July 1, 2006, to the General Fund, and commencing July 1, 2006, all such surcharges to the Unsafe Driving Surcharge Revenue Fund established pursuant to section 5 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c.70 (C.34:1B-21.27) to be applied as set forth in section 5 of that act. From and after such time as all bonds (including refunding bonds), notes and other obligations issued under section 4 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c.70 (C.34:1B-21.26), and the costs thereof are discharged and no longer outstanding, all such surcharges collected by the courts pursuant to subparagraph (a) of paragraph (2) of this subsection b. and forwarded to the Division of Revenue shall be transferred to the General Fund.

Upon request, the Administrative Office of the Courts shall provide a monthly report to the Division of Revenue containing information on the number of convictions for the offense of unsafe driving pursuant to section 1 of P.L.2000, c.75 (C.39:4-97.2) that were entered during such month, the amount of the surcharges that were assessed by the courts pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) for such month, and the amount of the surcharges collected by the courts pursuant to subsection f. of section 1 of P.L.2000, c. 75 (C.39:4-97.2) during such month.

(3) In addition to any other authority provided in P.L.1983, c.65 (C.17:29A-33 et al.), the commissioner, after consultation with the commission, is specifically

authorized (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in accordance with subparagraph (a) of paragraph (1) of this subsection b., surcharges for motor vehicle violations or convictions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes, or (c) to reduce the number of points for which surcharges may be assessed below the level provided in subparagraph (a) of paragraph (1) of this subsection b., except that the dollar amount of all surcharges levied under the Motor Vehicle Violations Surcharge System shall be uniform on a Statewide basis for each filer, without regard to classification or territory. ****.

***NEW JERSEY STATUTE* 2C:43-3.1(C)**

In addition to any other assessment imposed pursuant to the provisions of R.S. 39:4-50, the provisions of section 12 of P.L.1990, c. 103 (C.39:3-10.20) relating to a violation of section 5 of P.L.1990, c. 103 (C.39:3-10.13), the provisions of section 19 of P.L.1954, c. 236 (C. 12:7-34.19) or the provisions of section 3 of P.L.1952, c. 157 (C.12:7-46), any person convicted of operating a motor vehicle, commercial motor vehicle or vessel while under the influence of liquor or drugs shall be assessed $50.00.

***NEW JERSEY STATUTE* 2C:43-3.2(A)(1)**

In addition to any other fine, fee or assessment imposed, any person convicted of a crime, disorderly or petty disorderly persons offense or violation of R.S. 39:4-50 shall be assessed $75 for each conviction.