

Mandatory Jail Means Mandatory Jail under New Driving While Suspended Statute

08/27/14

As noted in an [earlier post](#) on this blog, New Jersey recently enacted a statute that made driving with a suspended license an indictable offense in certain circumstances, requiring a mandatory minimum period of incarceration of at least 180 days in the county jail upon conviction.

As might be expected, attorneys representing defendants charged with this new offense have attempted to find ways for their clients to escape the mandatory six month jail sentence. One attorney successfully convinced the trial court to permit his client to serve 90 days in jail, followed by 90 days in an inpatient rehabilitation program, as is permitted for repeat DWI offenders who receive 180 days in the county jail as a result of a third DWI conviction. Unfortunately for the defendant, our Appellate Division held in an opinion released on August 25, 2014, that the mandatory 180 day sentence upon conviction for the indictable driving while suspended statute requires that all 180 days be served in the county jail, and the jail time cannot be substituted by time spent in an inpatient rehabilitation program:

no discretion exists . . . to replace half of the mandatory 180 days of incarceration with a non-jail rehabilitation program.

Attorneys defending these cases will continue to attempt to find ways for their clients to escape the harsh consequences of this statute.

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