

Drive on a Suspended License Following a Conviction for Drunk Driving? Do not Pass Go.... Go Directly to Jail... Do not even think about rehab!

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In prior blog posts [New Law Mandates Video Cameras in Police Vehicles](#) and [Mandatory Jail Under New Driving While Suspended Statue](#), we discussed changes in the law governing suspended drivers. This article expands that discussion by employing an hypothetical anecdote to provide context to the law. . .

An unassuming mother of two steps from her suburban New Jersey condo on a crisp Tuesday morning at 7:45 a.m. and quickly enters her nondescript minivan. She deftly fastens her safety belt and secures all electronic devices safely away to avoid even the temptation of a distraction. Hands on “ten and two”, she cautiously maintains her speed as close to the speed limit as the flow of traffic will allow and drives like her every move is being captured on one of those notorious red light cameras. Let there be no mistake, her operation is intentionally designed to avoid attention.

Twenty minutes later, she guardedly pulls into the unremarkable parking lot of her employer’s office complex, where she parks without incident, and steps from the vehicle with a sigh of relief. The anxiety of what she has done that morning will remain with her, gnawing at her throughout the day. For the twenty-fifth time since losing her license for her first drunk driving conviction two months earlier, she will break the law. She will drive, as sober as can be, during her seven month license suspension. She will reverse this drive in ten hours. She tried to avoid this.

Mom has carefully balanced the options in her mind. She has no driver’s license and will, if caught in this cat and mouse game, face a mandatory jail sentence. There is no available public transportation between her job and her home. Commuting with others is not an option. Hiring a driver is for lottery winners. All of her money goes, well, ... there isn’t any. While her loss of driving privileges may justifiably draw little sympathy among those who have never been convicted of drunk driving, she is not attempting to justify her conduct. She knows she must pay a price for being convicted of driving after taking prescription pain killers. But she must balance her priorities. So, she drives. If she is caught just once, she must serve between ten and 90 days in jail. If she is caught a second time, she will have a criminal conviction, her first, and will serve 180 days in jail without parole or any hope of early release.

If this hypothetical scenario seems unlikely, think again. Each day, countless suspended drivers take to the roads, not out of entitlement but, out of the perceived necessity to maintain employment and tend to ordinary responsibilities. While no one should condone the act of disregarding a suspension order, this article merely attempts to question whether the punishment matches the crime.

Our motor vehicle code provides for substantial penalties (mandatory fines \$500 to \$1,500, additional loss of driving privileges for 12 to 30 months, and a minimum of 10 days up to 180 days in jail depending on the circumstances); however, our Legislature determined that more punishment was needed. In 2011, a new law went into effect making it a fourth degree crime to drive while suspended following a conviction for drunk driving or refusal to provide a breath sample. While this offense only applies to those caught a second time driving while suspended following a first DWI or Refusal conviction, it applies to everyone who drives even once following a second or subsequent DWI or Refusal conviction.

While the stigma of a criminal conviction, as opposed to a motor vehicle violation, alone can have a substantial, negative social and employment impact on a person, it is the mandatory sentence that flows from such a conviction that must give us pause. Unlike nearly all other fourth degree offenses, *N.J.S.A. 2C:40-26*, Operating Motor Vehicle During Period of License Suspension, carries a mandatory minimum 180 day jail sentence. This mandatory minimum sentence means that there is no early release through parole or through earned credits in the institution. In fact, on August 25, 2014, in *State v. French*, our Appellate Division determined that the 180 day jail sentence cannot even be reduced by attending an inpatient substance abuse treatment program because the Legislature did not authorize any relief from the mandatory incarceration despite the obvious benefits attendant to a comprehensive treatment program and concomitant costs of incarceration, which are born by the government. It is difficult to fathom how merely driving to work without a license could expose our hypothetical mom to the reality of 180 days in jail yet, that is the law. The United States is credited with the highest incarceration rate in the World. No one can reasonably dispute the dangers of driving while intoxicated; however, driving without a license does not present the same danger.

While the penalties are both severe and mandatory, there are often defenses and alternatives to jail. Anyone charged with driving while suspended (or revoked) as a result of a DWI or related conviction should immediately seek experienced counsel.

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