



NEW JERSEY LAW REVISION COMMISSION
Draft Tentative Report Addressing the Standard of Proof
for Alcohol Test Refusal Offenses in N.J.S. 39:4-50.4a

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S.* 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **August 11, 2025**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries to:

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Executive Summary

In New Jersey, the purpose of the Title 39 statutes punishing drunk driving is to “curb the senseless havoc and destruction caused by intoxicated drivers.”¹ Before the Supreme Court decisions in *State v. Widmaier* and *State v. Cummings*, refusing to submit to a breathalyzer exam after being apprehended for driving while intoxicated was treated as a civil offense.²

In *Widmaier*, the Court held that “for double jeopardy purposes,” “prosecution under the refusal statute must be regarded as quasi-criminal in nature.”³

Subsequently, in *Cummings*, the Supreme Court considered the appropriate burden of proof for breathalyzer refusal offenses in N.J.S. 39:4-50.4a, which requires “[t]he municipal court [to] determine by a preponderance of the evidence” whether an individual refused an alcohol test at an officer’s request.⁴ Despite a long history of precedent to the contrary, the *Cummings* Court highlighted the significance of the holding in *Widmaier*, and held “that, because a breathalyzer refusal case is properly a quasi-criminal matter, the constitutionally required burden of proof is the one applicable to criminal cases: proof beyond a reasonable doubt.”⁵

In light of the holding in *Cummings*, the proposed modifications to N.J.S. 39:4-50.4a contained in the Appendix replace “preponderance of the evidence” with the appropriate burden of proof: “beyond a reasonable doubt.”

Statute Considered

N.J.S. 39:4-50.4a provides, in relevant part, that:

* * *

The municipal court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi public areas of this State while the person was under the influence of intoxicating liquor or a narcotics, hallucinogenic, or habit-producing drug or marijuana; whether the person placed under arrest, if appropriate, and whether he

¹ *State v. Cummings*, 184 N.J. 84, 92 (2005).

² *State v. Cummings*, 184 N.J. 84 (2005); *State v. Widmaier*, 157 N.J. 475 (1999); *see also* N.J. STAT. ANN. § 39:4-50.4a (West 2025).

³ *Widmaier*, 157 N.J. at 500 (“Notwithstanding the civil standard of proof, we must adhere to the principle that the characterization of the refusal statute for double jeopardy purposes depends on whether the sanction essentially constitutes a criminal penalty.”).

⁴ N.J. STAT. ANN. § 39:4-50.4a.

⁵ *Cummings*, 184 N.J. at 89 (“This appeal requires that we consider, in light of intervening decisions of this Court, whether the statutory burden of proof in a breathalyzer refusal case comports with appropriate constitutional due process requirements for quasi-criminal actions.”).

refused to submit to the test upon request of the officer; and if these elements of the violation are not established, no conviction shall issue. . . .⁶

* * *

Background

John Cummings (“Cummings”) was apprehended for driving illegally across the center line of traffic in Mahwah Township, and the arresting officer attempted twice to conduct a breathalyzer exam at the police station.⁷ Cummings was issued citations for driving while intoxicated⁸, and for refusing to submit to a breathalyzer test.⁹

On May 29, 2003, Cummings appeared as a defendant in Mahwah Municipal Court and sought to dismiss the citation regarding his refusal to submit to a breathalyzer exam.¹⁰ He contended that “the preponderance of the evidence burden of proof set forth in the Refusal Statute violated his due process rights and that, given the nature of the charges against him, he was constitutionally entitled to a trial by jury.”¹¹ The court rejected his constitutional claim.¹²

Cummings then entered a conditional guilty plea, and the municipal court stayed his sentence pending appeal.¹³ The Law Division “conducted a trial de novo [and] rejected [Cummings]’s constitutional due process challenge to the preponderance of the evidence burden of proof embodied in the Refusal Statute.”¹⁴ The Law Division reached the same conclusion as the municipal court and imposed the same sentence, but again stayed the sentence pending an appeal.¹⁵

The Appellate Division “upheld the constitutionality of N.J.S.A. 39:4–50.4a, . . . and affirmed [Cummings]’s conviction and sentence,”¹⁶ relying on the decisions in *State v. Todaro* and *State v. Fahrner*.¹⁷

The New Jersey Supreme Court “granted certification to consider only one issue: whether the preponderance of the evidence burden of proof in the Refusal Statute violates due process.”¹⁸

⁶ N.J. STAT. ANN. § 39:4-50.4a (emphasis added).

