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## COMMENTARY

### Time To Get Rid of a Draconian Law

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**A** case before the New Jersey Supreme Court underscores the unnecessarily punitive nature of a state law mandating a lengthy driver's license suspension.

At issue is the question of whether the offense of possession of a controlled dangerous substance in a motor vehicle merges with the deferred disposition of the defendant's juvenile proceedings for possession of marijuana.

N.J.S.A. 39:4-49.1 prohibits possession of illegal drugs while operating a motor vehicle and mandates a punishment of a fine of at least \$50 and suspension of driving privileges for two years. A deferred disposition, authorized by N.J.S.A. 2A:4A-43(b)(1), adjourns proceedings for up to 12 months after the juvenile is adjudged delinquent; the complaint is dismissed at the end of that period if requirements are met.

In *State in the Interest of S.A.J. Jr.*, A-1963-05, the Appellate Division held last Aug. 9 that the Family Part judge properly merged the motor vehicle summons, finding that the legislative intent does not suggest that the mandatory loss of license would be applicable in a deferred disposition. That decision justly restricted the state's unnecessary attempt at using such an overly punitive and arguably unconstitutional statute.

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During oral argument on April 8 in *S.A.J.*, Justice Barry Albin compared the issue with cases involving adult defendants entering the conditional discharge program in municipal court under N.J.S.A. 2C:36A-1. He also asked the prosecutor arguing the case whether the Legislature intended that the motor vehicle offense should not survive a conditional discharge. Albin noted that such a scenario would result in the driver successfully completing a diversionary program and still losing his or her license for two years.

Despite such an outcome, the Appellate Division held in *State v. Newman*, 223 N.J. Super. 284 (App. Div. 1988), that the merger doctrine would not apply under those circumstances. The appellate panel found that a merger only involves multiple convictions, not dismissed charges under completion of a diversionary program. In addition, the panel ruled that double jeopardy principles do not preclude sentencing a motorist under both the criminal code and the motor vehicle code for the same offense. As such, the *Newman* and *S.A.J.* appellate panels present seemingly divergent opinions.

In 1964 when N.J.S.A. 39:4-49.1 was enacted, our legislators felt a two-year suspension was warranted for mere possession of drugs while operating a motor vehicle, regardless of whether the driver was under the influence. Such a penalty is unnecessary or, at the very least, way too long. This penalty is far greater than the suspension for first-time DWI offenders who are actually driving while under the influence and potentially threatening

other lives. The license suspension for those offenders ranges from three to 12 months, depending on the circumstances of the case and the results of the breath test.

Furthermore, possession of an open container of alcohol in a motor vehicle under N.J.S.A. 39:4-51b, which is comparable to possession of controlled dangerous substances in a motor vehicle, is punishable only by a fine. There is no license suspension authorized for that offense or even for consumption of alcohol in a motor vehicle under N.J.S.A. 39:4-51a.

There is no reasonable basis for the continued existence and imposition of N.J.S.A. 39:4-49.1. Despite a Law Division judge's ruling to the contrary in 1986 in *State v. Anderson*, 210 N.J. Super. 669, a two-year loss of license for mere possession of CDS in a motor vehicle is a cruel and unusual punishment.

It is not 1964 anymore. The right to drive is no longer a privilege; it is a necessity for most residents. Moreover, our criminal code addresses possession of controlled dangerous substances, thereby eliminating the need for a corresponding motor vehicle offense that tacks on additional penalties that do not match the offense. In fact, our Legislature recently inserted a hardship exception to the counterproductive mandatory license suspension of six months to two years under N.J.S.A. 2C:35-16 for criminal code drug violations.

Our Supreme Court should follow the Legislature's lead in taking steps to address unwarranted and overly punitive mandatory suspensions for minor drug offenses that have nothing to do with an individual's ability to drive. ■