⁷ *Cummings*, 184 N.J. at 89.

⁸ *Id.*; see also N.J. STAT. ANN. § 39:4-50 (West 2025).

⁹ *Cummings*, 184 N.J. at 90.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 91.

¹⁵ *Id.*

¹⁶ *Id.* (internal quotations omitted).

¹⁷ *Id.* (citing *State v. Fahrner*, 212 N.J. Super. 571 (App.Div.1986), *abrogated by State v. Cummings*, 184 N.J. 84 (2005) and *State v. Todaro*, 242 N.J. Super. 177 (App.Div.1990), *abrogated by State v. Cummings*, 184 N.J. 84 (2005)).

¹⁸ *State v. Cummings*, 182 N.J. 148 (2004).

Analysis

The Supreme Court in *Cummings* considered the legislative history of N.J.S. 39:4–50.4a and prior relevant case law to determine whether a reasonable doubt or preponderance of the evidence standard should apply.¹⁹ The Court recognized the long line of precedent affirming that the refusal offense was civil in nature, but relied on its decision in *Widmaier* to conclude that the standard should be beyond a reasonable doubt.²⁰

Legislative History of N.J.S. 39:4-50.4a

Before the enactment of the current refusal statute, refusing a blood-alcohol test carried no penalty.²¹ This resulted in a high rate of refusals, which made it difficult to distinguish impairment due to alcohol from other health issues during motor vehicle stops.²² In 1966, N.J.S. 39:4–50.4²³ was enacted; it treated refusal offenses as a civil, administrative matter.²⁴ In 1981, the Legislature revised New Jersey’s driving while intoxicated statutes and enacted the current version of the refusal statute (N.J.S. 39:4-50.4a).²⁵

In the 1981 revisions, the Legislature “shifted the forum for the imposition of all penalties under the Refusal Statute from the administrative to the judicial forum and proposed that the burden of proof be proof beyond a reasonable doubt.”²⁶ New Jersey’s Governor at the time, Brendon Byrne, conditionally vetoed the legislation, writing that “the beyond a reasonable doubt standard of proof is an unusually harsh burden of proof in a non-criminal case [and] recommend[ing] that the preponderance of the evidence standard . . . be retained.”²⁷ The Legislature retained the preponderance of the evidence standard for refusal offenses.²⁸

Since 1981, penalties for refusal have “increased significantly.”²⁹ Under the current statute, a first-time offender may be fined at least \$500, face a license suspension of 7-12 months, and a mandatory confinement of 12-48 hours at an Intoxicated Driver Resource Center.³⁰ For repeat offenders and offenses near schools or school crossings, the penalties are more severe.³¹

¹⁹ *Cummings*, 184 N.J. at 92-96.

²⁰ *Id.* at 96.

²¹ *State v. Wright*, 107 N.J. 488, 498 (1987), *abrogated by State v. Cummings*, 184 N.J. 84 (2005) (“A problem with this legislation was that drivers were not required to take a blood-alcohol test and refusal to take such a test carried no penalties.”).

²² *Id.* at 498-99.

²³ L.1966, c.142, § 4 (subsequently codified as N.J.S. 39:4-50.4a in 1981).

²⁴ *Cummings*, 184 N.J. at 92.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 92 (quoting *Report of the Governor to the Assembly re: Assembly Bill No. 2293* (January 4, 1982)).

²⁸ N.J. STAT. ANN. § 39:4-50.4a.

²⁹ *Cummings*, 184 N.J. at 92.

³⁰ *Id.* at 93.

³¹ *Id.*

Relevant Case Law

The *Cummings* Court examined prior case law addressing the appropriate burden of proof, explaining that courts have consistently held that the refusal offense is civil in nature and requires only a preponderance of the evidence standard of proof.³²

For example, in *State v. Fahrer*, the defendant “challenge[d] the constitutionality of [N.J.S. 39:4-50.4a] in permitting a lesser standard of proof than beyond a reasonable doubt.”³³ The *Fahrer* Court rejected the argument, relying primarily on the legislative history and intent of the statute.³⁴ The Court explained that

... the purpose of the Implied Consent Law ‘is to foster safety on the highway and not to impose criminal punishment to vindicate public justice’ The statutory scheme ‘is . . . to protect the motoring public by removing the offending driver from the highways with reasonable dispatch.’ . . . We agree . . . that the penalties for violation of the statute are severe [but] they are designed to induce compliance rather than to impose punishment. In light of this legislative objective, the severity of the sanctions does not render the statutory scheme so punitive in nature as to compel the use of the reasonable doubt standard.³⁵

Similarly, in *State v. Wright*, the New Jersey Supreme Court found that “a breathalyzer refusal hearing has always been treated as a civil matter; the standard of proof in such a proceeding is a preponderance of the evidence.”³⁶

Finally, in *State v. Todaro*, the Appellate Division reiterated that it is “well settled and firmly established by precedent” that “the Legislature intended this to be a civil proceeding with a preponderance of the evidence standard.”³⁷

In *State v. Widmaier*, however, the New Jersey Supreme Court departed from prior

³² *Id.* at 93-96 (reviewing *Fahrer*, *Todaro*, *Wright*, and *Widmaier*).

³³ *Fahrer*, 212 N.J. Super. at 574 (following his second refusal conviction under the 1981 version of the statute, defendant’s challenges related to his claim that his first conviction under the 1966 version of the statute could not “be considered as a prior offense in fixing the penalty for his present violation” and included an argument that the “preponderance of evidence standard in N.J.S.A. 50.4a cannot be deemed to apply to proof of refusal to submit, as such conduct constitutes a *quasi*-criminal offense requiring proof beyond a reasonable doubt, thereby rendering the current statute dissimilar in this respect from the predecessor statute”).

³⁴ *Id.* at 576.

³⁵ *Id.* at 577.

³⁶ *Wright*, 107 N.J. at 503 (addressing whether “actual operation” of a vehicle is necessary for a refusal conviction and determining that such a requirement would “distort” the traditional refusal hearing because “requiring ‘actual operation,’ which must be proved beyond a reasonable doubt, a standard that is traditionally associated with criminal and quasi-criminal case . . . will have the unwelcome effect of increasing the complexity of the refusal hearing”).

³⁷ *Todaro*, 242 N.J. Super. at 180 (finding that *Todaro*’s “constitutional argument is incorrectly premised . . . upon *Todaro*’s characterization of the refusal statute as criminal or quasi-criminal in nature” and concluding that “it is well settled in New Jersey that while drunk driving is a quasi-criminal offense, ‘[a] breathalyzer refusal hearing has always been treated as a civil matter; the standard of proof in such a proceeding is a preponderance of the evidence’”).

precedent when considering whether the State may appeal an acquittal of a refusal offense.³⁸ Addressing whether double jeopardy barred the State’s appeal, the *Widmaier* Court explained that “the characterization of the refusal statute [as criminal or civil] for double jeopardy purposes depends on whether the sanction essentially constitutes a criminal penalty.”³⁹ Finding the refusal offense penalties to be as severe, if not more severe, than other quasi-criminal motor vehicle violations, the *Widmaier* Court concluded that, “for double jeopardy purposes . . . , a violation of the Implied Consent Law and a prosecution under the refusal statute must be regarded as quasi-criminal in nature.”⁴⁰

In light of *Widmaier*, the *Cummings* Court re-examined the standard of proof required in refusal offense prosecutions.⁴¹ The Court explained that “[o]nce a determination is made that a proceeding is quasi-criminal in nature . . . we must consider whether the full panoply of rights and obligations concomitant to a criminal prosecution also apply.”⁴² Employing “simple logic,” the Court concluded that “if an acquittal under the Refusal Statute is to have the benefit of the double jeopardy bar . . . then it stands to reason that the State’s burden of proof must mirror the burden required of all other prosecutions that similarly are subject to double jeopardy considerations.”⁴³

The *Cummings* Court, therefore, held “that, for prosecutions under N.J.S.A. 39:4–50.4a, the State must prove the statutory elements of a defendant's refusal to submit to a breathalyzer test beyond a reasonable doubt.”⁴⁴

State v. Quinn

Almost fifteen years later, the Appellate Division decided *State v. Quinn*, which demonstrates the need to clarify the burden of proof in N.J.S. 39:4-50.4a.⁴⁵ In *Quinn*, the defendant appealed from his convictions in the Law Division for failing to maintain a lane⁴⁶ and refusing to submit to a breathalyzer exam.⁴⁷ The Appellate Division stated that “the Law Division judge found plaintiff had ‘established by a preponderance of the evidence that [d]efendant violated the refusal statute.’”⁴⁸

Citing the holding in *Cummings*, the Appellate Division held that “violations of the refusal

³⁸ *Widmaier*, 157 N.J. at 481.

³⁹ *Id.* at 496.

⁴⁰ *Id.* at 500.

⁴¹ *Cummings*, 184 N.J. at 95.

⁴² *Id.*

⁴³ *Id.* at 96.

⁴⁴ *Id.* (“apply[ing] ‘pipeline retroactivity’ to this new rule, that is, this new rule applies in this case, in future cases, and in any case still on direct appeal at the time this new rule is set forth”).

⁴⁵ *State v. Quinn*, 2018 WL 4937480, at *1 (N.J. Super. Ct. App. Div. Oct. 12, 2018).

⁴⁶ N.J. STAT. ANN. § 39:4-82 (West 2025).

⁴⁷ *Quinn*, 2018 WL 4937480, at *1.

⁴⁸ *Id.* at *3.

statute must be proven beyond a reasonable doubt.”⁴⁹ Noting that the “State concede[d] that the refusal charge must be remanded,” the *Quinn* Court “vacate[d the] defendant’s conviction for refusal to submit to a chemical test and remand[ed] to the Law division to determine whether defendant violated N.J.S.A. 39:4-50.4a beyond a reasonable doubt.”⁵⁰

Conclusion

N.J.S. 39:4-50.4a currently requires a municipal court to find the elements of the refusal offense “by a preponderance of the evidence.”⁵¹ The proposed modification contained in the Appendix changes the burden of proof to “beyond a reasonable doubt,” consistent with the holding of the New Jersey Supreme Court in *State v. Cummings*.⁵²

⁴⁹ *Id.* at *5.

⁵⁰ *Id.*

⁵¹ N.J. STAT. ANN. § 39:4-50.4a.

⁵² *Cummings*, 184 N.J. at 96.

Appendix

The proposed modification to **N.J.S. 39:4-50.4a** are shown below with ~~striketrough~~ and underlining).

N.J.S. 39:4-50.4a. Refusal to submit to chemical test; penalties.

a. The municipal court shall order any person who, after being arrested for a violation of R.S.39:4-50 or section 1 of P.L.1992, c. 189 (C.39:4-50.14), refuses to submit, upon request, to a test provided for in section 2 of P.L.1966, c. 142 (C.39:4-50.2):

- (1) if the refusal was in connection with a first offense . . . ;
- (2) if the refusal was in connection with a second offense . . . ;
- (3) if the refusal was in connection with a third or subsequent offense

The municipal court shall determine ~~by a preponderance of the evidence~~ beyond a reasonable doubt whether the arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while the person was under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug, or marijuana or cannabis item as defined in section 3 of P.L.2021, c. 16 (C.24:6I-33); whether the person was placed under arrest, if appropriate, and whether he refused to submit to the test upon request of the officer; and if these elements of the violation are not established, no conviction shall issue. . . .

Notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement under this section is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the Revised Statutes or offense under Title 2C of the New Jersey Statutes

Comment

In light of the holding in *Cummings*, that, because the refusal offense in N.J.S. 39:4-50.4a is quasi-criminal rather than civil in nature, the elements of the offense must be proven beyond a reasonable doubt,⁵³ the proposed modifications replace the current language requiring a court to determine the elements of the offense “by a preponderance of the evidence” with language requiring the elements to be determined “beyond a reasonable doubt.”

⁵³ *Id.* (“for prosecutions under N.J.S.A. 39:4–50.4a, the State must prove the statutory elements of a defendant's refusal to submit to a breathalyzer test beyond a reasonable doubt”).